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Bad Girls of Art and Law: Abjection, Power, and Sexuality Exceptionalism in (Kara Walker's) Art and (Janet Halley's) Law

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**BAD GIRLS OF ART AND LAW:
ABJECTION, POWER, AND SEXUALITY EXCEPTIONALISM
IN (KARA WALKER'S) ART AND (JANET HALLEY'S) LAW**

by

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Bad Girls of Art and Law: Abjection, Power, and Sexuality Exceptionalism in (Kara Walker's) Art and (Janet Halley's) Law

Adrienne D. Davis¹

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INTRODUCTION

In 1997 African-American artist Kara Walker won a MacArthur “genius” award. This highly public recognition poured gasoline on the slow burn already in progress among members of the senior black art establishment. Walker’s *métier* revives the old silhouette form: she creates life-sized racial caricatures engaged in every sexual taboo in the book—sodomy, bestiality, pedophilia, scatological sex committed amidst piles of excrement. One aspect of her work that has been particularly explosive is that it pokes fun at that greatest of American taboos, interracial sex. She parodies fears that have achieved the status of myth in both white and black communities, and she does so using as her setting that greatest of American interracial sex factories, the antebellum plantation. Walker’s response to the conflagration? More irreverence and proclamations that injury has become part of black identity: “All black people . . . want to be slaves just a little bit.”²

Meanwhile, legal scholar Janet Halley was igniting her own firestorm among feminists. Arguing that feminism’s first principle of sex equality might be in tension with projects and methodologies centered on sexual liberation, Halley invited progressive thinkers to “Take a Break from Feminism.” In a series of articles and talks that culminated in a book, she argued that sexual acts feminists indict as abuse might be applauded as liberatory according to other political scripts. Targeting feminist totems erected at the intersection of sex and violence, Halley argued that feminist “wins” may entail substantial losses according to “queer” goals and that the losses may outweigh the gains. Given her pedigree as an anti-subordination theorist, Halley’s indictment stunned many legal feminists, and her refusal to reconcile infuriated some.

Beyond involving bad girls in art and law, what do these two controversies have in common? At first glance, not much. The first dispute involves the racial politics of censoring high-brow art. (This is not *Dogs Playing Poker*.) The second involves a pretty rarefied academic debate about a supposed fissure between feminism and queer theory, two theoretical schools most think to be in “collusion,” when “most” think of them at all. Despite these apparent differences, this Article seeks to make some connections between the Halley and Walker disputes. It shows that both Walker and Halley reject understandings of the interplay of sex, power, and subordination proffered by conventional “justice projects”—specifically civil rights’ and feminism’s articulations of bodily violence and violation as key modes of racial and gender injury and subordination. Central to both of these justice projects is a relentless

2. MICHAEL D. HARRIS, COLORED PICTURES: RACE AND VISUAL REPRESENTATION 216 (2003).

analysis of material economies and how they accumulate and allocate racial and gendered power over bodies. Certainly Walker and Halley are not the first to dispute such accounts of injury and identity; yet what distinguishes them is that both attempt to ground their theoretical and aesthetic indictments in the notion of abjection, or the liberatory potential of suffering, degradation, and shame, particularly in sexual contexts. Both seek in abjection an alternative conception of bodies and power, one not rooted in civil rights' and feminism's first principles of equality, anti-subordination, and what Halley calls "minoritizing" impulses.³ Through abjection, each offers an alternative account of how bodies and power configure human subjectivity, in which consent does not play the usual starring role it does in liberal accounts, including many feminist ones. If consent is the liberal's key to sexual pleasure (including, crucially, in domination), then by subverting it, Halley and Walker throw our entire sexual system up for grabs. For Walker and Halley, the attraction, indeed, the "sexiness," of abjection lies precisely in its *dematerialization* of bodies and power. Both invoke abjection to theorize and imagine the manipulation of orifices outside of social relations of power or contexts in which bodies are actually found. In their renderings, abjection *is* sexy precisely because of its apparent disavowal of justice projects and their accompanying materialist, identitarian, and regulatory discourses.

This Article disputes abjection as a conceptual grounding for Walker's and Halley's political and theoretical indictments. Abjection is classically associated with Julia Kristeva's work in psychoanalysis, but gained political traction in queer theorist Leo Bersani's call for a subversive sex-based queer identity. I contend that Halley's theoretical invocation of Bersani's abjection is misplaced, and that Walker's aesthetic claims fall victim to similar misreadings. In fact, the Article argues that the theoretical innovations of both versions of abjection lie in their engagements *with* power and identity, their interplay with loss, longing, and belonging in Kristeva's classic iteration and with injury, rebellion, and politics in Bersani's subversive one. In particular, Bersani's notion of subversive abjection is hopelessly embedded in the very sorts of justice projects, identitarian claims, regulatory discourses, and material economies of bodies and power that Walker and Halley disavow. And, as I will show, feminism's regulatory discourse of consent looms large in Bersani's call

3. Ian Halley, *Queer Theory by Men*, 11 DUKE J. GENDER L. & POL'Y 7, 25, 29 (2004) [hereinafter Halley, *Queer Theory by Men*]. Halley initially elaborates "minoritizing" identity impulses in her *Like Race* essay, contrasting it with "universalizing ones":

If intra-gay identity wars can be roughly described as a tension between universalizing and minoritizing and between realist and nominalist understandings, so can disagreements about the ontology of racial differences. Minoritizing understandings emerge in ethnic solidarity, politics-of-recognition multiculturalist, and nationalist discourses of race; and universalizing understandings emerge in integrationist, hybridizing, mestiza, and strong-social-constructivist models.

Janet E. Halley, "Like Race" *Arguments*, in WHAT'S LEFT OF THEORY: NEW WORK ON THE POLITICS OF LITERARY THEORY 40, 65 (Judith Butler et al. eds., 2000) [hereinafter Halley, "Like Race" *Arguments*].

for a sex-based queer identity. While their aesthetic and academic invocations of abjection are fascinating and provocative, the Article concludes that neither Kristeva's psychoanalytic turn nor Bersani's political one endorses Halley and Walker's embrace of dematerialized economies of bodies and disavowals of anti-subordination projects.

Halley in particular has fallen prey to what might be thought of as a sort of sexuality exceptionalism, a deeply essentialist, almost Freudian, notion of sex as sacred, repressed, distinct from other bodily pleasures, and, because she views it as in need of liberation, exempt from regulation and distributive justice inquiries. (This is all the more odd given Halley's queer commitments, including her professed skepticism about the power feminists attribute to sex.) In this rendering, sex floats free of material, background conditions, influences, or effects. In addition, reading Walker and Halley together poses some tough questions for Halley. Walker's commitments are aesthetic; Halley, on the other hand, seems to be making regulatory claims about how law should govern. If Walker's representations of the racial power of abjection resonate with so many, what does this mean for the scope of Halley's claims? Are her arguments to take a break from justice projects limited to feminism only, or must we liberate shameful desire wherever we find it, including making room for the sorts of racial desires for humiliation and degradation we find in Walker's art? The Article concludes that Walker and Halley have joined the anti-identitarian zeitgeist in a peculiar way: rooting their disavowal projects in abjection, while fascinating, embeds them even more deeply in what they are trying to escape: investigations of material economies of injury, identity, and power. And, importantly for Halley, it may undermine her professed goal of liberating shameful sex, instead leaving her susceptible to what I will characterize as sexuality exceptionalism.

The Article makes its argument in three steps. First, Section I explores Walker's installations and Halley's writings to show how each rejects conventional justice projects' investigations of material economies of bodies, injury, and power (especially sexual power) and accompanying discourses of regulation and anti-subordination. Instead, both claim an alternative genealogy of bodies and power rooted in the liberatory potential of abjection. Next, Section II argues that their mutual embrace of abjection, while intriguing and provocative, in the end fails to offer theoretical and political support for their claims. Walker and Halley both reject justice projects that seek to counter subordination and injury through egalitarian, regulated social relations, including sexual ones. Yet, the Article argues that the theoretical innovations of both Kristeva's classic abjection and Bersani's subversive abjection lie in their analyses of power, including identitarian and materialist considerations very much akin to those Walker and Halley are trying to escape. In particular, consent and anti-subordination lie at the heart of *Is the Rectum a Grave*,

Bersani's germinal abjection text on which Halley heavily relies. In fact, I argue that without these conventional justice totems, abjection, to borrow an *au courant* phrase, loses its (subversive) expressive dimensions. Section III turns its attention to some meaningful differences between Walker's and Halley's projects, distinguishing Walker's aesthetic claims of boredom and racial economies of sexualized abjection from Halley's regulatory claims. This Section focuses more on Halley's project, partly because this is a legal article, but also because it is from her regulatory claims that I derive some limits to her logic. This Section argues that Halley's plea for a queer approach to sex may be in tension with what I characterize as her sexuality exceptionalism, a rather essentialist view of sex as somehow sacred and, unlike other bodily pleasures, beyond rational or distributive inquiry or regulation. In her appeals to the left, Halley exceptionalizes sex, exempting it from the distributive inquiries to which liberals/leftists subject other bodily pleasures (food comes to mind). This Section also uses Walker's scenarios of racial abjection to pose some questions about the scope of Halley's skepticism about justice projects. Finally, the Article concludes by giving some attention to the parts of Halley and Walker's representations that seem to agitate their audiences most—their efforts to dematerialize bodies while locating them within economies characterized by the brutality of their power and injury: slave plantations and modern-day rape camps. This Article argues that attention to the interplay of sex and power in material economies, or sex as a matter of distributive justice, is necessary to discern the meaning, and hence the politics and subversive potential, of sexual acts.

Mine is not the first critique to be made of either Walker or Halley.⁴ Other critiques, many personal and some *ad hominem*, have been made of both,

4. For discussions of Halley, see Robin West, *Desperately Seeking a Moralist*, 29 HARV. J.L. & GENDER 1 (2006) (responding to Halley's review of West's book within broader indictment of queer theory); Pamela D. Bridgewater, *Review: Splitting the Difference: A Reaction to Janet Halley's Split Decisions: How and Why to Take a Break from Feminism*, 19 YALE J.L. & FEM. 259, 260 (2007) (criticizing Halley for "fail[ing] to acknowledge the body of resistance projects into which *Split Decisions* fits"); Mary Anne Franks, Book Review, 30 HARV. J.L. & GENDER 257 (2007) (reviewing JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2007) and scrutinizing *SPLIT DECISIONS'* claims from the perspective of the critical theory and leftist principles Halley herself employs); Jill Marshall, Book Review, 35 J.L. & SOC'Y. 579 (2008) (reviewing VANESSA MUNRO, *LAW AND POLITICS AT THE PERIMETER: RE-EVALUATING KEY DEBATES IN FEMINIST THEORY* (2007)); Adam P. Romero, *Methodological Descriptions: "Feminist" and "Queer" Legal Theories*, 19 YALE J.L. & FEM. 227 (2007) (disagreeing with *SPLIT DECISIONS'* definitions of feminism and contending feminism itself invites the sort of critique Halley calls for); Symposium, *Queer Theory, Feminism, and the Law*, 11 DUKE J. GENDER L. & POL'Y 1 (2004) (diverse essays responding to *Queer Theory by Men*, *supra* note 3); see also Marc Spindelman, *Discriminating Pleasures*, in DIRECTIONS IN SEXUAL HARASSMENT LAW (Catharine A. MacKinnon & Reva B. Siegel eds., 2004) [hereinafter Spindelman, *Discriminating Pleasures*] (criticizing Halley's essay that preceded and transitioned into the Taking a Break from Feminism project). More generally, Marc Spindelman has been critical of the LGBT community's emphasis on sexual liberty at the expense of rectifying sexual injury. Marc Spindelman, *Surviving Lawrence v. Texas*, 102 MICH. L. REV. 1615, 1635-36 (2004) [hereinafter Spindelman, *Surviving Lawrence*] ("Advancing their like-straight arguments and drawing attention to heterosexuality's glories, lesbian and gay rights advocates completely avoid[] any serious and engaged

especially of Walker.⁵ What distinguishes this Article, however, is its emphasis on their mutual impulse to root their claims about bodies and power in the notion of abjection and its conclusion that such a conceptual grounding may lead to precisely what they seek to disavow: sexuality exceptionalism.

I. BAD GIRLS OF ART & LAW

A. Kara Walker's Art

As noted, a 1997 MacArthur Fellowship put into high gear a controversy over a newcomer to the art world, Kara Walker.⁶ The relatively young Walker revitalized a largely archaic art form, the silhouette.⁷ Popular as both inexpensive portraiture and parlor craft in the late eighteenth and early nineteenth centuries, silhouettes are cut-outs from solid pieces of paper that highlight the subject's profile features.⁸ The form dictated the limitations of the genre: "[s]ilhouettes require that all the information be contained on the edges of the figures," and hence "[t]he original forms were limited to static profiles often drawn from the subject's shadows cast onto a surface."⁹ Representing neoclassical revival as well as the new "science" of physiognomy, silhouettes were both backward- and forward-looking.¹⁰ Most depicted their subjects delicately and favorably.

analysis with the existing problems of sexual abuse, whether cross-sex or same-sex . . ."); *see also* Marc Spindelman, *Homosexuality's Horizon*, 54 EMORY L.J. 1361, 1365 (2005) (arguing that "extension of marriage rights to lesbians and gay men also raises the possibility that it has effectively enlarged the sex-relational terrain on which male sexual privilege . . . is free to roam").

5. *See infra* notes 30, 42, 104 and accompanying text. A PBS-sponsored website asked viewers to vote on whether it is morally acceptable to publicly display Kara Walker's art and the films of Nazi propagandist Leni Riefenstahl. A higher percentage of viewers voted to display Riefenstahl's work than Walker's. Mark Reinhardt, *The Art of Racial Profiling*, in KARA WALKER: NARRATIVES OF A NEGRESS 108, 120 (Ian Berry et al. eds., 2003).

6. Opponents sought to have her MacArthur fellowship revoked and had some success in deterring museums from showing her work. For instance, Walker's piece, *A Means to an End: A Shadow Drama in Five Acts* was pulled by the Detroit Institute of the Arts in July 1999. GWENDOLYN DUBOIS SHAW, SEEING THE UNSPEAKABLE: THE ART OF KARA WALKER 103-05 (2004). For discussion of the controversy, including the letter-writing campaign to have Walker's MacArthur award revoked, *see*, for example, Robert S. Chang & Adrienne D. Davis, *The Adventure(s) of Blackness in Western Culture: An Epistolary Exchange on Old and New Identity Wars*, 39 U.C. DAVIS L. REV. 1189, 1202 nn.43-44, 1203 n.45 (2006).

7. Walker was twenty-eight when she won the MacArthur grant. *See* Riché Richardson, *Kara Walker's Old South and New Terrors*, 25 J. CONTEMP. AFR. ART 48, 50 (2009). Ten years later, at thirty-eight, *Time Magazine* named her one of the one hundred most influential people in the world. *Id.* She also works in other genres, including gouaches, printed texts, and, most recently, animated puppet shows crafted from silhouette figures.

8. HARRIS, *supra* note 2, at 210-11, 218; *see also* Michael Corris & Robert Hobbs, *Reading Black Through White in the Work of Kara Walker*, 26 ART HIST. 423, 438-39 (2003); Annette Dixon, *A Negress Speaks Out: The Art of Kara Walker*, in KARA WALKER: PICTURES FROM ANOTHER TIME 11, 19 (Annette Dixon ed., 2002).

9. HARRIS, *supra* note 2, at 211.

10. Dixon, *supra* note 8, at 19-20.

Walker deployed the genre to substantially different effects. Her silhouettes feature multiple life-sized cut-outs made from black paper arranged on blank white canvases or walls. Unlike classic silhouettes, which following conventional portrait form appear posed, Walker's updates capture interactive bodies in motion, caught unaware, more akin to a contemporary action photograph.¹¹ Her installations wrap around museum or gallery walls like a mural, with cavorting figures frozen in independent panels, linked by a common theme but apparently unaware of each other.¹² Several art critics have described the black-on-white friezes as having the appearance of "shadow dramas."¹³ Her stock characters—the slave master and mistress, the pickaninny, the old slave, the Confederate soldier, and what Walker alternately calls "the Negress" and the "nigger wench"—invoke antebellum Southern slavery. Lest the context be unclear, the pieces have titles like *The End of Uncle Tom and the Grand Allegorical Tableau of Eva in Heaven* and *Gone: An Historical Romance of a Civil War as It Occurred Between the Dusky Thighs of One Young Negress and Her Heart*.¹⁴ But this ain't Tara. Or *Roots*.

Walker's installations appear deceptively simple. The only geographic references to slavery are backdrops of moss-dripping trees and clouded moons, sometimes with idyllic plantation buildings in the far distance. Against these odes to nineteenth century sentimentality unfolds Walker's "racially coded

11. See generally Anne M. Wagner, *Kara Walker: The Black-White Relation*, in KARA WALKER: NARRATIVES OF A NEGRESS, *supra* note 5, at 91 (describing how Walker's work updates silhouette form and plays with the idea of authorship).

12. Several critics have noted that her installations have the appearance of cycloramas. See, e.g., HARRIS, *supra* note 2, at 215. As Walker herself put it:

Well, from the moment that I got started on these things I imagined that someday they would be put together in a kind of cyclorama. I mean, just like the Cyclorama in Atlanta that goes around in an endless cycle of history locked up in a room, I thought that it would be possible to arrange the silhouettes in such a way that they would make a kind of history painting encompassing the whole room.

SHAW, *supra* note 6, at 39 (quoting Interview by Alexander Alberro with Kara Walker, 1 INDEX MAG. 26 (1996), available at http://www.indexmagazine.com/interviews/kara_walker.shtml).

13. See, e.g., SHAW, *supra* note 6, at 39-43 (discussing various referents for Walker's shadow dramas, including Jungian psychoanalytic theory and the gothic). Indeed, Walker entitled one of her installations *A Means to an End: A Shadow Drama in Five Acts*. Shaw refers to Walker's installations as "pageants." *Id.* at 6

14. *The End of Uncle Tom and the Grand Allegorical Tableau of Eva in Heaven* (1995), reprinted in PICTURES FROM ANOTHER TIME, *supra* note 8, at 54-55; *Gone: An Historical Romance of Civil War as It Occurred Between the Dusky Thighs of a Young Negress And Her Heart* (1994), reprinted in PICTURES FROM ANOTHER TIME, *supra* note 8, at 50-51. Between 1994 and 2002 Walker did over twenty silhouette wall installations. For a biography of Walker, see SHAW, *supra* note 6, at 12-18. For a descriptive bibliography of her work, see KARA WALKER: MY COMPLEMENT, MY ENEMY, MY OPPRESSOR, MY LOVE 384-406 (Philippe Vergne ed., 2007) [hereinafter MY COMPLEMENT]. See also PICTURES FROM ANOTHER TIME, *supra* note 8, at 97-100 (selected list of Walker's exhibitions, projects, and publishing). While most known for her larger installations, Walker also does variations that feature smaller silhouettes, single subjects, or different colors and backgrounds. She also works outside of the silhouette form altogether. *My Complement* offers the most comprehensive selection of her work.

mayhem.”¹⁵ Her figures, posed in discrete encounters, are a postmodern pastiche of canonical texts and popular myths of slavery. In *The End of Uncle Tom and the Grand Allegorical Tableau of Eva in Heaven*, a trio of young black women enthusiastically suckle each other while a (black) infant futilely grabs for a breast; to the right, Stowe’s heroine, little Eva, wields an axe against an innocent black toddler while behind her a younger black girl holds a spike at a threateningly sodomizing angle.¹⁶ In a 1997 installation, a banjo-playing black man with a pair of scissors in his back spurts blood from his mouth while a little black girl approaches from behind: will she wind the scissors like a key to bring him back to life or will she drive them further into his back?¹⁷

And sometimes you get the feeling Walker took one psychoanalysis course too many. Her “plantations” are an homage to Freud 101. Swords and sabers appear to have minds of their own, seeking sexual orifices at every turn, as do carrots, bugles, legs, and even a cloud. Excrement pervades the images: everywhere children and adults carelessly trail feces. And something is always, always going on beneath those darned hoop skirts. Second pairs of (masculine) legs are visible as women perform sentimental poses of courtship toward their apparent suitors. (Such a second pair appears ready to interrupt Walker’s interpretation of Eliza’s infamous run across the frozen Ohio River while the pieces of ice over which she skips now turn out to be the near-submerged head of a black man.¹⁸) Finally, that swan that raped Leda is everywhere, performing in-your-face miscegenation, buried up to its substantial white neck in black females’ various orifices.

Much noted is how viewers are incorporated into Walker’s installations; less so is how Walker plays with the processes of artistic production. She strategically recuperates the material production process of the silhouette in which the image is cut from a traced projection of the subject. Walker arranges her installations such that viewers find their own shadows projected onto the walls and interspersed among her figures and scenes. Thus Walker’s viewers find themselves projected into her art, not in the typical semiotic way, but as visible participants, collapsing conventional boundaries between art and audience.

Even most of her critics seem to concede Walker’s formal skills as an artist. Art scholar Michael Harris compliments her draftsmanship as

15. SHAW, *supra* note 6, at 18.

16. *The End of Uncle Tom and the Grand Allegorical Tableau of Eva in Heaven*, *supra* note 14. Of suckling images, one critic asks, “is this onanism, or pederasty, or nurture?” Wagner, *supra* note 11, at 98.

17. *Presenting Negro Scenes Drawn Upon My Passage Through the South and Reconfigured for the Benefit of Enlightened Audiences Wherever Such May Be Found, By Myself, Missus K.E.B. Walker, Colored* (1997), reprinted in PICTURES FROM ANOTHER TIME, *supra* note 8, at 36.

