

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Articles in Law Reviews & Other Academic Journals

Scholarship & Research

Winter 2016

Debunking the Myth of Universal Male Privilege

Jamie Abrams

jamieabrams@wcl.american.edu

Follow this and additional works at: https://digitalcommons.wcl.american.edu/facsch_lawrev



Part of the [Law and Gender Commons](#), [Law and Society Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Jamie Abrams, *Debunking the Myth of Universal Male Privilege*, 49 *University of Michigan Journal of Law Reform* 303 (2016).

Available at: https://digitalcommons.wcl.american.edu/facsch_lawrev/2031

This Article is brought to you for free and open access by the Scholarship & Research at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Articles in Law Reviews & Other Academic Journals by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

DEBUNKING THE MYTH OF UNIVERSAL MALE PRIVILEGE

Jamie R. Abrams*

Existing legal responses to sexual assault and harassment in the military have stagnated or failed. Current approaches emphasize the prevalence of sexual assault and highlight the masculine nature of the military’s statistical composition and institutional culture. Current responses do not, however, incorporate masculinities theory to disentangle the experiences of men as a group from men as individuals. Rather, embedded within contestations of the masculine military culture is the un-stated assumption that the culture universally privileges or benefits the individual men that operate within it. This myth is harmful because it tethers masculinities to military efficacy, suppresses the costs of male violence to men, and positions women as perpetual outsiders.

Debunking the myth of universal male privilege in heavily masculinized institutions would advance gender equality and shift the law reform focus. It would bring sexual assault, domestic violence, and sexual harassment into the same frame as the military mental health crisis and even mass soldier-on-soldier shootings. This would reveal the gender equality implications of military mental health and disentangle masculinities and military efficacy. Debunking the myth of universal male privilege would yield more vigilance to how law reforms can exacerbate hyper-masculine violence. It introduces new entry points to gendered violence in the military, expanding the focus from incident-based responses to recruiting and training.

INTRODUCTION 304

I. DEBUNKING THE MYTH OF UNIVERSAL MALE PRIVILEGE
TO ACHIEVE FEMINIST LAW REFORMS 306

A. *The Limits of Feminist Theory Alone in Masculinized
Institutions* 306

B. *Applying a Masculinities Lens to Feminist Law
Reforms* 309

II. THE HARMS OF PERPETUATING THE MYTH OF UNIVERSAL
MALE PRIVILEGE 312

* Jamie R. Abrams (LL.M., Columbia University School of Law, 2011; J.D., American University Washington College of Law, 2002; B.A., Indiana University—Bloomington) is a law professor at the University of Louisville Louis D. Brandeis School of Law. The author thanks participants in the AALS Mid-Year Meeting Workshop on Next Generation Issues of Sex, Gender, and the Law (Orlando 2015), Law and Society Annual Meeting Feminist Legal Theory CRN (Seattle 2015), Regional Junior Faculty Workshop (University of Cincinnati College of Law 2015), University of Kentucky Developing Ideas Workshop (2013), and Conference on Applied Feminism (University of Baltimore 2013), and Albertina Antognini, Ann McGinley, and Luke Milligan for feedback on earlier drafts. The author extends a special thanks to Carol Allen, Kristin Birkhold, Brittany Hampton, Kimberly Balkcom, Annie Malka, and Corey Shiffman for their invaluable editing and research support and to the University of Louisville Brandeis School of Law for grant support.

A.	<i>The Myth Falsely Tethers Masculinity and Military Efficacy</i>	312
B.	<i>The Myth Suppresses the Costs of Male Violence to Men</i>	316
C.	<i>The Myth Leaves Women as Pereptual Outsiders</i>	321
III.	FROM STAGNANT MYTHS TO LASTING INSTITUTIONAL REFORMS.....	325
A.	<i>Tethering Gender Equality To Military Efficacy</i>	325
B.	<i>Exposing the Risks of Exacerbating Gendered Violence</i> .	329
C.	<i>Shifting from Incident-Based Reforms to Training and Recruiting</i>	331
	CONCLUSION	333

INTRODUCTION

Existing responses to gendered violence in the military have stagnated at best and failed at worst.¹ Extensive feminist advocacy has challenged the masculine military culture, which has left military women excluded, assaulted, harassed, and marginalized.² Although specific law reforms have changed over time, the contours of the debate remain the same—feminists contest the masculine military culture and seek women’s inclusion, and military leaders defend the existing culture as essential to military efficacy. This approach perpetuates the myth that the masculine military culture universally privileges or benefits the individual men that operate within it.

