The Gender Line

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Feminist legal theory has not concerned itself much with the sympathetic construction of white maleness. Jurisprudential scholars have focused on the masculinity of nonmajority males. In the past decade, critical race scholars have centered attention on the differential treatment of black, Asian, and Latino males, principally as a matter of racial subordination. During roughly the same time frame, sexual orientation theorists have demonstrated the deep connections between heterosexuality and patriarchy, pointing out the ways military, employment, housing, custody, adoption, and sodomy laws discriminate against gay males.

The interest of feminist legal theorists in masculinity has concentrated on the ways institutional male power structures and interests reproduce themselves and exclude or disserve women: the explicit and more subtle forms of male domination in the workplace, male violence against women, and masculinity in various substantive areas of law as exercises of dominance, privilege, and power. These theorists touch kindly on the construction of masculinity only incidentally. The men who populate feminist legal theory, for the most part, are either perpetrators or the unwitting dupes of patriarchy.

Over the past two decades a dialogue about men and masculinity has occurred in disciplines other than law. The explorations of masculinity by various men’s movements have developed on a path apart from and rarely intersecting with feminist legal theory. Largely missing from feminist legal
theory is a sympathetic critique of the ways the ideology of majority group masculinity is constructed by law.

This chapter has two parts, and the bifurcation is almost a metaphor for the argument. The first part evaluates men’s movements in popular culture and some of the theoretical work in the social sciences regarding masculinity. The second part looks at the ways feminist legal theory has constructed maleness. In some ways, the situation of men in feminist theory parallels the treatment of women in traditional theory: initially excluded, then admitted at the margins, and—this reaches into the future—perhaps moving more toward the center of inquiry.

**Men’s Movements**

The 1990s have seen diverse attempts to redefine masculinity in the social sciences and popular culture, in reaction to male frustrations and feelings of disempowerment. A multilayered, amorphous collection of men’s organizations has burgeoned nationwide: a mythopoetic men’s movement, spiritual and semipolitical revival programs, the formation of men’s rights groups, study groups, and coalitions, and some profeminist men’s organizations. In *Wildmen, Warriors, and Kings: Masculine Spirituality and the Bible*, Patrick M. Arnold predicted that the developing men’s movement would become among “the strongest forces in American culture during the 1990s.”

**Men’s Rights Groups**

Reactionary men’s rights groups constitute one of the largest branches of the men’s movement. Based largely, and very explicitly, on a defensive reaction to feminism, organizations espousing men’s rights developed early in the second wave of feminism. The focus of almost all these organizations is the rights of men. The paramount concerns are that ex-wives drain men financially while denying them access to their children, although recently some groups have expanded to consider the correlative responsibilities of their participants.

The Men’s Defense Association (MDA), one of the oldest groups, was created in 1972. A letter from Richard Doyle, founder of the organization, explains the purpose of the MDA: “The male of the species is under increasing attack legally, politically, economically, and culturally. It is our mis-
sion to defend the interests of men, in opposition to the enormity of anti-
male forces and opinion.” The MDA originally kept a file of “sad stories” of
men losing custody and visitation rights, until the accumulation of stories
presented a filing problem.

The National Coalition of Free Men includes among its objectives the
laudatory goal of “promot[ing] awareness of how gender based expecta-
tions limit men legally, socially and psychologically.” Its literature explains
how men are culturally conditioned to be competitive, feel inadequate in
the child care arena, and think that “violent action confirms and enhances
their manliness.” So far, so good. But Free Men then suggests that men are
disempowered by having no reproductive rights and are “disadvantage[d]
in the work place because of female hiring quotas.” The group is quick to
blame feminism, a “shrill political movement” with “hostility for the nu-
clear family,” and the women’s movement, which “has gone unchallenged
and this has contributed greatly to the breakup of American families and
the social ills which follow: high rates of teen pregnancy, high rates of juve-
nile crime, high rates of teen suicide, depression, and poor school perfor-
manace.”

The American Fathers Coalition (AFC) is a 100,000 member lobbying
organization representing approximately 250 separate men’s rights groups.
It recently created an umbrella organization, the American Coalition for Fa-
thers and Children, to promote shared parenting. AFC activities include
lobbying for reduced child support payments if children spend more time
with their fathers, urging courts to enforce visitation orders, and organizing
picket lines to protest sexist stereotypes in movies like The First Wives Club.
Stuart Miller, a single father and lobbyist for AFC, maintains that men are
excluded from families: “The majority of men really do want to support
their kids,” he says; but he complains, “If someone takes your car, how much
longer are you going to keep making payments on that car?”

The National Organization for Men (NOM), with twenty-five thousand
supporters, lists as its purposes the protection of men’s rights and the pre-
vention of “the further erosion of men’s status.” Laced throughout NOM’s
literature are denunciations of the feminist movement (for perpetrating
myths that men are responsible for a large portion of domestic violence)
and “lesbian propaganda” (allegedly contained in the Ms. Foundation’s Take
Our Daughters to Work Day information kit). The Men’s Rights Association
produces a monthly newsletter, the Liberator, whose purpose is “to marshal
manpower in defense of men, masculinity and the family. Our definition of
men’s liberation is freedom to be (not from being) men.” One of the issues
of the *Liberator* included in its humor section the following joke: “Q: What is the difference between a terrorist and woman’s libber? A: You can negotiate with a terrorist.”

A handful of men’s rights groups proclaim an interest in egalitarian approaches, and a few are sympathetic to equal treatment views of feminism, but oppose anything smacking of special treatment or cultural feminism. Some men’s groups skip over the egalitarian rhetoric and extend the battleground of gender to wage war against affirmative action, pay equity (pejoratively dubbed “sex pay”), and abortion rights—anything that is perceived as promoting special treatment of women. One example of the new struggles looming on the men’s rights horizon is the issue of male reproductive choice. The National Center for Men is constructing a lawsuit that it believes will be the male counterpart to *Roe v. Wade*. The organization argues that men should be allowed to terminate their parental rights and responsibilities postconception during a limited time period.

Some organizations are specifically interested in fathers’ rights. Groups like the Men’s Defense Association, the American Fathers Coalition, Fathers’ Rights and Equality Exchange (FREE), and Dads against Divorce Discrimination (DADD) focus most of their energy on issues affecting single and divorced fathers, such as custody, visitation, child support, and divorce reform. Some of the fathers’ advocacy organizations, while prompted by discrimination against fathers in divorce and custody battles, seem less concerned with apportioning rights between divorced mothers and fathers and most concerned with encouraging shared parenting, to keep fathers actively engaged in the lives of their children. Groups such as Mad Dads, for example, are neither antifeminist nor misogynist in their rhetoric or undertakings, but try to promote the image of men as responsible fathers.

Many men’s rights groups blame feminism for a host of ills, chief among them the breakdown of the family. Ken Pangborn of Men International, a national coalition of over 130 men’s rights groups, described the group’s estimated 25,000 to 50,000 members as “absolutely death grip foes of feminism.” Fred Hayward, head of Men’s Rights Inc., concurs, but views being “pro-male” as a necessary defense, since, he says, “The logical extension of feminism is to eliminate men.”

The Mythopoetics

The mythopoetic men’s movement originated in the 1980s with various men’s retreats, and skyrocketed in popularity in the early 1990s, after the
publication of Robert Bly’s *Iron John: A Book about Men* and Sam Keen’s *Fire in the Belly. Iron John*, one of the most successful nonfiction works in 1991, sold more than a million copies and spent sixty-two weeks on the best-seller list. The mythopoets use myths, poems, and other literary works to examine men’s historical roles and seek guidance for modern male socialization and personal growth.

