

**MASCULINITIES AT WAR: WHAT ‘INVISIBLE WOUNDS’ REVEAL  
ABOUT GENDERED VULNERABILITY AND VIOLENCE**

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**DRAFT**

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### ABSTRACT

*As the newest class of trainees in the Navy's elite S.E.A.L. unit convenes on the quad, Navy Master Chief Jack Urgayle in the movie G.I. Jane invokes a D.H. Lawrence poem as he prepares these soldiers for the hardships they will endure:*

*Self-Pity*

*I never saw a wild thing sorry for itself.  
A small bird will drop frozen dead from a bough without ever having  
felt sorry for itself.*

*The movie depicts the fictional struggle to formally integrate women in the Navy S.E.A.L. unit. The poem's title, Self-Pity, is defined by Merriam-Webster's dictionary as "a self-indulgent dwelling on one's own sorrows or misfortunes." Notably, Master Chief Urgayle continues his memorable welcome address . . . "[t]he ebb and flow of the Atlantic tides, the drift of the continents, the very position of the sun along its ecliptic. These are just a few of the things I control in my world! Is that clear?" The Master Chief's remarks reveal vividly his view of the incompatibility of military service and vulnerability. The movie likewise poignantly reveals the stark distinction between achieving formal integration and substantive institutional integration.*

*Following Secretary Panetta's historic announcement lifting the combat ban, today's military is now formally the most inclusive military in United States history. No formal barriers remain preventing the full and open service of persons of color, women, or gays and lesbians. Yet we know that deep institutional and cultural norms still perpetuate a masculine culture that marginalizes women and compromises substantive equality. This feminist author suggests that we begin the next wave of institutional feminist advocacy (and gender equality more broadly) in the most unlikely of places – by exposing the myth of universal male military inclusion. A century of feminist advocacy has interrogated the masculine military culture, the culture that has left innumerable women excluded, assaulted, harassed, and marginalized.*

*The United States achieved formal military equality intertwined with recurring headlines of soldier suicides, domestic violence, soldier-on-soldier violence, post-traumatic stress disorder, depression, and alcoholism. This "mental health crisis" exposes a critical point to gender equality – that the male warrior archetype culture harms women, men, and military effectiveness alike.*

*As the above quote reveals, historic military service was framed around gendered binaries linking masculinity and violence and polarizing femininity and vulnerability. It did so specifically because of women's roles in the family. Yet underlying this mental health crisis is a stark reality that combat violence is not an inherently or innately masculine act either and that real military service is constructed around vulnerability and dependency.*

*This paper proposes a methodology of "symbiotic substantive equality" integrating masculinities theory to achieve feminist goals. Examining the epidemics of military mental health problems, domestic violence rates in military families, and soldier on soldier violence in the military through the lens of masculinities theory reveals the need to identify and address how the very masculine culture that purports to "privilege" male service is actually complicating male military service too.*

*The military is a catalytic site that represents broader gendered roles, including gendered family roles. Feminist engagement in the military institutional obstacles that are plaguing men and women stands to yield the more pervasive and lasting disaggregation of masculinity and violence and achieve an infusion of vulnerability and dependency into masculinity that will catalyze broader social change.*

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I. INTRODUCTION

As the newest class of trainees in the Navy’s elite S.E.A.L. unit convenes on the quad, Navy Master Chief Jack Urgayle in the movie *G.I. Jane* invokes a D.H. Lawrence poem as he prepares these soldiers for the hardships they will endure:

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The movie depicts the fictional struggle to formally integrate women in the Navy S.E.A.L. unit. The poem’s title, *Self-Pity*, is defined by Merriam-Webster’s dictionary as “a self-indulgent dwelling on one’s own sorrows or misfortunes.” Notably, Master Chief Urgayle continues his memorable welcome address . . . “[t]he ebb and flow of the Atlantic tides, the drift of the continents, the very position of the sun along its ecliptic. These are just a few of the things I control in my world! Is that clear?” The Master Chief’s remarks reveal vividly his view of the incompatibility of military service and vulnerability. In the content of women’s integration into the all-male unit it reveals the gendered binary aggregating masculinity and violence and polarizing femininity and vulnerability. It also reveals vividly the stark distinction between achieving formal equality and substantive equality.

This quote also brings together two seemingly dissonant events in our military today. In the early morning hours of January 2, 2013, Dr. Peter Linnerooth – a 42-year-old United States Army veteran who served in Iraq, a Bronze Star recipient, an army psychologist providing mental health services, a husband, and the father of four children – mixed a Jack Daniels and Diet Coke and then shot himself to death.<sup>1</sup> In doing so, he joined

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<sup>1</sup> See Mark Thompson, *How a Bronze Star-winning Army Doctor Saved His Troops in Iraq, But Couldn’t Save Himself*, Time, January 11, 2013 available at <http://nation.time.com/2013/01/11/dr-peter-j-n-linnerooth-1970-2013/print/> (last visited January 15, 2013).

innumerable other veterans of military service who have suffered painfully, (often) privately, and (often) tragically with the “invisible wounds” of war.<sup>2</sup> The “invisible wounds” fester pervasively in the family relationships of military veterans, in the psyche of military veterans, and in the everyday interactions of military veterans with co-workers, communities, and loved ones.

While Dr. Linnerooth’s death is a somber and sobering story of tragic dissonance, it sits paradoxically in the midst of headlines heralding historic inclusion in our nation’s military ranks. In seemingly unrelated news, just three weeks after Dr. Linnerooth took his life, Secretary of Defense Leon Panetta, announced on January 24, 2013 that the United States Armed Forces would open all combat positions to women.<sup>3</sup> This historic announcement achieved formal equality in all military branches for women.<sup>4</sup> It marked the apex of decades of activism for women’s military integration, following prior historic expansions opening all positions to women in the Navy and Air Force.<sup>5</sup>

The full formal inclusion of women in our nation’s military, in turn, followed, likewise, the historic repeal of the “Don’t Ask Don’t Tell” policy

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<sup>2</sup> Invisible wounds of war are either physiological or cognitive injuries, typically manifesting in the form of PTSD and other anxiety disorders. See Terri Tanielian & Lisa H. Jaycox, eds. *Invisible Wounds of War: Psychological & Cognitive Injuries, Their Consequences, & Services to Assist Recovery* 5 – 7, RAND FOUNDATION (2008).

<sup>3</sup> Dept. of Defense, Memorandum for Secretaries of the Military Departments Acting Under Secretary of Defense for Personnel & Readiness Chiefs of the Military Service, January 24, 2013, available at <http://www.defense.gov/news/WISRJointMemo.pdf>.

<sup>4</sup> The announcement lifted the last remaining prohibition on women’s military service, the 1994 Direct Ground Combat Definition and Assignment Rule, which had excluded women from combat ground positions. Memorandum from Les Aspen, Sec’y of Def., United States Dep’t. of Def., “Direct Combat Definition and Assignment Rule,” (Jan. 13, 1994). The effect of Aspen’s regulation created a glass ceiling for women in the armed forces; the promotional fast track and most prestigious jobs required combat experience, which perpetuated gender inequality within both grassroots and leadership levels. See e.g., Scott E. Dunn, *The Military Selective Service Act’s Exemption of Women: It’s Time to End It*, 1 ARMY LAW 1, 18-19 (2009) (“As a matter of DOD policy promulgated by Secretary of Defense Les Aspin in 1994, women are currently restricted “from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground.”).

<sup>5</sup> The Navy was the first branch of the military to commission women as active personnel. During World War II, women operated equally on the sea, “becoming an essential part of the [] war effort.” Captain Winifred Quick Collins & HERBERT M. LEVIN, MORE THAN A UNIFORM: A NAVY WOMAN IN A NAVY MAN’S WORLD XIV (1997). In addition, women entered the Air Force as pilots of certain types of aircraft, later becoming eligible for missile-launch careers. M. C. DEVILBISS, WOMEN AND MILITARY SERVICE: A HISTORY, ANALYSIS, AND OVERVIEW OF KEY ISSUES, 18 – 19 (1990).

in September 2011 and thus the formal inclusion of gays and lesbians serving openly in our nation's military.<sup>6</sup> Thus, positioning the United States military as the most open and inclusive in our nation's history.

These military events sit uncomfortably together. On the one hand, we observe a story of inclusion and historic shifts to formal equality for women, gay and lesbians, and historically disenfranchised military participants. On the other hand, we witness a story of exclusion, isolation, struggle, and human suffering for the men who have "enjoyed" full military integration and participation since our nation's founding. How, if at all, do these seemingly dissonant current events reconcile?

Reconciling these dissonant military events is a site to achieving substantive equality for women, gays and lesbians, *and heterosexual men* and to reframing gendered binaries of vulnerability and violence. These events expose the need to begin the next wave of institutional feminist advocacy (and gender equality more broadly) in perhaps the most unlikely of places – by exposing the myth of universal male military inclusion. A century of feminist advocacy has interrogated the masculine military culture, the culture that has left innumerable women excluded, assaulted, harassed, and marginalized. The underlying implication of the masculine military culture, however, suggests that the culture privileges or benefits men. Yet the mental health crisis<sup>7</sup> reveals the myth of universal male inclusion. Underlying this mental health crisis is a stark reality that combat violence is not an inherently or innately masculine act either and that real military service is constructed around vulnerability and dependency.

The military is a catalytic site for framing gendered roles. It is distinctly catalytic in its normative positioning of family roles. Military responses to openly gay service members, adultery, and domestic violence reveal that the military has taken perhaps surprisingly strong views on family norms, norms that are not always connected to military efficacy.

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<sup>6</sup> *Don't Ask, Don't Tell Repeal Act of 2010*, H.R. 2965, 111TH CONG. §§ 1-2 (2010).; See e.g., Army Sgt. 1st Class Tyrone C. Marshall Jr., *Defense Leaders Laud Repeal, Return of "Equality,"* AM. FORCES PRESS SERVICE (Sept. 20, 2011), available at <http://www.defense.gov/news/newsarticle.aspx?id=65390>

<sup>7</sup> See e.g., *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY*, at 5 (Terri Tanielian & Lisa H. Jaycox eds., 2008); Mark C. Russell, *Investigating the Root Causes and Negligence in a Military Mental Health Crisis*, HUFFINGTON POST, Aug. 16, 2012, [http://www.huffingtonpost.com/mark-c-russell-phd-abpp/military-mental-health-crisis\\_b\\_1774005.html](http://www.huffingtonpost.com/mark-c-russell-phd-abpp/military-mental-health-crisis_b_1774005.html) (describing the situation surrounding the mental health needs of United States military personnel as a "mental health crisis").

Accordingly, shifts in normative gender roles in the military, in turn, stand to influence family and other institutions as well.

This paper proposes a methodology of “symbiotic substantive equality” integrating masculinities theory to equality advocacy. Masculinities are distinctly a relational concept as institutions create masculinities and masculinities also construct institutions,<sup>8</sup> rendering them keenly relevant to a thorough account of gender equality. Masculinities are fluid and characteristically dependent on the “other” to define itself, rendering it hard to capture and explore masculinities in isolation without its relational constructs.<sup>9</sup> It is the framing of the “other” to define masculinities that positions masculinities theory as so informative to understanding military integration.