Effective law reform proposals must debunk this myth to advance gender equality. Feminist law reforms must examine heavily masculinized institutions through an added masculinities lens. A

1. See, e.g., Jerri L. Fosnaught, *Domestic Violence in the Armed Forces: Using Restorative Mediation as a Method to Resolve Disputes Between Service Members and their Significant Others*, 19 OHIO ST. J. DISP. RESOL. 1059, 1059–60 (2004) (“Every couple of years the media publishes a story highlighting the problem, and Congress or the armed forces respond by unveiling new reforms. . . . [T]hese reforms have failed to sufficiently address the reasons why service members resort to domestic violence more often than their civilian counterparts.”) (footnotes omitted); IN6, Inc., *13 Reasons Why Sexual & Domestic Violence is Not Just a Women’s Issue*, THE GOOD MEN PROJECT (Jan. 30, 2014), <http://goodmenproject.com/featured-content/cc-sexual-domestic-violence-is-not-just-a-womens-issue> (“After 40 years of an organized violence against women’s movement there is still an enormous amount of sexual and domestic violence; where do we go from here?”); Eric R. Carpenter, *The Military’s Sexual Assault Blind Spot*, 21 WASH. & LEE J. C. R. & SOC. JUST. 383, 384 (2015) (“Over the past two decades, new sexual assault scandals have been followed by familiar assurances and Congress’s patience has finally run out. . . . Why is it that those in the military say they are taking the problem seriously, but after more than twenty years, it does not seem like much has changed?”).

2. See, e.g., Jamie R. Abrams, *Migrating and Mutating Masculinities in Institutional Law Reforms*, in *EXPLORING MASCULINITIES: FEMINIST LEGAL THEORY REFLECTIONS* 145 (M. Fineman & M. Thomson eds., 2013).

masculinities lens reveals how male power and status are constructed and how the quest to attain idealized masculinities is sustained. Moreover, a masculinities lens exposes not only how men as a group create and sustain power within a particular institution (e.g., military, police, fraternity), but also how most men as individuals feel quite powerless and inadequate when they experience pressure to attain those dominant institutional masculine characteristics.

Leaving the myth of universal male privilege unaddressed creates a false gender binary. It frames women as outsiders, breaking into a male institution, and casts men as insiders, defending the institutional culture as necessary to military efficacy. Problematically, it tethers military efficacy to masculinity, positioning women's meaningful institutional integration as a threat both to masculinity and to military efficacy. Perpetuating this myth of universal male privilege is not only divisive and unproductive, but it also threatens to yield flawed legal reforms.

Injecting a masculinities lens to feminist law reforms reveals that previously segmented and isolated reform projects working to address sexual assault, domestic violence, veteran suicides, and mass military base shootings are more interconnected than previously understood. It broadens the frame, suggesting that beneath the well-documented military mental health crisis³ lies a stark reality that combat violence is not an inherently or innately masculine act. Bringing this realization to the surface frames the military more accurately and inclusively. Thus, applying a masculinities lens to feminist law reforms reveals that male military service is actually tightly constructed around male vulnerability, human dependency, and caregiving.

Part I reveals the limits of feminist law reforms *alone* in changing masculinized institutions and explains how an added masculinities lens might strengthen and supplement feminist law reforms. Part II identifies the harms of perpetuating the myth of universal male privilege. Part III envisions the move from stagnant myths to lasting law reforms. It considers how gender equality might be directly tethered to military efficacy, but cautions against law reforms that

3. See, e.g., RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 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 (describing the situation surrounding the mental health needs of United States military personnel as a "mental health crisis").

risk exacerbating gendered violence. Part III concludes with a proposed shift from incident-based responses to training and recruiting.

