



MEN, LAW AND GENDER

ESSAYS ON THE 'MAN' OF LAW
RICHARD COLLIER

a GlassHouse book

Men, Law and Gender

Essays on the 'Man' of Law

Richard Collier



First published 2010
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
270 Madison Avenue, New York, NY 10016

A GlassHouse book
Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2010 Richard Collier

Typeset in Sabon by
Taylor & Francis Books

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloguing in Publication Data

Collier, Richard.

Men, law, and gender : rethinking the 'man' of law / Richard Collier.

p. cm.

"Simultaneously published in the USA and Canada."

Includes bibliographical references and index.

ISBN 978-1-904385-49-3

1. Sex and law. 2. Men – Legal status, laws, etc. 3. Masculinity. 4. Fathers – Legal status, laws, etc. – Great Britain. 5. Law students – Great Britain – Social aspects. 6. Lawyers – Great Britain – Social aspects. I. Title.

K380.C65 2010

346.01'3 – dc22

2009026300

ISBN10: 1-904385-49-4 (hbk)

ISBN13: 978-1-904385-49-3 (hbk)

ISBN10: 0-203-86212-0 (ebk)

ISBN13: 978-0-203-86212-4 (ebk)

Men, Law and Gender

Essays on the 'Man' of Law

What does it mean to speak of 'men' as a gender category in relation to law? How does law relate to masculinities? This book presents the first comprehensive overview and critical assessment of the relationship between men, law and gender, outlining the contours of the 'man' of law across diverse areas of legal and social policy.

Written in a theoretically informed, yet accessible style, *Men, Law and Gender* provides an introduction to the study of law and masculinities whilst calling for a richer, more nuanced conceptual framework in which men's legal practices and subjectivities might be approached. Building on recent sociological work concerned with the relational nature of gender and personal life, Richard Collier argues that social, cultural and economic changes have reshaped ideas about men and masculinities in ways that have significant implications for law. Bringing together voices and disciplines that are rarely considered together, he explores the way ideas about men have been contested and politicised in the legal arena. This includes original empirical studies of male lawyers, the legal profession and fathers' rights and law reform, alongside discussions of university law schools and legal academics, family policy and parenting cultures.

This innovative, timely and important text provides a unique insight into the relationship between law, men and masculinities. It will be required reading for academics and students in law and legal theory, socio-legal studies, gender studies, sociology and social policy, as well as policy-makers and others concerned with the changing nature of gender relations.

Richard Collier is Professor of Law at the University of Newcastle, UK.

Acknowledgements

I have presented, over the years, many papers at conferences, workshops and staff seminars drawing on research conducted for this book, and I would like to thank all who have commented and asked me to speak, in particular those who have kindly supported my work as a Visiting Scholar.

I would like to thank Colin Perrin and his colleagues at Routledge who have worked on this book and have shown such great patience as each deadline passed. I would like to express my especial thanks to Sally Sheldon. Chapters 5 and 7 of this book develop themes discussed in previous collaborations with Sally and I would like to acknowledge both the influence of this work and my discussions with her, as well as her insights, generosity and understanding, in shaping the ideas about law, men and gender presented here. Any errors and oversights are, of course, my own.

I would like to acknowledge the financial support and assistance provided by the following. Discussion in chapter 6 draws on an empirical project funded by the British Academy, 'Male Lawyers and the Negotiation of Work and Family Commitments' (SG-31920) and I would like to thank and acknowledge the support of all the men and women who participated in this project and agreed to be interviewed. Chapter 7 presents preliminary findings from a study of the UK fathers' rights movement funded by the British Academy/Leverhulme Trust Thank Offer to Britain Fellowship (TOB06-07/SRF2005.88 & SG42903) and parts of the discussion in chapters 1 and 5 draw on work undertaken during a period of research leave funded by the AHRC (RL/AN8065/APN16739). In relation to chapter 7, I would also especially like to acknowledge and thank all the individual men and women who agreed to be interviewed and gave up their time to participate in this project. I hope the argument presented reflects key themes that emerged and succeeds in setting out, even to some degree, how it might be possible to chart a way through the often highly polarised debates in this area.