Examining the epidemics of military mental health problems, domestic violence rates in military families, and gendered violence in the military through the lens of masculinities theory reveals the need to identify and address how the very masculine culture that purports to “privilege” male service is actually complicating male military service and military efficacy. Such an analytical and theoretical approach stands to catalyze larger legal and social change – the decoupling of monolithic gendered framings of violence and vulnerability. This stands to make space for the vulnerable warrior and the caregiving warrior.

Section II examines the history of military service and integration. It concludes that military service historically fused masculinity and violence and polarized femininity and vulnerability. It positioned the family as paradoxically central to framing military service obligations and marginalized from military service. Section III concludes that while we have formally the most inclusive military in history, institutional and cultural obstacles continue to plague meaningful integration. Section IV reveals marginalized masculinities in the military and exposes the myth of male military inclusion. It makes the “easy case” to expose the myth through the military mental health crisis and the “harder cases” using inter-family violence and institutionalized peer violence and gendered violence. Section V recommends a “symbiotic substantive equality” approach to military integration that integrates masculinities theory for ex ante military reforms.

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<sup>8</sup> TODD W. REESER, MASCULINITIES IN THEORY 20 (2010).

<sup>9</sup> REESER, *supra* note, at 38.

## II. HISTORICAL MILITARY EXCLUSIONS ROOTED IN THE FUSION OF MASCULINITY AND VIOLENCE AND THE MARGINALIZATION OF FEMININITY, VULNERABILITY, AND FAMILY CAREGIVING

Gender roles in the military have a catalytic impact on gender norms more broadly. The gender norms expressed through the military reflect broader social, legal, and political gendered hierarchies. This section reveals how military service roles have perpetuated problematic gendered binaries designating men with an inherent or innate propensity for violence (or at least tolerance for) and women as innate vulnerable caregivers.

Military service historically positioned men as innately capable of violence. Early military service was obligatory, ritualistic, and connected to citizenship directly. Early framings of military service positioned military service as central to masculinities and to citizenship alike.<sup>10</sup> Military service was historically situated as a political and social site for boys to become men.<sup>11</sup> Our republican system of government itself was founded on the notion that men gain the right to self-governance through their citizen service as soldiers, jurors, and public officials.<sup>12</sup>

Military service reflected the binary of men in public life and women in private family life. Military service in the early republic both allowed men to become citizens and boys to become men.<sup>13</sup> It was a “proving ground for masculinity,” frequently seen as “a rite of passage, transforming boys into men.”<sup>14</sup> Deep political theory roots base the citizen-soldier tradition in constructions of masculinities. Machiavelli posited that participation in military practices constructed masculinity, soldiers, and

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<sup>10</sup> See e.g., Jamie R. Abrams, *Examining Entrenched Masculinities Within the Republican Government Tradition*, 114 W. VA. L. REV. 165 (2011).

<sup>11</sup> R. Claire Snyder, *CITIZEN-SOLDIERS AND MANLY WARRIORS* 89 (1999).

<sup>12</sup> See generally Ballots and Bullets: The Exceptional History of the Right to Vote, Stanford Research Paper No. 45, December 2002 (explaining how voting and military service were “complementary aspects of running the nation in peace and in war” and that relationship was “bidirectional: the obligation for future military service, as much as the performance of past duties, conferred a right to vote”).

<sup>13</sup> See generally R. CLAIRE SNYDER, *CITIZEN-SOLDIERS AND MANLY WARRIORS: MILITARY SERVICE AND GENDER IN THE CIVIC REPUBLICAN TRADITION*, 89 (1999); see also Carol Cohn, *Gays in the Military: Texts and Subtexts*, in *THE “MAN” QUESTION IN INTERNATIONAL RELATIONS* 142-45 (Ed. 1998) (explaining how the military has historically been a cite to “make men out of boys”).

<sup>14</sup> HELENA CARREIRAS, *GENDER AND THE MILITARY: WOMEN IN THE ARMED FORCES OF WESTERN DEMOCRACIES* 41 (2006).

citizens.<sup>15</sup> Rousseau positioned ritual male participation in civic and martial practices as “central to masculinity, to citizenship, and to civic life in general.”<sup>16</sup> This citizen-soldier framing positioned military service as obligatory to citizenship, and accordingly, the propensity for violence as obligatory to citizenship.

From the founding, women’s exclusion from military service was per se gendered: women were not in the military because they were not political citizens and they were not men.<sup>17</sup> Women’s role in the family caring for society’s most vulnerable and women’s own vulnerability supported early political exclusion too.<sup>18</sup> John Adams summarized the argument opposing women’s political participation in his famous 1776 letter to James Sullivan, stating that “men are fit for the hardy enterprises of war, as well as the arduous cares of state,” while women’s “attention is so much engaged with the necessary nurture of their children that nature has made them fittest for domestic cares.”<sup>19</sup>

Women accordingly carved out early forms of political participation caring for the nation’s most vulnerable. They defined roles as “mothers of citizens of the republic.”<sup>20</sup> In the “republican mother” tradition, women leveraged indirect principles of service, such as allegiance and loyalty.<sup>21</sup> “Republican mothers” then moved into public reforms that fostered and cultivated the health of the republic through social and benevolent work.<sup>22</sup> Women advocated for aid to widows, orphans, health care, and other social reforms,<sup>23</sup> positioning women to support the survival, longevity, and health of the republic.<sup>24</sup>

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<sup>15</sup> See *id.* at 22-23; J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, 201 (1975) (“[I]t may be through military discipline that one learns to be a citizen and to display civic virtue”).

<sup>16</sup> R. Claire Snyder, *Citizen-Soldiers and Manly Warriors* 156 (1999).

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<sup>19</sup> Langley & Fox *supra* note \_\_, at 23 (writing to James Sullivan about representative government).

<sup>20</sup> *Id.* at 35-36 (quoting Elizabeth Fox-Genovese commenting on whether women gained from the Revolution).

<sup>21</sup> Kerber, *supra* note \_\_, at 241.

<sup>22</sup> Dennis W. Johnson, *The Laws that Shaped America, Fifteen Acts of Congress and their Lasting Impact* 108 (2009).

<sup>23</sup> Johnson, *supra* note 22, at 108.

<sup>24</sup> Langley & Fox, *supra* note \_\_, at 39. These social reforms gradually moved from philanthropic work to politically oriented agitation. For example, many women in the nineteenth century became active in the abolitionist movement. See Siegel, *supra* note \_\_ at 146. Suffrage reforms emerged from the more evangelical temperance and slavery

The Civil War changed military service dramatically. Women played critical roles in the war, primarily supportive and nurturing roles caring for men in states of vulnerability.<sup>25</sup> Women in service carefully positioned themselves as “redemptive women.”<sup>26</sup>

Many women navigated military service by transferring the family paradigm into the military to justify their roles. Many soldiers called nurses “mothers” and many nurses called their patients “sons or boys.”<sup>27</sup> Yet women still had to maneuver their military service carefully within the masculine paradigm of the military and its gender-performative citizenship functions.<sup>28</sup> These supporting roles moved women closer to public life, but retained the gendered coupling of femininity and vulnerability.

The massive recruiting needs during the civil war forever changed the terms of male military service. After the Civil War, Congress formally repealed the Militia Act codifying citizen-soldier traditions,<sup>29</sup> replacing the local performative function with a nationalized militia system.<sup>30</sup> It

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movements as women learned to “turn the cause of women’s rights into a political movement.” *See id.*

<sup>25</sup> CUTTER, *supra* note \_\_\_, 156 (explaining that women proved they were “capable of performing work and duties commonly identified as masculine, and thus it stood to open up new rights and opportunities in public life”).

<sup>26</sup> *Id.* at 188.

<sup>27</sup> *Id.* at 189.

<sup>28</sup> Louisa May Alcott famously declared: “I’ve often longed to see a war, and now I have my wish. I long to be a man; but as I can’t fight, I will content myself with working for those who can.” *Id.* at 172.

<sup>29</sup> *See generally* R. Claire Snyder, *CITIZEN-SOLDIERS AND MANLY WARRIORS* (1999).

<sup>30</sup> The 1903 Dick Act asserted a national role over state militias, and created a “reserve militia” (the modern National Guard). *See* Militia Act of 1903 (Dick Act), ch. 196, 32 Stat. 775 (“That the militia shall consist of every able-bodied male citizen of the respective States, Territories and the District of Columbia, . . . shall be divided into two classes—the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given to them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia.”). The national military was further empowered by 1908 legislation expanding federal control over organized militias (the National Guard) outside the United States. SNYDER, *supra* note \_\_\_, at 99; *see* Militia Act of 1903 (Dick Act), ch. 204, 35 Stat. 399 (amendment to Militia Act of 1903 (Dick Act), ch. 196, 32 Stat. 775). The National Defense Act of 1916 further expanded the National Guard and empowered the president to institute a wartime draft. SNYDER, *supra* note 12, at 99. The 1917 Selective Service Draft Act required all men to register for the national draft. *Id.* at 100. With nationalized military service came wide-scale benefits, beginning with an 1884 Massachusetts state preference in civil service hiring, and ultimately including massive federal GI benefits and privileges episodically. *See* KERBER, *supra* note \_\_\_, at 251.

solidified a shift from local militia functions to national compulsory registration and draft obligations. The political framing of military service changed dramatically further in 1873 when the military formally became an all-volunteer force.<sup>31</sup>

These paradigmatic shifts in military service in turn expanded opportunities for women.<sup>32</sup> Opportunities for women in military service have expanded dramatically in all services steadily since the early 1900s, consistent with expanding political activism and roles for women.<sup>33</sup> The number of women in the United States military has continuously increased ever since enlistment opened to females.<sup>34</sup> The number of women in service has risen seven-fold since the military ended its policy of conscription, from 2% to 14% or from 42,000 women to 167,000 women.<sup>35</sup> These numbers are particularly noteworthy where the *overall* enlistment rate has decreased by approximately 738,000 members in that same time period.<sup>36</sup>

The modern military is formally the most inclusive military in history. In 2012, women make up fifteen percent of the active American armed forces,<sup>37</sup> 19.5% of the reservists are women,<sup>38</sup> and over 230,000

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<sup>31</sup> See David Burrelli, Women in Combat Issues for Congress, Congressional Research Service, Apr. 5, 2012, at 2.

<sup>32</sup> See David Burrelli, Women in Combat Issues for Congress, Congressional Research Service, Apr. 5, 2012, at 1.

<sup>33</sup> See generally See David Burrelli, Women in Combat Issues for Congress, Congressional Research Service, Apr. 5, 2012 (detailing the historical expansion of opportunities for women in military service historically).

<sup>34</sup> NAT'L CTR. ON FAMILY HOMELESSNESS, UNDERSTANDING THE EXPERIENCE OF MILITARY FAMILIES AND THEIR RETURNING WAR FIGHTERS: MILITARY LITERATURE & RESOURCE REVIEW 9 (2010).