18. *The Means to an End—A Shadow Drama in Five Acts* (1995), reprinted in PICTURES FROM ANOTHER TIME, *supra* note 8, at 30-31.

“disarmingly subtle.”¹⁹ He continues: “The fact that Walker has depicted racialized figures in convincing postures attests to her drawing skills.”²⁰ And yet, this is where Walker’s troubles start. Walker’s challenge is to convey racial differentiation and interaction in what is in essence an evacuated form, one that takes its meaning solely through its edges and boundaries. (Indeed, race is frequently represented through reduced means and often blacks are read as only silhouettes, i.e., without regard to content or interiority.) As Annette Dixon puts it:

[Her] work engages the question of how one represents race through reduced means. It is through outline and shape, and the intervals between the shapes, that information is conveyed. With all figures shown on black paper, the identity of a figure as black or white can be shown only through racially coded profiles.²¹

Walker creates racial meaning through exaggerated racial features: the profiles sport thick lips and noses, kinky hair, often rendered in spikes or “pickaninny” pigtails, big buttocks. Not only their features but their movements are coarse, with legs and buttocks jutting out at odd angles and mouths hanging open. In contrast, figures coded as “white” are typically shown in more refined and delicate postures.²² These are not only silhouettes, but caricatures.²³ And intriguingly, “[d]espite all the riotous miscegenation occurring in the work, the complication of mulatto characters seems to elude this format; recognizable contours require physiognomic distinctions that are not as clear as when we are talking about one of Archibald Motley, Jr.’s octoroons.”²⁴ Rather, in Walker’s work, race appears as an essence and a binary.²⁵

19. HARRIS, *supra* note 2, at 211; *see also* SHAW, *supra* note 6, at 18 (“In their deceptive simplicity, silhouettes had established themselves as a way that Walker could signify on the racialized imagery that had been a challenge to her artistic practice since Atlanta.”); Dixon, *supra* note 8, at 23 (noting Walker’s skills as “an extremely versatile artist”).

20. HARRIS, *supra* note 2, at 211.

21. Dixon, *supra* note 8, at 20. Michael Harris asks, “How do you exaggerate a stereotype, something that already is an exaggeration?” HARRIS, *supra* note 2, at 217.

22. The contrast is apparent in a tableau, *From the Bowels to the Bosom* (1996), featuring elements of several of Walker’s installations. *Reprinted in* PICTURES FROM ANOTHER TIME, *supra* note 8, at 52.

23. Robert Storr suggests her work is also reminiscent of the grotesque, beautiful and elegant, yet horrific in content. Adrienne Davis, Jason Gillmer & Robert Storr, *Special Panel Discussion in Conjunction with Kara Walker: My Complement, My Enemy, My Oppressor, My Love*, MODERN ART MUSEUM OF FORT WORTH (September 2008), http://www.themodern.org/mp3/panel_discussion_with_Kara_Walker_9.6.08.mp3.

24. HARRIS, *supra* note 2, at 211-12.

25. In *Excavated from the Black Heart of a Negress* (2002), Walker inverts race by re-assigning color. In this set of silhouettes “black” characters are now cut from white paper, and vice versa. This is apparent as an inversion only because, crucially, the now “white” characters have the phenotype and coarser movements that Walker (and viewers) assign to blacks. *Reprinted in* MY COMPLEMENT, *supra* note 14, at 332-37.

Not surprisingly, Walker's irreverent representations of bodies and power have triggered a contentious debate.²⁶ For a substantial number of viewers, her work is reminiscent of minstrelsy rather than the racial redemption that many seek in black art (e.g., "Black is Beautiful," the Black Arts Movement, and Négritude).²⁷ Of course, one can read her work as a postmodern riff on the silhouette's obsession with physiognomy and its connections to racism. Several art critics (including African-American ones) have done so.²⁸ But others simply don't see those politics, contending to the contrary that any subversive elements are outweighed by the offensiveness. Walker's opponents argue that black art has conventionally emphasized black humanity for a reason, and it was not simply because black people's feelings were hurt. They point out that the stereotypical images Walker rehabilitates and recycles were linked to structural violence, repression, and racial supremacy. A supporter, Michael Harris, fears that Walker

has locked herself into the racial discourse she is attempting to subvert. By identifying with slavery, she seems to trivialize it, and this has alienated her from preceding generations who have profound memories of racial violence and oppression and therefore a deep empathy for the crushing and violent consequences of slavery.²⁹

Hence, the campaigns, the censorship, and the outrage.³⁰

26. A good summary of the debate over Walker and her work can be found in SHAW, *supra* note 6, at 114-123. See also HARRIS, *supra* note 2, at 216-18; Robert F. Reid-Pharr, *Black Girl Lost*, in PICTURES FROM ANOTHER TIME, *supra* note 8, at 27.

27. Walker herself characterizes her work in this way. According to Michael Harris, "Walker has described her work as a minstrel show, and, like the original shows, her work is rooted in southern mythologies and unresolved racial conflict." HARRIS, *supra* note 2, at 212. Hence the discomfort of some viewers when Walker describes herself as playing the slave "just a little bit," apparently one of her favorite phrases.

28. Gwendolyn Shaw is a leader in efforts to rehabilitate and defend Walker's work. She argues that the discomfort with Walker's work comes from not knowing how to situate oneself against this "gothic space." SHAW, *supra* note 6, at 39. She goes on, "[i]t is much like comparing Alice Randall's recent satire, *The Wind Done Gone*, with the book on which it signifies, Margaret Mitchell's *Gone with the Wind*." *Id.*; see also HARRIS, *supra* note 2, at 222 ("Much of the criticism of Walker's art seems linked to its literal translation.").

29. HARRIS, *supra* note 2, at 216.

30. The editor of the *International Review of African American Art* explains that some feel that artists such as Walker "are making their reputations and large sums of money off of their own people's suffering, are repeating monotonous themes to exhaustion, and are catering to the most base interests of white curators and collectors." Juliette Bowles, *Extreme Times Call for Extreme Heroes*, 14 INT. REV. AFR.-AM. ART 3, 3 (1997). Michael Harris offers a more measured account:

It is telling that three of the most recent African American artists to experience a meteoric rise in the American art world at early ages are Jean-Michel Basquiat, Michael Ray Charles, and Kara Walker: artists whose work locates them deeply within white racial perceptions of blackness. This does not diminish, and is not a comment on, the quality of their work. However, I do wish to question the response to the work by many whites in an art apparatus that shows little egalitarian sincerity.

And Walker herself has contributed to the interpretation of her work as irreverent. She proclaims her boredom with the conventional civil rights emphasis on black injury and its rectification. Her caricatures of slavery's violence, racial and sexual degradation are not designed to indict these harms, but rather to express her impatience with them: "So much irritating fucking truth about [blacks] and our reliance on the old master/slave dialectic to define and redefine our selves [sic] and our history. I really started working this way because I was so sick of that dialectic of my colored gal experience."³¹ Her installations continually riff on this rejection of injury and its connection to black identity. "All black people . . . want to be slaves just a little bit. It gives people heaping teaspoons of dignity and pride."³² This disdain for racial dignity claims separates Walker from other black artists. Perhaps most controversially, she attributes craving injury to being part of black identity: "to be a slave runs along the lines of being a better masochist and knowing how to put up with things."³³

One distinct and particularly explosive aspect of the controversy is the sexual representations of black women, particularly with white men, that pervade Walker's installations. Her most redundant figure is the "sexually magnetic Negress" and her younger version, the (female) pickaninny, posed in sexually explicit acts.³⁴ Acts designed to shock. Swords and guns, symbols of both Confederate militarism and Southern "chivalry," embody the white phallus in several installations. In one panel of *The Battle of Atlanta: Being the Narrative of a Negress in the Flames of Desire—A Reconstruction*, a "negress" fellates a limp soldier's musket while she appears to vaginally sodomize herself with a second weapon.³⁵ In another, a Confederate soldier holds a young black girl close to his crotch as he marches, appearing to penetrate her, while his lifted foot anally sodomizes a young black boy.³⁶ The girl arches her back and flings her arms back (sexual ecstasy? fright and pain?), while the boy grasps an erect carrot situated at his genitalia. In a third panel, a young white boy, his playfulness represented by his paper sailor's hat, jabs his toy sword at the

HARRIS, *supra* note 2, at 197. For thoughtful discussion of efforts to prevent some of Walker's exhibitions and to revoke her MacArthur grant, see SHAW, *supra* note 6, at 102-123.

31. *I Hate Being Lion Fodder: An Interview/Conversation via Email Between Darius James and Kara Walker*, DEUTSCHE BANK MAGAZINE, available at <http://dbkunst.medianet.de/dbartmag/archiv/02/e/magazin-interview-walker.html> (last visited Mar. 22, 2010) [hereinafter *A Conversation Between Darius James and Kara Walker*].

32. HARRIS, *supra* note 2, at 216. Another critic—a "fan" who interprets Walker's work through the lens of Freudian uncanny—even "struggled" with whether to include this quotation, in part because it might lead readers to conclude that she is "politically irresponsible." Reinhardt, *supra* note 5, at 127.

33. HARRIS, *supra* note 2, at 216.

34. Dixon, *supra* note 8, at 13. Even finding language to describe the installations becomes a problem: some critics render "neutral" descriptions while others characterize the women as the objects of sexualized torture and brutal violence. See *infra* notes 40-47 and accompanying text.

35. *The Battle of Atlanta: Being the Narrative of a Negress in the Flames of Desire—A Reconstruction* (1995), reprinted in PICTURES FROM ANOTHER TIME, *supra* note 8, at 15.

36. *Id.* at 56.

spread legs of a lifeless black woman tied by her neck to a tree.³⁷ He is a bit off balance, and behind him a young white girl appears about to give him the final push toward penetration (and murder?). In *An Abbreviated Emancipation*, a little black girl fellates what turns out to be her own tail (or is it a whip?).³⁸ *The Means to an End—A Shadow Drama in Five Acts* starts with a black woman carrying around a young white boy, suspended by his lips from her breast. The installation ends with a white man wearing Lincoln's unmistakable hat grabbing a lifeless black girl by her neck while his enormous leg moves towards her crotch.³⁹

Walker's defenders argue again from postmodern sensibilities. Walker is playing with the "'psychosocial Legacy' of southern racism."⁴⁰ Or, another postmodern trope, self-referentiality and self-reflexivity. In this account, the sexually violated women in her installations are Walker herself projected onto the backdrop of slavery.⁴¹ Those who endorse this reading of her tableaux cast her as re-enacting the trauma of her own early interracial intimacy. In both cases, the installations ought not be read literally, but rather function as critiques of Walker's own relationship to race and gender.

But to her detractors, these burlesque images of black women and girls are among the most offensive aspects of her work.⁴² As numerous black feminists

37. *Id.* at 57.

38. *An Abbreviated Emancipation* (2002), reprinted in *PICTURES FROM ANOTHER TIME*, *supra* note 8, at 21.

39. *Id.* at 30-31.

40. SHAW, *supra* note 6, at 12. Riché Richardson similarly finds that Walker's work "bridg[es] art and activism" and "visualizes narratives of black rape and abuse that the media persistently denies." Richardson, *supra* note 7, at 50.

41. They rely on Walker's own recounting of her sexual history:

The moment race enters the picture—in interracial relationships even among friends—the whole history comes whopping down with it....It's like a stage set drops down. There are roles to be played. I solipsistically went into those roles. I convinced myself that my friends and relations were participating in that real drama of imagined history. I could not be certain of anything I was dreaming up. I had never felt myself a minority before getting into intimate dating relationships.

Edgar Allen Beem, *On the Cutting Edge or Over the Line? Kara Walker Is Gifted, Angry, and Subjected to Criticism for Exploiting Racial Stereotypes in Her Art. The Maine Resident Is Also Soft-Spoken and Unsettled by Her Own Success*, BOSTON GLOBE MAGAZINE, Dec. 30, 2001, at 16 (quoting Walker). In particular, the notion of Walker as traumatized pervades Michael Harris's extensive discussion of her work. HARRIS, *supra* note 2 *passim*.

42. "One of the most disturbing aspects of Kara Walker's mockery of enslaved black people is the gleeful display of so many little and prepubescent black girls being sexually abused or hypersexed." Bowles, *supra* note 30, at 15. After several descriptions, the article continues:

Maybe it is wiry little pigtails, bandanna-wrapped heads, strong African facial features and the plantation setting that distance these girls from the children of viewers who acclaim Kara Walker today. The sentiment against the sexual abuse of children is so strong now that it is hard to imagine an artist—who realistically and repeatedly depicts the sexual molestation, hypersexuality, and bizarre excretory functions of little *white* girls—receiving the same excited praise that Walker gets.

Id.; see also Arlene R. Keizer, *Gone Astray in the Flesh: Kara Walker, Black Women Writers, and African American Postmemory*, 123 PMLA 1649, 1656 (2008) ("More than any other image Walker

have noted, in addition to public discrimination, economic tyranny, political repression, and criminal surveillance, whites established dominance over blacks through what Angela Davis termed sexual terrorism.⁴³ Slavery, with its culture of rape and forced reproduction of black women, embodied the worst aspects of sex in the service of racial subordination. Walker's installations, with their conflation of sexual erotics with slavery's violence, or, even more provocatively, obliviousness to sexual subordination and abuse, flaunt this brutal and painful history. One commentator captures their impact:

The master may rape his property, but his victim does not hang her head in shame; instead, she looks back over her shoulder to see if her attacker is pleased. In this bizarre and horrific tableau there are no innocent heroines, no loyal retainers, and no one escapes unpunished—not the black paper characters on the white walls, and certainly not the viewer.⁴⁴

Arlene Keizer similarly observed, “When others have visually represented the rape of enslaved women, an attitude of mourning and outrage appropriate to a cultural tragedy has surrounded the image, an attitude in which the woman's resistance (or unequivocal victimization) is a critical element.”⁴⁵ In contrast, “Walker's work is explicit, playful, grotesque, and deliberately shocking: it is emphatically not the work of mourning.”⁴⁶ The fear is that such depictions satisfy “a strong desire for an essentially pornographic depiction of interracialism,” reassuring whites of the innocence of their own sexual past.⁴⁷

Elsewhere I have referred to the reflexive interpretation of white male/black female sexual relations through the historical lens of slavery's skewed and brutal power relations as the juridical imperative.⁴⁸ In this master narrative of structural rape and forced reproduction, sexual interactions between this dyad can only be subordinating manifestations of slavery's racial supremacy and political in motivation and effect, that is, designed and executed

deploys, [these depictions of sexual violence are] the source of the cultural controversy surrounding her work.”).

43. ANGELA Y. DAVIS, *WOMEN, RACE & CLASS* 24 (1983).

44. SHAW, *supra* note 6, at 65. According to Arlene Keizer, the enslaved, raped woman is a “conceptual icon” in black studies and black culture. She argues, “Walker has forced it into view,” yet “[i]t is an image that many in the black community fervently wish had never been pictorially represented.” Keizer, *supra* note 42, at 1656.

45. Keizer, *supra* note 42, at 1656.

46. *Id.*

47. Reid-Pharr, *supra* note 26, at 33.

48. Chang & Davis, *supra* note 6, at 1203-08 (according to the “juridical account: interracial intimacy between black women and white men has followed, and must always follow, a top-down exercise of power. This power is held by men and wielded against black women who may only futilely resist victimization. The emphasis is on the distribution of power between the dyad.” *Id.* at 1203.); Adrienne D. Davis, *Slavery and Shadow Families: Re-Thinking Interracial Intimacy Regulation* 5-7, 21-29, 63-65 (Aug. 8, 2010) (unpublished manuscript, on file with author) (urging limits of the juridical imperative and arguing instead for attention to background conditions of equality and power that shape the social meaning of sexual relationships and intimacy).

to oppress. Unlike frequent representation of black male/white female relationships as “a revolutionary act,” “in the context of the black arts and black power movements, no such rebellious cast could be imagined for black women’s relationships with white men.”⁴⁹ Instead, these sex acts are interpreted through a deeply gendered and conservative lens, in which black women are the gatekeepers of not only their own chastity and bodies but also of the honor and integrity of black communities. Indeed, following the juridical imperative, slavery’s sexual dynamics subordinated not only black women, but also black men, alienating them from conventional masculinity’s protection of women, thereby demoralizing the entire black community. Interestingly, both Walker’s detractors and her supporters embrace this reading of history: either Walker is condemned for not adhering to it or she is forgiven and understood because she lived it.⁵⁰

It is this view of sex as repressive and subordinating that Walker appears to be opposing in her art. Her silhouettes establish boundaries while simultaneously inviting their transgression, and apparently reveling in their violation. (And, as mentioned, the viewer, too, becomes implicated, violating the conventional boundaries between audience and art.) Contrary to the juridical imperative, Walker embraces the pleasure possibilities, the liberatory potential of degrading, subordinating, and unequal sex.⁵¹ In Walker’s

49. Keizer, *supra* note 42, at 1666. Indeed, Keizer observes, “Many in the black community experience this suggestion as a profound heresy, a breaking of the last taboo.” *Id.* Hence “[t]he suggestion that such relationships are driven, on the woman’s part, by self-hatred, masochism, and a desire to demean black people as a group hovers just below the surface of many of the critiques leveled at Walker, Jones, and other black women writers investigating this territory.” *Id.* at 1667; *see also* Wagner, *supra* note 11, at 98 (describing unspeakability of such representations for older black artists).

50. Gwendolyn Shaw and, to a lesser extent, Michael Harris and Riché Richardson, try to rehabilitate Walker by reading her art in this way, filling in missing history and theoretical references. Although it

is arguably the most pervasively traumatic, guilt-ridden episode in U.S. history, the experience of African slavery in America, this delineation produces an extraordinary space of psychological projection. It is a gothic space, belonging to the dark ages of American history, one that is barbarous, rude, uncouth, unpolished, in bad taste, and completely savage, a space made real on the walls of the gallery, in which the present-day viewer comes in contact with magnetic and disturbing specters from a mythical past engaged in an apocryphal and pornographic, unsentimental master-slave dialectic.

SHAW, *supra* note 6, at 39; *see also* HARRIS, *supra* note 2, at 211 (lauding Walker for her “brilliance,” “genius,” and “postmodern irony”); Richardson, *supra* note 7, at 53 (“The persistent and obsessive emphasis on the mythical black rapist, which construes black masculinity as pathological, ideologically obscures this white masculine sexual obverse, an obverse that Walker’s art has persistently acknowledged and magnified.”).

51. Patricia Yaeger combines a juridical reading of slavery’s sexually “traumatic events” and “stolen milk” with an intriguing Freudian interpretation of the silhouettes, comparing Walker’s “riot of lactation” with the role of cross-racial and incestuous suckling in Alice Randall’s parody, *The Wind Done Gone*, contending that in both, “milk has the power to initiate new genealogies, unexpected forms of rivalry and sisterhood, as well as old forms of capital.” Patricia Yaeger, *Circum-Atlantic Superabundance: Milk as World-Making in Alice Randall and Kara Walker*, 78 AM. LIT. 769, 784 (2006). Yaeger links “the hyperfolded, tradition-crumpling art of Walker and Randall” to a tradition of

portrayals, sex is everything MacKinnon tells us it is, but it's fun. Or uninteresting.

These are Walker's fantasy slave plantations, more influenced by Freudian repression and postmodern pastiche and parody than nineteenth century sentimentality or contemporary Black Pride. (Nat Turner and Gabriel Prosser are conspicuously absent and she delights in a Harriet Tubman who cannot remember which star is the North Star.⁵²) They are full of mischief and mayhem, and no one seems particularly angry or upset about, or even really aware of, the rampant debauched violence. Figures always seem to be looking the other way as their orifices are penetrated. If classic silhouettes were a nod to the artistic and scientific conventions of their time, Walker's reworked versions manifest an unabashed commitment to the irreverence and excess of contemporary and postmodern art.⁵³ The power of the images, and the controversy over her work, stems from the ambiguity: is Walker reiterating or subverting the myths and stereotypes of slavery?⁵⁴ A master (and mistress) of the postmodern, Walker dissembles in her answers. In other words, Kara Walker is a bad girl.

B. Janet Halley's Law

Janet Halley is a widely and highly regarded gender and sexuality theorist. Her early work in law indicted legal and political institutions for perpetuating heterosexism and repressing same-sex and gender rebellion.⁵⁵ While not explicitly feminist in method or claims, Halley's work was largely applauded

subverting racial legacies through subversive nursing and milk drinking within contemporary black fiction, including a plantation mistress's nursing a black baby in Sherley Anne Williams's *Dessa Rose* and Milkman Dead's pre-adolescent suckling in Toni Morrison's *Song of Solomon*. *Id.*

52. *Thelma Golden/Kara Walker: A Dialogue*, in PICTURES FROM ANOTHER TIME, *supra* note 8, at 43, 49 [hereinafter *Thelma Golden/Kara Walker*]. Black feminist theorist Michele Wallace compares Walker's silhouettes to the worlds created by Lewis Carroll and J.R.R. Tolkien. Michele Wallace, *The Enigma of the Negress Kara Walker*, in KARA WALKER: NARRATIVES OF A NEGRESS, *supra* note 5, at 174, 176.

