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Sexuality, Gender, Justice and Law: Rethinking Normative
Heterosexuality and Sexual Justice from the Perspectives
of Queer Humanist Men and Masculinities Studies

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Declaration

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Abstract

In this thesis, I critically investigate how issues of sexual justice, sexual politics and normative heterosexuality are interpreted, constructed, and discussed in several salient emancipatory or critical legal and political projects on sexuality and gender, especially in the areas of family relations. Subordination feminism, men and masculinity studies, queer theories, and liberal theories of sexual justice are the major theories I engage with. After critically reviewing the strengths and weaknesses of these theories, I argue that it is worth incorporating a combined approach of queer humanist men and masculinities studies in thinking about gender oppression, normative heterosexuality, law and sexual justice. The combined approach, I argue, is an approach that draws on queer theories, liberal theories of sexual justice, some feminist theories, and humanist men and masculinities studies. I contend that one of the core insights of queer humanist men and masculinities studies is the rejection of an oversimplified and unidimensional concept of gender oppression and gender power relations; a concept that is frequently assumed by subordination feminism. Queer humanist men and masculinities studies view the power relations of gender and the gender oppression in the family as multi-layered and complex, not just about male domination and female subordination. I argue that we will be able to see more realities and previously hidden or marginalised sexuality and gender oppression by incorporating perspectives inspired by queer humanist men and masculinities studies. I further contend that we cannot effectively subvert normative heterosexuality by only seeing and addressing gender normativity in one gender. I discuss the implications of queer humanist men's studies in equality law, family law and gay men's studies. In conclusion, I argue that queer humanist men and masculinity studies can broaden our base of concerns and knowledge of sexual injustices and sexual oppression in sexual justice projects. It is an approach worth considering and an area of sexual justice study worth further exploration and research.

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Chapter 1 Introduction: Themes, Approaches, and Structure of the Thesis

1.1 Research purposes and research topics

The general aim of the thesis is to critically re-examine normative heterosexuality, sexual justice, sexual politics, and law in modern democratic societies, inspired by approaches developed by queer humanist men and masculinities studies. I will critically investigate how issues of sexual justice, sexual politics, gender oppression, and normative heterosexuality are interpreted and discussed in salient contemporary non-conservative, emancipatory or critical legal and political projects on sexuality and gender in modern Anglo-American scholarship, especially in the areas of family relations.

Among the non-conservative sexual projects, liberal sexual justice theories, subordination feminist theories¹ and queer theories are three of the most visible and salient approaches in current progressive or critical schools of thoughts on sexual justice (sexuality and gender justice), sexual politics and normative heterosexuality. They all contribute greatly from different angles to present challenges to some aspects of sexual injustices and to help the unravelling of some of the oppression in normative heterosexuality. It is therefore worth critically reviewing these contributions and the possible limitations of their arguments on normative heterosexuality, sexual politics, and sexual justice. I will critically examine the pros and cons of some widely-regarded progressive or emancipatory theories of liberal sexual justice and theories of subordination-feminist sexual justice in law and politics. To what extent and in which aspects do these theoretical systems

¹ I use the terms 'subordination feminism' and 'subordination-feminist studies of men and masculinities' to refer to those feminist theories and men and masculinities studies that hold that currently men or (male) masculinity are systematically and institutionally privileged, while women or (female) femininity are systematically and institutionally oppressed, subordinated and disadvantaged, and which furthermore hold that gender oppression is overall unilateral in the sense that women or femininity are oppressed or subordinated by men or masculinity. Normatively, these gender justice projects, consciously or unconsciously, tend to focus on or prioritise the gender oppression of, and gender injustices towards, women or femininity. I will explain the terms in more details later in this chapter.

contribute to the task of destabilising and subverting the constraining practices, rules, systems, and stereotypes of sexuality and gender in modern democratic societies? To what extent are sexuality justice and gender justice promoted under their proposals? And to what extent and in which aspects might some of these proposals commit certain similar faults as conservative and traditionalist theories do in their projects of law, sexuality, and gender?

Moreover, in what respects and to what extent might some of the contemporary emancipatory sexual justice and sexual politics projects actually be at risk of producing, reproducing and promoting some problematic norms, ideologies, stereotypes, laws, and practices of normative heterosexuality in their legal and political theories and proposals? More broadly, what are the implications and limitations of queer and post-structuralist theories' intervention in sexual politics, sexual justice, and law? I will argue that approaches inspired by queer humanist men and masculinities studies should contribute significantly to our thinking about the challenges of normative heterosexuality, sexual justice, sexual politics, and law in modern democratic societies.

Normative heterosexuality (or heteronormativity) denotes social structures and culture that privilege, prioritise, or naturalise the institutions, norms, ideologies, and practices of heterosexuality. The terms (normative heterosexuality or heteronormativity) were used by critical sexual theorists such as queer theorists and feminists to refer to the normalisation, standardising, and privileging of certain sexuality norms and gender norms based on the assumptions and ideologies of dominant heterosexuality.²

² For the discussion of the origin and meaning of the terms 'normative heterosexuality', 'heteronormativity', and other related concepts such as 'compulsory heterosexuality', 'heterosexual contract', 'heterosexual matrix', and 'heterosexual imaginary', see Chrys Ingraham, 'Heterosexuality: It's Just Not Natural!', in Diane Richardson and Steven Seidman eds., *Handbook of Lesbian and Gay Studies* (London: Sage, 2002), 75-76; Steven Seidman, 'Critique of Compulsory Heterosexuality', in Lena Martinsson and Eva Reimers eds., *Norm-struggles: Sexualities in Contentions* (Newcastle: Cambridge Scholars Publishing, 2010), 191-208.

Early gay liberationists and lesbian feminists have already noticed and emphasised that the institution of heterosexuality is constituted by both gender constraints and sexuality constraints. They hold that 'normative heterosexuality creates a structural order of gender binarism, hetero/homo sexual division, male dominance, and heterosexual privilege.'³ Sexual politics and sexual justice projects that aim to question normative heterosexuality therefore include at least two core dimensions: challenging sexuality injustice and challenging gender injustice in the institutions, systems, and culture of normative heterosexuality.⁴ Indeed, as queer feminist Judith Butler suggests, gender normativity is highly bound up with sexuality normativity; and both of them are also closely connected with the norms and requirements of sexual dimorphism of the sexed bodies. She describes the compulsory coherence among sexed body, gender, and sexual desires within normative heterosexuality as 'the heterosexual matrix.'⁵ Hence normative heterosexuality (or heteronormativity) can be conceptualised as:

*'a regime that organizes sex, gender and sexuality in order to match heterosexual norms. It denotes a rigid sexual binary of bodily morphology that is supported by gender and sexual identities . . . It demands a coherence of idealized morphologies, presumptive heterosexual desire and a thoroughly constructed gender binary.'*⁶

In this thesis I start with the insight that projects of sexual politics and sexual justice, which intend to query the regime of normative heterosexuality and to promote

³ See Seidman, *ibid.*, 192. However, as my later arguments will demonstrate, I criticise the assumption and belief that gender injustice is almost always male domination (over female), as some lesbian feminist and gay liberationist theories explicitly or implicitly suggest.

⁴ Although normative heterosexuality is primarily a concept related to sexuality normativity and gender normativity, this does not mean their intersections with other axes of social categories such as class, race and age in heteronormativity should be neglected. For example, when addressing the injustice of normative heterosexuality in the workplace and its impact on gay men, we not only need to pay attention to how sexuality and gender norms might affect gay men as a social group in normative heterosexuality, we also need to appreciate the way class, culture or ethnic background may also intersect with sexuality and gender categories. Sexual politics and sexual justice projects therefore should be sensitive to difference and diversity within particular gender and sexuality groups.

⁵ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999), 6, 208 n.6.

⁶ M do Mar Castro Varela, N. Dhawan and A. Engel, 'Introduction', in M do Mar Castro Varela, N. Dhawan and A. Engel eds., *Hegemony and Heteronormativity: Revisiting 'The Political' in Queer Politics* (Surrey: Ashgate, 2011), 11.

sexual justice, ought to address both sexuality injustice and gender injustice that are present in the institutions and culture of normative heterosexuality. This is mainly because they are often highly interconnected with and mutually supported by each other and also because they both play core roles in maintaining, producing, and reproducing the restrictive heteronormative norms, practices, and ideologies. As feminist Stevi Jackson holds, heterosexuality is not simply a form of sexual expression but also a set of gender constraints which orders and regulates our sexual and social life: 'Heteronormativity defines not only a normative sexual practice but also a normal way of life.'⁷ Scholar Jonathan Ned Katz also argues that 'heterosexual order enshrines not procreation but [biological] sex difference and eroticism.'⁸ He suggests that a critique of heterosexual order ought to address both the sex/gender norms and the erotic norms in normative heterosexuality. Katz criticises Monique Wittig's critique of normative heterosexuality because her critique focuses almost entirely on its sex/gender orders while she 'presents no adequate analysis of the "sexual," erotic half.'⁹

As the above analysis indicates, we can argue that in projects to elucidate and promote sexual justice and sexual politics it is important to address both sexuality injustices/constraints and gender injustices/constraints of the systems of normative heterosexuality. Without addressing both dimensions of gender injustice and sexuality injustice in legal and political projects of sexual justice, we will not be able to really unsettle and to rework the norms and culture of normative heterosexuality. Accordingly, I will illustrate in Chapter 2 that my use of the concept of sexual justice includes both the dimensions of sexuality justice and gender justice and my use of the concept of sexual politics also comprises both sexuality politics and gender politics in this thesis.

⁷ Stevi Jackson, 'Gender, Sexuality and Heterosexuality: The Complexity (and Limits) of Heteronormativity', *Feminist Theory* 7, no. 1 (2006), 107.

⁸ Jonathan Ned Katz, *The Invention of Heterosexuality* (Chicago: University of Chicago Press, 2007), 157.

⁹ Ibid.

As families are one of the core sites where the constraints and impact of normative heterosexuality are most frequently and profoundly experienced and contested, this thesis will focus particularly on examining normative heterosexuality and sexual justice in family-related issues and laws such as family violence. I will criticise those theories of sexual justice, laws, and policies that either show tendencies to standardise heterosexist experiences or show tendencies to perpetuate gender bias, gender discrimination, and gender stereotypes in family-related issues. I argue that not only are conservative traditionalist projects guilty of perpetuating oppression and injustices of normative heterosexuality in the family, but that also, unfortunately, sometimes even certain so called 'progressive' feminist or liberal approaches may also help to produce and reproduce some unjust heteronormative stereotypes, discrimination, practices, and oppression in their assumptions and projects of sexuality and gender. Gender equality for women in the family certainly should be taken very seriously in family justice projects. However, I hold that concerns for gender justice and gender equality in families ought not to be generally reduced to or narrowly interpreted as mainly only concerned about justice/equality for (heterosexual) women in families. For example, influential liberal justice philosopher John Rawls and liberal feminist philosopher Susan Okin both generally reduce the issues of gender injustice in the family to issues of injustice towards (heterosexual) women in the family.¹⁰ The violence and injustice of crude stereotyping and overgeneralisation of sex/gender in some family law jurisprudence and jurisdictions ought to be examined also. I will criticize this kind of gender reductionist family justice and family law theories and approaches in later chapters.

In this thesis I contend that although many aspects of sexual injustices in modern democratic societies have been appropriately raised and challenged by progressive or emancipatory liberal and feminist legal and political theories and proposals on sexuality, gender, and justice, nevertheless some aspects of unjust and problematic sexuality and gender normativity in the institutions and culture of normative

¹⁰ John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), 162-167; Susan Moller Okin, *Justice Gender and the Family* (New York: Basic books, 1989), 134-186.

heterosexuality are generally marginalised or neglected in major progressive or emancipatory legal and political theories. Moreover, some assumptions and ideologies that are popular in some subordination feminist legal theories and legal policies may actually contribute to the reinforcement, production, and reproduction of some old or new forms of injustices, hierarchies, and exclusions in sexuality and gender and therefore perpetuate normative heterosexuality. In other words, while some liberal and subordination feminist projects regarding sexuality and gender contribute much in addressing certain aspects of historical and traditionalist oppression of gender and sexuality in normative heterosexuality and while they have been generally regarded as progressive or emancipatory legal and political projects,¹¹ there are still some areas of sexual injustices they might fail to properly address in their projects. Furthermore, some of the proposals and policies from subordination feminisms might serve to generate, create, and maintain some problematic forms of myths, stereotypes, exclusion, enforcement, discrimination, distinctions, and oppression of sexuality and gender and therefore to perpetuate the norms, practices, and culture of normative heterosexuality. I will critically review the pros and cons of influential subordination feminist discourses, ideologies, and policies on sexual justice and sexual politics, especially in family law and family justice related issues. I will illustrate how their projects might incur the risk of perpetuating gender and sexuality injustices in law and society and why we need also to consider voices other than subordination feminisms in the law and politics of gender justice.

Liberal sexual justice theories, especially liberal gay rights theories, are also among the most eloquent and salient schools of thought in contemporary Anglo-American legal and political theories against conservative sexual projects and against sexual injustices.¹² They argue against conservative and traditionalist sexual morality

¹¹ For example, see Wendy Brown's critiques of progressive politics. Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995).

¹² Liberal theories of gay rights provide normative justifications and moral grounds for the law and politics of gay rights and sexuality justice. For example, see Nicholas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London: Washington D.C., Cassell, 1997); Nicholas Bamforth and David A. J. Richards, *Patriarchal Religion, Sexuality, And Gender: A Critique of New*

politics and law such as the New Natural Law theory¹³ by providing moral justifications for liberal sexual politics and law. Liberal theories of sexual justice such as liberal gay rights theories generally base their sexual justice projects on some kinds of important liberal humanist values such as privacy, equality, freedom, or personal autonomy.¹⁴ On the one hand, their normative justifications for liberal sexual justice, I will argue, are very valuable as they help to explain the normative grounds and humanist values of sexual justice and sexual politics projects against normative heterosexuality. On the other hand, there might be some problems in their proposals worth further reflection. I will critically review some leading liberal sexual justice theories in Chapter 5.

Some post-modernist,¹⁵ post-structuralist,¹⁶ and queer theorists have already pointed out some of the limitations in certain subordination feminist or liberal

Natural Law (New York: Cambridge University Press, 2008); Morris B. Kaplan, *Sexual Justice: Democratic Citizenship and the Politics of Desire* (London: Routledge, 1997); David A. J. Richards, *Women, Gays, and the Constitution: The Grounds for Feminism and Gay Rights in Culture and Law* (Chicago: University of Chicago Press, 1998); David, A. J. Richards, *Identity and the Case for Gay Rights: Race, Gender, Religion as Analogies* (Chicago: University of Chicago, 1999); Richard D. Mohr, *Gays/Justice: A Study of Ethics, Society, and Law* (New York: Columbia University Press, 1988); Richard D. Mohr, *The Long Arc of Justice: Lesbian and Gay Marriage, Equality, and Rights* (New York: Columbia University Press, 2005); Carlos A. Ball, *The Morality of Gay Rights: An Exploration in Political Philosophy* (London: Routledge, 2003).

¹³ New Natural Law is a modern school of thought in moral, political and legal philosophy that argues for and defends certain conservative sexual morality and gender ideologies. Germain Grisez, John Finnis and Robert P. George are among the key members in this school. For a systematic and in-depth critique, see Bamforth and Richards, *ibid*.

¹⁴ Humanism in ethics, law and politics are theories and projects that aim to reduce human suffering and to enhance well-being. They generally emphasise the values of human dignity, freedom, equality, compassion, respect and empathy. See Ken Plummer, 'Critical Humanism and Queer Theory: Living with the Tensions', in Norman K. Denzin and Yvonna S. Lincoln eds., *The Sage Handbook of Qualitative Research*. 4th ed. (Thousand Oaks: Sage, 2011), 198.

Liberal humanist theories in law and politics base their normative projects on various fundamental human values that are widely recognised in liberal societies, such as human dignity, equality, freedom or personal autonomy. They often debate on which human value or values are more fundamental in liberal legal and political systems. Liberal gay rights theorist Nicholas Bamforth provides a useful and inspiring critical evaluation of modern liberal theories of gay rights and sexual justice. He concludes that the value of sexual autonomy can best justify gay rights law and politics. See Bamforth, n 12 above, 196-271.

¹⁵ Sociologist Steven Seidman holds that postmodernism is 'a broad cultural and intellectual standpoint that views science, and all claims to knowledge, as moral and social forces and that is suspicious of systematizing, theory-building projects.' In the law and politics of sexuality and gender, he thinks the major point of postmodernism is on 'the creation of social spaces that encourage the proliferation of pleasures, desires, voices, interests, modes of individuation and democratization.' See Steven Seidman, 'Identity and Politics in a "Postmodern" Gay Culture: Some Historical and

projects of sexuality, gender, justice, and law.¹⁷ I will draw on and expand some of their insights. However, I will also discuss some problems in some post-structuralist and queer projects on sexuality and gender. I hold that despite their emphasis on critical thinking in sexual politics, some post-structuralist and queer feminist projects might not be fully immune from some of the major limitations frequently found in subordination feminist approaches and ways of thinking.¹⁸ I will suggest that the arguments from queer legal theorist Janet Halley are particularly relevant and inspiring for approaches found in queer humanist men and masculinities studies and I will draw on and further develop some of her points in this thesis.¹⁹ Some of the limitations in her legal theory of sexuality and gender will also be discussed.

Another problem in current queer projects is that while there are explicit or implicit normative concerns, normative values, and moral implications in several visible queer projects,²⁰ queer theorists seldom clearly elaborate and address the

Conceptual Notes', in Michael Warner ed., *Fear of A Queer Planet: Queer Politics and Social Theory* (Minneapolis: University of Minnesota Press, 1993), 106.

¹⁶ Post-structuralism is a school of thought that challenges the belief of the fixity, completeness and invariableness of the structures in the intellectual world. Ian Buchanan argues that '[i]ts principal characteristic is scepticism (to the point of irrationality according to its critics) towards any form of completeness of either knowledge or understanding. It rejects all transcendental and/or idealist ontologies and epistemologies and accepts only those theories of being and knowledge that are premised on the final unknowability of these things.' See Ian Buchanan, 'Post-structuralism', in *A Dictionary of Critical Theory* (Oxford: Oxford University Press, 2010) . (Accessed 10 May, 2014) <http://www.oxfordreference.com/view/10.1093/acref/9780199532919.001.0001/acref-9780199532919-e-546>

¹⁷ For example, queer feminist Judith Butler challenges essentialist understandings of the idea of 'women' and the marginalisation of LGBT people in some feminist theories. See Butler, n 5 above. See also Leslie J. Moran, 'What Kind of Field is "Law, Gender and Sexuality"? Achievements, Concerns and Possible Futures', *Feminist Legal Studies* 17, no. 3 (2009), 309-313; Janet Halley, *Spilt Decisions: How and Why to Take a Break from Feminism?* (Princeton: Princeton University Press, 2006); Katherine M Franke, 'What's Wrong with Sexual Harassment?', *Stanford Law Review* 49, no. 4 (1997), 691-772; Brown, n 11 above.

¹⁸ For example, queer legal scholar Janet Halley has pointed out that some post-modern feminist, post-structuralist, and queer feminist projects such as Judith Butler's works still hold, imply, or rely on some gender subordination theses of women, femaleness and femininity. See Halley, *ibid.*, 18-20, 29-30, 149-150, 247-253, 273-276 and 309-311.

¹⁹ *Ibid.*

²⁰ For example, queer theorist Michael Warner argues for the importance of 'sexual autonomy' in his queer projects. See Michael Warner, *The Trouble with Normal: Sex, Politics and the Ethics of Queer Life* (Cambridge: Harvard University Press, 1999), 1-17. Queer theorist Judith Butler talks about the 'normative aspiration' of agency and freedom. See Judith Butler, 'On Being Beside Oneself: On the Limits of Sexual Autonomy', in Nicholas Bamforth ed., *Sex Rights: The Oxford Amnesty Lectures 2002* (Oxford; New York: Oxford University Press, 2005), 67-69.

normative grounds or justifications implied in their queer projects. I will argue that we also need to examine and analyse the normative implications and normative dimensions in queer projects.

At the same time, various strands of men and masculinities studies also provide an analysis of gender, sexuality, and social justice. Some of them endorse more or less a conservative traditionalist view and essentialist gender roles.²¹ Some insist and base their thinking and critiques of men and masculinities on the overarching premise, belief, and assumption that men as a social group are a privileged gender group, an approach largely informed by subordination feminist ways of thinking.²² Still some others suggest that not only should gender injustices towards and sexism against women be unravelled and challenged, but also that sexism against men and gender injustices towards men *qua* men should be challenged.²³ I will contend that the third approach of men and masculinities studies, which I label as 'humanist men and masculinities studies', is the more balanced, promising, and appropriate approach among the above three men and masculinities studies approaches. I argue that sexual politics and sexual justice projects would benefit from incorporating and considering research and perspectives from humanist men and masculinities studies. However, there are also some limitations and insufficiencies in the humanist approach of men and masculinities studies and I will argue that this kind of approach of studies of men and masculinities could benefit from an incorporation of some liberal sexual justice and queer notions, concerns, and insights.

²¹ For example, see John P. Bartkowski, *The Promise Keepers: Servants, soldiers, and godly men* (New Brunswick: Rutgers University Press, 2004), 45-66; Katherine K. Young, and Paul Nathanson. 'But Are the Kids Really All Right? Egalitarian Rhetoric, Legal Theory and Fathers', *New Male Studies* 1, no. 1 (2012), 61-82.

²² For example, see R. W. Connell, *The Men and The Boys* (Cambridge: Polity, 2000); Ann C. McGinley and Frank Rudy Cooper, 'Introduction: Masculinities, Multidimensionality, and the Law: Why They Need One Another', in *Masculinities and the Law: A Multidimensional Approach* (New York: NYU Press, 2012), 3.

²³ For example, Pasi Malmi, *Discrimination Against Men: Appearance and Causes in the Context of a Modern Welfare State* (PhD Thesis, University of Lapland, 2009). In public international law areas, there is also research that shares concerns in humanist men and masculinities studies. For example, see Sandesh Sivakumaran, 'Lost in Translation: UN Responses to Sexual Violence Against Men and Boys in Situations of Armed Conflict', *International Review of the Red Cross* 92, no. 877 (2010), 259-277; R. Charli Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', *Security Dialogue* 37, no. 1 (2006), 83-103.

In conclusion, I propose to examine the approaches of the queer humanist men and masculinities studies in thinking about gender oppression, normative heterosexuality, and sexual justice. I will first suggest a convergence between liberal sexual justice theories and humanist men and masculinities studies. I will use liberal sexual justice theories to justify the moral grounds and significance of humanist men and masculinities studies while also bringing humanist the insights and concerns of men and masculinities studies' into liberal sexual justice theories. Together they can form liberal humanist men and masculinities studies approaches. Then I suggest a blend of the queer humanist men and masculinities approaches that brings queer orientations into liberal humanist men and masculinities studies while also bringing liberal humanist men and masculinities studies orientations into queer studies. I will contend that liberal humanist men and masculinities studies could benefit from considering some notions and insights from queer theories, while queer projects could also benefit from considering some insights from liberal humanist men and masculinities studies. Furthermore, I will suggest the significance and need to incorporate the queer humanist men and masculinities studies perspectives into research into law and sexual justice. Since this combined approach of queer humanist men and masculinities studies in law and politics is still at its infant stage and has yet to be fully established, especially in the areas of legal theory, one of the core academic gaps that this thesis is aiming to fill therefore, is to further develop and defend the theory and insights of queer humanist men and masculinities studies in legal and political theories on sexuality and gender.

In respect of the areas of gay studies and queer studies, I will hold that the perspectives of queer humanist men and masculinities studies could possibly contribute to research about gay men's needs and interests, but it has yet to be taken seriously enough in gay and queer studies scholarship. For example, this kind of approach might help us to understand better and identify the specific difficulties and discriminations gay, bi, or trans gender fathers might experience, but which are not always captured or appreciated in subordination feminist and lesbian feminist family law scholarship. I will also hold that the jurisprudence of sexuality, gender, and justice could benefit from incorporating the lens of queer humanist men and

masculinities studies. Furthermore, I will contend that unless we can also take the injustices of the gender normativity of men and sex/gender discrimination and prejudices against men as men seriously and address them systematically, we will not be able to truly destabilise and transform the system of normative heterosexuality. Limitations in some post-structuralist and queer feminist projects will be illustrated. I will argue for the needs and benefits of incorporating perspectives inspired by queer humanist men and masculinities studies in the law and politics of sexuality and gender to better address the constraining sexuality and gender norms and practices and to better unsettle normative heterosexuality.

In relation to feminism I will hold that perspectives from queer humanist men and masculinities studies are consistent with those humanist feminist projects that are willing to see and address structural and collective gender injustices towards not just women, but also structural and collective injustices towards trans people and structural and collective gender injustices towards men *qua* men. In this sense, this kind of queer humanist men and masculinities approach is definitely consistent with these kinds of humanist feminist projects, because elimination of discrimination against girls and women certainly is also one of the core insurances and goals of the approach of queer humanist men and masculinities studies. They are both parts of wider queer humanist sexual justice and sexual politics projects. On the other hand, I will contend that insights from some liberal sexual justice theories can shed light on the normative implications and grounds for queer humanist men and masculinities studies' projects against oppressive normative heterosexuality. Therefore, queer humanist men and masculinities studies will also draw on some of the insights and arguments from liberal sexual justice theories, such as liberal gay rights theories. I also hold that there are explicit or implicit normative dimensions and aspirations in queer projects, so queer projects ought not to be read as just projects of pure deconstruction. At the same time, learning from queer approaches reminds us that projects of sexual politics and sexual justice need constant self-reflection and self-correction.

1.2 Research questions

In this section, I introduce the main research questions and methodologies of the thesis. As stated earlier, the main research purpose of this thesis is to argue for the significance and usefulness of studies inspired by approaches from queer humanist men and masculinities in unravelling, challenging, and transforming some aspects of sexual injustices, sexual discrimination, and sexual stereotypes and prejudices in the regime of normative heterosexuality in modern democratic societies. I focus primarily on reviewing contemporary Anglo-American scholarship on the law and politics of sexuality and gender.

I ask in this thesis: what are the harms and injustices in of normative heterosexuality in modern democratic societies? How can we properly address its problems and oppressive practices? What are adequate normative grounds for the pursuit of legal and political projects in modern democratic societies in order to challenge the problematic sexuality norms and practices and gender norms and practices in normative heterosexuality? What is the relationship and dynamic of gender oppression and sexuality oppression in the regime of normative heterosexuality? And how does normative heterosexuality operate in contemporary family relations? How are the issues of normative heterosexuality, sexual justice, and families presented, conceptualized, and addressed in current influential sexual politics and sexual justice projects? What are the pros and cons of these theories of sexuality and gender with regard to the way that they address the problems of normative heterosexuality and sexual justice? What kinds of sexuality and gender injustices are highlighted and which are neglected in their theories and ideologies? Why are some aspects of bias and injustice of normative heterosexuality less likely to be acknowledged and addressed in some major feminist or liberal proposals, while other aspects are prioritised and highlighted? What are the consequences of marginalisation and trivialisation of certain sexual injustices in the law and politics of sexuality and gender and what are the impacts of this kind of marginalization with regard to the perpetuation and reproduction of certain oppressive norms and ideologies in normative heterosexuality?

Is it proper and just, as some subordination feminists explicitly or implicitly suggest in their gender theories and gender law policies, to focus to a large extent on issues of structural oppression of and injustice towards women in their discussion of gender oppression and gender injustice?²⁴ For example, is the approach to gender justice and gender equality proposed and recommended by international law feminism in the CEDAW convention²⁵ and its treaty monitoring body, the CEDAW committee, appropriate and fair?²⁶ As Darren Rosenblum has pointed out, CEDAW is 'the central pillar of gender norms at the international level,' but it 'continues to focus so narrowly and exclusively on women.'²⁷ Being the primary source of international law in the area of gender justice and gender equality and being the principal UN treaty devoted entirely to sex discrimination and gender equality, CEDAW only focuses narrowly on and targets discrimination against 'women.' As feminist international law scholar Alice Edwards points out: 'the treaty clearly cover sex discrimination only as it applies to women.'²⁸ Is this kind of gender justice approach in law appropriate and effective in tackling normative heterosexuality and sexuality and gender injustices? Or might this kind of women specific and women exclusive gender justice approach in law and politics actually produce and reproduce some problematic heteronormative ideologies, rules, and constraints? What are the implications for gay men of this kind of women-exclusive gender justice law and policies?

²⁴ For example, see Rawls, n 10 above, 162-167; Okin, n 10 above, 134-186.

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 19 I.L.M. 33, U.N. Doc. A/34/180 [hereinafter the CEDAW Convention].

²⁶ The CEDAW committee is the treaty monitoring body of the CEDAW Convention. Its main responsibilities are 'the review of State party compliance with the Convention and the drafting of General Recommendations.' See Leilani Farha, 'Committee on the Elimination of Discrimination Against Women', in Malcolm Langford ed., *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (Cambridge: Cambridge University Press, 2008), 554.

For a feminist interpretation and elaboration of the CEDAW Convention and CEDAW Committee, see Marsha A. Freeman, Beate Rudolf, and Christine Chinkin, eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford: Oxford University Press, 2012). See also Dianne Otto, 'Women's Rights', in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris, eds., *International Human Rights Law* (Oxford: Oxford University Press, 2010), 345-364.

²⁷ Darren Rosenblum, 'Unsex CEDAW, or What's Wrong with Women's Rights', *Colum. J. Gender & L.* 20, no. 2 (2011), 100.

²⁸ Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge: Cambridge University Press, 2011), 154.

What are the core insights and characteristics of approaches inspired by queer humanist men and masculinities studies of sexual justice and sexual politics? Why do we need them and how will they contribute to the struggle against normative heterosexuality? What are the moral foundations and reasons for adopting combined queer and humanist men and masculinities studies inspired perspectives? In which parts and to what extent do perspectives inspired by queer and humanist men and masculinities studies converge with feminist or liberal insights? In which parts and to what extent do they diverge? How will combined approaches inspired by queer and humanist men and masculinities studies respond to practical issues in the law and politics of sexuality, gender and family such as family violence and parental responsibilities? These are all significant and relevant questions that I will explore further in this thesis. Overall this thesis will argue for the values, needs and benefits of taking the perspectives inspired by queer humanist men and masculinities studies more seriously in the law and politics of sexuality, gender, justice, and family.

1.3 Methodologies: queer approach and moral/political philosophy approach

Interdisciplinary approaches are adopted as the methodology in this thesis. I use both critical thinking/queer approaches and analytical moral and political philosophical approaches to study the law and politics of sexuality and gender. Furthermore, I emphasise the significance of referring to up to date empirical qualitative and quantitative research in the social sciences in these areas. I hold that each kind of approach plays a crucial role and has its unique contribution in legal and political research into sexuality and gender and therefore can complement each other in any research into sexual justice and sexual politics. I further argue that queer humanist men and masculinities studies would hold that all three approaches are valuable in contributing to the research of sexual justice and sexual politics.

1.3.1 Critical and queer thinking approach

The first major approach adopted in this thesis is the queer and critical sexual theory approach. Critical and queer thinking in the law and politics of sexuality and

gender will survey beyond the positive law, the 'black letter' of existing law, 'the texts of law', or the moral foundations of law. 'They seek to examine and explore the place of law within the wider social order.'²⁹ Critical and queer thinking brings social, political, and cultural critiques, concerns, and inquiries into legal studies and queries the power relations and politics in it. Furthermore, critical and queer approaches also highlight the importance of subjecting orthodox and dominant knowledge, thinking, beliefs, and ideologies of sexuality and gender to critical reflection.

Queer is primarily understood and used in this thesis not as a fixed identity, but rather as a theoretical approach, position, commitment, and model for critical inquiry, through which to reflect and re-examine the stability, naturalness, and legitimacy of often naturalized, taken for granted, or moralised social norms, boundaries, categories, ideologies, and distinctions in sexuality and gender. As queer legal scholar Leslie Moran argues, it is an approach that emphasises 'the virtue of openness' and 'the ongoing importance of critical reflection'.³⁰ It is also an approach and commitment to investigate and unravel the power relations, the knowledge-power nexus, and the politics of social construction of sexuality and gender normativity.³¹ And as queer theorist Judith Butler insists, this kind of critical/queer thinking is significant in resisting sexual oppression and sexual injustices.³² Too often dominant sexuality and gender norms easily make some groups of people, some types of bodies, or some forms of gender and sexuality performances unintelligible, illegible, or unrecognizable.³³ Queer approach and critical thinking is crucial in sexual justice projects in order to unravel constraining sexuality and gender norms and to resist, to rework, and to unsettle the violent hierarchies, exclusions, and oppression of them. I draw on queer theorists such as Judith Butler and Leslie Moran's insights and argue that the queer/critical thinking

²⁹ Leslie J. Moran, 'Lesbian and Gay Bodies of Law', in Diane Richardson and Steven Seidman eds., *Handbook of Lesbian and Gay Studies* (London: Sage, 2002), 299.

³⁰ Moran, n 17 above, 311-312.

³¹ Butler, n 20 above, 60-62.

³² *Ibid.*, 65.

³³ Butler, *Undoing Gender* (London: Routledge, 2004), 4-9, 13-14.

approach is one of the main approaches adopted in queer and humanist men and masculinities studies in thinking about men and masculinities issues in law and politics.

Queer theory opposes biological determinism³⁴ and takes social constructionist perspectives on sexuality and gender. Social constructionists contend 'that social categories are, to varying degrees, culture-specific, that is, they are the product of social dialogues and assumptions which vary from society to society and age to age.'³⁵ Social constructionism in sexuality and gender holds that social categories and social identities such as the ideas of masculinity, femininity, homosexuality, and heterosexuality are produced and constructed under the interaction of various complex and contradictory social forces.³⁶ For example, both Foucault and Jonathan Ned Katz argue that homosexuality and heterosexuality identities are relatively recent products in Western societies and the concept and institution of heterosexuality is not as natural or normal as it seems to be.³⁷ Katz points out that heterosexuality 'signifies one particular historical arrangement of the sexes and their pleasures.'³⁸ The definition and boundary between social categories such as masculinity/femininity or homosexuality/heterosexuality are constantly changing, are never-finished contestations, and are subjected to endless processes of redefinition.

³⁴ Biological essentialism and biological determinism in sexuality and gender hold that biological sex determines the corresponding proper or natural gender expression and sexual desires. As MacKinnon describes: 'Historically, being essentialist on sex or race has meant being biologically determinist: as if people are the way they are, act and think and feel the way they do, have the abilities and resources and occupy the social status they have because of their sex- or race-specific physiology ... The so-called natural traits, in the essentialist view, determine social outcomes and individual qualities.' See Catherine A. MacKinnon, *Women's Lives, Men's Laws* (Cambridge: Harvard University Press, 2005), 85. MacKinnon herself claims that feminism rejects biological determinism and is anti-essentialist. She claims that women are subordinated only because patriarchal culture normalises and legitimatises men's control and oppression of women. Women are not biologically determined to be subordinated. Their oppression is only a cultural product of patriarchy. She argues for a transformation from male culture, male law and male state to women's state, women's law and women's empowering culture. See MacKinnon, 32-43.

³⁵ See Bamforth, n 12 above, 75.

³⁶ For example, see Niall Richardson, Clarissa Smith, and Angela Werndly. *Studying Sexualities: Theories, Representations, Cultures* (Basingstoke: Palgrave Macmillan, 2013), 21, 45-46.

³⁷ Michel Foucault, *The History of Sexuality: An Introduction, Volume I*, translated by Robert Hurley, (New York: Vintage Books, 1990), 43,101; Katz, n 8 above.

³⁸ Katz, *ibid.*, 14.

In modern Western societies, science seeks to schematise, monitor, and regulate human sexuality via careful observation, surveillance, categorisation, discussion, and classification of human sexual practice, desires, gender performances, and anatomical body. As Michel Foucault points out:

*'[T]he notion of sex made it possible to group together, in an artificial unity, anatomical elements, biological functions, conducts, sensations, and pleasures, and it enabled one to make use of this fictitious unity as a causal principle, an omnipresent meaning, a secret to be discovered everywhere: sex was thus able to function as a unique signifier and as a universal signified . . . the knowledge of sexuality gained through proximity a guarantee of quasi-scientificity; but by virtue of this same proximity, some of the contents of biology and physiology were able to serve as a principle of normality for human sexuality.'*³⁹

Social constructionist perspectives of sexuality and gender, such as the queer theory approach, therefore holds that social categories of sex, gender, and sexuality are to certain extent all products of historical contingency.

However, by claiming that sexuality and gender categories are culturally and historically produced, queer theorists, such as Foucault and Butler, do not deny the importance and influence of material reality. What they want to emphasise is rather that we cannot understand, recognise, describe, and evaluate materiality and bodies outside our situated cultural signs and background. We have to and already interpret and make sense of material reality such as the human body in the specific cultural context in which we live and are embedded. Purely cultural signs do not produce a material body, but 'the body does not become sexually readable without those signs, and that those signs are irreducibly cultural and material at once.'⁴⁰ Butler does not deny the significance of the material body in our understanding of sex, gender, and sexuality, but insists that how we evaluate and recognise the human body is inseparable from the cultural background and interaction of social forces in the specific society we live.

³⁹ Foucault, n 37 above, 154-155.

⁴⁰ See Butler, n 33 above, 87.

Overall by adopting social constructionist perspectives on sexuality and gender, the approach of queer theory argues that sex, gender, and sexuality are identity categories produced by the networks of historical and local social forces. Under a Foucauldian and queer line of thinking, social categories of sexuality and gender are products of knowledge systems, discourses, and power relations.⁴¹ There is sociality of sexuality and gender, that is, they are socially constituted and mediated, never purely natural.⁴² A queer perspective thus rejects a pure essentialist understanding of sexuality and gender as it ignores the forces of culture discourses and social norms in shaping and constituting the meaning of sex, gender, and sexuality. Queer thinking instead would like to trouble the coherence, naturalness, and fixity of 'the heterosexual matrix',⁴³ the compulsory heteronormative requirements and the regulatory norms of sexuality performances and gender performances. A queer approach aims to reflect critically on how normative heterosexuality is produced, reproduced, and reinforced in law, politics, and everyday life and would like to develop and practise 'managerial techniques' ⁴⁴ to try to mobilise resistance and to open up options in normative heterosexuality. As maintained by Annamarie Jagose, in general 'queer describes those gestures or analytical models which dramatise incoherencies in the allegedly stable relations between chromosomal sex, gender and sexual desire.'⁴⁵ Queer theorist Butler emphasizes, as previously mentioned, that queer and critical reflection is crucial for 'a philosophy of freedom,' ⁴⁶ and is an important analytic tool to unsettle sexual oppression and gender injustices.

⁴¹ Tamsin Spargo, *Foucault and Queer Theory* (Cambridge: Icon Books, 1999), 14-26.

⁴² Butler, n 20 above, 68-69.

⁴³ Judith Butler describes the heterosexual matrix as '[t]hat grid of cultural intelligibility through which bodies, genders, and desires are naturalized...a hegemonic discursive/epistemic model of gender intelligibility that assumes that for bodies to cohere and make sense there must be a stable sex expressed through a stable gender (masculine expresses male, feminine expresses female) that is oppositionally and hierarchically defined through the compulsory practice of heterosexuality.' See Butler, n 5 above, 208.

⁴⁴ Michel Foucault, 'The Ethics of Concern for the Self as a Practice of Freedom', in Paul Rabinow ed., *Ethics, Subjectivity and Truth: The Essential Works of Michel Foucault 1954-1984* (New York: The New Press, 1997), 298.

⁴⁵ Annamarie Jagose, *Queer Theory* (Victoria: Melbourne University Press, 1996), 3.

⁴⁶ Butler, n 20 above, 67.

However, as queer theorist Judith Butler also elaborates, queer theory does not deny the necessities and the significance of employing sexuality and gender categories such as 'gay', 'lesbians', 'men', and 'women' in the law and politics of sexuality and gender and in everyday social life. We have to use them, she argues, because these terms already 'lay their claim on us prior to our full knowing.'⁴⁷ They are part of the important 'constitutive sociality of the self.'⁴⁸ We cannot rework and reshape current heteronormative legal and political order without acknowledging the impacts and significance of the social meanings of these identity categories in our culture and in everyday social life. Butler holds that:

*'[m]y agency does not consist in denying this condition of my constitution. If I have any agency, it is opened up by the fact that I am constituted by a social world I never chose . . . As a result, the "I" that I am finds itself at once constituted by norms and dependent on them but also endeavors to live in ways that maintain a critical and transformative relation to them.'*⁴⁹

Agency and autonomy co-exist with the inevitable historicity and sociality in our gendered and sexual lives. Subversion and transformation are only possible from within the specific social context of which we are embedded in and are partially composed of. Furthermore sexuality and gender identities have important and ambivalent meanings for us. We are on the one hand, empowered, enabled, and given meaning because of social identities, but on the other hand we may also experience constraints, exclusions, prejudices, and stereotypes because of our social identities. To some extent, we are compelled to speak in the language of identities. The crucial point is not to abandon or deny the roles of identity categories in social life, in law, and in politics, but rather to be always aware and vigilant of the possible violence, contestation, and arbitrary categorization that may be based on those identity categories. We need to be attentive to both the positive sides and the

⁴⁷ Judith Butler, *Bodies That Matter: On the Discursive Limits of "sex"* (Abingdon: Oxon, Routledge, 2011), 174.

⁴⁸ Butler, n 20 above, 50.

⁴⁹ Butler, n 33 above, 3.

possible violent hierarchy in recognition politics and law. Therefore Butler suggests that we need to follow a 'double-path' in politics. She contends that:

*'we must use this language [identity categories] to assert an entitlement to conditions of life in ways that affirm the constitutive role of sexuality and gender in political life, and we must also subject our very categories to critical scrutiny, find out the limits of their inclusivity and translatability, the presuppositions they include, the ways in which they must be expanded, destroyed or reworked both to encompass and open up what it is to be human and gendered.'*⁵⁰

Hence the crucial point that the queer theory approach would like to make about sexuality and gender categories is not to deny the meaning and importance of recognition and identities in sexuality and gender areas, but rather that, by employing these identity categories and by promoting the aims of progressive politics, we also need always to be self-reflexive about how the boundaries are drawn, maintained, and policed; why they are constructed in such ways; what are the benefits and what are the costs; and what are the power relations and possible violence in the process of such categorization; and how to open up more options and recognition. As queer theorists Foucault and Moran suggest: because of the inevitability of power relations in the process of constructing identities and of making distinctions, we need to develop and practice 'managerial techniques'⁵¹ to mobilise resistance, to open up possibilities, and to 'play these games of power with as little domination as possible.'⁵²

Queer legal theorist Leslie Moran summarises these points of queer approach clearly. On the one hand he shares 'the urgent concerns raised by contemporary gender sexual political activists and scholars about the investments and alignments that have been made between progressive political projects and the neo-liberal agenda.'⁵³ However, he also has

⁵⁰ Butler, n 20 above, 76.

⁵¹ Foucault, n 44 above. Moran, n 17 above, 310-312.

⁵² Foucault, *ibid.*

⁵³ Moran, n 17 above, 311.

*'concerns about the critiques they offer, in particular of their investment in the simplistic violent hierarchies of politics as either progressive or reactionary, of the analysis offered as truth in contrast to the stark errors of the past. While there may be some comfort in absolutes, my concern is the way they tend to promote sweeping generalisations, crude totalisations, new hierarchies, new political elites.'*⁵⁴

His suggestion is neither an abandonment of progressive recognition politics, nor does he think progressive politics can be totally free from 'the tendency to violence.'⁵⁵ His recommendations for critical sexual and gender researches in law are to 'be attentive to the peculiarities, to small difference,' and to be sensitive to 'the contradictions, the paradoxes, the inconsistencies.'⁵⁶ In other words, he argues the significance of 'the virtue of openness' and the development of 'managerial techniques' and the need to refuse crude totalisations and to face the challenges of 'contingency, incoherence, contradiction, multiplicity and permeability.'⁵⁷ Moran further argues that an 'either/or' approach and dichotomy frequently employed in progressive and emancipatory politics and law is not always able to capture the complexities, ambivalence, and contradictions of social institutions and human relations. For example, the home, the family, marriage or domestic partnerships are institutions 'of both safety and danger, security and insecurity, and stability and instability.'⁵⁸ A crude totalisation or overgeneralisation of these institutions as either sites of security or sites of violence in family law and in family policies might run the risk of not seeing some other important realities and dimensions in these institutions.⁵⁹

I find the elaboration and insights of Moran and Butler very persuasive and useful. Moran's insights about the need to be attentive to peculiarities and small differences and to be sensitive to contradictions, conflicts, tensions, and

⁵⁴ Ibid., 311-312.

⁵⁵ Ibid., 311.

⁵⁶ Ibid., 312.

⁵⁷ Ibid., 311.

⁵⁸ Leslie Moran, 'What's Home Got to Do with It? Kinship, Space, and the Case of Family, Spouse and Civil Partnership in the UK', *Yale JL & Feminism* 17, no. 1 (2005), 294.

⁵⁹ Ibid., 267-295.

inconsistencies are very inspiring for research into sexual justice and sexual politics. His arguments for the need to avoid crude generalisations in legal research about sexuality and gender, to develop managerial techniques to resist domination, and for stressing 'the ongoing importance of critical thinking' are crucial. Furthermore, his reminding us of the possible danger of adopting an either/or model in family law research is very inspiring. I also agree with Butler's suggestion and elaboration of the need for a double-path politics in sexual justice projects. I will draw on their insights in my arguments for queer humanist men and masculinities studies perspectives on sexual justice and the family.

Overall I agree with Moran's and Butler's insights that queer or critical sexual theory approaches do not aim to suspend or paralyse identity categories and recognition politics. Nor do queer approaches deny their needs, usefulness, and meaningfulness. The crucial point is rather to highlight the importance of ongoing critical reflection on normative and progressive projects of sexual politics and sexual justice. Just as Butler maintains: '[t]he political deconstruction of "queer" ought not to paralyse the use of such terms, but, ideally, to extend its range, to make us consider at what expense and for what purposes the terms are used, and through what relations of power such categories have been wrought.'⁶⁰ As Butler highlights, the queer/critical thinking approach is an important tool to resist and transform oppressive gender and sexuality normativity.

I argue that queer humanist men and masculinities studies would draw on insights from the queer approach to thinking about issues of sexuality, gender, masculinity, and justice. For example, in areas of international human rights law of gender justice and gender violence, from the perspectives of queer humanist men and masculinities studies we might want to ask whether, by only focusing on addressing gender violence against women, particular kinds of gender normativity and gender

⁶⁰ Butler, n 47 above, 174.

performativity⁶¹ are produced, reproduced, and prescribed in the CEDAW Committee's jurisprudence of gender violence.⁶² And what are the implications of those particular norms in law, politics, and everyday social life of gender and sexuality?

By employing and incorporating queer thinking approaches in this thesis, I will interrogate how certain forms of normative heterosexuality might be produced, reproduced, and reinforced by certain schools of thought and their legal and public policies. I will also query how sexuality and gender normativity serves to restrict and regulate our daily sexuality and gender performances and how gendered legal subjects are constructed in heteronormative law and culture. I will further ask how to open up more possibilities, how to be more sensitive to the marginalised and silenced voices, and how to be more vigilant to the possible violence in modern progressive law and politics of sexuality and gender, which on the one hand promote sexual justice, on the other hand might also 'promote sweeping generalisations, crude totalisations, new hierarchies, new political elites.'⁶³ For example, I will critically illustrate and examine how the standard paradigms of heterosexual female victims are produced, reproduced, and perpetuated in the jurisprudence of family violence and gender violence and how this kind of paradigm might perpetuate some oppressive heteronormative sexuality and gender norms, myths, and stereotypes.

1.3.2 Moral/ethical/political philosophy approach

The second major approach the thesis will adopt is the approach of inquiries and analyses within moral and political philosophy of the normative foundation and requirements of law and public policies in areas of sexuality and gender. Legal scholar Leslie Moran labels this approach a legal philosophical approach on law and

⁶¹ Queer feminist Judith Butler uses the concept 'gender performativity' to 'describe the way in which gender is produced as an effect of a regulatory regime that requires the ritualised repetition of particular forms of behaviour.' See Spargo, n 41 above, 75; Butler, n 5 above, xv.

⁶² See Christine Chinkin, 'Violence Against Women', in Marsha A. Freeman, Beate Rudolf, and Christine Chinkin, eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford: Oxford University Press, 2012), 443-474.

⁶³ Moran, n 17 above, 311-312.

sexuality.⁶⁴ This approach invites scholars to think about and debate ethically and normatively about the moral foundations, normative values, ethical grounds, and state's roles in sexuality and gender law, public policies, and projects. I argue that this kind of normative inquiry in the law and politics of sexuality and gender is crucial for us to be able to explore the moral grounds of sexual justice projects, law and policies against normative heterosexuality and to identify the moral wrongfulness and injustices of certain oppressive heteronormative regulations, ideologies, and practices.

I argue that queer and moral philosophy approaches have different focuses and strengths and can complement each other in research into and projects for sexual justice. There are benefits of using them together in analysing the law and politics of sexuality and gender. Adopting queer and critical thinking does not mean that we cannot also ask and investigate the normative and moral dimensions in the law and politics of sexuality and gender. An exploration of the moral values, implications, and requirements of sexual justice politics and projects does not prevent us from also wanting to question and reflect critically on how the distinctions, generalisations, and hierarchies of sexuality and gender are made in normative legal and political systems and judgements. I further hold that both approaches are indispensable and both could contribute to our understanding in analysing law, sexuality, gender, and justice.

Judith Butler already implies that both the normative claims such as sexual autonomy and sexual rights and the critical thinking and reflection of sexuality and gender normativity are important in the law and politics of sexuality and gender.⁶⁵ However, Butler herself, like many queer theorists, generally focuses more on adopting the critical/queer approaches in her research despite her acknowledgement of the significance of normative ideas in sexual politics. She does not clearly elaborate why certain sexual oppression and sexual injustices are morally wrong or what are the normative grounds and requirements of sexual politics and

⁶⁴ Moran, n 29 above, 297-99.

⁶⁵ Butler, n 20 above, 48-78.

law.⁶⁶ I argue, however, that queer projects such as Butler's do have normative concerns and implications and in addition to those of a queer approach; we also need an analysis grounded in moral philosophy to think about the normative implications in queer projects of sexual politics, sexual justice, and law.

In this thesis I am in accordance with Butler's view that to think critically is a necessary requirement for a responsible ethics and social justice project.⁶⁷ Normative sexual justice projects need critical reflections and I want to expand her insight by claiming that ethical/moral concerns and reflections are also important dimensions in critical thinking projects.

I suggest that both approaches are crucial in projects regarding sexual justice and sexual politics. There are often implicit or explicit normative dimensions, values, aspirations, and concerns in some queer projects. For example, queer theorists suggest or imply the values of freedom,⁶⁸ life,⁶⁹ non-violence,⁷⁰ sexual autonomy,⁷¹ or agency⁷² etc. in their queer projects. Queer projects such as the projects proposed by Michael Warner or Judith Butler do have moral and normative concerns, requirements, and implications. We need moral philosophical analysis and inquiry about the normative implications and dimensions of queer projects. For instance we need to think about why we need to open up possibilities, why we need to resist domination, and why values such as freedom, autonomy, or agency ought to be promoted or secured. There are moral and normative implications behind queer projects and they need to be thought about critically.

On the other hand, there are also critical reasons why normative legal theories of sexuality and gender should also always be sensitive to the power relations and the

⁶⁶ For example, see Nicholas Bamforth, 'Introduction', in *Sex Rights: The Oxford Amnesty Lectures 2002* (Oxford; New York: Oxford University Press, 2005), 20-21.

⁶⁷ Butler, n 20 above, 78.

⁶⁸ Moran, n 17 above, 311; Butler, *ibid.*, 67.

⁶⁹ Butler, *ibid.*, 56.

⁷⁰ *Ibid.*, 73.

⁷¹ Warner, n 20 above, 1-17.

⁷² Butler, n 33 above, 3-4.

possible exclusion, distinction, hierarchies, and categories they made or relied on in their normative systems and judgements. Critical thinking reminds us to be always vigilant of the possible violence behind normative judgements and reminds us of the importance of 'the virtue of openness' in thinking about normatively the law and politics of sexuality and gender. Our moral/normative system ought not to be treated as a complete, closed, static, total, and absolute system. Instead we need to be aware of the inevitable incompleteness of our moral judgements and normative projects. We need to acknowledge and be willing to face the inevitable certain unknowingness of humanness and some uncertainties in social life.⁷³ Therefore we also need to highlight 'the ongoing importance of critical thinking'⁷⁴ and 'the virtue of openness' in our normative projects of sexuality and gender.

Claiming we should employ both critical thinking and moral thinking in the law and politics of sexuality and gender does not mean that we should expect a utopian law and politics of sexuality and gender with no tensions or contestation in it. Instead tensions and contestation are always inevitable in life and theory of sexuality and gender. Instead of shying away from tensions and challenges, I argue that queer humanist men and masculinities studies should agree with queer theorists such as Judith Butler and Leslie Moran and hold that the existence of tensions requires and invites us to constantly reflect and re-examine our normative presumptions, ideologies, theories, and judgements.⁷⁵ And as scholar Ken Plummer maintains that '[w]e have to live with the tensions, and awareness of them is important background for the self-reflexive social researches.'⁷⁶

1.3.3 The significance of critical humanist empirical researches

In addition to the critical/queer approach and the moral/political philosophy approach, I will also emphasise the importance of drawing on and considering relevant insights, findings, and data from empirical researches about men,

⁷³ Butler, n 20 above, 72-73.

⁷⁴ Moran, n 17 above, 312.

⁷⁵ Butler, n 20 above, 78; Moran, *ibid.*, 310-312.

⁷⁶ Plummer, n 14 above, 195.

masculinities, sexuality, and gender in sexual justice research. Although this thesis is not itself a piece of direct empirical research, several insights and findings from important relevant pieces of empirical research about men, masculinities, and gender will be discussed and be referred to. And one of the most inspiring styles of empirical research in sexuality and gender is the critical humanist approach of qualitative studies.

According to Ken Plummer, critical humanism in empirical qualitative studies suggests 'orientations to inquiry that focus on human experience—that is, with the structure of experience and its daily lived nature—and that acknowledge the political and social role of all inquiry.'⁷⁷ Typical pieces of critical humanist qualitative research 'focus on human subjectivity, experience, and creativity. They start with people living their daily lives.'⁷⁸ Furthermore, the approach is not 'value-free' but is always preoccupied with concerns about some human values. Humanist values are at the core of such critical humanist inquiries: 'In the most general terms, critical humanism champions those values that give dignity to the person, reduce human sufferings, and enhance human well-being.'⁷⁹ In other words, qualitative research from a critical humanist consists of those pieces of empirical research which focus on human experience, the human situation, and human needs, with an underlying concern for human dignity, freedom, and social justice. For example, balanced critical humanist qualitative research into family violence and gender stereotypes should help us better understand the complex realities and experiences of violence in the family. And this information and these findings should help us to think about issues of family violence and social justice.

To see and understand various voices and realities better, it is crucial for us to keep legal research informed by up to date and balanced qualitative and quantitative empirical research. For example, balanced qualitative and quantitative research about family violence and gender stereotypes would help us better understand the

⁷⁷ Ibid., 197-198.

⁷⁸ Ibid., 198.

⁷⁹ Ibid., 198.

complex realities and experiences of violence in the family. And this empirical information and findings would help us better analyse and understand issues of family violence and social justice.

I argue therefore that there are benefits and significance for sexual justice and sexual politics projects in taking seriously both a critical/queer approach and a moral/political philosophy approach while also basing the critical and normative analysis on up to date and balanced data and findings from empirical studies, such as critical humanist qualitative researches on sexuality and gender. I further suggest that this is the kind of interdisciplinary approach that queer humanist men and masculinities studies adopt in thinking about issues of sexuality, gender, justice, and law. Queer humanist men and masculinities studies employ both queer/critical approach and moral philosophy approach in analysing and thinking about issues of men and masculinities while also emphasising the importance of considering findings and information from empirical research.

By applying the moral/ethical approach to men and masculinities research, queer humanist men and masculinities studies would like to explore the moral values, the moral grounds, and the normative requirements of sexual justice and their implications for men and masculinities in law, politics, and social life. By also employing the queer approach, queer humanist men and masculinities studies would like to investigate how the ideas, norms, performativity, and stereotypes of masculinities are produced, reproduced, and reiterated in normative heterosexuality and the implications of them in sexual and gender life and politics. And both the normative analysis and critical reflection will benefit from being informed by the up to date and balanced empirical research in sexuality and gender.

1.4 The structure of the thesis:

In Chapter 2 I will clarify and explain some of the key concepts and terms in this thesis, such as sexual justice, sexual politics, discrimination, oppression, and subordination feminism.