Bly and other mythopoets argue that men lack positive male archetypes, and that they have lost touch with an essential masculine force: the wildman within. Since most fathers are removed from their families by workforce commitments, the raising of sons is left to women, who turn their resentment of their husbands toward shaming their boys. Boys are cut off from their feelings and from each other at deeper emotional levels. With their masculinity chastised, boys are left to grow into men without appropriate initiation rituals. Men need an initiation into manhood that only other men can provide. Men's attainment of masculinity is connected to departing from home and leaving women behind.

The ideas are shared through men’s centers, gatherings, books, tapes, conferences, and retreats. Bly himself has led many of these wildman spiritual retreats or initiation rituals, at which men drum and dance around bonfires, hug one another, participate in talking circles during which they share their troubles, strip naked to engage in sweat lodge rituals, chant, recite myths and poetry, tell stories, organize into clans, and provide support for one another. An estimated 100,000 to 200,000 men have attended such events.

Mythopoetic adherents encourage men to acknowledge their vulnerability, focus introspectively, and engage in dialogue about their feelings. Men are prompted to overcome their isolation from one another, and to seek and receive nurturance from other men. Mythopoets view the separate spheres of men and women as vital to formation of male identity. Healing, in the mythopoetic view, can come only through reparation to Jungian archetypes and an emphasis on father-son relationships. “[T]he mythopoetic warrior’s quest is to rediscover his masculine core and experience a bond with his psychic ancestors.” This necessarily creates distance from women and sets up a blame situation. Most mythopoets see relations between men and women as inevitably adversarial, and criticize mothers for shaming their sons. Bly cautions that the mythopoetic movement “does not seek to turn men against women,” yet it links the empowerment of women and the emasculation of men. “Soft males” are often found in the company of “strong women.”
In its embrace of the central ideas of the gender identity paradigm—the existence of male and female essences, and the proposition that boys need male guidance to turn into men—the mythopoetic movement is accepting outdated psychoanalytic theory. “The [mythopoetic] men’s movement . . . misses one of the central insights of social science—that gender is a product of human action and interaction, that our definitions of masculinity and femininity are the products of social discourse and social struggle.”

The promotion of male bonding to the exclusion of women creates little opportunity for dialogue between the sexes. Sociologists Michael Kimmel and Michael Kaufman suggest that the mythopoetic men’s movement’s flight from femininity is ultimately damaging to gender relations:

Perhaps more than anything else, it is through the social practices of parenting that men may connect with the emotional qualities that they have rejected in real life—nurturing, compassion, emotional responsiveness, caring. These emotional resources will not be adequately discovered reading a book or stomping through the woods hugging other men who have taken totemic animal names. They are to be found in the simple drudgery of everyday life in the home. Cleaning the toilet, ironing, or washing dishes are not romantic—you don’t have to be a “golden eagle” to keep your nest clean. But they are the everyday stuff of nurture and care. They are skills that are learned, not received by divine revelation after howling at the moon in the forest. We need more Ironing Johns, not more Iron Johns.

The Evangelical Men’s Movement

In October 1995, Louis Farrakhan and his Nation of Islam organized the Million Man March in Washington, DC. Estimates of attendance ranged from 300,000 to 1.2 million African American men. It was billed as “a holy day of atonement and reconciliation” whose purposes were to exhort black men to “reclaim” their roles as heads of their families and as community leaders, rediscover religion, and take personal responsibility for their mistreatment of each other and of women. Women were excluded from the gathering. Farrakhan asked supportive women to demonstrate solidarity with the march by staying home from work, school, and shopping to instruct children in values of unity and esteem.

Promise Keepers, another men’s movement that is sweeping the nation, is a mostly white evangelical Christian group that is planning its own million man march. Since its inception, close to two million men have attended
Promise Keepers meetings in football stadiums across the country. The gatherings are male-only, have a spiritual orientation, and promote fatherhood. Founded in 1990 by former University of Colorado football coach Bill McCartney, the organization uses rhetoric similar to that enunciated in the Million Man March. Promise Keepers pledge to honor Jesus; pursue vital relationships with a few other men; practice spiritual, moral, ethical, and sexual purity; build strong marriages and families through love, protection, and biblical values; support the mission of the church; reach beyond racial and denominational barriers toward biblical unity; and influence their world. Promise Keepers has inspired the formation of dozens of Christian men’s groups across the country, such as Christian Men’s Network, Career Impact Ministries, Men Reaching Men, and Dad the Family Shepherd.

In the religious men’s movement, women are relegated to subordinate positions. In response to men’s collectives, supportive Christian women’s groups have sprung up across the country, with appropriately subservient names: Promise Reapers, Chosen Women, Heritage Keepers, and Suitable Helpers (not suitable leaders, but “helpers”). These women’s auxiliaries believe they can best assist their husbands’ missions by returning to traditional gender roles and adopting submissive postures with respect to their husbands’ wishes, following biblical teachings. One survey by the Promise Keepers organization showed that at Promise Keepers conferences, where attendees are exclusively male, 48 percent of the volunteers are women. These “unpaid servants” serve meals, assist the handicapped, and attend to the needs of those on the stadium floor. For the wives and girlfriends of evangelical followers, the movement represents a trade-off: the price of men’s commitment to their families and religious communities is “gender traditionalism—the idea that men and women generally have different social and familial roles, that these roles tend to reflect inherent psycho-emotional differences, and that men and women generally feel more fulfilled when they perform their respective roles.”

The ideal vision is of a return to a stark public-private distinction in which men are the public actors and women are relegated to the domestic realm. Louis Farrakhan has attempted to defend his Million Man March—“We’re not saying that a woman’s place is in the home. We are saying that a woman’s base is in the home”—but it seems to be a distinction without a substantive difference. Women are segregated and limited to home duty, while men conduct the public meetings. Men are the protectors, and women are in need of their support. Men are encouraged to treat their wives
fairly, so that the wives will accept their authority. The message equates responsibility with patriarchal control.

Feminist/Profemrist Men’s Groups

Feminist or profeminist men see the ways both women and men have suffered from sexism. They engage in a sympathetic critique of masculinity, and look at the ways social groups and institutions shape gender roles. Most view gender as a social construct and want to dismantle traditional sex roles. They oppose sexist, racist, and homophobic behavior, believe in shared responsibility for nurturing children, and engage in lobbying projects for women’s rights and gay rights. Michael Kimmel, sociology professor and spokesperson for the National Organization for Men Against Sexism, says the impetus for profeminist men’s organizations is “[m]en recognizing that their lives as men are impoverished because women are not equal—that we will live happier and better lives when women are our equals.”12 As Kimmel and Thomas Mosmiller detail in their book Against the Tide: Profeminist Men in the United States, 1776-1990, some men have supported feminist causes, particularly in discrete issue areas, such as voting, education, and reproductive rights, since the founding of the Republic. Beginning with the second wave of feminism in the 1970s, contemporary profeminist men supported women’s struggles for economic, social, and political equality, although this backing often consisted of individuals aligning with women’s groups, rather than collective efforts by groups of men.

