

# SEXUAL SEMIOSIS

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“There is a big secret about sex: most people don’t like it.” - Leo Bersani<sup>1</sup>

## I. INTRODUCTION

There is a big secret about sex; most people haven’t been having it. I invoke and alter Leo Bersani at the outset to set up a contemporary perspective. His polemic, it seems, is based on a nonexistent poll, and his audacity inspires those of us who theorize sexuality to make bolder pronouncements. But while Bersani wants to locate *aversion*, something in between needing and liking, my interest is in the *pleasure gap* between men and women. My hunch, like Bersani’s, is a theory, in this case a deduction based on an informal polling of friends, recent media hype,<sup>2</sup> and medical reports.<sup>3</sup> And from the outset, I should say that my comments are made against the backdrop of a relatively recent development in the history of human sexuality—the availability of a pill that functions to produce the erections that many men were previously unable to sustain.

It is in the context of who is now able to have sex (older men, but also increasingly somewhat younger) and those who will soon want to have sex with men when they heretofore did not want to have it (some straight women), that new statistics about having sex have begun to circulate. Both the phenomenally successful five-year-old blue pill, Viagra, and the in-production pink pill that will do for reluctant women what Viagra has done for impotent men are stories that have prompted the news media to circulate the following numbers: in the United States, thirty percent of males suffer from erectile dysfunction, and forty-three percent of American women “suffer” from what is called “arousal disorder.”<sup>4</sup> These statistics—as hypothetical as my assertion that most people aren’t having sex—are relevant to Janet Halley’s “Queer Theory by Men.”<sup>5</sup>

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1. Leo Bersani, *Is the Rectum a Grave?*, 43 OCTOBER 197, 197 (1987), *reprinted in AIDS: CULTURAL ANALYSIS, CULTURAL ACTIVISM 197* (Douglas Crimp ed., 1996).

2. John Przybys, *Erectile Dysfunction: The Little Blue Pill*, LAS VEGAS REVIEW-JOURNAL, Mar. 24, 2003, at 1E; Carrie Seidman, *Even Younger Men Are Looking to Viagra for Help*, ALBUQUERQUE TRIB., Mar. 27, 2003, at A8; Susan H. Thompson, *The Little Pill That Could*, THE TAMPA TRIB., Jul. 8, 2003, at 1.

3. Thompson, *supra* note 2, at 1 (stating that the National Institutes of Health reports that the number of men with erectile dysfunction may be 15-30 million).

4. Stephanie Earls, *Viagra After Five Years on the Market*, THE TIMES UNION, Mar. 23, 2003, at G1 (indicating that an estimated 43 percent of American women suffer from sexual or arousal disorder);

I might have argued that we have reached a kind of hiatus in sexuality studies, now distanced historically from the AIDS crisis, exhausted from legalization of abortion battles, overwhelmed with internet pornography, and ambivalent about kiddie porn. But now Janet Halley's thinking anticipates another crisis that should produce a flurry of new theories. It is not just that there will always be, as Janet Halley puts it, the "profoundly irresolvable problematic of desire,"<sup>6</sup> it is that there are also new unanticipated agents involved in the production of desire, or rather, agents that an earlier feminism might not have imagined would come together in just this way. So, I want to think about feminist theory as it meets real women, such as the abused wife Sheila Twyman,<sup>7</sup> against a somewhat new social background that I will characterize by a striking confluence: drug manufacturer Pfizer has recently circulated the figure that *nine* Viagra pills are now dispensed every second.<sup>8</sup> Rape crisis centers in Los Angeles currently use the following statistic to illustrate the situation they try to ameliorate on a daily basis: every *nine* seconds a woman is beaten by her boyfriend or husband.<sup>9</sup> These statistics reflect a lot of hard-ons and a lot of beatings and, while there is no necessary correlation between the two implied here, I find the parallel suggestive. The nine seconds eerily echo the nine pills. Someone will argue that there are many more pills taken than there are (reported) incidents of abuse and that Viagra users are older men and thus less likely to act out against women. Nevertheless, in provocative combination these numbers ask for serious feminist consideration.<sup>10</sup>

So against these popular statistics, we return, following Halley, to some really hard feminist issues: the semiotics of sexual dress (popularly, "she asked for it because she looked like that"), the corollary question of whose sexual interests are served, the flexibility of the "eroticization of domination" thesis,<sup>11</sup> and the difficulty of sexual reform. But first, since the strategy of "taking a break" frames this essay, I want to weigh in on Halley's notion as it is not clear to me whether the intent is to urge feminism to another position by circumventing it entirely or whether the idea is just meant to get around feminism because femi-

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Rachel Cooke, *Sexual Chemistry: There's Gold in Them There Pills*, THE OBSERVER, Oct. 27, 2002, available at <http://observer.guardian.co.uk/sex/story/0,12550,818438,00.html> (citing 1999 survey by the *Journal of the American Medical Association*, which found that forty-three percent of American women and thirty-one percent of American men suffer from sexual dysfunction).