In Chapter 3 I explore the development and discussion of the concept of 'normative heterosexuality' (or heteronormativity) in emancipatory and critical sexual studies. I will critically review how the concepts of normative heterosexuality, gender oppression, and sexual justice are understood and defined in early lesbian and radical feminist theories, gay liberationist theories and contemporary subordination feminisms, including subordination-feminist men and masculinities studies. I will critically examine several visible subordination feminist and subordination-feminist men and masculinities projects and ways of thinking on sexual justice, sexual politics, and normative heterosexuality, especially in family related areas. I will argue that despite their great contribution to challenging women's oppression, there are limitations in subordination feminist thinking, ideologies and legal and political policies. On the one hand, they rework and unsettle some historical ideas of gender oppression, but they might also produce, reproduce, and perpetuate some old and new gender normativity, exclusion and injustices in the law and politics of sexuality on the other. I will hold that we also need perspectives other than subordination feminism in thinking about gender, justice, and law.

In Chapter 4 I first examine the theory of humanist men and masculinities studies and its implications for research on sexual justice and gender oppression. I will argue that they provide very valuable but often neglected insights on issues of sexual justice and gender oppression. However, I will also point out some of the insufficiencies and limitations of this school of thought.

In this chapter important points and insights from queer theories on normative heterosexuality, sexual politics, sexual justice and gender oppression will also be critically reviewed. I pay particular attention to Janet Halley's queer legal theory, because it is relevant to those queer humanist men and masculinities studies approaches that I would like to suggest and develop in this thesis. However, important differences between my proposed project and her project will also be elaborated and discussed.

In Chapter 5 I will critically examine the pros and cons of the implications of several liberal theories of sexual justice in the law and politics of sexuality and gender. I will first discuss Dworkin's liberal theory of justice and its implications for sexual politics against normative heterosexuality, because he proposes one of the most persuasive and influential theories of liberal justice in normative legal and political theory. It is worth critically evaluating the pros and cons of the application and implications of his liberal justice theory in sexuality and gender issues. I will hold that although his liberal theory of justice provides us with a valuable normative justification for sexual justice law and politics, his theory nevertheless leaves unchallenged many aspects of structural heteronormative gender and sexuality ideologies, norms, practices, and prejudices.

In this chapter I will also critically review liberal theories of gay rights on sexual justice. I will focus on the liberal theories of gay rights of Nicolas Bamforth⁸⁰ and Carlos A. Ball, because to me they present some of the most sophisticated and persuasive arguments from those perspectives on issues of law and sexual justice and are worth further reflection. Their insights, arguments, and elaboration of the value of sexual autonomy in law and politics of sexuality and gender are inspiring and valuable. I hold that queer humanist men and masculinities studies could benefit from drawing on some of the important insights in their sexual autonomy/sexual justice theories.

However, perspectives from queer humanist men and masculinities studies might not find gay rights theories totally unproblematic. I will focus on two points. The first is the tendency to imply certain sexual hierarchy and sexual stratification in some of their systems of sexual morality. Certain sexual practices or relations might be, implicitly or explicitly, prioritised in their sexual justice projects while others might be marginalised. The second point is that some of their theories and ideologies on

⁸⁰ One of the important works from Nicolas Bamforth: *Patriarchal Religion, Sexuality, And Gender: A Critique of New Natural Law* is co-authored with another leading liberal gay rights scholar David A. J. Richards. In this book, they present one of the most thorough, detailed and insightful critiques of the theory of new natural law: an influential contemporary theory holding conservative sexist and homophobic ideologies in theology, ethics and law. See Bamforth and Richards, n 12 above.

gender justice and gender oppression are significantly influenced by subordination feminist ideologies and approaches. I will argue that it is not always unproblematic to take subordination feminist perspectives as a general guide when thinking about gender, justice, and law.

In Chapter 6, by drawing on insights and notions from queer theory, liberal sexual justice theories, and humanist men and masculinities studies, I will argue in favour of considering the perspectives of queer humanist men and masculinities studies in research into sexual politics and sexual justice. I will illuminate the main themes and arguments of queer humanist men and masculinities studies and the possible contribution of these kinds of approaches in the law and politics of sexuality and gender. I conclude this thesis by arguing for the significance and need of also considering queer and humanist men and masculinities studies perspectives in law, sexuality, gender, and justice.

The perspectives of queer humanist men and masculinities studies do not deny the existence of various great contributions from feminist and liberal theories in challenging normative heterosexuality and in pursuing sexual justice. Nor do I claim that the perspectives of queer humanist men and masculinities are complete and the only kind of legitimate perspectives on sexuality and gender. Neither will these approaches be free of internal tensions themselves. The main purpose is only to propose and to offer a kind of crucial but currently often overlooked and marginalised approach in legal and political studies of sexuality and gender. I suggest that by adopting these ways of thinking we should be able to better appreciate and address some marginalized or ignored angles when thinking about law, sexuality, and gender in jurisprudence and political theory. Certain sexual injustices and gender oppression in the regimes of normative heterosexuality could be better exposed, unravelled, addressed, and reworked by wearing the spectacles of queer humanist men and masculinities studies.

Chapter 2 Central Concepts and Key Terminologies: Sexual Justice, Sexual Politics, Gender Oppression and Subordination Feminism

In this chapter I explain the way in which the key concepts of 'sexual justice' and 'sexual politics' are used in this thesis. I suggest that sexual politics and sexual justice can be viewed as umbrella concepts that allow us to keep both dimensions of sexuality and gender in view in our query of normative heterosexuality. I then clarify my usage of some key terms such as 'sex', 'sexuality' and 'gender', and the terms 'oppression' and 'discrimination' will also be elaborated. Finally, I examine the concept of 'subordination feminism'.

2.1 Sexual politics and sexual justice

The term 'sexual politics' first became popular following feminist scholar Kate Millet's famous book *'Sexual Politics'*. She uses the term sexual politics to highlight and to criticise the phenomenon of male domination over women that she has observed and objected to within gender relationships.¹ Millet argues that politics is about governance and unequal power relations between social groups. She claims that her theory of sexual politics can be described as 'notes towards a theory of patriarchy.'² In her opinion, a gender relationship is relationship of subordination and domination, a relationship whereby 'male rules females'.³ Millet's ground-breaking work inspired many later feminist works on sexual politics of patriarchy and male domination, including very influential radical feminist scholarship. However, the idea of 'sexual politics' is later used by scholars to refer also to politics in erotic and intimate parts of life.⁴ Some theorists prefer to reserve the term 'sexual politics' to refer to the struggle against discrimination and constraints in erotic and intimate lives rather than dominance and resistance in gender

¹ Kate Millet, *Sexual Politics* (Chicago: Univ. of Illinois Press, 2000), 23-58.

² Ibid.

³ Ibid., 25.

⁴ For example, Steven Seidman, *Embattled Eros: Sexual Politics and Ethics in Contemporary America* (London: Routledge, 1992); John d'Emilio, *Sexual Politics, Sexual Communities* (Chicago: University of Chicago Press, 2012).

relationships as Millet originally proposed. For example, John d'Emilio uses sexual politics to denote politics in erotic aspects of life; this is different from Millet's original usage of the phrase.⁵ In this section I take a third route by using sexual politics as an umbrella concept to include both dimensions of gender and sexuality politics and I illustrate the benefits of such a definition.

Similarly 'sexual justice' is used by scholars to refer to either justice between men and women⁶ or justice in terms of sexuality.⁷ I take a third route by treating sexual justice as an umbrella concept encompassing both gender justice and sexuality justice.

Due to the complex meanings of the terms 'sex' and 'sexual', 'sexual justice' and 'sexual politics' also have multiple meanings as shown above; there are two major differences in the terms 'sex' and 'sexual'. One refers to aspects of cultural and biological divisions between men and women; the other to erotic and intimate aspects of life. As Stevi Jackson indicates: '[t]he words "sex" and "sexual" can be used to refer to the erotic (e.g., "having sex," "sexual fantasies") or to denote differences between men and women (as in "the two sexes" or "the sexual division of labour").'⁸ 'Sexual justice' and 'sexual politics' therefore denote two different but related aspects, that is, politics and justice in gender relations and politics and justice in eroticism and intimacy. The former can be labelled as the domain of gender justice/gender politics, the latter is the domain of sexuality justice/sexuality politics. Together, both can be subsumed under the broader concepts: 'sexual politics' and 'sexual justice'. 'Sexual politics' has already been used as an umbrella concept by some scholars to encompass both the gender and the sexuality aspect of

⁵ D'Emilio, *ibid.*

⁶ Barbara Arneil et al. eds., *Sexual Justice/Cultural Justice: Critical Perspectives in Political Theory and Practice* (London: Routledge, 2007).

⁷ Morris B. Kaplan, *Sexual Justice: Democratic Citizenship and the Politics of Desire* (London: Routledge, 1997).

⁸ Stevi Jackson, 'Heterosexuality', *Blackwell Encyclopedia of Sociology*. George Ritzer ed., Blackwell Publishing, 2007. Blackwell Reference Online. (Accessed 18 April, 2014) http://www.sociologyencyclopedia.com/subscriber/tocnode.html?id=g9781405124331_yr2013_chu nk_g978140512433114_ss1-27

politics.⁹ Similarly, sexual justice can be understood as an umbrella concept to include both gender and sexuality justice. However, by making such a distinction between sexuality and gender, I do not suggest the boundary between sexuality politics and gender politics (or the boundaries between sexuality justice and gender justice) is always without convergence or overlap. Indeed, sexuality and gender, although analytically distinguishable, in reality constantly overlap, crosscut, intersect and are closely bound up with each other. For instance, in issues of gender justice towards women in the family one can hardly ignore the impact of sexuality in women's family life. Similarly, with sexuality justice, one must address the influence of gender norms and ideologies in shaping sexuality normativity.

Precisely because sexual politics and sexual justice can be understood as umbrella concepts to include both gender and sexuality aspects of politics and justice, they can become very useful tools to allow us to keep both the sexuality and gender dimensions of the institution of heterosexuality on track in our investigation while questioning normative heterosexuality. Since the institution of heterosexuality mainly constitutes prescribed gender and sexuality norms, it is also crucial to keep both sides in view in our aim to understand and critically review the oppression of normative heterosexuality. Furthermore, constraining gender orders are almost inextricably interconnected with the constraining sexuality orders in the institution of heterosexuality. By using the broader concepts of sexual politics and justice, we will be able to keep both gender and sexuality injustice in view to examine, monitor and further challenge the close interplay and mutually supportive relationship between oppressive gender and sexuality norms. Therefore, I will use sexual politics and sexual justice as umbrella concepts in this thesis.

⁹ Stevi Jackson, 'Sexual Politics: Feminist Politics, Gay Politics and the Problem of Heterosexuality', in Terrell Carver and Veronique Mottier eds., *Politics of Sexuality* (Oxford: Routledge, 1998), 68-69; Matthew Waites, 'Sexual Politics', *Blackwell Encyclopedia of Sociology*. George Ritzer ed., Blackwell Publishing, 2007. Blackwell Reference Online. (Accessed 18 April, 2014). http://www.sociologyencyclopedia.com/subscriber/tocnode.html?id=g9781405124331_yr2013_chunk_g978140512433125_ss1-96

For reasons stated above, 'sexual politics' is defined as the power relations and the contestation of injustice and oppression in sexuality and gender related issues.¹⁰ In other words, sexual politics includes the concerns of both gender and sexuality politics. Similarly, sexual justice in this thesis denotes both sexuality and gender justice. Principles and theories of justice concern the proper arrangements and distribution of resources, entitlements, interests, benefits as well as burdens and responsibilities among people in societies.¹¹ Principles and theories of sexual justice therefore are about the legitimate and proper arrangements of entitlements, respect, protection, duties and restrictions in the fields of gender and sexuality; theories of sexual politics and sexual justice are inextricably interconnected. In fact, normative projects of sexual politics can be seen as projects in pursuit of sexual justice. Critical projects of sexual politics can be seen as exposing power struggles and possible unjust oppression in the fields of sexuality and gender.

2.2 Sex, sexuality and gender

The usage of three other key terms: sex, sexuality, and gender must be clarified, since different scholars have applied different definitions in their research. I will briefly define how I am using these terms in this thesis.

As mentioned above 'sex' is a term with complex meanings; in this thesis I use three different but related meanings. First, as discussed above, one of the major meanings of 'sex' relates to the erotic and intimate, and such is also the case with 'sexuality.' Stevi Jackson distinguishes the term 'sex' from 'sexuality' by limiting the former to denote carnal acts while treating the latter as a broader term for one's erotic life. I find this distinction useful and apply it in the present research. In this thesis, erotic sex and sexuality are distinguished as follows: the term erotic 'sex' denotes sex acts

¹⁰ Matthew Waites defines sexual politics as 'the contestation of power relations with respect to sex, gender, and sexuality. See Waites, *ibid*.

¹¹ According to John Rawls, principles of social justice 'define the appropriate distribution of the benefits and burdens of social cooperation.' See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 4. Nicolas Bamforth defines a theory of justice as 'a theory about the proper distribution of entitlements between individuals or groups in society.' See Nicolas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London; Washington D.C.: Cassell, 1997), 5.

and sexual behaviour, while 'sexuality' as a broader term denotes 'all erotically significant aspects of social life and social being, such as desires, practices, relationships and identities.'¹²

The second meaning of the term 'sex' refers to general differences between men and women.¹³ Thus, in this thesis I will also use 'sex' to refer to all aspects of general distinction between people with different sexed bodies (male, female or intersex)¹⁴ and gender. For example, as stated above, 'sexual politics' in this thesis not only denotes politics of sexuality, but also includes the aspect of politics between people with different sexed bodies and gender.

The third usage of the term 'sex' in this thesis refers narrowly to biological sexed bodies, the material base of sex.¹⁵ 'Sex' in this sense denotes the biological difference of bodies between men, women and intersex people. Related to this usage is a distinction of sex/gender. From the 1970s second wave feminists began to argue for a distinction between sex and gender.¹⁶ Scholars who do so, tend to contrast these ideas by claiming that, while 'sex' is a given, natural, pre-social and biological difference between men and women, gender is malleable and socially constructed.¹⁷ In this kind of sex/gender dichotomy, sex is defined as the supposedly 'natural' biological distinctions between males and females primarily found in relation to the reproductive functions of their bodies.¹⁸ 'Gender', on the other hand,

¹² Stevi Jackson, 'Gender, Sexuality and Heterosexuality: The Complexity (and Limits) of Heteronormativity', *Feminist theory* 7, no.1 (2006), 106.

¹³ Jackson, n 8 above.

¹⁴ Intersex people are people who born with 'non-standard' (not male or female) sex chromosomes, genitalia or reproductive organs. See Victoria Clark, Sonja J. Ellis, Elizabeth Peel and Damien W. Riggs, *Lesbian Gay Bisexual Trans and Queer Psychology: An Introduction* (Cambridge: Cambridge University Press, 2010), 262-263.

¹⁵ See Janet Halley, *Spilt Decisions: How and Why to Take a Break from Feminism?* (Princeton: Princeton University Press, 2006), 24.

¹⁶ See Michelle K. Owen, 'Gender', in Lorraine Code ed., *Encyclopedia of Feminist Theories* (London: Routledge, 2000), 220-222; Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999), 8- 9.

¹⁷ Stevi Jackson, *Heterosexuality in Question* (London: Sage, 1999), 6-7.

¹⁸ Barbara Ryan, 'Sex and Gender', *Blackwell Encyclopedia of Sociology*, George Ritzer ed., Blackwell Publishing, 2007. Blackwell Reference Online. (Accessed 18 April, 2014). http://www.sociologyencyclopedia.com/subscriber/tocnode.html?id=g9781405124331_yr2013_chu_nk_g978140512433125_ss1-81

means socially constructed cultural expectations, differences and practices based on one's biological sex. Gender reflects 'society's expectations about how men and women should act, dress, move, and comport themselves in the context of everyday social interaction.'¹⁹ Feminists who adopt this kind of dichotomy intend to distinguish gender from 'natural', 'pre-social' sex bodies and to highlight the contingencies of, and the non-determinism of, the constructed social roles of gender.²⁰ Although the sex/gender distinction is sometimes useful as an analytic tool, the tendency to uncritically treat sex/gender distinction as a kind of nature/culture distinction can be problematic.

Although the third use of the term sex in this thesis refers to biological categories, I suggest that it is important to acknowledge that to some extent biological 'sex itself is a gendered category.'²¹ It is important to acknowledge that the concepts of (biological) sex and gender are almost inseparable from the very beginning and are implicated in the construction of one another.²² For example, recently critical sexual theorists such as Judith Butler, Drucilla Cornell and Stevi Jackson have all questioned the way the sex/gender dichotomy is treated as a kind of pure nature/culture dichotomy.²³ For them, the belief that our sexed bodies are purely biological, natural, pre-discursive, and pre-social facts without gender categories construction is delusional. They do not deny the importance of the material base of human sexed bodies, but they do insist that we understand and interpret sexed bodies through a gender lens. As Judith Butler points out:

¹⁹ Michele Adams, 'Inequality/Stratification, Gender', *Blackwell Encyclopedia of Sociology*, George Ritzer ed., Blackwell Publishing, 2007. Blackwell Reference Online.(Accessed April 18, 2014). http://www.sociologyencyclopedia.com/subscriber/tocnode.html?id=g9781405124331_yr2013_chu nk_g978140512433115_ss1-39

²⁰ Owen, n 16 above, 220-222; Butler, n 16 above, 8-9.

²¹ Butler, *ibid.*, 10.

²² Clark, Ellis, Peel and Riggs, n 14 above, 268.

²³ Judith Butler, *Undoing Gender* (London: Routledge, 2004), 87; Drucilla Cornell, *At the Heart of Freedom: Feminism, Sex and Equality* (Princeton, N.J.: Princeton University Press, 1998) 6-8; Jackson, n 17 above, 6-7.

*'Sex is made understandable through the signs that indicate how it should be read or understood. These bodily indicators are the cultural means by which the sexed body is read. They are themselves bodily, and they operate as signs, so there is no easy way to distinguish between what is "materially" true, and what is "culturally" true about a sexed body. I don't mean to suggest that purely cultural signs produce a material body, but only that the body does not become sexually readable without those signs, and that those signs are irreducibly cultural and material at once.'*²⁴

She does not deny the importance of the material part of our sexed bodies, but insists that we read, categorise, and make sense of human bodies in a gendered cultural context. Therefore, she argues, '[g]ender is not to culture as sex is to nature; gender is also the discursive/cultural means by which "sexed nature" or "a natural sex" is produced and established as "pre-discursive", prior to culture, a politically neutral surface on which culture acts.'²⁵

Taking into account the above discussion of the distinction and relation between sex and gender, I suggest that the third usage of the term sex in this thesis refers to biological sexed bodies. Gender, on the other hand, refers to all aspects of social and cultural divisions and differences between men, women and trans people²⁶ and all kinds of social distinctions between masculinities and femininities. Gender is not simply socially constructed expectations based on bodies, but gender itself is also 'the very apparatus of production whereby the sexes themselves are established.'²⁷ Gender gives 'meaning and substance in the everyday actions, interactions and subjective interpretations through which it [sex] is lived.'²⁸ We read and conceptualise our sexed bodies through gender ideologies and gendered categories. Gender in this sense is mutually implicated with sexed bodies.

²⁴ Butler, *ibid.*, 87.

²⁵ Butler, n 16 above, 10.

²⁶ Trans is 'an umbrella term for people whose sex/gender diverges in some way from the sex/gender they are assigned at birth,' including transsexual, transgender and intersex people. See Clark, Ellis, Peel and Riggs, n 14 above, 270.

²⁷ Butler, n 16 above, 10.

²⁸ Jackson, n 12 above, 106.

In summary, 'sex' refers to three different but related meanings in this thesis. It denotes carnal acts (erotic 'sex'); or the general distinction between people with different sexed bodies and gender; or, the human sexed body (biological sex). 'Sexuality' refers to 'all erotically significant aspects of social life and social being, such as desires, practices, relationships and identities.'²⁹ 'Gender' denotes social and cultural difference and divisions between men, women and trans people, between masculinities and femininities. Gender is also the apparatus by which sexed bodies are established. 'Sexual politics' is defined as the power relations and the contestation of injustices and oppression in sexuality and gender related issues. 'Sexual justice' is about the legitimate and proper arrangements of entitlements, respect, protection, duties and restrictions in the fields of gender and sexuality.

2.3 Discrimination and oppression

The terms 'discrimination' and 'oppression' will be used in this thesis; therefore I shall define the application in this section. In general, discrimination 'implies more than simply distinguishing among social objects, but refers also to inappropriate and potentially unfair treatment of individuals due to group membership.'³⁰ Rosemarie Tong defines sex discrimination as 'the disadvantaging of a member or members of one sex over a member or members of the other because of their sex.'³¹ I find this definition of sex discrimination useful and will apply this to my definition of the concepts of sex/gender/sexuality discrimination. In this thesis sex, gender and sexuality discrimination will be defined as follows: discrimination due to (biological) sex, gender or sexuality is the wrongful or unjust disadvantaging of a member or members of one (biological) sex, gender or sexuality over a member or members of the other because of their (biological) sex, gender or sexuality.

²⁹ Ibid.

³⁰ John F. Dovidio, Miles Hewstone, Peter Glick, and Victoria M. Esses, 'Prejudice, Stereotyping and Discrimination: Theoretical and Empirical Overview', in *The Sage Handbook of Prejudice, Stereotyping and Discrimination* (London: Sage, 2010), 8.

³¹ Rosemarie Tong, 'Gender and Sexual Discrimination', in Hugh LaFollette ed., *The Oxford Handbook of Practical Ethics* (Oxford: Oxford University Press, 2003), 219.

Subordination feminist Iris Marion Young develops a definition of the concept of 'oppression' based on structural injustices towards social groups. For her, oppression is primarily a structural concept that denotes systematic and often taken for granted constraints on members of social groups. She argues that '[i]ts causes are embedded in unquestioned norms, habits and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules.'³² She aims to emphasise that oppression is not primarily a concept of individual moral wrong and individual injury, but a concept of institutional injustices and collective disadvantages. Therefore, oppression in this sense refers to injustices and disadvantages caused by widely held unquestioned social stereotypes, prejudices, norms and practices and institutionalised rules, policies and ideologies. She contends that oppression can be categorised into five major forms: exploitation, marginalisation, powerlessness, cultural imperialism and violence.³³ I find her articulation of the concept of oppression useful and inspiring; I will also define oppression as institutional, systematic and collective injustices caused by social stereotypes, bias, norms, and practices and by institutional rules, policies, and ideologies. However, in Chapters 3 and 4 I also illustrate the problems and biases in Young's feminist theory of justice and oppression. I argue that Young herself unjustly marginalizes and stereotypes certain groups or voices in her feminist justice theory. Sexuality and gender theories and proposals based on her idea could be at risk of producing and reiterating some unjust sexuality and gender norms and ideologies of normative heterosexuality.

2.4 Subordination feminism

In this section I explain how I use the term and concept of 'subordination feminism' as an analytic tool to critically review one of the most influential feminist approaches in contemporary legal and political theory on sexuality and gender.

³² Iris Marion Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 1990), 41.

³³ *Ibid.*, 48-65.

There are various feminisms and there are different ways to categorise various feminist theories.³⁴ The kind of feminist approaches that I would like to focus on and to critically examine, I categorise as 'subordination feminism'. The use of the term is inspired by queer legal theorist Janet Halley's analysis of modern feminism. She finds strong tendencies in contemporary feminist scholarship in the U.S. that base feminist projects on certain subordination theories of women or femininity. Despite the many similarities, the crucial difference between her critiques and my critiques of subordination feminism will be elaborated when I discuss and analyse her theory further in Chapter 4.

Here, 'subordination feminism' refers to normative feminist projects that state that currently men or (male) masculinity are systematically and institutionally privileged, while women or (female) femininity are systematically and institutionally oppressed and disadvantaged, which furthermore holds that gender oppression is overall unilateral in the sense that women or femininity are oppressed or subordinated by men or masculinity. Normatively, these gender justice projects, consciously or unconsciously, tend to prioritise the gender oppression of, and gender injustices towards, women or femininity.

There are three main reasons to focus on critically reviewing contemporary subordination feminism and its approaches to sexual justice and normative heterosexuality.

Firstly, subordination feminism is one of the most dominant and influential schools of thought in contemporary law and in the politics of sexual justice and gender equality, so their projects are worth in-depth re-examination and reflection. Subordination feminism is so visible, powerful and influential in contemporary normative feminist legal and political scholarship that some feminist scholars

³⁴ For examples of some popular ways to categorise different feminist theories in jurisprudence see Emily Jackson, and Nicola Lacey, 'Introducing Feminist Legal Theory', in James Penner, David Schiff and Richard Nobles eds., *Introduction to Jurisprudence and Legal Theory: Commentary and Materials* (London: Butterworths, 2002), 779-854. Also, see Hilaire Barnett, *Introduction to Feminist Jurisprudence* (London: Cavendish, 1998), 121-210.

suggest that subordination feminist thinking, beliefs and implications are the central theme or overarching concerns in modern normative feminist theories in law, politics and ethics. Feminist political theorist Susan James illustrates this point:

*'Feminism is grounded on the belief that women are oppressed or disadvantaged by comparison with men, and that their oppression is in some way illegitimate or unjustified. Under the umbrella of this general characterization there are, however, many interpretations of women and their oppression, so that it is a mistake to think of feminism as a single philosophical doctrine, or as implying an agreed political programme.'*³⁵

Here, Susan James outlines the general belief and ideology of the subordination feminist approach and thinks that this is the overall belief and concern shared by various feminisms in contemporary scholarship of feminist political theory.

Similarly, liberal and humanist feminist legal scholar Nancy Levit argues that subordination and oppression of women is the core concern in most modern feminist legal theories. She holds that 'feminism maintains that culturally, politically, economically, and legally, women have been, and still are, subordinated, oppressed, degraded, and ignored.'³⁶

Feminist legal theorists Emily Jackson and Nicola Lacey also contend that feminist legal theory generally holds that women are the disadvantaged gender in law. Ethically and politically, legal feminisms aim to challenge such oppression. Gender differentiation between men and women, male and female or masculine and feminine in law overall means the oppression of, and discrimination against, women in law. They argue that, compared to men, '[l]egal sex differentiation, in short, on the whole disadvantages women.'³⁷

³⁵ Susan James, 'Feminism', in E. Craig ed., *Routledge Encyclopedia of Philosophy* (London: Routledge, 1998). (Accessed 12 December, 2011). <http://www.rep.routledge.com/article/N022>

³⁶ Nancy Levit, *The Gender Line: Men, Women, and the Law* (New York: New York University Press, 1998), 189.

³⁷ Jackson and Lacey, n 34 above, 785.

Similarly, feminist political theorists Jane Mansbridge and Susan Moller Okin hold that 'feminism has one obvious, simple and overarching goal – to end men's systematic domination of women. Feminist theory also has one overarching goal - to understand, explain, and challenge that domination.'³⁸ They point out that the overarching normative principle in mainstream feminist political theory is subordination feminism's opposition to women's oppression and male domination.

As the foregoing analysis shows, it would not be an overstatement to state that subordination feminist ways of thinking and approach is one, if not the most visible and influential, strand of feminism in contemporary feminist legal and political theory.

The influence of subordination feminist ideologies and approaches can also be found in formal and institutionalised legal policies, institutions, power and practices. For example, one of the most influential gender equality approaches adopted in public international law of gender justice is the subordination feminist perspective in international law, a perspective that crudely categorises women as the oppressed gender group and men as the privileged gender group in law. Following the crude distinction between privileged men and oppressed women, the laws and the international institutions then focus their gender justice law and policies on women's needs and sufferings.³⁹

For instance, international law scholars have observed the wide institutionalisation of subordination feminist ideologies, proposals and approaches in international law documents and human rights instruments and institutions, such as the CEDAW Convention and the General Recommendations made by the CEDAW Committee.⁴⁰

³⁸ Jane Mansbridge and Susan Moller Okin, 'Feminism', in Goodin, Robert E., Pettit, Philip, and Pogge, Thomas, eds., *A Companion to Contemporary Political Philosophy*. 2nd ed. (Oxford: Blackwell, 2007), 332.

³⁹ Sylvia Chant, and Matthew Gutmann, *Mainstreaming Men into Gender and Development: Debates, Reflections, and Experiences* (Oxford: Oxfom, 2000), 1-23; Halley, n 15 above, 20-22, 31-35; Dianne Otto, 'Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade', *Melbourne. Journal of International I Law*, 10, no.1 (2009),11-26; Darren Rosenblum, 'Unsex CEDAW, Or What's Wrong With Women's Rights', *Colum. J. Gender & L.* 20, no. 2 (2011), 98-194.

⁴⁰ See Otto, *ibid.*; Rosenblum, *ibid.*

As the primary source of international human rights law in the area of gender justice and equality, and being the primary UN treaty devoted entirely to sex discrimination and gender equality, the CEDAW Convention takes the subordination feminist approach of gender justice by only narrowly focusing upon and targeting inequality of, and discrimination against, 'women.'⁴¹ Violence against women is the only type of gender violence covered and addressed in the framework of CEDAW jurisprudence.⁴² Violence against men, including violence against gay men, is unaddressed and excluded from protection by subordination feminist gender justice approach in international human rights law. While violence against lesbians is covered and addressed by CEDAW jurisprudence and its gender justice legal systems, violence against gay men, bi men, or trans men are not protected under this most important international treaty devoted exclusively to gender justice and sex discrimination.

Also, since the CEDAW Convention has been widely ratified by most of the global community and since the member states have a duty to file reports to the CEDAW Committee about their progress and effort in promoting gender justice towards women, its women-exclusive gender justice approach has a deep influence in many countries' domestic law and policies of sexual justice and gender equality.⁴³ It is crucial to critically examine the pros and cons of such an influential women-exclusive gender justice and gender violence approach.

Furthermore, many international institutions and organizations such as the UN, treat the concept and issues of gender equality as synonymous with issues of

⁴¹ See Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge: Cambridge University Press, 2011), 154; Marsha A. Freeman, Beate Rudolf, and Christine Chinkin, eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 52-70.

⁴² See Christine Chinkin, 'Violence Against Women', in *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary*, edited by Marsha A. Freeman, Beate Rudolf, and Christine Chinkin, (Oxford: Oxford University Press, 2012), 443-474.

⁴³ Leilani Farha, 'Committee on the Elimination of Discrimination Against Women', in *Social Rights Jurisprudence: Emerging Trends In International And Comparative Law*, edited by Malcolm Langford, (Cambridge: Cambridge University Press, 2008), 553.

equality for women.⁴⁴ As feminist international law scholar Alice Edwards articulates, in public international law:

*'Commonly the term 'woman' has been used as a synonym for 'sex' and/or 'gender'. For example, sex discrimination and gender discrimination are used interchangeably to refer to discrimination against women. Similarly gender-based violence has been interpreted as applying to violence perpetrated solely or disproportionately against women.'*⁴⁵

Scholar R. Charli Carpenter finds that 'the concept of gender-based violence has been linked almost exclusively to the issue of violence against women in the humane security sector.'⁴⁶ By treating the concept of gender equality as synonymous with the equality of women, the UN and the international institutions such as the World Health Organization (WHO) tend to reduce gender injustice issues to only issues of injustice towards women.⁴⁷

As queer theorist Janet Halley articulates, in many developed societies and in international organizations and bodies, subordination feminism has made great progress in taking power and making laws. Subordination feminism is far from just an underground operation as before, it is now also 'running things' and holds power in shaping many formal legal and public policies and informal social norms and ideologies of gender and sexuality. She calls these institutionalised subordination feminist projects and politics, 'governance feminism.'⁴⁸

Since subordination feminist ideologies and perspectives are influential and have real regulatory and governing power over our everyday social lives in the law and

⁴⁴ For example, the recently founded UN entity responsible for gender equality issues is named the 'United Nations Entity for Gender Equality and the Empowerment of Women', often to be known and shorthanded as 'UN Women'. The UN Women tends to interpret and understand the problems and phenomena of gender inequalities almost exclusively from discriminations against women and girls. See the information from their web site: <http://www.un.org/womenwatch/daw/daw/index.html> (Accessed 20 June, 2014). Also, see Freeman, Rudolf, and Chinkin, eds., n 41 above, 27.

⁴⁵ Edwards, n 41 above, 18.

⁴⁶ R. Charli Carpenter, 'Recognizing Gender-based Violence Against Civilian Men and Boys in Conflict Situations', *Security Dialogue* 37, no. 1 (2006), 86.

⁴⁷ Ibid., 86.

⁴⁸ Halley, n 15 above, 31.

politics of sexuality and gender, it is also very important to subject their sexual justice and gender equality projects and ideologies to a critical examination, just as we will agree it is crucial to subject mainstream liberal or socialist ideologies into critical examination. In this thesis I particularly focus on exploring subordination feminism's legal and political approach to sexuality and gender and its implications for, and impact on, men, gay men in particular.

The second reason to focus on a review of subordination feminisms in this thesis is that, in spite of some valuable post-structuralist and queer reflections and critiques on subordination feminist theories, there are still some problems in subordination feminist legal theories that have not been generally covered, sufficiently addressed, or systematically explored in queer/post-structuralist scholarship. I will elaborate the point in my review of queer theories of sexual politics and heteronormativity in Chapter 4.

The third point is that subordination feminist thinking and perspectives have a strong influence over other emancipatory or critical sexual justice and sexual politics projects, a point also mentioned by Janet Halley.⁴⁹ For example, we can find a significant influence of subordination feminist thinking and ideologies on early gay liberationist theories⁵⁰ and on some visible modern liberal gay rights theories,⁵¹ especially their theory on gender. Some queer-oriented projects, such as some queer feminist projects, also adopt or endorse some subordination feminist ideologies of, and approaches towards, gender in their projects.⁵² Since

⁴⁹ Halley, *ibid.*, 106.

⁵⁰ For example, see Carl Wittman, 'A Gay Manifesto', in Karla Jay and Allen Young eds., *Out of the Closets: Voices of Gay Liberation* (London: GMP, 1992), 330-341; Altman Dennis, *Homosexual Oppression and Liberation* (New York: New York University Press, 1993), 90-94, 215-226.

⁵¹ For example see Kaplan, n 7 above, 6; David A. J. Richards, *Women, Gays, and the Constitution: The Grounds for Feminism and Gay Rights in Culture and Law* (Chicago: University of Chicago Press, 1998), 199-287; David, A. J. Richards, *Identity and the Case for Gay Rights: Race, Gender, Religion as Analogies* (Chicago: University of Chicago, 1999), 39-83 ; Carlos A. Ball, *The Morality of Gay Rights: An Exploration in Political Philosophy* (London: Routledge, 2003). 75-138.

⁵² For example, queer scholar Janet Halley has pointed out that some post-modern feminist, post-structuralist and queer feminist projects such as Judith Butler's work still hold, imply, or rely on some gender subordination thesis. See Halley, n 15 above, 18-20, 29-30, 149-150, 247-253, 273-276. I will discuss Butler queer feminism in the next chapter.

subordination feminist perspectives and ideologies have a visible impact upon and close link with gay and queer theories, it is important to critically review the pros and cons of subordination feminist projects on sexual justice. I will discuss early gay liberationist theories in the next chapter. The deliberation on modern liberal gay rights theories can be found in Chapter 5, and a discussion of queer theory and queer feminism is in Chapter 4.

Many visible feminist legal and political theorists take or imply some kinds of subordination feminist approaches in sexual justice and sexual politics projects. For example, according to Iris Marion Young and Susan Moller Okin's feminist theories of social justice, men as a social group are regarded as an unjustly dominant gender group while women as a social group are regarded as an unjustly oppressed group in family relations. Men *qua* men are systematically privileged while women *qua* women are systematically oppressed in the family according to their theories.⁵³ Influential men's studies scholar R. W. Connell also endorses the subordination gender thesis in his theory and argues that men as a gender group 'are not oppressed or disadvantaged.'⁵⁴ In power relations some subordination feminists claim that 'men as a group have power over women as a group.'⁵⁵

It is worth pointing out that although subordination feminisms share the claim and assumption that in current society women, femaleness or femininity remain subordinated by men or masculinity, there are various subordination feminisms and they often disagree with one another on the roots of, or on the strategies against, the oppression of women and the domination of men. Some hold that the social construction of sexuality is at the root of women's oppression and male domination,

⁵³ See Iris Marion Young, *Intersecting Voices: Dilemmas of Gender, Political Philosophy and Policy* (Princeton: Princeton University Press, 1997), 95-113; Susan Moller Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989), 134-186.

⁵⁴ R. W. Connell, *The Men and The Boys* (Cambridge: Polity Press, 2000), 209.

⁵⁵ Ann C. McGinley, and Frank Rudy Cooper, 'Introduction: Masculinities, Multidimensionality, and the Law: Why They Need One Another', in *Masculinities And The Law: A Multidimensional Approach* (New York: New York University Press, 2012), 3.

like MacKinnon's sexual-subordination feminist theory.⁵⁶ Some claim that material and economic inequality is the root of women's subordination, like materialist and socialist subordination feminisms.⁵⁷ Violence against women approaches to feminism want to highlight oppression by focusing on the problems of gender violence against women and claim that gender violence and family violence ought to be addressed as the problem of male power and control over women.⁵⁸ Subordination feminist theories of family law and family justice argue that the family is the core site and regime of male domination and female oppression and the laws and institutions of marriage and family are overall male-privileged and female-subordinated.⁵⁹ The kinds of subordination feminist perspectives I would like to concentrate on particularly in this thesis are subordination feminist legal and political theories on family-related issues. I argue that subordination feminist perspectives are not always able to, suitable for, or willing to unravel, see, and address some of the kinds of sexuality and gender injustices in family relations, such as gender injustices towards men. To overcome the limitations, we also need to consider and incorporate other valuable perspectives, such as queer humanist men

⁵⁶ For example, see Catharine A. MacKinnon, 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence', *Signs* 8, no. 4 (1983), 635-658; Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989).

⁵⁷ For example see Jackson, and Lacey, n 34 above, 811-813.

⁵⁸ For example, see Edwards, n 41 above; Bontina Meyersfeld, *Domestic Violence and International Law*, (Oxford: Hart, 2010); Michelle Madden Dempsey, 'What Counts as Domestic Violence- A Conceptual Analysis', *Wm. & Mary J. Women & L.* 12, no. 2 (2005), 301-333; Michelle Madden Dempsey, 'Toward a Feminist State: What Does 'Effective' Prosecution of Domestic Violence Mean?', *The Modern Law Review* 70, no. 6 (2007), 908-935; Liz Kelly, 'What Does the Speaking Profit Us?: Reflections on the Challenges of Developing Feminist Perspectives on Abuse and Violence by Women', in Marianne Hester, Liz Kelly, and Jill Radford, eds., *Women, Violence, And Male Power: Feminist Activism, Research, And Practice* (Buckingham: Open University Press, 1996), 34-48; Jill Radford, and Elizabeth A. Stanko, 'Violence Against Women and Children: The Contradictions of Crime Control under Patriarchy', in by Marianne Hester, Liz Kelly, and Jill Radford eds., *Women, Violence, And Male Power: Feminist Activism, Research, And Practice* (Buckingham: Open University Press, 1996), 65-80; Russel P. Dobash., R. Emerson Dobash, Margo Wilson, and Martin Daly, 'The Myth of Sexual Symmetry in Marital Violence', in Claire M. Renzetti and Raquel Kennedy Bergen eds., *Violence Against Women* (Lanham: Rowman and Littlefield Publishers, 2005), 31-52.

⁵⁹ See for example Okin, n 53 above, 134-186; Martha Albertson Fineman, 'Fatherhood, Feminism and Family Law', *McGeorge Law Review*, 32, no. 4 (2001), 1031-1049; Martha Albertson Fineman, *the Autonomy Myth: a Theory of Dependency* (New York: the New Press, 2004); Martha Albertson Fineman, 'The sexual family,' in Martha Albertson Fineman, Jack E. Jackson, and Adam p. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, (Surrey: Ashgate, 2009), 45-64; Young, n 53 above, 95-113; Young, n 32 above, 50-51, 64-65.

and masculinities studies perspectives in thinking about sexuality and gender issues in family law and family justice projects.

The subtle distinction between the terms 'subordination feminism' and 'sexual-subordination feminism' is noteworthy. Sexual-subordination feminism is a term used by queer legal scholar Janet Halley to refer to those feminisms that claim that (hetero) sexuality is oppressive to women in current patriarchal societies and the social construction of male and female sexuality is the major cause of male domination and female subordination. She has MacKinnon's power feminism and cultural feminism in mind.⁶⁰

Sexual-subordination feminism is also labelled 'sex-negative feminism' because of the tendency towards sexual conservatism, structural and stereotyped female victimised status, and state-interventionist sexual policies and sex-censorship laws.⁶¹ Feminist theorist Gayle S. Rubin argues that this sex-negative feminist approach 'has considered sexual liberalisation to be inherently a mere extension of male privilege. This tradition resonates with conservative, anti-sexual discourse.'⁶² Sex-negative feminism generally criticises 'deviant' sex such as pornography, commercial sex and S/M sex as they are viewed as examples, expressions or products of patriarchy and male domination. By contrast 'sex-positive feminism' (or 'pro-sex feminism') is more willing to see and to celebrate the possible pleasure of sexuality and to assert and defend the agency of female sexuality in sexual relations.⁶³ They want to see both the possible danger and the pleasure in sexuality.⁶⁴ They oppose MacKinnon's structural and totalising sex-negative assertion that in the current patriarchal and male dominant culture female sexuality is inevitably victimised and oppressed by male sexuality and male power in everyday

⁶⁰ Halley, n 15 above, 27-79.

⁶¹ See Halley, *ibid.*, 29-30; Gayle S. Rubin 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality', in Henry Abelove, Michele Aina Barale and David M. Halperin eds., *Lesbian and Gay Studies Reader, Volume I* (London: Routledge, 1993), 3-44.

⁶² Rubin, *ibid.*, 28.

⁶³ See Janet Halley, n 15 above, 29-30; Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995), 87-95, 130-133.

⁶⁴ See Judith Butler, 'Against Proper Objects', in Elizabeth Weed and Naomi Schor eds., *Feminism Meets Queer Theory* (Bloomington: Indiana University Press, 1997), 10.

sex practice and sex culture.⁶⁵ They are also sceptical of the sex-negative feminist tendency towards conservative and moralistic sexual politics and sex-censorship laws and policies.⁶⁶ They question this sex-negative feminist monolithic and reductionist view of commercial sex, pornography and S/M sex as the production of male domination and male power.⁶⁷ They criticise the crude overgeneralisation and structuralising of women's subordination status, of stereotyping and normalisation of female passivity and vulnerability, and of compromising women's agency in issues of sexuality.⁶⁸

To be clear, the term 'subordination feminism' is used as a broader concept than the narrower concept of 'sexual-subordination feminism' and while they are related, they are not treated as identical concepts in this thesis. Whereas, all sexual-subordination feminism theories are a kind of subordination feminism, not all subordination feminisms can be classed as 'sexual-subordination feminism'. This is because, as I argue above, subordination feminisms do not necessarily need to hold that sexuality is the root of the oppression of women or that female sexuality is inevitably oppressed. Therefore, not all subordination feminisms equate to sexual-subordination feminism in this sense. Materialist and socialist subordination feminism, for example, focuses on how material inequalities or socio-economic structures disadvantage women and often claims that material inequality is the root cause of women's oppression and men's domination.⁶⁹ They are primarily materialist and socialist subordination feminism in this sense, rather than 'sexual-subordination feminism', which is better understood as a sub-group of subordination feminisms.

Following this point, I would like to further suggest that while some pro-sex feminists refute the sexual-subordination feminist approach in sexuality issues, they

⁶⁵ See MacKinnon, 'Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence', n 56 above, 635-658; MacKinnon, *Toward a Feminist Theory of the State*, n 56 above, 126-153, 171-183; Halley, n 15 above, 41-58.

⁶⁶ See Halley, *ibid.*, 29-30.

⁶⁷ Rubin, n 61 above, 23-34.

⁶⁸ Butler, n 64 above, 9-14.

⁶⁹ See for example Jackson, and Lacey, n 34 above, 811-813.

might still hold some kind of a subordination feminist approach, especially in issues other than sexuality. Socialist subordination feminist theory argues that the subordinate status of women is based on social economic systems, but not sexuality, can be an example. There can be feminist projects that hold both the characteristics of 'sex-positive' feminist perspectives and the characteristics of subordination feminist perspectives at the same time. This is because they can take an overall sex-positive view on sexuality issues but still claim that the subordinate status of women or femininity on grounds other than oppressed female sexuality.

Gayle Rubin's pro-sex feminism is an example. Her feminist analysis incorporates both pro-sex feminist⁷⁰ and socialist subordination feminist orientations and approaches.⁷¹ She presents an analysis of the 'political economics of sex' and holds that gender is hierarchical and women are the oppressed and subordinated gender in the sex/gender system.⁷² The origin of women's oppression is highly related to the gender division of labour.⁷³ She points out an 'assumption that gender involves masculine dominance and feminine oppression or inequality.'⁷⁴ She maintains that feminism is a theory of analysing and addressing gender hierarchy, women's oppression and gender injustices and that feminism has explanatory power on gender justice issues.⁷⁵

However, while she suggests that feminism has explanatory power and authority in gender issues, she also argues that sexual politics should not be dominated only by (subordination) feminist assumptions and viewpoints of gender hierarchy and women's oppression. This is not because she believes women are not oppressed because of their gender. As mentioned above, she does argue that women are the oppressed gender group in social, economic and political systems. This is rather

⁷⁰ Rubin, n 61 above, 3-44.

⁷¹ Gayle S. Rubin, 'The Traffic in Women: Notes on the "Political Economy" of Sex', in *Deviations: A Gayle Rubin Reader* (Durham: Duke University Press, 2011), 33-65.

⁷² Ibid.

⁷³ Jonathan Ned Katz, *The Invention of Heterosexuality* (Chicago: University of Chicago Press, 2007), 133-135.

⁷⁴ Halley, n 15 above, 118.

⁷⁵ Rubin, n 61 above, 28, 32-34.

because she thinks that not all oppression in sexuality can be analysed from subordination feminist perspectives.⁷⁶ She argues that:

*'Feminist conceptual tools were developed to detect and analyse gender-based hierarchies. To the extent that these overlap with erotic stratifications, feminist theory has some explanatory power. But as issues become less those of gender and more those of sexuality, feminist analysis becomes misleading and often irrelevant. Feminist thought simply lacks angles of vision which can fully encompass the social organization of sexuality.'*⁷⁷

She argues that sexuality oppression and erotic injustices are not always reducible to gender oppression and gender injustices. Therefore, in some erotic injustice cases it is not suitable to resort to a subordination feminist lens when they are not directly related to gender. She warns that the reduction of sexuality justice issues to largely gender hierarchy issues is dangerous. Rubin thinks that sexual-subordination feminist ideologies and proposals sometimes perpetuate erotic injustices by maintaining violent sexual stratification and sexual hierarchy based on some problematic moralist, conservative and regulatory projects and ideologies of sexual justice and sexual ethics. Marginal erotic practices such as S&M, fetish, promiscuity or commercial sex are easily stigmatised. She urges us to develop a relatively autonomous theory and a politics of sexuality that is not solely premised on subordination feminist analyses of gender.⁷⁸ She thinks subordination feminisms of gender hierarchy and oppression does have authority in gender injustice cases; however, she also argues that not all sexuality injustice cases are directly related to, or indeed belong to, gender injustice issues. Thus, they ought not to always be addressed and proceeded from a subordination feminist gender hierarchy approach. Therefore, her theory shares both subordination feminist characteristics on gender hierarchy and women's subordination and sex-positive feminist thinking on sexual freedom. She claims that '[i]n the long run, feminism's critique of gender hierarchy must be incorporated into a radical theory of sex, and the critique of sexual

⁷⁶ Ibid., 33-34.

⁷⁷ Ibid., 34.

⁷⁸ Ibid., 9-16, 27-35.

oppression should enrich feminism. But an autonomous theory and politics specific to sexuality must be developed.⁷⁹ Here she implies that a subordination feminist gender hierarchy approach still has the authority over gender justice issues.

There are both significant contributions and limitations to Rubin's sexual justice project. She rightly criticises the conservative moralist and totalising tendencies in many sexual-subordination feminisms on erotic justice issues. She is also right to claim that gender perspective is not, and ought not to be, the only overarching perspective when thinking about law and sexuality. However, it can be problematic to boldly assume and imply that subordination feminist perspectives are always useful and proper in thinking about gender justice issues. She seems to imply that subordination feminist perspectives and viewpoints have the ultimate authority in gender justice analyses. I will argue that gender relations and the issues of gender injustices, however, are much more complicated than what subordination feminist theories hold. Although subordination feminist approaches to gender justice have their value and contribution, they ought not to be treated as the only authority in gender justice projects, a point I shall elaborate throughout this thesis.

In summary, subordination feminist sexual justice and sexual politics projects are premised on, hold, or imply the belief that the current system and culture is patriarchal and male-dominant⁸⁰ and that men or masculinity are overall valued and prioritised at the expense of women or the devaluation of femininity, and the oppression is overall unilateral. Their normative gender justice projects are informed by the above belief and premise and tend to focus on addressing gender injustices and oppression towards women or femininity.

The problem of subordination feminist legal and political projects is not that they deny the existence of any disadvantages of or injuries to any man. Subordination feminisms do not necessarily hold an absolute claim that all men are always equally

⁷⁹ Ibid., 34.

⁸⁰ See Øystein Gullvåg Holter, 'Social Theories for Researching Men and Masculinities: Direct Gender Hierarchy and Structural Inequality', in Michael S. Kimmel, and Jeff R. Hearn, and R. W. Connell, eds., *Handbook of Studies on Men and Masculinities* (London: Sage, 2004), 15-34.

powerful and dominant in society or never experience any sex/gender discrimination or disadvantage. The problem is that by adopting subordination feminist ways of thinking, scholars, politicians and policy makers tend to easily, consciously or unconsciously, trivialise, marginalise or individualise sexual injustices towards men in their normative projects of sexual justice and sexual politics.

There are several typical strategies or models usually found or deployed in subordination feminisms on issues of gender oppression of and gender injustices towards men in heteronormative society. The first is that they might explicitly or implicitly deny, ignore or question the existence of certain sexual injustices towards men or assume the insignificance of certain sexual injustices towards men in their projects. For example, radical feminist MacKinnon suggests that men are not victims of domestic violence, rape, sexual violence and sexual harassment except in prisons and in child abuse cases. She implies that adult men are not victimised and assaulted by women in domestic violence, sexual violence and sexual harassment.⁸¹ Here she holds a heteronormative belief and myth (men are aggressive and invulnerable/women are harmless and vulnerable) in domestic violence and sexual violence jurisprudence and is sceptical of the realities that 'ordinary', 'normal' men can be victimised in intimate and sexual relations. However, as I will soon elaborate, family violence affects not only heterosexual women, but also gay men, lesbians and heterosexual men. MacKinnon holds an inappropriate heteronormative myth and ideology of family violence and sexual violence. Rather than promoting sexual justice, her theory in fact is likely to produce and perpetuate oppressive and biased ideologies, law and politics of sexuality and gender.

Subordination feminism may also acknowledge the existence of certain sexual injustices towards men but nevertheless consciously or unconsciously individualise or trivialise them by maintaining that these kinds of injustices are rare, are only individual cases, are not systematic social injustices, or are generally insignificant and not worth serious consideration and protection in law and politics. For example,

⁸¹ Catherine A. MacKinnon, *Feminism Unmodified* (Cambridge: Harvard University Press, 1987). 170-171.

family law scholar Michael Freeman argues that '[t]here is domestic violence against men...But it must be stressed that the social problem is domestic violence against women.'⁸² Also, for instance, some subordination feminists question whether there can be real male domestic victimisation by women in the context of current patriarchal and male dominant culture.⁸³ They may also tend to trivialise the harm and injustice of female violence against men.⁸⁴ I will critically evaluate this kind of subordination feminist approach in the next chapter.

Some subordination feminists hold that the disadvantages men experience, such as the burden of the role of breadwinner, are only costs for men to pay to maintain their male dominance and privileges. They insist that the disadvantages men may experience are just costs and are only the by-products of male privileges. In other words, their experiences are not treated and viewed as gender oppression *per se*. They tend to view the disadvantages of women as unfair gender discrimination and gender oppression, but think the disadvantages of men are only costs that men pay for their power.⁸⁵ The problem of this kind of subordination feminism is that they already wear a stereotypical and prejudicial lens in interpreting gender oppression of men and women. They implicitly assume heteronormative stereotypes of men's invulnerability and women's vulnerability in thinking about gender oppression. By doing so, they are actually repeating and reproducing a heteronormative gender dichotomy by constructing men's disadvantages as costs and by perpetuating the myths that only women experience gender oppression. I argue that the approach of queer humanist men and masculinities studies offers a more nuanced and multifaceted concept of gender oppression. I hold that the employment of such a concept of gender oppression may reveal more realities of gender injustices than

⁸² Michael Freeman, *Domestic Violence* (Surrey: Ashgate, 2008), xvii.

⁸³ For example, see Helen Reece's analysis of the jurisprudence of violence against women feminism. Helen Reece, 'Feminist Anti-violence Discourse as Regulation', In Shelley Day Sclater, Fatemeh Ebtehaj, Emily Jackson, Martin Richards eds., *Regulating Autonomy: Sex, Reproduction and Family* (Oxford: Hart Publishing, 2009), 37-52; Dempsey, 'Toward a Feminist State: What Does 'Effective' Prosecution of Domestic Violence Mean?', n 58 above, 908-935.

⁸⁴ Dobash, Dobash, Wilson, and Daly, n 58 above, 45.

⁸⁵ Connell, n 54 above, 165-167; Michael A. Messner, *Politics of Masculinities: Men in Movements* (London: Sage, 1997), 3-15, 36-62.

the oversimplified gender oppression concept held by some subordination feminists. The multifaceted concept of gender oppression could be an important analytic tool to dispel some myths and biases in the regimes of normative heterosexuality.

Or subordination feminist perspectives may argue that there are variations in men and not all sub-groups of men are equally powerful. Nevertheless, overall, men are still the privileged and dominant gender group and therefore gender oppression is still overall unilateral.⁸⁶ By emphasising the importance of identity intersection, they often imply that although men are privileged because of their sex/gender, they can be subordinated by other identities such as sexuality, class or race. For example, they might argue that gay men are simultaneously privileged and disadvantaged. Gay men are privileged because of their male gender, but socially oppressed because of their sexuality.⁸⁷ I will respond to this kind of perspective in a later chapter. I will argue that these kinds of intersectionality concerns, although very helpful and important in some aspects, are incapable of fundamentally overcoming the limitations of simplified and a one-dimensional perspective of gender in some subordination feminisms.

Some subordination feminist approaches claim that, unlike women's interests, the needs and interests of men are already well represented and covered in current patriarchal and male dominant society.⁸⁸ They argue that since the resources for promoting gender justice are limited, it is crucial to adopt a subordination feminist approach in gender justice projects by prioritising and privileging women's needs and women's concerns.⁸⁹ I argue that this way of thinking not only neglects and marginalises gender constraints of men too easily, but also fails to distinguish

⁸⁶ Michael Kimmel, *Misframing Men: The Politics of Contemporary Masculinities* (New Brunswick: Rutgers University Press, 2009), 215-216.

⁸⁷ See for example, Jackson, n 9 above, 68-77. Also, Wittman, n 50 above, 330-341.

⁸⁸ For example, see Kenneth Clatterbaugh, 'Men's Liberation', in Michael Flood, Judith Kegan Gardiner, Bob Pease, and Keith Pringle eds., *International Encyclopedia of Men and Masculinities* (London: Routledge, 2007), 416.

⁸⁹ For example, see liberal feminist Nancy Levit's outline of such kind of arguments in Levit, n 36 above, 200-201. Also, Chant and Gutmann, n 39 above, 16-23.

between patriarchal thinking and queer humanist men and masculinities studies. Patriarchal thinking about gender maintains conservative and traditionalist gender stereotypes and ideologies. In modern societies there are two major forms of traditionalist patriarchal thinking in gender: sexism against women and chivalry.⁹⁰ Queer humanist men and masculinities studies oppose both traditionalist sexist and chivalrous ideologies of gender/sexuality. I argue that patriarchal ideologies, sexism and chivalry, do not really represent either men or women's real interests and are harmful and oppressive to both men and to women.⁹¹ So the fact that there are more male politicians than female politicians does not necessarily mean that men's critical interests are well represented, understood and addressed in law and politics. If most male politicians still hold sexist or chivalrous beliefs, they are unlikely to properly represent and promote the real interests of both men and women. Unfortunately, many male politicians do hold manifest traditionalist or chivalrous ideologies of gender/sexuality. In these circumstances patriarchal male politicians, judges and policy makers may impose problematic gender norms on both women and men, especially on lower status men, such as the imposition of compulsory military service.⁹² So it is a myth to claim that because the majority of politicians are men, men's interests are necessarily well represented, promoted and addressed.