53. She violently reworks the silhouette form, contrasting the "'ugliness' of slavery and 'prettiness' of the silhouette." Reid-Pharr, *supra* note 26, at 28. Walker herself has argued that, as a "weaker, more feminine form," the silhouette may have been available to nineteenth century black women artists. SHAW, *supra* note 6, at 20. "I often compare my method of working to that of a well-meaning freed woman in a Northern state who is attempting to delineate the horrors of Southern slavery but with next to no resources, other than some paper and a pen knife and some people she'd like to kill." Dixon, *supra* note 8, at 11 (quoting Walker). Interestingly, even though machines allowing precision silhouettes date back to at least the nineteenth century, Walker works freehand in today's far more technologically sophisticated economy. *Thelma Golden/Kara Walker*, *supra* note 52, at 47; *see also* HARRIS, *supra* note 2, at 215 (discussing Walker's work in context of postmodernism and hip-hop culture).

54. For instance, Gwendolyn Dubois Shaw notes that *The Grand Allegorical Tableau* "evoked for me the restaging of an apocryphal episode from . . . *Uncle Tom's Cabin*. But I also saw piles of excrement, children being sexually assaulted, and babies being murdered, elements that didn't fit in with my memory of the book." SHAW, *supra* note 6, at 4.

55. JANET E. HALLEY, DON'T: A READER'S GUIDE TO THE MILITARY ANTI-GAY POLICY (1999); Janet Halley, *Sexual Orientation and the Armed Forces* and "Romer v. Evans," in ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION (Leonard W. Levy & Kenneth L. Karst eds., 2d ed. 2000).

by leading legal feminists and she was seen as a fellow traveler. Then the troubles began. In a series of essays, talks, and a book, Halley began to argue that we should “Take a Break from Feminism.”⁵⁶ The “we” here was progressive types, those whose first principles typically include equality, anti-subordination, and liberation broadly conceived, but not won by sending in the troops and bombs. In other words, the usual suspects among the liberal left in law.

Halley’s argument proceeds in three steps. As an initial matter, she offers what she describes as a “minimalist definition” of feminism.⁵⁷ While acknowledging variance and diversity, she defines all feminisms as sharing certain common features.⁵⁸ First, feminism draws a distinction between M and F. “Different feminisms do this differently: some see men and women, some see male and female, some see masculine and feminine.”⁵⁹ Next, as a descriptive matter, feminism posits the subordination of F to M, or, as Halley succinctly puts it, feminism sees $M > F$. Then, as a normative matter, feminism always carries a brief for F.⁶⁰ Defending this minimalist definition, Halley explains that it “maximizes the range of projects that can be described as feminist, and makes it harder to Take a Break from them.”⁶¹

56. The following essays contain overlapping arguments and are listed in the order I believe readers would find most useful in understanding Halley’s argument: Halley, *Queer Theory by Men*, *supra* note 3 (contending that a “queer theory by men” offers an alternative way of thinking about sexuality); Janet Halley, *Take a Break from Feminism?*, in *GENDER AND HUMAN RIGHTS* (Karen Knop ed., 2004) [hereinafter *Halley, Take a Break from Feminism?*] (making a “taking a break from feminism” argument in the context of human rights debates); Brenda Cossman et al., *Gender, Sexuality, and Power: Is Feminist Theory Enough?*, 12 *COLUM. J. GENDER & L.* 601, 601-02, 604-17, 635-37 (2003) (exchange between Halley, Brenda Cossman, Dan Danielsen, and Tracy Higgins over the merits of “taking a break from feminism”) [hereinafter *Is Feminist Theory Enough?*]; *see also* Karen Engle et al., *Roundtable Discussion: Subversive Legal Moments?*, 12 *TEXAS J. WOMEN & L.* 197 (2003) (roundtable discussion between Halley and Nathaniel Berman, Adrienne Davis, Karen Engle, Elizabeth Schneider, and Vicki Schultz) [hereinafter *Subversive Legal Moments?*]. Seeds of the argument can also be found in Halley’s *Sexuality Harassment*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW*, *supra* note 4 [hereinafter *Halley, Sexuality Harassment*] and Halley’s introduction with Wendy Brown in *LEFT LEGALISM/LEFT CRITIQUE* (Wendy Brown & Janet Halley eds., 2002) [hereinafter *Brown & Halley, Introduction*]. Halley’s book *SPLIT DECISIONS*, *supra* note 4, captures some of the arguments made in these essays, but not all, so I cite directly to her essays to maintain the nuance and subtlety of her critiques. I include citations to the book where its arguments are distinct.

57. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 604; Halley, *Queer Theory by Men*, *supra* note 3, at 8; Halley, *Take a Break from Feminism?*, *supra* note 56, at 61.

58. “I think these attributes are noticeable in virtually every form of feminism in the United States today . . .” Halley, *Queer Theory by Men*, *supra* note 3, at 8. Elsewhere she says “there are many many features of contemporary and historically important feminism that are optional, however much they appear to their proponents as indispensable.” Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 604; Halley, *Take a Break from Feminism?*, *supra* note 56, at 61.

59. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 604.

60. *Id.* at 604. In her last essay, Halley concedes that feminism might turn on a distinction between M and F and carry a brief for F without insisting on F’s subordination to M. But, Halley continues: “I think if you push hard enough, almost any currently available feminist text will eventually manifest its commitment to $M > F$.” Halley, *Queer Theory by Men*, *supra* note 3, at 8 n.3.

61. Halley, *Queer Theory by Men*, *supra* note 3, at 7. In the earlier essays, *Take a Break from Feminism?*, *Is Feminist Theory Enough?*, and particularly, *Subversive Legal Moments?*, she is pretty vehement about the universal indictment of feminism:

Halley's next step argues for a divergence between feminism's goals and those of queer theory. Within the minimalist architecture she identifies two "phyla," one committed to theorizing F's subordination through sexuality and the other focused on care work.⁶² Of concern to Halley is the former.⁶³ In its activist mode, feminism targeted sexual violence, sexual harassment, sex between unequals (Halley's examples are "boss/secretary, teacher/student"), and pornography "as leverage points for the de-subordination of women."⁶⁴ She fears that, in the process, these "feminist justice projects" succumbed to governance goals, developing frightening alliances with the state to police and discipline undesirable sex.⁶⁵ Halley also fears what she/Ian (Halley's *Queer*

My point today has been that, in those practices, feminism has argued itself into the idea that all left anti-subordination justice projects must be feminist—and if they are not, feminists have been morally bad. My countermove is to suggest that, we might have stronger feminism, and stronger other left justice projects, if, in this practice that is feminism, we were more willing to let some projects go and to let some things not be feminist.

Halley, in *Subversive Legal Moments?*, *supra* note 56, at 241. In the last essay, *Queer Theory by Men*, it appears her real targets are dominance and cultural feminism:

Our very desire and our very modes of knowledge are inhabited throughout by the epistemology of this power structure. Men emerge as objective knowers, and women as known objects; and this turns us all on and is our basic grammar of action: man fucks woman, subject verb object. Feminism is a project in *quest for* women's point of view, which, because it is already constituted *as its subordination*, is not only a profoundly deferred but also a deeply problematic starting place.

Halley, *Queer Theory by Men*, *supra* note 3, at 10; *see also* Romero, *supra* note 4, at 233 ("Halley's real problem is with two strands of "sexual-subordination" feminism, not feminism in toto. . . . Halley detests the anti-sex culture connected to [MacKinnon] and the moralism that pervades [West].") (footnotes omitted). Yet all of the pieces proclaim equally her commitment to the "minimalist definition" of feminism. The *Split Decisions* monograph incorporates an analysis of more kinds of feminisms, but still adheres to the "minimalist" definition. *See, e.g.*, HALLEY, *supra* note 4, at 4-5, 8, 17-20, 149, 189, 249, 287, 290, 309-10. The book also introduces another set of feminist minima, the Injury Triad, a "triad of descriptive stakes: women are injured, they do not cause any social harm, and men, who injure women, are immune from harm—female injury + female innocence + male immunity." *Id.* at 320; *cf.* West, *supra* note 4, at 38, 44 (urging that Halley erases rape's injury, absolves perpetrators of responsibility, and denies a role for state or social intervention, which she terms the "legitimation triad").

62. *See, e.g.*, Halley, *Queer Theory by Men*, *supra* note 3, at 8-9; *see also* Adrienne D. Davis & Joan C. Williams, *Foreword—Symposium: Gender, Work & Family Project Inaugural Feminist Legal Theory Lecture*, 8 AM. U. J. GENDER SOC. POL'Y & L. 1, 3 (2000) ("Yet, even as the sex/violence strand has become a mainstay of contemporary feminist legal theory, another core piece of anti-sexist analysis has been left under-attended. It is the conflict that people experience as they negotiate between their work lives and their family lives, especially once complicated by parental status.").

63. Halley is now working on comparative family law. *See, e.g.*, Janet Halley & Kerry Rittich, *Critical Directions in Comparative Family Law: Genealogies and Contemporary Studies of Family Law Exceptionalism: Introduction to the Special Issue on Comparative Family Law*, 58 AM. J. COMP. L. 753 (2010); Janet Halley, *A Tribute from Legal Studies to Eve Kosofsky Sedgwick: Introduction*, 33 HARV. J.L. & GENDER 309 (2010) (essays from the 2009 Family Law Summer Camp panel "Reconceptualizing the Affective Family: A Tribute to Eve Kosofsky Sedgwick").

64. Halley, *Queer Theory by Men*, *supra* note 3, at 13; *see also* Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 608; Halley, *Take a Break from Feminism?*, *supra* note 56, at 65.

65. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 608. Halley develops this skepticism of the left's alliance with the state in her introduction with Wendy Brown in *LEFT LEGALISM/LEFT CRITIQUE*, *supra* note 56. *See also* Halley, *Sexuality Harassment*, *supra* note 56. In a fascinating close

Theory by Men is authored by “Ian Halley”) calls governance feminism’s “convergentism,”⁶⁶ or its desire to integrate and assimilate everything “good” into itself,⁶⁷ leaving it mesmerized by its own “moral perfectionism” and unable to hear criticism.⁶⁸ Feminism’s unapologetic recruitment of state power, convergentist impulses, and will to power, to run things, are in need of “a theory and practice of its own role in governance, of itself as a responsible wielder of power.”⁶⁹

Understood as a theory of sexuality, one that embodies a “simultaneous turn to the state and against sex,” governance feminism threatens to thwart other left/liberal sexuality projects.⁷⁰ Of primary concern to Halley are queer projects committed to affirming sex without a first principle of equality or anti-subordination. Halley’s version of queer theory rejects governance feminism’s adherence to certainty, identity, and subordination as guiding principles.⁷¹ Queer theory’s vision of “sexuality [as] dark, unknown to us, riven by paradox and reversal” contradicts governance feminism’s commitment to knowing and pursuing women’s sexual welfare.⁷² In fact, Halley argues that feminism’s rigorous mapping of sexual injury may actually be injuring its “client base,” causing victims of sexism to suffer.⁷³ Halley’s queer theory is also rigorously

reading of Catharine MacKinnon’s work, she/Ian identifies the emergence of governance impulses as a key distinguishing feature between MacKinnon’s earliest work and her classic book, *FEMINISM UNMODIFIED*. “Early MacKinnon” embraced “a critique of the state and of the law. . . . The state could not be used against something so constitutive of it as male power; and female subjectivity, which was a constitutive element of male power, provided no way out of the dilemma.” Halley, *Queer Theory by Men*, *supra* note 3, at 11. But by the time *Feminism Unmodified* was published in the mid-1980s, MacKinnon “claimed to know many, many things.” *Id.* at 11. The state had a discernible role to play, and that was in protecting women from sexual violence, pornography, and sexual harassment through imposing legal sanctions and conferring rights. *Id.* Halley urges that “feminists who want to resist the influence of the Late MacKinnon should consider whether their own reasons for resistance appear as *MacKinnon’s own position*” in the early work. *Id.* at 10.

66. Halley, *Queer Theory by Men*, *supra* note 3, at 14.

67. Halley, in *Subversive Legal Moments?*, *supra* note 56, at 225.

68. Halley, *Take a Break From Feminism?*, *supra* note 56, at 66. Halley also refers to this as “big tent” feminism. Halley, in *Subversive Legal Moments?*, *supra* note 56, at 225. She rejects efforts by self-described feminists to incorporate her criticisms or defend feminism as “recuperative” and part and parcel of governance through convergence. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 606. Dan Danielsen also offers a brief but insightful comparison of this aspect of Halley’s work with a disparate tendency in Brenda Cossman’s. Danielsen, in *Is Feminist Theory Enough?*, *supra* note 56, at 629 (contrasting “containment” versus “big tent” feminisms).

69. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 608; *see also Subversive Legal Moments?*, *supra* note 56, at 231-33, 236-40 (extensively discussing governance feminism and its willingness to induce “sex panics” to achieve its regulatory aims).

70. Halley, *Queer Theory by Men*, *supra* note 3, at 13.

71. Halley’s queer theory borrows from Judith Butler, Michel Foucault, Friedrich Nietzsche, and postmodernist thought more generally.

72. Halley, *Queer Theory by Men*, *supra* note 3, at 38.

73. *Id.* at 12. Describing a woman who sued her husband for intentional infliction of emotional distress, claiming he coerced her into sadomasochism, Halley contends that, while the woman viewed herself as a victim, she was able to use the law, influenced by feminist theory, to exercise control over her husband’s sexual preferences. Noting that the court agreed with the wife, Halley argues: “feminism might be responsible not only for her power, but also for the terrible suffering that grounds it.” Halley, *Take a Break from Feminism?*, *supra* note 56, at 75 (emphasis omitted); Janet Halley, *The Politics of*

anti-identitarian, rejecting the distinction between M and F, thus forfeiting women as a client base. Finally, it breaks with the “equality-is-freedom” impulses of conventional anti-subordination and civil rights movements.⁷⁴ In its place, it permits, even celebrates, the eroticization of domination and its liberatory potential.⁷⁵ A consequence, indeed a goal, of governance feminism is to repress through legal sanctions and moral indictments “unequal” sex in the name of its client base, women. Hence, Halley fears that queer theory’s interests in [affirming] the “intersections of the erotic with power and pain might just not always line up under the minimal terms required by feminism today”⁷⁶

Halley’s final step is to urge that left/liberal/progressives Take a Break from Feminism. Instead of urging a reconciliation of feminism with queer theory, she argues the conceptual benefits of divergence. “The argument is not that the convergence of feminism with queer theory is impossible or undesirable; it is merely that divergence is both possible and possibly highly valuable.”⁷⁷ (This is also part of what distinguishes Halley’s project from standard queer critiques of feminism that do not urge a full-on “break.”⁷⁸)

Injury: A Review of Robin West’s Caring for Justice, 1 UNBOUND 65, 83 (2005) [hereinafter Halley, *The Politics of Injury*] (“While feminism is committed to affirming and identifying itself with female injury, it may thereby, unintentionally, intensify it.”); cf. West, *supra* note 4, at 18 (“The sense of injury, in other words, may well have been brought on, albeit indirectly, by texts, feminist and otherwise. It does not follow that the injury itself had its genesis in the Word. The sense of one’s entitlement to equal regard, by which one’s suffering might be regarded as injurious, avoidable, deterrable, and compensable, though, might well have.”).

74. Halley, *Queer Theory by Men*, *supra* note 3, at 38.

75.

[A]s long as men and women do find intense pleasure inside the eroticization of domination; as long as pleasure sometimes takes the form of pain, and pain of pleasure; as long as desire can extend its reach to shame; as long as gender as power-over is subject to complex psychic reversals; as long as the resulting highly volatile system is understood to provide the raw material *both* for domination *and* for “resistance, compromise, and opportunism”; as long as these conclusions about our life in sexuality hold, it could never be “just ‘the truth’” that the scenario we are construing was only pleasure/resistance and not something bad as well, or only something bad and not pleasure/resistance as well.

Id. at 37-38.

76. *Id.* at 49. Acknowledging variations of queer discourse, she seeks a queer theory purged of identitarianism and feminist convergence: in other words, a purely Foucauldian dedication to “bodies and pleasures.” *Id.* at 20 (citing Leo Bersani, *Is the Rectum a Grave?*, in AIDS: CULTURAL ANALYSIS/CULTURAL ACTIVISM 197 (Douglas Crimp ed., 1988)).

77. Halley, *Queer Theory by Men*, *supra* note 3, at 9-10. “My overall goal in this discussion is to make a case for the proposition that divergence in left thinking about sexuality and power can get us some conceptual gains that seem unavailable from convergence.” *Id.* at 9. In fact, as noted above, the convergentist impulse is one key feature of governance feminism. See *supra* notes 66-68 and accompanying text.

78. See, e.g., Cheshire Calhoun, *Separating Lesbian Theory from Feminist Theory*, 104 ETHICS 558 (1994); FEMINISM MEETS QUEER THEORY (Elizabeth Weed & Naomi Schor eds., 1997) (compilation of essays addressing “the odd sort of feminism queer theory presents [feminism] with,” which is “a strange feminism, stripped of its contentious elements, its internal contradictions, its multiplicity.” *Id.* at vii, ix.); Elisa Glick, *Sex Positive: Feminism, Queer Theory, and the Politics of Transgression*, 64 FEMINIST REV. 19 (discussing how the sexual politics of the 1980s and 1990s permitted a theoretical

Taking a Break from Feminism appears to have two components. As a descriptive matter, it rejects feminism's monopoly as a theory of sexuality. Halley observes: "[Gayle] Rubin's hypothesis that a left sex radical could have an analysis or a political moment that engages the politics of erotic life without being feminist has come to have a significant descriptive validity, at least for now."⁷⁹ Such a Break leaves room for hypotheses "that sexuality can be understood without reference to M and F; and . . . that power can be understood without >."⁸⁰ The normative component is that there are benefits of suspending feminism's monopoly. Halley compiles an exhaustive list of "costs" that governance feminism imposes.⁸¹ Of primary concern is its ruthless efforts to end the sexual subordination of its client base, women, at the expense of other social interests, including queer goals.⁸² In sum, "we don't always need feminism in order to have meaningful left projects about sexuality."⁸³

The Taking a Break from Feminism (TBF) essays comprise only one strand of Janet Halley's substantial and complex oeuvre. Some of her germinal articles also grappled with tensions between queer commitments and feminism, but in those papers she distinguished among different forms of feminism, those she found compatible with sexuality justice projects (e.g., socialist feminism

alliance between feminism and queer theory on sex positivity); *see also infra* notes 92, 205, and accompanying text (discussing rejection of women queer theorists).

79. Halley, *Take a Break from Feminism?*, *supra* note 56, at 58. Halley quotes Rubin: "Feminism is the theory of gender oppression. To automatically assume that this makes it the theory of sexual oppression is to fail to distinguish between gender, on the one hand, and erotic desire, on the other." *Id.* at 57 (quoting Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY 267, 307 (Carol S. Vance ed., 1984)).

80. Halley, *Queer Theory by Men*, *supra* note 3, at 47. Her monograph, *Split Decisions*, is more ambivalent about whether queer theory generated by men can offer the refuge from governance and equality-seeking Halley envisions. Halley herself notes the tension within the book:

I'm not promoting Queer Theory as The Answer, or as The Replacement of Feminism, or as a Normative Ideal. It has been a brave Break Taker, and it has carried the ball further down certain fields. But it has its own limits . . . Other people might idealize queer theory—for instance, the Janet Halley who started this book did—but I simply no longer think it's a good idea to collapse your theory with your utopia.

HALLEY, *supra* note 4, at 309. On the very next page she reiterates, "My idea that Queer Theory by Men would give me a clean break from feminism was promptly defeated by the very texts I selected to study." *Id.* at 310.

81. *See, e.g.*, Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 607, 607-11.

82. Halley is adamant that she is endorsing neither anti-feminism nor post-feminism, which she characterizes (and implicitly rejects) as neoconservative. "To say that this is an anti- or post-feminist question is to presuppose that 'we' are 'women'—a claim that would be untrue in a very trivial sense if 'we' are 'gay men and lesbians,' or 'black feminist women and progressive black men,' or 'the working class.' To insist that Taking a Break from Feminism is anti- or post-feminist is to presuppose that feminism will always be the origin and destiny of left politics on sexuality. But that's exactly what Taking a Break from Feminism is *challenging*." Halley, *Take a Break from Feminism?*, *supra* note 56, at 59-60 (emphasis in original) (footnotes omitted); *see also* Halley, *Queer Theory by Men*, *supra* note 3, at 14 ("Taking a Break from Feminism is anti- or post-feminist only if feminism *requires* convergentism on all matters relating to sexuality; that is, if M/F, M>F, and carrying a brief for F *must* be the ultimate ground of all work in this wide and politically, historically, and intellectually riven domain.").