<sup>35</sup> *Women in the U.S. Military: Growing Share, Distinctive Profile*, Pew Research Center available at <http://www.pewsocialtrends.org/2011/12/22/women-in-the-u-s-military-growing-share-distinctive-profile/> (December 22, 2011).

<sup>36</sup> *Women in the U.S. Military: Growing Share, Distinctive Profile*, Pew Research Center available at <http://www.pewsocialtrends.org/2011/12/22/women-in-the-u-s-military-growing-share-distinctive-profile/> (December 22, 2011).

<sup>37</sup> Steve Griffin, *Fighting for Gender Equality on the Battlefield*, N.Y. TIMES, Jan. 31, 2012.

<sup>38</sup> Statistics on Women in the Military, Women in Military Service for America Memorial Foundation, Inc. available at [www.womensmemorial.org](http://www.womensmemorial.org) (relying on data provided by the Department of the Defense and the United States Coast Guard). Approximately one-third of the active-duty women are African-American compared to sixteen percent of active-duty men. *Women in the U.S. Military: Growing Share, Distinctive Profile*, Pew Research Center available at <http://www.pewsocialtrends.org/2011/12/22/women-in-the-u-s-military-growing-share-distinctive-profile/> (December 22, 2011).

females have served in either Afghanistan or Iraq.<sup>39</sup> Moreover, female soldiers of the wars in Afghanistan and Iraq “have changed the way the United States military goes to war.

Women are, however, playing more administrative and support roles than men, socialized gender roles.<sup>40</sup> The allocation of positions that women do fill is still heavily skewed, relegating nearly fifty percent of female officers and enlisted servicewomen to administrative and support roles often in health care and administration (while approximately twenty percent of male servicemen fill these roles).<sup>41</sup> Only nine percent of women officers are in tactical operations occupations, compared with forty-two percent of male officers.”<sup>42</sup>

Since 1994, women were still excluded from positions engaged in direct ground combat.<sup>43</sup> While some of the arguments in opposition to women’s military integration seem to derive from natural law,<sup>44</sup> opponents of women’s military integration most often raised three arguments: biological differences, the impact on unit cohesion, and women’s roles as caregivers.<sup>45</sup>

Opponents of military integration first relied on gendered conclusions that women lacked the requisite physical strength to participate in combat positions.<sup>46</sup> As the 1992 Presidential Commission on the Assignment of Women in the Armed Forces stated, “[t]he evidence before the Commission clearly shows distinct physiological differences between men and women. Most women are shorter in stature, have less muscle mass, and weigh less than men. These physiological differences place women at a distinct disadvantage when performing tasks requiring a high level of muscular strength and aerobic capacity, such as hand-to-hand fighting, digging, carrying heavy loads, lifting, and other tasks central to ground

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<sup>39</sup> Steve Griffin, *Fighting for Gender Equality on the Battlefield*, N.Y. TIMES, Jan. 31, 2012.

<sup>40</sup> See Catherine Toth, *Women and the Military*, in THE HANDBOOK OF WOMEN, PSYCHOLOGY, AND THE LAW 329 (Andrea Barnes ed., 2005).

<sup>41</sup> Cornett, *supra* note \_\_\_ at 102.

<sup>42</sup> *Id.*

<sup>43</sup> Memorandum from Les Aspen, Sec’y of Def., United States Dep’t. of Def., “Direct Combat Definition and Assignment Rule,” (Jan. 13, 1994).

<sup>44</sup> Senate Report No. 96-826: “The principle that women should not intentionally and routinely engage in combat is fundamental.” S. Rep. No. 96-826, p. 157.

<sup>45</sup> Martha McSally, *Women in Combat: Is the Current Policy Obsolete?*, 14 Duke J. Gender L. & Pol’y 1011, 1030 (2007).

combat.<sup>47</sup>

Opponents of women's military integration then argued that unit cohesion and morale prohibited integration. In so doing, they deployed norms governing gendered family relationships. They argued that women's military presence would decrease unit cohesion and overall effectiveness of the military.<sup>48</sup> "Cohesion is a complex term that describes the unity and bonding that a unit must possess in order to be a team in battle."<sup>49</sup> In 1992, the Presidential Commission stated that "women's presence *might* impede cohesion in ground combat units due to lack of ability to do the job, lack of privacy, traditional male views of women, sexual misconduct, and pregnancy."<sup>50</sup> Congress reaffirmed combat restrictions when it declared "Registering women for assignment to combat or assigning women to combat positions in peacetime then would leave the actual performance of sexually mixed units as an experiment to be conducted in war with unknown risk -- a risk that the committee finds militarily unwarranted and dangerous."<sup>51</sup>

Opponents finally argued that exclusion was necessary to protect women's primary societal role in families. In *United States v. St. Clair*, the court upheld male-only registration declaring that "[i]n providing for involuntary service for men and voluntary service for women, Congress followed the teachings of history that if a nation is to survive, men must provide the first line of defense while women keep the home fires burning."<sup>52</sup> During the Presidential Commission's Alternative Views section, Elaine Donnelly and others stated: "Good men respect and defend women. Women should not be required, as the price of equality, to sacrifice this fundamental principle that governs a civilized order."<sup>53</sup>

It was not *just* that women were not strong or fit enough for military

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<sup>47</sup> PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT: WOMEN IN COMBAT 24 (1992).

<sup>48</sup> Martha McSally, *Women in Combat: Is the Current Policy Obsolete?*, 14 Duke J. Gender L. & Pol'y 1011, 1028 (2007).

<sup>49</sup> Martha McSally, *Women in Combat: Is the Current Policy Obsolete?*, 14 Duke J. Gender L. & Pol'y 1011, 1034 (2007).

<sup>50</sup> Martha McSally, *Women in Combat: Is the Current Policy Obsolete?*, 14 Duke J. Gender L. & Pol'y 1011, 1036 (2007); PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT: WOMEN IN COMBAT ?? (1992).

<sup>51</sup> Senate Armed Services Committee on the Fiscal Year 1981 Defense Authorization Bill. S. Rep. No. 96-826, p. 157 (1980).

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<sup>53</sup> President Commission Report, at 61.

service, *but also* that they belonged home with the family. General Eisenhower's hopes, for example, were that women “will come in [to the military] and I believe after an enlistment or two enlistments they will ordinarily--and thank God--they will get married.”<sup>31</sup> Senator Ervin proclaimed “[i]t is absolutely ridiculous to talk about taking a mother away from her children so that she may go out to fight the enemy and leave the father at home to nurse the children.”<sup>32</sup> Representative Dennis stated “drafting of American women and mothers into the military service is a thoroughly undesirable social development which would go far, indeed, to transform us into a national socialist state.”<sup>54</sup>

### III. OBSTACLES TO SUBSTANTIVE EQUALITY

The “direct ground combat” prohibition – the last formal exclusion – to women’s service was lifted in January 2013.<sup>55</sup> This historic announcement followed several years of policy softening and signaling toward this pending reform.<sup>56</sup> It also follows constitutional challenges.<sup>57</sup> It

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<sup>54</sup> Angela Rollins, *Act Like A Lady!: Reconsidering Gender Stereotypes & the Exclusion of Women from Combat in Light of Challenges to "Don't Ask, Don't Tell"*, 36 S. ILL. U. L.J. 355, 358 (2012)

<sup>55</sup> Department of Defense, Memorandum for Secretaries of the Military Departments Acting Under Secretary of Defense for Personnel and Readiness Chiefs of the Military Service, January 24, 2013, *supra* note \_\_\_\_ (ordering each military department, through the Joint Chiefs, to submit an implementation plan to comply with this directive by May 15, 2013). The memorandum allows for certain occupational units or specialties to remain closed to women with the approval of the Secretary of Defense, if the exclusion is “narrowly tailored[] and based on a rigorous analysis of the factual data regarding the knowledge, skills and abilities needed for this position.” *Id.* at 2.

<sup>56</sup> The House Committee on Armed Services in 2010 issued a report accompanying H.R. 5136, which would have required the “Secretary of Defense to conduct a review of military occupational positions available to female service members and the collocation policy and other policies and regulations to determine whether changes are needed, including legislative change, if necessary, to enhance the ability of women to serve in the armed forces. U.S. Congress, House Committee on Armed Services, 111th Cong., 2nd sess., May 21, 2010, H.Rept. 111-491. The Department of Defense announced in February 2012 that it would soften its combat exclusion policy by allowing women to serve in ground combat units below the brigade level, formally opening as many as 14,000 jobs to women, many in the Army and Marine Corp. *See e.g., Military to Ease Rules on Women in Combat*, USA Today, February 8, 2012 (reporting that the Department of Defense agreed to soften its combat exclusion policy by allowing women to serve in ground combat positions below the brigade level, in many cases formalizing the jobs that women were *already* performing in Iraq and Afghanistan).

<sup>57</sup> [CITE ROSTKER HERE]. *See e.g., Eyder Peralta, Servicewomen, ACLU Sue Pentagon Over Combat Exclusion*, available at <http://www.npr.org/blogs/the-two-way/2012/11/27/166011064/servicewomen-aclu-sue-over-combat-exclusion> (last visited January 24, 2013).

had become increasingly irrational in the context of modern warfare where the lines between combat and support positions were blurred.<sup>58</sup>

The removal of the combat ban comes with strong support from the feminist community.<sup>59</sup> Bearing arms for one's nation has long been recognized as the highest duty a citizen can provide.<sup>60</sup> Formal integration is indeed a critical legal victory for equality. While advocates celebrate the lifting of the combat ban, feminists also know that extensive institutional and cultural reforms persist to achieve meaningful integration.<sup>61</sup>

Masculinity still pervades and defines the military.<sup>62</sup> The military is largely designed around masculinity<sup>63</sup> and entrenched in a "combat, masculine-warrior" paradigm that "tacitly endorses excluding others who contradict their image of the combat, masculine warrior."<sup>64</sup>

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<sup>58</sup> See e.g., *Women in the U.S. Military: Growing Share, Distinctive Profile*, Pew Research Center available at <http://www.pewsocialtrends.org/2011/12/22/women-in-the-u-s-military-growing-share-distinctive-profile/> (December 22, 2011) (explaining how women still work in units that come under attack and position women in combat situations). Accordingly, women are increasingly serving in roles that include combat exposure. While only 7% of female veterans reported combat exposure prior to 1990, 24% of female veterans report combat exposure today. *Id.* The real world experiences of women soldiers made it increasingly tenuous to defend the ban. As one veteran explained,

[t]he policy creates the pervasive way of thinking that in military and civilian populations that women can't serve in combat roles, even in the face of the reality that servicewomen in all branches of the military are already fighting for their country alongside their male counterparts. They shoot, they return fire, they draft wounded comrades to safety, they engage the enemy, and they have been doing these heroic deeds since the Revolutionary War. They risk their lives for their country, and the combat exclusion policy does them a great disservice.

Major Mary Jennings Hegar, *Women Warriors Are On the Battlefield, Eliminate Outdated, Unfair Military Combat Exclusion Policy*, November 27, 2012 available at <http://www.aclu.org/blog/womens-rights/women-warriors-are-battlefield-eliminate-outdated-unfair-military-combat> (last visited January 24, 2013).