Some feminist men aligned with radical feminism, others with liberal feminism. The former were more willing to assail men as women’s oppressors, while the latter emphasized the ways gender roles constrain both sexes. Even with feminist men’s groups, a dance of essences occurs: in the later 1970s, when men sympathetic to feminist causes organized collectively to combat sexism, they “took the label profeminist rather than feminist because they recognized the personal experience of being a woman as an important component of being a feminist.”13

Feminist men joined consciousness-raising groups with women and worked with women’s organizations such as NOW. They began writing political tracts and more academic pieces, published in journals like Changing Men: Issues in Gender, Sex and Politics, Signs, and Genders. Each year since 1975, feminist men’s groups have held conferences on Men and Masculinity: the Los Angeles conference in 1978 centered on “Men Overcoming Sexism,” the 1989 M & M conference in Pittsburgh was titled

Paralleling the growth of feminist men’s political groups was the development of the academic discipline of men’s studies, which grew from fewer than fifty courses nationwide in the early 1980s to more than ten times that number today, with a high concentration of courses in California, the Midwest, and the Northeast.14

Some profeminist groups today take an active role in combating sexual harassment and violence against women by encouraging awareness, acceptance of responsibility, and prevention strategies. Many of these activities are simple, grassroots acknowledgments of gender issues through programs, protests, conferences, educational ventures, counseling, and media blasts. For example, NOMAS’s task force on Ending Men’s Violence conducted a GOTCHA campaign on the Duke University campus. A group of three students approached men walking alone across campus at night and put a sticker on them, to emphasize the vulnerability of women to sexual assault. Another member of the group would then hand the individual a pamphlet that addressed women’s risks of violence when they walk alone.

The White Ribbon campaign originated in Canada to commemorate the anniversary of the December 6, 1989, University of Montreal massacre of fourteen women. During the first year over a hundred thousand men wore white ribbons. In Canada the campaign has evolved to a week’s worth of events—films, concerts, discussion groups, walks, building lightings, vigils, posters, buttons, bookmarks, and corporate sponsors—to protest male violence against women. It has filtered into the United States, where some men’s groups on college campuses wear white ribbons to signify their opposition to sexual harassment and violence against women. Cities like Syracuse, New York, have created parallel White Ribbon events to create awareness and fund raising for anti-domestic violence efforts.

Other groups hand out antisexist leaflets at Andrew Dice Clay concerts, develop student organizations to discuss how gender issues affect men, provide counseling for abusive men, and attempt through public actions and seminars to campaign against sexism and violence.15 Ken Fisher, spokesperson for Men’s Network for Change, which bills itself as “Canada’s only coast-to-coast pro-feminist, gay affirmative, anti-racist, male positive net-
work,” says he used to “see a woman with a black eye and I’d look away. I wouldn’t generalize and I wouldn’t get involved. Men have to stop looking away.”

Profeminists are the smallest branch of the men’s movement, with an estimated two thousand adherents, many of them academics. As with other camps of the men’s movement, the number of official members may not tell the whole story. Tens or hundreds of thousands of other men who have not joined an organized men’s group may embrace feminist visions and be supportive of feminist ideals through their lived experiences: voting, vocalizing, promoting egalitarian policies in the workplace, and sharing traditionally female responsibilities at home.

Competing Masculinities

At one level, the widely varying groups in the men’s movement are engaged in battle over the definition of masculinity. This competition over the meaning of masculinity itself borders on a stereotype, but it stems from shared impulses to assert and define gender and to seek foundational truths.

For example, Robert Bly criticizes the passivity of feminist men, calling them “soft males”—men who reject their natural tendencies toward aggression. Men’s rights activists dismiss the weekend warriors as indulging in “New Age nonsense,” and some view profeminist men’s groups as traitorous. Profeminist groups try to distinguish and distance themselves from organizations that conduct male-only retreats. Some profeminists have been harshly critical of men’s rights groups: “For these men, the question of unfair divorce settlements, child-custody cases, and the like are a ruse used by some men who favor perpetuating their own dominant status in society.” Men’s rights adherents cling to traditional notions of the family, which is antithetical to the profeminist view. It is no accident that Promise Keepers meetings occur in sports stadiums. This negotiation over the construction of masculinity is an aggressive and intensely politicized discourse.

Competitive infighting even occurs within different camps of the same branch of the men’s movement. Doug Haugen, president of the North American Conference of Church Men’s staff, a fellowship of ministers from twenty-two denominations, said that he and other workers who have been in Christian men’s ministry for years have experienced some resentment at the instant commercial success of Promise Keepers. But, Haugen says, he
and the other pastors at the Promise Keepers Atlanta clergy conference “confessed and repented of their jealousies.”

These various men’s movements cut across axes of identity other than sex. They are about race, power, economics, religion, and psychological identification. Participants in mythopoetic men’s weekend retreats are overwhelmingly white, straight, well educated, and middle-class. The evangelical men’s movement is not only closely related to religion in general and the Christian right in particular, it is largely a lower-middle-class, working-class, and minority phenomenon. In terms of social class and general social power, the envisioned nationwide collective of men is empowering. But these men are not jockeying for leadership positions in the new corporate-technological society; they feel removed from the traditional power structures. It is a battle for domination of the sub-institutions, families, communities, and churches that support those power groups.

The Less Sympathetic Critique of the Men’s Movements

**Gender Separatism**

While members of the spiritual men’s movement, evangelical groups, and men’s rights advocates hold widely disparate views of masculinity, the movements have some strong thematic connections. First, most of the men’s movement collectives other than profeminist men’s organizations have a notable absence of women participants and an utter lack of interest in the intersections of men’s and women’s issues.

The various men’s movements’ insistence on men’s separation from women goes to the heart of their constructs of masculinity: maleness means, in part, an affirmative exclusion of women. At one extreme, some men’s rights advocates conduct their work in oppositional existence to feminism. Men International’s Kenneth Pangborn says one purpose of his organization is to combat the myths and “the constant venom spread by feminists and picked up by the media.”21 The theme of gender separatism is repeated in the religious revivals and the mythopoetic retreats: women are forbidden to attend either event.

For men’s rights groups, evangelical groups, and mythopoetic organizations, the primary synergy and support come only from other men; they make no efforts to bridge the gap between the sexes. In short, the most influential men’s movements, with, collectively, several million adherents, and influence far beyond that, promote a return to sex segregation.
**THE RETURN TO STEREOTYPIC PATTERNS OF MASCULINITY**

It is not a historical accident that in the 1990s there has been a resurrection of all-male groupings and calls for a return to the archetypes of traditional masculinity. In times of instability, humans seek out the familiar. There is nostalgia for a simpler era, a time when men were men, and women were less trouble.

Consider the religious men’s movement’s template for gender relations. The vision of millions of men gathering as a collective to pledge their faith and commit themselves to their families is one that embraces unity, brotherhood, and family values. But the ideal is simply a traditional view of the family, one with subservient women subscribing to autocratic male leadership.

Many of the evangelical methods of reinventing masculinity are retrospective, with archetypes borrowed from Christian theology and *Father Knows Best*. Nowhere in the picture is a partnership between men and women ever contemplated. In fact, some of the Promise Keepers literature says that the breakdown of the family can be attributed to “the feminization of the American male.”22 Reverend Tony Evans elaborates: “I am trying to describe a misunderstanding of manhood that has produced a nation of ‘sissified’ men who abdicate their role as spiritually pure leaders.”23 The Nation of Islam and the Promise Keepers associate male empowerment with the repression and domination of women. While the origins of the Islamic faith have always embodied separatism between the sexes, and the resurgence of interest in Islam may have to do in large part with racial and economic currents, some of its modern attractiveness is undoubtedly related to the male exclusivity.