Some parts of the book contain substantially revised versions of material that has appeared elsewhere and I am grateful to the publishers for the permission to reproduce them here, in particular, notably: R. Collier, 'Be Smart, Be Successful, Be Yourself...': Representations of the Training Contract and the Trainee Solicitor in Advertising by Large Law Firms', 12(1) *International*

Journal of the Legal Profession (2005), pp 51–92; R. Collier, “‘We’re All Socio-Legal Now?’: Legal Education, Scholarship and the Global Knowledge Economy – Reflections on the UK Experience’, 26(4) *Sydney Law Review* (2004), pp 503–37; R. Collier, ‘Fathers 4 Justice, Law and the New Politics of Fatherhood’, 17(4) *Child and Family Law Quarterly* (2005), pp 1–29; R. Collier, ‘Reflections on the Relationship Between Law and Masculinities: Rethinking The “Man Question”’, 56 *Current Legal Problems* (2003), pp 345–402. All references to previously published work have been appropriately cited.

Finally, I would like to dedicate this book to Fiona Coleman, Rosie Collier and my mother, Nancy, with my love.

Richard Collier
18/6/09

Contents

<i>Acknowledgements</i>	vi
Introduction	1
1 Men, masculinities and law: the 'man question' in legal studies	7
2 The restructured university: rethinking the gendered law school	53
3 Beyond the 'private life' of the law school: class and the (legal) academic subject	77
4 'Read what the law firms say': gender and the representation of career success in the contemporary legal profession	95
5 Engaging fathers, changing men? Law, gender and parenting cultures	128
6 'Please send me evenings and weekends': male lawyers, gender and the negotiation of work and family commitments	152
7 On fathers' rights, law and gender: recasting the questions about men, masculinities and personal life	195
<i>References</i>	242
<i>Index</i>	289

Introduction

In 1995, I published a book entitled *Masculinity, Law and the Family*, the first words of which were as follows:

Why another book on masculinity? It is becoming difficult to keep up with the books and articles exploring the social construction of masculinity. Each week, it seems, sees the publication of another. Yet amongst this now considerable literature ... there are few texts which take as the specific object of study the relationship between masculinity *and law*.¹

Over the past fifteen years or so, a rich picture has emerged within legal studies of the 'man' or, rather, as we shall see, the 'men' of legal discourse. Across diverse areas of law, work has sought to unpack the way in which ideas about men and gender have been understood, constructed or otherwise depicted. Gender struggles involving law have, of course, a long and well-documented history. Yet a legal-political terrain premised on particular beliefs about men and masculinity has, I shall argue in this book, been reshaped by the embedding in law of models of universal formal equality, by ideas of gender neutrality and rights discourses. Law has become a key site of conflict for a series of contemporary contestations around the 'historical collapse of the legitimacy of patriarchal power'.² The debates about law, men and gender discussed in the following chapters illustrate, in different ways, to adopt Raewyn Connell's term, crisis tendencies that have arisen around the legitimacy of gender relations in late modern societies. This book explores the uncertain, contradictory effects of these changes, and how legal feminism and the development of pro-feminist praxis alike have sought to question what it means to speak of 'men' as a gender category in relation to law, the 'Man' of law of my title.³

¹ R. Collier, *Masculinity, Law and the Family*, London: Routledge, 1995, p 1, original emphasis.

² R. W. Connell, *Masculinities*, Cambridge: Polity, 1995, p 85.

³ A similar approach has informed interrogations of the 'man question', whether in relation to law or feminist thought: for example, K. E. Ferguson, *The Man Question: Visions of Subjectivity in Feminist Theory*, Berkeley, University of California Press, 1993; N. Dowd, *The Man Question: Feminist Jurisprudence, Masculinities and Law*, New York: New York University Press, forthcoming; A. Howe, *Sex, Violence and Crime: Foucault and the 'Man' Question*, London: Routledge Cavendish, 2009.

