

CRIMINAL JUSTICE
HANDBOOK
**on Masculinity,
Male Aggression,
and Sexuality**

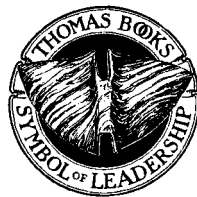
Carmen M. Cusack, J.D., Ph.D.

**CRIMINAL JUSTICE HANDBOOK ON
MASCULINITY, MALE AGGRESSION,
AND SEXUALITY**

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By

CARMEN M. CUSACK, J.D., PH.D.



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INTRODUCTION

Masculinity is a group of characteristics considered to be manly and socially acceptable for males. Masculinity may delimit acceptable levels of aggression and guide “normal” sexuality. *Criminal Justice Handbook on Masculinity, Male Aggression, and Sexuality* primarily discusses masculinity as a social construct, an ideal, and an impediment for males and females. At times, “masculinity” is used to describe an absence of femininity and may insinuate misogyny; yet, masculinity is not inherently opposed to femininity or feminism. Feminism is the theory of equality between sexes. Masculinity tends to envision social hierarchy, but hierarchical structures can support equality. However, masculine gender roles may seem to construct or rely on feminine weakness or subordination for collective male hegemony.

Masculinity is often exhibited as a gender role. Gender roles are behaviors, emotional responses, interpersonal rules, appearances, sexual desires, and other aspects of human dynamics that may restrict or enhance masculinity. Gender roles conform to societal norms that dictate parameters in nearly every area of life. Gender roles may require or encourage “normal” males to exhibit masculinity; while females may be rejected or disadvantaged for exhibiting masculinity. Yet, masculine behavior is not *per se* advantageous. Femininity may be gentle, collaborative and caring; but, it may be perceived or misclassified as weakness. Biological explanations of female weakness, and sometimes male weakness, may be used to justify femininity’s inferiority to masculinity. Direct correlations between masculinity and male hegemony are challenged by homosexual and transgender males who exhibit ruggedness and other traditionally masculine characteristics. As a class, nonheteronormative males violate norms upheld by social institutions preserving binary gender roles relating to biological sex and heterosexuality.

Criminal Justice Handbook on Masculinity, Male Aggression, and Sexuality analyzes a variety of social and criminal justice processes to examine how masculinity interplays with aggression. Aggression may relate to wealth, marriage, fraternal organizations, or other institutionalized patriarchal bastions.

Sexual aggression is coercive, controlling, or entitled behavior that may relate to cultural beliefs or mentalities that justify rape or scoring sex by any means necessary. Drugs and alcohol also tend to relate to aggression and sexual aggression; however, women knowingly continue to consume drugs and alcohol at higher rates despite their associations with sexual aggression. The criminal justice system continuously responds to drug and alcohol-fueled sexual aggression using an adversarial justice model; yet increasingly, the justice system has treated substance abuse using alternative resolutions and interventions.

U.S. society attempts to preserve and promote nuclear families. Yet, families are statistically dangerous environments for males and females. Males are more likely to be killed by female intimate partners than by female acquaintances or strangers. Women often kill men using one of several traditional *modus operandi*, including penile amputation and poison. Female intimate partners are more likely to be killed by male intimate partners than by any other person. Men are most likely to shoot female intimate partners. Rape is more common between intimate partners than strangers; and at one time, noninjurious rape and intimate partner violence between spouses was legal. However, law can no longer be used to protect traditional family structures at the expense of safety and freedom from sexual coercion. Similarly, laws have increased their protection of homosexual intimate partners; yet, enforcement and remedies may continue to be unequal or lacking.

Penises, scrotums, and private areas have been the focus of a significant body of constitutional law and criminal procedure. A few well-established laws and legal principles regulate the government's treatment of genitals; however, government agents touching, patting-down, searching, and viewing clothed or concealed genitals may continue to traverse into unsettled areas of law in certain contexts raising substantive and procedural legal issues. In some cases, courts have held that people are entitled to rights protecting their private areas from intrusion; but, courts often rule that genitals may be viewed or manipulated for protection or officer safety in some contexts. These laws call into question same-gender pat-down laws and other gendered procedures that were likely created to accommodate privacy and reduce harassment; but may cause conflict and discomfort between officers and transgender individuals. Definitions of "sex" and "gender" in the criminal justice system continue to be binary and traditional, for the most part. Most often, a person's "sex" refers to his or her genitalia (i.e., vagina or penis). However, criminal justice responses to transgender individuals in some situations may be alleged or held to have violated the Constitution; one major violation results from inappropriate conflation of sex with gender.

Metaphorically, weapons are phalluses capable of penetrating numerous victims. Zero sum battles yield a single victor. Weapons embody biological-

ly-oriented fantasies of spraying and penetrating as necessary to establish dominance and authority. They authorize leadership to a victor and ascribe paternalistic powers to protectors. *Criminal Justice Handbook on Masculinity, Male Aggression, and Sexuality* leads incorporates humanistic analyses of weapons, ammunition, toys, and aggression as sexually symbolic displays of masculinity.