Furthermore, some feminist projects, especially queer feminisms, may adopt a more nuanced, more helpful and in many respects a welcome perspective by taking more seriously the voices and experiences of sexual and gender minorities⁹³. This kind of feminist argument partially overcomes the limitations of other subordination feminist approaches. However, they are sometimes still restricted by the

⁹⁰ Pasi Malmi. *Discrimination Against Men: Appearance and Causes In The Context of a Modern Welfare State*. (PhD Thesis, University of Lapland, 2009), 237-240.

⁹¹ See my discussions of humanist men and masculinities studies in section 4.1 in Chapter 4. Humanist men and masculinities studies have pointed out that patriarchal, traditionalist, and chivalrous thinking and ideologies actually harm men (and women).

⁹² Not only several European states still keep the system of compulsory military service but also do countries in East Asia such as Taiwan and South Korea. These countries still require all adult young men, but not women to serve 1 to 2 years civil or military services. See my discussion of compulsory military service and normative masculinity in section 4.1 in Chapter 4.

⁹³ For example see Butler n 16 above. Also, Mimi Marinucci, *Feminism Is Queer: The Intimate Connection Between Queer And Feminist Theory* (London: Zed Books, 2011).

subordination gender thesis and are not totally immune from the limitations we find in subordination feminisms. They argue that not only women, but also a minority of sexual and gender non-conformity men such as gay men, bi men, feminine men, and trans people are victimized by dominant gender norms and patriarchal culture. Like women (as a gender group) who are oppressed by dominant gender norms, these sexual and gender non-conformity men are also oppressed in heteronormative culture and should be protected by sexual justice and gender equality projects.⁹⁴ They wish to highlight that not only women can suffer from gender oppression, but also sexual and gender minority men. However, consciously or unconsciously, they generally still imply in their projects that those men who suffer from gender oppression are only minorities, are exceptional, and are oppressed because of their deviation from standard gender norms. They imply that generally men (as a group) do not experience systematic gender oppression. Gender relations between men and women (or between masculinity and femininity) are still hierarchal and remain a topic of unilateral female oppression.⁹⁵ This belief system has some important breakthroughs because it goes beyond pure women-centred and women-exclusive gender justice projects and incorporates some gay theories or queer theories' concerns within their sexual justice projects. There are significant merits in this approach. However, I will later contend in Chapter 4 that there are still major limitations in this approach.

I will respond to the above feminist perspectives on sexual injustices towards men from queer humanist men and masculinities studies' perspectives in later chapters. I will argue that while some of the above accounts are helpful to some extent, overall they might not always be able to fundamentally overcome the major limitations of subordination feminist ideologies and projects in the law and politics of sexuality and gender. I will use family justice and family violence issues as examples to critically examine subordination feminist approaches to sexual justice.

⁹⁴ For example, see Butler, n 23 above, 6-7. Also, Rubin, n 61 above, 3-44.

⁹⁵ Butler, *ibid.*, 6-7; Butler, n 64 above, 23-24.; Rubin, *ibid.*, 3-44.

I would like to contend that although having supplied a great contribution, subordination feminist projects do not capture, unravel or address the full picture of sexual injustices and gender oppression. Furthermore, some of their ideologies, assumptions and proposals might be at risk of producing, reproducing and perpetuating certain old and new forms of sexual injustices, hierarchies and exclusion. I will illustrate and critically analyse subordination feminism and subordination-feminist men and masculinities studies in more detail in later chapters.

Chapter 3 Sexual Politics, Sexual Justice, Gender Oppression, and the Critiques of Normative Heterosexuality in Gay Liberationist Studies, Subordination Feminism, and Subordination-feminist Men and Masculinities Studies

3.1 Introduction

In the previous chapter the usage of some key terms and concepts were elaborated upon and clarified within the context of this thesis. In the following three chapters, I will critically review how issues of normative heterosexuality, sexual justice and gender oppression are reflected, understood and debated in contemporary progressive or critical legal and political theories about sexuality and gender.

In this chapter I start with reviewing some high profile gay liberationist theories, subordination feminisms, and subordination-feminist men and masculinities studies' arguments about normative heterosexuality, sexual politics and sexual justice. How effective are their projects in unsettling heteronormativity? What kinds of perspectives might be underdeveloped and worth further research? I identify the works and approaches in need of further development in this area. I suggest that one of the major academic gaps in contemporary legal and political research on the critiques of normative heterosexuality and sexual justice is that there is not enough attention paid to the research and investigations into how systematic and institutional gender oppression might constrain, oppress and disadvantage men by unjust and biased gender norms, stereotypes, practices and ideologies in normative heterosexuality. I will contend that more research ought to be conducted in these areas to help us better understand and further challenge the institutions, assumptions, stereotypes, practices and culture of normative heterosexuality.

As stated in chapter one, normative heterosexuality denotes social structures and social orders that privilege and normalise the systems, culture, rules, assumptions, practices and ideologies of heterosexuality. Lesbian and radical feminists, gay liberationists, and later queer theorists are among the main theoretical contributors to the reflection on, and critiques of, compulsory and normative heterosexuality.

Overall they find that heterosexuality is not just about personal sexual preference or practice, but is also about an oppressive sexuality and gender conforming systems, regimes and cultures.

The origin of the concept of normative heterosexuality and the critiques of heterosexuality as an unjust social order can be dated back to the second part of the last century when some early lesbian and radical feminists and gay liberationists began to question the institution of heterosexuality and to contest the gender and sexuality order they found problematic in dominant heterosexuality.¹ Since then scholars have used several different but related terms for their critiques of the hegemonic system and culture of heterosexuality, such as the concepts of 'heterosexual imaginary,'² 'heterosexual matrix,' 'heterosexual contract,'³ 'compulsory heterosexuality,'⁴ and 'hetero-patriarchy.'⁵ For example queer feminist Judith Butler labels the compulsory coherence among sexed bodies, gender and sexual desires in the culture of heterosexuality as 'the heterosexual matrix.' She argues that the concept of heterosexual matrix can be understood as:

¹ For a review of the evolution of the concept and critiques of normative heterosexuality, see Chrys Ingraham, 'Heterosexuality: It's Just Not Natural!', in Diane Richardson and Steven Seidman eds., *Handbook of Lesbian and Gay Studies* (London: Sage, 2002), 74-7; Chrys Ingraham, 'The Thinking Straight, and Acting Bent: Heteronormativity and Homosexuality', in Davis et al. eds., *The Handbook of Gender and Women Studies* (London: Sage, 2006), 313-318; Steven Seidman, 'Critique of Compulsory Heterosexuality', in Lena Martinsson and Eva Reimers eds., *Norm-struggles: Sexuality in Contentions* (Newcastle: Cambridge Scholars Publishing, 2010), 191-208; Also, Jonathan Ned Katz, *The Invention of Heterosexuality* (Chicago: University of Chicago Press, 2007), 113-166.

² Ingraham argues that heterosexual imaginary is a 'way of thinking that relies on romantic and sacred notions of heterosexuality.' This kind of ideology and thinking organises gender and sexuality orders in societies while also helping to maintain racial and class hierarchies. She argues that '[t]hrough the use of the heterosexual imaginary, we hold up the institution of heterosexuality as timeless, devoid of historical variation, and as "just the way it is" while creating social practices that reinforce the illusion that as long as one complies with this prevailing and naturalized structure, all will be right in the world.' See Chrys Ingraham, 'Heterosexual Imaginary', In George Ritzer ed., *Blackwell Encyclopedia of Sociology* (Oxford: Blackwell, 2007). Blackwell Reference Online. (Accessed 10 August, 2014).

http://www.sociologyencyclopedia.com/subscriber/tocnode.html?id=g9781405124331_yr2013_chunk_g978140512433114_ss1-26

See also Chrys Ingraham, 'The Heterosexual Imaginary: Feminist Sociology and Theories of Gender', *Sociological Theory* 12, no. 2 (1994), 203-19.

³ Monique Wittig, *The Straight Mind and Other Essays* (Boston: Beacon Press, 1992), 34.

⁴ Adrienne Rich, 'Compulsory Heterosexuality and Lesbian Existence', in Henry Abelove, Michele Aina Barale and David M. Halperin eds., *Lesbian and Gay Studies Reader Volume I* (London: Routledge, 1993), 232-239.

⁵ Francisco Valdes, 'Unpacking Hetero-patriarchy: Tracing the Conflation of Sex, Gender and Sexual Orientation to Its Origins', *Yale Journal of Law & the Humanities* 8, no.1 (1996), 161-209.

*'[t]hat grid of cultural intelligibility through which bodies, genders, and desires are naturalized....a hegemonic discursive/epistemic model of gender intelligibility that assumes that for bodies to cohere and make sense there must be a stable sex expressed through a stable gender (masculine expresses male, feminine expresses female) that is oppositionally and hierarchically defined through the compulsory practice of heterosexuality.'*⁶

Critical sexual theorist and sociologist, Steven Seidman suggests the phrase 'institutionalized normative heterosexuality' to denote both gender normativity and sexuality normativity in the institutions and culture of heterosexuality.⁷ Feminist Chrys Ingraham, uses the term 'heterosexual imaginary' to refer to the 'way of thinking that conceals the operation of heterosexuality in structuring gender and closes off any critical analysis of heterosexuality as an organizing institution.'⁸

Overall among the different terminologies used, 'normative heterosexuality' or 'heteronormativity' are perhaps the most popular when referring to the hegemonic, privileged, unmarked and naturalised institutions and culture of heterosexuality.⁹ The term 'heteronormativity' is first used by queer scholar Michael Warner in the early 1990s,¹⁰ while 'normative heterosexuality' first appeared early lesbian feminist works.¹¹ Warner himself acknowledges that his concept of heteronormativity is inspired by lesbian feminist Monique Wittig's idea of the 'heterosexual contract'¹² and her critiques of heterosexuality.¹³

⁶ See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York: Routledge, 1999), 208.

⁷ See Seidman, n 1 above, 192 and 205-208.

⁸ Ingraham, 'The Thinking Straight and Acting Bent: Heteronormativity and Homosexuality', n 1 above, 311.

⁹ Ingraham, *ibid*, 311, 315; Gregory M. Herek, 'Beyond "Homophobia": Thinking about Sexual Prejudice and Stigma in the Twenty-first Century', *Sexuality Research & Social Policy* 1, no. 2 (2004): 16.

¹⁰ Michael Warner is one of the earliest queer theorists to popularise the use of the term heteronormativity in queer critiques of dominant heterosexual culture. See Michael Warner, *Fear of a Queer Planet: Queer Politics and Social Theory* (Minneapolis: University of Minnesota Press, 1993), xxi-xxv.

¹¹ Ingraham, 'The Thinking Straight and Acting Bent: Heteronormativity and Homosexuality', n 1 above, 313.

¹² Wittig, n 3 above, 34.

¹³ Warner, n 10 above, xxi.

In this thesis I use the terms 'normative heterosexuality' and 'heteronormativity' interchangeably¹⁴ to denote the normalisation, standardisation, privilege and hegemony of certain body, sexuality and gender norms and practices based on the ideologies and culture of heterosexuality.

3.2 Lesbian feminism on the politics of normative heterosexuality, sexual justice and gender oppression

The criticisms of heterosexuality as a normative, constraining and unjust social order and institution was started from late 1960s and early 1970s by a number of lesbian and radical feminists and gay liberationists. Although generally lesbian and radical feminists and gay liberationists all maintain that heterosexuality is an institution and ideologies consist of both gender oppression and sexuality oppression,¹⁵ they tend to emphasise different critiques of heterosexuality.¹⁶ Lesbian and radical feminists present a version of a subordination feminist critique of heterosexuality. They highlight the problem of male domination over women in challenging the institution of heterosexuality.¹⁷ As feminist theorist Gayle S. Rubin has pointed out: 'lesbian feminist ideology has mostly analysed the oppression of lesbians in terms of the oppression of women.'¹⁸ From this point of view, male domination over women is the fundamental problem and the fundamental injustice within the system of heterosexuality. On the other hand, gay liberationists, while also echoing lesbian feminists, claim that in the institution of heterosexuality gender relations are hierarchal and oppressive to women, and they tend to focus more on challenging

¹⁴ There are also some other critical sexual theorists who also generally use the two terms 'normative heterosexuality' and 'heteronormativity' interchangeably. For example, see Herek, n 9 above, 16.

¹⁵ Seidman, n 1 above, 192.

¹⁶ Ibid., 191-208.

¹⁷ Seidman, *ibid.*, 193-197; Katz, n 1 above, 113-166; Stevi Jackson, 'Sexual Politics: Feminist Politics, Gay Politics and the Problem of Heterosexuality', in Terrell Carver and Veronique Mottier eds., *Politics of Sexuality* (Oxford: Routledge, 1998), 68-78; Also, Annamarie Jagose, *Queer Theory* (Victoria: Melbourne University Press, 1996), 44-57.

¹⁸ See Gayle S. Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality', in Henry Abelove, Michele Aina Barale and David M. Halperin eds., *Lesbian and Gay Studies Reader, Volume I* (London: Routledge, 1993), 33.

the harm and injustice of sexuality oppression of gay men and lesbians in the institution of heterosexuality.¹⁹

Scholars in early lesbian feminist group, The Purple September Staff, and feminist Charlotte Bunch, were among the first to argue that heterosexuality is normative in the sense of the normalisation of women's subordinate roles and status to men in societies.²⁰ Lesbian feminist Coletta Reid also argues that 'heterosexuality as an institution operates for the benefits of men.'²¹ For these early lesbian feminists, heterosexuality is a system of naturalising and normalising male domination over women. 'They maintain that heterosexuality is really a normalized power arrangement that limits options and privileges men over women and reinforces and naturalizes male dominance.'²²

Furthermore, their critiques of normative heterosexuality already go beyond the sexuality part. They already note that 'the assumptions of heterosexuality' govern not only women's erotic lives, but also their gendered social life. They notice how broadly and pervasively women's lives are constrained by heterosexual assumptions. As Margaret Small contends, assumptions of heterosexuality almost cover 'everything that has to do with the relationships between men and women,' including the 'assumptions about the family, about marriage, about motherhood, about housework, about childrearing, about rape, about illegitimacy, about spinsterhood.'²³ Thus, early lesbian feminist critiques of normative heterosexuality are not just about criticisms of oppression of female sexuality in heterosexuality, but also about the subordination of the female gender in normative heterosexual society.

¹⁹ For example, see Seidman, n 1 above, 193-197.

²⁰ Ingraham, 'The Thinking Straight and Acting Bent: Heteronormativity and Homosexuality', n 1 above, 313.

²¹ Coletta Reid, 'Coming Out in the Women's Movements', in Nancy Myron, and Charlotte Bunch eds., *Lesbianism and the Women's Movement* (Baltimore: Diana Press, 1975), 101.

²² Ingraham, 'Heterosexuality: It's Just Not Natural!', n 1 above, 74.

²³ Margaret Small, 'Lesbians and the Class Position of Women', in Nancy Myron, and Charlotte Bunch eds., *Lesbianism and the Women's Movement* (Baltimore: Diana Press, 1975), 59-60.

One of the most influential lesbian feminist critiques of normative heterosexuality is Adrienne Rich's feminist theory. Like most other early lesbian feminists, she bases her critique of heterosexuality on subordination feminist ideology. She uses the concept 'compulsory heterosexuality' to highlight her claim that heterosexuality is a male dominated institution imposed upon women.²⁴ She holds that compulsory heterosexuality is 'the enforcement of heterosexuality for women as a means of assuring male right of physical, economic, and emotional access.'²⁵ For her, the fundamental injustice of heterosexuality is rooted in its subordination of women and its privileges for men.

From the perspective of sexual politics, Rich argues that heterosexuality is 'a political institution which disempowers women.'²⁶ She urges women and feminist politics to adopt a 'woman identification'²⁷ approach and politics to resist 'male tyranny'²⁸ in compulsory heterosexuality. She uses the terms 'lesbian continuum' and 'lesbian existence' to denote, not only the erotic experience between women, but also the non-erotic women-identified experience among women, such as 'the sharing of a rich inner life, the bonding against male tyranny, the giving and receiving of practical and political support.'²⁹ She broadens the meaning of lesbian by 'naming all women-identified women as lesbian.'³⁰ Lesbianism is not just about personal sexual preference, but also a political affiliation of women in her system. To her, 'gender not sexuality, is the primary identificatory category.'³¹ Similar to some other lesbian feminists such as Sheila Jeffreys and Marilyn Frye, who are critical and sceptical of a lesbian alliance with gay men,³² Rich thinks that 'women [rather than gay men] are the natural allies of lesbians. Gay men, in so far as they

²⁴ Rich, n 4 above, 232-239.

²⁵ Ibid., 238.

²⁶ Ibid., 227.

²⁷ Ibid., 244-245.

²⁸ Ibid., 239.

²⁹ Ibid., 239, 245.

³⁰ Ibid., 227.

³¹ Jagose, n 17 above, 50.

³² See Sheila Jeffreys, 'The Queer Disappearance of Lesbians: Sexuality in the Academy', *Women's Studies International Forum* 17, no. 5 (1994), 459-472. Also, Marilyn Frye, 'Lesbian Feminism and Gay Rights Movement: Another View of Male Supremacy, Another Separatism', in *The Politics of Reality: Essays in Feminist Theory* (New York: Crossing Press, 1983), 128-151.

are men, are part of an oppressive social structure which lesbian feminism is committed to overthrowing.’³³ Are such lesbian feminist critiques of gay men convincing? I will argue that, while some of their concerns are legitimate, some are nevertheless problematic.

Rich’s concept of compulsory heterosexuality significantly contributes to the scholarship of normative heterosexuality by highlighting how female gender and female sexuality are imposed upon women through the institution of heterosexuality. However, there are also major limitations and weaknesses in her theory. For example, her critique of heterosexuality as an institution of male domination over women does not capture the full picture of injustice and violence in normative heterosexuality. Some serious injustices of normative heterosexuality, such as the oppression of gay men and trans people, are generally not addressed in her critique of the institution of heterosexuality. She also does not consider how men and those with the male gender might also be unjustly constrained and regulated in normative heterosexuality. I argue that the lesbian feminist approach alone is not sufficient in exposing, explaining and challenging the injustices of normative heterosexuality. We also need other useful perspectives to better understand and unsettle normative heterosexuality.

One of the core problems in Rich’s analysis is her tendency to adhere to an essentialist, totalising and stereotypical articulation of male gender and female gender and her one-dimensional understanding of gender power relationships in which only men dominate women. Female gender is generally interpreted as victimised and oppressed by a domineering male gender in a compulsorily heterosexual social life and culture. With this overarching assumption and premise, family violence in the home is generally viewed as the product and result of male power over women in the family and is therefore generally stereotypically portrayed and reduced to male violence against women and girls.³⁴ Through this oversimplified presentation of family and sexual violence, many victims who do not

³³ Jagose, n 17 above, 50.

³⁴ Rich, n 4 above, 233, 236-238.

fit into the 'female victim paradigm' can be easily and unfairly marginalised. However, as I will argue in more detail, in issues of family and gender violence, more and more empirical and qualitative research indicates that the reality is far more complicated than her stereotypical description.³⁵ Stereotypical feminist critiques of normative heterosexuality such as Rich's, are not only unable to reflect the complicated reality of violence and power relations in the home, but also might contribute to the perpetuation of stereotypical and oppressive heteronormative norms and bias in family and sexual justice. By tending to totalise and over-generalise compulsory heterosexuality as male tyranny over women, victims who do not conform to male-to-female violence paradigm are likely to be marginalised. In this circumstance, some form of unfortunate heteronormative stereotypes are likely to be produced, reproduced and reinforced.

³⁵ For example, according to the findings in review articles of empirical family violence studies in the past 20 years by family violence scholars, there are significant domestic violence victimisation rates for both men and women. Men and women also perpetrate comparable rates of intimate physical and emotional violence/abuse. Intimate partner violence exists, not only in heterosexual relationships, but also affects same sex relationships. Children witness similar rates of father to mother violence and mother to father violence at home. However, the legal justice system generally treats men less favourably than women in family violence cases. See Sarah L. Desmarais, Kim A. Reeves, Tonia L. Nicholls, Robin P. Telford, and Martin S. Fiebert, 'Prevalence of Physical Violence in Intimate Relationships, Part 1: Rates of Male and Female Victimization', *Partner Abuse* 3, no. 2 (2012), 140-169; Sarah L. Desmarais, Kim A. Reeves, Tonia L. Nicholls, Robin P. Telford, and Martin S. Fiebert, 'Prevalence of Physical Violence in Intimate Relationships, Part 2: Rates of Male and Female Perpetration', *Partner Abuse* 3, no. 2 (2012), 170-198; Jennifer Langhinrichsen-Rohling, Candice Selwyn, and Martin L. Rohling, 'Rates of Bidirectional versus Unidirectional Intimate Partner Violence across Samples, Sexual Orientations, and Race/ethnicities: A Comprehensive Review', *Partner Abuse* 3, no. 2 (2012), 199-230; Deborah M. Capaldi, Naomi B. Knoble, Joann Wu Shortt, and Hyoun K. Kim, 'A Systematic Review of Risk Factors for Intimate Partner Violence', *Partner Abuse* 3, no. 2 (2012), 231-280; Michelle Mohr Carney, and John R. Barner, 'Prevalence of Partner Abuse: Rates of Emotional Abuse and Control', *Partner Abuse* 3, no. 3 (2012), 286-335; Carolyn M. West, 'Partner Abuse in Ethnic Minority and Gay, Lesbian, Bisexual, and Transgender Populations', *Partner Abuse* 3, no. 3 (2012), 336-357; Melissa L. Sturge-Apple, Michael A. Skibo, and Patrick T. Davies, 'Impact of Parental Conflict and Emotional Abuse on Children and Families', *Partner Abuse* 3, no. 3 (2012), 379-400; Erika Lawrence, Rosaura Orenge-Aguayo, Amie Langer, and Rebecca L. Brock, 'The Impact and Consequences of Partner Abuse on Partners', *Partner Abuse* 3, no. 4 (2012), 406-428; Jennifer Langhinrichsen-Rohling, Adrienne McCullars, and Tiffany A. Misra, 'Motivations for Men and Women's Intimate Partner Violence Perpetration: A Comprehensive Review', *Partner Abuse* 3, no. 4 (2012), 429-468; Stan Shernock, and Brenda Russell, 'Gender and Racial/ethnic Differences in Criminal Justice Decision Making in Intimate Partner Violence Cases', *Partner Abuse* 3, no. 4 (2012), 501-530; Esteban Eugenio, Esquivel-Santoveña, Teri L. Lambert, and John Hamel, 'Partner Abuse Worldwide', *Partner Abuse* 4, no. 1 (2013), 6-75.

Another important critique of normative heterosexuality comes from the works of lesbian feminist Monique Wittig. She uses the concept 'the category of sex' and 'heterosexual contract' to label heterosexuality as a political regime where women are oppressed and dominated by male power under a mandatory 'heterosexual contract.'³⁶ She provides a similar contribution to that of Rich as she highlights how women as a sex group are constrained and forced to enter into an oppressive 'heterosexual contract.' But she also suffers similar drawbacks to Rich's work by her use of stereotypical observations of gender injustice in normative heterosexuality. Another major problem of her critique of heterosexuality is what Katz has pointed out: Wittig 'presents no adequate analysis of the "sexual," erotic half' of the institution and culture of normative heterosexuality.³⁷ Her critiques focus almost exclusively on the oppression of women and femininity but leaves oppression of non-standard sexuality largely unchecked. Queer theorist Warner acknowledges his concept of heteronormativity is inspired by Wittig's critique of the heterosexual contract.³⁸ However, in contrast to Wittig, Warner focuses more on sexuality oppression in his critique of heteronormativity. I will discuss his analysis in the next chapter.

A point worth further reflection is that unfortunately some lesbian feminist theories show bias and prejudices against men (gay and straight) and masculinities. For example, lesbian feminist Marilyn Frye criticises effeminate gay men by accusing them of making 'a casual and cynical mockery of women.'³⁹ She claims that 'gay men's effeminacy and donning of feminine apparel displays no love of or identification with women or the womanly.'⁴⁰ She argues that '[w]hat gay male affection of femininity seems to me to be is a kind of serious sport in which men may exercise their power and control over the feminine.'⁴¹

³⁶ Wittig, n 3 above, 1-8, 40.

³⁷ Katz, n 1 above, 159.

³⁸ Warner, n 10 above, xxi.

³⁹ Frye, n 32 above, 137.

⁴⁰ Ibid.

⁴¹ Ibid.

According to Frye, most effeminate gay men perform femininity out of their contempt towards women and femininity and their desire to claim male supremacy.⁴² To her, these effeminate gay men are not feminine and their femininity is only secondary to, and in imitation of, the 'real' femininity in 'real' women. I argue that Frye implies problematic heteronormative coherence between biological female sex and female gender. She problematically prioritises and normalises biological women's femininity over others', such as trans and gay men's, femininity. Real femininity seems to belong only to biological women in her ideology. She implies that feminine gay men do not have real femininity and can only mock and imitate femininity; gay men's femininity is not authentic and is interpreted as offensive to women. I challenge this kind of assumption of rigid connection and coherence between biological body and gender expression, from queer humanist men and masculinities studies inspired perspectives. Queer humanist men and masculinities studies problematise Frye's assumption of the exclusiveness of femininity to biological women. By implicitly presupposing that only biological women have authentic and legitimate femininity, Frye implicitly suggests that men or transgender people who perform femininity are portraying an unorthodox female gender. She cannot see the femininities of feminine gay men could also be femininities that are no less feminine and no less authentic than the femininities of biological women. By reducing feminine gay men's femininity to nothing more than mockery, contempt, imitation or even hatred of women, she closes with an essentialist view of sex and gender that naturalises and prioritises a heteronormative order of the coherence of the sexed body and certain dominant gender expressions. As a result, her arguments become ultimately inconsistent with her original aim of subverting the institution of heterosexuality. Her feminism is in danger of reinforcing a heteronormative order of sex and gender.⁴³

Furthermore, Frye claims that the reason that many gay men do not have sex with women is because they are 'woman-hating.' She argues that:

⁴² Ibid., 137-138.

⁴³ Ibid., 128-151.

*'In many cases they [gay men] are loathe to do their duty [have sex with women] only because they have learned all too well their lessons in woman-hating. Their reluctance to play out this part of manhood is due only to an imbalance, where the requisite woman-hating has taken a form and intensity which puts it in tension with this other requirement of manhood.'*⁴⁴

She holds that because many gay men develop a strong hatred towards women, these gay men are reluctant to have intimate sex with women. On the other hand, she also claims that heterosexual sex is 'a ritual enactment' of men's subordination of women.⁴⁵ Therefore, men are woman-hating not only because they have sex with women as heterosexual men, but also because they refuse to have sex with women, such as gay men. In her analysis, heterosexual men who desire sex with women perpetuate male-supremacy and control over women, while gay men who do not desire heterosexual sex are regarded as women-haters.⁴⁶ This kind of lesbian feminism is problematic. By viewing heterosexual sex as fundamentally and structurally men's subordination and control of women,⁴⁷ Frye has a tendency to view women as being structurally powerless and passive in sexuality without agency. She also tends to ignore the joy, pleasure and adventure of sex. By labelling gay men as 'woman-hating' for simply not desiring heterosexual sex with women, on this biased and unfounded view she implicitly assumes that heterosexual desire is the supposed normal desire, while male homosexual desire is exceptional and abnormal. Her lesbian feminism reinforces a kind of compulsory heterosexual oppression upon gay men by dogmatically degrading and stigmatising gay male sexuality and gay male sexual autonomy. I challenge this kind of essentialism and stigmatisation in lesbian feminism. By relying on hostile and discriminatory stigmatisation of gay male sexuality, Frye's lesbian feminism not only would not be able to destabilise certain aspects of normative heterosexuality but would further reproduce and reinforce them.

⁴⁴ Ibid., 140.

⁴⁵ Ibid., 140.

⁴⁶ Ibid., 140-141.

⁴⁷ Ibid., 129, 140.

In sum, lesbian feminism contributes significantly to the development of the critique and critical review of normative heterosexuality and sexual injustices. Lesbian feminist theories tend to focus on challenging gender injustice towards women in their critiques of normative heterosexuality, and this is their major area of contribution. However, although combating gender oppression of women is certainly one of the important areas of concern in the critiques of normative heterosexuality, it does not cover the whole picture of sexual injustice in normative heterosexuality. Furthermore, some lesbian feminist theories tend to essentialise certain gender prejudices and stereotypes and are at risk of further perpetuating some forms of sexual injustice in normative heterosexuality. We therefore also need other perspectives and approaches to fully critique normative heterosexuality.

3.3 Gay liberationist theory on normative heterosexuality and sexual justice

Early gay liberationists such as Carl Wittman and Dennis Altman echo lesbian feminist beliefs and arguments whereby women are the oppressed gender group in the institution of heterosexuality.⁴⁸ Nonetheless, they do not want to reduce the sexuality oppression of gay men and lesbians to just a by-product of the gender oppression of women and femininity.⁴⁹ They show deep concern over injustices connected to sexuality in the institution of heterosexuality.

Carl Wittman's gay liberationist theory about heterosexuality and gender is largely informed by a radical feminist idea of male domination and female subordination. To him, compulsory heterosexuality means the stigmatisation of homosexuality and the oppression of women in sex, marriage and society.⁵⁰ He rightly summarises the forms of homophobic oppression of gay men and lesbians in heterosexual society. He argues that gay men and lesbians are oppressed and injured by physical attacks, psychological injuries, internal homophobia and institutional oppression.⁵¹ He is

⁴⁸ See Carl Wittman, 'A Gay Manifesto', in Karla Jay and Allen Young eds., *Out of the Closets: Voices of Gay Liberation* (London: GMP, 1992), 330-341. Also, Dennis Altman, *Homosexual Oppression and Liberation* (New York: New York University Press, 1993), 90-94, 215-226.

⁴⁹ Seidman, n 1 above, 191-195.

⁵⁰ Wittman, n 48 above, 330-341.

⁵¹ Ibid., 335-336.

sceptical and critical of the moral value of heterosexual relations. He implies that exclusive heterosexual relations suggest homophobia and heterosexual sex denotes the oppression of women. He argues that:

*'Exclusive heterosexuality is fucked up. It reflects a fear of people of the same sex. It's anti-homosexual...Heterosexual sex is fucked up too; ask women's liberation about what straight guys are like in bed.'*⁵²

Although he rightly points out that gay men and lesbians are oppressed by physical violence, emotional abuse, internal homophobia and institutional discrimination in the institution of heterosexuality, his tendency to label exclusive heterosexual relations as homophobic is questionable and might not be consistent with the principle of sexual autonomy and sexual agency, a principle defended and adopted by liberal theories of sexual justice.⁵³ As I will discuss in Chapter 5, sexual autonomy and sexual agency require us to respect and to secure a proper space for individuals to decide upon their own preferences and expressions of sexuality. Homosexual relations should be protected and respected. Similarly, heterosexuals who choose to live in exclusive heterosexual relations should have the sexual freedom to do so and deserve others' respect. It is inappropriate to suggest that all those in exclusive heterosexual relations are homophobic in essence. His tendency to essentialise gender in heterosexual sex and heterosexual relations as male oppression over vulnerable women is also problematic. As I argue throughout this thesis, this kind of over-generalisation and over-simplification of gender in the critique of normative heterosexuality is questionable and could blind us to the complexities and multiple faces of various sexual injustices in the systems and culture of normative heterosexuality.

Another leading gay liberationist scholar Dennis Altman develops his gay liberationist critique of normative heterosexuality on the basis of sex roles theory.

⁵² Ibid., 331-332.

⁵³ Liberal theorist Nicholas Bamforth provides one of the most convincing and sophisticated arguments for the principle of sexual autonomy. I will discuss his liberal theory of gay rights and sexual justice in Chapter 5. See Nicholas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London, Washington D.C.: Cassell, 1997), 235-271.

Sex roles theory holds that 'being a man or a woman means enacting a general set of expectations which are attached to one's sex—the "sex role"'.⁵⁴ In this theory, masculinity and femininity are 'interpreted as internalized sex roles, the products of social learning or "socialization"'.⁵⁵ Altman believes that the expected and socially imposed sex and gender roles are the roots of oppression of gay people and women in heterosexuality. He argues that both gay people and women are constrained by socially imposed masculine and feminine roles, the binary gender roles that are constructed under the nuclear family ideologies in normative heterosexuality.⁵⁶ He thinks that the central oppression of women is their expected domestic sex role and the corresponding consequence of women's inferior economic situation. For gay people the central difficulty is the social stigma of their deviation of expected gender roles in sexuality.⁵⁷

One point worth mentioning is that he also agrees with the observation men's liberationist theory that imposed sex/gender roles in heterosexuality not only disadvantage women but also harm men. Inspired by early men's liberation studies, he argues that men are socialised to compete with other men and are conditioned into a violent and competitive masculine identity.⁵⁸ On sexuality he holds that human beings are in essence androgynous and bisexual but are forced to repress their innate homosexual desires by following rigid and binary sex roles assigned to them.⁵⁹ He suggests that the problem of male violence is largely related to the compulsory repression of male homosexual desires and the compulsory rejection of male bonds in heterosexist culture.⁶⁰ Men are forced to compete with one another and are barred from developing male bonds and male love in the institution of heterosexuality. Male violence is highly related to the compulsory socialisation of men into constant competition with, and hostility towards, other men in

⁵⁴ See R. W. Connell, *Masculinities* (Berkeley: University of California Press, 2005), 22.

⁵⁵ *Ibid.*, 22.

⁵⁶ Altman, n 48 above, 225-226.

⁵⁷ *Ibid.*, 226.

⁵⁸ *Ibid.*, 233-236.

⁵⁹ *Ibid.*, 102-103.

⁶⁰ *Ibid.*, 98-99.

heterosexual society.⁶¹ He therefore suggests that men also need to be freed from rigid heterosexual desires and sex roles. He argues for the need for not only gay liberation and women's liberation movements, but also the need for men's liberation movements. For example, he indicates that a men's liberation movement would liberate men from compulsory competitiveness among men and would encourage warmer relationships not only between men and women, but also among men themselves.⁶²

One of the significant strengths of Altman's gay liberation theory, I argue, is his observation that men also need to be freed from rigid sex roles and his implication that there could be an alliance and cooperation between gay liberation movements and men's liberation movements. However, he does not explore this topic. Nor does he elaborate upon the proposed relationship between gay liberation and men's liberation. I further investigate and develop this topic from queer humanist men and masculinities studies inspired perspectives in this thesis.

However, there are also some limitations in Altman's theory. For example, his claim of essential bisexuality of human beings could be questioned from perspectives of contemporary social constructionist and queer theories.⁶³ His claim that economic difficulty is the main cause of women's oppression could be contested by feminists who claim that women's oppression depends on the existence of other main causes.⁶⁴ His arguments that the roots of male violence are sexual repression and

⁶¹ Ibid., 233-236.

⁶² Ibid.

⁶³ For example, see Jagose, n 17 above, 41-43.

⁶⁴ For example, both Iris M. Young and Nancy Fraser insist that although material injustice is one of the core roots of women's oppression, it is not the only major cause of women's subordination. Young presents a theory of five faces of oppression to elaborate the oppression of women. See Iris Marion Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 1990), 50-65. Fraser argues that both material inequality and inequality in recognition are central to women's subordination. She contends that gender justice projects ought to address both economic inequality and cultural inequality of women. See Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation', in Larry J. Ray and Andrew R. Sayer eds., *Culture and Economy after the Cultural Turn* (London: Sage, 1999), 25-52. Also, Nancy Fraser, 'Feminist Politics in the Age of Recognition: A Two-dimensional Approach to Gender Justice', *Studies in Social Justice* 1, no. 1, (2007), 23-35.

assigned sex roles of men may also be oversimplified.⁶⁵ His tendency to equate sexism with sexism against women is also problematic; this is an issue that I explore in the critical evaluation of contemporary men and masculinities studies.⁶⁶

One of the major limitations of Altman's theory is his reliance on sex/gender roles theory in his sexual liberation theory. Sex roles theory itself has some internal weaknesses. For example, sex roles theory tends to hold relatively static and singular concepts of masculinity and femininity.⁶⁷ Its concepts and articulation of masculine roles and feminine roles are also generally based on the experiences of white, middle class people.⁶⁸ Sex role theory thus fails to adopt more fluid and diverse concepts of gender by overlooking the complexities and existence of multiple masculinities and femininities. Moreover, sex roles theory tends to view gender as mainly static rules of social expectations without highlighting the point

⁶⁵ Family conflict theory and feminist gender violence theory are two of the major theories in contemporary family violence scholarship. Although they hold different opinions on the causes and dynamics of family violence, both theories disagree with Altman's elaboration of the root of male violence. Feminists argue that the root of male violence is male domination and male power and control over women. See for example, Bontina Meyersfeld, *Domestic Violence and International Law* (Oxford: Hart, 2010); Michelle Madden Dempsey, 'What Counts as Domestic Violence-A Conceptual Analysis', *Wm. & Mary J. Women & L.* 12, no. 2 (2006), 301-333; Michelle Madden Dempsey, 'Toward a Feminist State: What Does 'Effective' Prosecution of Domestic Violence Mean?', *The Modern Law Review* 70, no. 6 (2007), 908-935; Liz Kelly, 'When Does the Speaking Profit Us? Reflections on the Challenges of Developing Feminist Perspectives on Abuse and Violence by Women', in Marianne Hester, Liz Kelly, and Jill Radford eds., *Women, Violence, and Male Power: Feminist Activism, Research, and Practice* (Buckingham: Open University Press, 1996), 34-48; Jill Radford, and Elizabeth A. Stanko, 'Violence against Women and Children: the Contradictions of Crime Control under Patriarchy', in Marianne Hester, Liz Kelly, and Jill Radford eds., *Women, Violence, and Male Power: Feminist Activism, Research, and Practice* (Buckingham: Open University Press, 1996), 65-80; Russel P. Dobash., R. Emerson Dobash, Margo Wilson, and Martin Daly, 'The Myth of Sexual Symmetry in Marital Violence', in Claire M. Renzetti and Raquel Kennedy Bergen eds., *Violence Against Women* (Lanham: Rowman and Littlefield Publishers, 2005), 31-52.

Family conflicts theorists on the other hand would suggest that there are multiple causes of male violence in families and would reject one simplified and overarching answer. See for example, Capaldi, Knoble, Shortt, and Kim. n 35 above, 231; Langhinrichsen-Rohling, McCullars, and Misra, n 35 above, 429-468. Also, Donald G. Dutton, *Rethinking Domestic Violence* (Vancouver: UBC Press, 2011). I agree with family conflicts theory's viewpoint that a reductionist explanation of male violence would be oversimplified and inadequate. I will discuss the issues of gender violence and family violence more in later sections.

⁶⁶ Altman, n 48 above, 216-226.

⁶⁷ Michael A. Messner, 'The Limits of "The Male Sex Role" An Analysis of the Men's Liberation and Men's Rights Movements' Discourse', *Gender & Society* 12, no. 3 (1998), 258.

⁶⁸ Connell, n 54 above. 26.

that gender is also about real practices and performances and is performative.⁶⁹ Due to sex roles theory's relatively static understanding of sex and gender roles, it has difficulties in capturing the constant resistance, conflicts, and power struggles within gender relations.⁷⁰ Since Altman relies on sex roles theory to develop a gay liberation argument, his theory nevertheless suffers from those similar limitations that we find in sex roles theory.

Furthermore, his discussion of the constraints of the sex/gender roles of men as a social group too narrowly focuses on the harm of aggressive male identity. There exist much wider restrictive and oppressive gender norms of men that are not addressed and considered in his liberation theory. He also does not clearly and sufficiently elaborate upon the relations between promoting gay liberation and men's liberation. Why is it crucial and beneficial for gay people to support, not only women's liberation, but also men's liberation? What does men's liberation mean and what does the liberation require? What are the implications of men's liberation in the law and politics of sexuality and gender? He seems to assert the need for a sexual politics of men's liberation, but does not fully elaborate its implications for gay liberation and gay rights politics, especially its implications for gay men. These questions are not sufficiently and clearly addressed and answered in his gay liberation theory. Nor has he explicitly acknowledged and declared that restrictive and constraining gender roles for men are also an issue of sexual injustice. He is not clearly aware of the existence and the harm of sexism against men as he treats sexism as synonymous with sexism against women. A thorough and systematic investigation and analysis of the harm of sexism and the injustice of gender oppression against men are lacking in his theory. Therefore, although he is one of the very early gay theorists who notices and partially anticipates the possible cooperation and benefits between gay liberation and men's liberation, there are still many insufficiencies in his gay liberationist theory.

⁶⁹ Queer feminist Judith Butler uses the concept 'gender performativity' to 'describe the way in which gender is produced as an effect of a regulatory regime that requires the ritualised repetition of particular forms of behaviour.' See Tamsin Spargo, *Foucault and Queer Theory* (Cambridge: Icon books, 1999), 75; Butler, n 6 above, xv.

⁷⁰ Messner, n 67 above, 258.

The major contribution from lesbian feminist and gay liberationist critiques of normative heterosexuality is that these sexual theorists do not view heterosexuality as just a personal sexual preference or only a matter of individual sexual identity anymore. They argue that heterosexuality should also be viewed as a problematic institution in which unjust and oppressive gender and sexuality norms and arrangements are institutionalised in law, politics and social structures. They also highlight how women and gay people are harmed in the problematic institution of heterosexuality. Furthermore, lesbian feminism note and contend that normative heterosexuality is not just about sexuality oppression of women, but is also an institution of oppression of women in almost every aspect of gender relations and gender life. Their insights about heterosexuality that it is more than just sexual expression, but also an institution of sexuality and gender injustices, inspires later feminist and queer critiques of normative heterosexuality. However, as I have also illustrated earlier, there are several major limitations in early lesbian feminist and gay liberationist critiques with respect to normative heterosexuality and sexual justice. One of the major problems is their interpretation and understanding of gender oppression. They tend to hold oversimplified ideas of gender oppression and gender injustices by viewing female gender as the only gender oppressed and constrained unjustly in normative heterosexuality. Contemporary subordination feminist projects developed later provide more nuanced accounts of gender oppression as illustrated in the next section. However, I will argue, while some of the adjustments are helpful, they do not overcome the major limitation in subordination feminist perspectives and approaches. In subsequent sections I discuss the views of contemporary subordination feminisms on normative heterosexuality. I critically review contemporary subordination feminist projects on law, family, gender and sexual justice. I argue that at least in family law and family justice, it is not always unproblematic to adopt subordination feminist approaches in thinking about sexual justice, law and families.

3.4 Contemporary subordination feminisms on sexual politics, gender oppression, law, and normative heterosexuality

The idea of early lesbian and radical feminism that normative and compulsory heterosexuality is primarily an institution of male domination over women continues to have a great impact on contemporary feminist projects on sexual justice and sexual politics. Many contemporary subordination feminists expand and modify this early feminist belief and idea. They continue to develop arguments about why women and femininity are subordinated and disadvantaged in normative heterosexual society, and how women's subordination can be eliminated. For example, sexual-subordination feminists such as MacKinnon hold that the social construction of female sexuality is the main cause of women's oppression while men's domination is largely rooted in and perpetuated by socially constructed male sexuality.⁷¹ Subordination feminist family law and family justice theorists argue that the law and institutions of marriage and family tend to privilege men and subordinate women; marital and family relations are unequal, and women are oppressed and discriminated against in the interests of men.⁷² The feminist violence against women approach argues that gender violence and family violence ought to be understood and addressed as issues of male power and control over women and children in the family and in society.⁷³

In this chapter I primarily concentrate on examining critically contemporary subordination feminist perspectives and theories on family justice and family violence jurisprudence. I argue that some dimensions and problems of

⁷¹ See Catharine A. MacKinnon, 'Feminism, Marxism, method, and the State: Toward Feminist Jurisprudence', *Signs* 8, no. 4 (1983), 635-658; Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989); Catharine A. MacKinnon, *Women's Lives, Men's Laws* (Harvard University Press, Cambridge, 2005).

⁷² See for example Susan Moller Okin, *Justice Gender and the Family* (Oxford: Oxford University Press, 1997), 134-186; Martha Albertson Fineman, 'Fatherhood, Feminism and Family Law', *McGeorge Law Review* 32, no. 4 (2000), 1031-1049; Martha Albertson Fineman, *the Autonomy Myth: a Theory of Dependency* (New York: the New Press, 2004) ; Martha Albertson Fineman, 'The Sexual Family', in Martha Albertson Fineman, Jack E. Jackson, and Adam p. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Surrey: Ashgate, 2009), 45-64.

⁷³ For example, see Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge: Cambridge University Press, 2011); Meyersfeld, n 65 above; Dempsey, n 65 above; Kelly, n 65 above; Radford and Stanko, n 65 above; Dobash, Dobash, Wilson, and Daly, n 65 above.

heteronormative gender norms and injustices might be generally marginalised or trivialised in subordination feminist legal and political theory. Furthermore, some of their legal projects and proposed policies not only rely on, but also have a tendency to perpetuate, certain problematic norms and ideologies of heteronormative sexuality and gender.

Recently, feminist sociologist Stevi Jackson presented one of the clearest and most eloquent arguments from subordination feminist perspectives on why heterosexuality ought not to be viewed as simply a dominant sexual orientation and why heteronormativity is not just about sexuality oppression. She holds that:

*'Heterosexuality, however, should not be thought of as simply a form of sexual expression. It is not only a key site of intersection between gender and sexuality, but also one that reveals the interconnections between sexual and non-sexual aspects of social life. Heterosexuality is, by definition, a gender relationship, ordering not only sexual life but also domestic and extra-domestic divisions of labour and resources... Thus heterosexuality, while depending on the exclusion or marginalisation of other sexualities for its legitimacy, is not precisely coterminous with heterosexual sexuality. Heteronormativity defines not only a normative sexual practice but also a normal way of life.'*⁷⁴

Here she summarises why both sexuality constraints and gender constraints ought to be taken into account and addressed within research in heteronormativity and sexual politics, an approach some feminists insist upon, but something not necessarily shared and adopted by gay studies or queer theories in their critiques of heteronormativity.⁷⁵ She argues that heterosexuality is not just about sexual preference towards the opposite sexes but is also an institution of sexuality and gender conformity. She draws a subtle distinction between the concepts of (normative) 'heterosexuality' and 'heterosexual sexuality'. The former is an institution and regime of gender and sexuality normativity, while the latter denotes a kind of sexual preference and sexual practice between opposite sexes. She argues

⁷⁴ Stevi Jackson, 'Gender, Sexuality and Heterosexuality: The complexity (and Limits) of Heteronormativity', *Feminist Theory* 7, no. 1 (2006), 107.

⁷⁵ Jackson, n 17 above, 68-69.

that scholarship of sexual politics and heteronormativity should not only focus on criticising sexuality constraints in heterosexuality, but should also address gender oppression (of women) in normative heterosexuality.⁷⁶

Jackson further claims that gender divisions and gender norms are male-dominant, female-oppressive, hierarchical and unequal in the institution and culture of normative heterosexuality, as subordination feminists generally claim.⁷⁷ She argues that both sexuality injustices and gender injustices (of women) should be kept in view in the critiques of normative heterosexuality. This is because 'women's oppression and the oppression of lesbian and gay men are interconnected, that both are sustained by the hierarchy of gender, in which male domination is sustained in part through the heterosexual contract.'⁷⁸ Based on this line of thinking, she argues that projects of sexual politics should target both the oppression of women and the oppression of lesbians and gay men because they are both oppressed and victimised by unequal gender hierarchy and male domination in heteronormative society. She contends that the oppression of women and LGBT people share the same roots: an unjust gender hierarchy that privileges men and masculinity while degrading women and femininity. She criticises gay rights projects that do not prioritise and incorporate subordination feminist ideologies and concerns of gender oppression of women. For her a proper sexual politics project against normative heterosexuality ought to address both the oppression and constraints of women and the oppression and constraints of non-heterosexuals.⁷⁹

Moreover, she revitalises some early lesbian feminist arguments and argues that gay men and lesbians are not similarly oppressed and situated in normative heterosexuality. This is because 'heterosexuality is a fundamentally gendered institution,'⁸⁰ in which men are privileged while women are subordinated. She suggests that although gay men are victimised because of their sexuality, their male

⁷⁶ Ibid.

⁷⁷ Ibid., 68-70, 74.

⁷⁸ Ibid., 69.

⁷⁹ Ibid., 69, 72-77.

⁸⁰ Ibid., 74.

gender is however privileged in heteronormative society. Lesbians, unlike gay men, experience both sexuality and gender subordination.⁸¹ She argues that gay politics needs to tackle both heterosexual privileges and male privileges. She suggests that a gender neutral notion of gay politics is insufficient in sexual politics projects. For example, she argues that the needs and specific situations of lesbian mothers cannot be properly grasped by gender neutral perspectives in gay politics.⁸² She suggests therefore a gender-specific approach to gay politics is needed to address the gendered experiences and needs of lesbians.

I agree with Jackson and some lesbian feminists' claims that gender injustice and gender oppression ought to be examined and tackled along with sexuality injustice within normative heterosexuality and sexual justice research. I also agree that queer and gay theories should not limit their critiques and challenge of heteronormativity to only sexuality related issues. Furthermore, I concur with the claim that subordination of women in normative heterosexuality needs to be addressed. But is it an appropriate, efficient, and balanced approach to gender justice to focus only upon challenging the oppression of women in heteronormativity? Can subordination feminists see the existence and the harm of the gender oppression of men in normative heterosexual societies and culture? Jackson's reductionist idea of gender oppression, as held by many other subordination feminist projects, has the actual effect of, and practical implications for, generally reducing the problem of gender oppression, gender injustices and sexism to simply a problem of women's oppression, injustices towards women, and sexism against women. Is this kind of reductionist concept of gender injustice and gender oppression appropriate in thinking about sexual justice and heteronormativity? I challenge the subordination feminist tendency of crudely equating issues of gender injustices with only issues of injustices towards women in their projects. I argue from the perspectives of queer men and masculinities studies that, while subordination feminisms rightly expose some aspects of injustices and constraints in normative heterosexuality, there are

⁸¹ Ibid.

⁸² Ibid., 74-75.

other important dimensions that might be largely marginalised in subordination feminist sexual justice systems and ideologies. In the next section I use family violence jurisprudence as an example to critically evaluate the strengths and weaknesses of the subordination feminist women-centred approach in sexual justice projects.

In respect of gay politics and gay rights, I agree with Jackson's claim that lesbians may face gender specific problems and difficulties. Sometimes gender sensitive perspectives in sexuality are needed for lesbians, for instance, in cases of lesbian mothers. However, my question is can we also see that there are gender specific needs and gender specific obstacles and discrimination that gay men experience, for example, in gay fathers' cases? Can we appreciate that gay men sometimes also are not only disadvantaged and discriminated against because of their sexuality, but also because of their male sex/male gender? Take gay fathers as an example; research indicates that gay fathers sometimes suffer from double prejudice and intersectional stereotyping of sexuality and gender in parenting issues.⁸³ On the one hand, gay fathers and their children sometimes experience general heterosexist discrimination and homophobic hostility from conservative professionals, service providers or the general public.⁸⁴ On the other hand, gay fathers sometimes also suffer from sexist discrimination and gendered biases against men and masculinity.⁸⁵ For instance, the family welfare systems and children's service providers are largely women-centred and female-oriented. Gay fathers report being marginalised and trivialised by family and children's service providers and professionals not only because of their homosexuality but also because they are

⁸³ Charlotte J. Patterson, 'Family Relationships of Lesbians and Gay Men', *Journal of Marriage and Family* 62, no. 4 (2000), 1057; Michael E. Lamb, *The Role of the Father in Child Development* (New Jersey: John Wiley and Sons, 2010), 319-327; Camille Gear Rich, 'Innocence Interrupted: Reconstructing Fatherhood in the Shadow of Child Molestation Law', *California Law Review* 101, no. 3 (2013), 693-696.

⁸⁴ Lamb, *ibid.*, 319-323; Judith Stacey and Elizabeth Davenport, 'Queer Families Quack Back', in Diane Richardson and Steven Seidman eds., *Handbook of Lesbian and Gay Studies* (London: Sage, 2002), 366.

⁸⁵ Lamb, *ibid.*, 327; Camille Gear Rich, n 83 above, 694-695; Gerald P. Mallon, *Gay Men Choosing Parenthood* (New York: Columbia University Press, 2004), 124-125, 132-139; Clifford J. Rosky, 'Like Father, Like Son: Homosexuality, Parenthood, and the Gender of Homophobia', *Yale Journal of Law & Feminism* 20, no. 2 (2009), 257-355.

men.⁸⁶ In child residence/custody cases, gay fathers are likely to face double discrimination and intersectional disadvantage from the intersection of a court's heterosexist attitude towards gay parents and a court's maternal preference for female parents.⁸⁷ Therefore, not only do lesbians sometimes face gendered obstacles in social life, but gay men also often experience gendered constraints. I argue that in sexual politics projects it is crucial that we not only attend to the gender specific needs of lesbians, it is important that we also address the gender specific needs for gay men.

I argue that for gay rights and gay justice issues, queer humanist men and masculinities studies will not only limit themselves to investigating and addressing the gender oppression of women but will also attend to gender oppression of trans people and oppression of men *qua* men. I argue that this kind of approach to sexual justice/sexual politics could help us better understand, unravel and address some of the gender specific oppression and constraints gay men experience but that are generally not taken seriously enough by subordination feminism or some gay theories.

The central theme and overarching premise in subordination feminist critiques of normative heterosexuality is the oppressive gender order in heteronormative institutions in which women are disadvantaged and dominated by men. Some subordination feminists and subordination-feminist men and masculinities studies respond to the critiques of their binary and stereotypical distinction of gender by claiming that men can be victims as individuals in the family or in social relations, but insist that men as a gender group *per se* should be regarded as the privileged gender when thinking of sexual justice.⁸⁸ This is mainly because, in their view, the whole of heteronormative society still largely rewards and privileges men as men.

⁸⁶ Mallon, *ibid.*, 124-125.

⁸⁷ Lamb, n 83 above, 327; Patterson, n 83 above, 1057; *Salgueiro da Silva Mouta v Portugal*, 31 E.H.R.R. 47 (2001).

⁸⁸ Michael A. Messner, *Politics of Masculinities: Men in Movements* (London: Sage, 1997), 1-15, 89-110.

Men as the gender group collectively enjoy the 'patriarchal dividend'.⁸⁹ Some subordination feminists argue for the need to also take into account the variations among different sub-groups of men and therefore to be more sensitive to the intersection of multiple group identities in sexual politics such as the intersection of sexuality, class and race with gender.⁹⁰ They argue that although men are privileged because of their male gender, some groups of men may be oppressed because of their other disadvantaged identities. For example, they argue that while working class men are privileged because of their male gender, they are also oppressed because of their class.⁹¹ Furthermore some subordination feminists are willing to acknowledge that there are 'costs' for men to pay for male domination. However, these subordination feminist scholars refuse to treat these 'costs' for men as unjust gender discrimination and oppression of men *per se* in normative heterosexuality.⁹² I argue that although some subordination feminists have modified their rigid and stereotypical understanding of gender by the above ways and the modifications are generally helpful, the fundamental limits of their structuralist understanding of gender injustices and gender oppression may still exist.

3.5 Constructing heteronormativity in the family: violence against women feminism on family violence, sexuality and gender

In this section I use the jurisprudence developed by subordination feminist theory regarding family violence as an example to critically evaluate the pros and cons of a subordination feminist approach to sexual justice and sexual politics. I argue that despite its contribution, the subordination feminist approach to family violence has a tendency of producing and perpetuating certain unjust heteronormative myths, discrimination and prejudices in their construction of family violence. I argue for the need to utilise other perspectives in family violence jurisprudence such as the queer humanist men and masculinities studies' approach to family violence.

⁸⁹ Connell, n 54 above, 79; R. W. Connell, *Gender* (Cambridge: Polity, 2002), 142-143.

⁹⁰ Messer, n 88 above, 89-110.

⁹¹ Michael Kimmel, *Misframing Men: The Politics of Contemporary Masculinities* (New Brunswick: Rutgers University Press, 2009), 215-216.

⁹² R. W. Connell, *The Men and The Boys* (Cambridge: Polity, 2000), 165-167; Messner, n 88 above, 3-15, 36-62.

The dominant feminist approach to domestic and family violence is subordination feminism's violence against women approach.⁹³ This approach contends that domestic violence should be analysed from the perspective of institutional gender inequality and ought to be addressed under the legal framework of violence against women jurisprudence.⁹⁴ They argue that the roots of domestic violence are patriarchy and institutional male power and the main pattern of domestic violence surrounds male control and dominance over women.⁹⁵ Domestic violence is gender violence against women in the family. They generally assume the male perpetrator/female victim dichotomy in their construction of domestic violence.⁹⁶ Gender is generally polarised, crudely categorised and stereotyped in violence against women feminism's analysis of family violence.