83. Halley, *Queer Theory by Men*, *supra* note 3, at 9.

and sex-positive feminism) and those, *e.g.*, “sexual subordination” feminism,⁸⁴ that she did not.⁸⁵ Her characterization in *Sexuality Harassment* is emblematic:

Indeed, *feminist* queer thinking might even say that we insult women by attributing to them such milquetoast psyches that they must be assumed incapable of fomenting powerful phantasmatic cathexes on abjection. And so we have queer and *feminist* queer projects of asking whether, when a woman claims that a male coworker or supervisor or teacher injures her by desiring her sexually, we should believe her, or think her claim of injury is reasonable.⁸⁶

But the feminism she endorsed in *Sexuality Harassment* drops mysteriously out of the TBF essays. In fact, what distinguishes the essays is that each attributes the “minimalist definition” to feminism, which she argues characterizes all feminisms.⁸⁷ In marked distinction from the earlier work, the TBF project rejects all feminisms as intrinsically incompatible with sexual liberty goals, now denominated as “queer.” To be fair, she does not consistently limit her critique to calls for sex equality: at some points she rejects all “minoritizing” civil rights projects.⁸⁸ Yet it is feminism that is squarely in her crosshairs. “Is there . . . something about the social world, something about justice, something about left ambitions, that need not be referred to by feminism?”⁸⁹ And, it is only feminism that she calls for a break from, not “justice” more broadly.⁹⁰

84. Halley, *Sexuality Harassment*, *supra* note 56, at 194-197; *see also* HALLEY, *supra* note 4, at 41.

85. Halley, *Sexuality Harassment*, *supra* note 56, at 81. For instance, she says “I argue that it is time for a return to a socialist feminist understanding of this piece of left legalism. This is in part because socialist feminism provides the more germane insights into working women’s lives.” *Id.* Similarly, in a contemporaneous essay, a review of Robin West’s book, *Caring for Justice*, Halley does not make a case for the TBF project, but instead urges feminism to “understand women’s version of what Leo Bersani, writing on behalf of *gay men*, has called ‘gay male love of the cock.’” Halley, *The Politics of Injury*, *supra* note 73, at 70 (emphasis in the original) (footnote omitted). In this essay, she expresses her concern not as a contradiction between feminism and queer theory, but rather as an intellectual failing of feminism, insightfully arguing that “a feature that I regard as widely characteristic of feminist legal theory today and highly puzzling if not downright inexplicable: a pervasive lack of interest in women’s erotic yearning for men and a foreclosure of theoretic space for an affirmation of men’s erotic yearning for them.” *Id.* She continues: “Inside feminism I’ve found affirmations of female femininity, female masculinity, and male femininity—but no affirmations of *male masculinity*.” *Id.*; *see also* Jane M. Gaines, *Sexual Semiosis*, 11 DUKE J. GENDER L. & POL’Y 55, 57 (2004) (noting that feminism has generated theories of pleasure but not of excitement).

86. Janet Halley, *Sexuality Harassment*, in LEFT LEGALISM/LEFT CRITIQUE, *supra* note 56, at 101 (emphasis in original). Similarly, she says, “I argue that it is time for a return to a socialist feminist understanding of this piece of left legalism. This is in part because socialist feminism provides the more germane insights into women’s working lives.” *Id.* at 81.

87. This architecture is maintained in her monograph. *See supra* note 61.

88. *See, e.g.*, Halley, *The Politics of Injury*, *supra* note 73, at 65 (characterizing Robin West’s recent book on cultural feminism as exemplary of “other left-multicultural identity-political subordination-theory (LMIPST) projects” that share a vision of identity politics as harm); *see also* Halley, “*Like Race*” Arguments, *supra* note 3, at 65 (on minoritizing identity projects).

89. Halley, *Take a Break from Feminism?*, *supra* note 56, at 59.

90. Contrast Halley’s book with Wendy Brown, *Left Legalism/Left Critique*, in which Halley and Brown compile essays “attempting to reinvigorate and revalue the tradition of critique as vital to what the intellectual left has to offer” with Halley’s call to “take a break from feminism.” Brown & Halley, *Introduction*, *supra* note 56, at 4.

In her quest for an alternative vision of sexuality and power, in one important essay Halley appeared to be rejecting not only feminism, but also the germinal queer texts by female scholars such as Eve Sedgwick, Judith Butler, and Gayle Rubin.⁹¹ Instead, she endorsed a particular brand of queer theory, that “authored by men.”⁹² (In fact, this essay is authored by “Ian” Halley.) It is here that Halley finds the relationship between sex and power she seeks. In contrast with feminism’s suspicions of “unequal sex,” its insistence on such sex as a core aspect of the subordination of its client base, women, and its commitment to punish and regulate deviations, Halley finds in male-authored queer theory the liberatory possibility of sexual shame and suffering.

In this queer mode, it is the confrontation of the self with its embodiment, with its will to power over and its utter lack of control over that object, the body; its pleasurable and frightening ability to wield itself as embodied to control the world, and the utter, persistent fragility and reversibility of that project (the world against the body, against the self) that *is* erotic; both assertion and dissolution are compellingly familiar, mutually contingent, and constantly yielding to one another in the body’s very capacity for experience of itself as human; gender is secondary, derivative, and (however highly useful as a vocabulary) definitive of exactly *nothing* in the tremulous project of the self. Indeed, if the implicit masochism of the orgasmic aim involves a will to be shattered, disoriented, erased, then gender would be one of the things that one lost track of.⁹³

Significantly, because her embrace of sexual shame is rooted in the release that comes from relinquishing power, *Queer Theory by Men* locates the shame in a *masculine* surrender of sexual dominance, an embrace of abjection which lesbians, implicitly, do not enjoy.⁹⁴ In so doing, she implicitly rejects lesbianism as failing to embody the satisfaction and fulfillment in surrendering

91. See, e.g., JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (1990); EVE KOSOFSKY SEDGWICK, EPISTEMOLOGY OF THE CLOSET (1990); Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in PLEASURE AND DANGER 290 (Carol S. Vance ed., 1989). Further examples of women scholars whose work in postmodernist and critical theory is often used by early queer scholars include: TERESA DE LAURETIS, ALICE DOESN’T: FEMINISM, SEMIOTICS, CINEMA (1984); DIANA FUSS, IDENTIFICATION PAPERS: READINGS ON PSYCHOANALYSIS, SEXUALITY, AND CULTURE (1995); LUCE IRIGRAY, SPECULUM OF THE OTHER WOMAN (Gillian C. Gill trans., 1985); JULIA KRISTEVA, POWERS OF HORROR: AN ESSAY ON ABJECTION (Leon Roudiez trans., 1982); MONIQUE WITTIG, LES GUERRILLERES (David Le Vay trans., 2007). Halley’s monograph, *Split Decisions*, incorporates an extensive analysis of some of these thinkers, but in a context in which Halley is already backing away from queer theory as a theoretical and political refuge from feminism’s governance and equality-seeking. HALLEY, *supra* note 4, at 114-18, 133-50.

92. See Halley, *Queer Theory by Men*, *supra* note 3, at 14-38.

93. Halley, *Queer Theory by Men*, *supra* note 3, at 26.

94. Cf. Robyn Wiegman, *Dear Ian*, 11 DUKE J. GENDER L. & POL’Y 93 (2004) (contending that Halley reifies gay men while excluding lesbians as sexual actors and theorists).

sexual power.⁹⁵ “Queer theory by men,” on the other hand, embraces the humiliation and degradation that feminism condemns as subordinating injury.

Halley’s critics have been only slightly less forgiving than Walker’s. Mary Anne Franks’ sharp review concludes, “what Halley seems to be after is not mere reinstatement of patriarchy, but patriarchy with a smile—with a stamp of (erotic) approval from women” and characterizes Halley’s approach to feminism as “paranoid-critical.”⁹⁶ A review in *Feminist Legal Studies* found *Split Decisions* to be a “famously reductive” “taunt” and noted: “It is worth pausing for a moment to consider why a scholar of Halley’s sophistication would do something as crass as reduce a long and vibrant tradition of intellectual and political resistance [feminism] to a slick mathematical formula.”⁹⁷ A different review charged that Halley “revels in the bombastic” and has created “caricatures” while failing to proffer “sophisticated and nuanced feminist theorizing.”⁹⁸ Both Robin West’s and Robyn Wiegman’s reviews similarly look askance at Halley’s politics.⁹⁹ Moreover, informally, at feminist conferences and gatherings, one hears murmurings: “I just don’t get it”; “What is she doing?”; “I thought she was a feminist.” The jury is in and, like Walker’s ejection from the black art establishment, Halley is out of feminism’s vast big tent. She is an official bad girl of law.

C. Common Commitment/Common Critique, or Genealogies Against Justice

One might object to Walker’s installations and Halley’s invitation to Take a Break from Feminism on any number of grounds. Criticisms might start with

95. In her monograph, *Split Decisions*, Halley engages many more texts, including some authored by those who identify as lesbian. See, e.g., HALLEY, *supra* note 4, at 132-50, 230-37, 246-60 (discussing Eve Sedgwick and Judith Butler).

The monograph is also more skeptical of the promise of queer theory by men.

96. Franks, *supra* note 4, at 259, 262 (“Halley frequently characterizes feminism as paranoid; ironically, Halley’s reading of the power of feminism could itself be described as paranoid.”). Franks’ scrupulous reading of *Split Decisions* focuses on and deconstructs the binary she finds Halley erects between “undifferentiated, decontextualized, and dehistoricized bodily pleasures” and “the allegedly pleasure-killing, paranoid, and moralizing power of feminism.” *Id.* at 257. At the end of her review, Franks concludes, “Halley’s theory does not just ask us to take a break from feminism; it asks us to take a break from critical thinking and to embrace a theory that immunizes us from any scrutiny of pleasure.” *Id.* at 267. But, basing her disagreement in a focus on the material, Franks disagrees: “While it is certainly Halley’s prerogative to find value in patriarchal norms, there is something intellectually dishonest about the implication that her position is somehow less moralizing, less paranoid, or less powerful than this Thing Called Feminism.” *Id.* at 261; see also Lisa Jervis, *The Feminist Minima*, 24 WOMEN’S REV. BOOKS 6 (2007) (book review) (also criticizing Halley for failing to take account of material conditions of power).

97. Joanne Conaghan, *The Making of a Field or the Building of a Wall? Feminist Legal Studies and Law, Gender and Sexuality*, 17 FEMINIST LEGAL STUD. 303, 305 (2009).

98. Mary Hawkesworth, *Book Review*, 5 PERSP. ON POL. 609, 609, 610 (2007) (“Halley’s virulent condemnation appears to depend upon a hypothetical feminism judged in the context of a counterfactual Supreme Court case on the basis of facts not in evidence, a troubling mode of theorizing, to say the least.”); see also Jervis, *supra* note 96, at 6 (“Her take is at once too bloodless to inspire much defensive anger and too obscure to sway the general public.”).

99. See West, *supra* note 4, at 14-16; Wiegman, *supra* note 94, at 96.

an effort to deny or explain away the disputes, as some art critics try to do with Walker.¹⁰⁰ Next, one might dismiss as un-descriptive their characterizations of the “justice projects” they reject.¹⁰¹ Walker caricatures the civil rights movement and, although in at least one essay Halley limits her concerns to dominance and cultural feminism, her indictment of feminism is relentlessly broad-ranging while she embraces only a stunningly narrow slice of queer theory.¹⁰² Finally, one could castigate them, Walker in particular, for fueling the fire. (Walker’s response to the fury and storm against her? An installation featuring a little black girl fellating the penis of a lynched black man.¹⁰³) In a less inflammatory way, Halley also has rejected feminist overtures to return to the fold and expressed skepticism about feminist and other civil rights “justice

100. Annette Dixon argues that Walker’s interest “is neither the history of American race relations nor the physical and psychological damage that has been visited upon (Black) American people, but instead the very discursive and aesthetic field that would allow the confusions surrounding her work to become so prominent.” Dixon, *supra* note 8, at 28; *see also supra* notes 41-42, 51, and accompanying text (critics arguing Walker does conform to juridical notions of race and sex). Insert sex for race and women for black people and this statement is probably equally descriptive of Halley’s work.

101. In contrast to the cottage industry dedicated to Walker’s work, while there has been much grumbling, published critiques of Halley’s argument are only now coming. (This appears to stem in some part from Halley’s own reluctance to publish her work until she had fully thought it through.) In her exchange with Halley, Brenda Cossman defends the analytic purchase of gender, contending that feminism can shed light on dynamics and disputes. Mapping different forms of feminism, she offers alternative readings of Halley’s key case. Cossman, in *Is Feminist Theory Enough?*, *supra* note 56, at 619-23 (“Together, sex radical, redistributive, and queer theory feminist readings would dispute and disrupt the dominant feminist reading of *Twymen*. But, each of these readings retains a focus on gender as an axis of power, as ‘a primary way of signifying relationships of power.’” *Id.* at 623.). In addition, Robyn Wiegman’s response to Ian Halley questions *Queer Theory by Men’s* taxonomies of both feminism and queer theory, concluding that it confuses the inherent governance of legal feminism with “feminism in its traversal of either public political culture or the academy.” Wiegman, *supra* note 94, at 105.

102. Halley defines dominance feminism as “domination of women through *power*” and cultural feminism as unjust male derogation of women’s traits or points of view or values or experiences through male-ascendant normative value judgments. Their solutions are to attack male power versus transvaluing values and restorative projects. In sum,

MacKinnon would like to get men by the balls because she does not believe their minds and hearts *can* follow; whereas cultural feminism has detailed plans for their hearts and minds. Cultural feminism is a fighting faith seeking the moral conversion of a little less than half the human race.

Halley, *Queer Theory by Men*, *supra* note 3, at 12; *see also* Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 605 (“Countering MacKinnon’s alliance with some cultural feminists to regulate heterosexual eroticism on the assumption that it is a key element in women’s subordination and is always . . . bad for women, there have been powerful sex liberationist, sex radical, and more recently ‘sex positive’ feminisms that understand sexuality to be a domain of ‘pleasure and danger’ to which women need untrammelled access.”). For discussion of Halley’s narrow vision of queer theory, see *infra* notes 202-07 and accompanying text.

103. Yasmil Raymond, MALADIES OF POWER: A KARA WALKER LEXICON 365 fig. 33 (still from Kara Walker’s video *Testimony: Narrative of a Negress Burdened*, available at <http://media.walkerart.org/pdf/KWlexicon.pdf> (2004)). Arlene Keizer notes that black women performing oral sex on white men is particularly inflammatory: “If the possibility of desiring white men is the most problematic ‘contemporary concern’ shaping postmemorial narratives of slavery, then the figure of fellatio, which appears in a surprising number of these works by African American women, is their most disturbing image of unruly desire.” Keizer, *supra* note 42, at 1668.

projects.” Both have been dismissed as merely generating and reveling in psychosocial dramas lacking in significant theoretical or aesthetic content or import. Others have tried to ascertain Halley and Walker’s psychological motivations for disavowal, putting them on the couch, as it were.¹⁰⁴

Yet, here I want to focus on a different aspect of Walker’s and Halley’s common commitment and common critique—their mutual indictment of conventional justice projects and the grounding of these indictments in alternative genealogies of sex and power rooted in their embrace of abjection.¹⁰⁵

In classic civil rights and feminist conceptions, bodies, power, and subordination run through a defined circuit. Certain bodily relations manifest or reinforce group-based power imbalances and should be condemned as subordinating. Both projects view sexual relations as particularly vulnerable. Indeed, structural subordination, whether racial or sexual, erupts most violently and visibly through bodies, leaving its imprints on broken carcasses—whipped, battered, lynched, or raped. These racially and sexually injured bodies manifest the machinations of material political economies that accumulate and allocate power among groups, and much of the historic mission of civil rights and feminism has been to investigate, document, and combat these effects. Both justice projects advocate egalitarian and regulated social relations, especially in sex, as crucial to countering group subordination.

In particular, consent and equality loom large in conventional justice projects’ sexual critiques. Both the juridical imperative and dominance feminism, which Halley terms sexual subordination feminism, theorize sex as a core source of identity injury.¹⁰⁶ Men maintain power over women and, less obviously, whites over blacks, through sexual violence, or the aforementioned

104. An issue of the *International Review of African American Art* particularly manifests this approach. 14 INT. REV. AF.-AM. ART (1997); see also Donald Kuspit, *Kara Walker’s Cakewalk*, available at <http://www.artnet.com/Magazine/features/kuspit/kuspit11-4-03.asp> (“I am suggesting that Walker’s work is much more interesting for what it tells us about her psyche than for its ideology . . .”). For a far more sophisticated psychoanalytic reading of Halley, see Ranjana Khanna, *Signatures of the Impossible*, 11 DUKE J. GENDER L. & POL’Y 69 (2004).

105. Cf. Spindelman, *Discriminating Pleasures*, *supra* note 4 (arguing that queer theory is in need of a theory of sexual injury and boundaries); Spindelman, *Surviving Lawrence*, *supra* note 4, at 1653-54 (contrasting the role of consent in sexual harassment and sodomy cases).

106. See *supra* notes 48-51 and accompanying text for discussion of the juridical imperative. Dominance feminism is classically associated with Catharine MacKinnon. See, e.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 3 (1987) (“[T]he social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual—in fact, is sex.”) (footnote omitted); CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (contrasting feminism’s account of male power through sex with Marxism’s account of class power through labor); see also Davis & Williams, *supra* note 62, at 2-3 (explaining that feminists such as MacKinnon “have shown how the eroticization of dominance systematically empowers men, while subordinating women and endangering their lives and bodily integrity”).

sexual terrorism.¹⁰⁷ (Note also the very attribution of identity—as men and women and whites and blacks—through these power relations.) Feminists prescribe consent as a powerful antidote to sexual injury, even if its precise calibration remains in dispute.¹⁰⁸ In addition, reciprocal and egalitarian sexual relations also indicate equal social relations. While feminists may meaningfully differ over its definition, from liberal iterations to the Antioch College policy, consent remains a lodestar in the quest for sexual equality.¹⁰⁹ Meanwhile, civil rights advocates dating back to Douglass and DuBois emphasize that until black people achieve full legal and social equality, black women’s sexual injuries will remain illegible as such, even within economies of formal consent.¹¹⁰ Both decried black women’s sexual subordination at the hands of

107. Notably, both Angela Davis and Andrea Dworkin have used sexual terrorism to characterize sexual relations. Compare Angela Davis, *Reflections on the Black Woman’s Role in the Community of Slaves*, 13 MASS. REV. 81, 96 (1972) (“In confronting the black woman as adversary in a sexual contest, the master would be subjecting her to the most elemental form of terrorism distinctively suited for the female: rape. Given the already terroristic texture of plantation life, it would be as potential victim of rape that the slave woman would be most unguarded.”), with Andrea Dworkin, *Pornography: The New Terrorism*, 8 N.Y.U. REV. L. & SOC. CHANGE 215, 217 (1978-79) (“Pornography is the propaganda of sexual terrorism. . . . Female rebellion against male sexual despotism, female rebellion against male sexual authority, is now a reality throughout this country. The men, meeting rebellion with an escalation of terror, hang pictures of maimed female bodies in every public place.”).

108. Some feminists allocate the duty to the object of desire to express or withhold consent; others endorse a regime in which the desiring party actively solicits consent. See, e.g., MAKING SENSE OF SEXUAL CONSENT (Mark Cowling & Paul Reynolds eds., 2004) (contemplating sexual consent outside the scope of both radical feminist rejections of consent as inextricably embedded in male domination and liberal defaults to individual agency as measure); Alan Soble, *Antioch’s “Sexual Offense Policy”: A Philosophical Exploration*, 28 J. SOC. PHIL. 22 (1997).

109. See, e.g., Katharine K. Baker, *Sex, Rape, Shame*, 79 B.U.L. REV. 663 (1999) (arguing for better distinctions between consensual and nonconsensual sex); Symposium, 41 AKRON L. REV. 839 (2008) (discussing rape, consent, and sexual autonomy). The Antioch College Sexual Offense Prevention Policy required consent to “each new level of sexual activity” and mandated that body language and silence were not sufficient; verbal affirmation was required. THE ANTIOCH COLLEGE SEXUAL OFFENSE PREVENTION POLICY 1, <http://antiochmedia.org/mirror/antiwarp/www.antioch-college.edu/Campus/sopp/SOPP2006%20.pdf>.

110. On the legibility of black suffering and its connection to “sentimental citizenship,” see generally REBECCA WANZO, *THE SUFFERING WILL NOT BE TELEVISED: AFRICAN AMERICAN WOMEN AND SENTIMENTAL POLITICAL STORYTELLING* (2009). I purposely use Douglass and Du Bois as examples of men who connected racial equality to black women’s sexual injury. See, e.g., W.E.B. DU BOIS, *The Damnation of Women*, in W.E.B. DU BOIS: A READER 299, 304-05 (David Levering Lewis ed., 1995) (“I shall forgive the white South much in its final judgment day . . . but one thing I shall never forgive, neither in this world nor the world to come: its wanton and continued and persistent insulting of the black womanhood which it sought and seeks to prostitute to its lust To no modern race does its women mean so much as to the Negro nor come so near to the fulfillment of its meaning. As one of our women writes: ‘Only the black woman can say ‘when and where I enter, in the quiet, undisputed dignity of my womanhood, without violence and without suing or special patronage, then and there the whole Negro race enters with me.’”). Douglass’s abolitionist newspaper, *The North Star*, carried this slogan on its front page: “Right Is of No Sex—Truth Is of No Color—God Is the Father of Us All, and We Are All Brethren.” Douglass attended the 1848 Seneca Falls Convention to support women’s rights. In 1888, just before his death, he told the International Conference of Women that one of his proudest moments was his support for women’s rights forty years earlier. For a discussion of Douglass’s paper and both men’s views on gender equality, see BEVERLY GUY-SHEFTALL, 11 BLACK WOMEN IN UNITED STATES HISTORY: DAUGHTERS OF SORROW (Darlene Clark Hine ed., 1990).

white men. Less obviously, but no less centrally, consent is seen as intrinsically linked to equality for civil rights as well as feminism.

This relentless focus on the material economies of bodies and power is part of what sends Halley and Walker screaming for the hills. Both reject justice projects' minoritizing impulses and emphasis on power and subordination, and both seem to want to subvert the accompanying regulatory discourses of consent and egalitarianism.

