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Review Essay: Janet Halley, Split Decisions: How and Why to Take a Break from Feminism

Ann Bartow

University of New Hampshire School of Law

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JANET E. HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (PRINCETON, N.J.: PRINCETON UNIVERSITY PRESS, 2006)

Ann M. Bartow*

My overarching reaction to Janet Halley's recent book, *Split Decisions: How and Why to Take a Break from Feminism*, can be summarized with a one sentence cliché: The perfect is the enemy of the good.¹ She holds feminism to a standard of perfection no human endeavour could possibly meet, and then heartily criticizes it for falling short. Though Halley's myriad observations about feminism occasionally resonated with my own views and experiences, ultimately I remain unconvinced that taking a break from feminism would, for me, be either justified or productive. But I did (mostly) enjoy reading it. Halley is well read, cleverly provocative, and a gifted writer. Below I give a somewhat glib and superficial overview of the book, and my reactions to it. I explain why I think Halley is too hard on feminists generally, and on Catharine MacKinnon specifically. And I take her to task for being harshly critical of feminism without offering realistic, pragmatic, or lawyerly alternatives. You can't theorize your way into an abortion, or out of a rape. You can have to rely on a legal system that may fail you, in which case you can work to improve it so that others don't suffer as you did. This is part of the very essence of feminism, which Halley gives short shrift.

I parsed *Split Decisions* the first time over a year ago in preparation for an "author meets reader" session with Halley at the 2007 Annual Meeting of the Law & Society Association in Berlin. There Halley was open to discussion of her book in a cordial and non-defensive way, which was a very pleasant surprise. Interviews I'd read with her about the book made her sound rather angry, and the book's introduction made her sound fearful and apprehensive about negative reactions the work would provoke. In consequence, some readers are gleefully anticipating the unleashing of a Feminist Flame War. Consider this closing paragraph of a review by University of Saskatchewan philosophy professor George Williamson:

Ultimately, Halley is saying what only a woman of impeccable feminist credentials could say. But even so, anyone familiar with the bitterness of feminist in-fighting must be pessimistic that even a balanced book such as this will be at all well-received, but rather is likely to be ferociously reviled and trashed.²

Yes, per Williamson only a brilliant, impeccable feminist would urge others to take a break from actual feminism, and only poorly credentialed, unbalanced and ferocious feminists would disagree that this is necessary. If these are the binary

* School of Law, University of South Carolina.

1 (Princeton, N.J.: Princeton University Press, 2006).

2 George Williamson, Book Review of *Split Decisions: How and Why to Take a Break from Feminism* by Janet E. Halley, online: Metapsychology Online Reviews <http://metapsychology.mentalhelp.net/poc/view_doc.php?type=book&id=3792&cn=135>.

options, put me squarely in the latter category. In fairness to Halley, Williamson seems to have missed Halley's description of herself as "only rarely and intermittently feminist,"³ or perhaps he preferred to ignore any evidence that didn't fit his theory. In the chapter entitled "My Complete and Total Lack of Objectivity" Halley writes that she hoped she "won't promote any of the contestants of feminism against it,"⁴ but it seems clear later doing just this is part of what animates the project. Yet she is self-doubting in some places, praises feminism in others, and ends that particular chapter with the words "I admit it's impossible to get this right."⁵ Perhaps this is tacit acknowledgement that the perfect is the enemy of the good? No feminist theorist gets everything right all the time, any more than any other legal scholar. Nor does any feminist lawyer, or any lawyer. But feminism has done a lot of good for women, even as mistakes were made, and will be again. If this book turns people away from feminism that lacks perfection, can they achieve the same positive goals from the "splits between theories" where Halley would situate them? Can a judge or lawyer help anyone effectively without picking sides? Halley never really explains how this will all work out in practice. It probably would have been a lot more fun to discuss this with her over a good bottle of wine than it was to write this review essay.