Subordination feminism's theory and construction of domestic violence has significant influence in the jurisprudence and legal practice of domestic violence. At an international level, the subordination feminist construction dominates international institutional official policies regarding domestic violence.⁹⁷ For example, in international law theory and practices, feminist international law generally defines and treats family violence as a problem of institutional male dominance and violence over women. Issues of domestic violence in international law are generally addressed as an issue of violence against women and are dealt

⁹³ See Kierrynn Davis and Nel Glass, 'Reframing the Heteronormative Constructions of Lesbian Partner Violence: An Australian Case Study', in Janice L. Ristock ed., *Intimate Partner Violence in LGBTQ Lives* (London: Routledge, 2011), 16-17; Janice I Ristock, *No More Secrets: Violence in Lesbian Relationships* (London: Routledge, 2002) 1-26, 105-106, 129-151.

⁹⁴ See n 65 above.

⁹⁵ Helen Reece, 'Feminist Anti-violence Discourse as Regulation', In Shelley Day Sclater, Fatemeh Ebtehaj, Emily Jackson, Martin Richards eds., *Regulating Autonomy: Sex, Reproduction and Family* (Oxford: Hart Publishing, 2009), 40-48; Dempsey, n 65 above; Krisana M. Hodges, 'Trouble in Paradise: Barriers to Addressing Domestic Violence in Lesbian Relationships', *Law & Sexuality Review, Lesbian, Gay, Bisexual & Transgender Legal issues* 9 (1999), 325-326; Donald G. Dutton, and Tonia L. Nicholls, 'The Gender Paradigm in Domestic Violence Research and Theory: Part 1—The Conflict of Theory and Data', *Aggression and Violent Behavior* 10, no. 6 (2005), 682-685.

⁹⁶ Ristock, n 93 above, 4, 122-123; Dutton, *ibid*.

⁹⁷ Bontina Meyersfeld, *Domestic Violence and International Law* (Oxford: Hart, 2010); Christine Chinkin, 'Violence Against Women', in Marsha A. Freeman, Beate Rudolf, and Christine Chinkin eds., *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford University Press, 2012), 443-474; Edwards, n 73 above, 69, 189-190, 246-266.

with under the violence against women legal framework.⁹⁸ In an official UN report on domestic violence, Radhika Coomaraswamy, the former Special Rapporteur on violence against women appointed by the UN Commission on Human Rights, claims that 'domestic violence is gender-specific violence directed against women, occurring within the family and within interpersonal relationships.'⁹⁹ The subordination feminist construction of domestic violence is also widely adopted by local legal and social service providers. For example, feminist 'power/control wheel' model is widely used and institutionalised by domestic violence service providers to elaborate the dynamics of domestic violence. The power/control wheel model argues that the root of domestic violence is men's power and control over women in the family. Physical, psychological, financial, emotional and sexual coercion and violence are the main forms of violence men use to dominate women in intimate relations.¹⁰⁰

Under the feminist framework of violence against women the construction of domestic violence, family violence against men, including family violence against gay men, bi men or trans people are generally marginalised and often invisible. A heterosexual female victim paradigm is generally assumed and prioritised under this approach.¹⁰¹ By adopting this kind of monolithic understanding of family violence, violence against women feminism has difficulties in properly responding and attending to the complex dimensions, relations and factors of abuse and violence in the family. Victims of same-sex intimate partner violence, for instance, are often trivialised in the jurisprudence of mainstream feminist theories of family violence. Although heterosexual men's violence in the family is a serious problem in need of urgent legal and political effort to address the issue, it is nevertheless problematic for subordination feminism to homogenise family violence into a male dominance

⁹⁸ Meyersfeld, *ibid.*, 24-78, 193-250; Chinkin, *ibid.*

⁹⁹ Radhika Coomaraswamy, *A Framework for Model Legislation on Domestic Violence: Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, submitted in accordance with Commission on Human Rights resolution 1995/85, (E/CN.4/1996/53/Add.2).

¹⁰⁰ See Davis and Glass, n 93 above, 16-17; Ristock, n 93 above, 146-151.

¹⁰¹ Ristock, *ibid.*, 4, 120-121; Dutton, n 95 above, 682-685.

model while leaving other forms and realities of family violence generally marginalised.

Moreover, the violence against women approach to domestic violence argues that female-to-male violence is not real domestic violence or is only domestic violence in a 'weak sense'.¹⁰² This is because, firstly, some of them argue that patriarchal power is a necessary element of domestic violence. Female-to-male violence always lacks this element and context because women do not have the same level of social power as men.¹⁰³ They claim that since women's violence does not perpetuate patriarchy and structural gender inequality and since women do not have the same social power as men, female-to-male violence in intimate relationships should not be treated as domestic violence.¹⁰⁴ Secondly, some others argue that only domestic violence that involves the element of patriarchal power and control is strong; it is the core sense of domestic violence. Since female-to-male and same sex domestic violence is violence without the support of the wider context of systematic male power, women's violence in the family is only a weak sense of domestic violence. They argue that the law and the state ought to focus on addressing and prosecuting the strong sense of domestic violence, that is, the male-to-female violence in heterosexual relationships.¹⁰⁵ Under such kinds of subordination feminist ideologies, female-to-male and same sex domestic violence are either excluded from the definition of domestic violence, or are treated as only a weak sense and trivial type of domestic violence that deserve only secondary concern. Men are implicitly assumed and constructed as heterosexual, violent, dominant, powerful and invulnerable while women are assumed as heterosexual, harmless, subordinated, powerless and victimised in feminist violence against women projects of domestic violence. These kinds of subordination feminist approaches to domestic violence and family violence, I argue, are at risk of perpetuating worrying and oversimplified heteronormative norms and stereotypes of sexuality and gender.

¹⁰² Reece, n 95 above, 40-48; Dempsey, 'Toward a Feminist State: What Does 'Effective' Prosecution of Domestic Violence Mean?', n 65 above, 908-935.

¹⁰³ Reece, *ibid.*; Kelly, n 65 above, 38-39.

¹⁰⁴ Dempsey, *ibid.*, 916-918; Reece, *ibid.*

¹⁰⁵ Dempsey, *ibid.*, 917-935; Reece, *ibid.*, 46-48.

They tend to construct, perpetuate and institutionalise unjust and discriminatory sexuality and gender myths and prejudices.

Much research on family violence, however, points out that family violence is not just a problem of male violence over women and children.¹⁰⁶ Family studies scholars find in their empirical research that partner violence is not unilateral male-to-female violence as many subordination feminists assume. As leading family researcher Murray A. Straus indicates:

*'[S]everal studies, including large and nationally representative samples, have found that Female-Only violence is as prevalent as or more prevalent than Male-Only violence, and that the most prevalent pattern is bidirectional violence; i.e., both partners are violent.'*¹⁰⁷

Numerous family violence and conflict research projects and surveys point out that family violence is far from simply a phenomenon of heterosexual male domination and abuse over heterosexual women and children in families.¹⁰⁸ For example, according to the latest *National Intimate Partner and Sexual Violence Survey 2010* in

¹⁰⁶ See n 35 above.

¹⁰⁷ See M. A. Straus, 'Dominance and Symmetry in Partner Violence by Male and Female University Students in 32 Nations', *Children and Youth Services Review* 30, no.3 (2008), 253.

¹⁰⁸ See n 35 above. Also, Straus, *ibid.*, 252-275; M. A. Straus, 'Future Research on Gender Symmetry in Physical Assaults on Partners', *Violence Against Women* 12, no. 11 (2006), 1086-1097; M. A. Straus, 'Processes Explaining the Concealment and Distortion of Evidence on Gender Symmetry in Partner Violence', *European Journal on Criminal Policy and Research* 13, no. 3 (2007), 227-232; M. A. Straus, and International Dating Violence Research Consortium, 'Prevalence of Violence against Dating Partners by Male and Female University Students Worldwide', *Violence against Women* 10, no.7 (2004), 790-811; M. A. Straus and Kristi L. Gozjolko, '"Intimate Terrorism" and Gender Differences in Injury of Dating Partners by Male and Female University Students', *Journal of Family Violence* 29, no. 1 (2014), 51-65; Michelle Carrado, Malcom J. George, Elizabeth Loxam, L. Jones, and Dale Templar, 'Aggression in British Heterosexual Relationships: A Descriptive Analysis', *Aggressive Behavior*, 22, no. 6 (1996), 401-415; Terrie E. Moffitt, Richard W. Robins, and Avshalom Caspi, 'A Couples Analysis of Partner Abuse with Implications for Abuse-prevention Policy', *Criminology & Public Policy* 1, no. 1 (2001), 5-36; Ko Ling Chan, and Murray A. Straus, 'Prevalence and Correlates of Physical Assault on Dating Partners', *Family & Intimate Partner Violence Quarterly*, 3 no. 3 (2008), 5-14; Collins W. Andrew, Deborah P. Welsh, and Wyndol Furman, 'Adolescent Romantic Relationships', *Annual Review of Psychology* 60 (2009), 640; David M. Fergusson, L. John Horwood, and Elizabeth M. Ridder, 'Partner Violence and Mental Health Outcomes in a New Zealand Birth Cohort', *Journal of marriage and family* 67, no. 5 (2005), 1103-1119; Jennifer Katz, Stephanie Washington Kuffel, and Amy Coblenz, 'Are There Gender Differences in Sustaining Dating Violence? An Examination of Frequency, Severity, and Relationship Satisfaction', *Journal of Family Violence* 17, no. 3 (2002), 247-271; Kirsten Robertson, and Tamar Murachver, 'Women and Men's Use of Coercive Control in Intimate Partner Violence', *Violence and Victims* 26, no. 2 (2011), 208-217.

the US, men report similar or slightly higher rates of victimisation of physical and psychological abuse in intimate relationships than women. About 4% women and 4.7% men report experiencing physical violence by an intimate partner in the 12 months prior to taking the survey. In respect of psychological aggression, a higher percentage of men (18.1%) over women (13.9%) report being victims of psychological aggression by an intimate partner in the 12 months prior to taking the survey. The same survey also reports non-negligible figures of male victimisation of sexual violence in intimate relationships.¹⁰⁹ Also, empirical research indicates that there exists a similar prevalence of intimate partner violence between LGBT intimate relations and heterosexual intimate relations.¹¹⁰

Due to the realities of the significant percentage of female perpetrators of intimate relationship violence, which is undeniable and supported by more and more empirical research, some subordination feminists further argue that we need to distinguish two types of domestic violence: the 'intimate terrorism' and the 'situational couple violence.'¹¹¹ The first type of intimate partner violence is

¹⁰⁹ National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, National Center for Injury Prevention and Control of the Centers for Disease Control and Prevention, (Accessed: 22 August, 2014). http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf

¹¹⁰ For example, see Brian Dempsey, 'Gender Neutral Laws and Heterocentric Policies: "Domestic Abuse as Gender-based Abuse" and Same-sex Couples', *The Edinburgh Law Review* 15, no. 3 (2011), 381-405; Catherine Donovan, Marianne Hester, Jonathan Holmes, & Melanie McCarry, *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships*, Initial report from a study funded by the Economic & Social Research Council, 2006; Anne Sullivan, and Kristen Kuehnle, 'Lesbian Battering', in Nicky Ali Jackson ed., *Encyclopaedia of Domestic Violence* (London: Routledge, 2007), 448-455; April Pattavina, David Hirschel, Eve Buzawa, Don Faggiani, and Helen Bentley. 'A Comparison of the Police Response to Heterosexual versus Same-sex Intimate Partner Violence', *Violence Against Women* 13, no. 4 (2007), 376-377. Ristock, n 93 above, 10-13. Lori, B. Girshick, *Women-To-Women Sexual Violence* (Boston: Northeastern University Press, 2001), 12-13; Carolyn Tucker Halpern, Mary L. Young, Martha W. Waller, Sandra L. Martin, and Lawrence L. Kupper, 'Prevalence of Partner Violence in Same-sex Romantic and Sexual Relationships in a National Sample of Adolescents', *Journal of Adolescent Health* 35, no. 2 (2004), 124-131; April Guasp, 'Gay and Bisexual Men's Health Survey', *Stonewall, London* (2012). (Accessed May 10, 2014) http://www.stonewall.org.uk/documents/stonewall_gay_mens_health_final.pdf; Stonewall, *Prescription for Change Lesbian and bisexual women's health check*, London: Stonewall, 2008. (Accessed May 10, 2014) http://www.stonewall.org.uk/documents/prescription_for_change.pdf; Leslie J. Moran, Susan Paterson & Tor Docherty, *Count Me in!: A Report on the Bexley and Greenwich Homophobic Crime Survey* (2004).

¹¹¹ Michael P. Johnson, 'Patriarchal Terrorism and Common Couple Violence: Two Forms of Violence against Women', *Journal of Marriage and the Family*, 57, no. 2 (1995), 283-294; Michael P. Johnson,

motivated by the desire to control and dominate, and involves one partner using control tactics over the other in their relationship. The latter form does not involve the motivation and tactics of control and domination and is only in response to intimate terrorism or occasional non-severe conflicts. Intimate terrorism (or patriarchal terrorism) 'is defined by the attempt to dominate one's partner and to exert general control over the relationship, domination that is manifested in the use of a wide range of power and control tactics.'¹¹² The tactics include emotional abuse, isolation, using children as a threat, economic or physical abuse.¹¹³ Situational couple violence 'is defined as intimate partner violence that is not embedded in such a general pattern of controlling behaviours.'¹¹⁴ They argue that the majority of intimate terrorism in the family is perpetrated by men against women while women's violence towards men is generally non-controlling.¹¹⁵

However, their conclusion that intimate terrorism is perpetrated almost exclusively by men against women relies on selecting samples of heterosexual female victims only and excluding samples of others in terms of gender and sexuality groups in their studies of intimate terrorism.¹¹⁶ Their research collects and considers data of female victims only, from agency samples from social and legal service providers such as women's shelters,¹¹⁷ or use large scale surveys, which only ask about the experience of female victimisation.¹¹⁸ They do not include and consider samples and data of male and LGBT victims or large scale survey results that also record the

and Janel M. Leone, 'The Differential Effects of Intimate Terrorism and Situational Couple Violence Findings from the National Violence against Women Survey', *Journal of Family Issues* 26, no. 3 (2005), 322-349.

¹¹² Johnson and Leone, *ibid.*, 323.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*, 324.

¹¹⁵ Johnson, n 111 above, 287, 291-293; Michael P. Johnson, 'Domestic Violence: It's Not About Gender—Or Is It?', *Journal of Marriage and Family* 67, no. 5 (2005), 1128.

¹¹⁶ Straus, 'Future Research on Gender Symmetry in Physical Assaults on Partners', n 108 above, 1090; Straus 'Processes Explaining the Concealment and Distortion of Evidence on Gender Symmetry in Partner Violence', n 108 above, 228-229.

¹¹⁷ For example, Johnson, n 111 above, 283-294. Researches find most of the social and legal services providers of domestic violence adopt subordination feminist ideology and generally assume domestic violence is perpetrated by male abusers against female victims. For the heterosexual female victims' paradigm in social and legal service providers and agencies of domestic violence, see Ron Wallance, 'Identifying Potential Challenges to Providing Emergency Advocacy Services to Male Victims of Intimate Partner Violence', *Partner Abuse* 5, no. 1 (2014), 58-68. Also, Ristock, n 93 above, 99-123.

¹¹⁸ Johnson and Leone, n 111 above.

experiences of male and LGBT victims. So it is not surprising that subordination feminist scholars conclude that the majority of intimate terrorism is perpetrated by men by only focusing on surveying and collecting experiences from cases of female victimisation.

Similarly, some subordination feminist theorists such as Russell P. Dobash and R. Emerson Dobash claim that the nature, intentions and pattern of male and female intimate partner violence are different. They claim that mostly, women's violence is not controlling, is not severe, is self-protective and is not physically or psychologically damaging while men's violence is controlling, coercive and harmful.¹¹⁹ Again, one of the major weaknesses of their studies is that their findings rely on only selecting and considering agency samples of female victimisation cases and male offenders convicted of domestic violence.¹²⁰ They do not include and consider samples and experiences of male victims or examples from the LGBT community. By excluding the experiences and perspectives of male and LGBT victimisation, they over-generalise their findings by concluding that the problem of intimate partner violence is primarily male to female.¹²¹ Male and LGBT victimisation of domestic violence are too lightly trivialised and the problem of domestic violence is too easily reduced to the problem of male to female violence within the family.

The above kinds of subordination feminist research and methodologies of family violence are unbalanced, biased and discriminatory because they already use a heteronormative lens of sexuality and gender in their studies. Although it is crucial to investigate and address heterosexual women's victimisation in intimate relationships, it can be problematic to assume an oversimplified heterosexual female victim paradigm in domestic violence studies.

¹¹⁹ Kelly, n 65 above, 38-39; Dobash, Dobash, Wilson and Daly, n 65 above, 45; Russell P. Dobash, and R. Emerson Dobash. 'Women's Violence to Men in Intimate Relationships Working on a Puzzle', *British Journal of Criminology* 44, no. 3 (2004), 324-349; Rebecca Emerson Dobash, Russell P. Dobash, Kate Cavanagh, and Ruth Lewis, *Changing Violent Men* (London: Sage, 1999).

¹²⁰ Dobash and Dobash, *ibid.*, 333-334; Dobash, Dobash, Cavanagh and Lewis, *ibid.*, 72-76.

¹²¹ Dobash and Dobash, *ibid.*, 344.

Research from survey data and experiences from service providers for male victims find that most male victims seeking help suffer from intimate terrorism by their female partner.¹²² For example, through their research of male victims seeking help from service providers, D. A. Hines and E. M. Douglas find that:

*'contrary to many assumptions about these men, the IPV [intimate partner violence] they sustain is quite severe and both mentally and physically damaging; their most frequent response to their partner's IPV is to get away from her; and they are often blocked in their efforts to leave, sometimes physically, but more often because of strong psychological and emotional ties to their partners and especially their children.'*¹²³

Empirical research that surveys the experiences of both men and women also reports non-negligible rates of male victimisation of intimate terrorism or similar percentages of male and female intimate terrorism perpetrators.¹²⁴ Research of same sex domestic violence also suggests the existence of the intimate terrorism type of family violence in same sex relationships.¹²⁵ Furthermore, researchers find that there are significant numbers and comparable percentages of both male and female perpetrators exerting coercive controlling tactics and displaying motives and intentions for control and coercion when perpetrating family violence.¹²⁶ These

¹²² D. A. Hines and E. M. Douglas, 'Intimate Terrorism by Women towards Men: Does It Exist?', *Journal of Aggression, Conflict, and Peace Resolution* 2, no. 3 (2010), 36-56; D. A., Hines and E. M. Douglas, 'A Closer Look at Men Who Sustain Intimate Terrorism by Women', *Partner Abuse* 1, no. 3 (2010), 286- 313; Sotirios Sarantakos, 'Deconstructing Self-defence in Wife-to-husband Violence', *The Journal of Men's Studies* 12, no. 3 (2004), 277-296; Todd A. Migliaccio, 'Abused Husbands: A Narrative Analysis', *Journal of Family Issues* 23, no.1 (2002), 26-52.

¹²³ Hines and Douglas, 'A Closer Look at Men Who Sustain Intimate Terrorism by Women', n 122 above, 28

¹²⁴ Straus and Gozjolko, n 108 above; Denis Laroche, *Aspects of the Context and Consequences of Domestic Violence: Situational Couple Violence and Intimate Terrorism in Canada in 1999* (Québec: Institut de la statistique du Québec, 2005).

¹²⁵ Ristock, n 93 above, 49-78; Claire M. Renzetti, *Violent Betrayal: Partner Abuse in Lesbian Relationships* (Sage: London, 1992), 115-117.

¹²⁶ Fred Buttell and Emily Starr, 'Lifting the Veil: Foundations for a Gender-inclusive Paradigm of Intimate Partner Violence', in Brenda L. Russell ed., *Perceptions of Female Offenders: How Stereotypes and Social Norms Affect Criminal Justice Responses*, (New York: Springer, 2013), 126-131; Robertson and Murachver, n 108 above, 208-217; Richard B. Felson, and Maureen C. Outlaw, 'Control Motive and Marital Violence', *Violence and Victims*, 22, no. 4 (2007), 387-407; Carrado, George, Loxam, Jones, and Templar, n 108 above, 401-415; Straus and Gozjolko, n 108 above, 51-65; J. Stets, and S. A. Hammond, 'Gender, Control and Marital Commitment', *Journal of Family Issues* 23, no. 1 (2002), 3-25; M. A. Straus, 'Current Controversies and Prevalence Concerning Female Offenders

examples of empirical research indicate that the realities and patterns of intimate terrorism and domestic violence are much more heterogeneous than subordination feminist family violence theories assume. Intimate terrorism and domestic violence cannot be generally reduced to just male to female violence in the family.

Studies of intimate partner violence between heterosexual and same-sex couples also indicate that the breadwinner or financially better off party in a relationship is not necessarily the party that perpetrates family violence; a myth held and perpetuated by violence against women feminist theories of family violence. Sometimes perpetrators are the party that earns less in a relationship. For instance, Claire M. Renzetti finds in her research into lesbian family violence that 'it appears violence in lesbian relationships occurs at about the same frequency as violence in heterosexual relationships.'¹²⁷ She finds that abusers' sexual jealousy and their psychological 'dependency' on their partners (that is, their desire for emotional control and their possessiveness over their partners) are strongly associated with their use of violence against their partner.¹²⁸ On the other hand, the financially and socially better off are more likely to be victimised by their partners in her research. Her research does not support subordination feminism's monolithic claim that domestic violence is about the financially better off party coercing and controlling their economically less endowed partner by power and violence in family.¹²⁹ Her research questions such monolithic constructions of power relations in family relationships. Instead, she suggests that power in intimate relationships is complex and multifaceted. Her research also indicates that various controlling tactics are widely used by perpetrators with the intention to control and dominate in same sex

of Intimate Partner Violence. Why the Overwhelming Evidence on Partner Physical Violence by Women Has Not Been Perceived and Is Often Denied', *Journal of Aggression, Maltreatment & Trauma*, 18, no. 6 (2009), 555-556. In their review article, Langhinrichsen-Rohling, McCullars and Misra find that 'studies that considered the most frequent motivations for perpetration reported by men and women often generated similar motives.' See Langhinrichsen-Rohling, McCullars and Misra, n35 above, 459. Kar and O'Leary find that women have higher levels of psychological aggression, dominance and jealousy in intimate relations. See Heidi L. Kar, and K. Daniel O'Leary, 'Patterns of Psychological Aggression, Dominance, and Jealousy within Marriage', *Journal of Family Violence*, 28, no. 2 (2013), 109-119.

¹²⁷ Renzetti, n 125 above, 115.

¹²⁸ *Ibid.*, 116-117.

¹²⁹ *Ibid.*, 117.

domestic violence.¹³⁰ Therefore, her study suggests that the coercive and controlling types of domestic violence do not only exist in male to female domestic violence as many subordination feminists assume in their family violence theory.

The heteronormative and traditional 'heterosexual female victim paradigm' of domestic violence is dominant and influential in both public culture¹³¹ and in the communities of the legal enforcement system and service providers.¹³² As reported: '[t]he presumption that all men are potential abusers and women the only victims of IPA (intimate partner abuse) permeates victims advocacy, the criminal

¹³⁰ Ibid., 115-117.

¹³¹ Sheila M. Seelau and Eric P. Seelau, 'Gender-role Stereotypes and Perceptions of Heterosexual, Gay and Lesbian Domestic Violence', *Journal of Family Violence* 20, no. 6 (2005), 363-371; Laurie L. Ragatz and Brenda Russell, 'Sex, Sexual Orientation, and Sexism: What Influence Do These Factors Have on Verdicts in a Crime-of-passion Case?', *The Journal of Social Psychology* 150, no. 4 (2010), 341-360; Susan B. Sorenson and Catherine A. Taylor, 'Female Aggression toward Male Intimate Partners: An Examination of Social Norms in a Community-based Sample', *Psychology of Women Quarterly* 29, no. 1 (2005), 78-96; Brenda Russell, Laurie Ragatz, and Shane W. Kraus, 'Expert Testimony of the Battered Person Syndrome, Defendant Gender, and Sexual Orientation in a Case of Duress: Evaluating Legal Decisions', *Journal of Family Violence* 27, no. 7 (2012), 659-670; Xiyang Wang, and Sik Ying Ho Petula, 'My Sassy Girl A Qualitative Study of Women's Aggression in Dating Relationships in Beijing', *Journal of Interpersonal Violence*, 22, no. 5 (2007), 623-638; Amanda J. Schmesser, 'Real Mean May Not Cry, but They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws', *Syracuse Law Review*, 58, no. 1 (2007), 196; Monit Cheung, Patrick Leung, and Venus Tsui, 'Asian Male Domestic Violence Victims: Services Exclusive for Men', *Journal of Family Violence*, 24, no. 7 (2009), 447-462.

¹³² Grant A. Brown, 'Gender as a Factor in the Response of the Law-enforcement System to Violence against Partners', *Sexuality and Culture*, 8, no. 3-4 (2004), 3-139; Kim A. Reeves, Sarah L. Desmarais, Tonia L. Nicholls, and Kevin S. Douglas, 'Intimate Partner Abuse of Older Men: Considerations for the Assessment of Risk', *Journal of Elder Abuse & Neglect*, 19, no. 1-2 (2007), 10; Henry J. Muller, Sarah L. Desmarais, and John M. Hamel, 'Do Judicial Responses to Restraining Order Requests Discriminate against Male Victims of Domestic Violence?', *Journal of Family Violence*, 24, no. 8 (2009), 625-637; Marie Mele, James C. Roberts, and Loreen Wolfer, 'Men Who Seek Protection Orders against Female Intimate Partners', *Partner abuse*, 2, no. 1 (2011), 61-75; Steve Basile, 'A Measure of Court Response to Requests for Protection', *Journal of Family Violence*, 20, no. 3 (2005), 171-178; Schmesser, *ibid.*; Malcolm J. George, 'Riding the Donkey Backwards: Men as the Unacceptable Victims of Marital Violence', *The Journal of Men's Studies*, 3, no. 2 (1994), 137-159; Melissa Hamilton, *Expert Testimony on Domestic Violence: A Discourse Analysis* (El Paso: Lfb Scholarly Pub, 2009), 161-164; Debra L. Oswald and Lucie Holmgreen, 'Female Sexual Aggression on College Campuses: Prevalence, Correlates, and Perceptions', in Brenda L. Russell ed., *Perceptions of Female Offenders: How Stereotypes and Social Norms Affect Criminal Justice Responses*, (New York: Springer, 2013), 77-92; Michelle Davies, 'Effects of Victim Gender, Age, and Sexuality on Perceptions of Sexual Assaults Committed by Women', in Brenda L. Russell ed., *Perceptions of Female Offenders: How Stereotypes and Social Norms Affect Criminal Justice Responses*, (New York: Springer, 2013), 93-100; Katherine R. White, and Donald G. Dutton, 'Perception of Female Perpetrators', in Brenda L. Russell ed., *Perceptions of Female Offenders: How Stereotypes and Social Norms Affect Criminal Justice Responses*, (New York: Springer, 2013), 101-116.

justice professionals systems, and society as a whole.¹³³ For example, as elaborated above, the heteronormative 'power and control wheel model' is widely adopted by domestic violence service providers.¹³⁴ The result is that violence perpetrated by heterosexual women in the family is more likely to be trivialised and excused, while male and LGBT victimisation are less likely to be taken seriously or become visible under the heteronormative construction of domestic violence.

Under the dominant heterosexual female victim paradigm, abused men by women are less likely to be issued a protection order by court even in similar abusive cases.¹³⁵ A study finds that:

*'male victims of domestic violence were not afforded the same protections as their female counterparts. This gender inequality in court response occurred even though male and female plaintiffs were similarly victimized by their opposite gender defendants.'*¹³⁶

Moreover, abused fathers are much less likely to secure temporary and permanent custody/residence orders of their children compared to abused mothers, while abusive mothers are still more likely to keep children in their custody.¹³⁷ The findings are worrying. Indeed, this could mean that many young children are left to live under the sole custody of their abusive mothers. This also echoes findings whereby, because of the gender bias and stereotypes against men within family violence legal systems, and because of the de facto maternal preference in child residence/custody cases, many abused fathers fear to report their victimisation and choose to stay in abusive relationships in order to be able to still live with their

¹³³ Reeves, Desmarais, Nicholls, and Douglas, *ibid.*, 10.

¹³⁴ Ristock, n 93 above, 147-151.

¹³⁵ Muller, Desmarais, and Hamel, n 132 above; Mele, Roberts, and Wolfer, n 132 above; Basile, n 132 above; Brown, n 132 above.

¹³⁶ Basile, *ibid.*, 178.

¹³⁷ Mele, Roberts, and Wolfer. n 132 above, 61-75; Basile, *ibid.*, 171-178.

children, to protect their children and to avoid losing contact with their children.¹³⁸

As Steven Basile finds:

‘many male victims of domestic violence who are parents and who are locked into violent relationships because they fear the court will not grant them custody of their minor children and may even lose contact with their children if their female abuser files a counterclaim against them.’¹³⁹

Similarly, Hines and Douglas find that commitment to the children and marriage and the fear of losing contact with children are among the main reasons why abused fathers still stay in abusive relationships.¹⁴⁰

Studies also find that legal enforcement professionals such as the police, judges and prosecutors tend to rely on heteronormative gender role stereotypes and myths in deciding and identifying the (primary) perpetrators in domestic violence.¹⁴¹ For example, police or judges tend to identify the abuser by relying on stereotypes of biological sex and gender. In heterosexual relationships, police and judges tend to assume that the biological man is the primary perpetrator.¹⁴² In same sex relationships, they tend to assume the more ‘masculine’ partner is the primary abuser. For instance, in lesbian domestic violence cases, Krisana M. Hodges finds that:

¹³⁸ Hine and Douglas, ‘A Closer Look at Men Who Sustain Intimate Terrorism by Women’, n 122 above, 286-313; Babette C. Drijber, Udo JL Reijnders, and Manon Ceelen, ‘Male Victims of Domestic Violence’, *Journal of Family Violence* 28, no. 2 (2013), 173-178; Sarantakos, n 122 above, 277-296; Denise A. Hines, Jan Brown, and Edward Dunning, ‘Characteristics of Callers to the Domestic Abuse Helpline for Men’, *Journal of Family Violence* 22, no. 2 (2007), 63-72; Simo Josolyne, *Men’s Experiences of Violence and Abuse from a Female Intimate Partner: Power, Masculinity and Institutional Systems* (PhD Thesis, University of East London, 2011), 38-79.

¹³⁹ Basile, n 132 above, 178.

¹⁴⁰ Hines and Douglas, ‘A Closer Look at Men Who Sustain Intimate Terrorism by Women’, n 122 above, 302-304.

¹⁴¹ Anna Stewart and Kelly Maddren, ‘Police Officers’ Judgements of Blame in Family Violence: The Impact of Gender and Alcohol’, *Sex Roles* 37, No. 11-12 (1997), 921-933; Michelle Aulivola, ‘Outing Domestic Violence’, *Family Court Review* 42, no. 1 (2004), 167; Hodges, n 95 above, 328; Stan Shernock and Brenda Russell, ‘Gender and Racial/ethnic Differences in Criminal Justice Decision Making in Intimate Partner Violence Cases’, *Partner Abuse* 3, no. 4 (2012), 501-530. Hamilton, n 129 above; Brown, n 132 above.

¹⁴² Brown, *ibid*.

‘When police and judges seek to understand same-sex domestic violence under the lens of “domestic violence as male dominance of women,” they may answer the question “who is the abuser” with the heteronormative question “who is the man?” In this way, lesbians who appear more masculine are especially vulnerable to misidentification as abusers when they seek legal help as battered women. Lesbian battered women, especially women who appear more masculine, risk misidentification as abuser in a way that heterosexual women do not.’¹⁴³

Similarly, Michelle Aulivola reports that the police often rely on gender stereotypes to decide the primary perpetrator in same sex domestic abuse disputes.¹⁴⁴ Research also finds that because of the pervasive and deeply held gender role stereotypes in society and in the culture of legal professionals, biological men and masculine lesbians are at significant risk of being falsely accused as perpetrators in domestic violence disputes.¹⁴⁵ By relying on a stereotyping subordination feminist model of family violence, the legal systems of domestic violence is at risk of perpetuating oppressive and unjust heteronormative gender and sexuality norms and biases.

With the pervasive heteronormative sexuality and gender prejudices in family violence jurisprudence and legal practice, research indicates that male victims have less confidence in the legal system for domestic violence and are far less likely than female victims to report their victimisation to the police or to seek other professional help from service providers.¹⁴⁶ When men do report their victimisation, police, prosecutors and other law enforcement officials are significantly less likely to arrest, charge or prosecute female offenders than to charge and to prosecute

¹⁴³ Hodges, n 95 above, 328.

¹⁴⁴ Aulivola, n 141 above, 167.

¹⁴⁵ Dena Hassounah, and Nancy Glass, ‘The Influence of Gender Role Stereotyping on Women's Experiences of Female Same-sex intimate Partner Violence’, *Violence Against Women*, 14, no. 3 (2008), 321-323; Ristock, n 93 above, 99-102; Hines and Douglas, ‘A Closer Look at Men Who Sustain Intimate Terrorism by Women’, n 122 above, 297-300. Sarantakos, n 122 above, 277-296; Joanna Reed, ‘Anatomy of the Breakup: How and Why Do Unmarried Couples with Children Break Up?’, in Paula England and Kathryn Edi neds., *Unmarried Couples with Children* (New York: Russell Sage, 2007), 148-149.

¹⁴⁶ For example, J. Stets, and M. A. Straus, ‘Gender Differences in Reporting Marital Violence’, *Physical Violence in American Families* (New Brunswick: NJ7 Transaction Publishers, 1992), 151-166; Suzanne K. Steinmetz, ‘Battered Husbands’, in Nicky Ali Jackson ed., *Encyclopedia of Domestic Violence* (London: Routledge, 2007), 53-59; Drijber, Reijnders, and Ceelen, n 138 above;

comparable male offenders.¹⁴⁷ In a study of the judicial construction of domestic violence, scholars find there are gendered expectations of male violence and female vulnerability in judicial constructions of domestic violence.¹⁴⁸ (Heterosexual) women are implicitly assumed as the legitimate victims deserving of state protection. In cases involving female violence, the court tends to minimise (heterosexual) women's violence.¹⁴⁹ Male victims of domestic violence frequently report suffering from institutional biases and trivialisation from the legal system and law enforcement professionals. 'Police officers refused to arrest the wives of some of the respondents merely because they found it difficult to accept that a husband could be abused.'¹⁵⁰

Gay men, lesbians and transgender victims of domestic violence are also at risk of being re-victimized by the legal system because of the heterosexist approach to domestic violence.¹⁵¹

Not only are there heteronormative biases against men and LGBT people in the legal system for domestic violence, the biases can also be found in the beliefs and ideologies of service providers or professionals. The heterosexual female victim paradigm is widely assumed and adopted by many service providers and by some professionals.¹⁵² As a study of LGBT victims of domestic violence indicates:

¹⁴⁷ Brown, n 132 above, 106-07; Emily M. Douglas, and Denise A. Hines, 'The Helpseeking Experiences of Men Who Sustain Intimate Partner Violence: An Overlooked Population and Implications for Practice', *Journal of Family Violence* 26, no. 6 (2011), 473, 480-481.

¹⁴⁸ Haamilton. n 132 above, 161.

¹⁴⁹ Ibid., 161-164.

¹⁵⁰ Migliaccio, n 122 above, 44.

¹⁵¹ See Hodges, n 95 above, 311-330; Brian Dempsey, n 110 above, 381-405.

¹⁵² Wallace, n 117 above, 58-68; Douglas and Hines, n 147 above, 473-485; Davis and Glass, n 93 above, 16-17; Ristock, n 93 above, 146-151; Diane R. Follingstad, Dana D. DeHart, and Eric P. Green, 'Psychologists' Judgments of Psychologically Aggressive Actions When Perpetrated by a Husband versus a Wife', *Violence and Victims* 19, no. 4 (2004), 435-452.

*'Domestic abuse is understood in Britain and by our respondents as a problem largely of heterosexual women being physically abused by their male partners. In consequence, most respondents had not understood their experience at the time as domestic abuse and it had not occurred to most of them to report their experiences to any agency.'*¹⁵³

Men and LGBT people are likely to be marginalised and experience discriminatory treatment by service providers.¹⁵⁴ Studies find that both LGBT and male victims are less likely to report domestic abuse to professionals in comparison to heterosexual women.¹⁵⁵

Some male victims avoid identifying themselves as victims and try to overlook, trivialise, deny or rationalise the violence they suffered in order to meet social expectations and requirements of normative masculinity. This is partly due to men being socialised from very early childhood to suppress the expression of their pain, fear and sufferings.¹⁵⁶ This is also related to a greater social stigma attaches to male victims of partner violence.¹⁵⁷

Gay and bisexual male victims of domestic violence suffer from double burdens and intersectional discrimination. On the one hand, gay men are constrained by normative masculinity, which discourages men to express their suffering and fear and to seek help.¹⁵⁸ On the other hand, gay men are further constrained by the fear

¹⁵³ C Donovan et al, *Comparing Domestic Abuse in Same Sex and Heterosexual Relationships* (Initial report from a study funded by the Economic & Social Research Council. 2006), 19.

¹⁵⁴ Renzetti, n 125 above, 118; Wallace, n 117 above, 58-68; Douglas and Hines, n 147 above, 473-485..

¹⁵⁵ For example, see Amy Roch et al., *Out of Sight, Out of Mind?: Transgender People's Experiences of Domestic Abuse* (LGBT Youth Scotland & Equality Network, 2010); Donovan, n 153 above; Steinmetz, n 146 above, 57; Douglas and Hines, *ibid.*, 479-483.

¹⁵⁶ Elizabeth A. Stanko, and Kathy Hobdell, 'Assault on Men: Masculinity and Male Victimization', *British Journal of Criminology* 33, no. 3 (1993), 400-415; Stephen M. Glomb, and Dorothy L. Espelage, 'The Influence of Restrictive Emotionality in Men's Emotional Appraisal of Sexual Harassment: A Gender Role Interpretation', *Psychology of Men & Masculinity* 6, no. 4 (2005), 241-243; Maria Tempenis Shelly, *Taking It Like A Man: A Study of Men's Emotion Culture* (PhD Thesis, Vanderbilt University, 2007), 95-168.

¹⁵⁷ Brown, n 132 above, 6-7.

¹⁵⁸ Tod W. Burke and Stephen S. Owen, 'Gay and Bisexual Male Domestic Violence', in Nicky Ali Jackson ed., *Encyclopaedia of Domestic Violence* (London: Routledge, 2007), 335.

of being reluctantly outed if they seek help or of being neglected or ridiculed by heterosexist service providers.¹⁵⁹

Family violence is a social problem influencing many people's lives, regardless of their gender or sexual orientation. However, in a society where a heterosexual female victim myth of domestic violence is generally and traditionally assumed, male and sexual minority people are too easily marginalised, ignored or even discriminated against by not only the general public but also by legal and social service professionals of domestic violence. Unfortunately, the violence against women feminist construction of domestic violence further marginalises and stereotypes men and LGBT people, rather than assist them. Instead of challenging heteronormative sexuality and gender prejudices of domestic violence, subordination feminism further perpetuates the unjust heteronormative biases and myths of family violence and cannot properly address and respond to the social problem of family violence.

Some sexuality and gender oppression in the family, as illuminated, are trivialised in the mainstream subordination feminist family violence approach. Victims of same sex domestic violence or male victims of female violence in the family are marginalised by service providers and legal professionals under this heteronormative heterosexual women victim paradigm in the violence against women approach to family violence. I argue that queer humanist men and masculinities perspectives will oppose this kind of heteronormative approach to family violence. Queer humanist men and masculinities studies will not only want to address the problem of violence against heterosexual women, but also violence against same sex partner or male partner in the family. Similarly, not only child abuse violated by men should be addressed but also child abuse perpetrated by women. I will discuss the heteronormative gender myths of child abuse in my critique of Richard Collier's family law theory.

¹⁵⁹ Ibid.

3.6 Subordination-feminist men and masculinities studies on sexual justice and normative heterosexuality

In the following sections I critically evaluate the approach of subordination-feminist men and masculinities studies to sexual justice in the family. I argue that, although a contribution, their theories nevertheless tend to assume and perpetuate certain heteronormative gender biases. I suggest that we need more balanced approaches to men and masculinity studies.

One of the most influential strands of contemporary men and masculinities studies is the subordination-feminist men and masculinities studies; not only is this the 'dominant perspective within men's studies in the academy,'¹⁶⁰ but, their ideologies and perspectives have also been formally adopted by an official UN gender equality report on men and boys.¹⁶¹ They often label themselves as 'feminist' or 'pro-feminist' men and masculinities studies.¹⁶² However, since their theories are premised on the over-arching beliefs and claims that men (as a group) are the dominant gender, not an oppressed gender group,¹⁶³ and 'all men are privileged vis-à-vis women';¹⁶⁴ the kind of 'feminism' they identify with and adopt is actually a version of strong subordination feminist perspectives. Therefore, I argue that it is more appropriate and accurate to describe and label this kind of men's studies as 'subordination-feminist men and masculinity studies' rather than 'feminist men and masculinities studies' or 'pro-feminist men and masculinities studies'. Hence, I use the phrase 'subordination-feminist men and masculinities studies' to refer to their men and masculinities studies and to distinguish them from other strands of men

¹⁶⁰ Kenneth Clatterbaugh, 'Literature of the US Men's Movements', *Signs* 25, no.3 (2000), 887.

¹⁶¹ Division for the Advancement of women, Department of Economic and Social Affairs, UN, *The Role of Men and Boys in achieving gender equality*, United Nations, Division for the Advancement of women, Department of Economic and Social Affairs, (Accessed: 25 September, 2014). <http://www.un.org/womenwatch/daw/public/w2000/W2000%20Men%20and%20Boys%20E%20web.pdf>

¹⁶² James P. Sterba, 'Profeminism', in Michael Flood, Judith Kegan Gardiner, Bob Pease, and Keith Pringle, eds., *International Encyclopaedia of Men and Masculinities* (London: Routledge, 2007), 505-508.

¹⁶³ Connell, n 92 above, 209.

¹⁶⁴ Kimmel, n 91 above, 216.

and masculinities studies, such as, conservative men and masculinities studies, or humanist men and masculinities studies.

Just as there are different strands of subordination feminism, there are also different focuses in subordination-feminist men and masculinities studies. For example, some of them follow the perspectives of sexual-subordination feminism and argue that male sexual violence is 'the lotus of men's oppression over women.'¹⁶⁵ Others may focus more on investigating male power and male privileges in the family.¹⁶⁶ The major contribution of their theories is their application of subordination feminist perspectives into research of men and masculinities. Subordination feminism, while being critical of male domination and male power, traditionally focuses more on women in their theory.¹⁶⁷ Subordination-feminist men and masculinities studies instead direct their research to focused studies of issues about men and masculinities. What are the pros and cons of such kinds of men and masculinities studies in the law and politics of sexuality and gender? What are the limits of their approaches and theories? I will critically comment on two leading subordination-feminist men and masculinities projects. I will argue that their approaches, although a great contribution, nevertheless suffer from several major limitations or biases. I argue that the approach of queer humanist men and masculinities studies could address some of the insufficiencies and shortcomings in subordination feminist men and masculinities studies' approaches to sexual justice and normative heterosexuality.

Before critically commenting on theories of subordination-feminist men and masculinities studies, I would like to first critically examine two other strands of men

¹⁶⁵ Messner, n 88 above, 55.

¹⁶⁶ For example, see Richard Collier, *Masculinity, Law and the Family* (London, Routledge, 1995). Also, Michele Adams and Scott Coltrane, 'Boys and Men in Families: The Domestic Production of Gender, Power, and Privilege', in Kimmel, Michael S., Jeff R. Hearn, and R. W. Connell, eds., *Handbook of studies on men and masculinities* (London: Sage, 2004), 230-248.

¹⁶⁷ Ann C. McGinley and Frank Rudy Cooper, 'Introduction: Masculinities, Multidimensionality, and the Law: Why They Need One Another', in Frank Rudy Cooper and Ann C. McGinley eds., *Masculinities and the Law: A Multidimensional Approach* (New York: NYU Press, 2012), 3.

and masculinities studies: conservative men's studies and men's liberationist theory. They are both criticised by subordination-feminist men and masculinities theorists.

Conservative men's movements and studies hold and promote conservative, traditionalist, heterosexist, and binarist gender practices and gender roles between men and women, such as the Promise Keepers movement.¹⁶⁸ They often promote and naturalise the ideology of a traditionalist gender division of labour such as men as the breadwinner and women as the carer in the (heterosexual) family. They tend to assume an unproblematic coherence between one's gender roles and one's biological sex. They also tend to think uncritically that the heterosexual family and heterosexual marriage define the meanings and essence of the institutions of family and marriage. This kind of biological essentialist men and masculinities studies is not only problematic but also restrictive and oppressive. Scholars have already elaborated the problems and limitations of such essentialist thinking of sex and gender in conservative men and masculinities studies.¹⁶⁹ A very convincing rejection of conservative traditionalist thinking of sexuality and gender can also be found in liberal sexual justice theories, such as Bamforth's liberal theory of sexual autonomy, which will be discussed in Chapter 5.¹⁷⁰

Conservative men's studies have been criticised by both subordination-feminist men's studies and liberationist men's studies. They both reject and question the traditionalist ideologies of gender adopted by conservative theories. They both oppose the essentialist idea that we have natural, unchanging, fixed and binary

¹⁶⁸ John P. Bartkowski, *The Promise Keepers: Servants, Soldiers, and Godly Men* (New Brunswick: Rutgers University Press, 2004), 45-66.

¹⁶⁹ For example, see Messner, n 88 above, 16-35.

¹⁷⁰ Nicholas Bamforth clearly articulates the 'sexual autonomy' or the 'empowerment' arguments for progressive and liberal sexual justice politics and law. He also points out why conservative and traditionalist sexual morality such as the sexual morality promoted by the New Natural Law theory is faulty, unjust and oppressive. I will draw on his liberal sexual autonomy arguments to elaborate the queer humanist men and masculinities studies approaches I proposed. See Nicholas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London, Washington D.C.: Cassell, 1997) 148-267; Nicholas Bamforth and David A. J. Richards, *Patriarchal Religion, Sexuality, And Gender: A Critique of New Natural Law* (New York: Cambridge University Press, 2008), 190-278.

gender roles based on our biological body.¹⁷¹ However, there are also significant disagreements between them. The major accusation subordination-feminist men's studies have made against men's liberation studies is that the subordination feminist approach to men's studies accuse men's liberationist theory of failing to notice and address the power relations in gender. In this section, I first outline men's liberationist theory and critically evaluate its strengths and shortcomings. Then I critically analyse subordination-feminist men and masculinities studies projects and their critiques of men's liberationist theory. I argue that although both strands of men and masculinities studies have their respective contributions, both strands also have major limitations. I argue that we need new version of men and masculinities studies that can incorporate their insights while also avoiding their limitations.

Liberationist men's studies are theories that argue for men's liberation from traditional sex roles. They contend that both men and women are constrained by compulsory sex roles. As previously mentioned, sex roles theory holds that 'being a man or a woman means enacting a general set of expectations which are attached to one's sex—the "sex role"'.¹⁷² Masculinity and femininity are 'interpreted as internalised sex roles, the products of social learning or "socialisation" in sex role theory'.¹⁷³ Men's liberation theorists argue that the traditional scripts of male sex roles are unhealthy, constricting and harmful to men and urge men to be liberated from the compulsory requirements of macho male identities and images.¹⁷⁴ They find the dominant male sex roles such as 'no sissy stuff', 'the big wheel [being breadwinner and successful]', 'the sturdy oak [being tough and unemotional]', and

¹⁷¹ Kenneth Clatterbaugh, 'Men's Liberation', in Michael Flood, Judith Kegan Gardiner, Bob Pease, and Keith Pringle eds., *International Encyclopaedia of Men and Masculinities* (London: Routledge, 2007), 415-417.

¹⁷² Connell, n 54 above, 22.

¹⁷³ Ibid.

¹⁷⁴ Maureen Baker and JI Hans Bakker, 'The Double-Bind of the Middle Class Male: Men's Liberation and the Male Sex Role', *Journal of Comparative Family Studies* 11, no. 4 (1980), 548, 551-552; Messner, n 67 above, 260-261.

‘give ‘em hell [being aggressive and competitive]’ are actually damaging to both individual men and women, and also to the society as a whole.¹⁷⁵

On the one hand, men’s liberation theories are very inspiring and insightful. They rightly remind us that men are not just the privileged gender group as early subordination feminist theory generally assumes, but a gender group that faces imposed sex roles in normative heterosexual societies. However, as already argued in the gay liberationist theory section, there are several major limitations in sex roles theory, the theory that men’s liberation theories generally rely on. Men’s liberation theory inevitably suffers from the general limitations of sex roles theory. Furthermore, men’s liberation projects often uncritically assume heterosexual men’s experiences in their discussion of men’s sex roles and constrains. Similarly, in talking about women’s sex roles they also generally assume heterosexual women’s experiences as representative.¹⁷⁶ I argue that queer humanist men and masculinities studies perspectives oppose this kind of heterosexist approach in thinking of gender role liberation.

Subordination-feminist men and masculinities studies also challenge men’s liberation projects’ reliance on the problematic sex roles theory as theoretical grounds for men’s liberation projects.¹⁷⁷ Their major criticism of men’s liberationist theory, however, is related to the overarching belief and principle adopted by subordination-feminist men and masculinities theory: their insistence and belief that men as a group are the dominant gender group, not an oppressed gender group,¹⁷⁸ and that ‘all men are privileged vis-à-vis women.’¹⁷⁹ Subordination-feminist men and masculinities studies argue that sex role theory should be replaced by gender power relationship theory, which argues that gender relationships and gender order in contemporary Western societies still show ‘the

¹⁷⁵ Baker and Bakker, *ibid.*, 550-551; Clatterbaugh, n 171 above, 415.

¹⁷⁶ Warren Farrell, *The Myth of Male Power: Why Men are the Disposable Sex* (New York: Simon and Schuster, 1993).

¹⁷⁷ Connell, n 54 above, 21-27; Messner, n 67 above, 255-276.

¹⁷⁸ Connell, n 92 above, 209.

¹⁷⁹ Kimmel, n 91 above, 216.

overall subordination of women and dominance of men.’¹⁸⁰ In other words, they argue that gender justice and gender politics projects ought to be based on the descriptive observation of the subordination of women and the domination of men and the normative commitment to eliminate the subordination of women. Thus, the gender relationship approach they propose is a kind of subordination feminist way of thinking.¹⁸¹ They generally adopt the top-down, or, domination-subordination model of power. Therefore, they claim that ‘[t]he main axis of power in the contemporary Europe/US gender order is the overall subordination of women and dominance of men.’¹⁸² They argue that ‘as a group, men have power over women as a group.’¹⁸³ To them, ‘[m]en, as a group, enjoy institutional privileges at the expense of women, as a group.’¹⁸⁴ Their idea of gender oppression is also unilateral. According to subordination-feminist men and masculinities studies, ‘men are viewed as a category of people who systematically oppress—and benefit from the oppression of—another category of people, women.’¹⁸⁵ Gender oppression is thus overall unilateral, that is, the oppression of women (as a group) by men (as a group). They adopt a unilateral male domination and female subordination model of power relationship in thinking about gender, justice and politics. They criticise men’s liberation projects for failing to adopt this kind of male domination/female subordination power relations model in thinking about gender issues.¹⁸⁶

I agree with some of the critiques that subordination-feminist men and masculinities studies scholars make of sex roles theory and men’s liberation theory, such as criticism of the static and unitary concept of masculinity or femininity in sex roles theory. I also totally agree with their rejection of conservative and traditionalist men’s studies and movement. However, I do not agree that by rejecting conservative men’s studies and by pointing out the limitations of men’s liberation studies and sex roles theory, the subordination feminist approach is the

¹⁸⁰ Connell, n 54 above, 74.

¹⁸¹ Connell, n 92 above, 23-25.

¹⁸² Ibid., 24.

¹⁸³ McGinley and Cooper, n 167 above, 5.

¹⁸⁴ Messner, n 88 above, 5.

¹⁸⁵ Messner, n 67 above, 271.

¹⁸⁶ Connell, n 54 above, 24-27; Messner, *ibid.*, 270-272.

only approach we ought to take and adopt in men and masculinities studies. I argue that there are also major insufficiencies in subordination-feminist men and masculinities perspectives and some of the limitations could be avoided or overcome by considering the insights and arguments from the queer humanist men and masculinities studies I defend and propose in this thesis. I suggest that taking more seriously the perspectives inspired by queer humanist men and masculinities studies in thinking about sexual justice, gender oppression and normative heterosexuality.

I also disagree with their tendencies to adopt a reductionist idea of power relationships in gender and their unilateral and one-dimensional accounts and concept of gender oppression. Nor do I agree with their broad claim that in issues of gender justice we ought to adopt a subordination feminist perspective of power relationships in gender by crudely categorising men as the dominant gender and women as the subordinated group.¹⁸⁷ I argue that in reality, power relationships in gender life are much more complicated and multi-dimensional than the reductionist model they hold. By taking a simplified power relationship of gender they tends to perpetuate and institutionalise some heteronormative gender myths and ideologies by defining women and femininity as vulnerable and harmless, while men and masculinity as invulnerable and dangerous. For example, in their family violence theories they tend to largely reduce the problem of domestic violence and child abuse to generally just problems of male violence against women and children.¹⁸⁸ Instead, I suggest adopting a Foucauldian thinking of power relationships and a more multi-directional model of power relationships and oppression in analysing power and oppression in gender and in family lives.

According to Foucault, a power relation is not just a relationship of unilateral domination and subordination. Instead, 'power is understood as a matter of

¹⁸⁷ Collier, n 166 above, 11-12.

¹⁸⁸ For example, see Collier, *ibid.*, 215-251. And Richard Collier, 'A Father's "Normal" Love?: Masculinities, Criminology and the Family', in R. Emerson Dobash, Russell P. Dobash and Lesley Noaks eds., *Gender and Crime* (Cardiff: University of Wales, 1995), 202-226.

complex relationships rather than as a property inherent in a particular individual or class.¹⁸⁹ Power relations exist in almost every relation when 'one person tries to control the conduct of the other,'¹⁹⁰ but 'there is necessarily the possibility of resistance'¹⁹¹ in power relationships. Foucault suggests power relations are everywhere and inescapable in human relations, but power relationships are not just repressive but also productive. The possibility of resistance, contestation, challenges and conflicts co-exist with the control, suppression and surveillance in power relations, so power relationships are not fixed and static but are mobile and constantly contested.¹⁹² He argues that 'if there are relations of power in every social field, this is because there is freedom everywhere.'¹⁹³ So in Foucault's mind power relations are endless struggles, conflicts and confrontations. There exists a disciplining and regulatory force, but there is always resistance, subversion and transformation. Halley summarises that Foucault's idea of power is not 'an eternal violence or a top-down imposition but as an open-ended series of reciprocally constitutive relations.'¹⁹⁴

I argue that this kind of idea of power relationships is more appropriate and useful in explaining and capturing the complex power relationships and power struggles in gender relations and in family lives. Gender relationships and family power relationships are far more complicated and multifaceted than the simplified 'men as the dominant gender/women as the oppressed gender' model insisted upon by subordination-feminist men and masculinities theories. I suggest more nuanced, complicated and multi-layered ideas of gender oppression and gender power relations are needed for analysing and reflecting on issues of sexual justice, sexual politics, gender oppression and normative heterosexuality. Also, I contend that one

¹⁸⁹ Spargo, n 69 above, 16.

¹⁹⁰ Michel Foucault, 'The Ethics of Concern for the Self as a Practice of Freedom', in Paul Rabinow ed., *Ethics, Subjectivity and Truth: The Essential Works of Michel Foucault 1954-1984* (New York: The New Press, 1997). 291.

¹⁹¹ Ibid., 292.

¹⁹² Spargo, n 69 above, 20-21.

¹⁹³ Foucault, n 190 above, 292.

¹⁹⁴ Janet Halley, *Spilt Decisions: How and Why to Take a Break from Feminism?* (Oxford: Princeton University Press, 2006), 120.

of the core insights of the queer humanist men and masculinities studies perspectives is the abandonment of the unilateral and reductionist concept of gender oppression and gender power relationships adopted by subordination feminist projects. Queer humanist men and masculinities studies view power relationships and gender oppression in family lives as multi-dimensional and complex, not just about male domination and female subordination. Gender oppression should not be understood as only a unilateral concept of oppression, but rather, as complicated and multifaceted. I argue that by taking a multifaceted and complicated view of gender oppression in family lives we will be able to see oppression, injustices and injuries not generally appreciated, noticed or addressed by the mainstream perspectives on sexual justice and the family. I also contend that a multi-dimensional model of gender power relationships and gender oppression is a very important theoretical tool to destabilise and unravel heteronormative ideologies and stereotypes of sexuality and gender in sexual justice projects. Too often, unjust and oppressive heteronormative norms and discrimination are produced and reproduced via the reductionist and totalising thinking of sexuality and gender.