Some fathers’ rights groups and most evangelical groups overlap in their implicit assumption of male supremacy. Religious groups rely on biblical teachings to construct their views of gender ideology. They explicitly want to return men to their rightful “head of household” position. One favorite Promise Keepers scriptural quotation is Ephesians 5:22–23: “Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife even as Christ is the head of the church.” The implicit messages also reinforce the gender hierarchy. The second of the seven Promise Keepers promises (right on the heels of a commitment to honoring Jesus Christ) is the commitment to “pursuing vital relationships with a few other men, understanding that he needs brothers to help him keep his promises.” The idea is that the most worthwhile bonds of connection that men will forge should be to other men.
The visions for male-female relationships reach only to the limits of the traditional family—with men in positions of power. Promise Keepers speaker Tony Evans explains how men should take responsibility as leaders in their families:

The first thing you do is sit down with your wife and say something like this: “Honey, I’ve made a terrible mistake. I’ve given you my role. I gave up leading the family and I forced you to take my place. Now I must reclaim that role.” Don’t misunderstand what I’m saying here. I’m not suggesting that you ask for your role back, I’m urging you to take it back. If you simply ask for it back, your wife is likely to simply [refuse]. . . . Be sensitive. Listen. Treat the lady gently but lovingly. But lead!24

With men’s rights groups, the male supremacy theme may be more subtle. Dads Against Discrimination, for example, is an organization created by divorced, separated, and unwed fathers who “pledge to PRESERVE, PROTECT, and DEFEND the FATHER headed family, and to pass the history of FATHERHOOD to subsequent generations.” According to Richard Doyle, head of the Men’s Rights Association (MRA), “Women are the ones who should be the nurturers,” but the MRA’s newsletter, the Liberator, is more explicit, often carrying articles blaming women for “most divorces, for all male misery, and for the breakdown of the American family.”25

One thematic strand crossing over several men’s movement groups is tied to the military posture of masculinity. The network of Promise Keepers is a hierarchical organization, with “key men/ambassadors” serving as “recruits” to introduce Promise Keepers to church officials. This hierarchical approach to male leadership is repeated in the mythopoetic organizations, with surrogate father figures or “teachers” offering men the father-love that has been missing from their lives, and in some men’s rights rhetoric suggesting that women have deprived men of their rightful roles as family leaders. Even some of the nonmisogynist groups, with laudable social objectives, such as MAD DADS (Men Against Destruction—Defending Against Drugs and Social Disorder), are out on patrol. MAD DADS, consisting of twenty-five thousand members in forty-five cities, is essentially community policing, with groups patrolling neighborhood streets at night to confront gang members and stop drug use and property crimes.

The ideas of male accountability and responsibility from the evangelical movements are fed by fairly conventional ideas of men as breadwinners and providers. Similarly, the mythopoetic ideal accepts as a given that men need
isolated retreats from their work and family responsibilities, rather than in-
vesting thought in changing the institutional structure of work. Can the at-
tempt to reshape the image of masculinity through the trope of equating 
informal strength with being “good” husbands and fathers be separated from 
formal masculinity? Not if the rhetoric that accompanies it envisions male lead-
ership, defines wives as “helpmates,” and directs men to avoid anything fem-
inine or “sissified.” For mythopoetic, men’s rights, and religious men’s 
groups, sensitivity to women’s issues is often linked to softness and emas-
culation.

**INTERNALISM, ESSENTIALISM, AND THE NATURALISTIC CONCEPTION OF GENDER**

Tied to traditional notions of masculinity is the belief in biological 
ences, promoted by both religious and mythopoetic groups and even 
some men’s rights advocates. According to mythopoets, men have lost touch 
with their male essences, their inner warriors, the wildman within. Some 
men’s rights groups concur with this belief in “essential maleness.”26 David 
Blankenhorn, chair of the National Fatherhood Initiative and a supporter of 
Promise Keepers, says that men “are by their natures inclined to ‘promiscu-
ity, abandonment, and violence.’”27 The purpose of the Million Man March 
was to call for African American men to take their “rightful place as men.” 
The fact that African American women have traditionally been the leaders 
was upsetting the “natural order of things,” in which a man is “the protec-
tor and provider and defender of [the] family.”28 This naturalism is a theme 
that resonates even among masculinity theorists who are otherwise sensi-
tive to some aspects of the social construction of gender. In *Warriors and 
Wildmen*, Stephen Wicks suggests that women’s and men’s places in society 
are set by natural forces that are largely impervious to human intervention: 
“So deeply rooted and pervasive is sex, that to attempt to subvert its energy 
radically and quickly by social arrangement is to tamper with nature itself, 
a potentially risky and ultimately futile endeavor.”29

A strand connecting the evangelical and mythopoetic movements is the 
emphasis on internal feelings (the shaming and wounds in the mythopoetic 
movement), individual experiences, and proclamations and words (the 
evangelical groups’ proclamations of love for their families and Jesus), as 
opposed to external behaviors or progressive social and economic reforms. 
The therapeutic focus of both groups is introspective: dancing, hugging 
other men, praying, crying, and telling stories of personal growth. The 
mythopoets and religious men’s movements’ emphasis on inner, spiritual
development relieves the participants of the need to address pressing social, economic, race, and class issues.

The internal and essentialist features of these men’s movement themes are limiting in several ways. They turn inward, toward the experiences of single individuals, rather than outward, either for verification or toward social reform. Even among men’s rights advocates who want sweeping legal reforms, the reforms themselves look at an isolated slice of the whole social picture: men’s rights. The advocates’ interest inevitably seems to stem from their own bitter divorce or custody experiences. They don’t want anyone else to suffer personally as they have.

Not only are social differences explained by the inherent differences between men and women, but as Ken Clatterbaugh says, “[b]ad things are bound to happen if change is introduced that goes against essential natures. Women are women and men are men and what men and women traditionally have done reflects their real natures—unhappiness, and possible social chaos, is the price of trying to alter gender roles.”

The More Sympathetic Feminist Read of the Men’s Movements: Seeing the Reconstructive Possibilities

The easy task of critique is to spot the socially conservative values underlying some of the men’s movements and to herald the dangers of reincarnating traditional, sexist gender roles. A button circulated among critics of men’s retreats capsulizes the dismissive attitude: “Men’s Weekends—when 365 days a year aren’t enough.”

The more difficult task is to find a charitable reading of these men’s movements, one that acknowledges their promising inclinations. A supportive feminist reading of the themes in the men’s movements would recognize the good impulses while criticizing those aspects that appeal to the traditional ideology of a given order, whether biological, historical, or religious.

What lessons can feminism learn from the various men’s movements? Sifting through the complaints of reverse sexism, the blame language that castigates women for the breakdown of the family, and the anti-affirmative action, anti-reproductive rights, antifeminist rhetoric is not simple. But if one can distill legitimate complaints out of the anger, what might they be?

Men are rightfully resentful about being locked into the social roles of breadwinner, protector, and provider. It is no coincidence that men’s rights
groups seek custody, evangelical groups seek to form closer relations with their family and their faith groups, and profeminist groups actively want to assume more child care responsibilities. The thematic complaint resonates with empirical experience: social forces have excluded men from the arena of nurturing. This is a mirror image of feminist concerns that society has delegated principal child care responsibilities to women.

All the men’s movements, from evangelical to profeminist, are struggling to reconstruct masculinity. Some of the groups recognize the emotional impoverishment of traditional models of masculinity, particularly the cultural training in distancing oneself from feelings and emotions. Men are meeting in relatively apolitical therapy and support or discussion groups concerned with issues of stress, grief, self-esteem, health, aging, and impotency. In 1991 over 1,500 such groups met in the United States. This may be the beginning of breaking down the notion that it is unmanly to discuss personal problems. (On the other hand, since these groups seem relegated to the therapy arena, maybe they still perpetuate the myth of manhood: only sick or troubled men are those who need to talk about their problems.)

