Feminist and Queer Legal Theory
Intimate Encounters, Uncomfortable Conversations

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Postscript: Curious Encounters, Unpredictable Conversations

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These far-ranging essays have offered us a glimpse of feminism and queer theory as they address sexuality, reproduction, marriage, employment discrimination, and a range of other topics. More provocatively, they have also provided a window onto the varied ways that feminism and queer theory approach each other. So how might these essays help us to rethink the relations among feminism and queer theory? How might we, as theorists and activists, conceive the engagements between these two bodies of work?

Contributors such as Janet Halley challenge a line of thought that assumes their convergence. When we assume that feminism and queer theory yield similar normative conclusions, we may miss the full import—the distinct tonal shadings or divergent intuitions or imaginaries—of each theory. Analyzing those settings in which they diverge—as Halley (2002) has with sexual harassment doctrine—also permits us to glimpse the tendencies and shortcoming of each movement. Feminism, if you credit the implications of queer critics, is weakened by an insufficient investment in pleasure, play, and identititarian fluidity—all of which produces a tendency toward moralism and exclusion. Queer theory, as feminist critics would have it, is more committed to its gleefully perverse imaginaries than to addressing the concrete conditions in which its proponents find themselves, and may be reluctant to abandon the vertiginous possibilities of critique for the looming fixity of pragmatic solutions.

Yet while it is valuable to create the critical space in which we can glimpse such tendencies, it is also important, as other essays remind us, not to overstate them. When we view these bodies of work as inevitably, or even predictably opposed, we risk reducing them to static frames or even caricatures. These deftly spotted Achilles' heels do not and cannot—as Tucker Culbertson and Jack Jackson’s chapter makes clear—reflect the increasingly varied work that flies under each banner. Catharine MacKinnon, for all of her contributions (e.g. 1987, 1989, 2005), no more represents feminist legal theory than Janet Halley’s bacchanalian oil rig, for all its illumination, comprises the alpha and omega of queer (legal) theory.

\[1\] The oil rig that was the workplace in *Oncale v. Sundowner Offshore Services* (1998) also served as the setting for a thought experiment in which Halley (2002) sketched plural scenarios of sexual engagement, reflecting different combinations of gender and...
Such oppositions also miss the fact that feminism and queer theory may contain shared elements of methodology, as Adam Romero points out, or that proponents of these frames may make common errors, as Laura Karran argues with respect to essentialism. Perhaps most importantly, a persistent emphasis on opposition or divergence may blind us to the synergies that emerge between these theories, in works or efforts in which both play a role (see Butler, 1997; Cosman, 2004). Katherine Franke’s (1997) discussion of sexual harassment as a “technology of gender,” for example, joins queer theory’s analysis of contingent legal and institutional production with feminism’s concern with gender inequality. Similarly Ann Scales’ (2006) explanation of why the right to abortion is the “queerest issue there is” forges surprising common ground between feminist and queer activists.

These latter insights demand new ways of conceptualizing relations between these two vital movements. The title of this collection gestures both toward past missteps and toward future possibilities. The qualifiers “intimate” and “uncomfortable” suggest that these movements are deeply, yet uneasily entwined—a pair of strange bedfellows made proximate by a reflexively unified left politics. Yet while there is surely a “politics” underlying any hypothesized relationship between feminism and queer theory—they do not exist in some pastoral, pre-political harmony—the notion of uncomfortable intimacy does not exhaust, or even typify, the ways that these movements have related and might relate. As these essays suggest, feminism and queer theory are not simply uncomfortable intimate partners: they also function as dancing partners, sparring partners, semiestranged former partners, comfortable and uneasy coalition partners.

What we need is a frame that departs from assumptions of intimacy—presumed, awkward or otherwise—and allows more space for fluidity and variation. The terms “encounters” and “conversations,” freed of their limiting qualifiers, could point in a more promising direction. An “encounter” suggests an incompletely determined engagement, whose form and trajectory may be unknowable ex ante; a “conversation” reflects a beginning, a verbal and perhaps affective extension of oneself toward another, that can move in many directions. From the greater fluidity and contingency implied by these terms, and elaborated by these essays, we may glean useful insights about the future relations between these bodies of work.