5. See generally Ian Halley, *Queer Theory By Men*, 11 DUKE J. OF GENDER L. & POL'Y 1 (2004).

6. *Id.* at 25.

7. See *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993). This is a divorce case involving Sheila Twyman's refusal to continue engaging in sadomasochistic sex play with her husband; she characterized the behavior as abuse, while her husband, William Twyman, characterized her reluctance to participate in such acts as a wife's refusal to fulfill her wifely duties.

8. Earls, *supra* note 4, at G1 (citing Pfizer reports that sixteen million men world-wide have taken the pill).

9. *Domestic Violence: Too Much of It About*, THE ECONOMIST, Jul. 16, 1994, at A25.

10. For how to "read" statistics about sexuality, see Mary Poovey, *Sex in America*, in *INTIMACY* 86 (Lauren Berlant ed., 2000).

11. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 SIGNS 650 (1983). This is shorthand for the famous passage. On women's socialization into passivity she says: "Some eroticize dominance and submission; it beats feeling forced. Sexual intercourse may be deeply unwanted—the woman would never have initiated it—yet no force may be present."

nism cannot accommodate a position that might deliver justice in a case such as *Twyman v. Twyman*.<sup>12</sup> We learn, if we didn't already suspect it before, that despite its enlightened analysis, feminism is not necessarily about justice for all (or for *both* as in *Twyman*<sup>13</sup>), although it is certainly about justice for *some* oppressed groups. Thus, it is clear to me why Halley wants a "break" from the automatic victimization thesis of some feminisms (as well as from the "homo-supremacy" of queer theory). But to argue that we need to "take a break from feminism" because feminism is structurally unable to imagine men's erotic interests makes feminism look, well, ungenerous. And also for feminism there would be the question of gay as opposed to straight men where gay male erotic interests would have more legitimacy than straight male interests, which, by (feminist) definition, are opposed to the erotic interests of women.

I realize that Halley might not think that there are many choices of where to look for a theory of men's erotic interests and the field is uneven since the bulk of the important work has been produced by gay, not straight, men. But Leo Bersani and Duncan Kennedy are very strange bedfellows, and what they seem to have in common, other than just being men, is their shared interest in maintaining the possibility of *excitement*, which means looking out for their own sexual interests to the degree that they construct these interests as a kind of standard. We are reminded that although feminism has a theory of pleasure, it has no theory of excitement, which is not to ask for it, but to wonder why it would figure as such a marked parallel in both gay and straight male thinking about sexuality (without just looking to the hard penis as an explanation).

Where *is* feminism today? That United States drug companies came to have a hand in the literal manufacture of desire worldwide does not surprise us, but the function of a kind of feminism in the mainstream *is* a surprise. That feminism's remarkable achievement of ubiquity in the mainstream, as Halley argues, could start to work against the interests of feminism to the point where we should "take a break from" feminism, was never anticipated in the early heady years of the Second Wave.<sup>14</sup> Where statistics about sexuality produce a popular sociology, feminism is called upon to revisit old issues, here in the light of the lives of real historical people such as William and Sheila Twyman.<sup>15</sup>

## II. GIVE FEMINISM A BREAK

Although I have reservations about Halley's "taking a break," I want to go on record as sympathetic to any effort to challenge established feminist theory, to counter feminist theory as establishment. There are important moments in the history of feminist theory that might be seen as straying from feminism, as decidedly unfeminist and veering toward heresy. Here is one early point of view, from Gayle Rubin's now-seminal essay, which didn't garner much interest when it first appeared in print:

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12. See *Twyman*, 855 S.W.2d at 619.

13. Halley, *supra* note 5, at 43-48.

14. The reference is to the Second Wave of feminism, a post-World War II development that continued the project of emancipation that began earlier in the last century.