While some of the methods remain largely internal, self- or group-focused, they signal the development of a new dimension to masculinity: men yearning to express emotions. Whether through dance and drumming rituals or participation in support groups or commitments to rebuild families and religious communities or seeking custody of and involvement with their children, hundreds of thousands of men across the nation are constructing a new masculinity, one with a softer side, one that connects them to other people on an emotional level. Unpacked from its trappings—the ceremonial drumming and chanting rituals, mythical archetypes, and weekend warrior quests—the mythopoetic movement, for example, offers promise in its search for emotional fulfillment, particularly in fatherhood. Consider a poem written by Robert Bly, “For My Son Noah, Ten Years Old”:

and slowly the kind man comes closer, loses his rage,  
sits down at table.  
So I am proud only of those days that pass in undivided tenderness,  
when you sit drawing, or making books, stapled, with messages to the world,  
of coloring a man with fire coming out of his hair.  
Or we sit at a table, with small tea carefully poured.  
So we pass our time together, calm and delighted.
Certainly, this male integration of traditionally female pursuits occurs within the sexual polarity of the movement’s theories, but at least it sees part of men’s work as child care. In this respect, the interests of those in the men’s movements are, if not one with feminists’ concerns, at least closely related.

One of the most hopeful readings of the men’s movements and attention to masculinities is that they seem to be following the developmental pattern of the second wave of the women’s movement. Just as feminism began in opposition to a masculine stronghold, the more conservative men’s movements began in opposition to the dominance of feminism in gender studies. It is vital to distinguish those portions of the men’s movements that are just reactionary attempts to cling to privilege. But the very fact of oppositional existence—to the extent that it is thoughtful and reasoned—would at least seem to necessitate an understanding of gender discourse.

The male-bonding, developing male intimacy, self-questioning, and focus on self-awareness of the male-only retreats parallels women’s consciousness raising groups. Part of the inquiry into masculinity promotes the idea of introspection. Even though this is subject to the critique that it is simply internal, it does encourage men to think seriously about their commitments, responsibilities, and places in the family and in larger community settings.

The women’s movement later branched into social reforms. Even if the social reforms of this generation of men’s rights groups are men seeking quid pro quo custody reforms, the recognition exists that the movement must turn outward toward broader social impacts. Whether the mythopoets can move beyond personal growth or self-actualization is an unanswerable question. Some evangelical groups have begun the process of building outward: in their efforts to dismantle denominational and racial barriers and reinvest in social communities, the Promise Keepers seem interested in having a larger cultural impact. Left open is whether the group will try to reach beyond interfaith barriers.

Looking at the ways men are constructed, we cannot help but gain insight into the construction of women. Even if some of those revelations presently take the form of point-counterpoint (such as who is favored in custody determinations, and in what ways), future dialogue does not have to be structured this way. Work in both feminism and men’s studies should benefit from engagement and constructive challenge. Consider, for example, the battle about domestic violence statistics. Some men’s rights groups have assailed numbers showing that men are typically the perpetrators of domestic violence and women its usual victims with evidence that women
are more likely to physically assault their spouses and partners. What may well be happening in some situations is that women in abusive relationships initially do provoke physical violence. This is consonant with contemporary domestic violence theory: perhaps some women have learned that the physical encounters will be less serious if the explosions occur earlier in the cycle of battering. Moving the discussion away from blame—who hits earlier, harder, or more often, men or women?—and analyzing instead the relational cycle of violence may increase understanding of the mechanisms of violence and ways to end its cycles.

Dialogue between feminists and adherents of various men’s movements has such possibilities. Are the consciousness-raising themes of men’s groups any different from the second wave of the feminist movement? Is the cycle of self-awareness different for men and women? If some men seek greater roles in child care, what institutional and personal changes are necessary to permit this? The tendency of both feminist and men’s groups has been to act in terms of opposition to the other sex, instead of toward general, unifying aims. Apart from work by profeminist men, the prospects for men’s movement theorists and feminists to join together in challenging traditional sex roles remains largely untapped.

Academic Constructions of Masculinity

Academic work on the ideology of masculinity shows that manliness is not a monolithic ideal, but is contingent on categories of class, race, and sexuality. Crossing these substrata of demographic characteristics, though, is a “constellation of standards and expectations that individually and jointly have various kinds of negative concomitants. . . . including achievement, emotional control, antifemininity, and homophobia.” Research suggests that the ideology of masculinity itself influences men’s behaviors: in following their social gender “scripts,” men engage in unwarranted risk taking, suppress emotions, and distance themselves from family members.

The various meanings of masculinity spread of course beyond the camps of the men’s movement, although the movement itself is in large part about defining masculinity. The Christian men’s movement, for example, is vocal about its disapproval of homosexuality. Promise Keepers has issued a press release saying that although it believes homosexuality is “a sin which violates God’s design,” gays are welcome to attend Promise Keepers rallies. More broadly, though, men who do not conform to heterosexual gender expectations suffer exclusion, torment, and physical violence. Our culture
censors gay-positive works: Washington, DC’s Corcoran Gallery of Art canceled a retrospective of the works of Robert Mapplethorpe, a gay photographer whose pictures graphically depicted gay sex practices; the fact that the National Endowment for the Arts funded some displays of Mapplethorpe’s works has threatened public funding for the arts; and school libraries across the country have removed books about being gay, such as Daddy’s Roommate, Daddy’s Wedding, His Athletic Shorts, and The Drowning of Stefan Jones, from their shelves.

The hierarchies of masculinity include stereotypic images of men of color: black men “are constructed as criminal, violent, lascivious, irresponsible, and not particularly smart,” while Native Americans are lazy, alcoholic, “menacing, hostile, and threatening.” The stereotypes translate into treatment. Men of color are the principal targets of police brutality. One of my colleagues, an African American male, pulled into his own driveway in an affluent, predominantly white suburban neighborhood. Two officers patrolling the area forced him to spread-eagle against the side of his car for being “suspicious.” Marvin Jones, a black law professor at the University of Miami, says that when he walks down a street he hears “a symphony of car doors locking.” Negative stereotyping is not exclusively a matter of demonizing images. Asian American males, for example, may be portrayed as mild-mannered, intelligent, studious, or effeminate. But the social construction of masculinity is a process of creating outsider classes and hierarchies of worthier and less worthy males.

Modern academic thinking about masculinity in psychology and sociology has focused on men in various institutional domains: the gender role conflicts experienced by men juggling differing expectations at home and work, the changing construct and expectations of fatherhood, the prospects of psychotherapy for men, and areas of dysfunction for men as social actors: problems of competition, aggression, violence, and intimacy.

Theorists in psychology have reevaluated traditional theories of masculinity. Post-Freudian theories of gender identity development suggested that psychological health depended on developing a coherent gender role consistent with one’s biological sex. Some gender identity theorists thus posited that the development of appropriate masculinity required little boys to reject their strong psychic attachment to their mothers and distance themselves from feminine behaviors. This traditional approach to masculinity was influenced by popular wisdom and, reciprocally, sifted into popular consciousness as stereotypic injunctions about appropriate male behavior. Deborah David and Robert Brannon cataloged these admonitions
as “No Sissy Stuff,” “Be a Big Wheel,” “Be a Sturdy Oak,” and “Give ’em Hell.”