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<sup>60</sup> Kerber, *supra* note \_\_ at 246 (citing Chief Justice Edwards Douglas White).

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<sup>62</sup> Karen O. Dunivin, *Military Culture A Paradigm Shift*, MAXWELL PAPER NO. 10, AIR WAR COLLEGE 1, 18 (Feb. 1997), available at <http://www.au.af.mil/au/awc/awcgate/maxwell/mp10.pdf>.

<sup>62</sup> CARREIRAS, *supra* note 14, at 43.

<sup>63</sup> *Id.* at 47.

<sup>64</sup> Karen O. Dunivin, *Military Culture A Paradigm Shift*, MAXWELL PAPER NO. 10, AIR WAR COLLEGE 1, 18 (Feb. 1997), available at <http://www.au.af.mil/au/awc/awcgate/maxwell/mp10.pdf>.

Male superiority is repeatedly reinforced in the military even during basic training when soldiers are referred to as “girls” as an insult and equipment is given different women’s names.<sup>65</sup> Military service is perceived as an atypical career track for women, thus stereotypes create entry barriers, such as parental resistance to female enlistment.<sup>66</sup> Women who seek more active, physical roles in the military are seen as “abnormal, mentally impaired, or morally corrupt” because such a role does not comport with images of women as nurturers of men.<sup>67</sup>

[More content here forthcoming.]

Feminists have targeted military culture as a source and site for targeting sex-based discrimination.<sup>68</sup> This advocacy is well placed. Feminist work has persisted for decades seeking institutional and cultural reforms.<sup>69</sup> Feminists have particularly focused on military domestic violence and military violence against servicewomen.<sup>70</sup>

The next section proposes that – following formal integration – we begin the next phase of gender equality by interrogating male military inclusion.

#### IV. SYMBIOTIC ROLES FOR MASCULINITIES AND FEMINIST THEORY IN MILITARY INTEGRATION

Masculinities theory and feminist theory developed historically as distinct – at times even divergent – strands of scholarship, particularly within certain strands of “men’s rights” masculinities.<sup>71</sup> While feminist

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<sup>65</sup> CARREIRAS, *supra* note 14, at 43.

<sup>66</sup> See Segal, *supra* note \_\_\_, at 67 (speculating on the impact of masculinity norms influencing disparate enrollment statistics).

<sup>67</sup> Toth, *supra* note 40, at 328-53.

<sup>68</sup> See e.g., Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women’s Integration in the Military*, 14 DUKE JOURNAL OF GENDER LAW & POLICY, 1097 (2007) (“The armed masculinity of contemporary soldiering remains a cultural construct constituted in hostile opposition to femininity”).

<sup>69</sup>  
<sup>70</sup> Judith E. Beals, *Understanding the Military Response to Domestic Violence: Tools for Civilian Advocates*, BATTERED WOMEN’S JUSTICE PROJECT 4, 17 (2007); Linda D. Korzan, *DoD Targets Domestic Violence*, AM. FORCES PRESS SERVICE (Jul. 30, 1996); *The Facts on the Military and Violence Against Women*, FUTURES WITHOUT VIOLENCE, available at [http://www.futureswithoutviolence.org/userfiles/file/Children\\_and\\_Families/Military.pdf](http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Military.pdf)

<sup>71</sup> See generally MASCULINITY STUDIES & FEMINIST THEORY, NEW DIRECTIONS (Judith Kegan Gardiner, Ed. 2002) (concluding that “the assumption that feminist thinking

theory interrogates the subordination and social/political inequality of women, certain strands of feminism, historically contested more directly *expressions of masculinity itself* as the site of feminist inquiry. In modern scholarship, masculinities theory is understood much more compatibly as an ally to feminist theory. Many masculinities scholars have argued that women *and men* should support feminist projects interrogating masculinities because all men are harmed by dominant conceptions of masculinities.<sup>72</sup> Likewise, feminist theorists today incorporate masculinities as “an analytic dimension” to feminist frameworks.<sup>73</sup>

Thus, scholars of both feminist theory and masculinities theory generally agree today that unpacking the binaries of politically and socially constructed roles of men and women is a mutually beneficial goal. While the *theoretical* strands might run parallel and compatibly today, meaningful techniques are newly emerging to *incorporate* masculinities theory into feminist law *reform* initiatives.<sup>74</sup> This paper introduces another

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and masculinity were mutually antagonistic was not entirely unfounded, but not entirely accurate either”).

<sup>72</sup> See generally *id.* at 5-6 (Judith Kegan Gardiner, Ed. 2002) (arguing that dominant masculinities narrowed all men’s “options, forced them into confining roles, dampened their emotions, inhibited their relationships with other men, precluded intimacy with women and children, imposed sexual and gender conformity, distorted their self-perceptions, limited their social consciousness, and dammed them to continual and humiliating fear of failure to live top the masculinity trademark”).

<sup>73</sup> See generally *id.*

<sup>74</sup> The robust group of scholars and scholarship doing this work using masculinities theory as a tool to achieve sustained feminist law reforms is too voluminous to record here. The UNLV William S. Boyd School of Law Wiener-Rogers Law Library houses a comprehensive bibliography of masculinities works on its Scholarly Commons *available at* <http://scholars.law.unlv.edu/mml/2011/events/3>. For a representative sampling of scholars using masculinities theories to advance feminist law reform initiatives, see generally Deborah Brake, *GETTING IN THE GAME: TITLE IX AND THE WOMEN’S SPORTS REVOLUTION* (2010); Deborah Brake, *Sport and Masculinity: The Promise and Limits of Title IX*, in *MASCULINITIES AND LAW: A MULTIDIMENSIONAL APPROACH* (Frank Rudy Cooper and Ann C. McGinley, eds., forthcoming 2011); Naomi Cahn, Dina Francesca Haynes and Fionnuala Ni Aolain, *ON THE FRONTLINES: GENDER AND POST CONFLICT RECONSTRUCTION* (2011); Nancy E. Dowd, *REDEFINING FATHERHOOD* (2000); Camille A. Nelson, *Sexuality Without Borders: Exploring the Paradoxical Connection Between Dancehall and Colonial Law in Jamaica*, in *MASCULINITIES AND LAW: A MULTIDIMENSIONAL APPROACH* (Frank Rudy Cooper and Ann C. McGinley Eds., forthcoming 2011); Ann C. McGinley, *Disparate Impacts in MASCULINITIES AND LAW: A MULTIDIMENSIONAL APPROACH* (Frank Rudy Cooper and Ann C. McGinley Eds., forthcoming 2011); Ann C. McGinley *Harassment of Sex(y) Workers: Applying Title VII to Sexualized Industries*, 18 *Yale L. J. & Feminism* 65 (symposium) reprinted in *WOMEN AND THE LAW* (Jane C. Moriarty, Ed., 2008); Kim Shayo Buchanan, *Beyond Modesty: Privacy in Prison and the Risk of Sexual Abuse*, 88 *MARQ. L. REV.* 751 (2005); David S.

representative example of how masculinities theory can be used to advance sustained feminist law reforms.

#### V. MARGINALIZED MASCULINITIES: THE MYTH OF MALE MILITARY INCLUSION?

Underlying feminist advocacy, however, is a threshold presumption that masculine military norms actually serve the men around which they are framed. Masculinities theorists describe, however, how dominant male norms perpetuate an idealized masculinity that very few men actually meet.<sup>75</sup> It is the very quest to achieve those norms that sustains them.

Hegemonic masculinity frames manhood as the *quest* to acquire and retain the symbols that express manhood,<sup>76</sup> such as strength, success, and control.<sup>77</sup> Hegemonic masculinity imperatives exert pressure on men to conform to its ideals, but these cultural traits need not correspond closely to the actual personalities of the majority of men.<sup>78</sup> Hegemony is thus described by the “successful claim to authority,” distinct from actual authority.<sup>79</sup> Indeed, while men as a group may be dominant and powerful, most men *as individuals* do not feel powerful.<sup>80</sup> The hegemonic model only actually represents a small number of men, but large numbers are “complicit in sustaining the hegemonic model.”<sup>81</sup> Men who do not meet these hegemonic norms will conclude that they are somehow “unworthy, incomplete, and inferior.”<sup>82</sup> Hegemonic masculinities are thus a relational concept, “not a fixed character type, always and everywhere the same,” and

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Cohen, *Keeping Men “Men” and Women Down: Sex Segregation, Anti-Essentialism, and Masculinity*, 33 HARV. J. L. & GENDER 509 (2010); Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2009); Valorie K. Vojdik, *Masculinities, Feminism and Turkish Headscarf Ban: Sahin Revisited*, in MASCULINITIES AND LAW: A MULTIDIMENSIONAL APPROACH (Frank Rudy Cooper and Ann C. McGinley Eds., forthcoming 2011).

<sup>75</sup> Cheng, supra note \_\_, at 124-35.

<sup>76</sup> Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity in SEX*, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY 61 (Ferber ed. 2009).

<sup>77</sup> CONNELL, supra note **Error! Bookmark not defined.**, at 77.

<sup>78</sup> CONNELL, supra note **Error! Bookmark not defined.**, at 77.

<sup>79</sup> Nancy Dowd, *Masculinities and Feminist Legal Theory*, 23 WISCONSIN J. OF LAW GENDER & SOC’Y, 213 (2008).

<sup>80</sup> Cheng, supra note \_\_, at 295.

<sup>81</sup> Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity in SEX*, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY 61 (Ferber ed. 2009).

always contestable.<sup>83</sup>

The exclusion of marginalized and threatening groups has long been a “masculine retreat” in our nation’s history as dominant masculinities have espoused consistent sentiments of nativism<sup>84</sup> and fears of feminization.<sup>85</sup> Hegemonic masculinity is distinctly framed “in relation to femininities and subordinated and marginalized masculinities.”<sup>86</sup> It necessitates a hierarchy by positioning masculinity in a hierarchical relationship to femininity.<sup>87</sup> It refers to the “cultural dynamic by which a group claims and sustains a leading position in social life. At any given time, one form of masculinity rather than others is culturally exalted.”<sup>88</sup> It is thus framed heavily by what it is not: namely, that men *not* be gay and *not* be feminine. Connell described “gayness” as the “repository” of what is “symbolically expelled from hegemonic masculinity.”<sup>89</sup>

With formal equality comes the question of meaningful institutional integration and substantive equality. This feminist author proposes that we begin the next phase of military integration and gender equality in – perhaps – the most unlikely of places – by interrogating *male* military integration. We must first expose the myth of universal male military inclusion to yield sustainable and symbiotic institutional integration. To expose the myth of male military inclusion is to reveal how a male combat warrior archetype distorts the realities of military service and marginalizes nonconforming women *and men* alike.<sup>90</sup> The images and norms we perpetuate of military

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<sup>83</sup> CONNELL, *supra* note **Error! Bookmark not defined.**, at 76, 79.

<sup>84</sup> ARMANDO NAVARRO, *THE IMMIGRATION CRISIS, NATIVISM, ARMED VIGILANTISM, AND THE RISE OF A COUNTERVAILING MOVEMENT* 20 (2009) (“Nativism the fear of foreigners was embedded in the country’s immigration experience.”)