Discussion of the relationship between law, men and gender, we shall see, raises questions about diverse aspects of social life, the variable and contested meanings that attach to gender, the structures of feeling that shape our lives. In the chapters to follow, I investigate a diverse range of discursive frameworks, different areas within which ideas about men's identities and experiences have been understood in law. I shall consider university law schools and legal academics, images of lawyers and work-life balance in the legal profession, the development of family policy and parenting cultures and the connections between the politics of law reform and the dynamics of separation. The way in which ideas about men become contested and politicised in the legal arena is a theme reflected in both recent feminist work and pro-feminist studies of masculinities. In chapter 1, I will explore how subjectivity and the idea of a distinctive masculine gender identity – what it means, for example, to be 'man' within specific, grounded contexts – is a culturally constituted category, neither wholly dependent on nor set apart from biology. I question, in particular, binary oppositions bound up with a form of thinking about men and masculinity that is, in certain respects at least, increasingly obsolete. Conceptual debates have moved far beyond the sexual divisions through which ideas about law, men and gender had, in the past, been understood, with new conceptual tools emerging that provide new possibilities for a more nuanced and multi-layered engagement with this gendered subject. Across each of the following chapters, I shall argue, there is no such thing as an essential or intrinsic 'male' or 'masculine' identity. Men's identities are constituted, rather, through diverse and socially contingent practices that may themselves be contradictory, 'practices that people socially categorised as men reproduce through their agency within contexts of power'.⁴

Building on recent sociological work, I seek to integrate, in particular, an appreciation, at both a theoretical and political level, of the complexity and contradictory nature of personal life.⁵ This will involve questioning, at different moments, how ideas about social class, race, ethnicity and vulnerability, intimacy and emotion have informed ideas about masculinity in law. Studies of law and gender, I suggest, have much to gain from incorporating a more complex account of the gendered male subject and the interconnected nature of the lives of women, children and men. Equally, public policies based on outmoded stereotypes of both sexes, we shall see, are unlikely to address the very real problems both women and men can face, problems I address in this book across a wide range of legal policy debates. What is required, I argue, is a re-theorising of men's identities by looking critically at, and beyond, the term 'masculinities' in ways

⁴ F. Ashe, *The New Politics of Masculinity Men, Power and Resistance*, (Routledge Innovations in Political Theory) London: Routledge, 2007, p. 159

⁵ C. Smart, *Personal Life: New Directions in Sociological Thinking*, Cambridge: Polity, 2007; also J. Eekelaar, *Family Law and Personal Life*, Oxford: OUP, 2006. See chapter 1, pp 44–46.

that might produce a richer, more nuanced conceptual framework in which men's practices, subjectivities and bodies can be approached.

It is unsurprising given the relational nature of gender identities and gender categories (masculinity/femininity and so forth) that a significant reconfiguration of ideas about gender should have had important implications for understandings of power between men and women. The case of fathers' rights politics, for example, discussed in chapter 7, illustrates in a particularly clear way the contradictory nature of some recent changes around law with regard to questions of equality and power. At various points in this book, we will see how law has reproduced heterosexist, gendered frameworks premised on problematic ideas about 'authentic' masculine identity and experience. In certain legal contexts, this has led to the embrace of standpoints that can all too often result in 'a dehumanizing of other groups and a corresponding withering of empathy and emotional relatedness within the self'.⁶ Collective mobilisation around law, we shall see, can in a certain context become a strategy for the maintenance of power.

At the same time, however, it is also important to recognise how new configurations of gender have profoundly reshaped a political terrain around equality, rights and responsibility in law, doing so in far-reaching and unpredictable ways. Whether in relation to these debates around fathers' rights and law reform (chapter 7), men's parenting in social policy (chapter 5), changes in the legal profession (chapters 4 and 6) or in universities and their law schools (chapters 2 and 3), reducing developments to the level of a backlash to feminism, for example, offers little 'in terms of conceptual clarity or theoretical usefulness'.⁷ Equally, these social changes and men's responses to them cannot be simply reduced to an 'anti-woman' sentiment, the reassertion of patriarchal privilege. In chapter 1, looking at feminism's interrogation of masculinity in legal studies, I will explore how a historical association of heterosexual, middle-class, white men with ideas about power and the reproduction of gender inequality in law linked men to certain beliefs about the masculine culture of law. These ideas about law and masculinity continue to resonate powerfully within certain contexts in the legal arena. This does not mean, however, 'that explorations of men's identities have to be based only on negative aspects ... or framed through analyses of men as constituting a 'social problem''⁸ (as in, for example, the analysis of family policy to be discussed in chapter 5). Men's lives are, as will be discussed within this book, more complex than would be indicated by the deployment of hegemonic masculinity within much of this work on men, a concept that itself stands in an increasingly uneasy relation to the multi-dimensional nature of men's engagements with and relationships to law discussed in these pages.

