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Misreading *Split Decisions*

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In his book *Lives of Eminent Philosophers*, Diogenes Laertius (2005) describes the following encounter between Plato and the Cynic philosopher Diogenes. One day Diogenes walked into Plato's lecture theatre with a plucked fowl and uttered: 'Here is Plato's man' (Laertius, 2005, p. 43). Diogenes' demonstration was a response to Plato's description of man as 'an animal biped and featherless' (p. 43). Moreover, Diogenes went ahead and supplanted Plato's description of man by stating that man has broad nails (p. 43). Janet Halley's *Split Decisions: How and Why to Take a Break from Feminism* could be situated within the tradition of classical Greek cynical philosophy. There is enough in the book to suggest that; Halley's genre of polemical writing and argumentation, its honesty, cheekiness and provocation are characteristics that she shares with this tradition of philosophy.[1] There is, though, enough in the book to suggest that it also orients itself significantly away from this tradition. The 'divergence' I would like to suggest takes place precisely with the announcement of the decision to be disoriented, to split away from the discourses surrounding gender and sex orientation. While this would have been a moment in which it could have made this association (admittedly an association that Halley never makes herself) with the anti-identitarian and anti-dialectical cynical tradition, it is precisely the moment where we can observe its divergence from it.

Why? Or rather, how can we make the above observation? We can come to this observation by subtly interrogating the idea of disorientation that haunts the book. *Split Decisions* confesses Halley's temporary break away from feminism and move towards an unknown destination. While space does not allow me to elaborate extensively upon the concept of disorientation, I would like to suggest that *Split Decisions* reads not so much as a book about Halley 'looking' for a new way away from feminism as a way of approaching legal 'conflicts', but rather as an announcement letting us know that she has found a new habitat in the tradition of *legal realism*. To put it bluntly, it is not a book about disorientation; it is not a book that journeys towards an unknown destination, but rather is a book that describes her new orientation. Halley writes at the start that having a break from feminism stems from a desire to see whether new ways of seeing the world, and thus solving problems (legal or otherwise), may open up by bracketing out feminist looking glasses (pp. 8–9). And it could, as she suggests, put us into a journey whereby 'taking a break from one hypothesis [feminism] might expose you to others, and so to new insights into power that are different, clashing perhaps, but also emancipatory' (p. 9). Moreover, in this journey one 'might face a split decision about what to think and do then but that would be a vital and engaged moment' (p. 9). Indeed, that is how Halley sees the journey away from feminism: without a particular pre-destination, somehow lost or disoriented in a way that is both productive and liberatory. But simultaneously, what Halley forgets is that in every journey not only, as Sara Ahmed in *Queer Phenomenology* (2006) informs us, does '"getting lost" still take[] us somewhere' (Ahmed, 2006, p. 7), but moreover, '[i]f orientations are as much about feeling at home as they are about finding our way, then it becomes important to consider how "finding our way" involves what we call "homing devices". In a way, we learn what home means, or how we occupy space at home and as home when we leave home' (Ahmed, 2006, p. 9). If migrating from feminism had as an aim disorienting Halley, then, despite her intention to 'get lost' she found herself in a new home, a new orientation, at Harvard Law School within a critical legal tradition that works with another theoretical frame: legal realism. In this way, we may observe that she is '*settling*' (Ahmed, 2006, p. 10) into a new tradition of legal thinking even if it is one which attempts to bring together different and disparate perceptions of the world. Her move could be one of those 'homing devices' that Ahmed talks about, that come with their

1 For more on the cynical tradition see Branham and Goulet-Caze 1996; Sloterdijk 2005.

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own risks and limitations. Halley calls this tradition necessary for 'think[ing] responsibly about the legal dimension of governance feminism', and in underlining that it is 'core' and 'vital' to her own 'argument' (p. 174), we can say that Halley makes legal realism her new home and orientation. Legal realism is presented as a better 'home' than feminism. Why is it a better home? It is a better home because it has a better understanding of both the function and role of law in our social world; it considers that there are a vast number of calculations that go through human minds before bringing an action in court, that in turn influence human and more specific interactions. In short, legal realism is more *real*. But, as the final section of this article suggests, this reality comes with its own costs. Legal realism might provide us with a more adequate description of law (p. 173), but it does this at the expense of curving out the fleshiness of the various possible responses (withdrawal, subversion of norms, rebellion) to conflict and elevating the role of the 'difficult decision', a well-established juri-political tool/practice.