Contemporary theorists reject the binary and essentialist nature of identity theory, which “pressures an individual to conform to a gender role that is restricted to one of only two possibilities” and point to the lack of empirical basis for it. Most modern psychologists and men’s studies scholars accept some variation of the “gender role strain” paradigm, which “sees gender differences as a result of cultural pressures on individuals to conform to gender role norms. Gender roles are seen as operationally defined, internally inconsistent, constantly changing, and inevitably producing a degree of psychological dysfunction in all people.”

The movement from gender identity theory to relational theories of psychological development may enhance social acceptance of less restrictive gender roles, and the necessity of more fluid gender roles is being confirmed with empirical research. Clinical studies have evinced an increasing awareness of the importance, for both fathers and children, of fathers’ participation in children’s lives, as well as the benefits to the entire family of more egalitarian parenting.

But what of the risky, irresponsible, and violent behavior that males demonstrate in abundance compared to females? Men become alcoholics at a rate five times that of women; “over 85% of drug offenders are male”; ultimately, “[m]en die 7 to 10 years sooner than women,” due principally to poor health management, higher rates of accidental injury, and much greater tendencies to indulge in risk-taking behaviors. Men commit 94 percent of all violent offenses; they are 50 percent more likely than women to be its victims. The wealth of psychosocial data supports what psychology professor Louise Silverstein and psychiatry professor Gary Brooks theorize about “dark side behavior”: these behaviors are not the products of aberrational males; they are instead the expected consequences of typical gender socialization. Culturally, we train males toward violence as a problem-solving strategy.

Cross-cultural studies have demonstrated that the traditional definitions of manhood are neither genetically fixed nor inevitable, and that sex and gender can be separated. The people of Tahiti, the Semai of the Malay peninsula, and the Vanatinai of Papua New Guinea are examples of nonpatriarchal cultures with minimal gender role differences: “In Tahiti, women are permitted to do virtually everything that men do, even holding political office, and men are not afraid of appearing effeminate. . . . within this cultural context, the male role is defined as almost the opposite of macho: Pas-
sivity, timidity, and no taste for competitive striving are valued traits.”46 The women of Juchitán, Mexico, descendants of an Amazonian Indian tribe, “dominate both the local economy and the men.” Not only are the Juchitán women “physically dominant over men (in terms of size and strength),” they are also the primary economic actors, “while men assume most of the child care responsibilities.”47

Sexual and social “gender transitivity” is exhibited among English schoolboys, in ancient Greece, and in the Native American berdache. The berdache of Mojave, Navaho, Pima, Sioux, and Zuni cultures were “socially cross-gendered” men and women who assumed the characteristics, dress, and social roles and responsibilities of the opposite sex. Their “socio-sexual identities constituted an independent and unique gender category that transcended ‘male’ and ‘female’ genders; on this basis, berdaches generally were highly regarded by their communities, respected and powerful because they personified a unity of dualities that helped to cohere the larger cosmology of Native American society.”48

These are not shadowy figures of yesteryear. In Lepurosh, Albania, Sema Brahimi was one of four sisters and an infant brother who lost their father when Sema was fourteen. Northern Albania is a culture in which women wear head coverings and must obey their husbands, fathers select wives for their sons, and each family must be represented by a man. When Sema’s father died, she cut her hair, became a field worker to earn money for her family, and adopted the masculine version of her name, “Selman, and her mother and sisters began referring to her with the pronouns ‘he’ and ‘him.’”49 She later selected a wife for her brother and “wore a suit and tie at his wedding, assuming the role of father of the groom.” In other words, to be able to play the political part of man, one must also play all the social roles. There is nothing particularly forward or progressive about a culture that requires family representation by a man, except at some level where the community makes no pretense that the biological fact of gender has such significance and that in certain social circumstances a cultural construct can supplant biology. The situation is a curious but explicit recognition that the construct of gender is cultural.

Simply put, it is culturally possible to socialize males and females away from aggression, competition, and even gender role differentiation. Academic inquiries into manhood raise new possibilities for constructions of masculinity that acknowledge power differentials in the present construction of gender relations, yet see the prospects for empathetic understanding of traditional male roles.
Despite this wealth of recent developments in men’s studies—regarding the hierarchies, complexities, and malleability of masculinity—many feminist legal theorists have not incorporated the new social science evidence into sympathetic constructions of males or masculinity. The men who populate feminist legal theory remain, for the most part, yesterday’s patriarchs.

**Feminist Legal Theory and the Construction of Masculinity**

The explorations of masculinity in the social sciences have not yet sifted into legal theory. Feminism in law has focused on the unjust subordination of women. Central to feminist legal theory are several premises. First, feminism maintains that culturally, politically, economically, and legally, women have been, and still are, subordinated, oppressed, degraded, and ignored. Second, feminism argues that law is in many ways gendered, it is an exercise of power, and it operates “to the detriment of women.” Finally, feminist legal theory contends that this pervasiveness of patriarchy is unjust. “[F]eminism in law means advocacy to end restrictive treatment of all women.”

**Liberal Feminism or Equal Treatment Theory:**

Men as Objects of Analysis

Feminist legal theory has evolved through stages into several different camps. The equal treatment theorists, or liberal feminists, were the first wave of feminist legal theorists. These theorists argued for the abolition of all gender-based classifications. The hallowed building block of liberalism, that all men are created equal, was recast to include women. The goals of liberal feminism were assimilationist in nature: making legal claims that would ensure women received the same rights, opportunities, and treatment as men. Thus, liberal feminists demanded equal pay, employment, education, and political opportunities.

Equal treatment theory viewed men as the benchmark, the norm. Male experiences were an accepted and unquestioned reference point. As theorists emphasized the need for women to achieve equal opportunities, the obvious focus was on the opportunities, rights, and powers men possessed that women did not. Most references to the treatment of men were descriptions of past and present conditions, rather than evaluations of whether those norms were good or bad.
The model of formal equality was reinforced by court decisions. A significant number of the more prominent early cases seeking equal treatment for women were constructed as challenges to gender classifications that burdened men, thereby stigmatizing women as incapable of shouldering those same burdens. Often these cases entailed strategic choices on the part of feminists to attack gender-based classifications using male plaintiffs. As director of the American Civil Liberties Union’s Women’s Rights Project (WRP), Ruth Bader Ginsburg developed the strategy of proceeding with cases featuring male plaintiffs to press for formal equality for women: “Her briefs consistently characterized sex stereotypes as double-edged. She argued that rigid sex roles limited opportunities for freedom of choice and restricted personal development for members of both sexes.” However, it is clear from the cases taken and arguments made that male plaintiffs were being used by women instrumentally, principally to advance women’s rights:

In all of the cases that the WRP has argued before the Court, women’s rights were presumably the central concern. In Kahn v. Shevin, for example, the WRP undoubtedly had little concern for the extra fifteen dollars added to Mel Kahn’s annual tax bill because Florida gave widows, but not widowers, a limited property tax exemption. Similarly, in Craig v. Boren, the WRP did not participate simply to protect the right of eighteen to twenty-one year old boys to buy 3.2 beer in Oklahoma. In all of the cases women suffered the critical wrongs, but men were the legal complainants. Use of a male plaintiff was the only way, in many cases, to meet standing requirements. Because the Court did not yet recognize the harm women suffered, a male plaintiff who suffered pecuniary harms was essential.

This litigation strategy did create a standard that was user-friendly to both sexes in the sense that it was gender-blind. Although the initial rubric was gender-neutral, its application in some cases has not yielded gender-neutral results, and instead has served to reinforce traditional role expectations.