⁶ R.W. Connell and J.W. Messerschmidt, 'Hegemonic Masculinity: Rethinking the Concept', *Gender and Society*, 2005, vol 19(6), p 852.7

⁷ Ashe, op cit, 2007, p 159.

⁸ Ashe, op cit, 2007, p 159.

Paying attention to these ‘practices within the category of men’, therefore, to follow a recent reading by Fidelma Ashe, ‘does not mean side-stepping questions of power or accountability’.⁹ It does however point to the need for a more complex account of men’s identities in contemporary society.

In the chapters to follow I will explore how ideas about affect and emotion, memory, intimacy, love and commitment inform men’s experiences and personal lives in contexts around law. I do so, however, in a way that is not set apart from a consideration of gender relations and power. As the discussion of contemporary work on men and gender considered in chapter 1 will illustrate, emotions, experiences and subjectivities can be seen *as* effects of power whilst, at the same time, having the potential to produce oppositional practices and resistances (including to dominant masculinities).¹⁰ That is why, building on earlier studies in this area,¹¹ it is important to note the complex, situated nature of the investments individual men and women can have in gender categories. The allure of particular ideas about legal practice, for example, considered in chapters 4 and 6 in the context of the legal profession, of a ‘legal lifestyle’ and certain kind of commitment to being a ‘successful’ lawyer, can be more complex than any reference to the masculine nature of law would allow. Ideas of masculinity are deeply contested in debates about the legal profession, about universities and their law schools, in relation to ideas about men’s work, family practices, intimacy and emotional lives. The nature of these gendered investments and social commitments can be fluid and contradictory, and it is significant that ‘the internal complexities of masculinities has only gradually come into focus as a research issue’.¹² In terms of the perceived costs, as well as the benefits, that attach to gendered identities, meanwhile, ‘without treating men as objects of pity, we should recognise that hegemonic masculinity does not necessarily translate into a satisfying experience of life’.¹³ Even a cursory look at the contemporary debates in the legal field, including those to be discussed in this book, illustrates how this is the case.

To raise these questions about law, men and gender, therefore, is not to efface issues of power. Far from it, whether at a theoretical level (chapter 1), in relation to the changes in legal education and research (chapters 2 and 3), the legal profession (chapters 4 and 6) and family policy and men’s parenting (chapters 5 and 7), I locate questions about men’s agency (what men do) within networks of power. This can be contrasted with engagements with men and gender, law and policy, where there often appears to be something more akin to a celebration or refusal of men and masculinity premised on the idea that there exists an essential ‘male’ identity among people who are identified within a

⁹ Ashe, *op cit*, 2007, p 159.

¹⁰ See further chapter 1.

¹¹ R. Collier, *Masculinities, Crime and Criminology: Men, Heterosexuality and the Criminal(ised) Other*, London: Sage, 1998; Connell and Messerschmidt, *op cit*, 2005, p 829.

¹² Connell and Messerschmidt, *op cit*, 2005, p 852.

¹³ Connell and Messerschmidt, *op cit*, 2005, p 852.

particular society as 'men'. Such identities, I will argue in chapter 1, do not exist prior to social practices and, therefore, the adoption of simplistic 'male positive' and 'anti-male' standpoints alike makes, as Ashe has argued, little sense.¹⁴ Many of the questions about law raised in this book will cut across categories of men, women and children, involving theilisation of contrasting interests and loyalties, different concepts of family and intimacy, diverse practices of care and a wide range of beliefs about the scope of legal rights and responsibilities. We are dealing with the heterogeneous nature of social practices in which progressive and regressive forms of gender politics can, we shall see, interact and co-exist in specific legal contexts, cutting across traditional political terrains in uncertain ways. This point has much to offer in developing an oppositional gender politics in the field of law, as well as in challenging the existing frameworks through which these gender relations have been understood.