15. See *Twyman*, 855 S.W.2d at 619.

Men and women are, of course, different. But they are not as different as day and night, earth and sky, yin and yang, life and death. In fact, from the standpoint of nature, men and women are closer to each other than either is to anything else—for instance, mountains, kangaroos, or coconut palms. The idea that men and women are more different from one another than either is from anything else must come from somewhere other than nature.<sup>16</sup>

We can only speculate as to why some aspects<sup>17</sup> of Gayle Rubin's seminal essay were originally favored over others. Perhaps the assertion that men and women might not be that different did not immediately serve the cause of the theorization of difference. But my point is more importantly this: one decade's heresy becomes another's theorem, an especially interesting development in feminism where one recalls, for instance, the feminist journal *Heresies*, which always seemed a step ahead of the debates of the 1980s sex wars.

Thus, I am sympathetic to Halley's attempt to re-think the relationship that is developing between feminist theory and queer theory. But the very title of her essay, "Queer Theory by Men," suggests that she is claiming Bersani and Kennedy's insights for queer theory rather than for an enlarged feminism. For almost a decade now, queer theory has been accommodating the spill-over from feminism—things too messy or too outrageous—to the point where it seems that we are saying that if it *can't* be feminist, it *can* be queer. Eve Sedgwick's original description of queer theory as the "open mesh of possibilities"<sup>18</sup> confirms the magnanimity of queer theory, and yet we must be cautious about disconnecting homosexuality from queerness. I am perhaps also guilty of enlarging the purview of queer theory to its detriment, having argued before that the more generous feminism we need is not feminism at all, but queer theory.<sup>19</sup> The point goes for me as well as for everyone else who finds queer theory so much more accommodating than feminism. We are enjoined not to lose the connection to homosexuality—the danger that I see in characterizing Duncan Kennedy's straight erotic interests as queer—unless, of course, this is a way of "subverting" straight maleness. (If we still believe after reading Bersani that sexualities can be subverted.)

However, the real reason I wonder why we should "take a break from feminism" rather than to just "give it a break," is that I don't want Halley to let feminism off the hook. It may be early in my response to say what I think her project really is, but if I leave it until later I run the risk that it will be missed by those readers who don't stick it out until the end. So, actually, I think that her rationale for "taking a break" turns out to be an argument for acknowledging the erotic interests of men, as stated, but, as understated, an argument for the space in which to consider its scary corollary, the necessary consequences of "flipping" the eroticization of domination—the *female uses of domination*. Yes, following Bersani, Halley is interested in the idea that heterosexual men, women,

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16. Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, in TOWARD AN ANTHROPOLOGY OF WOMEN 179 (Rayna R. Reiter ed., 1975).

17. One remembers this essay for its basic premise that women in many cultures exist to be exchanged by men.

18. EVE SEDGWICK, TENDENCIES 8 (1993).

19. Jane Gaines, *Feminist Heterosexuality and Its Political Incorrect Pleasures*, 21 CRITICAL INQUIRY 382, 404 (Winter 1995).

and gay men have equal access to the “will to dominate,”<sup>20</sup> a formulation that is not feminist, she says, not an organization of sexuality according to the principle of male/female difference. But she soft-pedals her point. This is really to say, translated into a question of legal theory, feminism does not finally help us to determine what is *just* since it has developed no theory of female injustice toward men—that is, beyond the uncontroversial view that the patriarchy works through women (to make them complicit in their own subjugation). To think that taking a break from feminism might be a step toward enlarging feminism, as Halley argues, such that an enlarged feminism might claim the victory for the new “bargaining power women have within marriage” is both exhilarating and disturbing. Another reason for “giving feminism a break” is that some of the judicial rhetoric in support of the rights of female victims sounds like a very lockstep feminism. Can we give feminism a break long enough to study the emergence of what we might call “popular feminism”?

### III. SEXUAL SEMIOSIS AND CRISES OF REPRESENTATION

What Halley terms “sexual semiosis”<sup>21</sup> would seem to be a side issue in relation to the question of Sheila and William Twyman’s private sex life, as well as Sheila’s sexual history that ostensibly included an earlier rape.<sup>22</sup> As I will show, there is a semiology as well as a sociology of the “pleasure gap” and we need to take every available angle to thinking about what Sheila Twyman wanted. Having said this, however, I actually wish that Janet Halley had not opened the Pandora’s Box of “sexual semiosis.” But perhaps she has no choice since Bersani and Kennedy have gone there and both have defined what she refers to as their “erotic interests,” not in terms of what they like to do in bed, but in terms of the coding of other bodies in social space.<sup>23</sup> The politics of interpretation are laid out nakedly when we ask who reads or misreads the sexual connotations of dress and demeanor. Something connects Bersani’s straight man driving down Folsom Street<sup>24</sup> who fails to see “leather queen” as commenting on his own masculinity,<sup>25</sup> and Kennedy’s guy who takes the “sexy dresser” at her word.<sup>26</sup> The complaint registered by Bersani and Kennedy is that the observer of cultural signs “misreads” by reading too literally. This is not to say that Bersani is not ultimately concerned with the culture critic who theorizes about the gay-macho style (as well as the butch-femme couple, and gay and lesbian sadomasochism) nor is Kennedy not concerned about restrictions on the production of signs—the limitation of what he calls signs that cause “excitement.”<sup>27</sup> But there is a frustration level with ordinary people, unaware of their use of signs. What gets raised, perhaps inadvertently, is the question of the intelligibility (readability) of social