Part I: the cynical Halley

> 'And if I could click my heels and become "a gay man" or "a straight white male middle-class radical", I would do it in an instant-wouldn't you? . . . On the downside, that means I can easily come into conflict with myself. As a gay man I could want some things that could hurt me in my life as a woman. I'm acquiring a deep sense that the resulting inner cacophony is fun. The project of me, then, has been to find a politics of internal-revern-ness – a discomfited politics – that is equally fun.' (p. 13)

The philosopher Sloterdijk, in his book *Critique of Cynical reason* (2005), suggests that the main achievements of the ancient Greek cynics, Diogenes being the exemplary figure, has been to expose the hypocrisy that underlined the philosophical tradition of Plato, Aristotle and others, through provocative speech acts and gestures, or what I would call embodied speech acts. According to Sloterdijk, philosophy's main concern has been to bring into harmony the question of life and doctrine (Sloterdijk, 2005, p. 101). If we suppose that this is the main concern of philosophy, then we need to understand both what it means and how this concern is challenged or critiqued by the cynical philosophers before we can see the connections with Halley's thought and writing in *Split Decisions*. Sloterdijk explains this in the following way:

> 'The core of every doctrine is what its followers embody of it. This can be misunderstood in an idealistic way as if it were philosophy's innermost aim to get people to chase after unattainable ideals. But if philosophers are called on to live what they say, their task in a critical sense is much more: to say what they live . . . A separation of person and thing, theory and praxis at this elementary level cannot be taken into consideration at all – except perhaps as a sign of corruption of truth.' (Sloterdijk, 2005, pp. 101–102)

The quote brings to our attention that the philosophical line 'from Plato on . . . cuts off the threads of material embodiment in order instead to draw the argumentation all the more tightly together into a logical fabric' (Sloterdijk, 2005, p. 102). The tradition of 'low theory' (Sloterdijk, 2005, p. 102), we are informed, took exactly the opposite direction. It is an anti-dialogic tradition that, through embodied practices and gestures (from masturbating in public and pissing in public as well as very public speech acts), exposes the hypocrisy of the dialogic discourse which in turn only in hypocrisy lives what it says or preaches. What the cynics do is just expose what is lived (Sloterdijk, 2005, p. 102). This tradition of embodied philosophy carries within it certain characteristics: it is shameless, cheeky, satirical, uninhibited and, above all, resistant to the idealisation of life and ideality in general. This tradition is adverse to mastery; through its practices (i.e. cheeky provocative speech acts) it exposes the powerlessness of mastery and simultaneously questions the ideality of high politics or politics of mastery and master philosophy.

Let me now return to the anecdote at the start of this essay to connect it with Halley's defacement of the feminist tradition, or Halley the cynic. Remember that Diogenes brought into the stoa a featherless fowl to expose the limits of Plato's description of man. In doing so, he exposed to Plato and his students that they could not say 'what is lived'. He exposed with this gesture that their philosophical discourses were far from the truth and, as we have seen, he does so with a sense of humour when he reminds Plato that his definition forgot that a fowl also has broad nails. Halley's style of writing is humorous, polemical, provocative and fearless in exposing the limits of feminist theory. She is telling all types of feminisms (from power feminism to cultural feminism) (pp. 41–57, 58–75), the sexual orientation movement and queer theory (pp. 107–123, 132–49) that they are not able to say 'how woman is lived', and instead, are holding onto a caricature of woman as powerless, biped and

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featherless, failing to notice that 'she' has nails that can be varnished and used as a weapon of seduction or be sharpened and used as a different type of weapon. And her defacement of the tradition is done through embodied examples of fantasies (see, for example, the quote at the start of this section), desires, pains and affects. Her examples, too many to recount here (my favourite though, is her 'cards on the table moment' (p. 41) which made me think of Halley as a poker player – my fantasy), demonstrate that feminist praxis and theory are not so co-existent. The significance of her style of writing and the honesty of her critique lie in exposing that women are not always victims or that they can't always be pathologised, and that sticking to this caricature of woman not only fails justice but also fails to capture the reality of situations or events of conflict. For Halley, the reality is elsewhere. But where? The reality can be unveiled through a more multifaceted approach to the problematic of conflicts that takes account of the other dimension of woman: the woman with finely polished nails. And here is where Halley slips into the realm of ideality, the ideality of legal realism, the theoretical framework that she considers able to capture this multifaceted dimension of life conflicts.