The time is, I believe, propitious for a book such as this and I wish to locate this work, at the outset, in the context of broader engagements with the relationship between law and gender. Writing in 2004 in the *Australian Feminist Law Journal* Margaret Thornton spoke of her wish to begin 'a conversation which I hope others will join so that we might discursively constitute a new episteme of feminist legal theory that is linked to the political'.¹⁵ Asking whether 'the conjunction of postmodernism and neo-liberalism' might add up 'to post-feminism',¹⁶ Thornton sought to question whether the institutional base of feminist legal scholarship may be 'disappearing beneath our feet'. Linking to themes and concerns I discuss in each of the following chapters, what is necessary, she suggested, is a return to 'political engagement, rather than introspection', to discourage 'an exclusive focus upon individual and micro-political sites ... disconnected from *the broader political picture*'.¹⁷ 'Clinging to the universals of the past' Thornton concludes, cannot 'save legal academic feminism'. Rather, she suggests, it is important to locate developments in feminist legal studies in the context of 'a particular politico-historical moment'.¹⁸ This is a moment, I will argue in this book, in which the political terrain around law and masculinity has been reshaped by an amalgam of social, legal, cultural and technological developments.

In contributing to this new episteme of legal theory, therefore, in the sense depicted by Thornton, what follows re-examines the 'broader political picture' marked by a new constellation of ideas about the relationship between law, men and gender. As such, and challenging all too often untested claims about the nature of masculine identity, this book does not present a linear narrative

¹⁴ Ashe, op cit, 2007, p 159.

¹⁵ M. Thornton, 'Neoliberal Melancholia: The Case of Feminist Legal Scholarship', *Australian Feminist Law Journal*, 2004, vol 20, pp 7 and 22.

¹⁶ Thornton, op cit, 2004, p 21.

¹⁷ Thornton, op cit, 2004, p 21, my emphasis.

¹⁸ Thornton, op cit, 2004, p 21.

of progression in the study of law and gender. Rather, following Thornton, I historically contextualise accounts that have sought to explore the relationship between men and law. I will question the extent to which the very model(s) of and approaches to masculinity dominant within much legal study in the past, including strands of feminist legal scholarship, can be seen as the product a particular 'episteme' – one whose time, if it has not already passed, then is at least, I shall suggest, open to question. In so doing, bringing together voices and disciplines that do not always speak together, I wish to push the boundaries of enquiry and adopt a rather different lens through which it might be possible to explore voices, histories, emotions and issues hitherto silent in many accounts of law and gender.

Men, masculinities and law

The 'man question' in legal studies

Introduction

This chapter 'sets the scene' for the discussions to follow in this book. It does so by considering a concept central to studies of law, men and gender – masculinities. The argument is structured around three sections. In the first, I introduce and overview core themes within the 'masculinity turn' in legal scholarship over the past two decades. Distinctive intellectual and political influences, I suggest, provide the backdrop for the study of masculinities and law and, throughout the chapter, I draw on examples from two areas in which this engagement with masculinities has been particularly developed; the field of Family Law and studies of law, crime and criminology. The first section provides the reader with knowledge of the kinds of arguments that have been made about the relationship between law and masculinity and the diverse subjects that have been addressed in this work.

The second section shifts the focus towards the conceptualisation of masculinity within legal studies. I examine the strengths and weaknesses of two of the main sociological and social-psychological approaches that have influenced these writings on men and gender. First, an engagement with hegemonic masculinity, an approach in which law is accorded a particular place in the reproduction of gender relations and position within the social structure. Second, encounters between law, discourse and the idea of the male (masculine) subject, what has been referred to in some accounts as a psychosocial account of men and masculinities.¹ In the third, and final, section, I chart a way through these perspectives, suggesting there is a pressing need to rethink the relationship between law, men and gender in the light of social changes discussed in this book and theoretical developments that have taken place in

¹ The transition between these two perspectives is discussed by J. Hood-Williams, 'Gender, Masculinities and Crime: From Structures to Psyches', *Theoretical Criminology*, 2001, vol 5, p 37. See further W. Cealey Harrison and J. Hood-Williams, *Beyond Sex and Gender*, London: Sage, 2002.

law and other disciplines. This chapter, in summary, explores how legal scholarship has sought to engage with the gender of men, the ‘man question’ or ‘man of law’ of my title, outlining a general context for the studies of law, men and gender to follow. It provides the backdrop against which the analyses of the following chapters will be developed; of university law schools and legal education, (chapters 2 and 3), men, gender and the legal profession (chapters 4 and 6), of men, law and social policy (chapter 5) and the politics of parenting, law and gender (chapter 7).