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20. Halley, *supra* note 5, at 19.

21. *Id.* at 38.

22. Twyman, 855 S.W.2d at 620 n.1.

23. Halley, *supra* note 5, at 38.

24. The reference is to a gay-male-populated street in San Francisco.

25. See Bersani, *supra* note 1, at 207.

26. Duncan Kennedy, *Sexual Abuse, Sexy Dressing, and the Eroticization of Domination*, 26 NEW ENG. L. REV. 1309 (1992), reprinted in DUNCAN KENNEDY, SEXY DRESSING ETC. 126, 178 (1993).

27. *Id.* at 165, 178; Bersani, *supra* note 1, at 206-07.

signs, and it is here that it seems to me that we have a kind of crisis, not a crisis of the kind or magnitude of the crisis of representation that Simon Watney<sup>28</sup> finds accompanying the medical crisis of AIDS. But a crisis of sorts.

We have a crisis in the *uses* of the theory of representation, of how we talk about things that stand for other things. We have a crisis if Bersani wants to argue that the representational crisis that came to a head with the AIDS crisis could be better understood as a “frenzied epic of displacements,” with the emphasis on *displacement*.<sup>29</sup> And indications of this same crisis are present if Kennedy, after repeating the basic semiotics lesson that “to put on a costume. . . is to produce a sign, in the same way that to speak a word is to produce a sign,”<sup>30</sup> wants to argue, in effect, that sexual abusers are guilty of restricting the sartorial “speech” of women.<sup>31</sup> In his analysis, because of the fear of abuse, women are not able to “say” or signify what Kennedy wants: sexy-dressing women, presumably in public and especially in the work place. Kennedy is here too easy a target for feminists (as Halley says) and there is no point in producing yet another feminist diatribe against his position. What I see, more importantly, is the theory of cultural signification used by both Bersani and Kennedy, not for the analysis of power, but used to obfuscate the way top-down power works—often through women. It comes out in their analysis of the semiotic practices of ostensibly unknowing others—“leather queens” and “sexy dressers.”

When Bersani rails against displacement does he mean to try to stop sexual semiosis? When Kennedy wants to change the social landscape of signs signifying “sexy” by indicting male harassers is this a circuitous route to corralling meaning? It is not that either exactly misunderstands the political implications of semiotic theory, for certainly there are plenty of references to the multiple, layered and contradictory life of social signs. Yes, says Kennedy, sexy dress can both carry allusions to abuse<sup>32</sup> or signify female autonomy,<sup>33</sup> and for Bersani the leather queen is both complicit with, and critical of, conventional maleness.<sup>34</sup> But why, then, if sexual signs are so irritatingly and wonderfully inconsistent, would one attempt to argue that there is a social downside to one signification over another—as though to start or stop—to intervene in the production of sexual meaning—to get between sign-sending bodies (not-sexy enough dressers and leather queens) and their receivers? Perhaps it would be better to just say that semiotics, the science of how things mean, is *not* a science like any other. If there is a crisis, it is in the attempt to use semiotics as though there were some possibility of control or degree of predictability.

The potency of the theory of representation, as it evolved in the work of Stuart Hall and others who were part of the Birmingham School of Marxist cul-

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28. See SIMON WATNEY, *POLICING DESIRE: PORNOGRAPHY, AIDS, AND THE MEDIA* 9 (1993) (finding that AIDS is not only a medical crisis, but “a crisis of representation itself, a crisis over the entire framing of knowledge about the human body and its capacities for sexual pleasure”).

29. Bersani, *supra* note 1, at 220.

30. KENNEDY, *supra* note 26, at 164.

31. *Id.*

32. *Id.* at 190-91.

33. *Id.* at 201.