Gang banging, illegal immigration, drug dealing, and human trafficking involve black markets and networking. There is significant overlap between perpetrators, movement patterns, information, and resources used to commit these crimes. People involved in one of these activities may likely be connected to another similar industry; and people victimized by one activity may perpetrate similar crimes. Young and middle-aged men make almost all of the profit from these markets; and female involvement is typically reduced to human capital (e.g., prostitution). However, females are likelier than men to work as sex traffickers; and men are more likely to be victims of human trafficking for labor.

This book discusses how male and female animals' sexualities generally are relevant to their statuses as working animals. However, surgical alterations on males or females are often species-specific. Thus, among some species of animals, female working animals may be more likely to be surgically altered; but, male working animals in other species may be likelier to be surgically altered. Handlers almost always discourage animals from participating in masculine behaviors; however, controlled aggression may be necessary among K-9s to apprehend suspects. Thus, K-9 dogs and K-9 handlers may operate under separate constructions of masculinity because human officers may liberally incorporate masculinity into their work; while canines may only exhibit masculinity on command (e.g., when ordered to seize a suspect). Working animals in criminal justice may be sexually victimized by handlers who inappropriately attempt to establish dominance.

Juveniles are sexually dominated and victimized by adults in correctional environments. Juveniles are statistically likelier than adults to be sexually violated by guards, delinquents, and inmates. In the general population, juveniles are at greater risk for victimization online; in school; and in other environments that lack parental support or supervision. Youth may bully peers who participate in alternative sexualities; however, some sexually deviant youth may prey on other minors. Male juveniles may voluntarily participate in risky behaviors, including statutory rape, to exercise independence and formulate manly identities.

Public displays of misconduct and disorderly behavior may stem from political speech; however, civil disobedience can be teased from misconduct because civil disobedience is passive. Civil disobedience usually does not involve disruptive and aggressive behaviors that serve to emotionally alleviate

aggressors or assert an individual's will over society or victims. Misconduct, like aggression and violence, may relate to hypermasculinity. Hypermasculinity may not be entirely different from masculinity. Definitions may be subjective; yet, "hypermasculinity" generally implies excessive masculinity. In some cases, legal lines between hypermasculinity, disorder, self-defense, vigilantism, and chivalry may seem to be arbitrarily drawn, especially when public figures are involved (e.g., athletes). Society may not sufficiently discourage overtly hypermasculine displays.

Criminal Justice Handbook on Masculinity, Male Aggression, and Sexuality implicitly relies on some feminist principles because it evaluates sex and gender equality; and it raises the possibility that postpubertal gender differences could be social constructions. Yet, despite feminist ideologies, males—as a group—are distinguishable from females. Differences may be innate or constructed; or they may lie on a spectrum with genetics on one end and gender roles on the other end. The criminal justice system has founded laws and policies on beliefs that gender is innate and socially constructed. For example, forensic investigators examine and produce evidence under the presumption that gender differences exist and may accurately reflect biological sexual differences. Differences between males and females include size, genitals, and sex cells. One reason that law and criminal justice routinely focus on gender differences may be that law enforcement organizations often negate feminism operating as boys' club. Boys' clubs are organizations, groups, or institutions that place masculinity above femininity, or males above females. They operate using hierarchies that rank members; yet, they may impose uniformity through various methods, including humiliation and homoeroticism.

This text should be used as a handbook to learn about and synthesize hundreds of intersections between criminal justice, laws, and maleness. Through these intersections, maleness may be defined relevant to masculinity, sexuality, society, crime, family, and interpersonal relationships. *Criminal Justice Handbook on Masculinity, Male Aggression, and Sexuality* attempts to explain how the law equalizes, protects, bridles, and enforces masculinity while dealing with crime, which often exploits and exaggerates masculinity.

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**CRIMINAL JUSTICE HANDBOOK ON
MASCULINITY, MALE AGGRESSION,
AND SEXUALITY**

Chapter 1

TRADITIONAL MASCULINITY

INTRODUCTION

Masculinity has been defined by specific and general characteristics and lifestyles considered to be socially acceptable for males. Gender roles may construct aspects of masculine behavior, ideas, relationships, and identity. Males may willingly adopt certain aspects of masculine gender roles; males may participate in masculinity to conform to societal or cultural pressures and influences; or they may attempt to or succeed in rejecting masculine gender roles. In some contexts, masculinity may be defined by polarization with femininity; and in other contexts, masculinity may be defined by absence of femininity.

MALES AND MASCULINITY

Throughout the world, the word “male” may be linked with societal and cultural definitions of “masculinity.” Various definitions of the word “male” and linkages to masculinity may be theoretical, biological, political, stereotypical, professional, and familial. Thus, socially and legally enforced male-based gender typologies may be defined by or derived from biology, appearance, psychological factors, or legal sex.