In case you hadn't noticed, I'm writing this book review mostly in the first person singular, and in what I hope will be a jaunty and accessible manner, to echo Halley's linguistically playful approach in the book. Her charm, humour and frequent fussy, self-deprecating qualifiers disarmed me initially. But Halley's generally friendly tone is belied by the violence of some of her language choices: splits; breaks; "beating back" the influence of Catharine A. MacKinnon; referring to some of her work as "the late MacKinnon" as if MacKinnon herself, as well as her influence, was dead; the deployment of the idiom "carrying a brief" for females (which connotes militant grudge holding); accusations of feminist "paranoia" and "bad faith;" characterization of challenging argument as "expert feminist attacks;" references to feminism's "dark side," its "vanquished" and its "prisoners of war," and repeatedly, permutations of the visceral phrase "feminism with blood on its hands," which startled and offended me every time I read it. I think anyone who has ever done any work in favour of abortion rights has been accused of having bloody hands by those who oppose women's freedom of choice, and Halley is far too smart to have interjected the expression and imagery unintentionally. I'm not sure what she intended with this. I'll concede that she got my attention, but it came linked to my enmity.

I also resented Halley's reference to much missed feminist law professor Mary Joe Frug, who was brutally stabbed and murdered in 1991 by a person or persons yet unknown, just a few sentences before angrily writing that "the CLS conference is dead,"⁶ killed, she suggests, by Robin West and "the late MacKinnon." I was lucky enough to hear Frug speak once, in the late 1980s when I was a law student, and I've read and appreciated her scholarship in the years since. Thinking about

3 *Supra* note 1 at 15.

4 *Ibid.* at 12.

5 *Supra* note 3.

6 *Supra* note 1 at 167.

what happened to her makes me want to weep, so I can only imagine what it is like for her friends and family. I don't much like it when people use her life or her death to make self-serving points about feminism. It is also unsettling that the MacKinnon references in this section of the book suggest that MacKinnon was a CLS conference participant, but a bit of research indicates this was not the case. That Halley implies she was and helped engineer the demise of the CLS conference is perplexing.

Halley prefaces a number of her framing sentences with the phrase "cards-on-the-table moment" as if the entire scholarly project was a high stakes poker game. Toward the end of the tome, where she analogizes feminism to an aging and blind but viciously barking dog,⁷ the "bitch" slur we feminists hear all too commonly was perilously close to the surface. A couple of pages later she insultingly anthropomorphizes feminism as adults on a playground who rush up at a little girl who has scraped her knee on a playground and cause her to cry with aggressive expressions of concern.⁸ Well, Janet Halley, if we are going to indulge in juvenile name calling, maybe feminism is rubber and you are glue, and whatever you say about feminism bounces back and sticks to you.

Halley begins her book by arguing (in a chapter pithily entitled "The Argument," no less) that theory produces reality, and that politics, resource distribution and sexuality are deeply contingent on theory that is embedded within feminism. The book, she says, is intended to alter reality by changing theory. And because Halley declares "*This* book--it's about sex," presumably Halley wants to change sex. You might therefore assume that the book has a highly charged erotic content. It doesn't, though. Instead it often reads like a memoir of someone who has abandoned a suddenly oppressive religion. Erotic sex is consigned to the "Sex 2" label.⁹ "Converging" and "diverging" are iterated aspects of discourse rather than intercourse. And there aren't any pictures.

Halley spends most of the book criticizing the writings of various feminist theorists, mainly feminist legal theorists. She particularly derides the "late" and presumably current work of Catharine MacKinnon by contrasting it unfavourably with MacKinnon's earlier writings, which Halley prefers. She seems to posit that over time, too much immersion in feminism made MacKinnon go wrong. I don't understand Halley's negative fixation with MacKinnon, which seems to transcend mere disagreement. She thanks MacKinnon for "generously provid[ing] substantive criticism of some pages" in her forward acknowledgements, but nothing in the book indicates that Halley is involved in any kind of substantive academic dialogue with her. Though Halley praises MacKinnon for various insights, she seems intractably unwilling to admit that MacKinnon's influence is significant because she gets so many things right.

One of the strengths of legal academia as I experience it is that most of us can all get along, at least most of the time. So I don't think the antagonism is personal. But it is certainly powerful. Did Catharine MacKinnon's feminist legal theories somehow ruin Janet Halley's theoretical sex life? All we know for sure is that Hal-

7 *Ibid.* at 343.

8 *Ibid.* at 346.