34. Bersani, *supra* note 1, at 207-08.

tural studies,<sup>35</sup> stemmed from attaching the theory of signs to ideology.<sup>36</sup> Thus, the question was not so much *what* was signified by the outrageous use of safety pins on the part of Dick Hebdige's working-class youths,<sup>37</sup> but *whose interests* were opposed or served by this representation. It is not the representations that do the real damage, rather, it is the social structure that underwrites and sponsors them. Whether dominant or oppositional, the social structure can cause harm to varying degrees ("mischief" says Richard Dyer<sup>38</sup>). Since this theory was devised as a critique of power under capitalism, it works best in relation to a Marxist analysis and sometimes, by analogy with class stratification, has been effectively extended to different contexts. For instance, Bersani has stated that gay men are not oppressed in the same way that many black women are, and certainly neither being black nor having sex has ever automatically politicized anyone.<sup>39</sup> My point here has to do with what some would call the Americanization and others would call the depoliticization of cultural studies (although that subject is beyond the scope of my comments as part of this symposium).

For all of the uses of semiotic theory, I find in this legal discourse an incredible lack of precision in describing signifying objects. From Kennedy, I want to know exactly which signs he wants to see increased rather than limited.<sup>40</sup> Is it the shorter skirt? If so, how short? Above the knee? Halfway up the thigh? And to say that one wants to see a skirt short is not to say that one wants to see it tight, since short but full skirts have been popular in recent years. Does Kennedy want female lawyers to appear in court in the style of Victoria's Secret? We don't know, because he doesn't say. Even Janet Halley is less than precise when it comes to detailing the way sexual iconography works, referring to the "erotic imagery of that men deploy in masturbation"<sup>41</sup> in her summary of Kennedy's reading of Madonna's *Open Your Heart* video.<sup>42</sup> I realize that this is a summary, but "deploy" skirts the question of the relation between looking and doing, and asks no questions about how erotic imagery might "move bodies." If these sophisticated cultural theorists don't see signs very well, what can we hope from ordinary people who are just trying to say something, anything, to each other with clothes—with hats or caps, earrings or nose rings, suits or shorts, trousers or jeans?

After nearly twenty-five years of cultural studies, we are still taking things at face value. Bersani, in his diatribe against displacement, would return us to the dark ages of cultural interpretation when things were only what they said

35. For a good overview of semiotic theory in the work of the Birmingham School, see Stuart Hall, *The Work of Representation*, in REPRESENTATION: CULTURAL REPRESENTATIONS AND SIGNIFYING PRACTICES 13 (Stuart Hall ed., 1997).

36. See *id.*

37. DICK HEBDIGE, *SUBCULTURE: THE MEANING OF STYLE* 107 (1979).

38. Richard Dyer, *Getting Over the Rainbow: Identity and Pleasure in Gay Cultural Politics*, in SILVER LININGS: SOME STRATEGIES FOR THE EIGHTIES 61 (George Bridges & Rosalind Brunt eds., 1981). Richard Dyer is a gay film theorist, early associated with the Birmingham School of Contemporary Cultural Studies in Britain.

39. See Bersani, *supra* note 1, at 204, 206.

40. See KENNEDY, *supra* note 26.

41. Halley, *supra* note 5, at 34.

42. See *id.*

they were and nothing more. He objects to the academic approach that “the body is to be read as a language.”<sup>43</sup> But if we didn’t attend closely to the body as a language, entire worlds of signs and their meanings would be lost on us. The “idolatry of the cock”<sup>44</sup> is available for all kinds of uses, among them the “semiotic guerilla warfare”<sup>45</sup> that he objects to so strenuously, and if its symbolic uses were not open, we would be left with the “idolatry of the cock” meaning nothing more than the “idolatry of the cock.” At base, Bersani’s strongest objection is to what could be understood as the problematic (for him) displacement at the highest level—the reading of everything sexual in social terms.<sup>46</sup> An objection to displacement is a move that stops sexual semiosis dead in its tracks. To object to the reading of sexual inequalities as social inequalities is not only to try with futility to halt the production of meaning, but to pull the rug out from under one of the basic tenets of feminism (as well as a thoroughly politicized queer theory). Halley is more tolerant. Bersani, she says, is convinced that the power in sexuality is “nontransferrable” to other social situations.<sup>47</sup> I read the flaw in Bersani differently, as (1) frustration with the imperfect analogies between class differences and the newer differences of sexual identities, for which I give him credit, as I have said, and (2) a slight tendency toward literalism. The problem: if sexuality is “non-transferrable” to other situations, “top” and “bottom” are always nothing more. Right? If bondage play in sex is not an expression of anything elsewhere, then it is only and ever itself, which is what? And finally, without a theory of displacement, how in the world are we going to be able, following Marxist theory, to find a segue from the superstructural realm of the sexual to the economic base, to that which is personally experienced as worries about mounting student loans, dwindling retirement savings, and workplace downsizing?