Contexts: the ‘masculinity turn’ in legal scholarship

Interrogation of the relationship between masculinities and law within legal studies has occurred at a nexus of developments that, although interconnected, draw on distinct theoretical and political trajectories in terms of how both law and masculinity have been conceptualised at different historical moments. The most significant influence – not only on law, but on the analysis of masculinity throughout the social sciences, arts and humanities – has been that of feminism; or, in relation to legal studies, the now well-established body of work sometimes referred to as legal feminism (or, more accurately, legal feminisms).² In this section, I outline how masculinity has been approached within feminist legal studies, detailing the kinds of areas explored and the arguments made. I proceed to discuss how an engagement with law has informed the critical study of men and masculinities, drawing out points of similarity, and difference, with these feminist conceptualisations of ‘the man of law’.

Men, masculinities and feminist legal studies

In approaching how feminist legal scholarship has sought to address masculinity, it is helpful to recall something of the history of the concept. The roots of an engagement with masculinity in social studies can be found in the distinction between sex and gender and, more specifically, in a body of post-war social-psychological research concerned with the relationship between sex roles and gender identity. Biological sex is here seen as something serving to augment, but not to determine, the gender identity for each sex; that is, masculinity in the case of the male sex, femininity in the case of female sex. A person’s gendered subjectivity, their sense of maleness or femaleness, is understood in this model to be a result of largely post-natal psychological influences able, in some cases at least, to completely override the biological ‘fact’ of a person’s genital, chromosomal or hormonal sex (resulting in, for example, the

² These feminist engagements with men and masculinities are considered throughout this book.

phenomenon of the transsexual).³ Within this frame of analysis, sex and gender are conceptually differentiated. Sex is deployed to describe the innate biological characteristics of humans. It is something 'of the body'. Gender, and with it masculinity as a descriptor of the gender of men, relates, in contrast, to social characteristics and usages which are socially/culturally associated with one sex or the other.⁴ This, broadly, constitutes the dominant frame of analysis within which an interrogation of masculinity has developed in both sociology and legal studies.

The functionalist analyses that emerged from the 1950s onwards, adopting this kind of approach to sex/gender, can be seen, in retrospect, to constitute a 'pre-history' of contemporary masculinity theory.⁵ A central problem with such accounts, feminist scholars later argued, concerned the way in which an overarching methodological individualism served to negate any questioning of the social structure, the gendered nature of a contingent, socially constituted public/private divide⁶ and, in particular, the crucial issue of the social power of men relative to women. When masculinity was addressed in this pre-history, rather, it all too often appeared as something that could be measured on a scale (as in studies of androgyny), or else as something individually possessed.⁷ Within the feminist texts that began to impact profoundly on the social sciences throughout the 1970s and 1980s, in contrast, a concern to challenge the structural power of men served to reframe the way in which masculinity was understood. In turn, the development of a distinctive feminist legal scholarship during this period has utilised the concept of masculinity in a number of different ways in

³ For detailed discussion of these issues, A. Sharpe, *Transgender Jurisprudence: Dysphoric Bodies of Law*, London: Cavendish, 2002.

⁴ R. Stoller, *Sex and Gender Vol 1: On the Development of Masculinity and Femininity*, London: Karnac Books, 1984; J. Archer and B. Lloyd, *Sex and Gender*, Cambridge: Cambridge University Press, 1985; Cealey Harrison and Hood-Williams, op cit, 2002, ch 3.

⁵ On the 'intellectually disorganized, erratic and incoherent' nature of the earlier sex role research, T. Carrigan, R. Connell and J. Lee, 'Towards a New Sociology of Masculinity', *Theory and Society*, 1985, vol 14, p 551, at p 553. On the 'male sex role', J. H. Pleck, 'The Male Sex Role: Problems, Definitions and Sources of Change', *Journal of Social Issues*, 1976, vol 32, p 55; M. Komarovsky, 'Functional Analysis of Sex Roles', *American Sociological Review*, 1950, vol 15, p 508; R. Brannon, 'The Male Sex Role: Our Culture's Blueprint for Manhood and What It's Done for Us Lately' in D. David and R. Brannon (eds), *The Forty-Nine Per Cent Majority: The Male Sex Role*, Reading, Mass: Addison Wesley, 1976. For an overview of this early literature R.W. Connell, *Gender and Power*, Cambridge: Polity, 1987.