As summarized above, Halley indicts feminism for its first principles of equality and anti-subordination as measures of women's welfare. Discussing *Twyman v. Twyman*, Halley hypothesizes that "power relationships between husband and wife are myriad, indeterminate, and not readily captured by dominance/subordination models."¹¹¹ In fact, she argues that feminism's discourse of sex and power might actually be contributing to sexual injury. She also takes it to task for its "governance," i.e., its regulatory impulses that cause it to systematically recruit state power to discipline and punish unequalitarian and subordinating sex.¹¹²

Even more provocatively than Halley, Walker proclaims herself bored by conventional civil rights justice and dignity projects, in her case as an aesthetic mission. Already resented for success without "paying dues,"¹¹³ Walker disassociates herself from the racial establishment, which she derides as "the niggerati."¹¹⁴ She expresses vast impatience with and derision for the civil rights generation and its cultural and historical icons. Poking fun at fire hose brutality, she indicts her brother for "seem[ing] to me to be a person who has been bracing himself for the fall, for the fire hoses, for the riot, for some kind of upsurge that's racially motivated, then being in a situation where it never arrived: bracing himself for the fall but landing on a pillow."¹¹⁵ She concludes, "That's for me the middle class black experience."¹¹⁶ But according to Walker, her brother is not alone: "Everyone wants to play the nigger now. There is more

111. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 615; *see also* HALLEY, *supra* note 4, at 346 ("If a social subordination exists and an antisubordination discourse—while also pursuing its antisubordination goals—ratifies it, fixes it, creates the discursive capacity for its experiential uptake by the subordinated, all the while hanging a bull's-eye on it, then where does one intervene to attack it?").

112. *See supra* notes 65-76 and accompanying text.

113. "She has won major awards, the fervent support of many collectors and galleries, the adoration of curators . . . and the appreciation of art historians. She also has inspired the unprecedented disdain of artists like Betye Saar and Howardina Pindell and many others within African American cultural circles." HARRIS, *supra* note 2, at 210. While this may sound like sour grapes, older black artists were subjected to structural racism and exclusion in the mainstream art world. In contrast, four years after her MacArthur award, Walker was selected to represent the United States at the 2002 Bienal de São Paulo and then the 2007 Venice Biennale. KARA WALKER, COLUMBIA UNIVERSITY SCHOOL OF THE ARTS, <http://arts.columbia.edu/visual-arts/kara-walker>.

114. *A Conversation Between Darius James and Kara Walker*, *supra* note 31, at 1 ("Harvard and Henry Louis Gates, Jr. also put on a kind of *niggerati* circus in 1998 that I failed to attend—probably to my detriment, but I hate being lion fodder.").

115. *Bowles*, *supra* note 30, at 8.

116. *Id.*

power in the role of the underdog, pop culture tells us.”¹¹⁷ Particularly in her crosshairs is older black Americans’ insistence on dignity and humanity in the face of racial humiliation and shame. Of hearing older black people singing *Lift Every Voice and Sing*, James Weldon Johnson’s ode to black faith in and hope for equality and liberty, Walker says, “To hear a song of such social and moral uplift dragged, kicking and screaming, by the well-meaning tone-deaf . . . seemed a cruel yet apt metaphor for African America as the 20th century prepares to retire.”¹¹⁸ Paralleling Halley’s argument on the feminist production of sexual injury, Walker concludes that civil rights discourse has made injury the *sine qua non* of racial identity. “I think really the whole problem with racism and its continuing legacy in this country is that we simply *love* it. Who would we be without it and without the ‘struggle’?”¹¹⁹

In the end, Walker and Halley share a disinterest in, even an indictment of, the justice claims and critiques—anti-subordination, minoritized identity, egalitarian regulation—conventionally articulated by civil rights and feminism. Both disclaim the structural analyses that ground feminist and civil rights critiques of social and sexual power. And frankly, both appear bored by the investigations into material economies of injury and violation that have long been standard among the liberal/left. Instead, power dissipates in Halley’s law and Walker’s art as it is reworked into the personal, the individual’s ecstasy, without attention to its accumulation in society or collectively in groups.

“Inside” indictments of justice projects are certainly not new. Some blacks have long distanced themselves from civil rights initiatives, and women castigating feminism has a long pedigree.¹²⁰ Some contemporary blacks call for color-blindness in lieu of racial consciousness and many women affirm conventional gender roles. What is different, and hence interesting, about

117. Walker elaborates, “History is carried like a pathology, a cyclical melodrama immersed in artifice and unable to function without it. The historical romance creates a will for abusive submission, exacerbated by contemporary ideologies that revere victimhood.” SHAW, *supra* note 6, at 118.

118. Bowles, *supra* note 30, at 8.

119. Reid-Pharr, *supra* note 26, at 33 (emphasis in original); Kara Walker, “Kara Walker interviewed by Liz Armstrong,” in *No Place (Like Home)* (Richard Flood ed., 1997); see also James Hannaham, *Pea, Ball, Bounce: Interview with Kara Walker*, 28 INTERVIEW 119 (Nov. 1998) (“It seems like I had to actually reinvent or make up my own racist situations so I would know how to deal with them as black people in the past did. In order to have a real connection with my history I had to be somebody’s slave. But I was in control. That was the difference.”).

120. For discussions of alternative black political traditions, see, for example, CHRISTOPHER ALAN BRACEY, *SAVIORS OR SELLOUTS: THE PROMISE AND PERIL OF BLACK CONSERVATISM FROM BOOKER T. WASHINGTON TO CONDELEEZA RICE* (2008); MICHAEL L. ONDAATJE, *BLACK CONSERVATIVE INTELLECTUALS IN MODERN AMERICA* (2010); DEAN E. ROBINSON, *BLACK NATIONALISM IN AMERICAN POLITICS AND THOUGHT* (2001); Adjoa A. Aiyetoro & Adrienne D. Davis, *Historic and Modern Social Movements for Reparations: The National Coalition of Blacks for Reparations in America (N’COBRA) and Its Antecedents*, 16 TEX. WESLEYAN L. REV. 687 (2010). For discussions of women’s opposition to feminism, see, for example, DONALD T. CRITCHLOW, *PHYLLIS SCHLAFELY AND GRASSROOTS CONSERVATISM: A WOMAN’S CRUSADE* (2005); RONNEE SCHREIBER, *RIGHTING FEMINISM: CONSERVATIVE WOMEN AND AMERICAN POLITICS* (2008); Thomas Jablonksy, *Female Opposition: The Anti-Suffrage Campaign*, in *VOTES FOR WOMEN: THE STRUGGLE FOR SUFFRAGE REVISITED* 118 (Jean H. Baker ed., 2002).

Walker's and Halley's aesthetic and political claims is that they do not line up with these arguably "conservative" critiques of justice projects either. Far from embracing a color-blind aesthetic, Walker's art gains its aesthetic traction *from* racial depictions and caricatures, and Halley is hardly interested in the family values/missionary sex endorsed by most anti-feminists.

Rather, what distinguishes their indictments is that both attempt to ground their rejection of conventional justice projects in an alternative conception of bodies and power, one not rooted in civil rights' and feminism's first principles of sexual injury and subordination, equality, and regulation. And both turn to the concept of abjection—the liberatory potential of suffering and degradation—to do so.

As noted, Halley finds in "Queer Theory by Men" the celebration, the eroticization, of dominance. Rejecting feminism's regulatory discourses of consent and egalitarianism, Halley finds in male-authored queer theory the liberatory and redemptive possibility of loss of self, of absence of control. "Shame is deeply embroidered into this image of erotic life."¹²¹ Sex holds the possibility, through suffering, degradation, and humiliation, of challenging the primacy of identity and the grip of dimorphic gender. She embraces Bersani's

willingness to affirm sexuality as carrying an appetite for deep threats to integrated selfhood, its willingness to lose touch of propositional ethical logic to do so, its plunge into a profoundly irresolvable problematic of desire, and its fragmentation not only of the self but of the gendered self¹²²

Locating pleasure in abjection rejects mutuality and reciprocity as sexual goals, instead seeking the shattering, the explosion, indeed, the annihilation of self. Through shamed desire and shamed pleasure, "suffering can be what people seek."¹²³

Several commentators, as well as the artist herself, have commented on the role of the abject in Walker's art. Most notably, art scholars Michael Corris and

121. Halley, *Queer Theory by Men*, *supra* note 3, at 36.

122. *Id.* at 25.

123. Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 617 (2003). Halley elaborates elsewhere:

[A]s long as men and women do find intense pleasure inside the eroticization of domination; as long as pleasure sometimes takes the form of pain, and pain of pleasure; as long as desire can extend its reach to shame; as long as gender as power-over is subject to complex psychic reversals; as long as the resulting highly volatile system is understood to provide the raw material *both* for domination *and* for "resistance, compromise, and opportunism"; as long as these conclusions about our life in sexuality hold, it could never be "just 'the truth'" that the scenario we are construing was only pleasure/resistance and not something bad as well, or only something bad and not pleasure/resistance as well.

Halley, *Queer Theory by Men*, *supra* note 3, at 37-38 (emphasis added).

Robert Hobbs applaud her use of abjection to rethink social stereotypes: “The body is opened to the social order, a more permeable world that experiences flows from the inside as well as from the outside.”¹²⁴ If silhouettes are “rendered intelligible by their margins,” then Walker makes excellent use of this medium to foreground the abject, focusing attention on acts of penetrating orifices traditionally defined as sexually taboo (fellatio, sodomy, bestiality, pedophilia).¹²⁵ This is classic abjection, the blurring of social boundaries by blurring bodily ones. Most controversially, Walker herself claims abjection in explaining her art, as “lur[ing] viewers into something ‘totally demeaning and possibly very beautiful.’”¹²⁶ Elsewhere, describing her own reaction to racist images she says, “Those postcard *coon* images aren’t ugly because they’re ugly, they’re hateful because they’re cute, loveable, desirable.”¹²⁷ As caricatures, her renderings of slavery’s violence, racial and sexual degradation, and general debauchery induce in viewers an impulse to giggle at this national trauma. Caricatures are cartoons; as simple characterizations, they are often designed to induce laughter. But there is something about how viewers’ find their own cartoonish fantasies literally projected onto the walls to cavort among Walker’s silhouettes that many find disturbing. And, like Halley, Walker embraces sexual shame and the seductiveness of degradation. She explains, “My work is intended to function like Harlequin romance novels which veil themselves in history and encourage women to participate in stories that are not in their best interests.”¹²⁸ Indeed, Walker celebrates her own shamed desire through adolescent relations with white boys who sought to, in her words, exploit her: “I guess that’s when I decided to offer up my side-long glances: to be a slave just a little bit.”¹²⁹ In abjection’s embrace of shame and degradation, Walker appears to seek the converse of the dignity that the civil rights generation sought and that she derides.

Walker’s invocation of blacks “wanting to be slaves a little bit” is different when she invokes it for herself versus when she indicts other blacks for the same thing. When she recounts her adolescent relationships with white boys, self-described as exploitative, her explanation of “wanting to be a slave a little bit” is quite Halley-like in its embrace of shame and humiliation as possibly erotic. On the other hand, when she characterizes *other* blacks as wanting to be

124. Corris & Hobbs, *supra* note 8, at 425; see also Kara Walker, *The Debate Continues: Kara Walker’s Response*, 15 INTL. REV. AF.-AM. ART 48, 48 (1998) (“At this historical juncture, consideration of the production of visual meaning can engage the fascination with abjection by enunciating the desire, contradiction, misperception, and fantasy that fuel history and society.”).

125. SHAW, *supra* note 6, at 36.

126. Bowles, *supra* note 30, at 7.

127. *A Conversation Between Darius James and Kara Walker*, *supra* note 31, at 1.

128. Bowles, *supra* note 30, at 8.

129. HARRIS, *supra* note 2, at 213. He continues “that the side-long glance is her answer to the male gaze: ‘It’s a look unreliable women give.’” *Id.* According to Harris, “[h]er silhouettes build on the idea of a profile as a side-long glance,” which Harris finds to be the beginning of feminist “back talk.” *Id.*

slaves “just a little bit,” followed by the indictment, “It gives people heaping teaspoons of dignity and pride,” she seems to be making a different Halley move—accusing them of what Wendy Brown would call wounded attachments, their identity as a minority group lying in their perpetual reenactment of injury.¹³⁰ Readers of these interviews with Walker might be so shocked by her inflammatory invocations of desires to be mastered that they might miss these two very different rhetorical moves and how each resonates with Halley in a different way.¹³¹

Finally, central to their mutual embrace of abjection is Walker’s and Halley’s creation of alter egos who revel in suffering and degradation. As mentioned earlier, Halley’s important essay, *Queer Theory by Men*, is authored by one “Ian Halley.”¹³² Through Ian, Halley rejects the identitarian injuries and commitments she argues feminism projects onto her body, read as female and lesbian. Instead, Ian represents a politics not “for women” but “for gay men.”¹³³ As Ian, Halley further focuses on Bersani’s “affirmation of a shamed desire and a shamed pleasure because they *are* a desire and a pleasure: it’s as if he had said ‘we desire it, and love it when we get it, so it’s good.’”¹³⁴ Similarly, Walker’s much-noted blurring of her art and her person has been a key point of contestation with her critics.¹³⁵ Her ubiquitous “Negress Wench” is not only a stock character in her tableaux but also an alternative creative persona.¹³⁶

130. WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* 53 (1995) (exploring “the ways in which certain troubling aspects of the specific genealogy of politicized identity are carried in its political demands, ways in which certain emancipatory aims of politicized identity are subverted not only by the constraints of the political discourses in which its operations transpire but by its own wounded attachments.”).

131. I thank Mary Anne Case for pointing this out to me.

132. Halley, *Queer Theory by Men*, *supra* note 3, at 7.

133. *Id.* at 18. Wiegman’s essay notes that Halley participates in the “‘traffic in gay men,’ a term which denotes the proliferation by lesbian thinkers, activists, and culture makers of a grammar of sex drawn from, often in overt debt to, gay male sexual styles and their idealization.” Wiegman, *supra* note 94, at 93. Ranjana Khanna asks,

If Janet Halley owns the words of Ian Halley, what is suggested about the constitution of the self, responsibility, and agency designated in the signature and in the name of the copyright holder? . . . Janet seems particularly keen to maintain ownership of Ian, and in some ways continues to insist her presence even though she presents herself as absent.

Khanna, *supra* note 104, at 70. Indeed, there is an arguable tension as to whether Halley is anti-identitarian or pro-ambiguity, i.e., sometimes she appears confidently pro-male, as in her endorsement of Duncan Kennedy’s taking account of heterosexual male interests and the residuum of risk to men. At these times she seems more interested in keeping M/F but flipping F > M, which seems decidedly identitarian. For a discussion of Kennedy and how he figures into Halley’s work, see *infra* note 152.

134. Halley, *Queer Theory by Men*, *supra* note 3, at 19.

135. According to one critic, Walker “has made a bargain with the viewer to implicate herself in the imagery.” HARRIS, *supra* note 2, at 212. *Cf.* Keizer, *supra* note 42, at 1670 (“Walker uses her personae to make a wide range of often contradictory statements.”).

136. Two installations are attributed to nineteenth century “Missus K.E.B. Walker, Colored,” which is a literary reference to an autobiography form favored by nineteenth century blacks. See *Presenting Negro Scenes Drawn Upon My Passage Through the South and Reconfigured for the Benefit of Enlightened Audiences Wherever Such May Be Found, By Myself, Missus K.E.B. Walker, Colored* (1997) Kara Walker, *reprinted in* PICTURES FROM ANOTHER TIME, *supra* note 8, at 36. A subsequent

(Interestingly black men do not figure as significantly in Walker's sexualized representations. The notable exception are images of black men's decapitated heads, including a rather blunt analogy between anthropomorphism and race-mixing that features white swans with ill-fitting black men's heads.)¹³⁷ Self-consciously periodizing herself as part of a post-civil rights generation, she rejects the juridical imperative's interpretation of her experience. Disputing critics' interpretations of her early interracial sexual experiences as "abuse," Walker proclaims her own embrace of what has been conventionally interpreted as sexual degradation and violation in the service of racial supremacy. (Recall her explanation of those experiences: "I guess that's when I decided to offer up my side-long glances: to be a slave just a little bit."¹³⁸) Like Halley, Walker rejects the regulatory discourses of consent and egalitarianism erected to protect her from racial and sexual danger. Hence, through the "Negress Wench" and "Ian," choosing as their registers another black woman and a gay man, Walker and Halley have inserted themselves as objects of the discourse, featured players in shadow dramas of their own.¹³⁹

In the end, abjection functions for both Halley and Walker as a crucial alternative to civil rights's and feminism's structural and material analyses of power and injury. Halley explicitly grounds her academic critique of feminism's governance in abjection; Walker's invocations are more complex, but she is no less committed to deploying abjection to aesthetically disrupt civil rights discourse. For both, abjection, as a genealogy of sex and power,

installation is even more self-referential: *No mere words can Adequately reflect the Remorse this Negress feels at having been Cast into such a lowly state by her former Masters and so it is with a Humble heart that she brings about their physical Ruin and earthly Demise* (1999), reprinted in *id.* at 68. Other attributions include the "Emancipated Negress"; "An African Anonymous Adventuress" from *Endless Conundrum*; the "Black Heart of a Negress" from *Excavated*; and "Dusky Thighs of One Young Negress" from *Gone. My Complement*, *supra* note 14, at 384-89 (exhibition list). Furthermore, in an interview, Walker describes her efforts to "set up a narrative of herself." Armstrong, *supra* note 119, at 104. More recently, Walker distanced herself from this persona:

There were a couple of long-winded titles for different works and shows where the word 'negress' was prominent—partially as a device and partially as a way of distancing myself from myself, or liberating myself from myself, or something.... I have rather stopped doing that now. It got a little tired after a while.

Robert Ayers, "Almost Political by Accident." *A Conversation with Artist Kara Walker*, THE HUFFINGTON POST (Oct. 26, 2010), http://www.huffingtonpost.com/robert-ayers/almost-political-by-accid_b_773039.html.

137. This is featured in at least two installations, *The Emancipation Approximation* (1999-2000) Kara Walker, reprinted in *PICTURES FROM ANOTHER TIME*, *supra* note 8, at 82-83; and *No mere words can Adequately reflect the Remorse this Negress feels at having been Cast into such a lowly state by her former Masters and so it is with a Humble heart that she brings about their physical Ruin and earthly Demise*, *supra* note 136.

138. See *supra* note 129.

139. The devices through which Walker and Halley transform their persona, time and sex, are themselves telling of their projects. Walker, a black woman, essentially re-periodizes herself, while Halley's alter ego, a gay man, plays with both gender and sexuality. As I describe *infra* note 187, this is emblematic of the different idealized forms in which the two work, Walker's nostalgia and Halley's utopianism. I thank Mary Anne Case for suggesting this to me.

emphasizes the liberatory value of degrading bodily violation rather than its indictment as a source of inequality and subordination. Instead of equality and conventional justice, abjection permits, and even endorses, humiliation and shame as constitutive of human subjectivity.

II. GENEALOGIES OF ABJECTION

Halley and Walker are correct in that abjection is very much about power. But can it stand for dematerialization and disavowal? I am skeptical. This section proffers a brief genealogy of abjection—from Julia Kristeva’s classic account to Leo Bersani’s more narrow one. It then considers whether either account offers the conceptual grounding Halley and Walker might seek for their disavowal projects.

A. *Abjection: Classic & Subversive*

Abjection is classically associated with French theorist Julia Kristeva.¹⁴⁰ Challenging the primacy of desire in psychoanalytic thought, Kristeva identifies the foundational role of exclusion and limits in shaping human subjectivity and the social order. Abjection is fundamentally concerned with “inside/outside boundar[ies],” banishments, and limits.¹⁴¹ It links the integrity of the individual—his guarding of his own margins—to the integrity of the social order. To belong, one must exclude.¹⁴² Following anthropologist Mary Douglas’ work on pollution, Kristeva argues that filth is never a quality itself, but relates to a boundary and “the object jettisoned out of the boundary, its other side, a margin.”¹⁴³ Kristeva’s interest is in the border that establishes the limit between the clean and proper and the filthy and banished. She argues it is the fascination with the border itself, with the margin, that constitutes the

140. See KRISTEVA, *supra* note 91.

141. *Id.* at 114.

142. [A]bjection is coextensive with social and symbolic order, on the individual as well as on the collective level. By virtue of this, abjection, just like *prohibition of incest*, is a universal phenomenon; one encounters it as soon as the symbolic and/or social dimension of man is constituted, and this throughout the course of civilization. But abjection assumes specific shapes and different codings according to the various “symbolic systems.”

Id. at 68 (emphasis in original). Toril Moi also points out Kristeva’s articulation of psychoanalysis as a discourse of love as opposed to desire, mandated by the ethics of the therapist/patient relationship. THE KRISTEVA READER 17-18, 238 (Toril Moi ed., 1986). See also MICHAEL WARNER, THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE 81-147 (2000) (making an analogous argument that marriage loses its meaning if everyone can do it).

143. KRISTEVA, *supra* note 91, at 69. She continues, “[t]he potency of pollution is therefore not an inherent one; it is proportional to the potency of the prohibition that founds it.” *Id.* Motivated by culturally specific impulses, societies identify sources of pollution and threatening objects and establish their limits, their boundaries against these threatening others.

abject.¹⁴⁴ By respecting this limit defining inside and outside, belonging and exclusion, the subject emerges from chaos, yet suffers in doing so.