I have discussed this tendency before as *semiotic fundamentalism*, and although it is especially characteristic of the rhetoric of the Right, I also find it from time to time on the Left.<sup>48</sup> One of the places I find it is in Catharine MacKinnon’s analysis of pornography: “Pornography is not imagery in some relation to a reality elsewhere constructed. It is not a distortion, reflection, projection, expression, fantasy, representation, or symbol either. It is a sexual reality.”<sup>49</sup> Halley says that we can pick and choose parts of MacKinnon, but MacKinnon’s argument that pornography only says one thing and that it therefore cannot be used in opposition to the patriarchy, aids and abets the patriarchy it cannot thus oppose. Right up there with MacKinnon’s pornography as a “sexual reality”<sup>50</sup> is Bersani’s insistence that the leather queen is a “*perversion* rather than a *subver-*

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43. Bersani, *supra* note 1, at 220.

44. *Id.*

45. *Id.*

46. *Id.* (“We have been studying examples of what might be called a frenzied epic of displacements on the discourse on sexuality and on AIDS.”)

47. Halley, *supra* note 5, at 19.

48. Gaines, *supra* note 19, at 396.

49. CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 172-73 (1987).

50. *Id.* at 173.

sion of real maleness.”<sup>51</sup> What is “real” maleness? The “leather queen” is only “unintelligible” to the “macho straight man” if “leather queen” has a single set meaning.<sup>52</sup> To ask for intelligibility is really to ask for the end of struggle over meaning.

#### IV. DRESS/CODE: EXCITED BY SIGNS

One of the things that *Twyman v. Twyman*<sup>53</sup> shows us from a sociological, rather than a legal, point of view is the deep ambivalence that many heterosexual women have about sex, something that the drug companies may now be telling us (and that we may never have known as a society if the drug business didn’t think that they had something to sell us). Kennedy’s concern about why more women don’t engage in sexy dressing begins to sound a bit like the question: why don’t wives want to have sex the way their husbands want to have it (as in *Twyman v. Twyman*)? And oddly, his theorization is a kind of rehearsal for this question of why women would have sex when they didn’t want to have it (the “why” behind the pink pill). The question of compliance with patriarchal codes—dress or otherwise—is always one of “which code,” since they are so contradictory. If, as Kennedy says, women regulate their behavior to avoid sexual abuse,<sup>54</sup> dressing modestly in order to conform with patriarchal codes, what do we do with the other competing patriarchal code, the one that wants them to dress for men in the first place?<sup>55</sup> The patriarchal code would seem to explain why women *do* dress in a sexy manner (to please men) as well as why they *don’t* (to avoid sexual abuse). Which is it?

Finally, in case it hasn’t been mentioned before, it does not seem to be the abuse that bothers Kennedy, as much as it is the way in which abuse puts a damper on the exciting signs that he wants to be excited by. His take seems an interesting variation on “blaming the victim” where he blames not women, but the potential perpetrators of crimes against them for their less than sexy appearance. Any critique of the highly ideological “she asked for it because she looked like that” is always welcome, yet this is not that. The dead giveaway is Kennedy’s confession that he wishes that women existed as the “bearers of the possibility of [his] own sexual excitement.”<sup>56</sup> His, not hers? One is tempted to wish that straight men could take a lesson from gay men, who Bersani describes as carrying the definitions of maleness within themselves as “permanently renewable sources of excitement.”<sup>57</sup> If only straight men carried their *own* sources of excitement—but then they wouldn’t be straight men, would they? In these theorizations we see gay men, struggling against the very thing they are turned on by and straight men not struggling at all, but rather desiring to surrender

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51. Bersani, *supra* note 1, at 208.

52. *Id.* at 207.

53. See *Twyman v. Twyman*, 855 S.W.2d 619 (Tex. 1993).

54. KENNEDY, *supra* note 26, at 148.

55. See *id.*

56. *Id.* at 161.

