

Gender, Sexualities and the Law
**Edited by Jackie Jones, Anna Grear, Rachel Anne Fenton and
Kim Stevenson (2011)**
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Reviewed by Sara Mills

Gender and language has had a rich interdisciplinary history, drawing on psychology, sociology and other disciplines. In recent years, as the field has become more established, this interdisciplinary focus has become less evident. It is for this reason that I was pleased to be reviewing a book that is not explicitly on gender and language, but which obviously has some insights into the field of gender and sexualities and their relation to language. Feminist legal theorists have a different range of concerns to gender and language theorists, and in reading about them, the concerns that we have at present in gender and language research, which seem to present themselves as self-evidently the only concerns that we could have, are brought into sharper focus. Throughout this collection of 23 chapters, there is an abiding concern with the notion of the legal subject as male, and the impact this has on the female legal subject. There is also a concern with the illusion of choice and autonomy.

There are six sections, on the following themes:

- theory, law and sex;
- representations, law and sex;
- violence, law and sex;
- international law and sex;
- reproduction, law and sex; and
- relationships, law and sex.

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In 'Women and the Cast of Legal Persons'(Chapter 1), Ngaire Naffine discusses the way that women are represented as additional and as abnormal, if we take the idealised legal subject as male. This has implications for the rights of women when they are in conflict, for example, with the rights of a foetus, when a pregnant woman refuses medical treatment. Often women are treated within the law as honorary men, until they present as 'sexual or reproductive persons', in which case they are treated as exceptional, and their rights as individuals are not always guaranteed: 'they are the problematic ones, not the law' (p. 23).

Anna Grear takes this as her starting point in 'Sexing the Matrix' (Chapter 3); she argues that we should challenge the binary basis of the law in order to imagine 'the possibility of a more inclusive legal rationality' (p. 45). She also argues for a focus on hybridity, but this risks 'the erasure of gender specific rights and the categories currently vital for political resistance to subjugation', and the 'possibility that the masculine will simply reassert itself in the universal image of the hybrid' (p. 46). Instead, she stresses that we should focus on the 'embodied peculiarity' of all subjects in which our 'universality and irreducible uniqueness come into potent symbolic fusion' (p. 47). Thus within the law, the focus would be on a gender spectrum rather than a binary.

In '(De)sexing the Woman Lawyer', Rosemary Hunter (Chapter 2) draws attention to the problems for women lawyers in trying to 'pass' as males within a thoroughly homosocial work environment. When they are harassed by males they are often put off from bringing complaints of sexual harassment as this 'entails further (self)identification with one's invidious embodiment' (p. 29). It is difficult for women to engage in the necessary socialising that the job entails – golfing, drinking, strip clubs.

In 'Vulnerability, Equality and the Human Condition', Martha A. Fineman (Chapter 4) analyses the conditions which often lead to inequality, and suggests that we should not necessarily focus on identities but rather on the elements for which those identities serve as proxies: 'poverty, ... subordination and a lack of access to basic social goods' (p. 54) She argues for an analysis which does not see inequality as the individual's fault, as a product of their identity, nor as the result of 'natural forces beyond the state or law to rectify' (p. 54). Instead of focusing on discrimination, the state should focus on the conditions needed to bring about equality.

Alice Belcher, in 'The "Gendered Company" Revisited' (Chapter 5), examines the way that companies are characterised as masculine and suggests that the inclusion of more women on the board changes the company's ethos. In Chapter 6, Leslie Moran examines the way that the sexuality of those within the legal profession is hinted at, through a close

visual examination of a portrait of Michael Kirby, a gay Australian judge. By examining the context of the portrait – that certain other judges refused to be included in the portrait – and setting this against the history of portraits of heterosexual judges, she shows the way that homosexuality is both very present and absent.

Todd Brower, in ‘Sexuality, Gender and Social Cognition’ (Chapter 7) examines the way that stereotypes inform what constitutes gay or lesbian identity within legal cases, and Judith Rowbotham (Chapter 8) analyses the stereotypes which underlie the treatment of female criminals, resulting in women being punished more harshly than men for certain crimes. Male violence is considered inevitable, natural, as due to testosterone, whereas female violence is not. In Chapter 9 Kim Stevenson also examines these stereotypes as they pertain to rape trials, particularly the myths about how rape victims should behave. This is echoed in Chapter 12 by Mandy Burton on the stereotypes of the ‘ideal’ victims of domestic violence, who are seen to conform to traditional gender roles. Iain McDonald in ‘When Hate is Not Enough’ (Chapter 11) examines the harm that can be caused by labelling homophobic violence as hate crime, arguing that it can enforce a climate of insecurity and ‘echoes the very logic of difference’ (p. 155).

Shilan Shah-Davis’s chapter on ‘honour killings’ in Pakistan (Chapter 14) was a stark reminder of the fate of women who do not conform to traditional gender roles; in the cases she discusses, the families who openly murdered a daughter who was seeking a divorce were not prosecuted. Shah-Davis tries to explain the complex legal and cultural context within which these legal decisions are made.

Kate Gleeson (Chapter 16) shows how women become invisible within abortion legislation and decisions about abortion. In Chapter 17 Bridget J. Crawford takes issue with third wave feminist theorists’ embracing of motherhood, and examines particularly Rebecca Walker’s uncritical account of becoming a mother. For Walker, until you become a mother, you’re still a daughter. Within her account there is no analysis of the imbalance in child-care, unequal pay and other issues which second-wave feminists focused on.

Rachel Anne Fenton, D. Jane V. Rees and Sue Heenan focus on reproductive technology in Chapter 18, and again challenge third-wave feminism’s ‘matrigyno-idolatry’ (p. 242). Artificial reproductive technologies like *in vitro* fertilisation (IVF) have a very low success rate, and yet women often see them as a way of delaying pregnancy until later in their career. Women can only get IVF on the UK’s National Health Service when they have been trying to become pregnant for three years, thus discriminating against lesbians, because their reason for choosing IVF is not due to infertility.

In Chapter 19 Susan B. Boyd critiques the concept of autonomy, arguing for a more relational model. For her, autonomy is only possible where one has support from others. She examines custody cases where shared parenting is the norm and the impact that this has on women's autonomy, who often have to continue contact with absent fathers where that relationship is harmful for both the woman and the children. Jeffrey Weeks (Chapter 20) analyses the legislation surrounding civil partnership. He shows that 'marriage can never be free of its heterosexual assumptions', and that many gay and lesbian people do not wish to marry or have civil partnerships because they have managed to forge relationships that are not based on an 'exclusive notion of love, which is locked into ideas of possession and wrapped in violence' (p. 273).

Elsje Bonthuys and Natasha Erlank (Chapter 21) analyse the responses of those within the Muslim community in South Africa to homosexuality and gay marriage, and come to the conclusion that there is a great deal of tolerance of homosexuals, but only if they are not open about their sexuality. Gay marriage is therefore difficult because it is a public acknowledgement of homosexuality, which cannot be admitted within Islam.

Overall, this collection gives new insights at both a theoretical and practical level into issues such as choice and autonomy in relation to the law. For me this has been a useful excursion into a range of new perspectives and insights into ways of thinking about gender, feminism and language.