3.7 Connell and her subordination –feminist theory of men, masculinities, and gender

In the following two sections, I critically examine the theories of two leading subordination-feminist men and masculinities studies scholars: sociologist R. W. Connell and legal scholar Richard Collier. I contend that despite great contributions, there are also limitations in their systems. The limitations in their theories are highly related to the monolithic subordination feminist model of gender power and gender oppression they adopt in their systems.

Connell is one of the most influential theorists in subordination-feminist men and masculinities studies. Her idea of hegemonic masculinity has been widely used as an analytic tool in exploring issues of men and masculinities in scholarship of gender

and men and masculinities studies.¹⁹⁵ She insists that men as a group 'are not oppressed or disadvantaged' and 'men in general gain a patriarchal dividend.'¹⁹⁶ Her concept of gender as structural and patterned social practices and relations based on our human bodies is partially inspired by Butler's concept of gender performativity.¹⁹⁷ Butler claims that gender is performative¹⁹⁸ and we are 'doing' gender within 'a scene of constraint' in everyday life.¹⁹⁹ Similar to Butler who argues that gender is about 'doing', about human practices and performances, Connell argues that '[g]ender is a way in which social practice is ordered. In gender process, the everyday conduct of life is organized in relation to a reproductive area, defined by the bodily structures and process of human reproduction.'²⁰⁰ In other words, she wants to emphasise that gender is the structure and arrangement of ordered and patterned social practices based on the reproductive distinctions of human bodies. Gender refers to, not only how we are expected to behave according to our sexed bodies, but also to what we actually do.

According to Connell, masculinity is the configurations and patterns of social practices that 'refers to male body, but is not determined by male biology.'²⁰¹ On the one hand she argues that masculinities are plural; not all masculinities are equally powerful and privileged. She contends that not only are gender relationships between men and women hierarchal, but also masculinities themselves are hierarchal.²⁰² On the other hand, she argues that in society there is a dominant and normative masculinity for all men to look up to and to follow: the hegemonic masculinity. Hegemonic masculinity is the normative, ideal and dominant masculinity and is the kind of masculinity that has a policing, governing and

¹⁹⁵ R. W. Connell, 'Hegemonic Masculinity: Rethinking the Concept', *Gender and Society* 19, no. 6 (2005), 829-830.

¹⁹⁶ Connell, n 92 above, 209.

¹⁹⁷ Judith Butler uses the concept 'gender performativity' to 'denote the way in which gender is produced as an effect of a regulatory regime that requires the ritualised repetition of particular forms of behaviour.' See Spargo, n 69 above, 75; Butler, n 6 above, xv.

¹⁹⁸ Butler, *ibid.*

¹⁹⁹ Judith Butler, *Undoing Gender* (Routledge: London, 2004), 1.

²⁰⁰ Connell, n 54 above, 71.

²⁰¹ Connell, n 92 above, 29.

²⁰² Connell, n 54 above, 76-81.

regulatory power and effects all men as a group.²⁰³ Hegemonic masculinity is normative in the sense that 'it requires all other men to position themselves in relation to it.'²⁰⁴ Furthermore she argues that the aim and essence of hegemonic masculinity is to maintain a gender structure of male dominance and female subordination. Hegemonic masculinity is a kind of male practice that aims to secure male dominance and power. It is not only the socially expected, prescribed and respected men's gender practices but also is the norms and practices that serve to guarantee 'the dominant position of men and the subordination of women.'²⁰⁵ Hegemonic masculinity is the kind of pattern of gender practices that produces, reproduces and maintains men's power and privileges over women. She thinks that this kind of hegemonic masculinity is the current normative, approved and admired type of gender norms and practices for men. Not all men are capable of enacting and doing hegemonic masculinity but almost all men gain patriarchal dividends from the existence and social force of hegemonic masculinity in society. As Carrie Paechter points, hegemonic masculinity 'confers considerable power, vis-à-vis women, not just on the hegemonically masculine but on all men, while at the same time standing as an ideal type against which various ways of 'doing man' can be constructed and performed.'²⁰⁶

Connell further argues that the concept of hegemonic masculinity can be applied on three different levels: global, regional (nation-state level), and local (families, companies, local communities, and organisations). So we can talk about hegemonic masculinity in international politics, in state law, or in families, in different racial groups, in education institutions, in prisons, or in different classes or occupation groups.

²⁰³ Connell, n 195 above, 832-833.

²⁰⁴ Ibid., 832.

²⁰⁵ ; Connell, ibid., 832, 840-849; Connell, n 54 above, 71, 77.

²⁰⁶ Carrie F. Paechter, 'Masculine Femininities/Feminine Masculinities: Power, Identities and Gender', *Gender and Education* 18, no. 3, (2006), 255.

However, she also insists that there is no 'hegemonic femininity' but only 'emphasized femininity'²⁰⁷ because she believes that the gender power relationship is asymmetrical. No form of femininity is hegemonic, dominant or powerful enough for her to be able to label as 'hegemonic femininity'. She argues:

*'[a]ll forms of femininity in this society are constructed in the context of the overall subordination of women to men. For this reason, there is no femininity that holds among women the position held by hegemonic masculinity among men.'*²⁰⁸

She thus holds that no femininities or patterned female gender practices are powerful or dominant enough to be able to be labelled 'hegemonic femininity', even in local levels such as in families, schools or local communities. So, according to her theory, we can only legitimately use the idea of hegemonic masculinity in families, but there is no hegemonic femininity in families, because, she suggests, femininity is simply not hegemonic or a powerful gender practice.

There are already some criticisms on her articulation and use of the concept of hegemonic masculinity. For example, one frequent criticism is that it is too vague, too ambiguous, and very often includes conflicting norms and practices.²⁰⁹ She does not clearly articulate what the norms and content of hegemonic masculinity entail, although she frequently mentions men's violence as a key practice and example of hegemonic masculinity.²¹⁰ Also she is criticised for tending to highlight only the negative attributes and practices of masculinity such as male violence while neglecting the positive side in her elaboration of hegemonic masculinity.²¹¹ I think all the above challenges to this theory of hegemonic masculinity are very persuasive. Her idea of hegemonic masculinity is too vague. She does not properly

²⁰⁷ According to Connell 'emphasized femininity' is socially approved, accepted and encouraged femininity which shows compliance to patriarchy and male domination. See Connell, n 195 above, 848.

²⁰⁸ R. W. Connell, *Gender and Power* (Cambridge: Polity, 1987), 187.

²⁰⁹ Tony Jefferson, 'Subordinating Hegemonic Masculinity', *Theoretical Criminology* 6, no. 1 (2002), 69-70.

²¹⁰ R. W. Connell, 'On Hegemonic Masculinity and Violence Response to Jefferson and Hall', *Theoretical Criminology* 6, no. 1 (2002), 93-97.

²¹¹ Jefferson, n 209 above, 70.

explain how to distinguish the attributes and practices of hegemonic masculinity from those in other types of masculinities. Also, when thinking of hegemonic masculinity, she tends to lump together a group of negative attributes and problematic practices of some men and misleadingly thinks they could represent hegemonic masculinity, even when these attributes or practices are actually widely socially condemned. For example, Connell suggests that violence against women and children is the practice and norm of hegemonic masculinity.²¹² However, as Tony Jefferson points out:

*'wife/partner batterers are not cultural heroes...Far from being a man, the resort to violence against women is commonly regarded as a failure of manhood(certainly in my experience of growing up male) since it displays both a (feminine) inability to control emotions and cowardice in attacking someone (usually) weaker than oneself.'*²¹³

It is true that some men perpetrate abuse and violence against women and children in the family and this kind of male violence in families is an urgent and serious social problem. However, it is not unproblematic to suggest that domestic violence against women and children are the prescribed, honoured, respected and admired hegemonic masculine norms and practices in modern society. Empirical studies suggest men's violence against women receives very low social approval.²¹⁴ Moreover, empirical studies suggest that in reality in modern Western societies it is women's violence (against men) which is more socially tolerated, more likely to be ignored, and less harshly judged than men's violence against women, either by legal enforcement systems and professionals,²¹⁵ or by the general public.²¹⁶ So it is not unproblematic for Connell to suggest that the widely condemned men's domestic

²¹² Connell, n 210 above, 93-94.

²¹³ Jefferson, n 209 above, 71.

²¹⁴ For example, see M. J. Mattingly and M. A. Straus, *Violence Socialization and Approval of Violence: A World Perspective on Gender Differences and American Violence*. Paper presented at the 60th annual American Society of Criminology meeting, St. Louis, 2008.

²¹⁵ See n 132, n 141 and n 152 above. Also, S. Okamoto, and M. Chesney-Lind, 'Girls and Relational Aggression: Beyond the "Mean Girl" Hype', *Family & Intimate Partner Violence Quarterly* 1, no. 3 (2009), 283-4; Brenda Russell, Laurie Ragatz, and Shane W. Kraus, 'Expert Testimony of the Battered Person Syndrome, Defendant Gender, and Sexual Orientation in a Case of Duress: Evaluating Legal Decisions', *Journal of Family Violence* 27, no. 7 (2012), 659-670.

²¹⁶ See n 131 above.

violence against women is the socially approved, respected, honoured and admired normative masculinity: that is, hegemonic masculinity.

I further hold that there are two possible problems in Connell's theory of hegemonic masculinity that have not been addressed by the existing critiques. First, as mentioned above, Connell insists we cannot legitimately use the concept of hegemonic femininity because currently women as a group are subordinated by men as a group in societies and therefore no pattern of femininity could have the power and dominance to be labelled as the hegemonic femininity. Femininity, in other words, is never hegemonic in current societies according to her system, even at the local level. She argues that hegemonic masculinity is global, national and local. At local level we can legitimately talk about and identify, for example, hegemonic masculinity in working class men in the work place, or hegemonic masculinity in the family. But her rejection of the possibility and legitimacy of the concept of hegemonic femininity altogether implies that there is no hegemonic femininity even at local level. So her gender theory implies that, while there is powerful hegemonic masculinity in families, we cannot legitimately imagine or say there is also powerful hegemonic femininity in families. Therefore, the implications of her hegemonic masculinity theory are that in current societies there are only dominant and powerful men's practices and gender in family lives, but women's practices and gender in families can never be labelled, judged and viewed as dominant and hegemonic.

I think this kind of thinking and distinction of men's gender and women's gender in the family and in intimate relationships is misleading, problematic and heteronormative. It adopts a problematic either/or model in thinking of gender, power and the family. And the either/or model is based on the heteronormative gender myth and stereotype that assumes that only masculinity is powerful and dominant. I argue that this approach to gender is inadequate and is likely to perpetuate constraining gender norms for men, women, and trans people in heteronormative society. I argue that instead we need a more nuanced and multidimensional perspective in analysing family, power and gender.

Family power relations are complex and multidimensional and there are various measurements and criteria for evaluating and thinking about power in the family. However, too often scholars like Connell rely on only 'masculinised' measurements, such as economic resources, formal political power or physical strength in judging and evaluating family power. They therefore conclude with a binary dichotomy by suggesting that men are the powerful and dominant gender, while women are the powerless and vulnerable gender in the family. I contend that, nevertheless, power relationships in the family are much more complicated and there are significant factors other than economic or formal political power factors that are crucial and relevant in understanding power relations in the family. For instance, one important factor influences the balance and execution of familial power is the parental relationships with children. Many parents, fathers or mothers, value highly their relationships with their children. For many parents in modern society, their relationships with their children are one of the most, if not the most, valued and meaningful aspects of lives.²¹⁷ However, it is biological mothers, no matter in homosexual or heterosexual relationships, that generally have greater opportunities and familial power to play maternal gatekeeping roles by restricting or deciding the range of involvement and contact the other partner or other people can have with the child.²¹⁸ For example, a study of lesbian families finds that:

²¹⁷ Ulrich Beck and Elisabeth Beck-Gernsheim, *The Normal Chaos of Love* (Oxford: Polity Press, 1995), 102-139; Rob, Palkovitz, Marcella A. Copes, and Tara N. Woolfolk, "'It's Like... You Discover a New Sense of Being" Involved Fathering as an Evoker of Adult Development', *Men and Masculinities* 4, no. 1 (2001), 49-69.

²¹⁸ Mignon R. Moore, 'Gendered Power Relations among Women: A study of Household Decision Making in Black, Lesbian Stepfamilies', *American Sociological Review* 73, no. 2 (2008), 335-356; Marsha Kline Pruett, Lauren A. Arthur, and Rachel Ebling, 'The Hand That Rocks the Cradle: Maternal Gatekeeping after Divorce', *Pace Law Review* 27, no.4 (2006), 709-739; Jay Fagan, and Marina Barnett, 'The Relationship between Maternal Gatekeeping, Paternal Competence, Mothers' Attitudes about the Father Role, and Father Involvement', *Journal of Family Issues* 24, no. 8 (2003), 1020-1043; Sarah M. Allen, and Alan J. Hawkins, 'Maternal Gatekeeping: Mothers' Beliefs and Behaviors that Inhibit Greater Father Involvement in Family Work', *Journal of Marriage and the Family* 61, no. 1 (1999), 199-212.; Marion L. Kranichfeld, 'Rethinking Family Power', *Journal of Family Issues* 8, no. 1 (1987), 42-56; Naomi Segal, 'Why Can't A Good Man Be Sexy? Why Can't A Sexy Man Be Good?', in David Porter ed., *Between Men and Feminism* (London: Routledge, 2012), 37, 40-41.

*'[b]iological mothers also have more say because in the event of split in a relationship, they have the authority to decide whether and how much visitation their partners can have with the children. In a relationship where two people are raising children and the partner becomes emotionally attached, the partner has a serious disadvantage in a society that gives her no resources after the relationship ends.'*²¹⁹

Scholars question the over-generalised powerless mothers and wives assumptions in heterosexual marriage and intimate relationships. They find that some women 'exercise their familial power and authority...by controlling the actions of fathers or other persons in relation to the children.'²²⁰ Studies also find that in residence/child custody negotiation, fathers often report a lack of bargaining power and feeling powerless.²²¹ For example, a study about child residence negotiation process finds that:

*'Whether or not fathers had played an equal part in the care and upbringing of their children or indeed been the primary carer...Fathers often felt mothers were able to act arbitrarily and that their own relationships with their children were now somewhat dependant on the mother's goodwill.'*²²²

Scholars also problematise the myth that higher earning ability necessarily translates into greater familial power.²²³ They find power relationships in families are actually highly multidimensional. Male figures are not necessary the only members in the family with power. On the other hand, female figures can sometimes have real power and authority over children and men in families. For

²¹⁹ Moore, *ibid.*, 349.

²²⁰ Pruett, Arthur and Ebling, n 218 above, 716.

²²¹ Alexander Masardo, 'Negotiating Shared Residence: The Experience of Separated Fathers in Britain and France', in Jo Bridgeman, Heather Keating and Graig Lind eds., *Regulating Family Responsibilities* (Farnham: Ashgate, 2011), 127-129; Joyce A. Arditti, and Katherine R. Allen, 'Understanding Distressed Fathers' Perceptions of Legal and Relational Inequalities Post-divorce', *Family Court Review* 31, no. 4 (1993), 461-476; Edward Kruk, 'Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers after Divorce', *Family Court Review* 30, no. 1 (1992), 81-101; A study of unmarried fathers finds these fathers feel particularly powerless and they sometimes suffer from physical abuses and sexual coercion from ex-partner when seeking access to their children. See Charlie Lewis, Amalia Papacosta, Jo Warin, *Cohabitation, Separation and Fatherhood* (York: York Publishing Services for Joseph Rowntree Foundation, 2002), 31-45.

²²² Masardo, *ibid.*, 128.

²²³ Moore, n 218 above, 347. Renzetti, n 125 above, 117.

example, research finds that children in separate families report high percentages of desires and wishes of more frequent contact and higher involvement with the non-resident parent (usually non-resident father) and these children report their non-resident fathers also have the same desires and wishes for more contact and involvement with their children.²²⁴ However, these children often report that it is their mothers who generally do not want them to spend more time with their fathers and have the power to intervene father-child involvement.

*'The more time they wanted with their fathers, the more they perceived their mothers interfering with that time. They saw mothers' desire to have the children with her as a primary reason they do not have more time with their fathers.'*²²⁵

In the above research, children report that their resident mothers have the power to play a maternal gatekeeping role by restricting or blocking the father's contact and involvement with their children. By implying that there is only hegemonic masculinity in the family but no hegemonic femininity, Connell essentialises and overgeneralises complicated gender power dynamics and fails to appreciate and address the multi-dimensional aspects of gender and power in family lives.

The second problematic implication of Connell's arguments of hegemonic masculinity is the possible tendency to unjustly discredit, disbelieve and devalue fathering and fathers. As already illustrated above, she suggests that the aim and ultimate purpose of hegemonic masculinity is to sustain male dominance, male privilege and patriarchy. She argues that 'the concept of hegemonic masculinity is based on practice that permits men's collective dominance over women to continue.'²²⁶ She further argues that 'being a father' and 'bringing home a wage'

²²⁴ Patrick Parkinson, Judy Cashmore, and Judi Single, 'Adolescents' Views on the Fairness of Parenting and Financial Arrangements after Separation', *Family Court Review* 43, no. 3 (2005), 429-444; William V. Fabricius, 'Listening to Children of Divorce: New Findings That Diverge From Wallerstein, Lewis, and Blakeslee', *Family Relations* 52, no. 4 (2003), 394; William V. Fabricius and Jeff A. Hall, 'Young Adults' Perspectives on Divorce: Living Arrangements', *Family Court Review* 38, no. 4 (2000), 446-461.

²²⁵ Fabricius, *ibid.*, 394.

²²⁶ Connell, n 195 above, 840.

are both part of gender practices of hegemonic masculinity.²²⁷ By insisting men's practice of hegemonic masculinity is primarily for the purpose of male domination and male privilege, and by suggesting that 'being a father' is a masculine practice of hegemonic masculinity, she seems to imply that fathering behaviours are ultimately and primarily designed for guaranteeing male dominance, male privilege and male power. She seems to implicitly suggest an essentialised negative image and purpose of fathering and fathers as ultimately and inevitably selfish and patriarchal. But do we really need to see a father's motives, love and fathering in this kind of essentialist and sceptical way? Is this a fair and balanced interpretation of fathers and fathering? No doubt there are abusive, controlling, violent and selfish fathers, just as there are also abusive, controlling, violent and selfish mothers, but there are also many responsible, caring, protecting and devoted mothers and fathers. There are various ways of parenting and various types of parent. To imply that 'to be a father' generally suggests men seeking dominance over women and children is crudely essentialising and unjustly degrades various practices, motivations and emotions of fathers and fathering towards their family. This kind of reductionist, biased and discriminatory perspective of fathers and fathering is not helpful and productive in understanding the complicated and multifaceted relations and practices of parenting, children, family and gender. Since Connell's masculinity theory is at risk of producing and reproducing certain unjust heteronormative gender norms and prejudices, a more balanced approach to the study of men and masculinities is needed. I suggest considering the queer humanist men and masculinities studies approach to men's studies.

3.8 Richard Collier on men, masculinity, family and law

In family law jurisprudence, legal scholar Richard Collier brings men and masculinities studies into legal research, especially in family law. His legal research on men and masculinities studies is mainly informed and shaped by subordination

²²⁷ Ibid., 840.

feminist ideologies and approaches.²²⁸ Since he is one of the leading scholars in law and masculinity studies, I critically evaluate his theory of law, masculinity and family in this section.

Collier criticises the new 'family men' and the 'new father' ideology in contemporary family law and family policies.²²⁹ He contends that the idea of the new father that is promoted in modern family law is still largely heteronormative. New fatherhood, according to him, is a kind of modern ideology of fatherhood and fathering that encourages fathers to be, not only economically responsible for children, but also actively and psychologically involved with children. In other words, modern family men and new fatherhood ideologies require fathers not only to continually play the major breadwinner role for their families but also expect fathers to engage in more active and involved parenting. Under this kind of ideology, gender neutral family law and policies are promoted. For example, the traditional maternal preference principle in child custody/child residence law has been replaced by formal gender neutral principles such as the child welfare principle.²³⁰

Collier criticises this kind of new fatherhood image and ideology as largely just rhetoric without the backing of real action from fathers.²³¹ He argues that modern fathers still prioritise their own career over child caring and refuse to make real

²²⁸ Collier, n 166 above. Richard Collier, 'A Father's "Normal" Love?: Masculinities, Criminology and the Family', n 188 above, 202-226; Richard Collier, 'After Dunblane: Crime, Corporeality, and the (Hetero-) Sexing of the Bodies of Men', *Journal of Law and Society* 24, no. 2 (1997), 177-198; Richard Collier, 'A Hard Time to Be a Father?: Reassessing the Relationship between Law, Policy, and Family (Practices)', *Journal of Law and Society* 28, no. 4 (2001), 520-545.

²²⁹ Collier, n 166 above, 215-251; Richard Collier, 'Men, Heterosexuality and Changing Family: (Re)constructing Fatherhood in Law and Social Policy', in Gill Jagger and Caroline Wright eds., *Changing Family Values*, (London: Routledge, 1999), 38-58; Richard Collier, 'A Hard Time to Be a Father?: Reassessing the Relationship between Law, Policy, and Family (Practices)', n 228 above, 526-545; Richard Collier, *Men, Law and Gender: Essays on the 'Man' of Law* (London: Routledge, 2010), 128-151.

²³⁰ Sonia Harris-Short and Joanna Miles, *Family law: Text, Cases, and Materials* second edition (Oxford: Oxford University Press, 2011), 715-775.

²³¹ Collier, 'A Hard Time to Be a Father?: Reassessing the Relationship between Law, Policy, and Family (Practices)', n 228 above, 535-539; Collier, 'Men, Heterosexuality and Changing Family: (Re)constructing Fatherhood in Law and Social Policy', n 229 above, 46-47.

change by becoming more engaged in child caring and in the children's' lives.²³² He argues that gender neutral family law does not take into account the gendered unequal and hierarchal power relationships and job divisions in the family.²³³ Perhaps, the core of his criticisms of the concept of modern fathers and modern family men, are related to his disbelief and distrust of modern fathers' devotion and commitment to children. He suggests that these new fathers do not really want to share the responsibility for child caring.²³⁴ He holds that elite and middle class men construct the distinction between the image of respectable and safe family man with the image of irresponsible and dangerous errant father. But in reality, he argues, there is not much difference between these two types of fathers. For Collier, both groups of men share the same problem: 'their lack of any involvement in childcare.'²³⁵ Both lack real interest in child care and involving themselves in child life. They are content to leave the caring role to women and pursue their own career. He quotes Suzanne Moore's words by suggesting: '[a]ll kinds of men think children basically belong to women, that their part in the process ends as soon as they put their trousers on.'²³⁶ Here Collier develops a family law theory on fathering, mothering and children similar to those proposed by some subordination-feminist family law theorists such as by Martha Albertson Fineman.²³⁷

Collier's claims that fathers' lack of interests and real action in getting more involved in children's lives is biased and misleading. Empirical studies on modern fathers do show that modern fathers are generally much more involved with their children than the previous generation. For example, research in the UK finds that 'there was a 200 per cent increase in the time that fathers are actively engaging with children

²³² Collier, 'A Hard Time to Be a Father?: Reassessing the Relationship between Law, Policy, and Family (Practices)', n 228 above, 537-538.

²³³ Collier, 'Men, Heterosexuality and Changing Family: (Re)constructing Fatherhood in Law and Social Policy', n 229 above, 43-52; Collier, 'A Hard Time to Be a Father?: Reassessing the Relationship between Law, Policy, and Family (Practices)', n 228 above 535-539.

²³⁴ Collier, n 166 above, 229-232.

²³⁵ *Ibid.*, 229.

²³⁶ *Ibid.*, 231.

²³⁷ Martha Albertson Fineman, 'Fatherhood, Feminism and Family Law', *McGeorge Law Review*, 32, no. 4 (2000), 1031-1049; Martha Albertson Fineman, 'The Sexual Family', in Martha Albertson Fineman, Jack E. Jackson, and Adam P. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Surrey: Ashgate, 2009), 45-64.

between 1974 and 2000.²³⁸ Research also indicates that many fathers have a profound emotional involvement with their children and often want to participate more in caring and in children's lives more generally, although they are still largely constrained by the gendered norms of being the primary provider for their family.²³⁹ Furthermore, research finds that despite the formal gender neutral language used in some areas of modern family law, the judiciary system and the legal professionals still often hold *de facto* gendered biases and prejudices against fathers.²⁴⁰ In other words, there are institutional and structural gender injustices and biases against fathers in law and in general culture. Collier generally trivialises and depoliticises the structural obstacles and discrimination fathers face in his family law theory.

Collier also addresses issues of family violence, child abuse and the concept of the family man. However, in his system, family violence and child abuse are generally reduced to issues of dangerous family men's violence against women and children.²⁴¹ He argues that the safe and respectable family man image actually diverts our attention away from 'dangerous qualities of familial masculinity.'²⁴² He echoes feminist criticisms of the construction of the safe family man ideology by law and wants to challenge the conception that 'men as fathers are, a priori, safe.'²⁴³ He uses child sexual abuse and domestic violence against women as examples to challenge the safe and natural concept of good father and family man. He suggests that the proper response to issues of child sex abuse and domestic violence is to

²³⁸ Stephen A. Hunt, and National Family & Parenting Institute. *Family Trends: British Families since the 1950s* (London: Family & Parenting Institute, 2009), 78.

²³⁹ Lamb, n 83 above, 94-154, 211-214; David H.J. Morgan, 'Men in Families and Households', in Martin Richards, Judith Treas, and Jacqueline L. Scott, eds., *The Blackwell Companion to the Sociology of Families* (Oxford: Blackwell, 2004), 381-384; Palkovitz, Copes, and Woolfolk, n 217 above, 49-69.

²⁴⁰ Cynthia A. McNeely, 'Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court', *Florida State University Law Review* 25, no. 4 (1998), 891; Sanford L. Braver, Jeffrey T. Cookston, and Bruce R. Cohen, 'Experiences of Family Law Attorneys With Current Issues in Divorce Practice', *Family Relations* 51, no. 4 (2002), 325-334; Richard A. Warshak, 'Gender Bias in Child Custody Decisions', *Family Court Review* 34, no. 3 (1996), 396-409; Paul L Smith., 'The Primary Caretaker Presumption: Have We Been Presuming Too Much?', *Indiana Law Journal* 75, no. 2 (2000), 731-746; Lamb, *ibid.*, 212-213, 327; *Salgueiro da Silva Mouta v Portugal*, 31 E.H.R.R. 47 (2001); Camille Gear Rich, n 83 above; Arditti and Allen, n 221 above; Kruk, n 221 above; Lewis, Papacosta, Warin, n 221 above.

²⁴¹ Collier, n 166 above, 215-251.

²⁴² *Ibid.*, 232.

²⁴³ *Ibid.*, 243.

address institutional male authority, male power and the myths of the safe family man in heterosexual families.²⁴⁴ He argues that we need to deconstruct the assumed and naturalised idea of the safe family man and good father in family law and policies.

I argue that he is absolutely right to challenge the idea of the safe and natural family man and the natural good father images and ideologies. He is also right in highlighting the problems of male violence in the family. I also agree that child abuse and domestic violence are urgent issues to be addressed and taken seriously. However, I also challenge his reduction of issues of family violence, child abuse, and intimate relationship violence to male violence against 'women and children.' He oversimplifies the problems of child abuse (especially child sexual abuse) and domestic violence by reducing them to just problems of male violence in the family. He frequently contrasts the term 'men' with the term 'women and children' and depicts men as violent perpetrators against 'women and children' in the family.²⁴⁵ He constantly bonds the term 'children' uncritically with the term 'women' in his arguments of family violence as if they are naturally bonded with and always have identical interests. On the other hand, he never uses the term 'children and men'. He implicitly uncritically assumes that children and women always have identical interests in families and their interests are jointly threatened by dangerous fathers. He never considers and addresses the problems of female members and mothers who perpetrate family violence, such as child physical and emotional abuse, child sexual abuse, and domestic violence against men. He seems to uncritically assume that family violence equates to male violence. However, this kind of reductionist thinking is biased, unjust and unhelpful. Victims of female violence and maternal child abuse, including maternal sexual abuse are unfairly trivialised and ignored in his family law theory.

His theory neglects, ignores, and marginalises female perpetrated violence and victims of the female perpetrator in the home. This is an unbalanced and insufficient

²⁴⁴ Ibid., 243-251.

²⁴⁵ Ibid., 243, 245, 246, 247, 249.

viewpoint on family violence. Take parental violence and abuse against children as an example. Empirical research shows that mothers and fathers commit similar rates of physical and emotional abuse against children.²⁴⁶ However, compared to paternal violence, maternal violence and abuse against children are far less likely to be noticed, to be taken seriously, or to be reported to law officers and child protection professionals.²⁴⁷ A large scale survey in Britain shows that young men are more likely than young women to experience parental physical violence in the families. Mothers are slightly more likely than fathers to use physical violence against children in the family.²⁴⁸ In East Asian societies mothers and fathers perpetuate similar rates of child abuse, including similar rates of physical and psychological abuse, according to a household survey conducted in Hong Kong.²⁴⁹ Research also finds that LGBT children experience higher rates of family abuse from both fathers and mothers. Both parents commit a significantly higher percentage of child abuse against LGBT children.²⁵⁰ Overall, child abuse is not just a problem of paternal abuse of children as Collier describes.

Moreover, although men are the main perpetrators of child sexual abuse in the family, it is unjust and inappropriate to assume that the problems and harm of female-perpetrated child sexual abuse in the family are ignorable or insignificant. While child sexual abuse by men is a serious social problem and ought to be addressed urgently, this does not mean victims and harms of child sexual abuse by women are trivial. The exact extent of child sexual abuse by women in the family is hard to be known but research indicates that female offenders do exist and the cases are largely underreported and unnoticed by either the general public or by

²⁴⁶ Pat Cawson, Corinne Wattam, Sue Brooker and Graham Kelly, *Child Maltreatment in The United Kingdom: A Study of the Prevalence of Child Abuse and Neglect* (London: NSPCC, 2000); Ko Ling Chan, *Study on Child Abuse and Spouse Battering: Report on Findings of Household Survey* (Hong Kong: The University of Hong Kong, 2005).

²⁴⁷ Sanna-Mari Kuoppamäki, Juha Kaariainen, and Noora Ellonen, 'Physical Violence Against Children Reported to the Police: Discrepancies Between Register-based Data and Child Victim Survey', *Violence and Victims* 26, no. 2 (2011), 257-268.

²⁴⁸ Cawson, Wattam, Brooker and Kelly, n 246 above, 31-33.

²⁴⁹ Chan, n 246 above.

²⁵⁰ Heather L. Corliss, Cochran Susan D., and Vickie M. Mays, 'Reports of Parental Maltreatment During Childhood in a United States Population-based Survey of Homosexual, Bisexual and Heterosexual Adults', *Child Abuse & Neglect* 26, no. 11 (2006), 1165- 1178.

legal and social service professionals.²⁵¹ This is mainly because of the traditional disbelief of the existence of sexual abuse of children by women, the dominant subordination feminist ideology that assumes male domination over women and children in the family, and the pervasive patriarchal and heteronormative gender stereotypes of caring and harmless women and femininity in society.²⁵² Not only subordination feminism informed scholars such as Richard Collier marginalise female offenders in child sexual abuse, traditionalist patriarchal scholars also hold and perpetuate heteronormative gender stereotypes by claiming that child sexual abuse by females is so rare that it is almost insignificant.²⁵³ However, according to Childline statistics 2005-2006 in the UK, of those children who reported being sexually abused, 5% of girls and 44% of boys stated that their abuser was female.²⁵⁴ Also Deborah S. Boroughs indicates that 'the sexual abuse of children by women, primarily mothers, once thought to be so rare it could be ignored, constituted 25% (approximately 36,000 children) of the sexually abused victims.'²⁵⁵

Research finds that police, prosecutors and social workers generally do not treat female-perpetrated sexual abuse cases as seriously as male-perpetrated cases. In child sexual abuse cases, research finds that child protection professionals:

²⁵¹ Deborah S. Boroughs, 'Female Sexual Abusers of Children', *Children and Youth Services Review* 26, no. 5 (2004), 484; Hannah Ford, *Women Who Sexually Abuse Children* (Chichester: John Wiley and Sons Ltd., 2006), 7-24; Rachel Goldhill, 'What Was the Thinking? Woman Who Sexually Offend Against Children— Implications for Probation Practice', *Probation Journal*, 60, no. 4 (2013), 420-424; Anne Banning, 'Mother-son Incest: Confronting a Prejudice', *Child Abuse & Neglect*, 13, no. 4 (1989), 563-565; Myriam S. Denov, 'The Myth of Innocence: Sexual Scripts and the Recognition of Child Sexual Abuse by Female Perpetrators', *Journal of Sex Research*, 40, no. 3 (2003), 303-314.

²⁵² Boroughs, *ibid.*, 484-487; Craig M. Allen, 'Women as Perpetrators of Child Sexual Abuse: Recognition Barriers', in Horton, Anne L., Barry L. Johnson, Lynn M. Roundy, and Doran Ed Williams eds., *The Incest Perpetrator: A Family Member No One Wants to Treat* (London: Sage, 1990), 108-125; Banning, *ibid.*, 563-570; Denov, *ibid.*, 303-314; Jacquie Hetherington, 'The Idealization of Women: Its Role in the Minimization of Child Sexual Abuse by Females', *Child Abuse & Neglect* 23, no. 2 (1999), 161-174; E. D. Nelson, 'Females Who Sexually Abuse Children: A Discussion of Gender Stereotypes and Symbolic Assailants', *Qualitative Sociology* 17, no. 1 (1994), 63-88.

²⁵³ Nelson, *ibid.*, 64.

²⁵⁴ Theresa A. Gannon, and Mariamne R. Rose, 'Female Child Sexual Offenders: Towards Integrating Theory and Practice', *Aggression and Violent Behavior* 13, no. 6 (2008), 443.

²⁵⁵ Boroughs, n 251 above, 481-482.

*'did not consider female-perpetrated abuse to be as serious as male-perpetuated abuse. The implication is that victims of sexual abuse perpetrated by a woman may be less likely to receive the protection afforded victims of male-perpetuated abuse.'*²⁵⁶

Studies also find that female perpetrators of child sexual abuse are less likely to be arrested, prosecuted or jailed compared with male offenders.²⁵⁷ Female-perpetrated child sexual abuse victims often face negative responses such as disbelief, minimisation, or discomfort from professionals when they reveal that their abusers are female.²⁵⁸

Also, research indicates that child abuse victims of female offenders usually face a great taboo of disclosing female sex offending.²⁵⁹ Child sexual abuse by females, especially by mothers, is regarded as the ultimate taboo and the most hidden aspect of life for many victims. This is related to the fact that 'while all disclosures of sexual abuse are inherently difficult, disclosures of female-perpetrated sexual abuse may have an added complexity given that these cases transgress the norm and defy traditional sexual scripts.'²⁶⁰ As a male victim of maternal child sexual abuse reports: '[i]t's more difficult for me to talk about the [female perpetrated] incest than the incest by my father. It was really hard to come forward and say that I was sexually abused by a woman.'²⁶¹ Actually research finds that the 'male sexual abuser paradigm' is so dominant in legal and social services responses to sexual violence that some victims of female sex abusers feel pressured to say their abusers are male in order to get help and to avoid being dismissed and disbelieved by legal and social service professionals.²⁶²

²⁵⁶ Jacquie Hetherington and Lynn Beardsall, 'Decisions and Attitudes Concerning Child Sexual Abuse: Does the Gender of the Perpetrator Make a Difference to Child Protection Professionals?', *Child Abuse & Neglect* 22, no. 12 (1998), 1265-1283.

²⁵⁷ Denov, n 251 above, 311.

²⁵⁸ Myriam S. Denov, 'To a Safer Place? Victims of Sexual Abuse by Females and Their Disclosures to Professionals', *Child Abuse & Neglect* 27, no. 1 (2003), 54-55; Banning, n 251 above, 563-570.

²⁵⁹ Denov, *ibid.*, 52.

²⁶⁰ Denov, n 251 above, 311.

²⁶¹ Denov, n 258 above, 52.

²⁶² Denov, n 251 above, 311.

The heteronormative gender myths and stereotypes of harmless, gentle and caring female images, especially harmless and caring maternal images in the family, often prevent professionals and public from seeing and taking female sex offenders of child abuse seriously. As Myriam S. Denov states: '[t]raditional sexual scripts, particularly the societal perceptions of females as sexually passive and innocent, may play an important role in the under-recognition and underreporting of female sex offending.'²⁶³ She further argues that 'the denial of women as potential sexual aggressors has not only been accepted and affirmed in the beliefs of the general population but has also been cemented in everyday practices of law.'²⁶⁴ Some ideologies and policies proposed and promoted by subordination feminists in sexual violence and family violence law and politics, do not challenge the heteronormative gender myths of harmless femininity in the family, and could further perpetuate and cement the heteronormative gender myths and stereotypes of masculinity and femininity in law and in society.

Collier oversimplifies the complex realities of child abuse in the family by implicitly equating it with fathers' violence against children. By doing so, he trivialises victims of female violence in the family and also reinforces a heteronormative gender stereotype and myth of violent men and harmless women in the family. Although he is right to question the uncritical assumption of the safe family man and safe father images in family law and family policies, he fails to question the ideologies of safe, caring and harmless women and mothering in the family. He uncritically implies harmless and caring maternal roles in his theory of family law. However, as I elaborate, this kind of assumption fails to address the complex realities of mothering and mother-child relationships. Fathers and mothers in many families are the greatest sources of love and safety; however, in some families, fathers and mothers can be sources of oppression and abuse. By not denying the contributions of many devoted and caring fathers and mothers, we must not assume also that fathering or mothering are always harmless and caring. Queer humanist men and

²⁶³ Ibid., 308.

²⁶⁴ Ibid., 309.

masculinities studies oppose the oversimplified approach on either fathering or mothering in family jurisprudence. Queer humanist men and masculinities studies also argue for recognising and addressing the complex roots and forms of child abuse in the family. Experiences and needs of victims of either male or female perpetrators should not be marginalised or ignored.

However, Collier does imply some adjustments in his later works by appealing for a relatively more nuanced approach to legal studies of men and masculinities.²⁶⁵ This is a welcome change and revision, but it is questionable whether he can fundamentally avoid the limitations of subordination feminist ideologies if he keeps adopting and assuming a monolithic, subordination feminist model of social power, gender oppression and gender power.²⁶⁶ Also, it is not clear how far he is willing to use a more nuanced approach to understand and to explore issues of power, gender oppression and the family.

In this chapter, I have critically evaluated the pros and cons of early lesbian feminism, gay liberation theory, contemporary subordination feminism, and subordination-feminist men and masculinities and their approaches to issues of normative heterosexuality and sexual justice. Lesbian feminism and gay liberation theory points out that heterosexuality is not just personal sexual expression but also an institution of sexuality and gender injustices. They also highlight how women and gay people are harmed by the experience of the institution of heterosexuality. One of the major problems in their theory of sexual justice is their general reduction of gender oppression and gender injustices to just the oppression of women. Similarly, although contemporary subordination feminist approaches contribute by highlighting some structural injustices towards women, their approach nevertheless tends to produce, reproduce, perpetuate and cement some problematic

²⁶⁵ Richard Collier, 'Feminist Legal Studies and the Subject(s) of Men: Questions of Text, Terrain and Context in the Politics of Family Law and Gender', in Diduck, Alison, and Katherine O'Donovan, eds. *Feminist Perspectives on Family Law* (London: Routledge, 2007), 235-258; Collier, *Men, Law and Gender: Essays on the 'Man' of Law*, n 229 above.

²⁶⁶ Collier, 'Feminist Legal Studies and the Subject(s) of Men: Questions of Text, Terrain and Context in the Politics of Family Law and Gender', n 265 above, 248-251.

heteronormative sexuality and gender discrimination and prejudices. Some forms of sexuality and gender injustices could be too easily marginalised and trivialised under this heterosexual-women centred perspective. In the next chapter, I critically evaluate humanist men's studies and queer theory. They provide two different valuable perspectives on sexual politics and sexual justice other than this mainstream subordination feminist approach. The strengths and weaknesses of these two approaches will be critically elaborated.

Chapter 4 Humanist Men and Masculinities Studies and Queer Theory on Sexual Justice, Sexual politics, Gender Oppression and Heteronormativity

In the previous chapter I critically evaluated how issues of sexual justice, gender oppression and normative heterosexuality are addressed in lesbian feminisms, early gay liberationist studies, contemporary subordination feminisms and subordination-feminist men and masculinities studies. In this chapter I critically examine these issues through a lens derived from humanist men and masculinities studies and queer theories. I argue that both schools can provide valuable insights on issues of sexual justice, gender oppression and heteronormativity. Both schools are important theoretical sources that I draw upon. However, limitations and insufficiencies of these theories will also be discussed. I suggest that both humanist men and masculinities studies and queer theories can benefit from incorporating insights from each other.

4.1 The emergence and implications of humanist men and masculinities studies

Recently a more balanced strand of studies of men and masculinities has emerged. Because this type of men and masculinities studies are premised on, and driven by, humanist concerns of reducing human suffering and promoting overall wellbeing for both men and women,¹ I label this approach to men's studies as 'humanist men and masculinities studies.'² This type is in accordance with men's liberationist studies and subordination-feminist men and masculinities studies with respect to rejecting

¹ Humanism in ethics, law and politics are theories and projects that aim to reduce human suffering and to enhance human well-being. They generally emphasise the values of human dignity, freedom, equality, compassion, respect and empathy. See Ken Plummer, 'Critical Humanism and Queer Theory: Living with the Tensions', in Denzin, Norman K., and Lincoln, Yvonna S. eds., *The Sage Handbook of Qualitative Research* (Thousand Oaks: Sage, 2011), 198.

² For example, see Pasi Malmi, *Discrimination Against Men: Appearance and Causes in the Context of a Modern Welfare State* (PhD Thesis, University of Lapland, 2009). In public international law areas, see Sandesh Sivakumaran, 'Lost in Translation: UN Responses to Sexual Violence against Men and Boys in Situations of Armed Conflict', *International Review of the Red Cross* 92, no. 877 (2010), 259-277; R. Charli Carpenter, 'Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations', *Security Dialogue* 37, no. 1 (2006), 83-103.

conservative men's studies' traditionalist articulation of gender. However, unlike men's liberationist studies, they do not rely on the limited sex roles theory to understand and to elaborate upon gender injustices. Also, unlike subordination-feminist men and masculinities studies, they are not bound by subordination-feminism's overarching and one-dimensional ideologies of the power relationships of gender. Therefore, humanist men and masculinities studies are more capable of seeing, not only gender oppression and injustices towards women, but also systematic gender oppression and systematic injustices towards men. Finnish scholar Pasi Malmi's systematic and critical investigation into the causes and patterns of discrimination against men in modern welfare states is, for me, a classic example of humanist men and masculinities studies.³ Other important works include, for example, some public international lawyers' critiques of the ignorance and trivialisation of gender violence against men in mainstream international law, politics, jurisprudence and legal practice.⁴

Malmi aims to explore and analyse the forms, the causes, the effects and the dynamics of gender discrimination against men in modern welfare states. His empirical study is conducted in the context of modern Finnish society. He criticises the approaches of both conservative and subordination-feminist men and masculinities studies. He criticises the former approach for its insistence on and naturalisation of some binary gender orders and arrangements. He is unsatisfied with the latter approach for its reluctance to question problematic female behaviours or feminist ideologies.⁵ He identifies with postmodern feminist scholarship and suggests that his project of unravelling gender discrimination against men is consistent with postmodern feminism by exploring the construction

³ Malmi defines modern welfare states as 'industrialized countries which use transfer payments and public policy for securing the welfare of their citizens, and which are characterised by public policies towards the advancement of women's status, women's high level of participation on the labour market, high level of female representation in parliament, and the low significance of marriage as a factor that binds women to a male breadwinner.' He argues that his study is primarily relevant for the Nordic countries. He contends that his study is relevant to the other European and Anglo-American countries as well as many of them are approaching to reach the modern welfare state status. See, Malmi, n 2 above. 35.

⁴ Sivakumaran, n 2 above; Carpenter, n 2 above.

⁵ Malmi, n 2 above, 19-20.

of gender in modern welfare society.⁶ Since currently there are very few research projects, and actually almost no books that systematically study gender discrimination against men within discrimination scholarship, he wants to fill the academic gap by exploring the dynamics, phenomena and causes of gender discrimination against men in modern society.⁷

He argues that the roots of gender discrimination exist across three levels of self-replicating structures: the mental, the cultural and the socio-structural.⁸ He uses the term 'memes' and 'memeplexes' to denote these self-replicating structures and patterns or sets of these interconnected systems.⁹ Sexism and racism are memeplexes that contain 'mental attitudes, prejudices and stereotypes; cultural memes such as texts, comic scripts, acts, and policies; and a social-structural meme that shows the disadvantaged status of the group this is being faced with racist(or sexist)discrimination.'¹⁰ He identifies a wide range of roots of gender discrimination, including cognitive and social psychological gender bias,¹¹ sexism (against men or women),¹² some feminist and masculine ideologies¹³ and institutional gender bias.¹⁴

With regard to gender discrimination, he argues that there are several major causes and forms of gender discrimination against men in modern societies. First, he contends that there are sexist gender stereotypes that contribute to gender discrimination against men. He contends that in modern societies, there are not only traditionalist sexist stereotypes against women,¹⁵ but also against men. For example, some scholars, institutions, and media may stereotypically depict men as

⁶ Ibid., 21.

⁷ Ibid., 1.

⁸ Ibid., 52-53.

⁹ Ibid.

¹⁰ Ibid., 53.

¹¹ Ibid., 133-140

¹² Ibid., 232-235.

¹³ Ibid., 143-158

¹⁴ Ibid., 158-170; 175-187.

¹⁵ Ibid., 114-187.

‘sex crazed’ and the ‘aggressive and violent’ gender.¹⁶ He finds that lower status men are particularly vulnerable to such sexist gender bias and he suggests that the construction of such negative gender stereotypes of lower status and working class men is possibly related to the joint interests of higher status men and women.¹⁷ ‘While women had an interest in ending the discrimination of women, the alpha males had the incentive to put down other men in order to distinguish themselves from the unsophisticated mob of the beta males.’¹⁸

Some research echoes Malmi’s finding that some upper-middle class or ruling class men sometimes put down or stereotype lower status men in order to maintain their superior power and reputation and to gain respect and support from women. For example, empirical research on masculinity and heteronormativity in a Swedish fire service, elite and upper-middle class men (the executives) tended to view working class firefighting men as lacking in ‘naturally good manners’ towards women and therefore as having ‘improper heterosexuality.’¹⁹ These upper class executives tended to ‘position themselves as respectable and good men, while (male working class) firefighters are constructed as representing a bad and unhealthy masculinity, which needs to be changed.’²⁰ Here, upper-middle class male executives distinguished themselves from male working class firefighters by constructing themselves as respectable ‘new men’ eager to oppose sexism (against women), and for gender equality, who understand and practice ‘good manners’ in gender relations.²¹ However, Ericson argues, the upper-middle class men’s respectable new men ideologies are often still constructed under a heteronormative gender narrative by assuming complementary, binary, different and naturalised gender for men and for women.²² These kinds of gender equality ideologies that these upper-middle class men hold might actually be an example of a renewed and

¹⁶ Ibid., 233.

¹⁷ Ibid., 170-171; 233-234.

¹⁸ Ibid., 233-234.

¹⁹ Mathias Ericson, ‘Good Manners: Struggles for Respectable Masculinities and Heteronormativities in the Swedish Fire Service’, in Lena Martinsson and Eva Reimers eds., *Norm-struggles: Sexuality in Contentions*, (Newcastle: Cambridge Scholars Publishing, 2010), 111.

²⁰ Ibid., 111.

²¹ Ibid., 111-112.

²² Ibid., 99-105, 111-112.

reconstructed set of heteronormative gender norms and arrangements in modern society.

I agree with Malmi's claim that sexism is not just about sexism against women. For instance, in modern developed societies, sexist speeches against men, just as sexist speeches against women, exist in everyday life and media. For example, there are books targeting female readers with explicit sexist (against men) titles, such as '*101 Reasons Why a Cat is Better than a Man?*'²³ or '*How to Make Your Man Behave in 21 Days or Less: Using the Secrets of Professional Dog Training.*'²⁴ In the UK a BBC Two programme 'Bring Your Husband to Heel', 'featured dog trainer Annie Clayton using her techniques to teach women how to modify their husbands' behaviour.'²⁵ Despite receiving complaints, Ofcom insisted the programme was not sexist but just a 'humorous take', claimed that the 'battle of the sexes has always been part of British culture through literature and other media'²⁶ and this programme is just part of this cultural tradition. Ofcom could be right in finding that this kind of sexist (or 'humorous') degrading of men is generally acceptable and tolerated in modern British culture. However, as some complaints have argued, 'a programme showing women or minority groups treated in the same way would never have been broadcast.'²⁷ The broadcasting of such a sexist programme from BBC2 and the claim from the Ofcom that this kind of programme is a part of normal 'British culture' is one example suggesting that sexism against men is not be taken seriously in modern British society.

Malmi further argues that while the ideology of macho masculinity is often related to the devaluation of femininity and women, in fact, the norms and expectations of macho men and macho masculinity could also be harmful and oppressive to some

²³ Allia Zobel-Nolan, *101 Reasons Why a Cat is Better than a Man?* (New York: Dell, 1995)

²⁴ Karen Salmansohn, *How to Make Your Man Behave in 21 Days or Less: Using the Secrets of Professional Dog Training* (New York: Workman, 1994).

²⁵ BBC News, 'BBC sorry for 'sexist' programme', 31 August 2005. (Accessed: 11 November 2014). http://news.bbc.co.uk/1/hi/entertainment/tv_and_radio/4200442.stm

²⁶ BBC News, 'Husband trainer show 'not sexist'', 21 November 2005, (Accessed: 22 August 2014). <http://news.bbc.co.uk/1/hi/entertainment/4457416.stm>

²⁷ Ibid.

men. Indeed, 'Macho masculinity combines the ideas of men as tough, competitive, self-assured, daring and capable of violence.'²⁸ Macho masculinity ideology is not only one of the ideologies sustaining patriarchy, but also arguably a source of gender oppression against some men. For example, under this kind of normative masculinity, men are expected to be tough, successful, strong, invulnerable and in a breadwinner role. Men who do not conform to the expectations are often and easily ridiculed, not just by other men, but by some women.²⁹

I think Malmi is right to point out that the macho men expectations are still very influential in societies and are related to some constraining gender norms. For example, several qualitative studies explore the gender norms of the restrictive expression and disclosure of fear and vulnerability in society.³⁰ They find that compared to women, men are socially discouraged to express, disclose, and acknowledge their emotion of fear.³¹ In violence cases, male victims of physical and sexual abuse tend to be more reluctant to disclose or speak of their fear and vulnerability.³² The findings are important for us to better understand various experiences and practices of men and the impact of normative masculinities over men's lives. From the perspectives of queer humanist men and masculinities studies, we might need to challenge the often unproblematic acceptance of the general 'not fearful' stereotypes of male victims in criminology and in the jurisprudence of family violence.³³

Malmi also identifies chivalrous ideologies in modern Western societies as another major source of gender discrimination against men. The chivalrous idea of men originated from the European knights' culture; women as vulnerable and dependent

²⁸ Malmi, n 2 above, 235.

²⁹ Ibid., 236.

³⁰ For example see Stephen M. Glomb, and Dorothy L. Espelage, 'The Influence of Restrictive Emotionality in Men's Emotional Appraisal of Sexual Harassment: A Gender Role Interpretation', *Psychology of Men & Masculinity* 6, no. 4 (2005), 240-253; Elizabeth A. Stanko and Kathy Hobdell, 'Assault on Men: Masculinity and Male Victimization', *British Journal of Criminology* 33, no. 3 (1993), 400-415; Maria Tempenis Shelley, *Taking It Like A Man: A Study of Men's Emotion Culture* (PhD Thesis, Vanderbilt University, 2007).

³¹ Shelley, *ibid.*, 109-115, 136-142.

³² For example, see Glomb and Espelage, n 30 above, 241, 249-251; Stanko and Hobdell, *ibid.*

³³ For example see Michael Freeman, *Domestic Violence* (Surrey: Ashgate, 2008), xvii..

on the protection from courageous and respectable gentlemen. These ideologies emphasise that the ability of 'courting the women' is an important element of being a gentleman. In modern Western societies the chivalry culture remains influential in many people's everyday gendered lives. For example, 'men are expected to open doors for women, give women their seat, pay for dates, and sacrifice their own comfort and safety for women.'³⁴ Chivalrous culture endorses the beliefs such as 'men must protect women's health and life (and prioritize them over their own),' 'men must behave like gentlemen,' and 'men must protect women from the inconveniences of life (and prioritize women).' He contends that chivalry culture and beliefs are at the root of some institutional gender discrimination against men because these chivalrous beliefs and ideologies are likely 'to aggregate into institutionalised belief systems, in which men's lives are considered less valuable than female lives, and men's health and comfort are considered less important than female health and comfort.'³⁵ He argues that conscription, the compulsory military service (or civil service) of men, represents an institutionalised chivalry culture and code (the belief of natural defense as every man's duty) in many modern European societies, such as Finland, Sweden and Germany.³⁶

I agree with him that compulsory civil or military service of young men is an example of the influence of chivalrous ideologies of masculinity in many modern societies. I am in accordance with him that compulsory civil and military service for young men is a gender justice issue. Not only is compulsory military service imposed on young men in some European countries, but also in many Asian countries such as Taiwan and South Korea. These countries still require all young adult men, but no women, to serve a certain period of compulsory service. The European Court of Justice (ECJ) does not treat the compulsory military service of men as incompatible with the EU treaty and directives. The ECJ declares that the unequal treatment of men and women of conscription can be justified under the needs and considerations of

³⁴ Malmi, n 2 above, 237-238.

³⁵ Ibid., 238.

³⁶ Ibid., 238-239.

national security.³⁷ In the case of *Alexander Dory v Bundesrepublik Deutschland*, the German Government justified its policy of compulsory military service of young men by resorting to the needs of national security. The German government claims that compulsory military service of young men is important for 'the democratic transparency of the military, national integration, the link between the armed forces and the population, and the mobilisation of the manpower needed by the armed forces in the event of a conflict.'³⁸ In Taiwan the constitutional court holds that compulsory military service of men is not in violation of the equality clause in the Taiwanese Constitutional Code due to 'the physical differences between males and females and the derived role differentiation in their respective social functions and lives.'³⁹ The above decisions and the German government's justification assume and naturalise certain chivalrous and stereotyped gender roles, expectations and the construction of men and masculinity. Men and masculinity are institutionalised, imposed and constructed by law as the gender more suited for war, violence, combat and sacrifice. Some restricting gender norms for men are produced and institutionalised under the state policy of compulsory civil and military service

Malmi also holds that maternal preferences and maternalism are causes of gender oppression against men, especially in care, parenting and child related areas. Maternalism is 'the belief in the superiority of women in childcare and the belief in the superior importance of mothers to children.'⁴⁰ Maternalism is a view held not only by some conservative traditionalists,⁴¹ but also by some feminists, for example, cultural and care ethics feminists.⁴² Maternalism is institutionalised implicitly or explicitly in various formal institutions. For example, in social services systems,

³⁷ See *Alexander Dory v Bundesrepublik Deutschland*, Case C-186-01.

³⁸ *Ibid.*, para. 37.

³⁹ See *Interpretation* no. 490, Justice of the Constitutional Court, Judicial Yuan, R.O.C.

⁴⁰ Malmi, n 2 above, 240.

⁴¹ For example, modern new natural law theologian Germain Grisez holds a traditionalist maternal preference view in gender and caring. He argues that women are more suited to the nurturing and caring role than men. Bamforth and Richards criticize Grisez's traditionalist ideology of family and gender. See Nicholas Bamforth and David A. J. Richards, *Patriarchal Religion, Sexuality, And Gender: A Critique of New Natural Law* (New York: Cambridge University Press, 2008), 232-236.

⁴² Janet Halley, *Spilt Decisions: How and Why to Take a Break from Feminism?* (Oxford: Princeton University Press, 2006), 58-60; Sara Ruddick, *Maternal Thinking: Toward a Politics of Peace* (London: The Women's Press, 1990).

social workers often focus on the services for mothers and ignore fathers.⁴³ Malmi argues that maternalist ideologies constrain both men and women, but point in different directions. Men are stereotyped as less capable or suitable for caring jobs. Women on the other hand are regarded as naturally more suited for caring for children.⁴⁴ As I elaborate in Chapter 3, maternal preference assumptions and beliefs do exist and have substantial influence in law and social services, especially in the areas of family law and family policies.⁴⁵ Gender discrimination and stereotypes sustained by maternalist ideologies need to be critically examined and challenged as they contribute to the perpetuation of some oppressive heteronormative arrangements and order in family life.