I. DEBUNKING THE MYTH OF UNIVERSAL MALE PRIVILEGE TO ACHIEVE FEMINIST LAW REFORMS

Debunking the myth of universal male privilege is an essential, but missing, first step to advancing gender equality in masculinized institutions. To advance gender equality we must apply a masculinities lens to reform initiatives. Without this masculinities lens, feminist law reforms may not examine the underlying masculinities imperatives that shape institutions, thereby limiting the likelihood of meaningful institutional change.

A. *The Limits of Feminist Theory Alone in Reforming Masculinized Institutions*

Feminists have worked for decades to reform the military by focusing squarely on the endemic sexual assault, harassment, and domestic violence perpetrated by men against women in military service.⁴ The number of reported sex crimes in the military is indeed sobering and troubling.⁵ Inevitably, in response, other

4. See, e.g., Noya Rimalt, *Women in the Sphere of Masculinity: The Double-Edged Sword of Women's Integration in the Military*, 14 DUKE J. OF GENDER L. & POL'Y, 1097 (2007) ("The armed masculinity of contemporary soldiering remains a cultural construct constituted in hostile opposition to femininity."); Judith E. Beals, UNDERSTANDING THE MILITARY RESPONSE TO DOMESTIC VIOLENCE: TOOLS FOR CIVILIAN ADVOCATES, BATTERED WOMEN'S JUSTICE PROJECT 4, 17 (2007), <http://www.bwjp.org/assets/understanding-military-response-domestic-violence.pdf>; Linda D. Kozaryn, *DoD Targets Domestic Violence*, ARMED FORCES PRESS SERV. (Jul. 30, 1996), <http://archive.defense.gov/news/newsarticle.aspx?id=40762>; THE FACTS ON THE MILITARY AND VIOLENCE AGAINST WOMEN, FUTURES WITHOUT VIOLENCE, http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/Military.pdf.

5. From just 2011 to 2012, the number of sexual crimes in the military rose 34.5% to 26,300 assaults from 19,300. GET THE FACTS ON MILITARY RAPE, ASSAULT AND OTHER SEXUAL OFFENSES, PROTECT OUR DEFENDERS (2012) http://protectourdefenders.com/images/POD_FactSheet.pdf. A review of military base records reveals a culture of chronic lack of enforcement of sexual violence in the military. Of those convicted, only one-third were incarcerated. Thirty received only a letter of reprimand. Yuri Kageyama & Richard Lardner, *Documents Reveal Chaotic Military Sex-Abuse Record*, AP NEWS, (Feb. 9, 2014), <http://usat.ly/LMh9tD> (documenting the story of how officers prosecute and punish under existing justice systems by analyzing records between 2005 and early 2013). A review of 1,000 cases of sexual abuse concluded that only 244 service members documented any punishment. From 2011 to 2012, the number of perpetrators convicted of sexual assault dropped from 1% in 2011 to 0.9% in 2012—a 10% percent decrease. *Get the Facts on Military Rape, Assault and Other Sexual Offenses: Fact Sheet from 2012 Department of Defense Sexual Assault Prevention and Response Office Annual*

scholars (often experienced military personnel) refute the severity of the endemic or propose some procedural tinkering around the margins of the behemoth military institution.

Feminist approaches to military reform have not yet challenged the myth of universal male privilege directly. Without understanding the complexities of governing masculinities within institutions, feminist goals can be thwarted and collateral consequences can result.

Feminist strategies have achieved formal integration, but not cultural or substantive equality.⁶ In 1996, feminist litigation successfully challenged the exclusion of women from the Virginia Military Institute (VMI), an elite, male-only public military school. The Supreme Court addressed women's exclusion, holding that although not all, or even most, women would likely pursue the adversarial military training that VMI offered, qualified women must be given consideration for admission consistent with Equal Protection guarantees.⁷ Because Virginia had no substantially equivalent educational opportunity available to women, VMI's exclusionary admission policy was held unconstitutional.⁸ The Court did not explicitly prohibit single-sex education, but it found that in this case, a separate women's program was incomparable because it did not follow the adversarial method or have the same elite status or backing of VMI.⁹