Equal treatment theory was necessary to eradicate the worst forms of disparity in treatment of women. Liberal feminism was justly concerned with women’s systematic and intentional exclusion from educational and vocational opportunities. These early feminists focused on basic disparities in the treatment of women, and approached the resolution of those disparities from a rhetoric of equality for women. Equal treatment theorists were primarily interested in opposing stereotypes of women as needing special protection. Even though these theorists made arguments about the dual...
disadvantages of gender stereotypes, they did not spin out the systematic implications of a wide variety of rules and laws that perpetuated gender role stereotypes that harmed men as well.

Cultural Feminism or Difference Theory: Men as Other

The second wave of modern feminists were the difference theorists, also referred to as cultural or relational feminists or special treatment theorists. These scholars would agree with liberal feminism’s insistence on gender-neutral laws for most issues. However, they maintain that formal equality, particularly with regard to reproduction and child raising, denies important social and biological differences between women and men. They critique equal treatment theory for providing equality of opportunity only to the extent that women are the same as men, but not for accommodating the ways women are different from men. In their view, equal treatment theory will ultimately fail to arrive at gender equity due to fundamental differences between men and women.

The difference theorists call for acknowledgment of the differences between the sexes, and recognition of the biological or social and cultural construction of gender roles. Some of them advocate the need for preferential treatment in the areas of reproduction and child rearing, while others more moderately support accommodation only for actual childbearing.

A central claim of difference theory is that women have distinctive methods of acquiring knowledge and making moral decisions. Women and men typically display different emotional and cognitive patterns, different social skills or characteristics, possibly stemming from innate physiological traits or from different life experiences. Women operate with an ethic of care and are concerned about relationships and collaborative resolution of issues. Men reason toward an ethic of rights; they prize autonomous individualism and attempt to resolve issues with hierarchical and objective methods. Women speak in a “different voice”: whereas men are aggressive and competitive, women are sensitive, empathetic, and nurturing. Men are given identity in difference theory only through their differences from women.

In legal theory, cultural feminists argue that the differences between women and men justify different legal treatment on a range of issues. In the area of maternity leave, for example, difference theory necessitated the recognition that notions of formal equality could operate to the detriment of women. Furthermore, at the institutional level, cultural feminists suggest that when women’s experiences and methods of reasoning are brought
to bear on legal issues, they shape and alter not only traditional outcomes, but also the processes by which those outcomes are reached, in fundamental ways.\textsuperscript{68}

Margaret Jane Radin and Robin West have argued that by demonstrating traits that, through biology or acculturation, are predominantly possessed and employed by women, difference theory was not only important empirical work, but was a necessary form of political legitimation for women.\textsuperscript{69} Moreover, difference theory was an important form of compensatory scholarship, since it socially validated women’s experiences, which, for many years, simply did not count.

At a minimum, cultural feminism focuses on gender similarities and differences. In emphasizing capacities possessed distinctly or predominantly by women, the theory highlights differences between men and women. At the extreme, this has led some theorists toward a wholesale exclusion of men on a number of levels. First, on the theoretical level, the focus of analysis is women, rather than people. Second, difference theory, with its construction of the dichotomous categories of women and men, excludes those who do not fit neatly into either category. The essentialism of difference theory does not admit that there may be gradations of differences—that gender may be a continuum. Third, in significant respects, a number of cultural feminists may be interpreted as promoting the separatist philosophy that men cannot be reconciled with or included in feminism. Robin West, for example, argues that men are “incapable of empathic knowledge regarding the subjective well-being of others.”\textsuperscript{70} Christine Littleton concurs, stating that “women’s experience [is] a necessary prerequisite for doing feminism” and maintaining that “men who wanted to use the label ‘feminist’ would have to spend a significant number of years living as women to qualify.”\textsuperscript{71}

In the social sciences more than in law, these gender differences have been interpreted as an indication of women’s moral superiority.\textsuperscript{72} A number of theorists writing about the sociology of consciousness have suggested that women are epistemologically privileged.\textsuperscript{73} Certain characteristics (female) are celebrated, while others (male) are not. The contention of some standpoint epistemologists is that the underprivileged position of persistent oppression creates an ability in women to discern reality more objectively than men.\textsuperscript{74} They also contend that because women’s nurturing or caring faculties are better developed, they are able to do different, and perhaps more exploratory, research than men. Some theorists make the stronger argument that feminist ethics should be privileged over masculin-
ist values, and that the application of feminine ideology creates better social outcomes.\textsuperscript{75}

Arguments about the superiority of the feminine difference are one response to the marginalization experienced by women for centuries. Some of these arguments may have functioned correctly by adding the omitted accomplishments and contributions of women. Even the stronger argument that women hold a privileged epistemological status may have been a necessary step in claiming legitimacy for gender differences or in reversing an established hierarchy so that it could be examined, but such an argument comes with a price. On the level of discourse, this framework meant that dialogue was a competition. The form of the argument—that women’s ethics should prevail over men’s—sets up a discourse that is at best competitive, at worst combative. Whose values should prevail?

Dominance Theory or Radical Feminism: Men as Oppressors

A third group of feminist legal theorists analyze the inequality in power relations between women and men.\textsuperscript{76} Instead of focusing on gender differences, dominance theorists, or radical feminists, emphasize women’s subordination. They describe how men’s cultural and sexual domination structures social and legal relations between the sexes. They assert that legal concepts, crafted by men, operate to control patterns of behavior between men and women.\textsuperscript{77} Dominance theorists call attention to the fact that the male norm in law and society is universal and unchallenged.

Dominance theory dwells less on the individual experiences of women and is much more concerned with the class-based oppression of women. These theorists call attention to the social institutions and practices that promote gender inequality as well as the oppression of women. They cite pornography, prostitution, sexual harassment, restrictions on abortion, and inadequate responses to violence against women as examples of social phenomena that contribute to the oppression of women: “Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, an institution of gender inequality.”\textsuperscript{78} Radical feminism argues for dramatic social transformation and redress of the power imbalance.

Dominance theory may tend to promote a circumscribed view of both men and women by representing men negatively and portraying women as the victims of centuries of male oppression. Under this theory, men subordinate, ignore, invade, harass, vilify, use, and torture women. They are, quite literally, the bad guys. The essential social relations between men and
women are those of domination and submission: male domination and female victimization. Gender is constructed as social position and political prowess. Sexuality is the practice of subjugation. As Robin West capsulizes it, radical feminists believe that “the important difference between men and women is that women get fucked and men fuck: ‘women,’ definitionally, are ‘those from whom sex is taken.’”

Importantly, not even the “good guys” are exempt from this description, for all men are potentially bad. Dominance theory opens the door to an essentialist position for the viewing of men as a uniform collective: none are better, some are worse, and all are guilty. Note that radical feminists are not the only ones to blame men: “To be blunt, it is almost impossible not to blind oneself to the violence in the world of which you are an indirect if not direct beneficiary, and most men do indeed benefit, at least in the short run, from the sexual violence from which many women fear or suffer.”

In addition to viewing men as the perpetrators, dominance theory views gender discourse as a finite-sum game in which there must be winners and losers. For dominance theorists, gender equates with and is defined by power. They argue that gender equality can come only through a shift in power: “Equality means someone loses power. . . . The mathematics are simple: taking power from exploiters extends and multiplies the rights of those they have been exploiting.” If women can attain equality only by “taking power from those who have it,” that is, men, this sets up a fundamental antagonism between the sexes.