In configuring what is interior to limits as belonging, one discovers the loss of what has been jettisoned and excluded, the subject's "inaugural *loss* that laid the foundations of its own being" and inclusion in the social order.¹⁴⁵ This loss is experienced as a void, a missing piece that the subject seeks and yet must disclaim. It draws the limit, and yet immediately regrets it. The abject then, is not the excluded, despised thing, but rather is the subject's own loss, "silhouetted as non-being," as a gulf, an abyss, threatening and yet beckoning.¹⁴⁶ Hence, "from its place of banishment, the abject does not cease challenging its master."¹⁴⁷ Rather, "the abject simultaneously beseeches and pulverizes the subject."¹⁴⁸ Abjection wavers between the loss of meaning in "absolute degradation" and the unbearable ecstasy in this suffering.¹⁴⁹ The greatest threat posed by the banished is its ongoing power to fascinate, even as it repulses and disgusts. In the end, the "intimate side [of abjection] is suffering and horror its public feature."¹⁵⁰ The agony and the ecstasy. This is the power of abjection.¹⁵¹

144. Abjection functions by constituting a deject, which constantly questions not its being but its place, situating itself by asking "Where Am I?" as opposed to "Who Am I?" *Id.* at 8.

145. *Id.* at 5.

146. *Id.* at 67. Kristeva expresses this simultaneous agony and ecstasy of differentiation through exclusion as crests, heights of harmony, and crescendos.

147. *Id.* at 2.

148. *Id.* at 5.

149. *Id.* at 18.

150. *Id.* at 140. Towards the end of the book she refers to abjection as "the power of fascination exerted upon us, openly or secretly, by that field of horror." *Id.* at 208.

151. The question of subjectivity and belonging or "exile" pervades other aspects of Kristeva's work on psychoanalysis. Like *Powers of Horror, Black Sun: Depression and Melancholia* and especially *Strangers to Ourselves* investigate the subject's formation through the linguistic, the maternal, and the anthropological. JULIA KRISTEVA, *BLACK SUN: DEPRESSION AND MELANCHOLIA* 11 (Leon S. Roudiez trans., Columbia University Press 1989) (1987) ("For my identification with the loved-hated other, through incorporation-introjection-projection, leads me to imbed in myself its sublime component, which becomes my necessary, tyrannical judge, as well as its subject component, which demeans me and of which I desire to rid myself."); JULIA KRISTEVA, *STRANGERS TO OURSELVES* 1 (Leon S. Roudiez trans., Columbia University Press 1991) ("Strangely, the foreigner lives within us: he is the hidden face of our identity, the space that wrecks our abode, the time in which understanding and affinity founder. By recognizing him within ourselves, we are spared detesting him in himself. A symptom that precisely turns 'we' into a problem, perhaps makes it impossible, The foreigner comes in when the consciousness of my difference arises, and he disappears when we all acknowledge ourselves as foreigners, unamenable to bonds and communities."). (Although I doubt that Kristeva's interlocution of the meaning and "absorption" of otherness and how we define ourselves, collectively and individually, is what Halley intends to capture, either. *Id.* at 2.) In particular, Kristeva's notion of the "foreigner" also rests on the outsider who is crucial to the construction of community and subjectivity, although in this text she focuses in addition on the subjectivity of the foreigner himself, through his perpetual exile and original loss of the mother and maternal language.

Living with the other, with the foreigner, confronts us with the possibility or not of *being an other*. It is not simply—humanistically—a matter of our being able to accept the other, but of *being in his place*, and this means to imagine and make oneself other for oneself.

Id. at 13. And, for the foreigner himself:

In 1987, Leo Bersani's germinal queer text, *Is the Rectum a Grave?*, deployed abjection to a different use.¹⁵² If Kristeva's classic psychoanalytic conception concerned itself with the linguistic, the maternal, and the anthropological aspects of abjection, Bersani's interests were in its political and subversive potential. Outraged by the "homophobic rage unleashed by the AIDS crisis," Bersani located both the threat and the subversive potential of homosexuality in the "hygienics of social power" invoked by gay men's association with anal penetration.¹⁵³

With the politics of gay identity (indeed with "gay" as an identity) in crisis, Bersani's essay sought sexual liberation in the gay male sex act itself. In his assessment, neither of the mainstream gay political modes, minoritizing analogies to other subordinated groups nor appeals to liberal impulses and values—the "Whitmanesque" bathhouse for instance—grappled with anal eroticism. Hence they failed to meet homophobia head on.¹⁵⁴ More intriguingly, though, Bersani indicts putatively "queer" political projects for also turning away from sex and the body. He re-centers the gay male sex act to counter a tendency toward "the redemptive reinvention" of sex he argues is more rooted in analyses of power than of sex and anal eroticism.¹⁵⁵ For

"The foreigner . . . does not give the same weight to 'origins' as common sense does. He has fled from that origin—family, blood, soil—and, even though it keeps pestering, enriching, hindering, exciting him, or giving him pain, and often all of it at once, the foreigner is its courageous and melancholy betrayer. His origin certainly haunts him, for better and for worse, but it is indeed *elsewhere* that he has set his hopes, that his struggles take place, that his life holds together today." *Id.* at 29 (emphasis in the original).

152. Bersani, *supra* note 76. Bersani's later work, *Homos*, reiterates and refines this notion of a gay male identity rooted in "love of the cock." LEO BERSANI, *HOMOS* 103 (1995) (arguing against "desexualizing discourses" of gay identity); *cf.* Leo Bersani, *Sociality & Sexuality*, 26 *CRITICAL INQUIRY* 641, 648 (2000) ("To neglect self-defeat in sexual relations leads to that pastoralizing of sexuality that I have frequently criticized; but to privilege self-defeat in the relational field is to reduce that entire field to libidinal relationality."). Some associate Bersani's later writings with the trend toward "queer negativity" or "the antisocial thesis" also articulated by Lee Edelman, Tim Dean, and Judith Halberstam. *See, e.g.,* TIM DEAN, *UNLIMITED INTIMACY: REFLECTIONS ON THE SUBCULTURE OF BAREBACKING* (2009); LEE EDELMAN, *NO FUTURE: QUEER THEORY AND THE DEATH DRIVE* (2004); Judith Halberstam, *The Anti-Social Turn in Queer Studies*, 5 *GRADUATE J. SOC. SCI.* 140 (2008). As Benjy Kahan notes, this view refuses dreams of the future grounded in redemptive narratives of the past, in which past histories of suffering, stigma, and violence are either overcome or memorialized (as Kahan succinctly puts it, "we will never go back" or "we will never forget."). Comment by Benjy Kahan to Adrienne Davis at Colloquium, *supra* note 1. *See, e.g.,* HEATHER LOVE, *FEELING BACKWARD: LOSS AND THE POLITICS OF QUEER HISTORY* 5 (2007) (calling it the "backward turn" in queer studies). Although Bersani's discursive trajectory is complex, I focus on the germinal work, *Is the Rectum a Grave?* because Halley locates her embrace of queer theory by men in this single essay by Bersani and an additional one by "straight" scholar Duncan Kennedy. *See supra* note 133. DUNCAN KENNEDY, *Sexual Abuse, Sexy Dressing, and the Eroticization of Domiance*, in *SEXY DRESSING ETC.* (1993).

153. Bersani, *Is the Rectum a Grave?*, *supra* note 76, at 212, 213. *Cf.* Wiegman, *supra* note 94, at 96 (describing absence of lesbians in Bersani's work). Wiegman enjoins him (and Janet) to "remember bois and grrrls have butts too." *Id.* at 116; *see also* EVE KOSOFKY SEDGWICK, *A Poem Is Being Written*, in *TENDENCIES* 177 (1993) (mourning the absence of discourse of female anal eroticism).

154. Bersani, *Is the Rectum a Grave?*, *supra* note 76, at 206, 205-07.

155. *Id.* at 215. Bersani rejects gay-macho, gay-femme, and lesbian-butch style as subversion by parody and by "honor" because of latent hostility. He contends these stylistic aesthetics "deny what I

instance, Bersani fears that Foucault's emphasis on bodies and pleasures shares with radical feminism's indictment of heterosexual intercourse a "[frequently] hidden agreement about sexuality as being . . . less disturbing, less socially abrasive, less violent, more respectful of 'personhood' than it has been in a male-dominated, phallogocentric culture."¹⁵⁶ In contrast, Bersani wants to defend, indeed to preserve, the "anticommunal, antiegalitarian, antinurturing, antiloving" aspects of the sex act.¹⁵⁷ Bersani then locates not just social subordination, but political possibility in the "seductive and intolerable image of a grown man, legs high in the air, unable to refuse the suicidal ecstasy of being a woman."¹⁵⁸ Bersani then asks the crucial question: What is the political possibility in suicidal ecstasy? Herein lies the essay's status as a germinal text on abjection.

Bersani uses abjection to counter "pastoralizing" political impulses. He finds in the "exploded limits" and "ecstatic suffering" of the sexual the ability to achieve a "more radical disintegration and humiliation of the self."¹⁵⁹ While there is the "temptation to deny the . . . strong appeal of powerlessness, of the loss of control,"¹⁶⁰ Bersani urges that "[h]uman bodies are constructed in such a way that it is, or at least has been, almost impossible not to associate mastery and subordination with the experience of our most intense pleasures."¹⁶¹ Bersani's abjection is all about transgressed boundaries, plunging beyond "a certain threshold of endurance" and the body's capacity for pleasure when its margin is violated, abolished.¹⁶² It is precisely in the self-shattering and self-annihilating aspects of sex that he finds the potential for liberation. "Queer" sex should embrace the shame in abdicating power, not run from it in pastoralizing

take to be wholly nonsubversive intentions by conflating them with problematically subversive effects." *Id.* at 207.

156. Bersani, *supra* note 76, at 215 (Foucault and others "argue[] for a radically revised imagination of the body's capacity for pleasure"). For Foucault, this flows from his turning away from sex itself, "from the acts in which [the body] engages, from the pain it inflicts and begs for—and directs our attention to the romances of memory and the idealization of the presexual, the courting imagination." *Id.* at 219-220. For MacKinnon and Dworkin, Bersani shows that their indictment of sex had the "effect of publicizing, of lucidly laying out for us" abject sex. *Id.* at 215. He also refers to Gayle Rubin, (the old) Pat Califia, Jeffrey Weeks and Simon Watney. *Id.* Bersani elaborates this incipient critique of how Foucault "de-gays" gay identity in HOMOS and *Sociality and Sexuality*. BERSANI, HOMOS, *supra* note 152, at 77-112 ("What strikes me as most interesting about this argument is a connection that Foucault appears to deny in the *Salmagundi* interview when he says that it is not sex acts themselves that are most troubling to nongays, but the gay lifestyle, those 'as yet unforeseen kinds of relationships.'" *Id.* at 81-82.); Leo Bersani, *Sociality and Sexuality*, 26 *CRITICAL INQUIRY* 641, 641-42 (2000) (using Foucault's contention that society's discomfort with homosexuality is not due to the sex act to interrogate psychoanalytic and philosophical conceptions of the self, sexuality, and relationality).

157. Bersani, *supra* note 76, at 215.

158. *Id.* at 212.

159. *Id.* at 215, 217.

160. *Id.* at 217.

161. *Id.* at 216.

162. *Id.* at 217.

redemptive moves.¹⁶³ For Bersani, if the source of our exclusion is supposed to subordinate us, we can instead embrace it as a politics of identity.

Clearly then, Bersani's abjection builds on and yet departs from Kristeva's classic conception. Again, in Kristeva's psychoanalytic model, it is the fascination with, the attraction to, the separation and suffering from that which has been expelled, and hence lost, that constitutes the abject. Kristeva appears most interested in abjection in its noun and verb forms: the abject and to abject (or ab-ject). In other words, in abjection as longing and loss for what has been excluded and expelled. In contrast, Bersani's interest is in the political possibility of abjection as a state of being, or non-being, as it were. His emphasis is on the capacity of shameful suffering to shatter the subject, fracture the self. His abjection re-centers the expelled body and its subversive potential in sexual politics. For Kristeva, the abjector suffers from its own longing for what has been lost. For Bersani, the abjected object embraces his own filthy expulsion, thereby subverting his exclusion into a politics of belonging and identity. Both Bersani and Kristeva find in abjection an account of human subjectivity, an alternative to dominant liberal conceptions of the coherent, desiring subject.

As the next Part will argue, Kristeva's classic iteration of abjection and Bersani's subversive one (in particular I think) pose some fascinating questions about the limits of sex and shame as normative conceptions of bodies and power in Walker's and Halley's work.

B. Abjection, Materiality, and Power

The heart of Julia Kristeva's project is to illuminate the simultaneous articulation and violation of boundaries. Walker's silhouettes conform to this conception of abjection almost exactly. The bounded edges of her silhouettes seem to delineate hard and fast boundaries, yet they continually invite their own penetration and violation. In addition, they distract from the other boundary violation, that between the viewer and the tableau, thereby blurring established delineations between art and audience. And, as art historian Michael Murphy noted, this secondary violation may in fact be contingent on the viewer's focus on the "edginess" of the cutouts and the "outrageousness" of the topic.¹⁶⁴ In fact, the viewer loses her own innocence as she finds herself inserted into Walker's tableaux. Abjection read in its classic form as expulsion, longing, and loss is highly descriptive of Walker's work. What Walker provocatively represents is racial loss and longing, of both blacks and whites.

163. See Bersani, *supra* note 76, at 221 (The redemptive "ambition of performing sex as *only* power is a salvational project, one designed to preserve us from a nightmare of ontological obscenity, from the prospect of a breakdown of the human itself in sexual intensities, from a kind of selfless communication with 'lower' orders of being.").

164. Comment by Michael Murphy to Adrienne Davis at Colloquium, *supra* note 1.

Both yearn for less complicated sexual pasts and race relations, fetishes of an innocent white sexual past and the juridical imperative respectively, long since expelled and surrendered to updated racial histories. In Walker, racial innocence, of both blacks and whites, is that which is expelled and yet mourned precisely because of its expulsion. Sexual loss is the price of racial belonging.

Halley appears less interested in classic abjection than in Bersani's subversive iteration. As Part I explains, she grounds her break from feminism and queer embrace of abjection in Bersani's *Is the Rectum a Grave?* And, although Walker's commitments are less explicit, she, like Halley, appears most interested in abjection's disruptive possibilities, its capacity to subvert and generate aesthetic, and hence political, discursive ruptures. In Halley's *Taking a Break from Feminism* and Walker's installations and accompanying interviews we find a common commitment to the liberatory possibilities of "shamed desire," "shamed pleasure," and the seductiveness of degradation. Both endorse the "anticoncommunal, antiegalitarian, antinurturing, antiloving"¹⁶⁵ aspects of human and sexual relations, disavowing justice projects and their accompanying discourses of minoritized identity, anti-subordination, and regulation.

Paradoxically, though, it is in Bersani's subversive abjection that we find the limits of Walker's and Halley's desires and claims for sex and shame as normative. This is particularly acute for Halley, who explicitly grounds her embrace of abjection in "queer theory by men," with Bersani as her avatar. Specifically, she misses three analytic moves I take to be central to subversive abjection. While they pose challenges for both projects, in the end, I think, they prove more fatal for Halley, given her specific embrace of a politics of abjection as articulated in Bersani's "queer theory by men."

The first point of divergence is in Halley's and Walker's disavowal of justice projects' focus on anti-subordination and explorations of material economies of power and injury. Recall, both dematerialize sex, with slavery's labor and production relations absent from the moonlight and magnolia representations in Walker's silhouettes, and Halley's essays rendered as seemingly self-consciously and purposely abstract. Bersani's subversive abjection manifests a serious attention to the economic and material structures in which sexual acts occur and from which they take their meaning. As noted, *Is the Rectum a Grave?* is rooted in the mid-1980s AIDS crisis and "how a public health crisis [became] treated like an unprecedented sexual threat."¹⁶⁶ Bersani makes broad-ranging links between health care policies, media representations, mortality statistics that value bodies in different ways, and labor policies that subsidize some forms of care-giving and not others. In opposition to Walker's and Halley's dematerialized bodies, Bersani's essay is

165. Bersani, *Is the Rectum a Grave?*, *supra* note 76, at 215.

166. *Id.* at 198.

utterly grounded in the background distribution of power and resources between groups and how these materially affect real bodies.¹⁶⁷

Also of interest to Bersani are geographic manifestations of sexuality and its regulation, most notably bathhouses and their practices, hierarchies, and ideologies. There is a vast theoretical literature on how spatial configurations influence human relations and possibility.¹⁶⁸ Most obviously, overtly “gay” relationships became possible with the rise of hotels and other spaces that permitted rebellious sex.¹⁶⁹ Again, Bersani would be among the first to call attention to how these background conditions influence abjection’s political possibility. Subversive abjection requires certain pre-conditions, and this in turn requires attention to the material conditions of any given political economy.

Second, Bersani’s is explicitly an identity claim. As noted, he seeks to reconceive a gay male identity and politics in contradistinction to Foucault, Weeks, and Watney’s pastoralizing and redemptive articulations. (He also gives mild attention to how gays are *excluded* from mainstream institutions.¹⁷⁰) Granted, his is not an effort to ground identity in injury, as Walker and Halley accuse feminist and civil rights folks of doing. But their characterization is certainly subject to dispute. Others, myself included, would argue that justice projects get painted with too broad a brush (or, in Walker’s case, cut too coarsely). For instance, political projects such as Bersani’s focused on positive rights and access to resources to combat the lethal reach of AIDS. Other projects similarly sound in the register of distributive justice. Contemporary examples of identity politics not rooted in injury might include demands for language accommodation or disability rights. Hence, the search for minoritized

167. Several inaugural queer texts were born out of material economies of death, desire, and power. *See, e.g.*, LEE EDELMAN, *HOMOGRAPHESIS: ESSAYS IN GAY LITERARY AND CULTURAL THEORY* (1994); D.A. MILLER, *THE NOVEL AND THE POLICE* (1988); CINDY PATTON, *INVENTING AIDS* (1990); SEDGWICK, *supra* note 91. Following Hortense Spillers, Robyn Wiegman distinguishes the “epistemic shift” of identity as it transitions from its origins in social movements to academic enterprise. Wiegman, *supra* note 94, at 94. Born of AIDS outrage and seeking a politics, yet yearning for scholarly legitimacy, *Is the Rectum a Grave?* might represent such a transitional text.

168. *See, e.g.*, MIKE DAVIS, *CITY OF QUARTZ: EXCAVATING THE FUTURE IN LOS ANGELES* (1990); SUSAN HANSON & GERALDINE PRATT, *GENDER, WORK, AND SPACE* (1995); HENRI LEFEBVRE, *THE SURVIVAL OF CAPITALISM: REPRODUCTION OF THE RELATIONS OF PRODUCTION* (1976); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); LINDA MCDOWELL, *GENDER, IDENTITY AND PLACE: UNDERSTANDING FEMINIST GEOGRAPHIES* (1999); EDWARD W. SOJA, *POSTMODERN GEOGRAPHIES: THE REASSERTION OF SPACE IN CRITICAL SOCIAL THEORY* (1989).

169. *See, e.g.*, GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKINGS OF THE GAY MALE WORLD 1890-1940*, 162 (1994) (“A male couple sharing a room, or a respectable-looking male hotel guest taking another man to his room for a few hours, aroused less suspicion on the part of desk clerks. . . . A few hotels, such as the St. George in Brooklyn, developed a reputation for their willingness to accommodate gay men on a short- or long-term basis, but gay men could use a larger number of them surreptitiously.”).

170. In a classic indictment of the media’s role in producing heterosexual hysteria and anxiety as a response to AIDS, Bersani noted: “Thus the family identity produced on American television is much more likely to include your dog than your homosexual brother or sister.” Bersani, *supra* note 76, at 203.

identity rooted in injury is only one among many strains of such politics, several of which share common cause with Bersani's own efforts to theorize a common, cohesive identity and its politics.¹⁷¹ In short, Bersani's is explicitly a justice claim, an anti-subordination and identity manifesto grounded in resistance to economies of death in the gay male health crisis.

Finally, it is worth giving some attention to the role of consent in subversive abjection. Consent, while a finely guarded liberal principle, has reached its greatest heights in feminist theory. This is one of the regulatory forces that Halley wants us to Take a Break from and that Walker rather brutally parodies in her installations. (Consent appears irrelevant in Walker's slavery tableaux, perhaps because of its associations with regulatory projects she disdains.) Yet, the subversive potential, indeed, the very logic of, Bersani's abjection lies in the consent of the penetrated. Both the threat and the political possibility of abjection lie in the "widespread confusion in heterosexual *and* homosexual men between fantasies of anal and vaginal sex."¹⁷² Bersani argues heterosexual intercourse provides the social map for sex and power, in which women are passive receptacles and men are active conquerors. Even when on top, "*To be penetrated is to abdicate power.*"¹⁷³ Importantly, in such a construction, "gay" takes its social meaning not from its same-sex character but from its association with passivity and the female role, from the willingness to become penetrated and despised.¹⁷⁴ Yet, neither the vagina nor its imagined anal analog is conceived as powerless, vulnerable, and inviolable. Rather, both are imagined as the antithesis of the penis, imminently able to perform, insatiable, and hence promiscuous, if not properly tamed and regulated.¹⁷⁵ For Bersani, the crucial analogy is to prostitutes, who "publicize (indeed, sell) the inherent aptitude of women for uninterrupted sex."¹⁷⁶ (Thus the critical border between "wife" and "prostitute," apparently invented and then violently guarded in so many societies.) If marriage represents the satiated vagina, the controlled and domesticated woman, then, like prostitutes, gay men are untamed by marriage, unregulated by monogamy, and, governed by their insatiability, will murder us all.¹⁷⁷ "[P]romiscuity in this fantasy, far from

171. Ranjana Khanna emphasizes that Bersani does *not* fall prey to the "wounded attachments" criticized by Wendy Brown. Khanna, *supra* note 104, at 79.

172. Bersani, *supra* note 76, at 211.

173. *Id.* at 212. See also Khanna, *supra* note 104, at 73 (noting that "Bersani insists on the value of the subordinate position") (footnote omitted).