<sup>85</sup> KIMMEL, *supra* note \_\_, at 62.

<sup>86</sup> Cheng, *supra* note \_\_, at 295.

<sup>87</sup> MESSERSCHMIDT, *supra* note **Error! Bookmark not defined.**, at 164.

<sup>88</sup> CONNELL, *supra* note **Error! Bookmark not defined.**, at 77.

<sup>89</sup> CONNELL, *supra* note **Error! Bookmark not defined.**, at 78.

<sup>90</sup> *See e.g.*, R.W. CONNELL, *MASCULINITIES* 213-15 (2005). Connell explains that despite the cultural framing of military service in a heroic warrior lens, “we would be sadly misled if we believed military operations actually work on the basis of crusading heroism.” Rather, the techniques of industrialized war have almost nothing to do with the conventions of individual heroism.” *Id.* at 214. Thus, Connell explains, military service is a basis to produce “exemplary masculinities” and is “thus integral to the politics of hegemonic masculinity.” *Id.* at 214

service are inaccurate and unproductive.<sup>91</sup> Dr. Linnerooth's suicide, in that sense, reveals a powerful story of struggle, alienation, and isolation for – even – the population around whom military culture was historically and normatively built and sustained.

a. *The Easy Case: Making Visible the Invisible Wounds of War*

i. Invisible Wounds Revealed

The military mental health crisis strongly exposes the myth of universal male military inclusion. Despite the dominant masculine warrior archetype surrounding military service suggesting an innate masculine ease with exposure to violence, psychological responses to combat exposure suggest otherwise.

Post-Traumatic Stress Disorder (PTSD) is classified as an anxiety disorder, often triggered by a significant life experience involving “threat of injury or death.”<sup>92</sup> PTSD occurs broadly within the general population, but members of the military are frequently diagnosed with PTSD at a higher rate than the civilian population, partly due to the strenuous and violent experiences associated with combat.<sup>93</sup> Though events triggering the onset of PTSD vary immensely between individuals, three common categories of symptoms have emerged: re-experiencing symptoms, including flashbacks and bad dreams, avoidance symptoms, such as emotional numbness, lack of interest, or feelings of depression or guilt, and hyperarousal symptoms, which include near constant anxiety or tension.<sup>94</sup>

While the mainstream media and political discussions of PTSD and depression following combat exposure are new, the psychological hardships of war are not new. Soldiers as far back as the Trojan War, have reported

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<sup>91</sup> See e.g., R.W. CONNELL, MASCULINITIES 213-15 (2005). Connell explains that despite the cultural framing of military service in a heroic warrior lens, “we would be sadly misled if we believed military operations actually work on the basis of crusading heroism.”

Rather, the

techniques of industrialized war have almost nothing to do with the conventions of individual heroism.” *Id.* at 214. Thus, Connell explains, military service is a basis to produce “exemplary masculinities” and is “thus integral to the politics of hegemonic masculinity.” *Id.* at 214

<sup>92</sup> “Post-Traumatic Stress Disorder.” PUBMED HEALTH

<sup>93</sup> Jeffrey Norris, *Women May Be at Increased Health Risk Due to PTSD*, UNIVERSITY OF CALIFORNIA SAN FRANCISCO

<sup>94</sup> U.S. DEPT. OF HEALTH & HUMAN SERVICES, NAT’L INSTITUTE OF HEALTH, *Post-Traumatic Stress Disorder (PTSD)* 1 – 3.

real mental repercussions surrounding combat exposure.<sup>95</sup> Soldiers in Ancient Greece, for example, frequently described symptoms of modern-day Post-Traumatic Stress Disorder, including acute stress reaction and isolation caused by traumatic combat-related events, upon their return home from the battlefield.<sup>96</sup> Although treatment for some combat-related disorders began as early as World War I,<sup>97</sup> the aftermath of the Vietnam War first showcased virulent emotional reactions to war, raising greater awareness of the need for military service members to access mental health care.<sup>98</sup>

While the Vietnam War raised social and political awareness surrounding the mental health repercussions of military service,<sup>99</sup> treatment remained universally inadequate.<sup>100</sup> Society's refusal to talk about the severe consequences of PTSD<sup>101</sup> restricted the research and development of effective treatment options.<sup>102</sup> Moreover, the stigma attached to the

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<sup>95</sup> INST. OF MED. OF THE NAT'L ACADS., RETURNING HOME FROM IRAQ AND AFGHANISTAN: PRELIMINARY ASSESSMENT OF READJUSTMENT NEEDS OF VETERANS, SERVICE MEMBERS, AND THEIR FAMILIES, 40 (2010); *See e.g.*, Peyton Cooke, *Post-Traumatic Stress Disorder & The Military Justice System*, 79 MISS. L.J. 485 (2010).

<sup>96</sup> *Id.*

<sup>97</sup> RICHARD FALK, IRENE GENDZIER & ROBERT J. LIFTON, CRIMES OF WAR: IRAQ, 404-405 (2006); Cooke, *supra* note 1 at 493.

<sup>98</sup> *See e.g.*, *Tough and Tender: New World Order Masculinity and the Gulf War*, IN THE "MAN" QUESTION IN INTERNATIONAL RELATIONS, 15 (noting how the Vietnam War complicated the narrative for returning soldiers because men were not socialized as heroes upon their return); Stephanie Simmons, *When Restoration to Duty and Full Rehabilitation is Not a Concern: An Evaluation of the United States Armed Forces*, 34 N.E.J. on Crim. & Civ. Con. 105 (Winter, 2008) (*citing* BRUCE J. WINICK, A THERAPEUTIC JURISPRUDENCE MODEL FOR CIVIL COMMITMENT, IN INVOLUNTARY DETENTION AND THERAPEUTIC JURISPRUDENCE: INTERNATIONAL PERSPECTIVES ON CIVIL COMMITMENT 23, 29 (Kate Diesfeld & Ian Freckelton eds., 2003).)

<sup>99</sup> Marcia G. Shein, *Post-Traumatic Stress Disorder in the Criminal Justice System: From Vietnam to Iraq and Afghanistan*, FED. LAW., Sept. 2010, at 42, 43. (analyzes the increase in scientific and political recognition of PTSD that "surged" during the era of the Vietnam war).

<sup>100</sup> *Id.* ("Treatment options for Veterans of the Vietnam War were limited because of limited benefits, 'inadequate facilities, and professional understanding.") (internal citation omitted).

<sup>101</sup> A medical diagnosis of Post-Traumatic Stress Disorder includes the finding of "re-experiencing symptoms, avoidance and numbing symptoms, and arousal symptoms" related to a traumatic event in one's life, such as military service in a time of war. Neb. Dept. of Veteran's Affairs, *Post-Traumatic Stress Disorder: What is PTSD?*, <http://www.ptsd.ne.gov/what-is-ptsd.html> (last visited Sept. 5, 2012). PTSD is characterized by distinct biological and psychological changes, which routinely affect a soldier's ability to "function in social or family life." *Id.*

<sup>102</sup> Interview by VIETNAM MAGAZINE with Representative Jeff Miller (June 6, 2012), available at <http://www.historynet.com/interview-rep-jeff-miller.htm>.

Vietnam War caused many Americans to treat returning veterans poorly because of the sharply divided and politically-charged environment of the time.<sup>103</sup>

PTSD has been recorded in over 39,365 cases from 2003 to 2009.<sup>104</sup> Studies show that exposure to combat in Iraq alone resulted in 19.1% of soldiers screening positive for PTSD,<sup>105</sup> while over 300,000 soldiers suffer from depression.<sup>106</sup> In addition to PTSD, military personnel may also suffer from mental disorders such as panic disorder, agoraphobia, obsessive-compulsive disorder, depression and substance abuse.<sup>107</sup> One study revealed that of 26,613 active-duty personnel polled, 6% engaged in “heavy drinking” after returning from Iraq or Afghanistan.<sup>108</sup>

Most alarming are the rising rates of suicide and homicide by veterans.<sup>109</sup> Undiagnosed PTSD and depression are two leading causes of suicide among veterans.<sup>110</sup> Current suicide rates in the Army are the highest they have been in over three decades,<sup>111</sup> with the Department of Veterans Affairs reporting an average of 18 war veterans committing suicide a day!<sup>112</sup>

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<sup>103</sup> *Id.*

<sup>104</sup> Testimony, *Assessing Combat Exposure and Post-Traumatic Stress Disorder in Troops and Estimating the Costs to Society: Implications from the RAND Invisible Wounds Study*, RAND CORP. (Mar. 2009), available at [http://www.rand.org/pubs/testimonies/2009/RAND\\_CT321.pdf](http://www.rand.org/pubs/testimonies/2009/RAND_CT321.pdf).

<sup>105</sup> See generally TERRI TANILIAN & LISA H. JAYCOX, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* (TERRI TANILIAN & LISA H. JAYCOX, EDs., 2008), available at [http://rand.org/pubs/monographs/2008/RAND\\_MG720.pdf](http://rand.org/pubs/monographs/2008/RAND_MG720.pdf).

<sup>106</sup> *Id.*

<sup>107</sup> AM. PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 424-425 (4th ed. 1994)

<sup>108</sup> Editorial, *Reserve, National Guard at Higher Risk of Alcohol-Related Problems after Returning from Combat*, SCI. DAILY (Aug. 12, 2008), <http://www.sciencedaily.com/releases/2008/08/080812160607.htm>.

<sup>109</sup> Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES, Jan. 13, 2008. See also HANNAH FISCHER, UNITED STATES MILITARY CASUALTY STATISTICS: OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM (2009), at 1-2, available at <http://www.fas.orgsgp/crs/natsec/RS22452.pdf>.

<sup>110</sup> Madeline McGrane, *Post-Traumatic Stress Disorder in the Military: The Need for Legislative Improvement of Mental Health Care for Veterans of Operation Iraqi Freedom and Operation Enduring Freedom*, 24 J.L. & Health 183 (2011).

<sup>111</sup> *Veterans for Common Sense v. Peake*, 563 F. Supp. 2d 1049, 1062-63. (N.D. Cal. 2008) (citing RAND study).

<sup>112</sup> Milaninia *supra*, note 45(citing VOCATIONAL REHABILITATION, MORE VA AND DOD COLLABORATION NEEDED TO EXPEDITE SERVICES FOR SERIOUSLY INJURED

There are certain modern realities of war that exacerbate mental health stressors. American military personnel after September 11, 2001, have endured a new set of unique challenges and strains serving in Iraq and Afghanistan. Since 2001, the U.S. military has continually confronted international terrorism in an effort to dismantle extremist terror groups. The war in Afghanistan, known as “Operation Enduring Freedom,” and “Operation Iraqi Freedom” in Iraq have resulted in the deployment of 1.9 million American soldiers.<sup>113</sup> Soldiers deployed to Iraq and Afghanistan are deployed for longer tours of duty and more frequent tours,<sup>114</sup> in particularly harsh conditions,<sup>115</sup> in a complex political environment.<sup>116</sup> The experiences of soldiers in Iraq and Afghanistan are also unique in challenges identifying the enemy, the threats posed (e.g., roadside bombs, suicide bombings), the types of weaponry used, and the uncertain nature of the conflict.<sup>117</sup> The all-volunteer nature of the military further challenges modern military service.<sup>118</sup> Military recruiting has faced new challenges in recruiting its personnel. Concerns have emerged from recent veterans that modern military personnel are under-funded and under-equipped for the hazards

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SERVICEMEMBERS, GAO REPORT 06-167 (Jan. 2005), *available at* <http://www.gao.gov/highlights/d05167high.pdf>.