Postmodern Feminism: Men Omitted

Much of modern feminist legal scholarship has moved beyond the sameness-difference-dominance debate, although a number of ideas from cultural feminism are being adopted and implemented as mainstream social practice. A principal current focus of feminist exploration in law is postmodern feminism. Feminists influenced by postmodernism emphasize that there is no monolithic female experience, but many experiences that vary according to a woman’s race, class, ethnicity, and culture. Femininity is socially constructed, and knowledge, rather than consisting of objective, timeless truths, is situational and constructed from a confluence of multiple perspectives.

Another insight of postmodern feminism is that abstract theorizing should give way to pragmatic, contextual solutions. An important facet of postmodernism generally, and postmodern feminism in particular, is that
discourse, perhaps especially legal discourse, constructs social understanding. Some authors suggest that to prevent gender hierarchies from self-reproducing, postmodern feminist theory must focus on the structural conditions perpetuating patriarchy.86

Postmodern feminism is concerned with the dilemma of essentialism: how feminists can remain unified on gender issues and yet recognize that feminists are shaped as much, if not more, by characteristics of race, class, and ethnicity.87 Feminists drawing on postmodernism want to avoid unitary truths and acknowledge multiple identities.

In struggling with the “no woman, many women” concept, much of postmodern feminism simply omits men. Of course, the postmodern perspective that women’s identities are shaped by their cultural and social situations necessarily includes their interactions with men. The postmodern exploration of this subject considers the social construction of gender differences and the self.88 Nevertheless, the idea that many incarnations of women exist is a woman-centered theory—the focus is on women. Even postmodern feminist ideas about the cultural composition of gender concentrate primarily on women. Thus, the reason for the omission of men from postmodern feminism is not that men are irrelevant or that they are evil, but principally that the concentration is on a different subject: woman or women.

Feminist Legal Theory in Perspective

None of this analysis is meant to suggest that the various incarnations of feminist legal theory are wrong or that they have not been helpful. They have been absolutely critical in redressing the institutional blindness to the subordination of women, affirming women’s experiences, empowering women, and elevating their social and political status. Although feminists have paid attention to the condition of men, their attention was for a particular purpose. Feminist arguments about how men have been disadvantaged were employed principally to create equal opportunities for women.

Much of feminists’ inattention to men is understandable since women lacked the attention for centuries. In its nascency, feminist theory needed to focus on the situations of women. The establishment of women’s identity and group consciousness may have required at least the temporary separation of the interests of men and women.

Feminism requires opposition to the unjust subordination of women. Underlying this definition, though, are broader suppositions that gender
role stereotyping is unjust, that categorical assumptions about people must be closely examined, and that an awareness of the social, cultural, and political ramifications of any categorization must be considered. Gender disparities exist only as relational differences. We know gender stereotyping only by comparing the treatment of one group of people (women or men) to another group of people (men or women), while bearing in mind both differences and similarities in situations, functions, needs, and rights. The focus of feminist scholarship for the past two decades has been on how women differ from men, how women have been disadvantaged relative to men, and what corrective actions are needed to secure the financial, social, and political status of women.

Gender role stereotypes include both male and female stereotypes. Clearly, any discrimination against men may ultimately result in harm to women. For example, punishing only men for statutory rape reinforces the model of males as aggressors and affords women “protection” while denying them sexual freedom. But it is vital to acknowledge that the indictment of gender role stereotypes reaches further than harms to women. Stereotypes that create constructs of masculinity harm men both directly and indirectly.

While some have recognized that perpetuation of sex role stereotypes harms men as well as women, there has been no systematic application of feminist theory to situations that injure men. Although the equal treatment theorists examined the burdens of stereotypes on men as well as women, they employed this strategy to advance the role of women. Furthermore, feminism in the modern era has done little to examine the more sophisticated and subtle ways stereotypes, particularly those stereotypes that have been internalized, affect men. Feminist legal theory has not comprehensively explored the negative effects that gender role stereotypes have on men, or it has relegated consideration of such effects to footnotes.

In disciplines other than law, feminists have begun to address the various situations of men and concepts of masculinity. Importantly, the topic of masculinity was essentially nonexistent until feminists began to write about the centrality of gender in the construction of work, domestic life, and identity. Michael Kimmel writes,

So how is it that men have no history? Until the intervention of women’s studies, it was women who had no history, who were invisible, the “other.” Still today, virtually every history book is a history of men. If a book does not have the word “women” in its title, it is a good bet that the book is about men. ... These books do not explore how the experience of being a man structured
the men’s lives, or the organizations and institutions they created, the events
in which they participated. American men have no history as gendered selves;
no work describes historical events in terms of what these events meant to the
men who participated in them as men.⁹²

Masculinity has received little attention in feminist legal theory. Only
quite recently, and then only minimally, have legal theorists explored the
ways legal theory and doctrines help to shape concepts of maleness. Not
until the mid-1990s did a small number of feminist legal scholars, such as
Mary Ann Case, Katherine Franke, and Kenneth Karst, writing about diver-
gent topics, even venture into empathetic discussions of majority group
masculinity.⁹³ Katherine Franke, for example, argues that sex discrimina-
tion laws, in making a sharp separation between sex and gender—assuming
the former is a matter of biology and the latter of culture—ignores the ways
discrimination based on sex is actually discrimination based on traditional
gender roles. In its focus on biological sex, Franke argues, “antidiscrimina-
tion law strives for too little” and can never reach situations of discrimina-
tion against transgendered individuals or effeminate men or women with
masculine characteristics or interests.⁹⁴

In a discussion of the military’s exclusion of homosexuals and women,
Kenneth Karst has described the ideology of masculinity, with its tenets of
domination and male bonding. “The exclusion policy,” he says, “is part of a
vigorous effort to keep the gender line clearly marked.” Karst carefully traces
the ways legal institutions (such as court approval of the combat exclusion
for women) shape traditional images of masculinity:

War is man’s work. Biological convergence on the battlefield would not only
be dissatisfying in terms of what women could do, but it would be an enor-
mous psychological distraction for the male who wants to think that he’s
fighting for that woman somewhere behind, not up there in the same foxhole
with him. It tramples the male ego. When you get right down to it, you have
to protect the manliness of war.⁹⁵

These are promising beginnings, but much greater inquiry needs to aim
at discovering the ways legal constructs are interwoven with the social prac-
tices that define what it means to be male in this culture.

Many of the insights from the different incarnations of feminist theory
can be applied to the treatment of men. To the extent that caring, contextu-
alizing, unmasking, raising awareness, and emphasizing connections be-
tween people are important operating principles, they should be applied to
men’s relations to legal theory and doctrine.
Pragmatic feminism teaches the importance of looking at specific situations and the danger of universals. Feminists have argued for greater contextual analyses of the categories of identity—such as race, gender, class, ethnicity, and sexual orientation—that shape people’s decisions and attitudes. These contextual methodologies can be applied to various situations and roles that shape the constructs of masculinity.

An important methodological tool of feminism is unmasking gendered biases or assumptions made by social groups and institutions, laws, and legal doctrines. It is a process that consists of evaluating whether rules operate in a neutral manner and, more generally, of making gender visible. The treatment of men by various legal doctrines reinforces stereotypic notions of maleness. For example, the law defining the kinds of injuries that are compensable under Title VII describes, legally, who can suffer. It speaks volumes about the ways law views men as impervious to emotional pain.

Feminist legal theory is ready to move beyond the singular interests of women. Men have not been invited into the theoretical discourse; they have not been invited to the table (you should excuse the expression). The next two chapters move the discussion from the level of theory to practice. They suggest ways gender role stereotypes are both constructed and perpetuated in social relations and by legal doctrine.