Legal contexts may determine the relevance of being male. One example is that in some jurisdictions certain crimes may only be charged against males, i.e. rape (Wencelblat, 2004). However, only a minority of jurisdictions exclusively prosecute males for rape. A second example is that at common law, “rape” was defined as a violation that could not be perpetrated against males (Teichner, 2008). A third example occurs in family law contexts, including relevant civil and criminal cross-over. Males’ parental rights share a

relationship with fatherhood; and in some rare instances, males' parental rights may directly relate to a female partner's motherhood (Denno, 1998). In civil and criminal contexts, sexual harassment demonstrates a fourth example. Law explains that women's rights may be violated when women receive negative treatment due to associations with gender, sex, childbirth, and pregnancy. In these legal contexts, "woman" may be diametrically distinguishable from "man," e.g. biological sex and ability to become pregnant.

Sexual harassment, discussed further in Chapter 15, is a pervasive problem that may receive more intellectual attention than practical remediation. Some scholars and researchers suspect that sexual harassment and other sexual violations against males may be severely underreported, perhaps because masculinity is associated with strength to withstand predation and ability to defend oneself from subjugation. Men may be indoctrinated by gender roles that cause them to fear being ridiculed for reporting sexual violations. Fear and lack of resources may lead to underreporting. Sexual predators may understand masculine indoctrination and cultural perspectives; and they may perceive and rely on a somewhat low risk of being reported by male victims. Even when victims report, heterosexually-oriented violations may be dismissed as juvenile behavior; and homosexually-oriented violations may be considered too taboo to be addressed; too strange to be understood; or too stereotypical to be taken seriously (Wencelblat, 2004). For many years, American society promoted the belief that men could not be sexually assaulted by women. Men who experienced erections or ejaculations during sexual assault, perpetrated by males or females, were dismissed as having enjoyed or consented to sexual contact (Cusack, 2014; Fuchs, 2004). Understandings have evolved about female-on-male abuse, but traditional masculine gender roles may result in men internalizing denial of male vulnerability; and constraints may correlate with men being unable to recognize when they are victimized by women (Levine, 2006).

Medical determinations of "sex" and correlative genders may or may not be relevant within the criminal justice system (Greenberg, 1999). For example, "legal sex" is often defined by chromosomes, but legal categories delimit two genders. Science has identified several sex chromosomes variations, i.e. XXY, XXX, and XO. Potentially, these variations may defy binary legal definitions of "male" and "female," i.e. XY and XX. Appearance and gender assigned at birth may determine legal sex. Legal scholars recognize that 1 percent to 4 percent of humans may be intersex; yet, the legal community disagrees about what weight, if any, that fact should bear on legal sex classification. Like race, sex chromosomes are an immutable trait even though they may not correspond to appearance or norms; chromosomes cannot be impacted or altered by hormone therapy or gender reassignment surgery (Frye & Meiselman, 2001). Due its constancy and reliability, defining "legal sex" using immutable traits may foster fairness and even applications of the

law. Furthermore, it could expose ways in which law is used to enforce binary gender roles.

EQUAL PROTECTION

The Fourteenth Amendment to the U.S. Constitution establishes a right to Equal Protection. Under this right, suspect classes cannot receive disparate treatment under the law. Race and religion are often considered to be suspect classes. Courts use strict scrutiny to evaluate the constitutionality of laws having discriminatory affects against races or religions. Discrimination may be indirect, i.e. apparent in a law's effect rather in a law's wording. For laws to be upheld by the U.S. Supreme Court under strict scrutiny, the government must prove that narrowly tailored laws are used to further a compelling government interest using the least restrictive means. Women are considered to be a quasi-suspect class because of their traditionally subordinated role and exclusion from public life. Courts may increase their scrutiny of gender-based laws to an intermediate level; though, courts have invalidated gender inequality using rational review (*Reed v. Reed*, 1971). Intermediate scrutiny only requires the government to demonstrate that a law furthers an important government interest substantially related to the challenged law. Although many gender-based classifications may violate equal protection, some gender-based classifications may serve to remedy historical mistreatment of women. Yet, governmental attempts to remedy inequality cannot harm or disenfranchise males. For example, employers may never discriminate against employees or job candidates based on sex or stereotypes about sexual orientation (*Phillips v. Martin Marietta Corp.*, 1971). Men and women must be treated equally by the government and employers (*Craig v. Boren*, 1976; EEOC, 2014). In some cases, businesses open to the public cannot discriminate against customers or members.

Oppression and discrimination against men is commonly ignored. Males may institutionalize gender norms by controlling males' in public and private. Government, which was once exclusively controlled by males, may discriminate against males and institutionalize traditional gender roles. For example, prior to 2003, males were prohibited from having oral or anal intercourse with other males; and in many states, males are prohibited from marrying males because same-sex marriage violates traditional gender norms (*Lawrence v. Texas*, 2003). At the federal level, discrimination against same-sex marriage was abolished on equal protection grounds stemming from due process guaranteed in the Fifth Amendment (*U.S. v. Windsor*, 2013). Despite relatively recent political changes, the government continues to enforce and