<sup>113</sup> INST. OF MED. OF THE NAT’L ACADS, *supra note* 44, 13, 25.

<sup>114</sup> See INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY, at 5-7 (Terri Tanielian & Lisa H. Jaycox eds., 2008).

<sup>115</sup> INST. OF MED. OF THE NAT’L ACADS, *supra note* 44, 1 (noting the high rate of multiple deployments for the all-volunteer military).

<sup>116</sup> David Jackson, *Obama Pledges Aid to Veterans*, USA TODAY, Sept. 1, 2012 (“[W]ar remains ‘a source controversy’ politically” for President Obama).

<sup>117</sup> See e.g., See Constantina Aprilakis, *The Warrior Returns: Struggling to Address Criminal Behavior by Veterans With PTSD*, 3 GEO. J.L. & PUB. POL’Y 541, 543-44 (2005) (discussing the unique threats of roadside bombs and suicide bombings). See also Joshua Akers, *The Unconventional War: Parallels Between the Combat Experience in Vietnam and Iraq*, 4-5, VALLEY HUMANITIES REVIEW (Spring 2011) (noting the differences in the nature of the conflict, geographic conditions, and the types of threats posed to servicemen); Committee Report, *Countering the Afghan Insurgency: Low-Tech Threats, High-Tech Solutions*, NATO (2011), *available at* <http://www.nato-pa.int/default.asp?SHORTCUT=2551>.

<sup>118</sup> Even though the American military is currently based on volunteer enlistment, the “poverty draft” suggests “the enlisted ranks of the military [are] made up of young people with limited economic [and career] opportunities.” Jorge Mariscal, *The Making of the American Soldier: Why Young People Join the Military*, ALTERNET, June 25, 2007, *available at* [http://www.alternet.org/story/52233/the\\_making\\_of\\_an\\_american\\_soldier%3A\\_why\\_young\\_people\\_join\\_the\\_military](http://www.alternet.org/story/52233/the_making_of_an_american_soldier%3A_why_young_people_join_the_military); See also Carmillo Bica, *Rich Man’s War and a Poor Man’s Fight*, Op-Ed, TRUTHOUT, Feb. 11, 2011, *available at* <http://archive.truthout.org/rich-mans-war-and-a-poor-mans-fight67666>.

they face.<sup>119</sup>

These new complexities of warfare and of military service seem to be increasing the psychological complications of war.<sup>120</sup> Studies suggest that incidents of psychological trauma are higher in recent decades.<sup>121</sup> Post 9/11 veterans report substantially higher readjustment difficulties (43%) than veterans before 9/11 (25%).<sup>122</sup> Nearly half of all veterans post 9/11 report “strains in family relations” and “frequent outbursts of anger.”<sup>123</sup> Thirty-seven percent report that “they believe they have suffered from post-traumatic stress,” compared to just 16% of veterans before 9/11.<sup>124</sup>

The modern mental health crisis in the military reveals a dissonance for male soldiers in responding to combat violence, suggesting that violence is not inherently masculine. Many of the institutional barriers to treatment are deeply rooted in stigmas that can only be fully understood through the lens of festering masculinities underpinnings to military service. This thesis is further explored below.

## ii. Invisible Wounds Make Marginalized Masculinities Visible

Emerging research and anecdotal accounts have catalyzed a national veteran’s mental health movement towards recognition of combat-related disorders and the necessity of professional assistance.<sup>125</sup> Reforms and responses are being framed exclusively as veterans’ issues,<sup>126</sup> however, not as gender issues as well. Existing conversation about the mental health

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<sup>119</sup> See e.g., A Breaking Military: Over Extension Threatens Readiness, Iraq and Afghanistan Veterans of America Issue Report, Jan. 2008, *available at* [http://iava.org/files/Military\\_Readiness\\_0.pdf](http://iava.org/files/Military_Readiness_0.pdf) (concluding that only an estimated 12% of Operation Iraqi Freedom soldiers are equipped with armor, despite the threats of combat exposure faced by many more).

<sup>120</sup> INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY, at 5 (Terri Tanielian & Lisa H. Jaycox eds., 2008).

<sup>121</sup> Stephen L. Robinson, National Gulf War Resource Center, Hidden Toll of the War in Iraq: Mental Health and the Military, *available at* <http://www.americanprogress.org/kf/hiddentoll91404.pdf>

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Nema Milaninia, *The Crisis At Home Following the Crisis Abroad: Health Care deficiencies for US Veterans of the Iraq and Afghanistan Wars*, 11 DEPAUL J. HEALTH CARE L. 327 (2008).

<sup>126</sup>

crisis among military families is missing two critical symbiotic components – feminist advocacy and masculinities theory.

Notably missing from mental health crisis responses is a masculinities analysis. There has been a resounding stigma associated with military personnel obtaining mental health services. That stigma is squarely rooted in the precise masculine culture that feminists seek to reform. As one soldier who served in Iraq and now helps others seek mental health services explained: “It’s humiliating, first of all, for a male. We’re men; we’re alpha. To admit we’re broken is a big, big ego thing.”<sup>127</sup> In the extreme, a soldier’s admission of mental health may be seen a “malingering to escape service,”<sup>128</sup> and those individuals with a mental illness were seen as irresponsible.<sup>129</sup>

Some of this stigma is rooted in the same exclusionary archetype that feminists are targeting. It is a dissonance in reconciling mental health diagnoses and “Army Strong” ideals.<sup>130</sup> The opening quote from G.I. Jane reveals this poignantly. The message is clear – vulnerability is weakness and is accordingly repelled from military archetypes.

Consider, for examples, accounts surrounding the 2009 mass shooting at Camp Liberty in Baghdad by Sergeant John Russell.<sup>131</sup> Russell had been contemplating suicide, had sought mental health treatment, and displayed such clear signs of distress that his first lieutenant removed the firing pin from his M16 assault rifle.<sup>132</sup> In the dawn hours before the shooting, he met with a chaplain who scheduled a mental health appointment for Russell and emailed a psychiatrist expressing concerns that Russell was “deteriorating.”<sup>133</sup> He subsequently used a stolen gun to kill

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<sup>127</sup> Schwartz 2009???

<sup>128</sup> *Id.*

<sup>129</sup> Thomas W. Britt, THE STIGMA OF MENTAL HEALTH PROBLEMS IN THE MILITARY, 172 *MILITARY MEDICINE* 157 (2007).

<sup>130</sup> Madeline McGrane, POST-TRAUMATIC STRESS DISORDER IN THE MILITARY: THE NEED FOR LEGISLATIVE IMPROVEMENT OF MENTAL HEALTH CARE FOR VETERANS OF OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM, 24 *J.L. & HEALTH* 183 (2011). Letter to the Editor, *The Hearts and Minds of Soldiers*, N.Y. TIMES, Jan. 28, 2009, at A30.

<sup>131</sup> Jomana Karadsheh, et al., U.S. Soldier Charged with Murder in Iraq Shooting Death (May 12, 2009), available at <http://www.cnn.com/2009/WORLD/meast/05/12/iraq.soldiers.killed/#cnnSTCtext>.

<sup>132</sup> Eliot Blair Smith, *Military Mental Health Crisis Exposed with Camp Liberty Killings*, Bloomberg News (August 1, 2012).

<sup>133</sup> *Id.*

five comrades on the base of Camp Liberty in Iraq.<sup>134</sup> At the time of the shootings, Russell was on his third deployment and was being actively treated at Camp Liberty's stress clinic for mental health issues related to his traumatic combat experiences.<sup>135</sup>

But why this shooting and why then? On the morning of the shooting, Russell visited the clinic for the fourth time in four days, where a superior officer stripped him of his weapon privileges.<sup>136</sup> Based on Russell's medical records and conversations with others, Russell's superiors determined he lacked the quality of strength under all circumstances, which is traditionally exemplified by, and required of, American soldiers.<sup>137</sup> Following the soldier's visits to the stress clinic, Russell was deemed temporarily unfit to carry a weapon because of his mental instability and suicidal thoughts.<sup>138</sup> In an atmosphere that places a "premium on strength, physically, mentally, and emotionally . . . [d]isarming a soldier in the field leaves them feeling especially vulnerable and violated."<sup>139</sup> Therefore, when the officer dressed down Russell, he was physically and figuratively stripped of his masculine identity as an American soldier, which only further exacerbated his deteriorating mental health stability, and may have contributed to his hyper-masculine act of opening fire on his men in the armed forces. This account of the Camp Liberty shootings suggests a symbiotic benefit to men and women alike in extracting the masculinities underpinnings of the mental health crisis.

Hegemonic masculinity is sustained by the quest for a dominant strand of masculinity and the perceived powerlessness that men can derive

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<sup>134</sup> Elliot Blair Smith, *Military Mental Health Crisis Exposed with Camp Liberty Killings*, BLOOMBERG, Aug. 1, 2012, available at [www.bloomberg.com/news/print/2012-08-01/military-mental-health-crisis-exposed-with-camp-liberty-killings.html](http://www.bloomberg.com/news/print/2012-08-01/military-mental-health-crisis-exposed-with-camp-liberty-killings.html) (last visited Sept. 13, 2012).

<sup>135</sup> Luis Martinez, *U.S. Soldier Suspected of Killing Fellow Troops at Camp Liberty*, ABC NEWS (Mar. 11, 2009), available at <http://abcnews.go.com/Politics/story?id=7556201&page=1#.UFHx7I6mlUQ>.

<sup>136</sup> Elspeth Cameron Ritchie, *Military Psychiatrists at War: True Life and Death Decisions*, TIME, Aug. 7, 2012, available at <http://nation.time.com/2012/08/07/military-psychiatrists-at-war-true-life-and-death-decisions/>.

<sup>137</sup> Addendum O: Comprehensive Soldier Fitness, 2012 Army Posture Statement, available at [https://secureweb2.hqda.pentagon.mil/vdas\\_armyposturestatement/2012/addenda/addenda\\_o.aspx](https://secureweb2.hqda.pentagon.mil/vdas_armyposturestatement/2012/addenda/addenda_o.aspx)

<sup>138</sup> Smith, *supra* note 1.