57. Bersani, *supra* note 1, at 209.

themselves if only women could exist as “bearers of the possibility of [their] own sexual excitement.”<sup>58</sup>

So why would women have sex when they didn’t want to have it? And why don’t they show a little more cleavage? The question of whether to dress or not to dress (sexier) to please men is not answered by changing the subject to abuse. Much more prevalent than abusers are common workplace-variety lechers and sexy dressing, that old metaphor for availability, which *always* sends the wrong signals since women don’t know if they want the sex that they think they want. Why did Sheila Twyman not want to engage in “light bondage” and sex play with neckties?<sup>59</sup> From a patriarchal point of view the rapist she never names is like Kennedy’s abuser—a spoiler. Without at all dismissing the trauma of rape and battery, we need to give a fuller explanation than “fear” for women’s sexual reluctance. This brings us to the improved framing of the question, which is why did Sheila Twyman initially *have* the sex that she did not want to have? (Halley, you will recall, asks about the bondage that she engaged in before she mentioned the earlier rape—even if it was two or three times, as the case record suggests.<sup>60</sup>)

After decades of talking about sex there are still many things that don’t get said, and up there with Bersani’s myth of bathhouse democracy on the list of “a few lies” about sexuality,<sup>61</sup> are the explanations for women’s reluctance, soon to be known as female “arousal disorder.” The notion of arousal disorder covers a long list of explanations for the pleasure gap between men and women, only a few of which are worry about pregnancy (still), household distractions, money worries, feeling too thin or too fat, an inept husband or lover, exclusive focus on his pleasure, and basic lack of knowledge about the actual location of the clitoris.<sup>62</sup> Some cultures excise the clitoris and others *displace* it.<sup>63</sup>

## V. MARITAL MONOGAMY

The history of the “law of husband and wife” in the United States is a history of the gradual addition of powers not historically available to the wife.<sup>64</sup> It is difficult from a feminist point of view not to see this evolution as part of an effort in recent decades to try to produce a more just society through legal means. But when Janet Halley asks where is the “real place where power meets the population”?<sup>65</sup> her position is more subtle than one that would just urge more rights for women within marriage. Note that she hasn’t leaped to echo the

58. KENNEDY, *supra* note 26, at 161.

59. Twyman 855 S.W.2d at 636.

60. *Id.* at 620 n.1.

61. Bersani, *supra* note 1, at 206.

62. For more on this, see Jane Gaines, *Machines That Make the Body Do Things*, in *MORE DIRTY LOOKS* (Pamela Church-Gibson ed., 2003).

63. The reference is to the difference between the Third World practice of clitoridectomy, the surgical removal of the clitoris, and the First World practice of symbolically shifting it. The best example of this is the feminist insight that the film *Deep Throat* was a fantasy relocation or displacement of the clitoris into the throat. See LINDA WILLIAMS, *HARD CORE: POWER, PLEASURE, AND THE “FRENZY OF THE VISIBLE”* 101-02 (1989).

64. See, e.g., HENDRIK HARTOG, *MAN AND WIFE IN AMERICA: A HISTORY* 309-12 (2000).

65. Halley, *supra* note 5, at 48.

more popular feminism of the lone female on the Texas Supreme Court, Justice Rose Spector.<sup>66</sup> What requires our attention is feminism *when it starts to work against the interests of feminism*. With its reinforcement of the “powers of the weak” which become the defining powers of the woman within marriage, feminism has given women a bigger stick, with patriarchs on the courts increasingly willing to give this power to traditional victims. But this new victim’s power does not fix the institution. Of *Twyman v. Twyman* Halley asks, “Can feminism read the case as male subordination and female domination—and *still* be bad for women?”<sup>67</sup> The answer to the question: yes, but not if feminism takes on the institutionalization of monogamy, that is, marital monogamy.

As Halley posits, “Marriage provides spouses with an amazing power over each other.”<sup>68</sup> In this way, monogamy within marriage, that old cornerstone of Judeo-Christian virtue (and its heir, feminist moralism), can contribute to injustice. There are passages in both Bersani and Kennedy that criticize sexual relations as we have idealized it (marriage), although in Kennedy it is inadvertent and in Bersani it amounts to overkill. It slips into Kennedy, where in discussing the potential objections to “office sexy dressing” he mentions the way dress threatens marriage and in particular the “wife’s legitimate monopoly on her husband’s sex life”<sup>69</sup> (where adding the qualifier “legitimate” is intended to save the institution of marriage from being characterized as a monopoly—a criminal offense!). Since it is difficult to argue against the reigning morality to suggest the illegitimacy of monogamy, we should recall that it is only within marriage that such a monopoly is legitimate, thus where non-monogamy is actionable. Phrased as “legitimate monopoly,” marital monogamy starts to sound like the legal ball and chain that it is, a *bad* good thing.