He also notices some (subordination) feminist ideologies such as the insistence of women as the oppressed group by men and the insistence of focusing on women's needs in equality policy are also possible causes of gender discrimination against men.⁴⁶

I contend that Malmi's project overall is very insightful. His project contributes significantly to a systematic analysis, explanation and description of the causes and forms of gender discrimination against men. However, there are also some limitations and insufficiencies; for example, he does not elaborate normatively why both conservative and some subordination feminist approaches to gender discrimination are unjust and oppressive. His project is generally a descriptive analysis of gender discrimination against men. He does a great job in this respect; however, I argue that in addition to descriptive research of gender discrimination against men, we also need to explore and think about the normative and ethical questions of gender discrimination against men. My thesis aims to not just 'describe' gender oppression against men but also to deliberate upon the normative and critical dimensions of this topic. Another major limitation in his project is that

⁴³ Malmi, n 2 above, 241-242.

⁴⁴ Ibid., 242-243.

⁴⁵ See 3.3 and 3.7 in the previous chapter.

⁴⁶ Malmi, n 2 above, 247-274.

he does not address or elaborate upon the relation between normative heterosexuality and gender discrimination against men. He also does not consider how sexuality intersects with gender in sexual injustices towards men, especially towards sexual minorities such as gay men. I argue that we need to avoid heterosexist assumptions in thinking about gender discrimination against men and rather consider the intersection of gender and sexuality. Furthermore, he has only a limited examination on the impacts of feminist projects on gender justice and he focuses on examining sexual-subordination feminist and maternalist feminist ideologies. My critical evaluation of subordination feminism in this thesis is not limited to critiques of sexual-subordination feminism and material feminism.

Overall, I find the perspectives of humanist men and masculinities studies such as Malmi's and some international lawyers⁴⁷ very inspiring and useful. I draw on their insights in this thesis. However, there are two major limitations and insufficiencies in their approach. First, currently the relevant research in this area is concentrated on empirical research or case studies. What is lacking is a normative inquiry into and a theoretical justification of why we need to eliminate gender oppression against men and why sexual justice projects need to take gender oppression against men seriously. For example, although Malmi describes and elaborates the causes and appearance of gender discrimination against men in detail, he does not address and answer the normative question of what we ought to do with gender oppression against men. Is it morally wrong and unjustifiable? If so, why is it wrong and how do we address it? His survey of gender oppression against men, as he claims, is mainly a descriptive project. So the normative aspects and inquiries are generally not covered, asked or addressed. I argue that we need to think about normative justification and normative questions in sexual justice and sexual politics projects.

Secondly, current humanist men and masculinities research tends to implicitly assume hetero-central experiences in their analyses. These projects also tend to treat sex, sexuality and gender identities as relatively fixed, unproblematic,

⁴⁷ See Sivakumaran, n 2 above; Carpenter, n 2 above.

unchanging and natural. I argue that a more diverse understanding of men and masculinities is needed in humanist men's studies.

Despite the limitations, there are great contributions from humanist men and masculinities approaches on sexual justice and normative heterosexuality. They have begun to address one of the often marginalised and ignored aspects in sexual justice and gender equality scholarship: the gender injustices towards men and gender discrimination against men. I argue that gender oppression against men do exist, ought to be addressed and ought to be taken more seriously. I further contend that unless we are willing to acknowledge and address gender oppression against men, we will not be able to successfully unsettle the systems and regimes of normative heterosexuality. I argue for the need to consider the approaches of queer humanist men and masculinities studies that draw upon queer theory, liberal theories of sexual justice, and humanist men and masculinities studies in analysing sexual justice, gender oppression and normative heterosexuality.

4.2 Queer approaches to heteronormativity, law, sexual justice, and sexual politics:

One of the central themes in queer theory is a critical reflection on heteronormativity.⁴⁸ In this section I argue that the insights from queer critiques and queer thinking are very important and valuable to projects of sexual politics and sexual justice. However, there are also some points regarding queer critiques of heteronormativity worth further reflection. I focus on two main points. The first is about the relative lack of clarification and elaboration by some queer theorists of the normative dimension and normative grounds of their queer projects.⁴⁹ The other is that some queer theories either generally focus on sexuality issues in their projects so have relatively less analysis on gender issues;⁵⁰ or they explicitly or

⁴⁸ For example, see Michael Warner, *Fear of a Queer Planet: Queer Politics and Social Theory* (Minneapolis: University of Minnesota Press, 1993), xxi-xxv; Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge: New York, 1999).

⁴⁹ See my critical evaluation of Judith Butler's and Janet Halley's queer theories in this chapter.

⁵⁰ For example, see Michael Warner, *The Trouble with Normal: Sex, Politics and the Ethics of Queer Life* (Cambridge: Harvard University Press, 1999).

implicitly adopt or assume problematic subordination feminist ideologies in thinking about gender.⁵¹ In responding to the first issue, I suggest that we also need reflection from theories of liberal sexual justice in our critiques of heteronormativity. In response to the second question I argue that queer projects could benefit from bringing some humanist men's studies' concerns into queer studies, and vice versa. Ultimately in scholarship regarding sexual politics and sexual justice, I value the benefits of incorporating the perspectives of queer humanist men and masculinities studies that draw on the insights from queer theory, liberal sexual justice theory and humanist men and masculinities studies.

4.2.1 Foucault, Moran, and queer approach:

I elaborate in Chapter 1 how I use a queer approach in this thesis. I maintain that a queer approach is a major analytic tools adopted in this thesis. The queer approach is understood as a commitment to explore and to unravel the power relations, the knowledge-power nexus, and the politics of the construction of sexuality and gender normativity.⁵² I argue that queer thinking is significant for us to practice resistance to sexual oppression and injustice. Too often do dominant sexuality and gender norms render some groups of people, some types of bodies, and some forms of gender and sexuality performances unintelligible, illegible or unrecognisable.⁵³ A queer approach and critical thinking is crucial in sexual justice projects to unsettle these constraining sexuality and gender norms. It is an approach crucial for us to learn and to practice the 'techniques of management' to resist, to rework and to unravel the hierarchies, exclusion and oppression in sexuality and gender areas.⁵⁴ Queer theory is primarily understood and used in this thesis, not as a fixed identity category, but rather as a theoretical approach and commitment to critically reflect

⁵¹ For example, see Mimi Marinucci, *Feminism Is Queer: The Intimate Connection Between Queer and Feminist Theory* (London: Zed Books, 2011) 83-114.

⁵² Judith Butler, 'On Being Beside Oneself: On the Limits of Sexual Autonomy', in Nicholas Bamforth ed., *Sex Rights: The Oxford Amnesty Lectures 2002* (Oxford; New York: Oxford University Press, 2005), 60-62.

⁵³ Judith Butler, *Undoing Gender* (London: Routledge, 2004), 4-9, 13-14.

⁵⁴ Michel Foucault, 'The Ethics of Concern for the Self as a Practice of Freedom', in Paul Rabinow ed., *Ethics, Subjectivity and Truth: The Essential Works of Michel Foucault 1954-1984* (New York: The New Press, 1997), 298.

and re-examine the often naturalised, assumed, and moralised social norms, categories, ideologies, assumptions, arrangements and distinctions in sexuality and gender. Queer thinking aims to trouble the coherence, naturalness and fixity of 'the heterosexual matrix';⁵⁵ the assumed and imposed coherence of body, gender and sexuality. Queer approaches thus aim to critically reflect on how normative heterosexuality is produced, reproduced and reinforced in law, politics and everyday social life. Queer theorists urge us to develop the necessary managerial techniques to broaden our freedom and to mobilise resistance and to open up more options in normative heterosexuality.⁵⁶

I also draw upon the insights from several important queer theorists in this thesis. For example, I discuss Foucault's idea of the social construction of sexuality, his articulation of power relationships as productive, not just repressive, and his idea of the possibility and need of our 'practices of freedom.'⁵⁷ I explain that I draw on queer legal theorist Leslie Moran's insights of the significance of 'the virtue of openness' and 'the ongoing importance of critical reflection' and the need to be sensitive and attentive to small differences and contradictions in research regarding sexual politics and sexual justice.⁵⁸ His reminder of the possible limitations of the binary either/or way of thinking is also very useful in analysing issues of safety and justice in the family.⁵⁹

Overall I draw on the Foucauldian concept of power relationships and the queer approach to the 'philosophy of freedom.'⁶⁰ Power relationships are everywhere,

⁵⁵ Butler describes the heterosexual matrix as '[T]hat grid of cultural intelligibility through which bodies, genders, and desires are naturalized... a hegemonic discursive/epistemic model of gender intelligibility that assumes that for bodies to cohere and make sense there must be a stable sex expressed through a stable gender (masculine expresses male, feminine expresses female) that is oppositionally and hierarchically defined through the compulsory practice of heterosexuality.' See Butler, n 48 above, 208.

⁵⁶ Foucault, n 54 above, 282-285, 298.

⁵⁷ Ibid., 282-285.

⁵⁸ Leslie, J. Moran, 'What Kind of Field Is 'Law, Gender and Sexuality'? Achievements, Concerns and Possible Futures', *Feminist Legal Studies* 17, no. 3 (2009), 310-312.

⁵⁹ Leslie, J. Moran, 'What's Home Got to Do with It-Kinship, Space, and the Case of Family, Spouse and Civil Partnership in the UK', *Yale JL & Feminism* 17 (2005), 267-295.

⁶⁰ Butler, n 52 above, 67.

inescapable, unstable and reversible,⁶¹ power relationships can be repressive but they can also be productive.⁶² They have a disciplining and regulatory force but they also coexist with the possibility to resist, subvert and transform. There are constant contestations, conflicts and struggles in power relationships.⁶³ For Foucault and queer theorists such as Moran and Butler, it is crucial to investigate the dynamics and regulatory forces of power and discourses in order to 'play these games of power with as little domination as possible.'⁶⁴ In other words, in order to best resist repressive aspects of power relations and open up possibilities and freedom, it is crucial for us to highlight the ongoing importance of critical reflection in the law and politics of sexuality and gender. Therefore, popular and dominant cultural, social, moral and institutional assumptions, boundaries, identities and ideologies are not assumed as universal, normal, necessary, unproblematic, natural and fixed in queer thinking. The power dynamics and struggles of diverse social forces and their interaction with law ought to be constantly scrutinised and re-examined. Only through this kind of constant critical thinking and reflection can we rearticulate and rework constraining and naturalised sexuality and gender norms. Also, only by unravelling certain oppressive gender and sexuality norms can we open up new possibilities and broaden our practices of freedom.

Foucault and Moran focus their research on investigating sexuality normativity.⁶⁵ I argue, however, that many of their inspiring insights can be applied to research on gender issues. Also, as I contend earlier, I agree with critical sexual theorists Steven Seidman and Stevi Jackson's opinion that we need to address both sexuality normativity and gender normativity in the scholarship of sexual politics, sexual

⁶¹ Foucault, n 54 above, 283, 291-292, 298-299.

⁶² Amy Allen, 'Feminist Perspectives on Power', *The Stanford Encyclopedia of Philosophy*. (Accessed: 15 March, 2015) <http://plato.stanford.edu/archives/sum2014/entries/feminist-power>

⁶³ Ibid.

⁶⁴ Foucault, n 54 above, 298.

⁶⁵ See Moran, n 59 above; Leslie J. Moran, *The Homosexual(ity) of Law*, (London: Routledge, 1996); Leslie J. Moran and Beverley Skeggs, with Paul Tyrer, and Karen Corteen, *Sexuality and the Politics of Violence and Safety*, (London: Routledge, 2004); Leslie J. Moran, 'A Queer Case for Judicial Diversity: Sexuality, Law and Judicial Studies', in Noreen Giffney and Michael O'Rourke eds., *The Ashgate Research Companion to Queer Theory* (Farnham: Ashgate, 2009), 295-310.

justice and normative heterosexuality.⁶⁶ Therefore, I apply some inspiring insights of Foucault and Moran to the investigation of gender oppression and gender constraints, particularly those of men under the regimes of normative heterosexuality. This is because gender oppression against men within the regimes of normative heterosexuality is an area relatively less studied and underexplored in queer theory and gay studies. I aim to contribute to the academic gap in this thesis. I argue, for example, Moran's insights of the limitations of the either/or model is very useful when analysing issues of family violence and gender.

4.2.2 Warner, sexual autonomy and queer theory

Queer theorist Michael Warner revisits and rearticulates feminist critiques of heterosexuality and creates the term 'heteronormativity' to refer to the privileged and naturalised status of heterosexual culture in societies.⁶⁷ He reinterprets Wittig's concept and critiques of the 'heterosexual contract'⁶⁸ and uses the term heteronormativity to denote the often taken-for-granted and moralised heterosexual norms. He argues that '(h)et culture thinks of itself as the element form of human association, as the very model of inter-gender relations, as the indivisible basis of all community, and as the means of reproduction without which

⁶⁶ Some queer scholars prefer to use the concept heteronormativity more exclusively to refer to sexuality normativity in erotic and intimate life. For example, see Sasha Roseneil, Isabel Crowhurst, Tone Hellesund, Ana Cristina Santos, and Mariya Stoilova. 'Changing Landscapes of Heteronormativity: The Regulation and Normalization of Same-sex Sexualities in Europe', *Social Politics: International Studies in Gender, State & Society* 20, no. 2 (2013), 165-199. Some other critical sexual theorists such as Steven Seidman, Stevi Jackson and Chrys Ingraham adopt a broader definition and usage of the concept of normative heterosexuality or heteronormativity to include and denote not only certain sexuality constraints but also certain gender constraints in the institutions and culture of heterosexuality. See Steven Seidman, 'Critique of Compulsory Heterosexuality', in Lena Martinsson and Eva Reimers eds., *Norm-struggles: Sexuality in Contentions*, (Newcastle: Cambridge Scholars Publishing, 2010).191-231; Stevi Jackson, 'Gender, Sexuality and Heterosexuality: The Complexity (and Limits) of Heteronormativity', *Feminist theory* 7, no 1 (2006), 105-121; Chrys Ingraham, 'The Thinking Straight and Acting Bent: Heteronormativity and Homosexuality', in Davis et al, eds., *The Handbook of Gender and Women Studies* (London: Sage, 2006), 313-318. I take the second approach in this thesis and argue that normative heterosexuality is not just about sexuality constraints but also about gender restrictions.

⁶⁷ Michael Warner is among earliest queer theorists who begin to use and popularize the term heteronormativity in their queer critiques of dominant heterosexual culture. See Warner, n 48 above, xxi-xxv.

⁶⁸ Monique Wittig, *The Straight Mind and Other Essays* (Boston: Beacon Press, 1992), 34.

society won't exist.⁶⁹ Although Warner's concept of heteronormativity is inspired by lesbian feminist Wittig's critiques of heterosexuality, they show a different emphasis and focus in their critiques of normative heterosexuality. Wittig focusses on unravelling and challenging male domination over women in the system and culture of heterosexuality.⁷⁰ As illustrated above, Wittig argues that women are forced to enter into the oppressive heterosexual contract that privileges men in normative heterosexual societies. Men in general are regarded as oppressors and unjust beneficiaries in the regimes of normative heterosexuality.⁷¹ Warner on the other hand focuses more on questioning the exclusion and stigmatisation of sexuality and gender minorities such as LGBT people in the culture of heteronormativity.⁷²

Warner and Wittig, however, do not explore and address how restrictive gender norms might oppress and discriminate men (*qua* men) in the institutions and culture of normative heterosexuality. I argue that to be able to unsettle heteronormativity, it is also crucial for us to see, investigate and address institutional and constraining gender norms and gender oppression against men *qua* men within reflections on sexual justice and sexual politics. Sometimes gay men and straight men might both suffer gender constraints of, and gender oppression against, men *qua* men in heteronormative culture and institutions because of their maleness or male gender. To illustrate an example, gay men and straight men are imposed upon and are constrained by compulsory male civil and military services in many countries, including many developed countries, such as Finland, Germany, Taiwan and South Korea. Compulsory conscription is institutional gender oppression against men and is produced and sustained under certain heteronormative gender expectations and ideologies for all men. Men, no matter gay, bi, straight men or even trans people who are categorised as biologically male, are all forced by many states to serve in

⁶⁹ Warner, n 48 above., xxi.

⁷⁰ Wittig, n 68 above, 1-8, 40.

⁷¹ Ibid.

⁷² See Michael Warner, *ibid.*, vii-xxxi; Warner, n 50 above; Michael Warner, 'Beyond Gay Marriage', in Wendy Brown and Janet Halley eds., *Left Legalism/Left Critique*, (Durham: Duke University Press, 2002), 259-289; Lauren Berlant and Michael Warner, 'Sex in Public', *Critical inquiry* 24, no.2 (1998), 547-566.

the military. And I argue that in order to be able to better unsettle the culture of normative heterosexuality and understand more fully the oppression gay men experience, we not only need to investigate the sexuality discrimination against gay men as Warner does, but also to explore how gay men might be affected and disadvantaged by structural gender injustices of men *qua* men. We need to address the double discrimination of sexuality and gender and their intersection in gay men's lives. This is one of the areas rarely addressed in queer or gay studies. In this thesis, I argue that this significant issue needs to be addressed.

One of the strengths in Warner's queer project is that, together with Lauren Berlant, they accurately summarise the central characteristics of heteronormative norms and culture. They describe heteronormativity as 'the institutions, structures of understanding, and practical orientations that make heterosexuality seem not only coherent—that is, organized as a sexuality—but also privileged.'⁷³ They state that heteronormative culture operates in many ways in societies to privilege heterosexual ways of life. Heteronormativity operates as an almost invisible but taken-for-granted background, structure or set of principles in social and daily life; presenting as the 'natural' order in human life; the 'ideal' or morally superior order and arrangements.⁷⁴ Their queer theory projects thus aim to deconstruct the disguised moral superiority, naturalness and unquestionableness of heteronormative assumptions in everyday social life. Their analyses of the core features of heteronormativity are very insightful and can be used as analytic tools to unravel and to reflect on the often invisible, naturalised and morally idealised heteronormative norms and assumptions in sexual and gendered life.

One crucial point is that Warner explicitly argues for a queer politics and queer ethics based on the idea of 'sexual autonomy.'⁷⁵ He explicitly indicates that there are normative values and concerns in his queer critique of heteronormativity. However, he does not fully elucidate and clarify the relation between the normative

⁷³ Berlant and Warner. *Ibid.*, 548.

⁷⁴ *Ibid.*

⁷⁵ See Warner, n 50 above, 1-40.

idea of sexual autonomy and the critical approach of queer theory. Nor does he justify the normative idea of sexual autonomy in his queer theory. I argue that Warner is right to suggest that there are normative concerns and values in queer projects. He is also right to imply that the idea of sexual autonomy could be an important moral ground for queer challenges of heteronormativity and for sexual politics. I argue that in this respect, queer theory could draw on liberal theories of sexual justice such as that of liberal gay rights theory of Nicolas Bamforth and liberal justice theory of Ronald Dworkin to elucidate the normative grounds and concerns for queer sexual politics projects.⁷⁶ I will further discuss this point in Chapter 5.

4.2.3 Butler and queer feminism on normative heterosexuality and sexual politics

Judith Butler's queer feminist theory provides one of the most sophisticated problematisations of and challenges to the naturalness of heteronormativity. In this section I critically evaluate her queer feminist critiques of normative heterosexuality and argue that her critiques such as gender (and sexuality) as performative are very insightful.⁷⁷ I draw on her arguments in the theory of queer humanist men and masculinities studies. However, from the perspectives of queer humanist men's studies, I also point out two major weaknesses of her queer feminist project.

Butler contends that in society certain human bodies and certain sexual and gender lives are rendered unrecognisable and illegitimate by dominant heteronormative norms of body, gender and sexuality.⁷⁸ Butler uses the concept 'gender performativity' to 'describe the way in which gender is produced as an effect of a regulatory regime that requires the ritualised repetition of particular forms of behaviour.'⁷⁹ She reminds us that gender (and sexuality) is performative, that is, produced and sustained through the constant gender practices of the citation and

⁷⁶ See Nicolas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London, Washington D.C.: Cassell, 1997); Ronald Dworkin, *Justice for Hedgehogs* (Cambridge: Harvard University Press, 2011).

⁷⁷ Butler, n 48 above, xv-xvi, 34, 185-193.

⁷⁸ Ibid., xxiii-xxv.

⁷⁹ See Tamsin Spargo, *Foucault and Queer Theory* (Cambridge: Icon books, 1999), 75; Butler, n 48 above, xv.

repetition of certain constructed and imaged gendered essence.⁸⁰ Her arguments of gender performativity 'show that what we take to be an internal essence of gender is manufactured through a sustained set of acts, posited through the gendered stylization of the body.'⁸¹ Therefore, gender is not just about being but also about doing. Gender is 'something one is compelled to do in order to be constituted as a recognizable human subject. Gender is a culturally sanctioned performance, a requirement that a body coheres, and continues to cohere, according to certain norms of intelligibility.'⁸² In current societies normative genders (and sexuality) are constructed according to the culture and ideologies of heteronormativity: or as Butler terms, 'the heterosexual matrix.'⁸³

Heteronormative ideologies and culture stabilise, normalise and naturalise the binary and complementary gender order and they presume the natural and compulsory coherence of the sexed body, gender and desires. Some heteronormative norms of the human body, gender and sexuality produce and perpetuate, for example, the ideal dimorphism, the moralised and privileged heterosexual sex and desires, and the 'ideals and rules of proper and improper masculinity and femininity'.⁸⁴ Some kinds of bodies, gender expressions and sexuality performances are judged as unrecognisable, improper, unintelligent, unreal or unworthy of respect in the regimes of heteronormativity and these examples of exclusion, hierarchy and discrimination can be arbitrary and oppressive.⁸⁵ She emphasises the significance of critical/queer thinking in order to practice resistance to sexual oppression, to mobilise options and to open up possibilities.⁸⁶ She argues for the importance of critical/queer thinking to trouble the imaged and constructed coherence, naturalness and fixity of 'the heterosexual matrix', the compulsory sexuality normativity and gender normativity imposed by

⁸⁰ Butler, *ibid.*, xv.

⁸¹ *Ibid.*

⁸² Anita Brady, and Tony Schirato, *Understanding Judith Butler* (London: Sage, 2011), 44-45.

⁸³ See n 55 above.

⁸⁴ Butler, n 48 above, xxiv-xxv.

⁸⁵ Butler, n 53 above, 1-9; Butler, n 52 above, 56-57, 64-65.

⁸⁶ Butler, n 52 above, 74.

heteronormativity.⁸⁷ For her, the queer projects of mobilising resistance and opening up possibilities are projects of a 'philosophy of freedom.'⁸⁸

One of the important points I draw on from Butler's queer theory is her emphasis on the adoption of a 'double-path' sexual politics.⁸⁹ I argue that her idea of a double-path approach to sexual politics could be read as implying two important points.

The first, is that on the one hand, queer projects of sexual politics should not ignore or deny the significance and meaningfulness of identities categories. On the other hand, queer projects should emphasise the need for a critical use of, and critical reflections on, the identities categories. When discussing the notions of the 'human' or 'women', Butler argues that:

*'we must use this language [identity categories] to assert an entitlement to conditions of life in ways that affirm the constitutive role of sexuality and gender in political life, and we must also subject our very categories to critical scrutiny, find out the limits of their inclusivity and translatability, the presuppositions they include, the ways in which they must be expanded, destroyed or reworked both to encompass and open up what it is to be human and gendered.'*⁹⁰

The crucial point she would like to make is not to deny the meaning and importance of recognition and identities in sexuality and gender, but rather that by employing these identity categories and by promoting progressive political aims, we also need to remain self-reflective on how the boundaries are drawn, sustained and policed; why they are constructed in such ways; what the benefits might be, and the costs; what the power relationships and possible violence in the process of such categorisation might entail; and, how to open up more options and recognition.

I agree with Butler's insights that queer approaches do not aim to suspend or paralyse identities categories and recognition politics; nor do queer approaches

⁸⁷ Judith Butler, *Bodies That Matter: On the Discursive Limits of "Sex"* (Abingdon Oxon: Routledge, 2011), 173-175.

⁸⁸ Butler, n 52 above, 67.

⁸⁹ Ibid., 52-53, 59-60, 69, 75-76.

⁹⁰ Ibid., 76.

deny the needs, usefulness and meaningfulness of them. The crucial point is rather to highlight the importance of ongoing critical reflection on normative projects of sexual politics and sexual justice.

I argue that there is a second important implication in Butler's idea of a double-path sexual politics. She suggests that in sexual politics we need not only the normative claims and the moral pursuits such as 'self-determination',⁹¹ 'autonomy'⁹² or 'sexual rights',⁹³ but also a critical examination, reflection and reworking of the dynamics, power relationships and construction of sexuality and gender normativity.⁹⁴

However, here is my first major critique of her queer feminist project. Butler herself, despite her acknowledgement of the significance and usefulness of some normative/moral ideas and claims in sexual politics, focuses only on unravelling and destabilising the heterosexual matrix in her project. She does not clearly elaborate why certain constructed gender and sexuality norms are morally questionable, are unjust, are inhuman, or are oppressive. Nor does she sufficiently clarify the normative grounds to challenge and to resist sexual injustices and sexual oppression. Why do we need to open up possibilities in sexual politics and in social lives? Where is the normative ground for resistance, transformation and reworking of heteronormative norms? Similarly, liberal legal theorist Bamforth notes that although 'Butler appears to be justifying human rights claims (and rejecting the attacks launched on international human rights norms by cultural relativists) as part of a broader project to promote culture openness',⁹⁵ Butler does not clarify 'what role ... human rights claims play' in sexual justice/sexual politics projects.⁹⁶

I argue, however, queer projects of sexual politics and sexual justice such as Butler's (or Foucault's, Moran's and Warner's projects) do imply, explicitly or implicitly,

⁹¹ Butler, n 53 above, 7.

⁹² Butler, n 52 above, 52-53.

⁹³ Ibid., 68-69.

⁹⁴ Ibid., 58-59, 64-65, 68-69, 72-73, 77-78.

⁹⁵ Nicholas Bamforth, 'Introduction', in *Sex Rights: The Oxford Amnesty Lectures 2002* (Oxford: Oxford University Press, 2005), 20.

⁹⁶ Ibid., 20-21.

normative concerns, values and implications. In addition to the queer/critical inquiries on the construction and reproduction of normative gender and sexuality, we also need moral philosophical analyses to explore the normative implications in queer projects of sexual politics. Therefore, I argue that on the one hand I share Butler's insight that to think critically is a necessary requirement for a responsible ethics and social justice project;⁹⁷ normative sexual justice projects need critical reflections. However, on the other hand, I contend that ethical and moral concerns, exploration and reflections are also indispensable dimensions in projects of sexual politics and sexual justice. I argue that both the critical/queer inquiries and the moral/normative investigations are necessary in our critiques of heteronormativity.

I further hold that Butler's sexual politics project could be read as queer humanist while promoting sexual autonomy/agency. Her queer project refers to, and implies some, humanist values such as freedom⁹⁸ and autonomy/agency.⁹⁹ Humanism in ethics, law and politics are theories and projects that aim to reduce human suffering and to enhance well-being.¹⁰⁰ There are profound normative dimensions, values, aspirations, and concerns in Butler's queer projects. For example, she holds that:

*'What continues to concern me most is the following kinds of question: what will and will not constitute an intelligible life, and how do presumptions about normative gender and sexuality determine in advance what will qualify as the 'human' and the 'livable'? In other words, how do normative gender presumptions work to delimit the very field of description that we have for the human?'*¹⁰¹

Here she suggests that the underlying concerns behind her queer project are humanist concerns of exploring what kinds of people and lives are excluded from being recognised as 'human', as 'intelligible', and as 'livable' lives; in other words, they are humanist inquiries. She also explicitly states that there are normative tasks and goals in her queer projects at times. For example, she argues that '[i]f there is a

⁹⁷ Butler, n 52 above, 78.

⁹⁸ Ibid., 67.

⁹⁹ Ibid., 52-53; Butler, n 53 above, 7.

¹⁰⁰ Plummer, n 1 above, 198.

¹⁰¹ Butler, n 48 above, xxiii.

positive normative task in *Gender Trouble*, it is to insist upon the extension of this legitimacy to bodies that have been regarded as false, unreal, and unintelligible.¹⁰² Here she suggests that the extension of recognition and legitimacy to marginalised and stigmatised bodies (such as the unrecognised intersex bodies)¹⁰³ are the core normative aspirations and aims in her *Gender Trouble* project. Also, in *Undoing Gender* she argues that '[w]hat is most important is to cease legislating for all lives what is livable only for some, and similarly, to refrain from proscribing for all lives what is unlivable for some.'¹⁰⁴ She elaborates that the normative purposes of the queer/critical examination of gender normativity are to maximise the possibilities for a livable life and to minimise the possibilities of an unbearable life.¹⁰⁵ Here her queer project clearly implies and is in accordance with core humanist values and aims: to reduce suffering and to enhance well-being. Therefore, her queer sexual politics projects could be read as possessing deep humanist concerns, values and aspirations.

Since there are important moral/normative implications and profound humanist concerns in some visible queer projects, I argue that we need to follow a 'double-path' in projects of sexual politics and in critiques of normative heterosexuality. In addition to the critical scrutiny of the use of identities categories and the critical reflections on the power relationship and construction of dominant sexuality and gender norms, we also need to explore and reflect on the moral and the normative grounds and implications of our projects of sexual politics. For instance, we need to think about the normative/ethical questions such as why we need to open up possibilities, why we need to resist domination, and, why values such as freedom, autonomy or agency ought to be promoted or secured. There are moral and normative implications behind queer projects and they need to be critically thought about and addressed.

¹⁰² Ibid., xxv.

¹⁰³ Brady and Schirato, n 82 above 35-39.

¹⁰⁴ Butler, n 53 above, 8.

¹⁰⁵ Ibid., 8.

On the other hand, there are also critical reasons why normative legal theories of sexuality and gender should also always be sensitive to the power relationships of social forces and the possible exclusion, distinction, hierarchies and categories they rely on in their normative systems and judgements. Critical thinking reminds us to be vigilant with respect to the possible violence behind normative evaluation and reminds us of the importance of 'the virtue of openness' when reflecting on issues in the law and politics of sexuality and gender. We need to keep our moral/normative arguments, projects and judgements open to challenges, adjustments and reinterpretation. Our moral/normative system ought not to be treated as a complete, closed, static, total and absolute system. Instead, we need to be aware of the inevitable incompleteness of our moral judgements and normative projects. We need to acknowledge and be willing to face the inevitable unknown aspects of humanness and the uncertainties in social life.¹⁰⁶ Therefore, we also need to highlight 'the ongoing importance of critical thinking' and 'the virtue of openness' in our normative projects of sexuality and gender.¹⁰⁷

In accordance with the above analysis, I echo Butler's insight that we need both critical thinking and normative claims and values in sexual politics. Butler rightly identifies the need for the adoption of a double path in sexual politics; however, she mainly addresses one side of it in her queer project. I argue that the queer humanist men and masculinities studies I propose also adopt a double path of sexual politics and sexual justice. I will argue in the next chapter that some insights and arguments from liberal theories of sexual justice are very useful and will be drawn on in thinking about the normative grounds of projects of sexual politics and sexual justice. By adopting a double path in sexual justice issues, I argue that queer humanist men and masculinities studies would not deny the significance of employing identity categories in sexual politics and in everyday social lives; on the other hand, we need to use them critically. For example, as Moran argues, we need to be attentive to peculiarities and small differences and be sensitive to

¹⁰⁶ Butler, n 52 above, 72-73.

¹⁰⁷ Moran, n 58 above, 312.

contradictions, conflicts, tensions and inconsistencies when using these complex notions of identity. Furthermore, I argue that we also need moral and normative investigations and deliberations in projects of sexual politics and sexual justice.

Moreover, I argue that while highlighting the significance of employing both queer/critical thinking and moral/normative analyses in the law and politics of sexuality and gender, I do not claim or expect a utopian sexual politics without any tension or contestation. Instead, tension and contestation are inevitable in lives and in projects of sexuality and gender. Instead of shying away from tensions and challenges, I argue that queer humanist men and masculinities studies should agree with queer theorists such as Butler and Moran by suggesting that the existence of tension requires and invites us to constantly reflect, re-examine, revise and re-think our normative assumptions, ideologies, theories and judgements.¹⁰⁸ The tension and contestation might also indicate and remind us that there is always some uncertainty, unknowingness and limit in our projects. It is therefore important not to view our projects as absolute, totalising, closed, complete and fixed systems. Rather, they are better understood as projects with certain openness and in need of endless reflection and re-examination.

The second major problem in Butler's queer feminist theory, I argue, is her idea and understanding of gender oppression and her insistence on the authority of feminism in analysing gender issues. I argue that although she correctly notes and criticizes the heterosexist and essentialist thinking in some second wave feminisms, her project is still significantly influenced and informed by the problematic subordination feminist ideologies on gender oppression and gender hierarchy. The consequence is that while she acknowledges and suggests that women as a group are oppressed, she generally fails to acknowledge the harm of gender oppression of men as a gender group. Furthermore, her tendency to equate gender analysis and gender perspectives with feminism is problematic.

¹⁰⁸ Butler, n 52 above, 73, 78; Moran, *ibid.*, 310-312.

Butler criticises the essentialist use of the idea of 'women', the heterosexist assumptions of sexuality and the marginalisation of LGBT people in mainstream feminism.¹⁰⁹ She argues that she aims to 'open up another possibility for feminist thought, one that would overcome its complicity in heterosexist presuppositions, and mark an alliance with lesbian and gay struggles.'¹¹⁰ She criticises some implicit or explicit assumptions within feminism about heteronormative ideologies and norms of sexuality and gender in their systems. She argues that these feminist theories assume the naturalness, irreversibility and stableness of the dichotomy between 'men' and 'women' and their gender.¹¹¹ They also generally prioritise and assume heterosexual desires and experiences in their feminist projects.¹¹²

For example, she criticises radical feminist MacKinnon's construction of sexuality and gender, which actually produces and reproduces some problematic gender normativity.¹¹³ She argues that in MacKinnon's system, women's gender is defined by oppressed female sexuality. Men's gender is defined by aggressiveness and the domination of women. Although MacKinnon aims to challenge male domination, Butler argues that MacKinnon actually 'institutes a regulation of another kind: to have a gender means to have entered already into a heterosexual relationship of subordination.'¹¹⁴ She criticises MacKinnon's assumption of the subordinated female sexuality and her heterosexist reduction of the concept and problem of sexual harassment to male domination and violence towards women.¹¹⁵ She argues that this kind of construction of the concept of sexual harassment in law 'become[s] themselves the instrument by which gender is thus reproduced.'¹¹⁶ Women's gender is reproduced, constructed and institutionalised as structurally vulnerable,

¹⁰⁹ Butler, n 53 above, 6, 9-10.

¹¹⁰ Judith Butler, 'Against Proper Objects', in Elizabeth Weed and Naomi Schor eds., *Feminism Meets Queer Theory* (Bloomington: Indiana University Press, 1997), 2.

¹¹¹ *Ibid.*, 2, 9-14.

¹¹² Butler, n 48 above, viii, 1-46.

¹¹³ Butler, n 53 above, 52-56.

¹¹⁴ *Ibid.*, 54.

¹¹⁵ *Ibid.*, 53-55.

¹¹⁶ *Ibid.*, 54.

heterosexual and subordinated in heterosexist systems of sexual harassment jurisprudence.¹¹⁷

Butler herself opposes this kind of heterosexism in feminism and urges feminism to expand their concerns to sexuality and gender minority people such as gay men, lesbians and trans people.¹¹⁸ She argues that it is problematic and narrow-minded for mainstream feminism to premise their gender politics on heterosexist ideas of 'gender' or 'women'.¹¹⁹ She argues that feminists ought not to limit their concerns to only the oppression and subordination of heterosexual women by men, but rather, that there are other important sexual and gender oppression matters to be addressed.¹²⁰ We need to question the heterosexist concepts of sex, gender and sexuality to be able to see the gender and sexual oppression of gay men, lesbians and trans people.¹²¹

To illustrate by means of an example, she argues that in modern heteronormative society, we largely interpret and read the human body through a binary male/female distinction and through the notion of ideal dimorphism.¹²² The ideal dimorphism in normative heterosexuality expects that the human body can and should always be distinguished in a binary male/female body model.¹²³ Intersex bodies thus become unrecognised and illegitimate under heteronormative law, knowledge systems and state policies. Indeed, '[S]evere and violent gender policing' such as coercive surgery are widely imposed on infants and children with sexually indeterminate bodies.¹²⁴ Trans people are also easily subjected to pathologisation

¹¹⁷ Katherine M. Franke, 'What's Wrong with Sexual Harassment?', *Stanford Law Review* 49, (1997), 761-762.

¹¹⁸ Butler, n 109 above, 1-3.

¹¹⁹ *Ibid.*

¹²⁰ Butler, n 53 above, 4- 10.

¹²¹ Butler, *ibid.*, 52-54. Butler, n 110 above, 1-3.

¹²² Brady and Schirato, n 82 above, 35-39.

¹²³ Butler, n 48 above, 145-150.

¹²⁴ Butler, *ibid.*, 207; Butler, n 53 above, 4-6.

and discrimination through the heteronormative lens and ideals of the human body.¹²⁵

By criticising the heterosexism in some feminist theories and by arguing for the need for being attentive to the oppression of sexual and gender minorities, Butler does not argue that women are not oppressed in heteronormative societies. Neither does she suggest that gender relationships are not hierarchal,¹²⁶ or indeed that we cannot use identities categories such as 'women' and 'lesbians' in the law and politics of sexuality and gender. She rather argues that '[d]iscrimination against women continues...so this dimension of gender discrimination remains crucial to acknowledge.'¹²⁷ She maintains that gender injustices towards, and gender oppression of, women ought to be acknowledged, taken seriously, and treated as one of the major concerns in equality jurisprudence.¹²⁸ At the same time she wants to broaden and extend feminist concerns of women's oppression to the oppression of sexual and gender non-conformity people in equality jurisprudence.¹²⁹

However, while she acknowledges the problem of 'discrimination against women' and 'violence against women',¹³⁰ and argues that they ought to be addressed and taken seriously, she never mentions or uses the terms 'discrimination against men' or 'violence against men' in her research. This does not necessarily mean that she thinks all men never suffer from gender discrimination or gender violence. However, this might indicate that she tends to assume, that unlike women, only a minority of sexual and gender non-conformity men such as gay men, bi men, feminine men and trans people are victims of gender violence and gender oppression. I want to argue that this kind of thinking and assumptions regarding gender oppression are problematic and inadequate.

¹²⁵ Brady and Schirato, n 82 above, 35-39.

¹²⁶ Butler, n 110 above, 18.

¹²⁷ Butler, n 53 above, 6.

¹²⁸ Butler, n 52 above, 61.

¹²⁹ Butler, n 53 above, 6.

¹³⁰ Ibid., 9.

She further argues that both feminism and queer studies (or lesbian and gay studies) ought not to refute each other.¹³¹ She urges feminism to abandon its heterosexism and to extend its concerns beyond just the subordination of women by men. She also urges queer, lesbian and gay studies to include feminist analyses of gender oppression of women and gender hierarchy. In fact, she holds that while feminism ought to learn from queer or lesbian and gay studies to overcome its heterosexism, queer and gay studies also ought not to be 'liberated' from feminist analyses of gender.¹³² She believes that without including feminist ideas of gender oppression and gender hierarchy, queer and gay studies would be uncritical of the sexism (against women) in their projects.¹³³ She argues that:

*'If sexuality is conceived a liberated from gender, then the sexuality that is "liberated" from feminism will be one which suspends the reference to masculine and feminine, reinforcing the refusal to mark that difference, which is the conventional way in which the masculine has achieved the status of "sex" which is one. Such a "liberation" dovetails with mainstream conservatism and with male dominance in its many and various forms, thus to a large extent calling into question the assumed symmetry of "lesbian and gay".'*¹³⁴

Here, Butler argues that the feminist take on gender hierarchy and gender subordination ought to always inform and be incorporated into sexuality theories such as queer or gay studies. Without feminist analyses of gender hierarchy, she thinks we will cease to notice the difference between 'masculine' and 'feminine', and by doing so, we will fail to challenge male domination, which often operates under the guise of a gender neutral appearance. She suggests that we need a queer feminist sexual politics that combines both feminist concerns of unjust gender hierarchy and radical sexual theory's concerns of arbitrary sexual stratification;¹³⁵ a proposal suggested by Gayle Rubin.

¹³¹ Butler, n 110 above, 1-3.

¹³² Halley, n 42 above, 247-253, 273-276.

¹³³ Butler, n 110 above, 23-24.

¹³⁴ *Ibid.*, 23-24.

¹³⁵ *Ibid.*, 18.

Queer feminist projects such as Butler's,¹³⁶ compared to subordination feminism, adopt a more nuanced, helpful and in many respects, more welcome and balanced approach by arguing that not only women, but also a minority of sexual and gender non-conformity men such as gay men, bi men and trans people are victimised in dominant gender norms and patriarchal culture. They argue that, like women (as a gender group) who are oppressed by dominant gender norms, these sexual and gender non-conformity men are also oppressed in heteronormative culture and they should also be included and covered in law and projects of sexual justice and gender equality.¹³⁷ Queer feminism highlights that it is not only women who suffer from gender oppression, but also some sexual and gender minority men. However, as stated above, queer feminists still generally, consciously or unconsciously, imply in their projects that those men that suffer from gender oppression are only in the minority, are exceptional, and are oppressed only because of their deviation of standard gender norms or sexuality. While they explicitly acknowledge the problems of gender discrimination against women and gender oppression of women, they tend to think that generally men (as a group) do not experience systematic gender oppression, unless they are sexual or gender minorities. Gender relations between men and women (or between masculinity and femininity) are still understood as hierarchal and under the unilateral oppression of men.¹³⁸ This kind of thinking and construction of gender oppression by queer feminism to some extent exhibits an important breakthrough in feminist sexual justice scholarship because it goes beyond pure women-centred and women-exclusive gender justice projects and incorporates some gay theories or queer theories' orientation in their theory of sexual justice. Some dimensions of suffering and oppression of gay, bi or trans people could be acknowledged and addressed. These are very significant merits and contributions from the queer feminist approach. However, I argue, from the

¹³⁶ A useful outline of queer feminism can be found in Mimi Marinucci's book on queer feminism. See Marinucci, n 51 above, 85-113.

¹³⁷ For example see Butler, n 48 above, 6-7.; Gayle S. Rubin, 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality', in Henry Abelove, Michele Aina Barale and David M. Halperin eds., *Lesbian and Gay Studies Reader, Volume I* (London: Routledge, 1993), 3-44.

¹³⁸ Butler, n 53 above, 6-7. Butler, n 110 above, 23-24; Rubin, *ibid.*, 3-44.

perspectives of queer humanist men and masculinities studies, there still exists major limitations in such queer feminist thinking.

Firstly, as queer legal theorist Janet Halley has argued, Butler's insistence on adopting a feminist analysis of gender hierarchy and gender subordination of women in issues of sexual politics and sexual justice manifests the fact that her queer feminist project is still significantly influenced and informed by subordination feminist ideologies. Halley argues that in Butler's work she has a:

*'strong will to pair f [women, femaleness and femininity] with m [men, maleness, and masculinity] as a relevant opposition, to insists that coming untethered from it reinstates male dominance, and to keep vigil against the subordination of f.'*¹³⁹

Butler maintains that it is important to hold fast to the belief of the subordination of females or femininity when analysing issues of sexual justice and gender oppression. Butler therefore 'regards the omission of gender as its elision: gender as m > f must be marked if we are to avoid recapitulating masculinist epistemology and reinstating male dominance.'¹⁴⁰ However, this assumed female gender subordination perspective is problematic and dogmatic; it may still oversimplify and overgeneralise the complexities of gender relationships. Indeed, as Halley rightly comments: '[o]ddly enough, MacKinnon could have said exactly the same thing.'¹⁴¹ By insisting on the need to incorporate subordination feminist ideologies of gender oppression in thinking about sexuality and gender, Butler may commit a similar fault to that found in MacKinnon's subordination feminist system that she wants to challenge.

Thus, I argue that one of the major insufficiencies in Butler's critiques of heteronormativity is that she fails to acknowledge and address the gender oppression of men as a gender group. While she explicitly acknowledges the problems of gender discrimination against women, she tends to assume that men as

¹³⁹ Halley, n 42 above, 19-20.

¹⁴⁰ Ibid., 276.

¹⁴¹ Ibid., 150.

a group do not experience systematic gender oppression, unless they are within a sexual or gender minority. Gender relations between men and women (or between masculinity and femininity) are still understood as hierarchal-only, remaining the unilateral oppression of women by men. By taking these subordination feminism-informed ideologies, Butler has difficulties in addressing the systematic gender injustices and oppression of men. Some areas of injustice in the heterosexual matrix are marginalised and invisible in her queer feminism. Also, by implying that we ought to always adopt a (subordination) feminist perspective of unidimensional gender hierarchy and gender oppression, her queer project might contribute to the reproduction and perpetuation of certain heteronormative gender stereotypes, myths and orders. For example, although men sometimes suffer from systematic gendered violence, the problems of violence against men could become easily trivialised and invisible under the approach adopted by queer feminism.¹⁴² She only notices and mentions the problems of 'violence against women' and gender violence against sexual and gender minorities, but never addresses the problems of violence against men in her theory.¹⁴³ She can see the harm and injustice of gender violence against women but fails to see gender violence against men as a group an issue of justice. Gender injustices towards men and gender oppression of men are reduced to that of some minority men, while the problems of injustices against women (as a group) are acknowledged, highlighted and addressed in her queer feminist projects.

From the perspectives of queer humanist men and masculinities studies, I argue that, though it is very important to address gender injustices towards women in the law and politics for sexual justice, it is not enough to solely address issues of gender oppression against women. I contend that problems of gender injustices towards men *qua* men also need to be taken seriously in critiques of heteronormativity and

¹⁴² For example, researches indicate violence against men is pervasive in conflicts but are generally trivialised compared with violence against women. See Sivakumaran n 2 above. Also, Carpenter n 2 above. Researches indicate that boys are more often more heavily physically punished than girls in school. 'When corporal punishment was legal, boys were much more often beaten than girls.' See R. W. Connell, *The Men and The Boys* (Cambridge: Polity, 2000), 158.

¹⁴³ Butler, n 53 above, 1-56.

they cannot be reduced to just issues of injustices towards some minority men. Furthermore, I argue that, whereas queer feminists correctly criticise the heterosexism in some feminism and correctly aim to address the sexual oppression of sexual and gender non-conventional people, they generally fail to address the intersectional oppression of sexuality and gender of gay and bi men. They fail to notice that, just like lesbians who suffer from discrimination, not just because of their sexuality but also due to their femaleness or femininity, gay men sometimes might also suffer from gender injustices, gender discrimination or gender violence, and not just because of their homosexuality, but also due to their male gender or maleness. For example, men as a gender group, including gay men, are all more likely to be victims of the gender violence of sex-selective massacre or forced recruitment into state conflict.¹⁴⁴ There is gender oppression of men as men, which constrains not only straight men but also gay and bi men; just as there is gender oppression of women as women, which constrains both heterosexual women and lesbians. I contend that in order to be able to fully understand and address the gender oppression gay men might experience, it is not enough to only treat gender injustices towards gay men as an issue of gender oppression of sexuality and gender non-conventionality. We also need to address the gender oppression against men as a group.

Furthermore, I challenge Butler's and Rubin's claim and tendency to equate critical theories and analyses of gender with feminist analyses of gender hierarchy. I agree with Halley that the feminist ideology of gender hierarchy and gender subordination of women ought not to be regarded as the only legitimate authority in the law and politics of sexuality and gender.¹⁴⁵ There are other valuable theories and perspectives of gender also worth consideration. For example, I propose the perspectives from queer humanist men and masculinities studies as possible alternatives in projects of sexual politics and sexual justice. My proposed queer humanist men and masculinities studies are partially inspired by Halley's queer

¹⁴⁴ For example see Carpenter, n 2 above, 88-93.

¹⁴⁵ Halley, n 42 above, 249-253, 274-277.

project in law and politics. However there are also important divergences between my project and her queer theory. I discuss her theory in the next section.

4.2.4 Halley's queer legal theory of sexuality and gender and her project of 'Take a Break from Feminism':

Janet Halley proposes a very inspiring and insightful queer legal theory on the law and politics of sexuality and gender. She argues that subordination feminist ways of thinking and ideologies have become the dominant model in modern feminist scholarship and feminist politics in the U.S.¹⁴⁶ She holds that although subordination feminism is useful in disclosing some realities and interests in sexual and gendered lives, they ought not to be treated as the sole authority and the only legitimate perspective in thinking about sexuality and gender because there are complex, diverse and conflicting realities, interests, harms, benefits, desires and power relationships in sexual and gendered lives.¹⁴⁷ Subordination feminism is inevitably limited and incomplete, and hence unable to reveal all aspects of the realities, dimensions and interests in complex sexuality and gender issues. Unfortunately, most contemporary feminist projects she surveys tend to assume the necessity of holding certain forms of subordination theory of f (women, femaleness or femininity) in projects of sexuality and gender.¹⁴⁸ They tend to assume and maintain that subordination feminist analyses of male domination and female subordination is an indispensable element or the overarching structure of any adequate theory of sexual justice and sexual politics.¹⁴⁹ Halley challenges this kind of prescriptive and totalising tendency in mainstream feminism and argues that we sometimes need to 'Take a Break from Feminism' in order to see realities that subordination feminism cannot and does not reveal.¹⁵⁰

I argue that her queer legal project of sexuality and gender is very useful in sexuality and gender studies. Many of her insights are drawn upon and incorporated in my

¹⁴⁶ Halley, n 42 above, 17-22.

¹⁴⁷ Ibid., 3-10, 319-347.

¹⁴⁸ Ibid., 4-6, 17-22.

¹⁴⁹ Ibid., 4-5.

¹⁵⁰ Ibid., 8-10, 17-20, 282.

proposed queer humanist men and masculinities studies. Also, some of her insights and arguments could be read as manifesting and being in accordance with the concerns and spirits of queer humanist men and masculinities studies. However, there are also some crucial differences between my project and her project. Also, I discuss the possible limitations of her project.

Halley's queer critiques of feminism begin with her observation of the dominance and popularity of the thesis of subordination of f (women, femininity or femaleness) in modern feminisms. She argues that feminism in the U.S. today, very often 'is persistently a subordination theory set by default to seek the social welfare of women, femininity, and/or female or female gender by undoing some part or all of their subordination to men, masculinity, and/or male or masculine gender.'¹⁵¹ According to Halley, despite the differences in feminisms, three common characteristics can be descriptively identified in most feminism theories she surveyed in the U.S.¹⁵² She finds that 'these attributes are noticeable in virtually every form of feminism in the United States today.'¹⁵³

First, Halley holds that feminism makes 'a distinction between m and f. Different feminisms do this differently: some see men and women, some see male and female, some see masculine and feminine.'¹⁵⁴ She notices that contemporary feminisms in the U.S. will 'turn in some central or core way on a distinction between m and f' in their systems.¹⁵⁵ The second core characteristic is that feminisms hold a descriptive claim, belief and assertion that women or femininity are subordinated by men or masculinity. For feminisms, 'a position must posit some kind of subordination as between m and f, in which f is the disadvantaged or subordinated element.'¹⁵⁶ Lastly, followed by the above descriptive claim that women (and/or femininity) are disadvantaged, modern feminisms argue that normatively something

¹⁵¹ Ibid., 4.

¹⁵² Ibid., 17-20.

¹⁵³ Ibid., 18.

¹⁵⁴ Ibid., 17.

¹⁵⁵ Ibid., 18.

¹⁵⁶ Ibid.

ought to be done to eliminate and address women's subordination and disadvantages in law, politics and society. She summarises the belief as 'feminisms oppose the subordination of f ... feminism carries a brief for f.'¹⁵⁷ The three common characteristics can be outlined as:

*'a distinction between something m [men, masculinity, and maleness] and something f [women, femininity, and femaleness]; a commitment to be a theory about, and a practice about, the subordination of f to m; and a commitment to work against that subordination on behalf of f.'*¹⁵⁸

She sometimes presents them in the shorthand: 'm/f, m>f, and carrying a brief for f.'¹⁵⁹

She claims that the feminist assumption of 'm/f, m>f, and carrying a brief for f' is very visible and influential in current American feminist scholarship. She argues that attributes of this kind of feminism 'are noticeable in virtually every form of feminism in the United States today.'¹⁶⁰ Second wave feminism, such as power feminism by MacKinnon or cultural feminists,¹⁶¹ rely on some sort of subordination theory of f (women, femaleness, or femininity) in their feminist theory. Even some visible post-modernising, queer or sex-positive feminists such as Judith Butler's queer feminism, in spite of their critical approach, nevertheless still resort to subordination theory of f in their feminist theories.¹⁶² Halley argues that these post-structuralist and queer feminisms such as Butler's projects still do not really take a break from the subordination of f thesis and remain constrained by the subordination feminist ideologies of gender and women.

¹⁵⁷ Ibid., 4, 18.

¹⁵⁸ Ibid., 4-5.

¹⁵⁹ Ibid., 5.

¹⁶⁰ Ibid., 18.

¹⁶¹ Care ethic feminism is one of the influential strands in cultural feminism. For example see Virginia Held, *The Ethics of Care: Personal, Political, and Global* (Oxford; New York: Oxford University Press, 2006).

¹⁶² Halley, n 42 above, 8-20, 29-30, 118, 149-15, 247-253, 274-277, 310.

Halley notices that some hybrid feminism¹⁶³ such as antiracist or socialist feminist projects could depart from the subordination feminist thesis 'by diverging from and thus suspending (subordination) feminism.'¹⁶⁴ What she means here is that some hybrid feminisms suspend the employment of, and reliance on, the subordination feminist thesis in some parts of their systems by resorting to other non-subordination-feminist perspectives such as antiracist thoughts.¹⁶⁵

I argue that although hybrid feminism is useful by being able to see the impacts of other identities, the divergence towards, or the inclusion of, perspectives of other identity categories itself does not address the fundamental problem and weakness in the subordination feminist paradigm. This is because the divergence from or inclusion of perspectives from other identities categories does not challenge the claimed exclusive authority of subordination feminism with regard to thinking about gender. Therefore, some kinds of feminism based on gender oppression and discrimination subordination do not see that gender oppression of men *qua* men may still be trivialised or rendered invisible. I use Young's hybrid feminism as an example to illustrate this point.

As stated earlier in Chapter 2, Young develops a concept of oppression based on structural injustices towards social groups. For her, oppression is primarily a structural concept that denotes systematic and often taken for granted constraints on members of social groups.¹⁶⁶ Oppression in this sense refers to injustices and

¹⁶³ In jurisprudence, feminist critical race theorist Kimberle Crenshaw highlights the concept of intersectionality and argues that the law needs to address the intersection of group discrimination and oppressions based on multiple identities categories such as gender, race and social class. For example, she criticises that African American women's oppressions and experiences are marginalised in both mainstream feminism and critical race theory because the former assumes a white women's perspective while the latter assumes an African American men's perspective. She argues for the importance of addressing the intersection of racism and sexism in African American women's cases. See Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *University of Chicago. Legal Forum* (1989), 139-167; Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color', *Stanford Law Review* 43, no. 6 (1991), 1241-1299.

¹⁶⁴ Halley, n 42 above, 20, 106.

¹⁶⁵ *Ibid.*, 25-26.

¹⁶⁶ Iris Marion Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 1990), 40-42.

disadvantages caused by widely held unquestioned social stereotypes, prejudices, norms and practices and institutionalised rules, policies and ideologies.¹⁶⁷ She contends that oppression can be categorised into five major forms: exploitation, marginalization, powerlessness, cultural imperialism and violence.¹⁶⁸ She holds a subordination feminist thesis of gender in her feminist project, for example, in her theory of family justice.¹⁶⁹ She argues that women as a social group are oppressed and implies that men as a group are privileged in relation to women.¹⁷⁰ Young suggests that women as a gender group *per se* suffer from gender oppression. Gender oppression of women consists of all five forms of oppression: women are exploited, marginalised, powerless, culturally stereotyped and devalued, and are targeted by gendered violence against women.¹⁷¹ However, she only discusses the oppression of women as a group, but never mentions oppression of men as a group. She seems to imply that men as a gender group *per se* do not suffer from gender oppression. Rather, she suggests that men could be oppressed by their other identity categories such as social class, race or sexual orientation.¹⁷² For example, working class men suffer from class oppression based on exploitation, powerlessness and cultural devaluation. Gay men suffer from sexuality oppression based on homophobic violence and cultural stigmatisation.¹⁷³ The problem with this line of thinking is that while Young can see the injuries done to working class men because of their class status, and the oppression of gay men because of stigmatised sexuality, she nevertheless fails to see that both working class men and gay men might also suffer gender injustices because of their male sex/gender. Moreover, she fails to consider how the oppressions of homosexuality and the gender oppressions of men might intersect in gay men's lives, or how class discrimination might intersect with sexism against men in working class men's lives. It is surely important

¹⁶⁷ Ibid.