<sup>139</sup> Robert H. Reid, *John M. Russell Charged in Shooting of 5 U.S. Soldiers in Iraq*, HUFFINGTON POST, May 12, 2009, available at [http://www.huffingtonpost.com/2009/05/12/john-russell-charged-in-s\\_n\\_202028.html](http://www.huffingtonpost.com/2009/05/12/john-russell-charged-in-s_n_202028.html).

from the constant pressure to achieve this masculinity.<sup>140</sup> This perception of inadequacy can lead to hyper-masculine expressions. Hyper-masculinity is a theory of exaggerated masculinity expressed as a manifestation of one's insecurities.<sup>141</sup> Hyper-masculinity is a "hedge, an effort to offset feelings of masculine inadequacy."<sup>142</sup> Hyper-masculinity has been used to explain some acts of male violence, extreme conservative viewpoints, and bodybuilding behaviors, to name a few expressions.<sup>143</sup>

The military mental health crisis reveals complex and symbiotic layers of insider/outsider advocacy and dominant and subordinate gender hierarchies worthy of further examination. Military culture is systematically built upon the outsider status of women, gays, and some men.<sup>144</sup> The mental health crisis of military service personnel reveals that men too can be the victims of complex dominant masculine paradigms spinning a narrative of physically aggressive and inherently combat-ready men. The mental health crisis of today's military reveals that masculine imperatives in the military position many men – not just women – in outsider status with respect to military service too. The culture impacts men and women alike. This outsider status is fueled, in part, by hegemonic masculine imperatives that yield the suppression of vulnerability narratives.<sup>145</sup>

There is also critical room in the mental health crisis for sustained feminist advocacy and substantive equality achievements. These masculinities underpinnings tap in to the underpinnings of masculinities whereby some male power is constructed and maintained by defining masculinity in relation to the "other" – namely maxims of dominant masculinities dictating that men should not be gay and not be feminine.<sup>146</sup> Thus, opponents of military integration for women, gays, and lesbians have politically and socially leveraged dominant masculinities to maintain a largely male and heterosexual fighting force.<sup>147</sup>

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<sup>140</sup> Dowd, *supra* note 80, at 213.

<sup>141</sup> JOSEPH H. PLECK, *THE MYTH OF MASCULINITY* 96 (1981).

<sup>142</sup> KIMMEL, *supra* note \_\_ at 161.

<sup>143</sup> PLECK, *supra* note 141, at 96.

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<sup>145</sup> See e.g., Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women's Integration in the Military*, 14 *DUKE JOURNAL OF GENDER LAW & POLICY*, 1097 (2007) (concluding, with respect to Israeli military integration efforts, that "merely inserting some women into a misogynist warrior culture does not eliminate the conflation of soldiering with masculinity."

<sup>146</sup>

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Thus, the military mental health crisis reveals that military culture harms the women of our armed forces, but also the men, and undermines efficacy entirely. Mental illness among members of the military plagues our communities and has entered our court system through unfortunate acts of violence committed by military members.<sup>148</sup>

Examining masculinity and violence within the military more holistically by insiders and outsiders aligns with both pressing military needs to sustain an emotionally fit, sustainable fighting force and anti-subordination goals to foster a more inclusive military culture that eradicates discriminatory and violent acts that perpetuate the subordination of women and men.

Given the reciprocal centrality of masculinity to military service and of military service to framing masculinity itself, the legal, social, and political responses to the military mental health crisis marks a critical entry point to decoupling the gendered underpinnings of violence and vulnerability.

#### b. *The Harder Cases: Violence on the Homefront*

Harder, and perhaps more controversial, to consider are the questions of hyper-masculine expressions of violence. Might these social endemics also reflect a hyper-masculine response to military service itself, debunking the myth that military service is inherently masculine?

##### i. *Inter-Family Violence*

Feminists have long focused on the rates of domestic abuse<sup>149</sup> in

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<sup>148</sup> *Id.* at 28 (describing how soldiers who commit dangerous behaviors may in fact be PTSD-afflicted).

<sup>149</sup> The concept of domestic violence is fluid, ranging from acts of physical aggression to more subtle attacks on an individual's emotional, psychological, or economic wellbeing. Regardless of its form, the implications of domestic violence often prove debilitating to the structural soundness of the family unit. Donna Miles, *Military Launches Domestic Violence Awareness Campaign*, HUFFINGTON POST, Oct. 4, 2010. Domestic violence can be generally characterized to include "willful intimidation, physical assault, battery, sexual assault, and/or [physically or emotionally] abusive behavior perpetrated by an intimate partner against another." *Domestic Violence Facts*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, [http://www.ncadv.org/files/DomesticViolenceFactSheet\(National\).pdf](http://www.ncadv.org/files/DomesticViolenceFactSheet(National).pdf). In the United States, domestic violence permeates every American population, regardless of race, ethnicity, socioeconomic status, age, or gender. *Id.* National statistics reveal that it affects more than 4 million people a year, with almost 17,000 of them murdered by an intimate partner and an estimated 2,000 children dying at the hands of a caregiver," showing the

military families and military responses to this abuse as a critical site for law reform.<sup>150</sup> It is well established that military families suffer from domestic abuse at a significantly higher rate compared to non-military families.<sup>151</sup> One report concluded, for example, that one in three military spouses suffer from domestic violence.<sup>152</sup> One study concluded that the rate of domestic violence in the military was as high as three times the civilian rate.<sup>153</sup> A second look at the data lowered the rate to two times as high.<sup>154</sup> In particular, the military rates, are higher for severe forms of domestic abuse.<sup>155</sup>

In response to national awareness of statistics like those mentioned above, feminists launched reform efforts to combat domestic violence in military families.<sup>156</sup> Military responses link family behaviors to military service. The military investigates and prosecutes alleged domestic violence differently compared to the procedures employed by civilian agencies.<sup>157</sup> The Department of Defense interprets acts of domestic violence as “not only an assault on the family, [but also as] an assault on military values[,] good order[,] and discipline.”<sup>158</sup> To that end, the military has continuously pledged its support for the health and wellbeing of families facing problems related to domestic violence. The military normatively imposes a “zero tolerance policy” for any act of domestic violence perpetrated by a service member.<sup>159</sup> However, once a case of domestic violence has been reported, “a ‘multi-disciplinary team’ of specialists [investigates the complaint and

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prevalence of domestic violence in the United States. Miles, *supra* note 1.

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<sup>151</sup> See generally Richard E. Heyman & Peter H. Neidig, *A Comparison of Spousal Aggression Prevalence Rates in U.S. Army & Civilian Representative Samples*, J. OF CONSULTING & CLINICAL PSYCHOLOGY 232, 239 (1999); Christine Hansen, *A Considerable Service: An Advocate's Introduction to Domestic Violence & the Military*, DOMESTIC VIOLENCE REPORT 2 (April/May 2001); NAT'L CTR. ON FAMILY HOMELESSNESS, UNDERSTANDING THE EXPERIENCE OF MILITARY FAMILIES AND THEIR RETURNING WAR FIGHTERS: MILITARY LITERATURE & RESOURCE REVIEW 10–11 (2010).

<sup>152</sup> [http://www.civresearchinstitute.com/dvr\\_military.pdf](http://www.civresearchinstitute.com/dvr_military.pdf)

<sup>153</sup> Battered the Truth,” Washington Times, February 4, 1999, at OpEd.

<sup>154</sup> *Id.* Citing [http://www.civresearchinstitute.com/dvr\\_military.pdf](http://www.civresearchinstitute.com/dvr_military.pdf)

<sup>155</sup> Richard Heymann and Peter Neidig, “A Comparison of Spousal Aggression Prevalence Rates in U.S. Army and Civilian Representative Samples,” 67 *Journal of Consulting and Clinical Psychology*, 239-42, N2 (1999). One study concluded that military men were four times more likely to choke their wives into unconsciousness or leave them with bruised windpipes and neck muscles. Anson Shupe et al., *Violent Couples* 76-77 (1987

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<sup>157</sup> Hansen, *supra* note 5, at 1.

<sup>158</sup> Press Service, Dept. of Defense, DoD Committed to Preventing Family Violence (Mar. 8, 1999).

<sup>159</sup> Hansen, *supra* note 5, at 2.

will] make recommendations to commanders on how to best proceed, whether it be counseling or stronger interventions such as restraint or military justice.”<sup>160</sup> Therefore, the Department of Defense’s flexible approach to their “zero tolerance policy” fails to adequately address the ever-growing problem of domestic violence within military with any uniformity; it is hard to ignore the inherent conflict of interest where one’s commander uses their discretion to determine the fate of a military offender.<sup>161</sup>

The military has no authority to resolve reports of domestic violence perpetrated by non-military personnel against members of the armed forces. However, where the abuser is subject to the control and jurisdiction of the military, the case may proceed either within the Family Advocacy system or the military justice system, depending on the severity of alleged abuse.<sup>162</sup> The Family Advocacy Program’s design is not based on punishment of the offender; rather, the program serves to identify, intervene, and treat those people affected by domestic violence.<sup>163</sup> While the case is being investigated by officers of the military, the Family Advocacy system works to ensure the “victim’s medical, mental health[,] protection needs are being met,”<sup>164</sup> while simultaneously advocating an abuser’s eligibility for the appropriate intervention services.<sup>165</sup> Following the investigation, the multi-disciplinary committee makes a recommendation to the offender’s commander regarding what action should be taken against the abuser.<sup>166</sup> From there, “[t]he commander determines whether to order the individual into treatment, and/or to seek to impose disciplinary procedures under the Uniform Code of Military Justice. The commander may also seek to obtain the discharge of the service member from the military.”<sup>167</sup>

The majority of domestic violence cases within the military are resolved by administrative means rather than criminal proceedings in military tribunals.<sup>168</sup> Most non-judicial punishments of military members who are found guilty of domestic violence may include the lowering of an offender’s rank, loss of pay, or extra work assignments, serving as a form of

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<sup>160</sup> *Id.*

<sup>161</sup> *Id.*, at 4.

<sup>162</sup> Rod Powers, *Military Domestic Problems*, <http://usmilitary.about.com/od/divdomviolence/l/aadomviol1.htm?p=1> (2012).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Hansen, *supra* note 5, at 4.

<sup>166</sup> *Id.* at 4.

<sup>167</sup> Powers, *supra* note 19.

<sup>168</sup> Hansen, *supra* note 5, at 4.

restitution for individual's violation of the values military values.<sup>169</sup> A small percentage of cases, classified as "severe," are eligible for prosecution under the Uniform Code of Military Justice.<sup>170</sup> Such proceedings closely resemble a civilian trial by jury, where parties are allowed to present evidence supporting their claim or defense to the alleged domestic violence.<sup>171</sup> It is important to consider the effects of the military culture on a soldier or veteran, because military training "enforces violence as a means of resolving conflicts."<sup>172</sup> In more recent prosecutions, judges and juries are increasingly required to consider the effect of combat trauma and stress when determining the culpability of their actions.<sup>173</sup>

Despite the formal, albeit flexible, procedure outlined by the Department of Defense, a great deal of evidence suggests the military often mishandles investigations and fails to provide a sense of justice to the victim of abuse.<sup>174</sup> Evidenced by the lack of prosecutions under the Uniform Code of Military Justice, "[p]hilosophically, domestic violence has been viewed by the military as a case of family dysfunction, not through a lens of criminal behavior. While civilian prosecutors in the past two decades have cracked down on abusers, the military emphasizes counseling and instructs commanders to consider the effects of punishments on careers of the accused."<sup>175</sup> Even if a military member is convicted of spousal abuse or some other form of domestic violence, it is commonplace for such an individual to be honorably discharged from service, with no possibility of jail time or a criminal record reflecting the dangerous behavior.<sup>176</sup> Therefore, the military's approach does not support the eradication of domestic violence because its policies provide no real deterrent, nor punishment, related to the assault on the wellbeing of American families.