⁶ K. O'Donovan, *Sexual Divisions in Law*, London: Weidenfeld & Nicolson, 1985; M. Thornton (ed.), *Public and Private: Feminist Legal Debates*, Melbourne: OUP, 1995; S. Boyd (ed.), *Challenging the Public/Private Divide: Feminism, Law and Public Policy*, Toronto: University of Toronto Press, 1997; J. B. Elshtain, *Public Man, Private Woman*, Oxford: Wiley Blackwell, 1982.

⁷ Carrigan et al., op cit, 1985. On androgyny note, for example, S. Bem, 'Probing the Promise of Androgyny' in A. G. Kaplan and J. P. Bean (eds), *Beyond Sex Role Stereotypes: Readings Towards a Psychology of Androgyny*, Boston: Little Brown, 1976. On the impact of this early masculinity theory on accounts of law and crime see N. Naffine, *Female Crime: The Construction of Women in Criminology*, Sydney: Allen and Unwin, 1987; N. Naffine, 'The Masculinity-Femininity Hypothesis', *British Journal of Sociology*, 1985, vol 25, p 365.

seeking to account for the relationship between women, men and the power of law.

It is important to sound two notes of caution at this point. First, the project of feminist legal studies has long been – and, of course, remains – contentious, not least in terms of an epistemological foundation around the notion of a unified subject ‘Woman’.⁸ In the following, I will be using, for heuristic purposes, the idea of distinctive phases to feminist scholarship. Such an argument is, I recognise, problematic in its tendency to categorise together a vast and diverse body of work, and assume that a linear narrative (one of progress?) underscores what is, in fact, a far more complex (and contested) history.⁹ Second, it is important to recall that earlier pre-feminist sociogenic sex-role accounts of masculinity themselves raised themes that recur within later feminist and pro-feminist studies. Thus, there is an intriguing degree of continuity in this work on masculinity, not least a depiction of masculinity as something at once fragile, precarious and marked by anxiety (notably in relation to (hetero)sexuality); and, simultaneously, as something natural, taken for granted and defined repeatedly in relation to what it is *not*: not feminine, ‘unmanly’ or homosexual.¹⁰

Notwithstanding the above, it is possible to identify three principal areas within which an engagement with masculinity has figured in feminist legal scholarship. These are, first, in the exploration of the gendered nature of legal *practices and institutions*, second, in a critique of legal *methods and reasoning* and, third, in studies of the construction of gender and sexuality within *legal discourse*. In relation to each, I shall now suggest, there exist revealing similarities, and differences, in how masculinity has been conceptualised. Each, importantly, raises issues which, I shall proceed to argue in section two, speak to more fundamental ambiguities about the meaning of masculinity as it has been deployed in relation to the study of law.

Legal practices and institutions

The concept of masculinity has been used extensively within analyses of a wide range of institutions and practices relating to diverse aspects of law and legal

⁸ See further C. Smart, *Feminism and the Power of Law*, London: Routledge, 1989; C. Smart, ‘The Woman of Legal Discourse’, *Social and Legal Studies*, 1992, vol 1, p 29; N. Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory*, Oxford: Hart Publications, 1998; N. Naffine, ‘In Praise of Legal Feminism’, *Legal Studies*, 2002, p 71; J. Conaghan, ‘Reassessing the Feminist Theoretical Project in Law’, *Journal of Law and Society*, 2000, vol 27, p 351. See below, p 19.

⁹ N. Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence*, Sydney: Allen and Unwin, 1990, ch 1.

¹⁰ Contrast H. M. Hacker, ‘The New Burdens of Masculinity’, *Marriage and Family Living*, 1957, vol 3, p 227; R. E. Hartley, ‘Sex Role Pressures and the Socialisation of the Male Child’ in J. Pleck and J. Sawyer (eds), *Men and Masculinity*, Englewood Cliffs, NJ: Prentice Hall, 1974.