174. Certainly Bersani was not the first or only to note this. See, e.g., ROGER N. LANCASTER, *LIFE IS HARD: MACHISMO, DANGER, AND THE INTIMACY OF POWER IN NICARAGUA* 235-52 (1994) (describing male sexualities through the prism of machismo and active/passive sexual roles).

175. Both engender suspicion and hostility as the antithesis of the penis, requiring no stimulation to perform and with unending stamina. "Tragically, AIDS . . . has reinforced the heterosexual association of anal sex with a self-annihilation originally and primarily identified with the fantasmatic mystery of an insatiable, unstoppable female sexuality." Bersani, *supra* note 76, at 222.

176. *Id.* at 211.

177. "[T]he similarities between representations of female prostitutes and male homosexuals should help us to specify the exact form of sexual behavior being targeted, in representations of AIDS, as the

merely increasing the risk of infection, is the *sign of infection*. Women and gay men spread their legs with an unquenchable appetite for destruction.”¹⁷⁸ The political possibility lies in the active abdication, the purposeful relinquishment, of control over the margin, the limit, the boundary and border. It comes from the way that gay men voluntarily take on the role of women, not the ways that any man can be forced to assume this role through sexual violence.¹⁷⁹ In the voluntary inequality lies the threat, and, crucial to Bersani’s argument, the subversive potential as well.¹⁸⁰

Of course, one could make the case for the possibility of sexual pleasure in non-consensual acts. Similarly, one could argue the imminent rape-ability of both gay men and straight women. But that is not where Bersani locates his political potential. Rather, it is in the body’s *seeking* its own annihilation, its own debasement. (Recall Bersani’s muse is the prostitute, not the rape victim). His emphasis on sex as self-abolition, self-debasement, self-annihilation assumes the solicitation, the invitation, in other words, the *consent* to, the “ecstatic suffering.”¹⁸¹ The meaning of anal eroticism here comes in relinquishing control over this margin, this precious limit, that has taken on so much social meaning. Countering “redemptive projects” requires embracing the liberatory potential in *voluntary* inequality.¹⁸²

In sum, Bersani’s subversive abjection is a justice project accompanied by a discourse of minoritized identity, anti-subordination, and attention to material economies of power. Without question, equality and identity lie at the heart of his subversive notion of abjection. Perhaps Halley is rendering Bersani as a silhouette. (Indeed, perhaps the persona of Ian is a silhouette?) While both Walker and Halley invoke a political possibility in abjection as an alternative mode of conceiving bodies and power, neither appears interested in these aspects of subversive abjection. (In fact, Halley rejects this as the part of

criminal, fatal, and irresistibly repeated act.” *Id.* For eclectic discussions of women as sexual agents, see generally Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 11 COLUM. L. REV. 181 (2001); Susan Ekberg Stiritz, *Cultural Cliteracy: Exposing the Contexts of Women’s Not Coming*, 23 BERKELEY J. GENDER L. & JUST. 243 (2008); PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY, *supra* note 79.

178. Bersani, *Is the Rectum a Grave?*, *supra* note 76, at 211 (footnote omitted).

179. Marc Spindelman makes related points about consent in the gay community. “If gay men like Lawrence and Garner, and perhaps lesbian women as well, are not persons who might be violated through same-sex sex, what does it mean for them to say ‘yes’ to sex when they do?” Spindelman, *Surviving Lawrence*, *supra* note 4, at 661.

180. Ranjana Khanna proposes melancholia in lieu of disavowal. “Halley, following Bersani, sees a politics derived from the dissolution of the self as something peculiar to homosexuality rather than melancholia more generally.” Khanna, *supra* note 104, at 74, 83 (footnote omitted).

181. Bersani, *Is the Rectum a Grave?*, *supra* note 76, at 218.

182. In some ways Kristeva’s articulation of abjection captures Walker’s and Halley’s interest in the *jouissance* of straying onto forbidden ground. Classic abjection articulates the compulsion and fascination with what has been left behind—the sense of belonging and community that can come through discarding. Hence there is a way in which classic abjection is about belonging and subjectivity, if not justice and identity.

Bersani that capitulates to feminism's governance.¹⁸³) Rectifying queer injury is at the heart of Bersani's project. Without it, Bersani's abjection loses its meaning and power as a queer text. Or, put another way, without consent, abjection may lose its subversive expressive dimensions. One might argue (persuasively) that Halley just got her texts wrong. That she really intended to invoke Kristevan classic abjection, the yearning for that which is lost and expelled. But she is very explicit in her claims about Bersani. And she explicitly calls for the liberatory potential in shame and degradation *over* equality, anti-subordination, and dignity, as an alternative first principle. Hence, Halley's call for sexual abjection finds some limits precisely in the queer theory she turns to. In the end, abjection seems more helpful as psychoanalysis than as politics.

The next Section suggests some limits to Halley's project specific to law, feminism, and regulatory projects. At some moments, it uses Walker to do so.

III. SEXUALITY EXCEPTIONALISM

Thus far this Article has emphasized convergences between Halley and Walker's projects. Now I'd like to consider some meaningful differences. Walker's aesthetic vision disdains and disclaims the juridical imperative, the solely subordinating vision of sex and race, seeking to enable and urge a different vision of bodies and power. Her textual claims, primarily in interviews, go even further, disclaiming what Halley would call "minoritized identity" based on injury.¹⁸⁴ In both media, Walker's arguments are primarily ones about human subjectivity, particularly its racialized and sexualized dimensions (recall her desire to encourage women to participate in stories that are "not in their best interests."¹⁸⁵). However, whatever her impatience with civil rights fetishism, Walker stops short of calling for its end, for a return to pre-civil rights racial relations, or for "Taking a Break from Civil Rights." Indeed, her claims do not appear to be regulatory ones. Rather, she seems most interested in exploring the spaces opened up by civil rights and its transformation of race, of changing racial subjectivity in the shadow of these

183. She makes a similar charge against Duncan Kennedy's *Sexy Dressing*. Both this and Bersani are examples of what Halley calls "queer theory by men." Halley, *Queer Theory by Men*, *supra* note 3, at 15, 18 (discussing Bersani's "unusually strongminded embrace of abjection" and how his interests are those of gay men, not women); *see also id.* at 29 (discussing how Kennedy's work is not feminist and is in fact taken only from his perspective as a white middle class male by "affirm[ing] that men (even those who don't abuse women) eroticize women's subordination, suspect[ing] that women do too, and acknowledging multiple male interests in the underenforcement of rules against men's sexual abuse of women."); Khanna, *supra* note 104, at 72-73; 77-78 (offering an alternative description of Bersani and Kennedy's relationships to feminism).

184. *See supra* note 3.

185. *See supra* note 128 and accompanying text.

new spaces. Considering the limits of Walker's claims is useful in deriving the scope of Halley's and their import for law and legal theory.

In contrast to Walker, Halley's embrace of abjection seeks to clear not only conceptual but regulatory space. Halley states: "I hope to show that left/liberal/progressives can Take a Break from Feminism in their theorizing, their alliance formation, and their activism from time to time, and that the results can be (not that they must be—only that they *can* be) good, not only for projects that fall outside the domain of feminism, but for feminism, too."¹⁸⁶ But what, exactly, is the nature of Halley's regulatory claims? How does abjection go from an account of human exclusion and belonging (Kristeva) and a basis for an identitarian politics (Bersani) to the engine for dismantling a regulatory regime? In other words, what is the connection between Halley's embrace of abjection and her break from feminist-inflected sexual regulation?

What is both seductive and frustrating about the TBF project is it is so very difficult to pin Halley down on the nature and scope of her normative claims or regulatory vision.¹⁸⁷ There is a contemporaneous and slightly later set of essays on "Governance Feminism" at work in the international context, but I do not take these to be part of the TBF project, nor do they appear in the *Split Decisions* monograph.¹⁸⁸ (I exclude them from consideration here as part of my interlocution with TBF because they give a quite different account of both "Governance Feminism" and feminism itself, and they do not iterate feminism as in tension with other projects of sexual liberation.¹⁸⁹) Instead, in much of the

186. Halley, *Queer Theory by Men*, *supra* note 3, at 9.

187. Robin West characterizes them as "dystopian imaginings." West, *supra* note 4, at 44. Elsewhere West says, "Readers of Halley's work do not often encounter straightforward, empirical claims about the amount, types, or intensities of sexual harms in the world. Rather, what one more often sees in Halley's writing is a hermeneutic of interpretation, not an empirical claim, regarding sexual harms." *Id.* at 30-31. Mary Anne Case made the opposite observation, contrasting Walker's nostalgia with Halley's utopianism. Telephone Conversation with Mary Anne Case, Arnold I. Shure Professor of Law, University of Chicago Law School (August 2010). If Walker looks firmly backwards to question our aesthetic and political present, Halley looks resolutely forward, to a future compelling in its contours, but that remains empty of substantive content.

188. See Janet Halley, *Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law*, 30 MICH. J. INT'L. L. 1 (2008) [hereinafter Halley, *Rape at Rome*]; Janet Halley, *Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict*, 9 MELB. J. INT'L L. 78 (2008) [hereinafter Halley, *Rape in Berlin*]; Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335 (2006) [hereinafter Halley et al., *Four Studies in Contemporary Governance Feminism*]. These essays are fascinating, and I commend them to anyone interested in understanding the richness and complexities of Halley's claims.

189. But here, again, we find the ambiguity: an interlocution of "governance feminists" versus feminism per se. The Governance Feminism, or what she dubs, GFeminism, essays criticize the collaboration of a newly emergent feminism with nationalism ("In nationalist normativity, only sheer domination—only the designation 'rape'—makes women's sex with a wartime enemy tolerable") and its alliance with what Martha McClusky has termed the carceral state to pursue a criminal mode of abolition and prohibition of rape in wartime. Martha McClusky, Comment at *Injury and Distribution: An Inquiry into the State of Our Art on Sex, Sexuality, Gender and the Family* (Nov. 20-22, 2003).

These essays define "governance feminism" differently than do the TBF essays. They do not adhere to the "minimalist" definition of feminism that characterizes all of the TBF pieces. Instead, these

formal TBF essays Halley's disavowal remains abstract. It is clear she has a beef with feminism's governance, i.e., its vision and its alliance with the state on matters ranging from sexual harassment to rape, but, apart from tantalizing statements like, "why don't we consider rape as a long slow punch in the face," it is difficult to know what is in her crosshairs.¹⁹⁰ Halley argues that feminism has been guilty of both identitarian and governance harms, i.e., that its construal of sex and power has actually been productive of injury, inducing women to embrace a victimized identity, and the regulatory salve itself has been too concentrated, foreclosing other sexual goals. Let's concede for the moment the identitarian fear about women's internalization of injured identity. In other words, for the moment, let's assume that Halley is correct, that feminism's verb form injunction to "survive" and its noun-form lauding of "survivors" has exacerbated rather than ameliorated the psychic injuries of rape. Now let's explore her second argument, that feminist-initiated reforms of sexual assault governance have themselves imposed substantial costs, shutting down other sexual goals interested in liberatory versus reciprocal and egalitarian sex.

What follows is my effort to take seriously Halley's call for a break from feminism, but to do so within her own logic, that is, a logic that seeks to distance itself from minoritized identity projects and their equality and anti-subordination principles to embrace abjection as an alternative liberatory politics of the left.

essays differentiate feminisms with distinctly different investments, distinguishing "structural," "individualist," and "radical" versions of feminism and inquiring which "strands" of feminism "docked" more successfully in Governance Feminism's alliance with state power. In addition, in these essays Governance Feminism itself appears more as a political and tactical mode of interaction and engagement, a management style, and/or an Eriksonian life cycle for feminism. It is "a new feminist organizational style that has evolved over the course of the 1990s" characterized by its "multiplicity, mobility, fragmentation, a regulatory or bureaucratic legal style, as well as ready facility with non-state and para-state institutional forms (NGO's, law school clinics, ad hoc expert groups doing letter writing campaigns)" and its "institutionalization" of feminist achievements. As a life cycle, Halley perceptively notes that it is "feminism grown up, professionalized, and adept at wielding power" and a "newly mature engagement with power." Again, crucial to the Governance Feminism project is that it encompasses different *kinds* of feminism. Finally, none of the Governance Feminism essays call for a "break" from feminism, or even hint at it. Indeed, instead of calling for a break, her essay on rape in war and sex trafficking with Thomas, Shamir, and Kotiswaran identifies an "exciting new research paradigm for feminists and nonfeminists alike." In sum, these projects seem to enjoin feminists to realize and come to terms with its accumulated hard-won power, to envision ourselves as rulers. Halley, *Rape in Berlin*, *supra* note 188, at 106; Halley, *Rape at Rome*, *supra* note 188, at 3, 2, 18, 39; Halley et al., *Four Studies in Contemporary Governance Feminism*, *supra* note 188, at 336, 341, 340 (emphasis added).

190. Within the TBF project, her most substantive critique is interpreting a domestic violence/marital rape case as a sex panic. Each of the TBF essays includes almost identical analysis of *Twyman v. Twyman. Taking a Break to Decide (II)*, in HALLEY, *supra* note 4, at 348-63; Halley, in *Is Feminist Theory Enough?*, *supra* note 56, at 611-17; Halley, *Queer Theory by Men*, *supra* note 3, at 39-48; Halley, *Take a Break from Feminism?*, *supra* note 56, at 68-78. The *Split Decisions* book also includes an analysis of a Supreme Court decision on same-sex sexual harassment, updated from a pre-TBF article. HALLEY, *supra* note 4, at 290-303 (revising discussion of *Oncale v. Sundowner Offshore Services Inc.*, 523 U.S. 75 (1998), from Halley's *Sexuality Harassment* essay, *supra* note 56, at 189-93); see also Halley, in *Subversive Legal Moments?*, *supra* note 56 (in roundtable discussion of other germinal sex equality cases, raising concerns about sex panics).

First, sex seems to occupy a curiously abstract, yet deeply essentialist line in Halley's accounting, one surprisingly Freudian in fact. Sex appears sacred, essential to the self, irrational perhaps, and hence exempt from regulation, perhaps even unregulatable. This syncs well with biological notions of sex as a "natural drive," one that is pre-social and universal. (Evidence here includes the fact that babies masturbate and get erections.) It is a Freudian monolith, an oddly pre-Foucauldian rendering of sex as "repressed" and in need of "liberation." (Indeed if, following Foucault's mandate, we cannot meaningfully distinguish between repression and production of sex, it is unclear how a queer-based "regulation," or "non-regulation," would liberate it.) Absent is a sense of the multiple uses and appearances of sex, not only as conventional "pleasure" or "intimacy," but as work in labor markets; an object of both production and consumption in media of all sorts (pornography, advertising, entertainment); a technique of population management and discipline (à la Agambens and Foucault); a strategy of political discipline and destruction; an intensely regulated resource in processes of personal and social reproduction; a contested scarce resource for some populations (*i.e.*, the disabled); or as a metric for distributing resources.¹⁹¹ In all of these, sex is deeply material, intensely economic, linked to populations and their access to distributive justice and cultivation of capabilities.

It's odd, then, to argue that if there are markets for sex, they could not be regulated as other labor or consumption is, because of sex's essential, Freudian meaning. Or that populations struggling to contain AIDS and other health threats cannot properly include sexuality as an object of public health innovation. Or that scrutiny of the techniques of the camp or the prison (or the plantation for that matter) would exclude and exempt sex.¹⁹² Positing sex as more connected with the self than other acts or endeavors—labor, reproduction, production, consumption—and making this the basis of its exemption from regulation and from governance, seems such a curious call for Halley to embrace. (Much as it would be odd to contend that the excesses of OSHA or labor unions mean we should Take a Break from Labor Regulation.) All law is a governance project. I fear that for all of its *bona fides* TBF falls prey to a view of sex as exceptional, that is, distinctive (and distinguished) from other

191. An essay on international governance feminism that Halley co-authored with Prabha Kotiswaran, Hila Shamir, and Chantal Thomas gives explicit attention to distributive concerns. However, the essay attributes sections to the authors separately, and the other authors focus more on the distributive contexts and consequences, Halley more on indicting governance feminism. Halley et al., *Four Studies in Contemporary Governance Feminism*, *supra* note 188, at 337 ("We take it as a given, for a distributively focused legal analysis, that punishing conduct as crime does not 'stop' or 'end' it, as governance feminists . . . sometimes seem to imagine.") (emphasis added).

192. See, e.g., GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (1998) (contending that modern sovereign power operates via biopolitics, or managing the very fact of life and death, as manifest in the camp); MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1977) (arguing that the prison and its perpetual surveillance is the archetype of modern sovereign power).

market and political relations, beyond rational analysis, and exempt from meaningful regulation.¹⁹³ We might call this excepting and exempting “sexuality exceptionalism.”

A second way of thinking about these anti-governance claims is through the lens of costs, not of regulating sex, but of sex itself. As my former colleague Richard Myers put it, consensual and non-consensual sex used to impose similar, or at least comparable, “costs.”¹⁹⁴ These included unwanted pregnancy, unknown paternity, and, of course, disease. Yet the increasing availability and acceptability of birth control, abortion, and condoms, all public health techniques, plus DNA testing for paternity, have significantly altered the equation. One result of this “technology innovation” was to lower significantly the consequential costs of consensual sex, particularly with regard to disease and pregnancy, thereby creating a significant disparity between the costs of consensual and nonconsensual sex. In the face of this striking disparity, and the lowered costs of consensual sex, Halley’s call to end, or break from, the feminist-inflected consent principle of sexual governance is curious. The technological “cost reduction,” a key component of “liberating” sex, alongside the reduction in its moral costs authored by feminist, queer, and other sex-positive movements, relies on both a certain rationality about sex, that is, its articulation as a technique of abating human misery and enhancing human capability, not merely as a source of pleasure or technique of morality, and its contextualization within political economies (or what I have elsewhere called sexual political economies¹⁹⁵). In this sense, abating nonconsensual sex and sexual violence is a technique of distributive justice, not meaningfully different from abatement of famine, illiteracy, poverty, disease, and unwanted pregnancy. (This is quickly illustrated by the fact that both rape and consensual but unsafe sex have been key contributors to the AIDS crisis in underdeveloped countries. Consider the intensely controversial “Real Men Don’t Tolerate Rape” campaign in South Africa as part of the anti-AIDS campaign which

193. Adam Romero concurs that “Halley should leave the take-a-break-from-feminism rhetoric behind.” Romero, *supra* note 4, at 229.

194. Conversation with Richard Myers (Fall 2007).

195. Adrienne Davis, *Don’t Let Nobody Bother Yo’ Principle: The Sexual Economy of American Slavery*, in *SISTER CIRCLE: BLACK WOMEN AND WORK* 103, 120 (2002) (“[E]nslaved black women shared the world of productive labor with white men, black men, and white women but also inhabited a separate world of compelled sexual and reproductive labor. By understanding American slavery as a sexual economy in which black women’s reproduction and sexuality were appropriated for any number of white economic and political interests, we can see more clearly how slavery was a deeply gendered and sexualized institution in which there was a constant interplay between black sexuality and white economic profits. Such an understanding collapses the distinctions we draw between sex and work, families and markets, also showing how this distinction was itself largely under male control.”); Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW*, *supra* note 4, at 460-61 (“Designating slavery a sexual political economy makes explicit the connection among its markets, labor structure, and sexual exploitation. It also directs attention toward the ways that New World slavery’s geographic manifestation, the plantation, was particularly hospitable to institutionalized sexual abuse and coercion of women in the black workforce.”).

emerged alongside the more conventional approach to push condoms with consensual sex.¹⁹⁶) I fear that to ignore the shift to consent and the accompanying liberation of sex invites a return to a regime in which higher cost sex is viewed and treated the same as lower cost sex, that is, beyond the reach of capabilities enhancement and shielded by shame from scrutiny. With this disparity precarious, and the costs of consensual sex again on the rise, it is an odd time to urge the end of governance of sex, or to govern it solely towards its liberatory and shameful potential.

Relatedly, calls to view rape as “like any other bodily assault” (i.e., the long punch in the face), like the implication that people might revel in its liberatory possibilities, ironically exceptionalize it. They seem to suggest that law enforcement could not subject sexual violence to the same forensic scrutiny they apply to homicide, home invasion, arson, or securities fraud. In fact, discerning what motivates, and hence deters, perpetrators requires some focus on their crime and its motivations. Calls to wrap rape into non-sexual assault will definitionally miss why rapists rape, which is almost certainly different than why burglars burgle, serial killers kill, and arsonists burn. In *Split Decisions*, Halley asks whether feminism’s emphasis on sexual violence has recruited women to suffer: “What if the politics of injury and of traumatized sensibility that have almost completely occupied the space cleared by MacKinnon’s politics of domination and subordination are helping to authorize and enable women as sufferers?”¹⁹⁷ These critiques focus on the victim, or, if I may, the object of sexual assault. Yet criminal law typically focuses its regulatory energy on perpetrators. (In fact, as Robin West notes, there is a curious lack of perpetrators in the TBF project.¹⁹⁸) To re-focus attention on the victims and why they suffer is, again, an exceptionalizing move. Similarly, contending that sexual components of crimes are unworthy of their own forensics is to exceptionalize those acts from all others.

Third, Halley’s argument de-materializes power in an intriguing and perhaps unanticipated way. She appears to suggest that law sacrifices too much when it takes account of institutional or cultural power disparities in crafting sexual regulatory regimes. For instance, she questions the sexual governance of status-based power differentials, such as teacher/student, boss/underling, guard/prisoner.¹⁹⁹ The left’s relationship with power is obviously complex. Yet, I think it is safe to say that a focus on power and its distributional effects are two key tenets of the left. In fact, a sustained, some would say unrelenting, analysis of power is much of what distinguishes “left” from “liberal”

196. See, e.g., Corrina Schuler, *A Voice Against Rape Rattles South Africa*, CHRISTIAN SCI. MONITOR, Oct. 13, 1999, at 1 (describing how South Africa’s advertising regulator pulled controversial “real men don’t rape” commercials off the air).