Report, PROTECT OUR DEFENDERS, http://protectourdefenders.com/images/POD_FactSheet.pdf. These numbers are likely under-representative because fear of retaliation or reprisal perpetuates a culture of non-reporting. Even in that context of under-reporting and under-enforcement, thirty percent of terminated military commanders who were fired over the past eight years lost their jobs because of sexually related offenses, including harassment, adultery, and improper relationships. Military families suffer from domestic abuse at a significantly higher rate than non-military families. See, e.g., Richard E. Heyman & Peter H. Neidig, *A Comparison of Spousal Aggression Prevalence Rates in U.S. Army and Civilian Representative Samples*, 67 J. OF CONSULTING & CLINICAL PSYCHOL. 239, 239 (1999); Christine Hansen, *A Considerable Service: An Advocate's Introduction to Domestic Violence & the Military*, 6 DOMESTIC VIOLENCE REPORT 2 (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).

6. On December 3, 2015, Defense Secretary Ash Carter announced that there would be no exceptions granted to the full military integration of all women; the full integration would proceed jointly among all branches. He reported that while all jobs will be open to women in 30 days, "it will take months and years for some units to feel the true effects of integration in combat deployments, as today's incoming women rise from recruits and go through their specialty training and proceed on into their careers." Kevin Baron, *No Exceptions; Defense Chief Opens All Military Jobs to Women*, *Defense One* (Dec. 3, 2015), <http://www.govexec.com/defense/2015/12/military-opening-all-combat-jobs-women/124175/>.

7. See *United States v. Virginia*, 518 U.S. 515, 520–21, 540–41 (1996).

8. *Id.* at 535, 552.

9. Valorie K. Vojdik, *Girls' Schools After VMI: Do They Make the Grade?*, 4 DUKE J. GENDER & L. POL'Y 69, 70 (1997).

The admission of women to VMI revealed the limitations of formal equality feminist approaches alone within heavily masculinized institutions.¹⁰ Although women won equal admission to VMI, nothing about the formal equality victory transformed the underlying culture into which women would enter.¹¹ The equal protection issue presented to the court did not address how the formal exclusion of women “perpetuates the mistaken belief that women are inherently different than men, not only in their cognitive abilities but in temperament, personality, and psychology.”¹² It presumed that the institutional approach benefited the men within its walls universally and failed to explain why women wanted access. The case thus left women knocking on the door of an all-male institution, and it left uncontested the presumption that the institutional norms privileged men universally.

Although critiques of formal equality are not new, applying a masculinities lens to feminist reforms reveals not only the *limits* of formal equality, but also the *risks* of approaches that do not directly contest the underlying masculinities imperatives. Even successful law reform projects can yield collateral consequences by perpetuating gendered stereotypes and masculinizing institutions. Examples of these collateral consequences can be seen in the context of rape and domestic violence law reforms. As University of Colorado Law Scholar Aya Gruber has argued, feminist law reforms addressing rape and domestic violence intersect with the criminal justice system in ways that became “less about critiquing the state and society’s treatment of women and more about allying with police power to find newer and better ways of putting men, who themselves often occupy subordinate statuses, in jail.”¹³

Feminist reforms have successfully achieved systemic and formal state intervention in domestic violence, overcoming the dominant narrative of non-intervention, which privileged male power over the family.¹⁴ However, these reforms also layered domestic violence law

10. *Id.* at 71. See generally LEIGH GOODMARK, *A TROUBLED MARRIAGE* (2012).

11. See, e.g., Benedict Carey, *While at War, Female Soldiers Fight to Belong*, N.Y. TIMES (May 24, 2015), <http://nyti.ms/1KtEKLg> (documenting rises in women’s depressive symptoms after deployment, which “beg us to account for why there’s this apparent surge in felt hopelessness and alienation among so many women service members during deployment”). The article describes gender-based tensions navigating the military culture. The culture teaches men to “Do your part, keep your head, cover your buddy’s back—and you’re in.” A woman, however, is “treated like a girl, and yet [she] can’t really be a woman—that’s the feeling.”