9 *Ibid.* at 24.

ley says quite explicitly that if she could click her heels and become a gay man or a straight white male middle-class radical, she would do so in an instant.¹⁰ She never explicitly says that she feels feminism ruined being a woman for her, but at various junctures in the book, that's the implication I drew. What would her sex life be like without feminism? Taking a break from feminism puts one in a different place than she would be if the feminist movement hadn't been successful in some regards. I'd have liked Halley to account for this.

Oddly, Halley compliments MacKinnon for articulating what Halley calls the emancipatory method of consciousness-raising. Consciousness-raising fora are available to all women, inviting them to share details about their lives and recognize that there are profound commonalities in women's experiences, across many kinds of differences such as age, race, and class, linked to their subordination as women. Halley wrote:

In *Second Signs*, published in 1983, MacKinnon fully embraced the problem that women's knowledge of their reality, their ability to see male dominance and to object to it for themselves, was relentlessly situated *in* male dominance. Boldly, she refused to explain the problem away on grounds of false consciousness ... or of the verity of any biological woman's experience ... attributing the paired objections to the object/subject polarity that feminism detects at the heart of male power.¹¹

It seems like Halley understands the importance of conscientious bouts of consciousness-raising as a feminist method. She also refers to MacKinnon's critique of liberal feminism as her "best work," astutely noting that "[t]he very idea that justice for women depends on a comparison of their life situation with that of men limits equality theories to the terms set by male dominance"¹² But when she raises convergence as an evil and counterproductive facet of feminism, I wonder if she grasps how important mapping and understanding commonalities among women is to attempting successful legal initiatives aimed at materially improving the situations of women. She's correct that trying to force consensus is wrong. But a feminism that has to wait until everyone is in absolute agreement cannot accomplish anything tangible in the interim. Demanding everyone agree before any forward progress can occur guarantees that there won't be any. Again, the perfect is the enemy of the good.

Women really aren't all alike, Halley says, (which isn't exactly a radical insight, or one she is alone in making, see e.g. MacKinnon on anti-sameness), and making laws that assume this, or using laws to foment this, is completely unacceptable. Theory creates reality, according to Halley, but it is a reality that can be readily Be Taken a Break From, maybe even abandoned with "swoops of joy."¹³ She skirts (or

¹⁰ *Ibid.* at 13.

¹¹ *Ibid.* at 43.

¹² *Ibid.* at 80.

¹³ *Ibid.* at 13.

pants) the fact that law, or the absence of law, creates a very different paradigmatic structure than theory. Generalizations are made by political actors, and they are addressed either by actions or by calculated inaction. Taking a Break from our politico-legal system isn't an option, much as we all might like to just take a break from patriarchy and call it a day.

Halley's theorizing and re-theorizing of theories that are not tethered to concrete examples gets a bit obtuse in places. Halley is certainly correct when she alleges that no one theory of feminism gets everything right all the time, from every perspective. And her detailed analyses of various feminist writings are useful and engaging. But her criticisms of what she terms governance feminism are difficult to read and absorb, due to the pairing of an aggressive tone with a paucity of specifics. She claims that "[i]f you look around the United States, Canada and the European Union, the human rights establishment, even the World Bank, you see plenty of places where feminism ... is running things."¹⁴ I don't know what she is talking about. I wish she'd provided a list of these places, so this claim could be fact checked. Where were the feminists in the Bush Administration? Which state legislatures are under feminist control? How many public universities have a noticeably pro-feminist leadership and agenda, and which ones are they? And are they hiring? And finally, what are the criteria by which the leadership of an entity qualifies as "feminist"? The lawyer in me wants to know.

Halley further asserts that "[e]mployers, schools, health care institutions and a whole range of entities, often formally "private," govern too—and feminism has substantial parts of them under its control."¹⁵ This is one of the places where I had to put the book down and walk away for a few minutes to calm down. I invite Halley to join me in South Carolina for a while, a couple of months at least, so that she can point out all the important institutions here that are under feminist control, because I haven't noticed any on my own, to put it mildly. The rate of domestic violence here is depressingly high. In the face of data showing 30,000 incidents of domestic violence in this smallish state each year,¹⁶ would she dare lecture the local, vocal feminists demanding funding for much needed domestic violence shelters about their "bloody hands"? A third of the population of the United States resides in The South, a geographically distinct region with a fairly pervasive common culture that is not exactly known for being feminist friendly. I have no idea if Halley's generalizations are intended to apply to Southerners like me. In any event, they do not. I can only imagine how utterly disconnected from reality her descriptions of feminist control would seem to enormous sections of the world's population.