Part II: Halley the legal realist/ idealist

The nineteenth-century criminal barrister and judge Fitzjames Stephen, in his essay 'The relation of Novels to Life' in a Cambridge Periodical called *Cambridge Essays* (1855), attacked the novelist Charles Dickens for failing to depict the reality of life (Hostettler, 1995, p. 30). In the *Law Magazine and Law Review* (1864/65, 18.139) Stephen wrote:

> 'A criminal court is one of the great schools of life. We have there laid bare the foibles, the weakness, and the crimes of our fellow-creatures. Much that would otherwise remain hidden, is there disclosed to whole world.' (cited in Hostettler, 1995, p. 24)

Had Halley chosen just to deface the tradition she would not have to share ideality with the utilitarian Stephen. But, together they share the ideality of the real world and the possibility that it provides to find how things are, to represent them and to enable us to come to better decisions. Still, while they share the idea of 'ideality', they do not appear to share the same ideality. Stephen idealised the institution of law and the possibilities that it could deliver. In the above quote, we can see that he sees the court not only as a place where life, his contemporary life in nineteenth-century England, passed by, but also as a place where life is made public, is publicised. In the court, one could see the competing elements of social life and try and make sense of them. Halley instead has the inverse sentiment for law; law is not an ideal space, it can't represent reality, it deduces reality from a set of de facto doctrines that bar the multiple realities and fantasies of actors that enter into its arena. We need, she suggests, to do something (it is not prescriptive) like what she does in her analysis of the facts of the *Twyman* case (pp. 348–63); to offer a Nietzchian/Foucauldian reading where the different fantasies and aspirations of actors are played out in order to begin to 'ever look into the world and see whether it matches them' (p. 363). Legal realism, as she admits earlier in the book, provides us with the map of these competing fantasies, worldviews, universalities (Butler, 2000, pp. 136–81; Loizidou, 2007, pp. 120–126). Then, when the multiplication of 'competing universalities' (Butler, 2000, pp. 138–81) is gathered together, another calculation will be put into force: one that first will enable us to see whether the world matches them, and then will necessitate a decision, despite the uncertainty that all these 'competing universalities' produce. Halley's proposition is both ambitious and admirable. Still, at its very core remains a structural problematic. Here is how I understand it: no matter how many 'competing universalities' we have that would, as she envisages, constantly shift the positions of complainant and accused during this process, her proposition does not 'take a break' from a juridico–political model of resolving conflict and its tool/concept of 'the decision'. A decision will at the end announce very clear roles: one will be always a victorious complainant and the other the accused. Somehow, paradoxically, and despite her loss of faith in law and its abilities to capture the wider picture of a conflict, Halley appears here to share Stephen's 'ideality' and optimism in law; she idealises law and its tool/practice of decision-making.

As long as the decision remains the only practice for conflict, we run the risk of never really being able to move away from the complainant/victim and accused positions. At the end of every decision, no matter how complex and imaginative it could be, and Halley's analysis of the *Twyman* case is both, we will still find for one or the other. We will still decide for feminism or for legal realism.

Halley decides that feminism is unable to bridge the 'word–thing' divide, and that while legal realism is able to bridge the divide a little more, in doing so it manages to say very little about gender/sex/sexuality. Alternatively, it translates them into the skeletal cost and effect paradigm.

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Of course, this might be/is the case with every theory. I am not certain, nor would I ever be, of whether things could be otherwise, but as long as the structure of a polemic remains deeply embedded in decision-making, in a juridico–political model, I will have to quote Bartleby's 'I would prefer not to'.

But if (and I hope I have misread *Split Decisions*) Halley does not idealise legal realism, then I would like to hear more about the possibility of living and allowing others to live without idealisation. The cynical Halley seems to gesture towards the potentiality of this other type of conversation or world-being.

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