One insight may be that the “break” we need to take is not from feminism, but from the easy comforts of either convergent or divergent assumptions. Perhaps we need to acknowledge that the relations between these efforts are, in any given context, unknowable ex ante. And we need to approach this open possibility with curiosity, rather than suspicion, antagonism, or misplaced pastoral longing for identity. To give content to this possibility, I want to end with two examples, which evoke some of the plural, productive ways these movements might relate. Neither examines interactions between feminism and queer theory per se, but both concern the way that these movements might engage across their sexuality, each of which was genuinely (and Halley argued, pleasurably) equivocal as to the “wantedness” of the encounter.
differences—as bodies of theory and as forms of left activism—if they approach each other without strong preconceptions.

The first example, which concerns theoretical borrowing or synthesis, is an essay by my colleague Angela Harris (2008). Reviewing Paisley Currah and colleagues' recent anthology concerning transgender rights and Julia Serano's book *Whipping Girl: A Transsexual Woman on Sexism and Scapegoating of Femininity* (2007), Harris asks what feminism might learn from the theory arising from the transgender movement. Analyzing the difficulties many identity-based movements have faced with essentialism and exclusion, Harris (2008) notes:

> at least some trans scholars and activists have internalized the lesson that many feminists had to learn the hard way: race, class, sexuality, and gender are not separable. Trans activists and scholars come by antiesentialism honestly. As nearly every book on tran identity begins by acknowledging, the term is an umbrella that attempts to shelter very different kinds of folks ... transvestite, cross-dresser, trans* person, genderqueer, queer* woman, MTF, MtM ... butch, femme, she-male, he-she, boy-queer, girl-queer are all identities that have been claimed by (and sometimes inscribed upon) people who in some way violate the rigid gender-norm system enforced by United States heteropatriarchy. The trans movement has lacked a stable and homogeneous subject position from the get-go, and so by necessity has avoided some (not all) of the painful internal "authenticity" purges that African American, lesbian and other communities have endured. (p. 314)

This engrained anti-essentialism, along with a more flexible, mutually constitutive view of "nature" and "culture," and a persistent appreciation of the feminine, represent important insights that feminism might glean from the transgender work. These insights, Harris concludes, might permit feminism to chart a path beyond what, for many, has seemed a recent stagnation: "Now and then one of my friends asks me, in a whisper appropriate to respect for the passed, "So, whatever happened to feminism?" From now on, I intend to recommend these books to them, and tell them, 'Transgender happened. Check it out.' Check it out" (p. 319).

Harris's essay is not about the relation between feminism and queer theory, per se, though there is surely overlap between trans scholarship and queer theory, as Currah's chapter here describes. It is about how one group of theorists can learn from another, whose distinct constituencies or analytic focus may permit it more

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2 It is also important not to exaggerate or idealize the anti-essentialism of the transgender movement. It is surely the case, as Harris argues, that it has benefited from being from the get-go a heterogeneous movement which cannot assume a unity of identity or interest among its members. But it also contains subgroups who are more conventionally committed to alignment between biological sex and social gender, and embrace a more traditional view of gender roles.
direct access to certain insights. Just as feminism can learn from trans scholarship about anti-essentialism, or appreciation of the feminine, it might learn from queer theory about the instability of ostensibly formative identity categories, or about the pleasure (or even the pleasure-in-danger) of sexuality. That such insights will have a different valence within a feminist frame is inevitable and, in fact, salutary: resistance to sexual repression by women, for example, may operate differently and have different historical resonances from such resistance perpetrated by gay men. Yet the introduction of such insights or stances may permit feminists to address gaps or remodel positions that have weakened their claims or divided their constituencies. It is not clear where feminists will take these possibilities, or what it means for their future collaborations or confluence with trans scholars or activists: Harris concludes simply that “[m]ore conversation between trans and feminist thinkers is overdue” (p. 319). But Harris’s feminism is not a straw person whose rigidity or stasis provides fertile ground for critique; it is a more supple body of work capable of engagement, movement, and growth.

A second example concerns the world of activism: in particular, the greater identitarian fluidity that might be achieved through participation in temporary, contingent coalitions. In his book *Melancholia and Morality: Essays on AIDS and Queer Politics* (2002), Douglas Crimp challenges queer political activists to replace a static identity politics, which has generated strategies of “outing” and “bashing back,” with a more fluid notion of “identification.” The process of “identification,” according to Crimp, prompts political action which is not based solely on the participant’s own social location. As he notes,

> A white, middle-class HIV-negative lesbian might form an identification with a poor black mother with AIDS, and through that identification might be inclined to work on pediatric health care issues; or, outraged by the attention to the needs of babies at the expense of the needs of the women who bear them, she might decide to fight against clinical trials whose sole purpose is to examine the effects of an antiviral drug on perinatal transmission … (p. 192)