¹⁶⁸ Ibid., 48-65.

¹⁶⁹ Iris Marion Young, *Intersecting Voices: Dilemmas of Gender, Political Philosophy and Policy* (Princeton: Princeton University Press, 1997), 101-106, 122-123; Iris Marion Young, 'Equality of Whom? Social Groups and Judgments of Injustice', *Journal of Political Philosophy* 9, no. 1 (2001), 10-11.

¹⁷⁰ Young, n 166 above, 42, 48-65.

¹⁷¹ Ibid., 48-65.

¹⁷² Ibid.

¹⁷³ Ibid., 63-65.

to address the multidimensionality of social injustices as Young or other hybrid feminists emphasise. However, if they cannot see that there are systematic and institutional gender injustices towards men as a social group, their hybrid feminist project is still limited by the subordination feminist paradigm.

Halley describes the departure and split from subordination feminist perspectives as 'Taking a Break from Feminism',¹⁷⁴ and contends that theories of law, sexuality and gender sometimes do need to make this break so that they can see more possibilities, interests, injuries and realities.¹⁷⁵

There are many strengths and contributions in Halley's project. She rightly points out the limitations of the subordination feminist paradigm and rightly highlights the need also to consider other theories of gender and sexuality that are not premised on the overarching subordination feminist thesis of gender. She also rightly challenges the subordination feminist tendency to claim prescriptively that the subordination theory of f (women, femaleness or femininity) is the necessary ultimate authority and normative paradigm in analysing issues of sexual justice and sexual politics.¹⁷⁶ Furthermore, her project is one of the very few critical sexual theories that explicitly discusses and addresses the harms of gender injustices towards men (as a group), take them seriously, and does not reduce them to simply issues of injuries to sexuality minority men.¹⁷⁷ She does not only reflect on and discuss sexuality constraints of LGBT as most queer theories and gay studies do, she also suggests that men as a gender group can also be problematically stereotyped and biasedly constructed in the law and politics of sexuality and gender.¹⁷⁸ She contends that:

¹⁷⁴ Halley, n 42 above, 106.

¹⁷⁵ *Ibid.*, 3-10, 283-363.

¹⁷⁶ *Ibid.*, 6-10.

¹⁷⁷ *Ibid.*, 33, 320-325. 341-344.

¹⁷⁸ *Ibid.*

*'I also noted that a very profound (but highly contingent) commitment among many feminists to the Injury Triad—to seeing the world in terms of female injuries, female innocence and male immunity—not only involved them in a denial of their will to power, and of their power, but precluded them from acknowledging their actual social effects when these take the form of female immunity, female aggression, and/or male injury.'*¹⁷⁹

Here she questions the subordination feminist construction of maleness and femaleness in sexual politics.

I agree with her that there is a problematic tendency in some legal and political projects of subordination feminism to assume and to reproduce myths and stereotypes of vulnerable and innocent women/femininity and invulnerable and dangerous men/masculinity, for example, the violence against women approach to family violence discussed in Chapter 3. This approach holds that domestic violence should be regarded as gender violence against women, where the root of domestic violence is patriarchy and male control and dominance.¹⁸⁰ Under the violence against women legal framework of domestic violence, family violence against LGBT people and family violence against men are generally unaddressed and remain marginalised. Men are implicitly assumed and constructed as heterosexual, violent, dominant and invulnerable, while women are generally assumed as heterosexual, harmless, subordinated and victimised in the violence against women approach to domestic violence. This kind of approach of domestic violence, I argue, is at risk of perpetuating heteronormativity and stereotypes of sexuality and gender.¹⁸¹

I also agree with Halley's observations that despite queer feminist critiques on second wave feminism, some post-modern and queer feminisms such as Butler's project still imply or suggest certain problematic subordination theses of female

¹⁷⁹ Ibid., 341-342.

¹⁸⁰ Helen Reece, 'Feminist Anti-violence Discourse as Regulation', In *Regulating Autonomy: Sex, Reproduction and Family*, edited by Shelley Day Sclater, Fatemeh Ebtehaj, Emily Jackson, Martin Richards, (Oxford: Hart Publishing, 2009), 40-48; Michelle Madden Dempsey, 'Toward a Feminist State: What Does 'Effective' Prosecution of Domestic Violence Mean?', *The Modern Law Review* 70, no. 6 (2007): 917-935.

¹⁸¹ See Chapter 3.5 in this thesis.

gender, as I argued in the previous section on Butler. I agree with Halley's observations that the subordination theory of f is very popular and visible in modern Anglo-American feminist scholarship and politics, a point I also mentioned in Chapter 2.

However, there are two major differences between my project and that of Halley.

The first major difference between my suggested queer humanist men's studies and her queer project is related to our different understanding and use of the ideas of oppression and subordination. Halley is sceptical about a sexual politics that is based on subordination/oppression theories.¹⁸² One of the strongest critiques of Halley's project is related to some criticisms about her ideas of subordination and structural injustices. For example, subordination feminist Davina Cooper argues that by suspending subordination theory Halley fails to address the problems of structural injustices, institutionalised inequalities and systematic biases and norms in social justice projects.¹⁸³ The structural and systemic injustices towards women are neglected and unaddressed in Halley's project. Cooper holds that we still need a sexual politics that is based on the subordination theory of women, otherwise structural gender injustices will be ignored and remain invisible and unaddressed.¹⁸⁴ Cooper recommends subordination feminist perspectives such as Nancy Fraser's feminist justice theory.¹⁸⁵

However, I argue that Fraser's gender justice theory has serious limitations and insufficiencies. Fraser argues that we need to keep both distributive justice and recognition justice in sight in thinking about social justice, including issues of gender justice.¹⁸⁶ In gender justice issues she adopts a subordination feminist perspective

¹⁸² Halley, n 42 above, 5-10.

¹⁸³ Davina Cooper, 'The Pain and Power of Sexual Interests: Responding to Split Decisions', *International Journal of Law in Context* 6, no. 1 (2010): 94-97.

¹⁸⁴ *Ibid.*, 94-99.

¹⁸⁵ *Ibid.*, 97.

¹⁸⁶ Nancy Fraser, 'Feminist Politics in the Age of Recognition: A Two-dimensional Approach to Gender Justice', *Studies in Social Justice* 1, no. 1 (2007): 25-29.

by arguing that men are the 'dominant group'¹⁸⁷ and masculinity is the privileged gender¹⁸⁸ while women are the oppressed group¹⁸⁹ and femininity is the devalued gender. By holding this kind of subordination feminist ideology, Fraser only notices and addresses gender oppression of women as a group in her theory and has difficulties in seeing the existence of the harms of gender oppression of men as a group.¹⁹⁰ She argues that women experience gender injustices in criminal law, in social welfare programmes, and in asylum policies.¹⁹¹ She claims that:

*'[w]omen suffer gender-specific forms of status subordination, including sexual harassment, sexual assault, and domestic violence; trivialising, objectifying, and demeaning stereotypical depictions in the media; disparagement in everyday life; exclusion or marginalisation in public spheres and deliberative bodies; and denial of the full rights and equal protections of citizenship.'*¹⁹²

The problem with Fraser's gender justice theory is not that her accounts of gender oppression of women do not exist; there exists serious problems of gender oppression of women in modern societies that need to be taken seriously. The problem is rather that by holding a subordination feminist perspective, she has difficulties in seeing the realities that gender oppression is not simply unilateral oppression, constraining women and femininity. She fails to see the multiple faces, forms, dynamics and power relationships of gender oppression. She fails to acknowledge and address the existence and the harms of gender oppression of men qua men. As a result, her gender justice approach could contribute to perpetuating some problematic heteronormative gender stereotypes and norms.

Most of the above gender injustices Fraser lists do not just affect women, but also men. For example, there are not only gender injustices towards women in criminal

¹⁸⁷ Nancy Fraser, 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation', in Larry J. Ray and Andrew R. Sayer eds., *Culture and Economy After the Cultural Turn* (London: Sage, 1999), 38.

¹⁸⁸ Fraser, *ibid.*, 26.

¹⁸⁹ Fraser, n 186 above, 25-34.

¹⁹⁰ *Ibid.*, 23-35.

¹⁹¹ *Ibid.*, 31.

¹⁹² *Ibid.*, 26.

justice systems, but also systematic gender injustices towards men and boys in the criminal justice system. Research finds that women and girls are more likely to be treated more leniently in custodial remand judgements;¹⁹³ similarly, judges are more reluctant to impose custody sentences on women and girls.¹⁹⁴ The criminal justice system tends to treat female offenders as 'in need of medical or psychological treatment rather than as pure criminal.'¹⁹⁵ Research finds that in cases of female offending 'courts tend to consider mitigating circumstances such as current and personal problems rather than emphasizing the nature of the offence as are done with male offenders.'¹⁹⁶ The court is more willing to contextualise the offence of female offenders, but not the male offenders. Compared to female offenders, male offenders' psychological and psychiatric background and factors are less investigated and are less likely to be considered.¹⁹⁷ As a consequence, a sentence for female offenders 'may result in minimal prison sentences compared with men.'¹⁹⁸ Female offenders' criminal intention is more likely denied and her dangerousness is minimised in the criminal justice system.¹⁹⁹ Research also indicates that both the traditionalist patriarchal chivalrous ideology and modern subordination feminist ideology intersect and contribute to the reproduction of heteronormative gender myths and stereotypes of men and women in criminal systems.²⁰⁰ As Hird elaborates:

¹⁹³ Kate Stewart, 'Gender Considerations in Remand Decision-making', in Frances Heidensohn ed., *Gender and Justice: New Concepts and Approaches* (Devon: Taylor & Francis, 2006), 129, 133-144.

¹⁹⁴ *Ibid.*, 142.

¹⁹⁵ Nicola Hutson and Carrie Anne Myers, 'Bad Girls or Mad Girls—The Coping Mechanisms of Female Young Offenders', in Frances Heidensohn ed., *Gender and Justice: New Concepts and Approaches* (Devon: Taylor & Francis, 2006), 147.

¹⁹⁶ Myra J. Hird, *Engendering Violence: Heterosexual Interpersonal Violence from Childhood to Adulthood*. (Surrey: Ashgate, 2002), 96.

¹⁹⁷ *Ibid.*, 94-95.

¹⁹⁸ *Ibid.*, 95.

¹⁹⁹ *Ibid.*, 94-95.

²⁰⁰ *Ibid.*, 105-114.

*'We equate femininity with passivity and masculinity with aggression. We also assume that women's relationships are structured around a non-hierarchical ethics of care. This supposed female preferencing of relationships necessarily implies that these relationships are premised around selfless caring. Precisely because of these powerful a priori associations, a certain discursive manoeuvring often takes place in which girls and women are able to talk freely about what they desire and what they do "for the sake of the relationship"; rather than the desire to have control or power over the person.'*²⁰¹

The gender myths and stereotypes perpetuated by patriarchal chivalrous thinking and subordination feminist ideologies render the problem and harm of female violence as trivialised, minimised, silenced, hidden or redirected to other issues. Under these circumstances, male victims of female violence are easily ignored, ridiculed, disbelieved, stereotyped and experience difficulties in receiving the help and support they deserve. For example, in the U.S., although according to the latest survey and correctional data, female correctional workers perpetrate the majority of staff-to-inmate sexual abuse in male facilities, the problems and harms of female-to-male sexual abuse in prison are still largely ignored and trivialised.²⁰² Recent U.S. surveys 'found that incarcerated men report much higher rates of sexual abuse by staff than by fellow inmates, and found that a large majority of staff perpetrators of sexual abuse are women.'²⁰³ Research finds that in sexual abuse custody cases 'female sex offenders receive less harsh sanctions overall than male sex offenders; they are even less likely to be prosecuted or punished when the victims are male and in custody.'²⁰⁴ Despite such visible female-perpetrated sexual abuse in prison and in correction systems, the research and policies of sexual abuse in prison still focus generally on male-to-female abuse. The mainstream research and public policy of correction systems still assume heteronormative gender ideologies and myths of harmless women and dangerous men. As Kim Shayo Buchanan holds: 'the

²⁰¹ Ibid., 108-109.

²⁰² Kim Shayo Buchanan, 'Engendering Rape', *UCLA Law Review* 59 (2012): 1630-1688; Lauren A. Teichner, 'Unusual Suspects: Recognizing and Responding to Female Staff Perpetrators of Sexual Misconduct in US Prisons', *Mich. J. Gender & L.* 14 (2007): 259-298; Brenda V. Smith, 'Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody', *UCLA Law Review* 59 (2011): 1690-1745.

²⁰³ Buchanan, *ibid.*, 1646-1647.

²⁰⁴ Smith, n 202 above, 1690.

main stereotype that seems to shape the selective attention of prison rape discourse to expected forms of prison rape is the heterosexist and gendered “sexual script” by which masculinity is understood to dominate femininity, and its corresponding pervasive societal belief that women are incapable of sexual aggression.²⁰⁵ The heterosexist and gendered norms and expectations of aggressive masculinity and innocent femininity in criminal justice system render sexual abuses that do not conform to the paradigm of male-to-female violence unrecognisable, marginalised or excused. ‘Instances of abuse perpetrated by females, rather against females, become hard for people to see.’²⁰⁶

In family violence jurisprudence and legal practice, as I elaborated in detail in Chapter 3, the myths and biases of the aggressive men/innocent women model is still highly pervasive and dominant.²⁰⁷ The result is that female violence in the family is more likely to be trivialised, while male victims are likely to be taken less seriously. Indeed, ‘[t]he presumption that all men are potential abusers and women the only victims of IPA [intimate partner abuse] permeates victims’ advocacy, the criminal justice professionals systems, and society as a whole.’²⁰⁸ Men abused by women are less likely to be issued a protection order by court, even in similar abuse cases.²⁰⁹ Research finds that ‘male victims of domestic violence were not afforded the same protections as their female counterparts. This inequality in court responses occurred even though male and female plaintiffs were similarly victimized by their opposite gender defendants.’²¹⁰

²⁰⁵ Buchanan, n 202 above, 1640-1641.

²⁰⁶ Ibid., 1642.

²⁰⁷ See n 132 and n 133 in Chapter 3.

²⁰⁸ Kim A. Reeves, Sarah L. Desmarais, Tonia L. Nicholls and Kevin S. Douglas, ‘Intimate Partner Abuse of Older Men: Considerations for the Assessment of Risk’, *Journal of Elder Abuse & Neglect* 19, no. 1-2 (2007), 10.

²⁰⁹ Henry J. Muller, Sarah L. Desmarais and John M. Hamel, ‘Do Judicial Responses to Restraining Order Requests Discriminate against Male Victims of Domestic Violence?’, *Journal of Family Violence* 24, no. 8 (2009), 625-637; Marie Mele, James C. Roberts and Loreen Wolfer, ‘Men Who Seek Protection Orders against Female Intimate Partners’, *Partner Abuse* 2, no. 1 (2011), 61-75; Steve Basile, ‘A Measure of Court Response to Requests for Protection’, *Journal of Family Violence* 20, no. 3 (2005), 171-178; Grant A. Brown, ‘Gender as a Factor in the Response of the Law-enforcement System to Violence against Partners’, *Sexuality and Culture* 8, no. 3-4 (2004), 3-139.

²¹⁰ Basile, *ibid.*, 178.

The crucial point to make here is not to deny the need to address the problems of gender oppression against women; the problems of gender oppression of women are very serious. The point I would like to emphasise rather is that there are limitations and insufficiencies in the unilateral and unidimensional concept of gender oppression presented by subordination feminist. For example, in Fraser's system, she generally reduces the concept of gender subordination and gender oppression to the oppression and subordination of women or femininity. This kind of reductionist and oversimplified understanding and approach to gender oppression, I argue, is too limited to see the complexity and multiplicity of gender oppression.

With respect to Halley's project, I agree with Cooper or Fraser's claim that we need to continue to use the concepts of oppression or subordination, not suspend their use. So the first major difference between my project and Halley's is related to our different attitudes towards the concepts of subordination and oppression in theories of sexual politics and sexual justice. Her 'Take a Break of Feminism' project is sceptical of a sexual politics based on subordination theory and urges us to suspend subordination theories in law and politics.²¹¹ However, my queer humanist project does not hold that we need to suspend the subordination theory or concepts such as oppression and subordination in projects of sexual politics and sexual justice. My project still uses these concepts of gender oppression, gender injustices or systematic gender discrimination, but not in the same way as subordination feminists such as Young, Fraser or MacKinnon. The difference between my queer humanist men and masculinities studies' understanding and employment of the concept of gender oppression and subordination feminism's understanding of gender oppression, is that gender oppression in my project is not primarily a unilateral and unidimensional concept, but rather, a more multifaceted and complicated concept.

²¹¹ Halley, n 42 above, 5-10, 282.

As discussed already, subordination feminism's idea of gender oppression and gender subordination is generally unilateral and unidimensional, mainly only referring to male domination over women. On the contrary, I argue that gender subordination or gender oppression should adopt a complex and multifaceted narrative, with multi-directional and complex forms of subordination and oppression co-exist in gender relationships, gendered lives and gender politics. We cannot simply reduce or crudely oversimplify gender oppression and gender subordination to unilateral oppression of women by men in gender relations, or vice versa. The realities are much more complicated and multifaceted. Also, mostly men and women are constrained and restricted to heteronormative norms of gender and sexuality, although perhaps in different ways, by different means, and on different occasions. The main point is that in modern developed heteronormative societies, gender oppression is not just about the oppression of women by men. By adopting a unilateral and oversimplified idea of gender oppression, we are likely to fail to see and address the multiple forms and dynamics of the complicated realities of gender oppression in modern societies.

In Chapter 2 I defined the concept of oppression as institutional, systematic and collective injustices caused by social stereotypes, biases, norms and practices and also by institutional rules, policies and ideologies in this thesis. Under the above elaboration and definition, men and women both suffer from some forms of gender oppression. Take familial lives and family relationships as an example, subordination feminist family law and family justice theories hold a unilateral understanding of gender oppression and claim that women (as a group) are oppressed by men (as a group) in the heteronormative institution of family. They hold that women (as a group) are oppressed while men (as a group) are privileged within the family.²¹² They argue that women are disadvantaged and oppressed in the family because of the unequal caring responsibility expectations, the exploitative division of labour

²¹² For example, see Susan Moller Okin, *Justice Gender and the Family* (New York: Basic books, 1989), 134-186; Martha Albertson Fineman, 'Fatherhood, Feminism and Family Law', *McGeorge Law Review* 32, no. 4 (2000): 1031-1049. Martha Albertson Fineman, 'The Sexual Family', in Martha Albertson Fineman, Jack E. Jackson, and Adam p. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, (Surrey: Ashgate, 2009), 45-64.

and the problems of male violence in the home. I argue that women certainly suffer from gender oppression because of the unequal caring roles, because of their lower involvement in the career market, and because of the problems of male violence in the family. I agree that all these examples of gender oppression of gender injustices towards women ought to be taken seriously and addressed. However, this does not mean we should only acknowledge the existence and the harm of gender oppression of women in the family. By thinking of gender oppression as complex and multidimensional from the perspectives of queer humanist men and masculinities studies, we can see that in gender relationships, not only women, but also men might suffer from some gender injustices and gender oppressions. For instance, my previous discussion of family violence indicates that heterosexual women are not the only gender group suffer from family violence. Domestic violence cannot be easily reduced to just a problem of male dominance of women in patriarchy, as mainstream subordination feminist theories of family violence assume.²¹³ Or as indicated above, men and boys sometimes experience systematic gender discrimination in criminal justice system. By abandoning the unilateral and oversimplified idea of gender oppression whereby one dominant gender oppresses the victimised gender, we no longer need to assume that only one gender group suffers from gender oppression. By overcoming the limitation can see the multiple dynamics, forms and power relationship in gender and be able to better address the complicated dimensions and impacts of gender oppression of different groups of people.

I argue that by adopting a multi-dimensional and complex concept of gender oppression, the harm of the gender oppression of trans people could also be more visible. Gender oppression of trans people is a very serious problem that needs to be addressed urgently. Trans people often suffer from most violent forms of gender oppression and gender policing.²¹⁴ The topic deserves devoted research by sexuality

²¹³ See n 180 above.

²¹⁴ Judith Butler is one of the leading philosophers who have specifically addressed the issue of transgender people in her works. One of the research motivations for Butler's queer project is her observation of heterosexist oppression and violence towards transgender persons. She says, 'I grew

and gender studies scholars. However, in order to better concentrate on the main arguments and main topic of sexual justice, gender oppression and men in this thesis, I do not go further to present a systematic exploration and review of transgender jurisprudence.²¹⁵ I instead focus on the critical examination of the impacts and oppression of heteronormative constraints on the male body, male gender and male sexuality and their intersections in law, politics and public politics since these aspects of heteronormative gender and sexual suppressions and injustices are still largely understudied in the theory of law, sexuality and gender.

Overall, unlike Halley, I do not argue that we need to suspend the theory and concepts of subordination and oppression in the law and politics of sexuality and gender. In this respect I am in accordance with subordination feminism by holding that we still need to use the concepts of gender/sexuality oppression and gender/sexuality subordination in sexual justice and sexual politics projects. The

up understanding something of the violence of gender norms: an uncle incarcerated for his anatomically anomalous body, deprived of family and friends, living out his days in an “institute” in the Kansas prairies.’ See Butler, n 47 above, xx. She challenges the heterosexist assumption of the naturalness and the existence of a biological male/female distinction independent of and prior to the discursive force of sex/gender. The bodies of transgender people are too often rendered unintelligible and unnatural in heteronormative norms of the human body and are too often forced to meet the body intelligibility in the heteronormative world by imposed medical ‘treatment’, such as the construction, diagnosis and treatment of the Gender Identity Disorder (GID). Butler challenges the naturalness of the binary sexed body and its immunity from any cultural influence. See Butler, n 52 above, 4-10, 87. She does not deny the importance of the material body but insists we already view and understand such a material body under gendered views constructed within a heteronormative culture. Heterosexist societies and laws render transsexual bodies unintelligible by already viewing via a heteronormative lens and expect binary normative bodily traits and dichotomies.

²¹⁵ A group of inspiring works from transgender jurisprudence and political philosophy have recently emerged to challenge the binarist hegemony of sex, gender and sexual desire in law. For example, Andrew N. Sharpe argues that transsexuality not only challenges heterosexism but also casts doubt on the construction of the coherence of certain forms of gay identity that exclude the possibility of ‘transsexual homosexual’. See Andrew N. Sharpe, ‘Institutionalizing Heterosexuality: The Legal Exclusion of “Impossible” (Trans) sexualities’, in Leslie Moran, Daniel Monk, and Sarah Beresford eds., *Legal Queeries: Lesbian, Gay and Transgender Legal Studies* (London: Cassell, 1998), 26-41. There are other important recent works on transsexuality jurisprudence. For example, see Stephen Whittle, ‘*Gemeinschaftsfremden*- or How to Be Shafted by Your Friends: Sterilization Requirements and Legal Status Recognition for the Transsexual’, in Leslie Moran, Daniel Monk and Sarah Beresford eds., *Legal Queeries: Lesbian, Gay and Transgender Legal Studies* (London: Cassell, 1998), 42-56; Andrew N. Sharpe, ‘Transgender Jurisprudence and the Spectre of Homosexuality’, *Australian Feminist Law Journal* 14 (2000), 23-37; Paisley Currah, ‘The Transgender Rights Imaginary’, in Martha Albertson Fineman, Jack E. Jackson, and Adam p. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Surrey: Ashgate, 2009) 245-258.

concepts of oppression and subordination are still useful in sexual justice projects. Also, I agree with subordination feminism that we need to address systematic gender oppression and injustices. However, I also argue that what we require is a complex and multidimensional idea of gender oppression rather than a unilateral concept of gender oppression. I argue that by employing a multi-dimensional concept of gender oppression, we can avoid the weakness of subordination feminism on the one hand, and keep the problems of systematic gender injustices and oppression in sight without having to suspend the use of the ideas of oppression and subordination. I argue that these kinds of concepts of gender oppression and gender subordination are useful to my proposed queer humanist men and masculinities studies.

The second major difference between my project and Halley's is that on the one hand I agree with her that we ought not to treat our theory as having the ultimate authority, or the only way to think about sexuality and gender, or as a complete and closed normative system.²¹⁶ On the other hand, I do not agree this means that we should not aim to explore the moral grounds and the normative foundations of our projects for sexual justice and sexual politics. Like some other queer theorists, Halley's project implies some normative values and commitments but she generally does not clearly elaborate the normative grounds of her queer project.²¹⁷ She faces similar problems as Butler or Warner, as argued earlier. There are normative questions they do not sufficiently answer, such as why we need to seek more possibilities, why certain sexual and gender constraints ought to be resisted, and ethically and morally, why we need queer or critical thinking in sexuality and gender politics. I argue that we need to try to think about and elaborate upon the normative grounds and implications of our sexual politics and sexual justice projects. Also, some of the liberal theories of sexual justice, such as liberal gay rights

²¹⁶ Halley, n 42 above, 9.

²¹⁷ For example, although Halley endorses a sex-positive and sex-affirmative position in sexual politics, she does not elucidate the normative foundation of sex-positive politics and public policies. See Janet Halley, 'Queer Theory by Men', in Martha Albertson Fineman, Jack E. Jackson, and Adam P. Romero eds., *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations* (Surrey: Ashgate, 2009), 26-27.

theories, can be inspiring in this respect. However, I would like to highlight also that by trying to articulate the normative grounds of sexual justice projects, we need not treat our normative projects as absolute, complete, unchanging and a foreclosed system. We still need to keep our normative elaboration and analysis open for challenge, critical reflection and adjustment. We need to admit and to acknowledge that our normative sexual justice project is never complete and never totally certain. As Butler and Halley point out, there is always some unknowingness in the future and we need to keep our project open for reflection and re-examination. I will discuss the normative grounds for projects of sexual justice and sexual politics in the next chapter.

There is one more point I can make on Halley's project. She presents a definition and description of 'feminism' in modern American society. However, I suggest that her analysis of feminism is better understood as an analysis and summary of 'subordination feminisms.' I suggest that there can be feminisms without holding the overarching subordination thinking of women or femininity. I suggested that this is the kind of feminism that is consistent and in accordance with queer humanist men and masculinities studies. One example is the sexual harassment theory proposed by Katherine M. Franke.²¹⁸ However, I agree with Halley that the dominant trend in modern feminism is the subordination feminist approach.

In this chapter I have critically evaluated the strengths and limitations of two approaches to projects of sexual politics: humanist men and masculinities studies and queer theory. I argued that humanist men's studies have the strength of noticing the problem of gender oppression of men qua men. However, they tend to assume a heterocentrist perspective with respect men. Therefore some heteronormative ideologies are still unchallenged in this approach. They also do not systematically elaborate the normative foundation of their humanist men's studies. I argue that they would benefit from incorporating some perspectives from queer theory and liberal theory of sexual justice. I argue that queer theorists provide

²¹⁸ Franke, n 117 above, 691-772.

useful theoretic tools to unravel and unsettle the naturalised and moralised heteronormativity in our sexual and gendered lives. Queer theorists to some extent address the problem of the oversimplified and reductionist approach of subordination feminism by attending to the perspectives from sexuality and gender non-conforming minorities and by problematising the essentialist construction of sexuality and gender. However queer feminism is still limited by subordination feminist ideologies in thinking about gender justice. I argue that Halley's queer theory is inspiring but I do not agree that we need to avoid resorting to the concepts of oppression and subordination in sexual politics projects. I also point out that most queer theory, despite normative concerns, fails to elaborate and address normative implications and grounds in their queer projects.

One of the fundamental questions for issues of sexual politics and sexual justice is the moral foundation for sexual politics and sexual justice projects. What is wrongfulness of sexuality and gender bias, discrimination and oppression? Why do we need to address heteronormative sexuality and gender oppression? We need to reflect on the normative foundation and implications of our legal and political projects of sexual justice. I will discuss this topic in the next chapter.

Chapter 5 Liberal Justice Theories and Liberal Gay Rights Theories on Sexual Justice

5.1 Introduction

In the previous chapter, I elaborated the need and usefulness of employing a queer/critical approach to unravel and destabilise heteronormativity in projects of sexual politics. I also argued that in addition to the subordination feminist commitment to challenge gender oppression of women, we could also broaden our concerns by considering the findings of humanist men and masculinities studies. Furthermore, I critically evaluated the possible limitations of some projects of queer theory and humanist men and masculinities studies. One of the main insufficiencies in some queer projects or in humanist men and masculinities studies is their relative lack of exploration and clarification of the normative grounds, values and implications of their studies. I argue that we need to follow a double path in sexual politics; we not only need critical/queer thinking in sexual politics, we also need to reflect on the implicit or explicit moral/normative claims and concerns in our projects of sexual politics and sexual justice. Queer projects generally focus on critical thinking and inquiries in sexual politics; the normative implications and moral grounds are not addressed to a significant degree. Humanist men and masculinities studies, on the other hand, either concentrate on presenting a description of gender oppression of men/masculinities, or fail to elucidate the normative values and grounds of their studies. I argue for the perspectives inspired by queer humanist men and masculinities studies, which emphasise the need for critical thinking, the concerns of gender oppression of all gender types, and the need to reflect morally and normatively on the law and politics of sexuality and gender to be taken seriously. In this chapter, I aim to explore normative questions of sexual politics, such as what is the normative foundation for theories, policies, and laws that aim to challenge the norms, ideologies and culture of normative heterosexuality? Why should heteronormative law, policies, norms and ideologies to be destructed, unsettled and unravelled? Why should we resist and problematise

heteronormativity? What should we rework in terms of sexuality and gender normativity within heteronormativity?

To answer these questions we need to explore the normative values and ethical implications of a sexual politics that questions normative heterosexuality. For me, the arguments from liberal gay rights theories from Nicholas Bamforth and Carlos A. Ball are very useful and can be drawn upon in this topic.¹ Insights from some feminist justice theorists such as Young, are also valuable as I already articulated earlier in this thesis.² I focus on discussing liberal theories of sexual justice in this chapter. I critically review how some visible liberal justice scholars discuss the normative foundation of the law and politics of sexuality and gender.³ I ask what we can learn from these discussions in law and sexual justice; what are the contributions and possible limitations of their projects?

There are different liberal approaches to the law and politics of sexual justice. Bamforth provides a very useful and insightful critical evaluation of various liberal approaches to sexual justice.⁴ I will not repeat his arguments here as I agree with most of his evaluation and comments. For example, I agree with Bamforth's critiques of the limitations of David A. J. Richards' respect for privacy arguments on issues of gay rights. As Bamforth points out, if we read Richards' argument as an

¹ Nicholas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law* (London, Washington D.C.: Cassell, 1997); Carlos A. Ball, *The Morality of Gay Rights: An Exploration in Political Philosophy* (London: Routledge, 2003).

² Young's concept of oppression is adopted in this thesis to denote structural sexuality and gender constraints, prejudices and injustices. See section 2.3 in Chapter 2.

³ Although liberalism itself is not a united school of thought without internal debates and conflicts, generally speaking, contemporary liberal theories in politics are of theoretic tradition and schools advocate the protection and promotion of various moral and political values such as personal liberty, autonomy and equality in law and politics. Different liberals therefore often have a different emphasis or proposal of how to best promote liberty and equality. See Alan Ryan, 'Liberalism', in Robert E. Goodin and Philip Pettit eds., *A Companion to Contemporary Political Philosophy, 2nd Edition* (Oxford: Blackwell, 2007), 360-365.

⁴ Bamforth has analysed and reviewed various liberal approaches to gay rights, including liberal immutability arguments, liberal respect for privacy arguments, liberationist sexual theory, liberal equality arguments and liberal autonomy arguments. He argues that the last approach is the more preferred as other approaches have some insufficiencies in the justification of gay rights. See Bamforth, n 1 above, 196-271.

anti-perfectionist project,⁵ then Richards is holding an implausible position on ‘the separation of law and morals.’ If we read Richards’ arguments as a perfectionist project, then there are internal inconsistencies in his privacy arguments.⁶ Also, I agree with Bamforth’s comments that the problem of Richard D. Mohr’s arguments for respect for privacy is that his privacy arguments are premised on other more fundamental moral values such as human dignity or equal respect. Also, Mohr does not clearly and coherently present the arguments regarding dignity or equal respect.⁷ In this chapter, I critically evaluate four leading liberal lawyers’ approaches to sexual justice: Hart, Dworkin, Bamforth and Ball. I first critically review H. L. A. Hart’s arguments on law, morality and sexuality; although providing a great contribution, are nevertheless limited by his failing to ground his liberal theory of sexuality on substantive moral values. I then critically examine Dworkin’s later liberal theory of justice and its implications for sexual justice. I hold that although his liberal justice theory has potential in providing us a valuable normative justification for the law and politics of sexual justice, his theory nevertheless leaves many aspects of structural heteronormative gender and sexuality ideologies, norms, practices and prejudices, unchallenged. Then I discuss Bamforth and Ball’s liberal gay rights theories that, I argue, provide the most convincing justifications for projects of sexual justice.

⁵ Anti-perfectionist liberals such as political liberal John Rawls argues for a restriction of the use of comprehensive moral and philosophical perspectives and principles in the justification of public policies and law. See John Rawls, *Political Liberalism*, (Columbia University Press: New York, 1996), xliii-xlvi. Liberal perfectionism on the other hand opposes political liberalist separation theses and emphasises the need for substantive moral evaluation in law and politics. Liberal projects from Joseph Raz and Nicolas Bamforth are examples of perfectionist liberal projects in law and politics. Raz defends a political morality based on the concept of personal autonomy. See Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1986); Joseph Raz, ‘Liberty and Trust’, in George, Robert P. ed., *Natural Law, Liberalism, and Morality: Contemporary Essays* (Oxford: Clarendon Press, 1996), 113-130. Bamforth’s liberal theory of sexual autonomy will be discussed later in this chapter.

⁶ Bamforth, n 1 above, 209-212.

⁷ Ibid., 216-219.

5.2 Hart's liberal jurisprudence of sexuality

In this section, I critically review Hart's liberal approach to law and sexual morality. Inspired by J. S. Mill's famous 'harm principle',⁸ Hart opposes the legal enforcement of morality and suggests that liberty requires respect for one's private life.⁹

Respect for privacy is an important and popular approach adopted by liberal lawyers in LGBT campaigns against intrusive state power. In 1957 the Wolfenden Report in the UK recommended partial decriminalisation of adult male homosexual practices in private by referring to a liberal concept of the respect for privacy.¹⁰ The report holds that 'there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business.'¹¹

Mill, a classic liberal philosopher, explores the question of personal liberty and the legitimate grounds of the state's use of coercive power. Mill argues that it is important to distinguish self-regarding from other-regarding behaviour when reflecting on the legitimate use of state coercive law.¹² Self-regarding conduct is a person's conduct that 'affects the interests of no persons besides himself, or needs not affect them[other persons] unless they like.'¹³ An other-regarding conduct is conduct affecting others' interests. He argues that only the wrongfulness of other-regarding conduct can be legitimately subjected to the sanction of public enforcement. On the other hand, self-regarding conduct does not raise issues of morality and justice, but rather of nobility and prudence, and hence this conduction should not be subject to enforcement of compulsory standards by law and public

⁸ John Stuart Mill, *On Liberty and Other Essays*, John Gray ed. (Oxford: Oxford University Press, 1998), 14.

⁹ H. L. A. Hart, *Law, Liberty and Morality* (Stanford: Stanford University Press, 1963), 4-5, 46-48,

¹⁰ *The Report of the Committee on Homosexual Offences and Prostitution* (London: HMSO, 1957)

¹¹ *Ibid.*, Cmd.247, Par.61. For a critical evaluation of the usefulness and limitations of the respect for privacy arguments in areas of sexual justice and gay rights, see Nicholas Bamforth, 'Same-sex Partnership: Arguments of Justice', in Robert Wintemute and Mads Tønnesson Andenæs, eds., *Legal recognition of same-sex partnerships: A study of National, European and International Law*. (Oxford: Hart Publishing, 2001), 33-38.

¹² Mill, n 8 above, 83-85.

¹³ *Ibid.*, 84, 104.

power.¹⁴ Mill intends to elaborate the idea that there is a domain of liberty in private that should be left without the intervention of public coercion.¹⁵ Only conduct that infringes other members' legitimate advantages is subject to the domain of possible state coercive intervention. Therefore, he famously proposed the harm principle:

*'[T]he principle is that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their member, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.'*¹⁶

Inspired by Mill, Hart proposes a modified liberal jurisprudence based on the harm principle. Hart agrees with Mill that the law should not enforce morality,¹⁷ but disagrees with Mill on the legitimacy of legal paternalism and the legal regulation of conduct that causes serious offence.¹⁸ Hart defends a liberal jurisprudence against the legal enforcement of private immoralities, but holds that paternalism and offences to public decency could be legitimate grounds for legal enforcement. His liberal jurisprudence of law and sexuality was developed during the debates he exchanged with Lord Patrick Devlin from late 1950s to 1960s.

According to Devlin, society is justified in enforcing certain common standards or popular morality as a means of self-preservation.¹⁹ He holds that social cohesion depends on the existence of a shared set of moral beliefs among its members.²⁰ Due to the significance of the preservation of shared morality to the existence and integration of society, he argues that it is legitimate for the state to resort to

¹⁴ John Gray, 'Introduction', in John Stuart Mill *On Liberty and Other Essays* (Oxford: Oxford University Press, 1998), ix-xiii.

¹⁵ *Ibid.*, xv.

¹⁶ Mill, n 11 above, 14.

¹⁷ Hart, n 9 above, 4-5.

¹⁸ *Ibid.*, 33-34, 41-48.

¹⁹ Patrick Devlin, *The Enforcement of Morals* (London: Oxford University, 1965), 11-14.

²⁰ *Ibid.*, 10, 120.

criminal law to enforce common morality.²¹ This line of thinking implies that homosexuality should be criminally punished in a society where homosexuality is widely viewed as immoral. A further point is that Devlin thinks it is unnecessary to defend legal enforcement of morality on the grounds of substantive moral truth. For him it is the requirement of social cohesion that justifies the legal enforcement of morality, not moral truth.²² Both liberal legal scholars and new natural law theorists criticise Devlin's arguments. New natural law theorist Robert P. George insists that legal enforcement can never be justified without considering objective moral values.²³ However, the moral criteria and the premises that George and other new natural law lawyers rely upon in their theory of sexual morality are, as Bamforth and Richards rightly point out, problematic, discriminatory and unappealing.²⁴ Hart criticises Devlin for failing to provide sufficient empirical evidence to support the 'disintegration thesis.'²⁵ Hart argues that changes in societal morality do occur from time to time; however, they are not 'tantamount to the destruction of a society.'²⁶

Hart then suggests a liberal jurisprudence inspired by Mill's harm principle by arguing for valuing individual liberty and opposing legal enforcement of private moral wrongfulness. Hart holds that individual liberty should not be invaded unless there are other legitimate grounds for legal intervention. However, unlike Mill who holds that the only legitimate grounds for legal enforcement is the prevention of harm to others, Hart provides three possible grounds that justify legal coercion that restricts personal freedom: prevention harm to others, legal paternalism and prevention of offensive acts in public.²⁷ Hart holds that private immorality *per se* is not the proper area for criminal enforcement.²⁸

²¹ Ibid., 11-14.

²² Bamforth, n 1 above, 180; Robert P. George, *Making Men Moral: Civil Liberties and Public Morality*, (Oxford: Clarendon, 1993), 53.

²³ George, Ibid., 71-82.

²⁴ Nicholas Bamforth and David A. J. Richards, *Patriarchal Religion, Sexuality, And Gender: A Critique of New Natural Law* (New York: Cambridge University Press, 2008), 190-278.

²⁵ Hart, n 9 above, 50-52, 82-83.

²⁶ Ibid., 51.

²⁷ Ibid., 30-34, 38-48.

²⁸ Ibid., 4-5, 45-48.

Different from Mill, Hart contends that legal paternalism and protection from public indecency can also be grounds for coercive law. Hart defends legal paternalism because there is 'a general decline in the belief that individuals know their interests best.'²⁹ Some choices or undertakings that people make are harmful to themselves. Acts out of free choice and consent can be controlled by coercive legal regulations for the prevention of grave self-harm.³⁰ Personal liberty could be outweighed by some other significant considerations of personal interest or welfare. Hart only provides examples of physical (legal regulations of drugs) paternalism.³¹ Hart does not explicitly state whether he would ever allow moral legal paternalism. Nonetheless, he seems to suggest that moral harm is an uncertain idea so moral paternalism is thus problematic.

The third reason for the legitimate justification of legal enforcement for Hart is the offence principle. Hart thinks that criminal law could intervene in cases of 'protection from shock or offence to feelings caused by some public display.'³² He holds that bigamy and polygamy are punishable not because of their immoralities, but because of their serious offence or nuisance to others.³³ He argues that '[I]t is important to see that if, in the case of bigamy, the law intervenes in order to protect religious sensibilities from outrage by a public act.'³⁴ Bigamy is punishable neither due to its irreligiousness nor immorality but the offence and nuisance it causes to the public.³⁵ According to Hart, because immediate and public offensiveness is present in the case of public sex, soliciting on street, public displaying of pornography, bigamy, or public homosexual behaviour, prohibitions of these acts could be enforced by criminal law while immoral sex in private between consenting adults ought not to be punished by criminal law.³⁶

²⁹ Ibid., 32.

³⁰ Ibid., 32-33.

³¹ Ibid., 32.

³² Ibid., 47.

³³ Ibid., 41-45.

³⁴ Ibid., 41.

³⁵ Ibid., 41.

³⁶ Ibid., 41-48.

I argue, however, that Hart does not pay enough attention to the question whether the outrage of the public holds any rational foundation. Nor does he emphasise a critical perspective by which to challenge whether popular public feelings are products of oppressive heteronormative ideologies and biases. Hart's liberal jurisprudence is at risk of endorsing and perpetuating pervasive and influential heteronormative norms or homophobic rules in public lives because his theory fails to challenge the power relations, the social construction and the delusional naturalness and taken-for-grantedness of some possible public bias and stereotyping. Under Hart's principle of offence, which relies on positive morality (popular social morality)³⁷ as the standards for the law of public decency, same sex behaviours in public like kissing or hand-holding may be viewed as offensive and be forbidden in a homophobic society where homosexuality is deeply stigmatised by its homophobic and oppressive social norms. Hence Hart's liberal jurisprudence might in reality endorse, rather than subvert, the problematic heterosexist popular culture in the law and politics of gender and sexuality. Furthermore, as Bamforth argues, another major limitation of Hart's project is his failure to address the substantive moral justifications of the law about sexuality.³⁸ By adopting an approach towards a separation of law and morality,³⁹ Hart is unable to clarify the moral wrongfulness of some oppressive homophobic biases and heteronormative norms. Hart also fails to acknowledge that legal paternalism or criminal punishment of public nuisances often already entails and assumes some substantive moral judgements. They are not pure neutral legal principles without moral judgements, as Hart assumes.⁴⁰ Hart's liberal jurisprudence on the one hand is an important breakthrough for the oppressive homophobic law and politics of sexuality. On the other hand, failing to take a critical thinking approach and assuming the separation of law from substantive moral inquiries makes his project vulnerable to heterosexism. Overall, as Bamforth argues, the privacy arguments although holding some benefits, cannot really explain the moral goodness and value foundation of same sex love and

³⁷ Ibid., 20.

³⁸ Nicholas Bamforth, *Sexuality, Morals and Justice: A Theory of Lesbian and Gay Rights Law*, 134.

³⁹ Ibid., 132-133.

⁴⁰ Ibid., 132-3, 143.

intimate life and cannot properly justify the normative foundation of the law and politics of gay rights.⁴¹

5.3 Dworkin's theory of social justice and its implications for sexual justice

Dworkin's early theory adopts a more anti-perfectionist approach in jurisprudence and political theory. He endorses a state neutrality principle by arguing that 'political decisions must be, as far as is possible, independent of any particular conception of the good life, or of what gives value to life.'⁴² He contends that the principle of political neutrality of the state requires the state to refrain from imposing majoritarian moral standards on sexual minorities.⁴³ Perfectionist liberal lawyers Bamforth and Ball both argue that this kind of neutral liberalism cannot address the fundamental moral wrongfulness of homophobic laws and public policies and is not the best way to advance the promotion and protection of gay rights.⁴⁴ Later, Dworkin revised his position of political neutrality by shifting towards liberal perfectionism in jurisprudence and political theory. In his later works, he supports a political morality based on human dignity and its requirements of personal autonomy/authenticity and equality.⁴⁵ I think his later position is more inspiring and useful in the law and politics of sexuality and gender; however, it is not without weaknesses. I will focus mostly on critically evaluating his later works.

Dworkin's later theory of social justice theory is premised on his idea of human dignity and its moral implications in human lives. He argues that to be able to best explain the moral meanings, values and normative implications of human lives, we need to rely on the idea of dignity and its two moral principles.⁴⁶ He argues that there are two fundamental ethical requirements and implications of human dignity:

⁴¹ Ibid., 206-220; Bamforth, n 11 above, 33-38.

⁴² Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), 191.

⁴³ Ibid., 196-197, 366-371.

⁴⁴ Bamforth, n 1 above, 135-136, 212-220; Carlos A. Ball, *The Morality of Gay Rights: An Exploration in Political Philosophy* (Routledge: London, 2003), 30-37.

⁴⁵ Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press: Cambridge, 2011), 1-19.

⁴⁶ Ibid., 14-15, 191-218.

self-respect and authenticity.⁴⁷ In personal moral life the principle of self-respect means: '[e]ach person must take his own life seriously: he must accept that it is a matter of importance that his life be a successful performance rather than a wasted opportunity.'⁴⁸ He argues that people have an ethical responsibility to treat their lives, bodies, talents and existence seriously and to grasp the opportunities to live meaningfully. The principle of authenticity means '[e]ach person has a special, personal responsibility for identifying what counts as success in his own life; he has a personal responsibility to create that life through a coherent narrative or style that he himself endorses.'⁴⁹ The principle of authenticity asks us to make our own decisions of how to best use our lives. Dworkin himself prefers using the term authenticity over autonomy: 'Authenticity demands that, so far as decisions are to be made about the best use to which a person's life should be put, these must be made by the person whose life it is.'⁵⁰ He also argues that '[a]uthenticity is damaged when a person is made to accept someone else's judgement in place of his own about the values or goals his life should play.'⁵¹

Following the above arguments about human dignity and its moral principles, Dworkin argues that there are two corresponding political principles in his liberal justice project.⁵² First, there is a requirement for the state's respect for individual freedom and responsibility in life-planning, and decision-making: a political principle that is derived from the ethical principle of authenticity.⁵³ Second, there is a requirement of equal concern and respect by the government towards all citizens.⁵⁴ This political principle of equal concern and respect is related to the ethical principle of self-respect in personal life. He argues that:

⁴⁷ Ibid., 195.

⁴⁸ Ibid., 203.

⁴⁹ Ibid., 204-205.

⁵⁰ Ibid., 212.

⁵¹ Ibid.

⁵² Ibid., 2.

⁵³ Ibid., 336.

⁵⁴ Ibid.

*'No government is legitimate unless it subscribes to two reigning principles. First, it must show equal concern for the fate of every person over whom it claims dominion. Second, it must respect fully the responsibility and right of each person to decide for himself how to make something valuable of his life.'*⁵⁵

Dworkin therefore proposes a liberal jurisprudence and political theory by arguing for an equality of resources and respect for personal freedom and responsibility in the law and politics. There are two major areas of social justice about which he is particularly concerned. The first is about distributive justice of resources, and the second, the protection of personal liberty. In issues of distributive justice, he argues for adopting a model of equality of resources. He holds that liberal equality requires equality of resources, not equality of outcome.⁵⁶ The principle of equal resources treats people 'as equals when it distributes or transfers so that no further transfer would leave their shares of the total resources more equal.'⁵⁷ The underlying rationale for adopting the model of equality of resources rather than equality of outcome is the personality/circumstances distinction, or the ambition/endowment distinction.⁵⁸ Dworkin contends that a society should partially compensate for people who suffer from 'brute bad lucks',⁵⁹ but should also leave enough space for people to make choices and face the consequences of their own decisions based on personal preferences, ambitions or tastes.⁶⁰ Therefore, for example, while it is fair to channel certain resources to disabled people, it would be inappropriate for a government to cover a person's extravagant tastes.⁶¹

His views lie in the area of distributive justice: the duty of a state and the law is to make sure the redistribution of resources is based on a model of equality of resources. He resorts to a hypothetical insurance market to speculate and decide

⁵⁵ Ibid, 2.

⁵⁶ Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Boston: Harvard University Press, 2000), 65-120.

⁵⁷ Ibid., 12.

⁵⁸ Ibid., 81-89.

⁵⁹ Ibid., 73-74, 76-78.

⁶⁰ Ibid., 71-92.

⁶¹ Ibid., 82.

how much reasonable people would insure against different events of bad luck, risks and inequalities according to the overall preferences of individuals in a community.⁶² In a hypothetical insurance market, people decide the premiums they would like to pay against specific bad luck and inequalities according to their own preferences and judgments.⁶³ However, they do not know their own or other people's exact rate of risks of bad luck or inequalities in question. Dworkin thinks that through this insurance model we can 'identify a top coverage level at which we can sensibly assume that most people in our community would have chosen to insure, given what we know about their needs and preferences, and given the premium structure that coverage would require'.⁶⁴ Dworkin therefore uses a hypothetical insurance market approach to speculate and decide how to allocate benefits and burdens among citizens in real life social justice issues. He argues that the results reflect 'reasonable assumptions about overall preferences of the community over risk and insurance'.⁶⁵ Dworkin's approach to equality represents a liberal approach by aiming to reconcile the respect of individual autonomy and the concern of addressing social inequalities in society.

In respect of personal freedom, Dworkin holds that his liberal justice project would require liberal tolerance.⁶⁶ As elaborated above, Dworkin argues that people should be able to have the moral independence and freedom of decision-making in their own lives.⁶⁷ Liberal tolerance opposes any imposition of popular morality via criminal law on minorities.⁶⁸ Indeed:

⁶² Ibid., 65-119.

⁶³ Dworkin, n 45 above, 356-361.

⁶⁴ Ibid., 361.

⁶⁵ Ibid.

⁶⁶ Dworkin, n 56 above, 211-213; 282-283.

⁶⁷ Dworkin, n 45 above, 211-213.

⁶⁸ Dworkin, n 56 above, 282-283.

*'People have the right not to suffer disadvantage in the distribution of social goods and opportunities, including disadvantage in the liberties permitted to them by the criminal law, just on the ground that their officials or fellow-citizens think that their opinions about the right way for them to lead their own lives are ignoble or wrong.'*⁶⁹

Gay men and lesbians' sexual freedom should not be denied simply because homosexuality is regarded as immoral by the majority in society.⁷⁰ Similarly, he opposes moral paternalism on the same grounds of upholding liberal tolerance.⁷¹ Dworkin argues that liberal equality denies the legitimacy of outlawing human behaviour simply because the state or the majorities find it demeaning or corrupting. A liberal community can outlaw conduct under the requirements of social justice, but not from the disapproval of others' moral tastes.⁷²

I argue that Dworkin's later elaboration of the two political requirements of liberal justice: equal concern and respect, and respect for individual freedom and responsibility could partially explain the moral grounds of projects of sexual politics and sexual justice if we accept his moral theory.⁷³ His ideas of equality of resources and liberal toleration could partially tackle some of the inequalities in sexual and gender lives. However, there are also limitations in his project.

First, Dworkin tends to view political rights and human rights largely from a perspective of protecting individual interests and freedom from collective enforcement and actions. His arguments of liberal tolerance of homosexuality focus almost exclusively on condemning arbitrary state invasion of sexual freedom of sexual minorities.⁷⁴ Although resistance to a state's violent coercive inference of gay and lesbian people's sexual freedom is very important, it is far from the core point

⁶⁹ Dworkin, n 42 above, 353.

⁷⁰ Dworkin, n 56 above, 282.

⁷¹ Ibid., 211-225.

⁷² Ibid., 211-212.

⁷³ Dworkin, n 45 above, 2.

⁷⁴ Dworkin, n 56 above, 282-283.

of the injustices and oppression LGBT people face in everyday life.⁷⁵ What LGBT people need goes far beyond simply liberal tolerance, as Dworkin assumes. His sexual justice and sexual politics project does not go far enough to challenge systematic heteronormative gender and sexuality norms and their negative impact and constraints on LGBT people. Therefore, his idea of liberal toleration is of limited usefulness in addressing sexuality and gender oppression.

Secondly, Dworkin focuses almost exclusively on addressing issues of equality of material resources in distributive justice while marginalising other important areas of social injustice. Many aspects of injustice in sexuality and gender go beyond, and are not limited to, the distribution of material resources, for example, sexist and heterosexist prejudices, homophobic and gendered violence, or heteronormative family law and public policies. Dworkin's system ignores or marginalises non-material aspects of injustice and oppression in social life and leaves them generally unaddressed in his project.

Feminist theories of social justice of Fraser or Young, for example, have the advantage of going beyond the limited distributive model of material resources in a theory of social justice and are therefore worth considering in this connection. For instance, as elaborated above, Fraser argues that social justice projects need to address injustices with regard to both resources and recognition.⁷⁶ A much wider problem of social injustice could be acknowledged and addressed under Fraser's model. However, I would also argue that there are limitations of Fraser and Young's projects, owing to their failure to address the problem of structural gender injustices and oppression of men *qua* men. While I would agree with Fraser and Young's insights that social justice projects ought not to be reduced to issues of resource redistribution, I also diverge from their projects by arguing in favour of taking gender oppression and gender constraints on men *qua* men more seriously.

⁷⁵ See *Beyond Tolerance: Making Sexual Orientation a Public Matter*, Equality and Human Rights Commission, 2009. (Accessed: 22 August 2014).

http://www.equalityhumanrights.com/uploaded_files/research/beyond_tolerance.pdf

⁷⁶ See my discussion in 4.2.4 in Chapter 4.

I argue that Dworkin's theory not only fails to address the problem of the systematic constraints placed on women in society,⁷⁷ but also that his project fails to address the structural constraints placed on men and masculinity by heteronormativity. I use an example of the heteronormative gender role of masculinity in the family to illustrate this point. In heteronormative society and culture, men are still expected to shoulder the major provider's responsibilities in the (heterosexual) family. Men are often expected to fulfil the gendered breadwinner responsibility by society and by their partners.⁷⁸ Men take most unsocial jobs and the most dangerous work.⁷⁹ They also tend to work longer hours and commute over longer distances.⁸⁰ These formal and informal social, legal and cultural gender expectations of men have some negative and constraining impacts on them, especially on working class and ethnic minority men.⁸¹ The expectation for men of being the normative provider has a negative impact on men's family lives. They have less time and receive less social support to care for their children. Although it is important to address the earning power inequalities in relationships, it is also an issue of social justice when one gender is particularly disadvantaged in parenting and in parent-child relationships. When men are disproportionately imposed upon in terms of breadwinning in heteronormativity, this can be an issue of social justice which is beyond pure material injustice. As research indicates:

⁷⁷ For feminist discussion of structural injustices towards women in society, see, for example: Nancy Fraser, 'Feminist Politics in the Age of Recognition: A Two-dimensional Approach to Gender Justice', *Studies in Social Justice* 1, no. 1 (2007): 23-35. Also, Iris Marion Young, *Justice and the Politics of Difference*, (New Jersey: Princeton University Press, 1990), 40-65.

⁷⁸ Research show in many households and marriages, men's economic ability is one of the major concerns for their female partners. In heterosexual relationships, if men do not have enough earning ability, their chance of getting married and staying married is dramatically decreased. 'Most men have little choice in how to spend their lives, being forced into full-time continuous life-long employment career whether they like it or not, whether they take on the breadwinner role for a wife and children or not.' See Catherine Hakim, *Key Issues in Women's Work: Female Diversity and the Polarisation of Women's Employment*, (London, Glass House Press, 2004), 201.

⁷⁹ For example, in the UK men are more than 20 times more likely to suffer occupational mortality than women. See Office for National Statistic, *Statistical Bulletin: Occupational Mortality 1991-2000*, 2009, 3.

⁸⁰ Louie Burghes, Lynda Clarke, and Natalie Cronin, *Fathers and Fatherhood in Britain* (London, Family Policy Studies Centre, 1997), 44-46.

⁸¹ Michael E. Lamb, *The Role of the Father in Child Development* (New Jersey: John Wiley and Sons, 2010), 296-315.

*'In many parts of the world, particularly southern Africa and Asia, men work several hundreds of miles away from their homes to provide sufficient income for their families. Many other men have to work long hours, often in two jobs, to keep their families afloat. Under such circumstances, hands-on involvement with children is impossible.'*⁸²

In many societies it is mainly a man's duty to work in the labour market and to provide for their family. Fathers are defined and expected to be financial providers within heteronormative culture.⁸³ When the budget is tight, many working class men have to sacrifice their family life and time with children by working abroad, during unsocial hours, managing double shifts, or risk their life and health by working in unsafe, unpleasant and dangerous workplaces.⁸⁴ This kind of burden is disproportionately imposed on fathers. Moreover, these working class fathers are likely to be further disadvantaged following divorce or separation in respect of parent-child relations. They are more likely to become non-resident parents under current family law systems, which often assume the *de facto* primary caretaker principle in separation. Since full-time working fathers follow the expectations of performing the primary breadwinning gender role and devote themselves to their family as the primary provider, they are unlikely to be afforded an opportunity of being the resident parent after separation. As a result, these full-time working fathers are likely to be further disadvantaged after separation in respect of maintaining good personal relations and being involved with their children.⁸⁵

⁸² Ibid., 109.