197. HALLEY, *supra* note 4, at 345.

198. West, *supra* note 4, at 34-35, 41.

199. Halley, *Queer Theory by Men*, *supra* note 3, at 13.

approaches to law and policy. After all, what is the difference between police brutality and a bar fight? Certainly, the unrelenting analysis of power is a core tenet of the critical legal studies movement that has so influenced both me and Halley: “[E]very time you bring a case and win a right, that right is integrated within an ideological framework that has as its ultimate aim the maintenance of collective passivity. That doesn’t mean you don’t bring the case—it means you keep your eye on power and not on rights.”²⁰⁰ Hence it is hard not to contrast Halley’s call to break with these critiques of power against Bersani’s material focus on the distributive effects of power in 1980s San Francisco and its bodies withering of AIDS. For Bersani, this generated a hatred, a rage, and a call to action. But in the TBF project, the material and distributional context of bodies disappears.²⁰¹ Bodies are notable for their capacity for liberatory pleasure, but not much beyond that. In disdaining feminism’s engagement with power, either Halley is rejecting this key tenet of the legal left, or she is arguing that power is somehow exempt from scrutiny when bound up with sex, or (again) sexuality exceptionalism.

Fourth, given Halley’s professed alignments with queer approaches, the TBF project is curiously identitarian. In *Sexuality Harassment* and *Split Decisions*, she contrasts “gay” with “queer” conceptions of sexuality.²⁰² Halley characterizes gay theory as endorsing stable, dichotomous identities, including heterosexual/homosexual, and lesbian women/gay men as “very different.”²⁰³ She contends that queer theory, on the other hand, regards the very idea of gender and other stable identities with “some skepticism even resentment,” thereby presumptively rejecting differences between het/homo, as well as lesbians and gay men, and instead encouraging contingent and alternate sexual identities along dimensions other than the sex of the object of desire.²⁰⁴ Yet recall that in her own early foray into TBF, Halley’s embrace of abjection is rooted in queer theory *only by men*. In that crucial, provocative essay, authored by Ian, Halley identified her politics as aligned with “Queer Theory by Men,” appearing thereby to want no truck with the work of Eve Sedgwick, Judith Butler, Gayle Rubin, and other leading queer theorists who are not biologically male.²⁰⁵ (Indeed, I suspect Kristeva comes closer to Halley’s rejection of the coherent sexual subject than does Bersani.) Robyn Wiegman is concerned, in

200. Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 36 (1984).

201. Mary Anne Franks also takes Halley to task for failing to live up to a truly “left” spirit of interrogation and engagement. Franks, *supra* note 4, at 257-59, 263 (noting Halley’s project is “meant to be a leftist one” and charging her with “depoliticized” and “decontextualized” analysis and claims).

202. Halley, *Sexuality Harassment*, *supra* note 56, at 193-94; *see also* HALLEY, *supra* note 4, at 112-14.

203. Halley, *Sexuality Harassment*, *supra* note 56, at 194.

204. HALLEY, *supra* note 4, at 113.

205. Adam Romero’s review of *Split Decisions* offers a helpful consideration of Butler’s resistance to disaggregating feminist and queer theories. Romero, *supra* note 4, at 255-56. As noted above, the *Split Decisions* monograph does complicate this early, identitarian stance. *See supra* note 95.

fact, that Halley participates in the “traffic in gay men.”²⁰⁶ In her essay, styled as a letter to Ian Halley, she asks Janet/Ian:

[W]hy does the queer sexual imaginary that you seek seem to require for its startling, sexy, divergentist appeal a model and mode of sexual, social, and psychic definition based on identifications with gay men? Is it because the figure of the lesbian is now so overwhelmed by her proximity to feminism, where she has trafficked in a kind of self-production that many have come to disavow, that only her absence can open the project to sexual and theoretical imagination and a transformed future?²⁰⁷

The effect is to privilege the very identitarianism and dimorphic gender Halley seeks to disavow through queer theory while evacuating lesbian sexuality, theory, and politics from her version of “queer.” Hence parts of the TBF project manifest an odd adherence to the very idea of the stable gender dimorphism Halley wants to escape. Crucially, this gender identitarian distinction is not one that is drawn *within* queer theory. (This is also reminiscent of Walker, whose silhouettes and tableaux I noted take on their racial meaning precisely by relying on and executing the same racial stereotypes she resists.) Hence, there is an odd quality to Halley’s simultaneous disavowal and yet intermittent reification of dimorphic gender identification.

Finally, I’d like to consider Halley’s work in light of Walker’s to identify a latent tension in the TBF essays. Walker’s tableaux demonstrate that racial degradation and subordination can be sources of intense bodily pleasure, including sexual pleasure. (Indeed, Walker’s work is characterized by its foregrounding of the sexually *and* racially abject body.) In more recent installations about lynching, she depicts the sexual pleasures of racial degradation and violence, echoing what several cultural critics have articulated in scholarly form.²⁰⁸ Where Walker departs from these scholarly critiques and

206. See *supra* note 133. See also Khanna, *supra* note 104, at 71 (discussing what was lost or gained in Halley’s “substitution of Janet for Ian, and the constitution of the self sometimes proposed in the proffering of a signature.”).

Queer Theory by Men tries to have its cake and eat it too by on the one hand offering a compelling commitment to the most profound and to my mind productive anti-identitarian impulses of queer theory, while enacting, on the other hand, its rebellion against feminism in a performative grammar of identitarian attachment to the belligerent bodies (yes, I’ll say it) of variously embodied men.

Wiegman, *Dear Ian*, *supra* note 94, at 95.

207. *Id.* at 110. In her “letter” to Ian Halley, Wiegman asks “How anti-identitarian are you, finally, if your retreat from governance feminism is nominated *Queer Theory By Men*?” and “Can a pro-sex, shame affirmative, self-shattering, and anti-domestic sexual imaginary be pursued if lesbians remain in the room?” *Id.* at 105, 96.

208. JACQUELINE GOLDSBY, A SPECTACULAR SECRET: LYNCHING IN AMERICAN LIFE AND LITERATURE 219 (2006) (discussing “traffic in lynching photographs”); TRUDIER HARRIS, EXORCISING BLACKNESS: HISTORICAL AND LITERARY LYNCHING AND BURNING RITUALS 23, 21-24 (1984) (describing how “the lynched black man becomes a source of sexual pleasure to those who kill him”); Robyn Wiegman, *The Anatomy of Lynching*, 3 J. OF THE HIST. OF SEXUALITY 445, 446 (1993) (“[N]ot only does lynching enact a grotesquely symbolic—if not literal—sexual encounter between the white

joins with Halley is in her far more provocative claim, that racial humiliation and degradation could also serve as a source of sexual pleasure for blacks, the abjected bodies, as well. Hence Walker's art seizes upon this discomforting element of our national history—the racial erotics of lynching—and pushes it even farther, arguably into Halley's terrain.

Walker's aesthetic projections raise some questions for the TBF project. Halley contends that feminism's regulatory impulses are at odds with queer theory's interests in sexual possibility, including the liberatory possibility of non-reciprocal, shameful, and degrading sex. But Walker's silhouettes illustrate that the body's capacity for pleasures derived from shame, humiliation, and degradation is expansive.²⁰⁹ Sixty years ago, Frantz Fanon identified the psychoanalytic roots of racial pleasures, neatly deconstructing the purported dichotomy between sex as "natural" and race as "constructed."²¹⁰ Following Fanon, Walker's aesthetic projections radically expand Halley's sexual claims into the racial arena. Halley has distanced herself from the conventional justice critiques of oppression and injury. With no anti-subordination principle in place, Walker's identification of the racial and other erotics of subordination put the question squarely to her: what is the scope of her desired break from justice projects? And what, exactly, is her relationship to pleasure?

There is an ambivalence in the essays as to the scope of Halley's proposed "Break"—is it a Break from all justice projects or merely from feminism? At some points Halley proclaims that the Break is limited to, as the project and book title suggest, feminism. For instance, while Halley prefers power feminism over cultural feminism, which she finds "repellent," she believes "that it might sometimes be good to Take a Break from *both* forms of feminism."²¹¹ At others, she joins forces with political theorist Wendy Brown to

mob and its victim, but the increasing use of castration as a preferred form of mutilation for African American men demonstrates lynching's connection to the sociosymbolic realm of sexual difference.").

209. Of course, we could pose the same question of other justice projects as well. Most obviously, if homophobia is a source of bodily pleasure, as it surely is, should it, too, be condoned? I think here of Ted Haggard, Senator Larry Craig, and Congressman Mark Foley as only the most recent exemplars of public homophobes and anti-gay activists who engaged in closeted same-sex practices. Eve Kosofsky Sedgwick terms this desire-triggered homophobia homosexual panic. SEDGWICK, *supra* note 91, at 182-212. See, e.g., Andrew Chung, *The Elephant in the Room*, TORONTO STAR, Sept. 2, 2007, at 1D; Timothy Patrick McCarthy, *Homos, Hypocrites, Haters*, PITTSBURGH POST-GAZETTE, Sept. 9, 2007, at H-1.

210. FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Charles Lam Markmann trans., 1967) (1952). More recently, David Eng also uses psychoanalytic theory to show that "sexuality is not natural—that it is resolutely cultural and constructed." DAVID L. ENG, *RACIAL CASTRATION: MANAGING MASCULINITY IN ASIAN AMERICA* 14 (2001); see also Wagner, *supra* note 11, at 98-99 (discussing Fanon in context of Walker's work); Anthony P. Farley, *Black Body as Fetish Object*, 76 OR. L. REV. 457, 474 (1997) (discussing Fanon's view that the "colorline . . . like sexuality, gives one's body a thematic structure"). To take a very small example of racial pleasures and hierarchies, recessive genes such as light skin and blue eyes are treasured in many cultures.

211. HALLEY, *supra* note 4, at 41.

query, in effect, since when did the left get in bed with the state?²¹² Is Halley calling for relinquishing the state's regulatory role any time pleasure is possible? Or, are the claims limited to gender justice projects? If the former, broader version of the claim, TBF seems to be calling for a consistent privileging of the possibility of pleasure in abjection and subordination over equality and justice.²¹³ Which then raises the next question—what is it that makes her project “left”? Why is it not merely part of the vast anti-identitarian and anti-equality zeitgeist that characterizes “right” (and many liberal) projects today?²¹⁴ If TBF is limited to the latter, more literal interpretation—as a break solely from feminism—why? Without a guiding principle, some mechanism distinguishing between the liberatory value in bodily pleasures deriving from conventionally sexual acts versus other sexual and bodily pleasures, Halley's entire project is susceptible to a sort of gender essentialism, or a claim that sex is more “special” than (or prior to?) other bodily functions and pleasures. In short, if we are to disavow some regulatory regimes but not others, embrace some bodily pleasures but not others, what is the guiding principle? Can we articulate it, without devolving into sexuality exceptionalism?

Which leads me to be curious about the implications of Halley's injunctions for the queer theoretical project itself. Some interesting recent work in queer theory directs its attention to questions of how race and other categories inflect the distribution of power and the meaning of acts in queer life. I think here of critiques ranging from the racialization of sex and power

212. See also Halley, *The Politics of Injury*, *supra* note 73, at 65 (characterizing feminism as part of larger LMIPST projects, i.e., “left-multicultural identity-political subordination-theory . . . projects” that include “some critical race theory, gay identity politics, disability rights projects, indigenous-nationalist projects and human rights projects”).

213. This is a core theme of Mary Anne Franks' review of *Split Decisions*:

A politically viable theory must be critical and contextual; Halley's desire-as-theory is neither. This is clearest in the way that Halley approaches “pleasure,” and consequently, in the way that she approaches “harm.” To put it bluntly, Halley seems to think that a lack of pleasure, or the loss of an opportunity for pleasure, is, in itself, a harm. This is hedonics indeed; Halley does not concern herself with evaluating pleasures but rather implies that the very fact that someone could take pleasure in something makes that possibility inherently valuable. Simply put: Halley immunizes pleasure from critique.

Franks, *supra* note 4, at 263.

214. Although I noted that I was not going to consider the Governance Feminism essays, I'll cheat a little here. In her critique of the ICTY norms criminalizing rape in war, Halley characterizes the decisions of women to engage in sex with enemy combatants as choice, solace, pragmatism, desire, etc. Halley, *Rape in Berlin*, *supra* note 188. There is nothing “wrong” with her critique, but to me it resonates so much more with liberalism's emphasis on choice and agency, than with a left engagement with the background contexts of distribution and power that shape “choice.” Of course, Marx put this much better than I: “The slave is the property of a particular *master*; the worker must indeed sell himself to capital, but not to a particular capitalist, and so within certain limitations he may choose to sell himself to whomever he wishes; and he may also change his master.” KARL MARX, 1 CAPITAL: A CRITIQUE OF POLITICAL ECONOMY app. at 1032 (Ben Fowkes trans., Penguin Classics 1990) (1867). See also Robert L. Hale, *Bargaining, Duress, and Economic Liberty*, 43 COLUM. L. REV. 603 (1943) (discussing how background political and economic context shape both life options and bargaining power, undermining conventional doctrines such as duress).

vis-à-vis dinge queens and rice queens, to the fascinating recent studies of how black punks and their white daddies negotiated the strictures of racism and homophobia in the Jim Crow South, to the need for a compelling analysis of Tyrone Garner that defies both the “gay” glorification of the *Lawrence v. Texas* facts as “the gay *Loving*” and the condemnation of them, as the black police officer did, as “unspeakable.”²¹⁵ (You may recall that it was Garner’s white “boyfriend” who instigated the *Lawrence* litigation when he turned Garner in, describing him as “a nigger with a gun” to compel police to rush to find Garner in bed with Lawrence.²¹⁶ This flies in the face of the gay *Loving* analogy.) In Halley’s iteration, how far does a queer theoretic anti-identitarianism go? Can identitarian-based critiques be sustained as queer in Halley’s rigorously anti-identitarian political mode? Does her critique render black queer analysis oxymoronic?

In sum, in Halley’s TBF, rather than being historical, contingent, and varying, sex appears natural, essential, and fundamentally more “special” than (prior to?) other bodily functions and pleasures. It is isolated from real economies of distribution, populations, labor, public health. Unlike other labor forms, it cannot be regulated. Unlike other social relations, it is amaterial, isolated from power and its distributive effects. Unlike other bodily forms and practices, i.e., race or religion, it is embraced as natural and crucial to the self, thus appearing as ahistorical, pre-social, and beyond the scope of innovation, technology, and regulatory inquiry. And finally, her embrace of its “liberation” is deeply identitarian, rooted in the sex practiced “by gay men” and the queer theory generated “by gay men,” embracing dimorphic gender as stable and meaningful. It is exempt from regulation because of its “primality” and its repression (and its need for liberation). Sex exceptionalism isolates sex from other social relations, networks of exchange and power, and distributive justice

215. DAVID L. ENG, *THE FEELING OF KINSHIP: QUEER LIBERALISM AND THE RACIALIZATION OF INTIMACY* 35-37, 40-42 (2010) (citing Dale Carpenter, *The Unknown Past of Lawrence v. Texas*, 102 Mich. L. Rev. 1464 (2004)). David Eng and I both resist romanticized readings of Garner’s interracial relationship. I have contended that, contra liberal interpretations of interraciality as a “bellwether” of racial affection and equality, such relationships can often reinforce and intensify structural subordination and power imbalances. I call this the injuries of intimacy. Garner’s racialization by an angry white boyfriend, who also sought the assistance of the carceral state to punish his straying partner, is emblematic of this. Davis, *Slavery and Shadow Families*, *supra* note 48, at 67. See also ENG, *RACIAL CASTRATION*, *supra* note 210, at 1 (using psychoanalytic theory to consider interplay of racial and sexual formations); RODERICK A. FERGUSON, *ABERRATIONS IN BLACK: TOWARD A QUEER OF COLOR CRITIQUE* ix (2003) (“tell[ing] a story of canonical sociology’s regulation of people like the transgendered man, the sissy, and the bulldagger as part of its general regulation of African American culture.”); DWIGHT A. MCBRIDE, *WHY I HATE ABERCROMBIE AND FITCH: ESSAYS ON RACE AND SEXUALITY* (2005) (using queer insights to transform terrain of African-American studies as a field); *BLACK QUEER STUDIES: A CRITICAL ANTHOLOGY* (E. Patrick Johnson & Mae G. Henderson eds., 2005) (collection of germinal black queer texts); Jennifer Devere Brody & Dwight A. McBride, *Introduction*, 23 *CALLALOO* 286, 287 (2000) (introducing collection of essays challenging “[the] heterosexist impulse in black studies and connect[ing] it to the reigning politics of black authenticity”).

216. Cf. Carpenter, *supra* note 215 (giving different accounts of Lawrence and Garner’s arrest to show actual facts and motivations remain unclear).

inquiries. This seems to be the opposite of what Halley desires for sex in our world.²¹⁷

I fear that Halley's TBF has placed sex beyond the distributive justice and capabilities projects that I know Halley cares deeply about. My closing question then is: can sex be part of the same distributive inquiry that we make with respect to other central capabilities, i.e., literacy, food, health care, shelter—and yet also be recognized for its distinctive traits? And I do mean distinctive, *not exceptional*, in the sense that we recognize the differing characteristics of all capabilities. When sex is in play, can we be attentive to the distributive consequences of power? In sum, can we move from this exceptional view to an understanding of sex occurring within political economies, or, what I've characterized elsewhere as sexual political economies?²¹⁸

CONCLUSION: SILHOUETTES OF POWER

This Article has used the disparate aesthetic and scholarly projects of Janet Halley and Kara Walker to make some observations about the latest wave of anti-identitarianism among the left. If the current anti-identitarian zeitgeist is about distancing bodies from the material effects history is supposed to inflict on them, Walker and Halley have joined it in a powerful way. While among the more interesting provocateurs, they are hardly alone in their claims. Other now-standard moves against justice projects attempt to marginalize the injury, play the blame game, or pit some injuries against others. In contrast, Walker and Halley root their disputes with conventional civil rights and feminist justice projects in their embrace of abjection.

As I hope this Article has made clear, there is merit to their projects. Both seek to shed light on economies of injury and the current flaccidity of identity politics. Both challenge us to re-conceive power's nuance and the body's capacities. They force us to grapple with the liberatory possibilities of shame and the fragmented self, versus the dignity-seeking at the heart of most justice projects. Yet, this Article has also tried to suggest some limits to their provocation, and for Halley in particular, her normative and regulatory claims.

217. I should note that Halley is not alone in sexuality exceptionalism. In a narrower context, labor advocate Vicki Schultz too tries to find way to exempt sexuality from regulation in workforce. *See generally* Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061 (2003) (contending that sexual harassment law wrongly suppresses sex and intimacy in the workplace). *See also* Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1689 (1998) (arguing that sexual harassment law should focus on women's consignment to lesser, gendered work roles, not "sexuality as such"). *Cf.* Romero, *supra* note 4, at 242 ("Vicki Schultz's recent work on employment discrimination in the form of hostile environment sex harassment illustrates that Halley's critical stance, and the critique of feminist projects she seeks, can be achieved without taking a break from feminism.").

218. *See supra* note 195.

Abjection as they articulate it celebrates shame and degradation *over* justice projects' first principles of equality, anti-subordination, and dignity. If justice projects are skeptical of power for its proclivities to violence and group subordination, Walker and Halley applaud power as liberatory, particularly in sexual contexts. Yet, despite their embrace of these alternative conceptions of bodies, both oddly dematerialize sex and power. Slavery's labor and production relations are absent from the moonlight and magnolia representations in Walker's silhouettes, and Halley's essays about feminist regulation and governance rarely discuss "real cases" or the background conditions of the rape camps. In both, the abject is dematerialized into a liberation that is deeply personal and not at all political.

This Article performed a brief genealogy of abjection to raise some questions about Walker's and Halley's claims. It contended that while their aesthetic and intellectual invocations of abjection are fascinating, neither Kristeva's psychoanalytic turn nor Bersani's political one endorses Halley and Walker's embrace of dematerialized economies of bodies and disavowals of anti-subordination projects. In particular, Bersani's notion of abjection, which has achieved canonical status in sexuality studies, is an identity and justice project, one that rests on material investigations of injury and background regimes.

In addition, for legal scholars in particular, this Article has sought to show how, even as we try to escape the perils of identitarianism, we may find ourselves in a trap of exceptionalism. Halley is correct that feminism needs to account for its own power. All law is governance and feminist law is no different, despite its impulses to moralize. Yet Halley goes from a provocative and rip-roaring critique of feminism to a claim about sexuality of her own—that it is sacred, repressed, and in need of liberation from feminist regulation and governance. It appears outside of the regulation we apply to markets, beyond the efforts to help vulnerable populations, almost Freudian in its simultaneous irrationality and necessity for the constitution of the self. And, while Halley's commitments are clearly to the anti-identitarian project, she herself falls prey to a deeply essentialist identitarianism as she parses and prefers a queer theory made "by men."

In the end, I am calling for a new justice project. My hope is to avoid both moralizing sex as an identitarian force, which Halley contends feminism does, and exceptionalizing it, as I contend Halley does. Must we except sex from rigorous attention to distributive economies of justice? I hope not. Instead, those committed to proliferating sexual capabilities should give close attention to the material and distributive contexts and backgrounds of sex, or sexual distributive justice.