This reality presents causation questions. Is there something about military service that attracts men more prone to domestic violence? Or is there something about military service itself that yields domestic violence as a hyper-masculine expression. Psychological literature considers both.<sup>177</sup>

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<sup>169</sup> *Id.* at 5.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> NAT'L CTR. FOR FAMILY HOMELESSNESS, *supra* note 5, at 11.

<sup>173</sup> Alvarez & Sontag, *supra* note 9.

<sup>174</sup> Amy Herdy & Miles Moffeit, *Homefront: Betrayal in the Ranks*, DENV. POST 19 (2004).

<sup>175</sup> *Id.* at 22

<sup>176</sup> *Id.* at 28

<sup>177</sup> Joshua J. Jackson et. al, *Military Training and Personality Trait Development: Does the Military Make the Man, or Does the Man Make the Military*, PSYCHOLOGICAL

At bottom, however, the training provided to military personnel seeks to break down their civilian identity in favor of a military persona.<sup>178</sup> “[W]hen compared with men in civilian pursuits, those entering the military are also more aggressive, more interested in competition than cooperation[,] and less concerned about the feelings of others.”<sup>179</sup>

Within the last decade, wartime stress placed on military families has contributed to the aggression and instability of soldiers and their loved ones upon their return home from combat.<sup>180</sup> More specifically, “[d]eployment to war, with its long separations, can put serious stress on military families. [S]tudies have shown that recurrent deployments heighten the likelihood of combat trauma, which, in turn, increases the risk of domestic violence.”<sup>181</sup> Military personnel with a diagnosis of PTSD are significantly more likely to perpetrate domestic violence against a partner than either a civilian or military member without such condition.<sup>182</sup> Thus, despite the benefits of aggression and competitiveness within the military context, such traits are associated with greater levels of conflict between partners, perhaps explaining the discrepancy in domestic violence rates between the military and civilian populations.<sup>183</sup>

## ii. Institutionalized Violence Against Women

[More development forthcoming.]

## VI. “SYMBIOTIC SUBSTANTIVE EQUALITY”: BRINGING MASCULINITIES THEORY AND FEMINIST THEORY TOGETHER TO MAKE SPACE FOR VULNERABLE WARRIORS

Because military service has historically been a site for framing masculinity itself, it likewise sits in a catalytic role. Throughout our entire history we have masculinized and romanticized a male warrior archetype

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SCI. 273 (2012) (concluding that it is inconclusive; there is evidence to suggest the military attracts a certain type of personality and to suggest that the military lifestyle can exacerbate that individual’s predisposition to violence).

<sup>178</sup> *Id.* at 271.

<sup>179</sup> Gerry Everding, *Military Service Changes Personality, Makes Vets Less Agreeable*, <http://news.wustl.edu/news/pages/23381.aspx> (last visited Nov. 8, 2012).

<sup>180</sup> Lizette Alvarez & Deborah Sontag, *When Strains on Military Families Turn Deadly*, N.Y. TIMES, Feb. 15, 2008.

<sup>181</sup> *Id.*

<sup>182</sup> See NAT’L CTR. ON FAMILY HOMELESSNESS, *supra* note 5, 10–11.

<sup>183</sup> Jackson et. al, *supra* note 6, at 275.

that harms women *and men*.<sup>184</sup> The sequencing of military integration simultaneous with the mental health crisis presents a critical launch point for the next wave of military integration and gender equality – what this paper describes as “symbiotic substantive equality.”

a. INJECTING GENDER INTO *EX POST* RESPONSES

This section will argue that feminist and masculinities approaches are necessary. Despite the commonality of symptoms among those who are diagnosed with PTSD, the evolution of the anxiety disorder has occurred along gendered lines, perhaps implicating the development of treatment techniques and the effectiveness of clinical procedures used to treat males and females.<sup>185</sup> For example, “[e]pidemiological studies reveal that men tend to experience higher lifetime exposure to traumatic events than women, but women are twice as likely to develop PTSD secondary to traumatic exposure.”<sup>186</sup> Indeed, the studies further noted the source of each individual’s traumatic event.<sup>187</sup> “Male participants [were] more likely to report experiencing accidents, nonsexual assault, combat or war, disaster or fire, serious illness or unspecified injury, and witnessing death or injury than [were] female participants. On the other hand, sexual assault or abuse, whether occurring in childhood or adulthood, [was] reported more frequently by female participants.”<sup>188</sup> Nevertheless, the underlying findings of the epidemiological studies may be skewed due to the role gender stereotypes have played in the evolution of the PTSD diagnosis; the codification of PTSD symptoms was spurred by the return of Vietnam veterans.<sup>189</sup>

Prevalence of anger within the male combat population emboldened the idea that anger is the consistent male, and not necessarily female, reaction to PTSD because of the violence associated with combat and the stigma of the Vietnam War.<sup>190</sup> However, Secretary of Defense Leon Panetta’s recent lift of the ban on women in combat will increase female

<sup>184</sup> See Ralston, *supra* note \_\_, at 677.

<sup>185</sup> Tara E. Galovski, Juliette Mott & et al., *Gender Differences in the Clinical Presentation of PTSD & Its Concomitants in Survivors of Interpersonal Assault* 790, *Journal of Interpersonal Violence* (2011).

<sup>186</sup> *Id.*

<sup>187</sup> David F. Tolin & Edna B. Foa, *Sex Differences in Trauma & Posttraumatic Stress Disorder: A Quantitative Review of 25 Years of Research*, *PSYCHOLOGICAL BULLETIN* 968 (2006).

<sup>188</sup> *Id.*

<sup>189</sup><sup>189</sup> *Id.* at 959.

<sup>190</sup> Galovski et al, *supra* note 4, at 792.

“risk for frequent exposure to physical and psychological trauma,” perhaps redefining the face of PTSD to include a more universal reaction shared among the male and female population, rather than gender-distinct experiences.

Within the population of those positively diagnosed with PTSD, gender differences are less documented. The lack of documentation within the PTSD community may be credited to historic lack of gender diversity within the most frequently studied types of trauma, namely combat-type experiences common to the military.<sup>191</sup> Though women can now enroll in combat units, procedures and treatment of PTSD may not be effective for female soldiers. For example, “[t]he consideration of gender differences in anger is particularly important, given that anger has been identified as both a predictor of PTSD development and a predictor of poor treatment outcome.”<sup>192</sup> The danger of gender differences in this context arises when a Doctor fails to sufficiently identify the source of a female’s mental health issue, namely PTSD, if she fails to identify the traumatic events deemed significant within the female population.

## ii. IMPROVING EX ANTE INSTITUTIONAL SUPPORT

In April of 2012, the U.S. Department of Defense issued a Memorandum, *Policy Guidance on the Assessment and Treatment of Post-Traumatic Stress Disorder (PTSD)*, “to provide policy guidance on the assessment and treatment of PTSD.”<sup>193</sup> In an effort to combat the inconsistent, and often inadequate, treatment of PTSD within the military community, the Department of Defense standardized the procedures related to the diagnosis and treatment of the anxiety disorder.<sup>194</sup> “The use of standardized and validated PTSD clinical screening tools, such as the PTSD Checklist, may be particularly useful in identifying who might benefit from further clinical evaluation or in monitoring treatment response, but are not diagnostic.”<sup>195</sup> The benefits of standardization within the military will help combat the negative stereotypes related to PTSD while increasing military personnel’s trust in the healthcare system.<sup>196</sup> However, no standardized screening tool can replace a comprehensive clinical interview “that assesses

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<sup>191</sup> *Id.* at 790.

<sup>192</sup> *Id.* at 792.

<sup>193</sup> Memorandum for Commanders, Medcom Regional Medical Commands, *Policy Guidance on the Assessment & Treatment of Post-Traumatic Stress Disorder (PTSD)*, 2.

<sup>194</sup> David Vergun, *Army Standardizes PTSD Diagnosis & Treatment*, ARMY NEWS SERVICE, Aug. 3, 2012.

<sup>195</sup> Memo, *supra* note 5, at 3.

<sup>196</sup> Vergun, *supra* note 4.

the full spectrum of both PTSD and non-PTSD symptoms within the broader bio-psycho-social context.”<sup>197</sup>

The Department of Defense’s effort to standardize the treatment of mental health issues, while ideological, begins inherently flawed due to the military’s historic discrimination against females. Though the opportunity of women to serve in combat equalizes the professional opportunities available to male and female soldiers, the military’s health-care program will struggle to keep pace with the influx of women diagnosed with PTSD. The comprehensive clinical interview will be critical to the success of the Department of Defense’s standardized approach. With the recent repeal of “Don’t Ask, Don’t Tell,” and the opening of combat positions to women, now more than ever, the gender-lines of the military are blurred. The diagnosis and treatment of soldiers who fail to identify with their own gender norm should not be overlooked.

### iii. Vulnerable Warriors and Warriors as Caregivers

Masculinities come into existence at particular times and places, and are always subject to change.<sup>198</sup> Masculinity is historically fluid, rendering it rich for analysis in immigration law.<sup>199</sup> R.W. Connell explains, “To recognize gender as a social pattern requires us to see it as a product of history and also as a *producer* of history.”<sup>200</sup> Masculinity is often deployed as a political tool, as this Paper will examine.<sup>201</sup> Examining the myth of male military inclusion reveals that men face a double edged sword in integration.<sup>202</sup>

At bottom, we need to reveal the intensity and emotional rigor of the experience of military service.<sup>203</sup> “So we have a paradoxical situation of an institution that constructs and upholds the most rigid stereotypes of hegemonic masculinity but at the same time provides a context that allows

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<sup>197</sup> Memo, *supra* note 3, at 3.

<sup>198</sup> *Masculinities*, R.W. Connell (2005) *masculinities*. 185

<sup>199</sup> CONNELL, *supra* note **Error! Bookmark not defined.**, at 76.

<sup>200</sup> CONNELL, *supra* note **Error! Bookmark not defined.**, at 81; *see also* KIMMEL, *supra* note \_\_ (explaining that “we cannot fully understand American history without understanding masculinity).

<sup>201</sup> *See* PLECK, *supra* note 141, at 162.

<sup>202</sup> *See e.g.*, Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women’s Integration in the Military*, 14 DUKE JOURNAL OF GENDER LAW & POLICY, 1097 (2007).

<sup>203</sup> Carol Cohn, *Guys in the Military: Texts and Subtexts*, In *The “man” question in international relations* (ed. 1998.) at 145

men to transcend some of these limits: The rigid constraints that typically prevent men from bonding with other men. These constraints break down in a controlled but nonetheless real way.”<sup>204</sup>

[Build out conclusions more fully to reveal that modern military service *does* align with his model of warriors as vulnerable and warriors as caregivers.]

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<sup>204</sup> Cohn. 145.