⁸³ For example, an American study finds that the child support policies in the US show different cultural expectations towards low income noncustodial fathers and mothers. The research finds that 'regardless of how little a noncustodial father earns, he may be expected to provide some minimal amount for the support of his children. Often the same is not required of low-income noncustodial mothers.' See Daniel R. Meyer and Steven Garasky, 'Custodial Fathers: Myths, Realities, and Child Support Policy', *Journal of Marriage and the Family* 55, no. 1 (1993), 87-88.

⁸⁴ See n 79 above.

⁸⁵ Edward Kruk, 'Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers after Divorce', *Family Court Review* 30, no. 1 (1992): 81-101; Alexander Marardo, 'Negotiating Shared Residence: The Experience of Separated Fathers in Britain and France', in Jo Bridgeman, Heather Keating and Graig Lind eds., *Regulating Family Responsibilities* (Farnham: Ashgate, 2011), 119-136; Susan D. Stewart, 'Nonresident Mothers' and Fathers' Social Contact with Children', *Journal of Marriage and Family* 61, no. 4 (1999): 894-907; Lamb, n 81 above, 180-183; Jonathan Bradshaw, *Absent Fathers?* (London: Routledge, 1999), 80-98.

The heteronormative gender norms tend to naturalise and unfairly burden women with the caring role while devaluing men's caring ability, motivation and work.⁸⁶

*'Many custodial mothers face chronic strains due to the demands of solo parenting and raising children on a reduced budget. Similarly, many noncustodial fathers face chronic strains due to a decrease in contact with their children and the difficulties of maintaining close father-child relationships under conditions of limited access.'*⁸⁷

Heteronormative gender norms that define men as better providers, less able care takers and women as better/natural caretakers, have negative and constraining effects on both men and women. Liberals such as Dworkin do not fully address these kinds of structural heteronormative injustices and constraints in his theory. His project of sexual justice is of limited use in challenging the institutions and norms of normative heterosexuality.

Dworkin's project of liberal justice not only has limited usefulness in addressing the gender oppression of women, it also leaves structural gender constraints placed on men unaddressed. A project for social justice with regard to sexuality and gender ought to address women's disproportionate share of domestic life and also tackle the demand for men's disproportionate burden of work and negative constraints on their parental role and involvement with children. Furthermore, as argued above, structural heteronormative injustices towards LGBT people are not sufficiently challenged in Dworkin's system of thought. By focusing narrowly on material injustice, Dworkin's social justice system fails to properly challenge broader institutional and cultural heteronormative constraints, either for men, for women, or for LGBT people. It also has limited use in unsettling heterosexism in society.

⁸⁶ Pruett, Marsha Kline, Lauren A. Arthur, and Rachel Ebling, 'The Hand That Rocks the Cradle: Maternal Gatekeeping after Divorce', *Pace L. Rev.* 27, no. 4 (2006): 709-739; Jay Fagan, and Marina Barnett, 'The Relationship Between Maternal Gatekeeping, Paternal Competence, Mothers' Attitudes about the Father Role, and Father Involvement', *Journal of Family Issues* 24, no. 8 (2003): 1020-1043; Sarah M. Allen, and Alan J. Hawkins, 'Maternal Gatekeeping: Mothers' Beliefs and Behaviors That Inhibit Greater Father Involvement in Family Work', *Journal of Marriage and the Family* 61, (1999): 199-212.

⁸⁷ Lamb, n 81 above, 181.

5.4 Liberal gay rights theories of sexual justice

In this section, I critically review liberal gay rights' theories of sexual justice. I focus on engaging with the theories of two leading liberal gay rights theorists: Nicolas Bamforth and Carlos A. Ball. This is because they present some of the most sophisticated and persuasive arguments on issues of law and sexual justice from the perspective of liberal theories of social justice. Their articulation and arguments for the idea of sexual autonomy are particularly inspiring and valuable and can be drawn upon to elucidate the implicit moral values in some projects of critical sexual justice. Furthermore, Bamforth (together with David A. J. Richards) provides the most systematic, convincing and eloquent critiques on the conservative new natural law theory.⁸⁸ I will draw on some of the important insights from their arguments of sexual autonomy. However, I also identify possible problems in some of their arguments; I focus on two points. The first is those tendencies of some liberal gay rights theories such as Balls' theory to imply or argue for a sexual hierarchy and stratification in the law and politics of sexual justice. Certain sexual practices or intimate relationships may be, implicitly or explicitly, prioritised in their sexual justice projects, while others devalued. This might be an inevitable result in practical law and politics as some distinctions and decision-making is inevitable in the practice of law and sexuality. However, I argue that when claiming or suggesting some new sexual hierarchies, liberal theories of sexual justice might, consciously or unconsciously, produce new levels of exclusion or marginalisation in sexual politics and in LGBT communities. Secondly, some of the theories and arguments about gender injustices and gender oppression in liberal theories of gay rights are significantly influenced by some kinds of subordination feminist ideologies and approaches. I argue, however, that it is not always unproblematic to generally adopt subordination feminist perspectives in thinking about sexuality, gender, justice and law.

⁸⁸ Nicholas Bamforth and David A. J. Richards co-author *Patriarchal Religion, Sexuality, And Gender: A Critique of New Natural Law*. In this inspiring book, Bamforth and Richards systematically examine and criticise the limitations, faults, inconsistencies and prejudices in the conservative new natural law theory. See Bamforth and Richards, n 24 above.

Contemporary normative legal and political theorists adopt different principles of social justice and political morality and therefore hold different opinions and ideas of how law and public policies ought to be made in the areas of sexuality. Principles of political morality are those principles that guide the political actions of public institutions and state power, including the practice of legal institutions.⁸⁹ Major normative legal and political theorists develop various views of the requirements and meaning of political morality in modern democratic societies. Applying these conceptions of political morality in the areas of sexuality and gender, normative theorists advance various arguments about how law and state' power ought to be employed in areas of gender and sexuality in modern democratic societies.

Liberal gay rights theorist Bamforth provides one of the most convincing arguments for the normative justification of sexual justice law. Bamforth argues that the fundamental justification and the underpinning value for the law and politics of sexual justice in modern democratic societies is the value of autonomy/empowerment.⁹⁰ Personal autonomy, according to liberal legal theorist Joseph Raz, denotes the ideal that 'people should make their own lives.'⁹¹ Raz holds that:

*'The autonomous person is a (part) author of his own life. The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives.'*⁹²

The ideal of personal autonomy refers to some degree of self-decision, self-authorship, self-responsibility, self-control and self-creation in one's own life. Autonomous life is the ideal of the value of autonomy. We can also talk about the

⁸⁹ Dworkin holds that political morality 'studies what we all together own other as individuals when we act in and on behalf of that artificial collective person.' By the collective person he means political communities. See Dworkin, n 45 above, 327-28. On the discussion and elaboration of theories of political morality and its relationship with theories of justice in legal and political philosophy, see Bamforth, n 1 above, 5-10.

⁹⁰ Bamforth, *ibid.*, 258-267; Bamforth, n 11 above, 41-46.

⁹¹ Raz, *The Morality of Freedom*, n 5 above, 369.

⁹² *Ibid.*, 369.

‘conditions of autonomy.’⁹³ Raz argues that to be able to live autonomously, there are three necessary conditions: ‘appropriate mental abilities, an adequate range of options, and independence.’⁹⁴ We need an adequate range of options for us to choose from and to consider within our lives. The condition of independence means one’s life is not coerced or manipulated by others.⁹⁵

Bamforth applies the idea of personal autonomy into sexual justice and holds that sexual autonomy is the most persuasive and profound moral justification and moral grounding for the law and politics of sexual justice. He holds that in a democratic society where the value of autonomy (or dignity/empowerment) is appreciated, people can find sexual/emotional expression, aspirations, affection and behaviours that are significant human goods and important human needs.⁹⁶ They are ‘of central importance for human beings.’⁹⁷ The value and importance of sexual expression and emotional communication can be shown by the fact that people have often suffered from the suppression of sexual impulses and emotional feelings.⁹⁸ Furthermore, there is always a certain degree of reciprocity and exchange in sex encounters, a reality denoting the value and need of human interdependence in sex.⁹⁹ Also, the reality that people’s sexual tastes vary also helps to explain the importance of sexual autonomy.¹⁰⁰ On the other hand, discriminatory laws and politics of sexuality have the negative effect of objectifying and devaluing the targeted groups such as LGBT people.¹⁰¹ Hostile and discriminatory law and politics in sexuality objectify the discriminated groups and individuals, such as gay, lesbian, bi and trans by stigmatising them, refusing them recognition, marginalising their needs and interests, and imposing a homophobic social culture and legal practices. As a result, the personal

⁹³ Ibid., 372.

⁹⁴ Ibid.

⁹⁵ Ibid., 377-378.

⁹⁶ Bamforth, n 11 above, 41.

⁹⁷ Ibid.

⁹⁸ Bamforth, n 1 above, 259.

⁹⁹ Bamforth, n 11 above, 41.

¹⁰⁰ Bamforth, n 1 above, 259-260.

¹⁰¹ Ibid., 261-264.

autonomy of LGBT people is deeply violated, disrespected and dismissed by these kinds of systematic discriminatory laws and politics.¹⁰² From the above arguments, Bamforth concludes that we need to respect the sexual autonomy of individuals and grant sexual minority people proper legal protection, such as the protection provided by antidiscrimination legislation and human rights law. He argues that:

‘[b]y granting legal protection we are, in consequence, both helping to combat objectification and disempowerment and protecting the moral good associated with freely chosen sexual behaviour, conceptions of sexuality, and sexual/emotional relationships.’¹⁰³

I find Bamforth’s arguments regarding sexual autonomy very persuasive and insightful in the way that they set out the moral value and moral grounds of sexual justice law and politics. The moral grounds of sexual justice law and politics could be properly explained and justified by the idea and value of personal autonomy in sexual and gendered lives.

Ball later develops a similar argument for gay rights law and politics based on the ideas of human need, human capacities and personal autonomy.¹⁰⁴ I agree with Bamforth and Ball that the arguments for autonomy are useful in elaborating and justifying the moral foundations and normative grounds of sexual politics and sexual justice law. The normative grounds for supporting the suggestion by queer theories of the need for constant critical thinking could be explained by our commitment to the value of personal autonomy or agency. However, holding that autonomy/agency could be plausible moral grounds for sexual politics does not mean that sexual politics projects ought to be regarded as foreclosed, certain, complete and unchanging normative projects. We still need to constantly reflect on our understandings of the meanings, requirements and conditions of personal

¹⁰² Bamforth. n 11 above, 42-44.

¹⁰³ Ibid., 44.

¹⁰⁴ Ball, n 44 above, 75-138.

autonomy/agency in sexual and gender life. Our grasp and interpretation of the meaning and requirements of autonomy/agency ought not to be treated as comprehensive, static and totalising. We need to keep our moral analysis open to constant reflection, adjustment and possible challenges. After all, there is always some degree of uncertainty and unknowingness and we need to be willing to see the possible limitations and tensions in our projects, including our normative arguments regarding sexual justice and law.

There is one major concern I raise about Ball's theory of sexual justice and gay rights. Ball claims that long-term and stable intimate relationships are morally more valuable than 'promiscuous', pure sexual, or only short term intimate relationships.¹⁰⁵ He argues that gay men and lesbians are not more promiscuous than straight people, and gay people are as capable as straight people to commit to long term relationships.¹⁰⁶ He holds that governments should not only permit same sex marriage, but should also actively promote and encourage long-term, stable and long-lasting relationships between gay people because these relationships, he thinks, are more valuable than those of a casual and non-committed nature.¹⁰⁷ He holds that family law and family policies ought to favour and promote stable, loyal and committed relationships in LGBT communities. I share with queer theorists such as Warner¹⁰⁸ and Butler¹⁰⁹ their concerns that such proposals might construct and produce a new kind of problematic sexual hierarchy in gay communities. 'Queer' gay people might be marginalised under this kind of homonormativity in gay politics. A possible new kind of sexual exclusion and sexual normativity could be produced and imposed on LGBT people in mainstream gay politics. I am not claiming that we cannot make a distinction between relationships, nor do I oppose gay marriage. Rather, what I would like to emphasise is that we also need to be vigilant of the possible violence and arbitrariness in constructing sexual hierarchies.

¹⁰⁵ Ibid., 106-111.

¹⁰⁶ Ibid., 131-133.

¹⁰⁷ Ibid., 106-117; 126-133.

¹⁰⁸ Michael Warner, 'Beyond Gay Marriage', in Wendy Brown and Janet Halley eds., *Left Legalism/Left Critique* (Durham: Duke University Press, 2002), 259-289.

¹⁰⁹ Judith Butler, 'Is Kinship Always Already Heterosexual?', in Wendy Brown and Janet Halley eds., *Left Legalism/Left Critique* (Durham: Duke University Press, 2002), 232-258.

Secondly, although I agree with Bamforth that sexual autonomy is a plausible and convincing normative grounding for the law and politics of sexual justice, I would like to raise one point about his elaboration of gender and sexual oppression. On reviewing three major reports on sexual and gender violence from Amnesty International, Bamforth argues that both women (as a group) and sexual minorities such as LGBT communities are imposed upon by oppressive gender norms in heteronormative societies.¹¹⁰ Sexual minorities such as gay men, lesbians and trans people are punished and discriminated because they violate the supposed normative gender expectations and rules in sexual life.¹¹¹ Women (as a group), according to Amnesty International and Bamforth, suffer from double gender oppressions. On the one hand, they are oppressed because of their conformity to the heteronormative gender norms. This is because normative gender rules in normative heterosexuality are oppressive and harmful to women. So even when women conform to the ascribed and expected gender norms, they are still being oppressed.¹¹² On the other hand, women, like gay men and lesbians, also are punished and disadvantaged if they try to break away from the dominant gender norms imposed upon them.¹¹³ So whether conforming to gender norms in normative heterosexuality or not, women are oppressed anyway because of their sex/gender. However, Bamforth seems to imply that, unlike women, men who conform to dominant gender norms or expectations in heteronormativity are not oppressed. Only sexual and gender minority men who deviate and violate gender norms are oppressed because of their gender/sex. If my understanding of his argument is correct, I would like to add that, just like women, men sometimes suffer from gender oppression of men *per se*. Men are sometimes discriminated against and oppressed, not just because they deviate from the normative gender expectations, but also because they conform to the expected and imposed gender norms of men/masculinity.

¹¹⁰ Nicholas Bamforth, 'Introduction', in *Sex Rights: The Oxford Amnesty Lectures 2002* (Oxford; New York: Oxford University Press, 2005), 1-43.

¹¹¹ *Ibid.*, 4-8.

¹¹² *Ibid.*, 3-8.

¹¹³ *Ibid.*

I totally agree with Bamforth that sexual minority people such as gay men and lesbians suffer from heteronormative oppression because they violate and deviate from the constraining and compulsory heterosexualist norms and expectations. I also totally agree with him that women do suffer double gender oppressions. Women who conform to normative gender rules may suffer from unequal caring responsibility, various forms of violence against women, or discrimination in their career. Women who resist dominant gender roles also face discrimination. However, I argue that men sometimes also suffer double gender oppressions. Men are not only punished by societies if they violate heteronormative norms of sexuality and gender, for example, the oppression and discrimination against gay men, trans men or feminine men. Sometimes men may also suffer gender oppression precisely because of their male sex/gender, because they are men, because they conform to certain expected and imposed gender stereotypes or rules. For example, as elaborated in Chapter 3, numerous pieces of research indicate that domestic violence is not just a male-to-female phenomenon. A significant percentage of domestic violence victims in heterosexual relations are men. Domestic violence occurs in same sex relations as well.¹¹⁴ Research finds that one of the main reasons men suffer from female violence in heterosexual relationships is related to the constructed masculine expectations and assumptions made of men in normative heterosexuality.¹¹⁵ Under heteronormative culture, men are often constructed and expected to be relatively invulnerable to harm, abuse and violence, especially by violence by women. Under these ideologies, some heterosexual women assume that men cannot be hurt, or assume the harmlessness of female violence; men are supposed to be able to take it (female violence). For example, according to sociological research, two of the major reasons for female university students using violence against their boyfriends are 'they do not believe that they can hurt men' and 'they expect that men do not care about slaps and punches, and

¹¹⁴ See Section 3.5 in Chapter 3.

¹¹⁵ Pasi Malmi, *Discrimination Against Men: Appearance and Causes in the Context of a Modern Welfare State* (PhD Thesis, University of Lapland, 2009). 236-237; Xiyang Wang and Sik Ying Ho Petula, 'My Sassy Girl: A Qualitative Study of Women's Aggression in Dating Relationships in Beijing', *Journal of Interpersonal Violence* 22, no. 5 (2007): 623-638.

do not retaliate.’¹¹⁶ The normative gender norms and expectations of macho masculinity imposed on men mean that men are often expected to be invulnerable to female violence. The problem of female to male violence therefore is that it can be easily trivialised or invisible in law and in society under such normative gender constructions in heteronormativity.¹¹⁷ Sometimes men suffer gender injustices and gender violence precisely because men are assumed to meet some dominant gender norms in normative heterosexuality; indeed, some dominant gender norms of men and masculinity themselves are oppressive and constraining.

I illustrate another example. Scholar R. Charli Carpenter indicates how gender-based violence is inappropriately understood and read as synonymous with violence against women under the influence of both feminist and traditionalist legal theories in international humanitarian law. She describes how violence against men and boys in conflicts is therefore marginalised, ignored and trivialised in international humanitarian law. She argues for the pressing need and significance of the recognition of, and attention to, the harms and injustices of gender-based violence against men and boys in conflict. She holds that ‘adult men and adolescent boys also face major risks of abuse and violence based upon culturally constructed notions about gender roles.’¹¹⁸ She indicates that ‘the human security proponents have failed to adequately recognize, take it seriously, and respond to adult men’s risk of summary execution, sexual violence or mutilation, and conscription as a human rights abuse and human security problem.’¹¹⁹

Carpenter finds that in conflicts men and boys suffer from gender violence against men such as sex-selective massacre or forced conscription precisely because of these men and boys’ male sex/gender. They suffer sex-selective massacre, not because they deviate from their male gender, but just because they are men. Similarly, they suffer from forced recruitment into military forces, not because they

¹¹⁶ Malmi, *ibid.*, 236-237. Wang and Ho, *ibid.*, 626-635.

¹¹⁷ See n 131 and n 132 in Chapter 3.

¹¹⁸ R. Charli Carpenter, ‘Recognizing Gender-Based Violence Against Civilian Men and Boys in Conflict Situations’, *Security Dialogue* 2006; 37; 97.

¹¹⁹ *Ibid.*

are judged as gender non-conventional, but because they are treated like 'normal' men. My point here is that the impact of gender oppression on men is wider than Bamforth implies. I suggest that we need to consider and address how men might be constrained or oppressed, not just because they deviate from the standard gender expectations of men and masculinity, but also in situations where they suffer gender oppression and gender injustices just because they conform to normative gender norms and stereotypes, or simply because of their male sex/gender. I further hold that Bamforth's sexual autonomy theory can provide a solid normative grounding for a humanist sexual justice project that aims to challenge sexuality and gender oppressions of LGBT, women and men in normative heterosexuality.

In this chapter I critically evaluated liberal justice theories on sexual justice. I found that Hart's arguments against legal moralism, although to some extent meaningful, nevertheless fail to provide a solid normative ground against heterosexism. He also fails to address the structural injustices of heteronormativity. Dworkin's project of liberal equality, although helpful in addressing some problems of some inequalities in distributive justice, also fails to address many aspects of injustices in heteronormativity. I contend that liberal theories of sexual autonomy proposed by Bamforth and Ball provide the most solid and convincing normative grounds and moral justification of the law and politics of sexual justice. I argue that liberal sexual autonomy theories can also provide some normative explanations of the implicit normative values in the queer approach. On the other hand, the queer approach highlights the significance of critical thinking in liberal projects of sexual justice. Despite the usefulness of liberal theories of gay rights, I also indicated their possible limitations. In the next chapter, I elaborate how queer humanist men and masculinity studies draw on liberal theories of sexual autonomy, humanist men's studies and queer theory, and the implications of such approaches in sexual justice law and politics.

Chapter 6 Conclusion: Incorporating The Approaches of Queer Humanist Men and Masculinities Studies in Sexual Justice Law and Politics

In the previous chapters, I critically evaluated salient contemporary progressive and critical theories on sexual justice, sexual politics and normative heterosexuality. In Chapter 3 I discussed the early critiques of normative heterosexuality from the perspective of theories of lesbian feminism and gay liberation. Despite their original contribution of subjecting normative heterosexuality to critical reflection, they tend to hold essentialist ideas of sex, gender and sexual orientation. Gay liberationist theorist Altman notices the possible connection between gay liberation and men's liberation. However, he fails to fully address the issue and leaves the topic generally unexplored and undeveloped. Contemporary subordination feminism extends and revises early lesbian feminists' critiques of normative heterosexuality. Subordination feminism contributes greatly to the tasks of elaborating and addressing structural gender injustice and gender oppression of women in normative heterosexuality. However, those theorists tend to hold an oversimplified view of gender oppression and structural gender injustices by assuming women/femininity as the only sex/gender that is oppressed within normative heterosexuality. Furthermore, their focus on women's subordination often marginalises or renders invisible the experiences and perspectives of sexuality and gender minorities within these subordination feminist projects of sexual justice and law. I use the violence against women feminist approach to family violence to illustrate this point. I find LGBT and male victims are generally marginalised while the problem of female violence is generally trivialised in subordination feminist family violence jurisprudence and politics. Subordination feminist ideologies also inform and dominate the mainstream approach to men's studies. I find that subordination-feminist men and masculinities studies suffer from similar limitations to those found in subordination feminism. In subordination-feminist men's studies, family power and family violence is generally essentialised and reduced to male domination and male violence over women and children. The multiple power relations and dynamics in the family and the problems of female abuse and violence are overlooked.

In Chapter 4 I critically analysed two alternative approaches to mainstream subordination feminism with respect to sexual justice and sexual politics: humanist men's studies and queer theory. I find humanist men's studies valuable and useful owing to their unravelling the often overlooked gender discrimination and injustices towards men. However, these approaches are limited by failing to provide a solid normative grounding for humanist men's studies projects. They also tend to assume heterosexist men's experiences and perspectives in their research. I argue that their study could benefit from incorporating insights from liberal theories of justice and queer theories. I also critically review queer theories in this chapter. I find queer theories especially useful and inspiring in problematising and unsettling naturalised and moralised heteronormativity. Queer theories also contribute significantly by questioning the essentialist tendency in second wave feminism and in highlighting existing heteronormative oppression and injustices towards LGBT people. However, I argue that queer feminism is still significantly influenced by subordination feminist ideologies of gender oppression. The consequence is that they often have difficulty in seeing and addressing the gender oppression of men as men. With this weakness, queer feminism is unable fully to subvert the oppression of normative heterosexuality. Moreover, just like some subordination feminist projects, queer feminism might to some extent further perpetuate unjust and constraining gender norms in normative heterosexuality. I also argue that it is not enough for some queer and gay theories to focus solely on tackling sexuality oppression in normative heterosexuality. As queer feminism theorists rightly point out, gender analysis is also an important dimension in critiques of heteronormativity. However, I do not think that the analyses presented by subordination feminism and their perspectives on gender hierarchy and oppression are the only plausible and legitimate analyses of gender, as some queer feminist theory assumes. I argue that a more balanced, inclusive and multi-dimensional concept of gender power relations and gender oppression is needed. I also contend that some injustices towards and discrimination against gay men cannot be fully unravelled

and addressed if we solely focus on addressing sexuality discrimination against gay men. I argue that just as lesbians may experience double discrimination of sexuality and gender, gay men too also sometimes experience double discrimination and intersectional injustices of sexuality and male sex/gender. I argue that it is important for a queer critique of normative heterosexuality to address, not only oppression on grounds of sexuality, but also gender oppression. I also contend that although many queer projects imply some normative values and concerns, they generally do not address and articulate the normative grounds and values that inform and underpin their projects. I argue that we need to consider moral/normative thinking in our projects of sexual justice against heteronormativity.

In Chapter 5 I critically evaluated different liberal theories of sexual justice. I find that liberal theories of sexual autonomy provided by liberal gay rights theorists such as Bamforth and Ball best elucidate and justify the moral values and normative grounds for projects of sexual politics and law against normative heterosexuality. However, I argue that we need to be cautious about making a new sexual hierarchy in liberal justice theory. Also, I argue that some liberal theories of sexual autonomy adopt subordination feminist ideologies in their arguments regarding gender oppression. I argue that they are likely to suffer from the same weaknesses as subordination feminism in this respect. I argue that liberal theories of sexual autonomy itself can provide a solid normative grounding by which to challenge all aspects of sexuality and gender oppression in heteronormativity. Their theories of sexual justice support and suggest the need to address, not only oppression of women as women, but also oppression of men as men.

After critically reviewing the strengths and weaknesses of contemporary progressive and critical theories on law, sexual justice and normative heterosexuality, I argue in this concluding chapter that it is worth incorporating a combined approach of queer humanist men and masculinities studies in thinking about gender oppression, normative heterosexuality, law and sexual justice. A combined approach, I argue, is

an approach that draws on queer theories, liberal theories of sexual justice, some feminist theories, and humanist men and masculinities studies.

I hold that there are two layers of convergence in such an approach of queer humanist men's studies. First, I suggest a convergence between liberal theories of sexual justice and humanist men and masculinities studies. I employ liberal theories of sexual justice to explain the moral grounds that underpin humanist men and masculinities studies while also bringing humanist men and masculinities studies' concerns into liberal theories of sexual justice. Together they can form liberal humanist men and masculinities studies. Then I suggest a combined queer and liberal humanist men and masculinities studies by bringing queer orientations into liberal humanist men and masculinities studies, while also bringing liberal humanist men and masculinities orientations into queer studies. I contend that liberal humanist men and masculinities studies can benefit from a consideration of some notions and insights from queer theories, while queer projects can also benefit from a consideration of some insights from liberal humanist men and masculinities projects. I argue that the combined perspective inspired by queer liberal humanist men's studies can contribute to our knowledge of sexual justice and gender oppression. They are worthy of being considered and taken seriously in the law and politics of sexual justice.

I argue that queer humanist men's studies use both the approaches of critical/queer theory and also analytical moral and political philosophy to study the law and politics of sexuality and gender. Insights from queer theories are drawn upon in queer humanist men's studies. Sexuality and gender categories are not regarded as fixed, stable, static, or closed. Rather, they are partially products of various social forces. In the politics of sexual justice, on the one hand, we use identity categories to reflect on issues of social groups and social justice. On the other hand, it is important to critically examine and to reflect upon how sexuality and gender boundaries, distinctions and categories are made and the power relations involved in exclusion and inclusion, and the process of recognition and the non-recognition.

Since there are important moral/normative implications and concerns in visible queer projects, I argue that we need to follow a double-path in sexual politics and sexual justice projects by emphasising the needs of both critical thinking and moral inquiry in sexual politics against normative heterosexuality. In addition to the critical scrutiny of the use of identities categories and the critical reflections on normative heterosexuality, we also need to explore the normative grounds and the implications of our projects of sexual politics and sexual justice.

I share Butler's insight, that to think critically is a necessary requirement for a responsible ethics and social justice project. Normative projects of sexual justice need critical reflection. I further expand her argument by claiming that ethical/moral concerns and reflections are also important dimensions of the law and politics of sexuality and gender. We need moral philosophical investigation and elaboration of the normative implications of queer projects. For instance, we need to think about why we need to open up possibilities, why we need to resist domination, and why values such as freedom, autonomy or agency ought to be promoted. On the other hand, there are also critical reasons why normative legal theories of sexuality and gender should also always be sensitive to the power relations and the possible exclusion, distinction and hierarchies they make or rely on in their normative systems and judgements. Critical thinking reminds us to be vigilant of the possible violence behind normative judgements and reminds us of the importance of the virtue of openness in thinking about normative law and politics of sexuality and gender. The key point here is not to regard our normative project as comprehensive, complete, stable, foreclosed, absolute and unchanging. We need to acknowledge the possibilities of unknowingness and uncertainty and keep self-reflective in our normative projects.

By applying a moral/ethical approach, queer humanist men and masculinities studies explore the moral values, the moral grounds and the normative requirements of sexual justice and their implications for men and masculinities in law, politics and social life. By also employing a queer approach, queer humanist men and masculinities studies would like to investigate how the ideas, norms,

performativity and stereotypes of masculinities are produced, reproduced and reiterated in normative heterosexuality. Both the normative analysis and the critical reflections will benefit from being informed by up to date and balanced empirical research in sexuality and gender.

Some findings from humanist men and masculinities studies are also incorporated in the combined approach of queer humanist men's studies. Humanist men and masculinities studies reject conservative traditionalist and patriarchal articulation and proposals of sexuality and gender. However, unlike subordination-feminist men and masculinities studies, humanist men and masculinities studies are not bound by the overarching subordination-feminist ideologies and perspectives on gender, men and masculinities. Therefore, they are more capable of not only seeing gender oppression of women, but also gender oppression of men as men. Some insights of humanist men and masculinities are drawn upon in the combined approach of queer humanist men and masculinities studies. For example, their finding that sexism is not just about sexism against women is crucial in sexual justice study. I hold that gender oppression against men does exist and ought to be addressed and taken more seriously. However, humanist men's studies do not provide systematic normative arguments to elucidate the moral grounds for addressing gender oppression of men *qua* men. Their descriptions of gender oppression of men are also based on a heterocentrist analysis. I argue that the combined approach of queer humanist men's studies addresses this weakness by exploring the normative grounds for tackling gender oppression of men and by highlighting the significance of considering perspectives from gay, bi and trans men in men's studies.

I point out that queer humanist men and masculinities studies hold that, although it is very important to address gender injustices towards women, it is not enough to solely see and address issues of gender oppression of women in sexual justice law and politics. The studies hold that the problems of gender injustices towards men also need to be taken seriously and cannot be reduced solely to issues of injustices towards some minority men. Therefore, there is both convergence and divergence between queer feminism and queer humanist men and masculinities studies. Queer

feminist projects such as Butler's argument that not only women, but also a minority of sexual and gender non-conforming men, are victimised in normative heterosexuality. They hold that sexual and gender non-conforming men should also be protected and covered by law and projects of sexual justice and gender equality. However, they generally still, consciously or unconsciously, imply in their projects that those men who suffer from gender oppression are only minorities, are exceptional and are oppressed only because of their deviation from standard gender and sexuality norms. They imply that generally men (as a group) do not experience systematic gender oppression *per se*. Gender relations between men and women (or between masculinity and femininity) are still hierarchal and are still assumed to be the unilateral oppression of women. Queer feminism has some important breakthroughs because it goes beyond purely women-centred and women-exclusive gender justice projects and incorporates some concerns of gay theories or queer theories. There are significant merits in this approach. However, they still fail to acknowledge and address systematic gender oppression of men *qua* men.

I argue that there are convergences between queer feminism and queer humanist men and masculinities studies. For example, they both challenge heterosexism and oppression of women in their projects regarding sexual justice. However, there is also divergence. Queer feminism generally does not see, acknowledge and address gender oppression of men *qua* men. Queer humanist men and masculinity studies instead hold that just like lesbians suffer discrimination, not only because of their sexuality but also their femaleness or femininity, gay men sometimes may also suffer injustices and discrimination, not solely because of their homosexuality, but also because of their male sex/gender. For example, men as a gender group, including gay men, are all more likely to be victims of the gender violence in the event of sex-selective massacres or forced recruitment in conflicts. Adult men, no matter whether they are gay, bi or straight are all more likely to be targets of gender violence in the event of sex-selective massacres or forced conscription because of their biological sex. There is gender oppression of men as men, which constrains not only straight men, but also gay and bi men; just as there is gender oppression of

women as women, which constrains both heterosexual women and lesbians. In order to be able to fully understand and address the gender oppression that gay men experience, it would not be enough to only treat injustices towards gay men as simply an issue of oppression of sexuality and of gender non-conventional men. Queer humanist men and masculinities studies maintain that we also need to address gender oppression against men as men to fully understand the double discrimination gay men may experience.

I contend that queer humanist men and masculinities studies also remind us that some oppressive gender myths and stereotyping could be reproduced and perpetuated consciously or unconsciously not only by patriarchal chivalrous thinking, but also by some subordination feminist ideologies. For example, both patriarchal chivalrous and some subordination feminist ideologies tend to construct and reproduce the myths and biases of harmless/vulnerable women and femininity and violent/invulnerable men and masculinity in law and in politics, such as in child abuse law and public policies.¹ The problems and harm of female violence and female abuse by women might be rendered invisible, trivialised, minimised or silenced. Victims of female abuse, especially male victims, may also be easily ignored, ridiculed, disbelieved, stereotyped and experience obstacles to legal and professional help and support due to the biased institutional culture. Queer humanist men and masculinities studies would like to remind us that the law and policies proposed by subordination feminism are not necessarily guaranteed to unsettle heteronormativity and gender prejudices and injustices. On the contrary, they sometimes produce and perpetuate, rather than transform, oppressive heteronormative and unjust gender constraints in their projects of sexual politics and sexual justice.

I argue that from the perspective of queer humanist men's studies, the power relations with respect to gender and within the family are understood as far more complicated and multifaceted than the oversimplified model of 'dominant men (as a

¹ Camille Gear Rich, 'Innocence Interrupted: Reconstructing Fatherhood in the Shadow of Child Molestation Law', *California Law Review* 101, no. 3 (2013), 609-698.

group)/oppressed women (as a group)', a model implied by some salient subordination feminist theories and subordination-feminist men and masculinities theories. I suggest that a more nuanced and multi-dimensional idea of gender oppression and gender power relations is needed in order to reflect adequately on issues of sexual justice, sexual politics, gender oppression and normative heterosexuality.

I contend that one of the core insights of queer humanist men and masculinities studies is the rejection of an oversimplified and unidimensional concept of gender oppression and gender power relations; a concept frequently assumed by subordination feminism. Queer humanist men and masculinities studies view the power relations of gender and the gender oppression in the family as multi-layered and complex, not just about male domination and female subordination. Complex forms of subordination, domination and oppression can co-exist and do co-exist in gender relations, gendered lives and in the family. We ought not to simply reduce gender oppression and gender subordination to only unilateral oppression of women by men, or vice versa; the realities are much more complicated and multifaceted. Most of the time, men and women are both constrained and restricted in heteronormative norms of gender and sexuality, although perhaps in different ways, by different means, and on different occasions. I argue that by taking a multifaceted view of gender oppression in the family, we will be able to see oppression, injustice and injury not generally appreciated, noticed or addressed by patriarchal, chivalrous or subordination feminist perspectives on sexual justice, law and the family. I contend that a multi-dimensional model of gender power relations and gender oppression is a very important theoretical tool to destabilise and to unravel oppressive gender ideologies and stereotyping in normative heterosexuality.

Take familial lives and family relationships as an example. As elaborated earlier, theories of family law and family justice offered by subordination feminists tend to hold a unilateral understanding of gender oppression and claim that women (as a group) are oppressed by men (as a group) in the institutions of marriage and family.

I argue that women certainly suffer some forms of gender oppression such as the unequal caring roles, their lower involvement in the career market, and the problems of male violence in the family. I totally agree that gender oppression of women ought to be taken seriously and be addressed; however, this does not mean that we only acknowledge the existence and the seriousness of gender oppression of women in the family. By viewing gender oppression as complex and multi-dimensional as I suggest, we can acknowledge that in family lives, not only women, but also men may suffer certain gender injustices and oppression. Just as my discussion of family violence in Chapter 3 indicates, gender oppression is not just about women's oppression. Family violence cannot be easily reduced to a problem of male dominance over women (and children) in the patriarchal family as mainstream subordination feminism holds.

Different from the subordination feminist's unilateral concept of gender oppression as oppression of women by men in the family, I argue that family power relations and family oppression are much more complex and multi-dimensional. Not only do women suffer certain forms of gender oppression in the family, but men may also experience gender oppression and gender injustices in the family. For instance, fathers face greater obstacles in playing and fulfilling the caring roles. Under current English family law systems, the biological mother has automatic parental responsibility and right. Biological fathers, unless they are married to the biological mothers, are not automatically afforded parental responsibilities. They have to acquire it by birth registration, by a parental responsibility agreement with mothers, or by applying for parental responsibility orders, usually occurring in conflicting cases.² While biological mothers have the institutional privilege of automatically secured parental responsibility and rights before law and do not suffer the burden of having to ask for their partner's agreement to acquire parental responsibilities. Biological fathers (gay or straight) who are not married to biological mothers may struggle emotionally, financially and legally to see their parental responsibilities

² Sonia Harris-Short and Joanna Miles, *Family law: Text, Cases, and Materials* second edition (Oxford: Oxford University Press, 2011), 661.

recognised by law and to be able to be involved with their beloved children. They may face tremendous obstacles from biological mothers.³

Research also indicates that despite the formal and apparent use of gender neutral language, current family law culture and practice still de facto favours mothers over fathers in residence arrangements after separation.⁴ Fathers often express their fear of antagonising children's mothers because they are often dependent on mothers' good will in maintaining contact or shared residence arrangements.⁵

*'Whether or not fathers had played an equal part in the care and upbringing of their children or indeed been the primary carer, there was a clear sense that parental separation had left them with a sense of becoming a 'second-class' parent. Fathers often felt mothers were able to act arbitrarily and that their own relationships with their children were now somewhat dependent on the mother's goodwill.'*⁶

Legal professionals often advise fathers and mothers differently by discouraging involved fathers to seek child residence/physical custody in divorce/separation cases even though both parents are highly involved and competent parents.⁷ Research also indicates that even equal parenting fathers and primary carer fathers often suffer gender discrimination and bias in child custody cases.⁸ The gender injustices and gender discrimination against fathers in parental responsibilities and

³ Ibid., 662-663.

⁴ Richard A. Warshak, 'Gender Bias in Child Custody Decisions', *Family Court Review* 34, no. 3 (1996), 396-409; Edward Kurk, 'Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers after Divorce', *Family Court Review* 30, no. 1 (1992), 81-101; Sanford L. Braver, Jeffrey T. Cookston, and Bruce R. Cohen, 'Experiences of Family Law Attorneys with Current Issues in Divorce Practice', *Family Relations* 51, no. 4 (2002), 330-331; Joyce A. Arditti, and Katherine R. Allen, 'Understanding Distressed Fathers' Perceptions of Legal and Relational Inequality Postdivorce', *Family Court Review* 31, no. 4 (1993), 461-476; Leighton E. Stamps, 'Maternal Preference in Child Custody Decisions', *Journal of Divorce & Remarriage* 37, no. 1-2 (2002), 1-11; Alexander Masardo, 'Negotiating Shared Residence: The Experience of Separated Fathers in Britain and France', in Jo Bridgeman, Heather Keating and Craig Lind eds., *Regulating Family Responsibilities*, (Farnham: Ashgate, 2011), 127-129; Charlie Lewis, Amalis Papacosta, Jo Warin. *Cohabitation, Separation and Fatherhood* (York: York Publishing Services for Joseph Rowntree Foundation, 2002), 24-53.

⁵ Masardo, *ibid.*, 127-129.

⁶ Ibid.

⁷ Braver, Cookston and Cohen, n 4 above, 330-331; Kurk, n 4 above, 81-101.

⁸ Lewis, Papacosta and Warin, n 4 above, 24-53.

child custody are not trivial. From the perspective of queer humanist men's studies, these injustices should be taken seriously.

Gay fathers suffer double burdens and double discrimination in parenting issues. On the one hand, gay fathers experience heterosexist discrimination and hostility because of their sexuality. On the other hand, they also suffer sexist gender discrimination against men in parenting issues.⁹ For example, in the case *Salgueiro da Silva Mouta v Portugal*,¹⁰ the Court of Appeal in Portugal overruled a previous decision giving a gay father physical custody and responsibility for his young daughter on two grounds. First, the Court of Appeal stated that 'as a general rule custody of young children should be awarded to the mother unless there were overriding reasons to the contrary.'¹¹ The second reason is the Court of Appeal finds that 'homosexuality was an abnormality and the children should not grow up in the shadow of abnormal situations.'¹² The ECHR Court decides that the Portuguese Appeal Court's decision violates art 8 of the ECHE Convention taken in conjunction with art 14. The ECHR Court declares the Portuguese court's articulation on making discriminatory treatment on grounds of homosexuality unconvincing, clumsy and failing to meet the proportionality test. Nevertheless, the legitimacy and legality of the arguments and the principle of maternal preference are not addressed in this case by the ECHR Court.

The above case shows that gay fathers do sometimes face double discrimination because of their male sex/gender and their homosexuality. To properly understand and to address fully discrimination against and injustices towards gay fathers, we need to tackle not only sexuality injustices towards gay men, but also gender injustices towards gay men. Also, both gay men and straight men may suffer similar gender injustices towards men *qua* men, for example, in cases of gender injustices towards fathers in child custody law. I argue that we need the perspectives inspired

⁹ Michael E. Lamb, *The Role of the Father in Child Development*, 327. Rich, n 1 above, 695-696.

¹⁰ *Salgueiro da Silva Mouta v. Portugal*, 31 E.H.R.R. 47 (2001).

¹¹ *Ibid.*

¹² *Ibid.*

by queer humanist men and masculinities studies to better understand the double and intersectional oppressions of gay men.

Queer humanist men's studies suggest that multiple factors and criteria other than economic earning power can be and should be used to analyse and to understand power relations within the family. One important factor concerning the dynamics of familial power concerns power arising from relationships in the family. Biological mothers, no matter whether in homosexual or heterosexual relations, normally have a greater say over issues of caring, parenting and children. Biological mothers have more familial power and opportunities to play the maternal gatekeeping roles by restricting or deciding the range of involvement of the other partner or other people with children.¹³ For many children and fathers, mothers have significant power over other family members.

I emphasise that the approach of queer humanist men's studies has significant implications in many areas of law and policy regarding children and parenting. By not denying the contribution and love of many devoted parents, queer humanist men's studies question not only the uncritical construction of the image of harmless and safe men, but also the harmless and safe female image in the family. The caring, safe and harmless female image, especially caring, safe and harmless mother/mothering images, are assumed and reinforced in both patriarchal culture and in some subordination feminist ideologies. However, I do not agree with some subordination feminist theories in the way that they consciously or unconsciously trivialise, minimise or ignore the harm and problems caused by female abuse in the family. As pointed out in Chapter 3, although mothers and fathers perpetrate similar

¹³ See Mignon R. Moore, 'Gendered Power Relations among Women: A Study of Household Decision Making in Black, Lesbian Stepfamilies', *American Sociological Review* 73, no. 2 (2008), 335-356; Pruett, Marsha Kline, Lauren A. Arthur and Rachel Ebling, 'The Hand That Rocks the Cradle: Maternal Gatekeeping after Divorce', *Pace L. Rev.* 27, no. 4 (2006), 709-739; Jay Fagan, and Marina Barnett, 'The Relationship between Maternal Gatekeeping, Paternal Competence, Mothers' Attitudes about the Father Role, and Father Involvement', *Journal of Family Issues* 24, no. 8 (2003), 1020-1043; Sarah M. Allen, and Alan J. Hawkins, 'Maternal Gatekeeping: Mothers' Beliefs and Behaviors That Inhibit Greater Father Involvement in Family Work', *Journal of Marriage and the Family* 61, (1999), 199-212; Marion L. Kranichfeld, 'Rethinking Family Power', *Journal of Family Issues* 8, no. 1 (1987): 42-56; Naomi Segal, 'Why Can't a Good Man Be Sexy? Why Can't a Sexy Men Be Good?' in David Porter ed., *Between Men and Feminism* (London: Routledge, 2012), 37, 40-41.

rates of child physical and psychological abuse, maternal abuse is far less likely to be reported and addressed compared to paternal child abuse. I challenge some subordination feminists' reduction of problems of child abuse and family violence to almost only problems of male power and control over women and children.

Another example to problematise the subordination feminist's oversimplified idea of family power as male control over women and children is the issue of intrusive parenting/parental psychological control.¹⁴ Parental psychological control, overall, denotes parenting that 'does not allow children psychological autonomy.'¹⁵ Scholars argue that '[t]he central elements of psychological control are intrusive into the child's psychological world and self-definition and parental attempts to manipulate the child's thoughts and feelings through invoking guilt, shame, and anxiety.'¹⁶ Research finds that parental psychological control has negative effects on children and is associated with the disturbances of self-processes and some internalised and externalised problems of children and adolescents.¹⁷ Studies suggest some fathers and mothers perpetrate intrusive parenting towards their children; the majority of research finds that mothers perpetrate a higher level and percentage of parental psychological control over children.¹⁸ LGBT children and adolescents may be particularly vulnerable to parental psychological control over and intrusion into their

¹⁴ Barber and Harmon argue that parental 'psychological control refers to paternal behaviours that are intrusive and manipulative of children's thoughts, feelings and attachments to parents. These behaviours appear to be associated with disturbances in psychoemotional boundaries between the child and parent, and hence with the development of an independent sense of self and identity. It is also predictive of numerous forms of psychological and social maladaptation.' See Brian K. Barber and Elizabeth Lovelady Harmon, 'Violating the Self: Paternal Psychological Control of Children and Adolescents', in Brian K. Barber ed., *Intrusive Parenting: How Psychological Control Affects Children and Adolescents* (Washington: American Psychological Association, 2002), 15.

¹⁵ Susanne Frost Olsen et al, 'Maternal Psychological Control and Preschool Children's Behavioural Outcomes in China, Russia, and the United States', in Brian K. Barber ed., *Intrusive Parenting: How Psychological Control Affects Children and Adolescents* (Washington: American Psychological Association, 2002), 235,

¹⁶ Gaye Stone, Cheryl Buehler, and Brian K. Barber, 'Interparental Conflicts, Parental Psychological Control, and Youth Problem Behaviour', in Brian K. Barber ed., *Intrusive Parenting: How Psychological Control Affects Children and Adolescents* (Washington: American Psychological Association, 2002), 57.

¹⁷ Barber and Harmon, n 14 above, 25-46.

¹⁸ Brian K. Barber, Roy L. Bean and Lance D. Erickson, 'Expanding the Study and Understanding of Psychological Control', in Brian K. Barber ed., *Intrusive Parenting: How Psychological Control Affects Children and Adolescents* (Washington: American Psychological Association, 2002), 266.

feelings, self-development, self-discovery, and emotional lives in homophobic families as many LGBT youths suffer from parental rejection and disapproval of their sexual orientation.¹⁹ With a plural idea of gender power and gender oppression in the family, I argue that queer humanist men's studies will enable us to see and address the problem of not only paternal psychological control, but also the problem of maternal psychological control over children in the family.

My point is that family power relations and gender oppression in families are not a unilateral and simplified male dominance/female subordination model. Family power relations and gender oppression in the family are better understood from a multi-dimensional and complex model. I argue that by adopting a multi-dimensional and complex concept of gender oppression, we will not only be able to see the gender oppression of women, but also the gender oppression of trans people, of gay men and lesbians, and of men in the family. Also, we will not only see dangerous or harmful parenting perpetrated by some fathers, but also dangerous and harmful parenting perpetrated by some mothers.

I also argue that queer humanist men and masculinities studies also emphasise the importance of intersectionality and the influence from other categories that make up a person's identity such as race, class and age. Queer humanist men and masculinities studies, while focusing on sexuality and gender and their interactions, do not claim that sexuality and gender identities are more fundamental categories than others such as race or class. Queer humanist men's studies emphasise the significance of addressing the intersections and impacts of different identity categories. For example, working class men often face the intersectional oppression of burdens of a heavy workload, unsocial working hours and unpleasant and even dangerous working conditions. It is important to see and address the particular experiences and the intersection of class and gender of working class men. Although normative heterosexuality is primarily a concept related to sexuality normativity and gender normativity, this does not mean their intersections with other axes of social

¹⁹ Melinda, S. Miceli, 'Gay, Lesbian and Bisexual Youth', in Diane Richardson and Steven Seidman eds., *Handbook of Lesbian and Gay Studies* (London: Sage, 2002), 200.

categories in heteronormative culture should be neglected. For example, in addressing the injustice of normative heterosexuality and its impact on East Asian gay men, we not only need to pay attention to how heteronormative sexuality and gender norms might affect gay men as a social group, we may also need to appreciate the influence of the cultural and ethnic background and its intersection with sexuality and gender in East Asian gay men's lives, such as the influence from Confucian ideologies.

I contend that queer humanist men and masculinities studies criticise equality law approaches promoted and adopted by some subordination feminists, such as the women-exclusive approach to gender equality and sexual justice adopted by the CEDAW Convention and the CEDAW Committee. I criticise this approach for its institutionalisation and perpetuation of certain heteronormative, constraining and binary gender norms and ideologies and its ignorance of gender discrimination against men. I also question the oversimplified and binary 'male as privileged group/female as disadvantaged group' model adopted in some equality jurisprudence. There is a trend in some equality and discrimination jurisprudence to label and define men as the privileged gender group and women as the oppressed group.²⁰ However, I argue that this kind of approach to gender equality law may actually reproduce and reinforce some heteronormative gender norms. For example, in Canada, female inmates are not subjected to cross-gender frisk searches and surveillance while male inmates are subjected to frisk searches and surveillance by female guards in prison. In the case of *Weatherall v Canada (Attorney General)*,²¹ a male inmate challenged the different treatment of genders in prison but this claim was rejected by the Canadian court. One of the important reasons the court cites in rejecting the male inmate's claim is that women are generally a disadvantaged group while men are privileged. Therefore women are regarded and judged as more

²⁰ Kathleen E. Mahoney, 'Canadian Approaches to Equality Rights and Gender Equity in the Courts', in *Human Rights of Women: National and International Perspectives*, edited by Rebecca J. Cook, (Philadelphia: University of Pennsylvania Press, 1994), 437-462. Andrew Koppelman, *Antidiscrimination Law and Social Equality*, (New Haven: Yale, 1996). Catharine A. MacKinnon, *Women's Lives, Men's Laws*, (Cambridge: Harvard University Press, 2005), 32-57, 240-244.

²¹ *Weatherall v Canada (Attorney General)*, 1993 S.C.R. 2 872 (1993)

vulnerable and more threatened by sexual abuse or sexual harassment than men.

The Canadian court holds that:

*'[W]omen generally occupy a disadvantaged position in society to men. Viewed in this light, it becomes clear that the effect of cross-gender searching is different and more threatening for women than for men. The different treatment to which the appellant objects thus may not be discrimination at all.'*²²

Here the Canadian court implicitly expects, holds, produces and reinforces a heteronormative gender standard and stereotype for all men: men are, and ought to feel, less threatened than women when experiencing cross-gender searching and surveillance by the opposite sex. By constructing the male subject in this way, the court implicitly reproduces and sustains some heteronormative gender order, norms and stereotypes such as men are (and should be) more invulnerable to sexual harassment by females, and women are unlikely to be perpetrators of sexual aggression and sexual abuse. The monolithic and institutionalised 'men as privileged group/ women a disadvantaged group' approach adopted by the Canadian court is likely to perpetuate the myths that female-to-male sexual abuse and violence is less threatening, less damaging and less harmful than male-to-female violence; and men are, and ought to be, more immune from sexual aggression and harassment than women. I argue that this kind of equality law approach and way of thinking about sex, gender and sexual justice is problematic. It is reproducing new forms of heteronormative gender norms and oppression through the construction and adoption of problematic gender equality jurisprudence.

One more point that queer humanist men's and masculinities studies would like to emphasise is that we need to collect empirical data and investigate experiences from all gender and sexuality groups in order to better understand the realities of gender and sexual life.

²² Ibid.

Unfortunately, some legal and political projects on sexuality and gender do not base their theories and claims on solid or up to date empirical studies. The consequences are that their proposals and claims may be unbalanced, biased or discriminatory. For example, some domestic violence and gender violence research tends to collect or survey only empirical data, perspectives and experiences regarding domestic violence committed against women by men. Data and experiences in same sex intimate relations are frequently ignored.²³ Data and experiences of male victims are often uncollected, ignored or avoided; and if collected, are sometimes suppressed.²⁴ By only collecting data and surveying experiences of female victims affected by male violence, such research inappropriately bases its theories and policies regarding family violence on one-dimensional empirical data and perspectives. By ignoring male and non-heterosexual victimisation, they tend to claim that family violence is generally a problem of violence against women by men. Non-heterosexual victims are too easily marginalised and male victims are silenced and unrecognised in this kind of problematic research approach. For example, the *World Report on Violence and Health* from the World Health Organization (WHO) justifies its concern and discussion of domestic violence to solely male-to-female violence by stating that 'the overwhelming burden of partner violence is borne by women at the hands of men.'²⁵ However, the research sources that the report cites in its references for the claim are researches which collect and survey only data of male-to-female violence.²⁶ No empirical data of male victims, female perpetrators and experiences within same sex relations in domestic violence are collected, addressed and surveyed in the sources the WHO report cites and relies on. In fact, the two sources the WHO report uses to justify its sole focus on male-to-female domestic violence are both violence against women studies. Issues of violence

²³ See Kierrynn Davis and Nel Glass, 'Reframing the Heteronormative Construction of Lesbian Partner Violence: An Australian Case Study', in Janice L. Ristock ed., *Intimate Partner Violence in LGBTQ Lives*, (London: Routledge, 2011), 16-18.

²⁴ Murray A. Straus, 'Processes Explaining the Concealment and Distortion of Evidence on Gender Symmetry in Partner Violence', *European Journal on Criminal Policy and Research* 13, no. 3 (2007), 227-232.

²⁵ World Health Organization, *World Report on Violence and Health*, Geneva, 2002: 89-91, 113.

²⁶ See L.L. Heise, M.Ellsberg, M. Gottemoeller, *Ending Violence Against Women, Population Reports Series L no. 11* (Baltimore: John Hopkins University School of Public Health, 1999), 4-6; WHO, *Violence against Women: A Priority Health Issue* (Geneva: WHO, 1997) (Document WHO/FRH/WHD 97.8).

against men and LGBT are hardly covered and addressed in these sources. By relying on research that focuses on and includes only heterosexual women's experience of victimisation in domestic violence perpetrated by a male partner, it is not surprising that the WHO report finds only male violence against women worthy of being addressed. However, the reductionist and oversimplified approach is biased, unjust and dangerous. Harms and injuries suffered by same sex couples, trans couples and male victims are easily marginalised in this kind of research approach and in public policies. Moreover, heteronormative norms and ideologies of sexuality and gender are further perpetuated and sustained by the WHO policy of domestic violence. I argue that it is important to collect solid and balanced empirical data and experiences in sexuality and gender research to help us better understand and grasp the reality.

I argue that we will be able to see more realities and previously hidden or marginalised sexuality and gender oppression by incorporating perspectives inspired by queer humanist men and masculinities studies. Also, the core idea of this approach on gender oppression is to adopt a multi-dimensional concept of gender oppression.

In respect of gay and queer studies, I hold that the approach of queer humanist men and masculinities studies can possibly contribute to the research of gay men's needs and interests, an area that is still underexplored in gay and queer studies. For example, this kind of approach might help us better understand and identify the specific difficulties and discriminations gay, bi or trans fathers may experience, but are not always captured or appreciated in subordination feminist and lesbian feminist theories of family law. I also hold that jurisprudence of sexuality, gender and justice could benefit from incorporating perspectives of queer humanist men and masculinities studies. Furthermore, I contend that unless we also take the injustices of gender normativity of men and sex/gender discrimination and prejudices against men as men seriously, we will not be able to effectively challenge and transform the systems of normative heterosexuality. Rather, we are at risk of further perpetuating heteronormativity.

In relation to feminism, I hold that queer humanist men and masculinities studies are consistent with humanist feminist projects, which are willing to see and address structural and collective gender injustices towards, not just women, but also injustices towards trans people, sexual minorities and men as men. In this sense, this kind of approach of queer humanist men and masculinities studies is consistent with humanist feminist projects, because the elimination of discrimination against girls and women is also one of the core concerns in queer humanist men's studies. I argue that queer humanist men's studies insist we cannot effectively subvert normative heterosexuality by only seeing and addressing gender normativity in one gender. I also hold that there are explicit or implicit normative dimensions and aspirations in queer projects, so queer projects do not necessarily need to be read as solely projects of pure deconstruction. At the same time, learning from queer approaches reminds us that projects of sexual politics and sexual justice need constant self-reflection and self-correction.

In conclusion, I argue that queer humanist men and masculinity studies can broaden our base of concerns and knowledge of sexual injustices and sexual oppression in sexual justice projects. It is an approach worth considering and an area of sexual justice study worth further exploration and research.

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