Even where Halley addresses particular legal cases, she's pretty vague about where Taking a Break From Feminism leaves things. Consider, for example, her lengthy deconstruction of the *Oncale* case.¹⁷ *Oncale* is the case in which the U.S.

¹⁴ *Ibid.* at 20.

¹⁵ *Ibid.* at 21.

¹⁶ Samantha Harris, "South Carolina's domestic violence rate highest in the nation: Love doesn't hurt" *Independent Mail* (19 October 2007), online: <<http://www.independentmail.com/news/2007/oct/19/south-carolina-has-highest-rate-domestic-violence/>>.

¹⁷ *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998)

Supreme Court unanimously held that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII, which makes certain kinds of employment discrimination illegal. According to the Court:

[Oncale] was employed as a roustabout on an eight-man crew which included respondents John Lyons, Danny Pippen, and Brandon Johnson. Lyons, the crane operator, and Pippen, the driller, had supervisory authority. On several occasions, Oncale was forcibly subjected to sex-related, humiliating actions against him by Lyons, Pippen and Johnson in the presence of the rest of the crew. Pippen and Lyons also physically assaulted Oncale in a sexual manner, and Lyons threatened him with rape.

Oncale's complaints to supervisory personnel produced no remedial action; in fact, the company's Safety Compliance Clerk, Valent Hohen, told Oncale that Lyons and Pippen "picked [on] him all the time too," and called him a name suggesting homosexuality. Oncale eventually quit—asking that his pink slip reflect that he "voluntarily left due to sexual harassment and verbal abuse." When asked at his deposition why he left Sundowner, Oncale stated "I felt that if I didn't leave my job, that I would be raped or forced to have sex." [Citations omitted].

Catharine MacKinnon was one of the lawyers involved in convincing the Court that Oncale, if his claims were proven, should have a legal remedy. Halley's critical response is to assert that the social outcomes of providing him with one might be both anti-gay and anti-sex, and "not worth it." But she never tells us for sure. Was Oncale entitled to bring his suit or not? Even after explicitly admitting that "deciding not to do anything is doing something," she declines to weigh in. And that is a rather stunning cop out.

Another omission is more troubling. She also fails to credit MacKinnon for consulting with and obtaining the support of various gay rights groups in the *Oncale* litigation. Nor does she explain why a number of them signed on to MacKinnon's brief. MacKinnon's approach in *Oncale* may not have been perfect, but that is not a standard any litigator is ever likely to meet. Halley's account of *Oncale*, and her homophobia charges, have been explicitly and resoundingly challenged by legal theorist Marc Spindelman, in his contribution to an essay collection edited by Catharine MacKinnon and Reva Siegel.¹⁸ This part of the book would have been stronger and more credible if Halley engaged Spindelman's rebuttals to her claims.

I've met people who claim to be feminists, but rather than accomplishing anything productive for women, use their purported feminism as a platform from

¹⁸ Marc Spindelman, "Discriminating Pleasures" in Catharine MacKinnon & Reva Siegel, eds., *Directions in Sexual Harassment Law* (New Haven, CT: Yale University Press, 2003) 201.

which to criticize others and claim superiority over them. I don't think this account fairly fits Halley, but I suspect she has been exposed to too many so-called feminists for which the description is true. I fear she blames a generalized feminism for the behaviour of a few bad actors. Well, that's my theory, anyway. Like Halley, I'm short on supporting specifics.

I admit this review is a little negative, but I hope it falls far short of the dire "ferocious trashing" prediction described above. I don't fear Halley's theories, and I'm not afraid Halley's book will derail feminism. It may make a lot of antifeminist men happy, but only until they figure out how little galvanizing impact it is likely to have. Halley has an interesting way of disconnecting legal theories from the ways in which law is experienced by individuals in their every day lives, but I'm optimistic that feminist lawyers will keep helping actual clients with good, though not perfect, works, and the world will be a better place in consequence.