More importantly, however, “identifications” with others serve continuously to unsettle and refashion identities, both individually and collectively—transforming what many have understood as identity politics. Here, Crimp describes the transformative “identification” that occurred when queer ACT-UP activists allied with injectable drug users to resist a New York law prohibiting the distribution of clean hypodermic needles:

> Arrested for taking to the streets of New York to distribute—openly and illegally—clean IV needles to injecting drug users, a group of ACT UP queers stood trial, eloquently argued a necessity defense, and won a landmark ruling that … eventually forced Mayor Dinkins to relent on his opposition to needle

3 On this point, see Katherine Franke (2001b).
exchange. AIDS activists are still ... mostly a bunch of queers. But what does queer mean now? [italics added] Who, for example, were those queers in the courtroom, on trial for attempting to save the lives of drug addicts? They were perhaps queers whose sexual practices resulted in HIV infection, or placed them at high risk of infection ... but once engaged in the struggle to end the crisis, these queers’ identities were no longer the same. It's not that “queer” doesn’t any longer encompass their sexual practices; it does, but it also entails a relation between those practices and other circumstances that make very different people vulnerable both to HIV infection and to the stigma, discrimination, and neglect that have characterized the societal and governmental response [italics added] to the constituencies most affected by the AIDS epidemic. (p. 192)

This example challenges certain assumptions that underlie the notion of a persisting tension between feminism and queer theory, and highlights other ideas that might inform their future relations. ACT-UP, the organization spotlighted by Crimp, belies the notion of queer theorists as more absorbed by perversity and play than by concrete mobilizations for change. Not that ACT-UP wasn’t both playful and perverse—it was surely both—but it also inaugurated substantive interventions which altered governmental policy, and introduced strategies of political mobilization that continue to shape left political practice (see Hildebrand, 2006). It demonstrated that these ostensibly opposed tendencies could co-exist within the same organization, and, more importantly, that perversity and play could create a novel and successful strategy for resistance, even change.

Crimp also describes ACT-UP in a moment of coalescence, and ultimately of “identification,” with users of injected drugs. Like any coalition partners, these groups had characteristics and political imperatives in common: both were composed of people with a susceptibility to, and a high incidence of, AIDS; and both opposed the Dinkins administration’s resistance to programs of needle exchange. Yet like many coalition partners, they acted on these similarities across substantial differences: many of the queers had never used intravenous drugs, and many of the drug users were not sexual dissidents; the groups most likely also reflected differences in tone and stances (advocacy groups representing drug users, for example, have not frequently embraced irony as a political stance). Amidst this constellation of similarities and differences, the groups were able to combine their energies for a particular effort. Yet even through this single collaboration, both groups were subtly altered by the identifications produced by this effort: this new subjectivity became something they took with them into their next political engagement or alliance. Members of the two groups were able to see the resistance to the administration’s needle laws as a strategy that touched all of them; the

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4 Crimp’s (2002) essay “How to Have Promiscuity in an Epidemic” reflects these tendencies both stylistically and substantively, but also communicates a wholly serious message about the relationship between sexual pleasure and the political will to respond to a deadly epidemic.
queers understood their queerness as capable of enlarging to encompass the position of those who were rejected and abandoned by government, for entirely different reasons; the needle users may have come to understand their status, or their advocacy of needle exchanges as partaking of the frank, stigmaphilic quality of the "queer." Although this is not a narrative about coalition between queers and feminists, it illustrates some of the attributes such a coalition might embody: contingency, temporal limitation, pairing of irony and indignation, and partial, yet also enlarging "identifications" with the other.

Our comfort with the possibility and the contingency of such coalitions requires a willingness to examine the combination of confluent and divergent impulses that comprise them—without preconception, and without (excessive) anxiety about what we might find. Joan Nestle, a germinal figure in both feminist and queer theory, explored this willingness to inquire in her 1984 essay "The Fem Question," which challenged feminists to rethink their view of lesbians who identify as femmes. She called it "curiosity ... the respect that one life owes to another." In this kind of respect, the willingness, indeed the eagerness, to know, exceeds the certainty that one already knows. It incites coalition members to look clearly and carefully at one another: to revisit and revise the familiar tropes or cognitive shortcuts each may have used in approaching the other.

This volume itself may help to illustrate and encourage this stance: its willingness to pose hard questions about the alignments and tensions between these two movements, and its insistence on highlighting a range of different answers. These moves can be unsettling in that they take us from familiar paths to less predictable terrain; yet they comprise the first steps toward creating a less formulaic and more fruitful set of relationships between feminism and queer theory.