How to mount a challenge to marital monogamy? Without Bersani’s follow-up to his back-handed compliment paid to MacKinnon and Dworkin, we wouldn’t have the rhetorical ammunition to launch a critique of the marriage power relation. Recall his praise of their critique of intercourse: “Their indictment of sex—their refusal to prettify it, to romanticize it, to maintain that fucking has anything to do with community or love—has had the immensely desirable effect of publicizing, of lucidly laying out for us, the inestimable value of sex as . . . anti-communal, anti-egalitarian, anti-nurturing, anti-loving.”<sup>70</sup> But how as a culture to disabuse ourselves of the notion that sex between two people that involves fucking (thus exempting lesbians) necessarily promotes equality and love? Note that Bersani, after espousing a nonhomologous relation between the sexual and the social, has produced a thoroughly social analysis of intercourse, the most notorious of sex acts from the feminist point of view. But

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66. See *Twyman v. Twyman*, 855 S.W.2d 619, 642-44 (Tex. 1993) (Spector, J., dissenting). In her dissent, Judge Spector seems to think that the male judges are hung up on the difference between “negligent” and “intentional” infliction of emotional distress, making the kind of feminist remark that we might predict: “In the judicial system dominated by men, emotional distress claims have historically been marginalized.”

67. Halley, *supra* note 5, at 44.

68. *Id.* at 48.

69. KENNEDY, *supra* note 26, at 183.

70. Bersani, *supra* note 1, at 215. Mandy Merck suggests that Bersani turns the tables on them here and I agree. See MANDY MERCK, IN YOUR FACE: 9 SEXUAL STUDIES 155 (2000).

no matter, he has given us a fiery argument against heterosexual relations and their legalization and perhaps this is why Halley has taken to raiding queer theory for the legal theory that could address the injustices that flow from marital monogamy. For Bersani's analysis finally dovetails with Halley's critique of marital power in his more general observation that the problem is "perhaps. . . *the degeneration of the sexual into a relationship that condemns sexuality to becoming a struggle for power.*"<sup>71</sup> I realize that I am taking Halley places that she doesn't go in this essay, since she doesn't bring up the weary question of sexual reform. So this is where I would like to see her insight taken. Where some would argue that feminism failed in its critique of marriage and family, queer theory holds out new hope—if only because gays and lesbians have nothing invested in the institution that still shelters so many straight Western feminists.<sup>72</sup>

## VI. CODA: VIAGRA-INDUCED CONTRADICTIONS

It remains to be seen whether the new blue and pink pills will exacerbate relational dysfunction to the degree that we might hope. People who haven't been having sex will be having sex. In addition to being more, there will be even longer lasting hard-ons. While the Viagra pill needs to be taken an hour before arousal and lasts for four hours, the new drugs in the pipeline, such as Lilly Pharmaceutical's Cialis, can be administered sixteen minutes before sex and last for up to thirty-six hours. Imagine the new pressures on marital monogamy produced by what is being called a "weekend drug." Spelling it out, Dr. Leonore Tiefer, clinical Associate Professor of Psychiatry at New York University School of Medicine, is dubious about either blue or pink pills as a solution to what's wrong with people's sex lives, remarking, "But thanks to Viagra there are a lot of hard penises out there, and you know what they require."<sup>73</sup>

It remains to be seen whether the new pills will widen or shrink the pleasure gap between men and women. But there will inevitably be more "anti-nurturing and anti-loving" experiences which means more victimization and more legal cases in which a more popular version of feminism will prevail. We have already seen what might be called the first of the Viagra alienation of affection divorce cases. Roberta Burke, 61, sued for divorce from her common law husband, Francis Bernardo, 70, who left her after ten years together.<sup>74</sup> Following one night with her in which he was restored to his former virility, he abandoned her to pursue other, younger women.<sup>75</sup> Roberta Burke, however, is only one side of the equation. Her case may lead us to think only in terms of men leaving and beating women, and to think that under Western law women will historically continue to use their victim's powers against men. As feminists, which side concerns us? What can be said is that the pink as well as the blue pills will either lock in marital monogamy or at least exacerbate already existing dysfunction. We might then see what could be called the chemically- or biologically-

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71. Bersani, *supra* note 1, at 218.

72. For a new and more devastating critique, see LAURA KIPNIS, *AGAINST LOVE: A POLEMIC* (2003).

73. Cooke, *supra* note 4.

74. *See Suddenly a Viagra Stud, He Flees Lover, Gets Sued*, *THE NAT'L L.J.*, Jun. 15, 1998, at A27.

75. *Id.*

produced enhancement of existing contradictions that define this strange institution in which two people, legally equal, but socially unequal, fight it out.