12. Vojdik, *supra* note 9, at 70.

13. Aya Gruber, *A “Neo-Feminist” Assessment of Rape and Domestic Violence Law Reform*, 15 J. GENDER RACE & JUST. 585 (2012).

14. But see Carolyn Ramsey, *The Exit Myth: Family Law, Gender Roles, and Changing Attitudes Toward Female Victims of Domestic Violence*, 20 MICH. J. OF GENDER & L. 1 (2013).

reforms on paradigmatically masculine law enforcement agencies and a conservative crime control agenda, which complicated and transformed law reform outcomes.¹⁵ The reforms positioned masculinized law enforcement agencies as surrogate protectors of women and families, placing men as both perpetrators and protectors and reinforcing dominant masculinity norms—not gender equality. Domestic violence reforms engaged in line drawing within the criminal law reform agenda, entrenching masculinized violence. It also reinforced the characterization of women as universally vulnerable to victimization and men as universally prone to violence and insulated from victimization.¹⁶

As explored in the next Part, making masculinities visible within law reforms facilitates more sustained and pervasive law reform successes and addresses the underlying gender dynamics of vulnerability and violence.¹⁷

B. Applying a Masculinities Lens to Feminist Law Reforms

It is critical to integrate masculinities theory into feminist responses to gendered violence within heavily masculine institutions.¹⁸ This means directly studying how male power structures are constructed and retained within institutions. Feminist law reforms that fail to systemically consider masculinities are insufficient.¹⁹

Feminist theory historically addressed the subordination of women by men and by the state. Masculinities theory developed as distinct—at times even divergent—strands of scholarship, particularly within “men’s rights” masculinities.²⁰ Today, masculinities theory is better understood as an ally to feminist theory.²¹ Scholars

15. Abrams, *supra* note 2, at 145.

16. *Id.*

17. *Id.*

18. See Judith Kegan Gardiner, *Introduction*, in *MASCULINITY STUDIES & FEMINIST THEORY: NEW DIRECTIONS 1* (Judith Kegan Gardiner ed., 2002) (discussing how to “help feminist theories break free from theoretical impasses”).

19. See Lee H. Bowker, *On the Difficulty of Eradicating Masculine Violence*, in *MASCULINITIES AND VIOLENCE 1–2* (Lee H. Bowker ed., 1998).

20. See Gardiner, *supra* note 18, at 3. 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. *Id.* at 5–6.

21. See *id.* at 5 (“Profeminist men argued that men should support feminism because most are harmed by idealizing the characteristics of socially powerful men and by defining the masculine in opposition to women and subordinate men, especially homosexuals and men of color.”).

of both theories generally agree that unpacking the binaries of politically and socially constructed roles of men and women is a mutually beneficial goal.²² Although feminist theory and masculinities theory are compatible conceptually,²³ meaningful techniques to incorporate and *apply* them consistently in practice are still emerging.²⁴

Masculinities scholarship critically examines how men, as individuals, do not feel privileged.²⁵ Masculinities examine how men have power over women as a group, how certain practices “maintain group power,” and how individuals engage in masculine practices.²⁶ Although men may be dominant and powerful as a group, most men do not feel powerful as individuals.²⁷ Rather, dominant norms perpetuate an idealized masculinity that very few men actually meet.²⁸ It is the very quest to achieve those norms that sustains them. The hierarchies require,

everyone to take part, if the system is to continue. The people who choose [] not to go along, who opt out of being caught in the cycle are castigated and shamed because each person who

22. See *id.* (“[T]hus the assumption that feminist thinking and masculinity were entirely mutually antagonistic was not entirely unfounded, but not entirely accurate either.”).

23. See *id.* at 5–6. Likewise, feminist theorists today incorporate masculinities as “an analytic dimension” to feminist frameworks. See *id.*

24. See generally Nancy Dowd, Ann McGinley & Nancy Levit, *Feminist Legal Theory Meets Masculinities Theories*, in *MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH* (Frank Rudy Cooper & Ann C. McGinley eds., 2012). 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, *Sport and Masculinity: The Promise and Limits of Title IX*, in *MASCULINITIES AND LAW: A MULTIDIMENSIONAL APPROACH* 207 (Frank Rudy Cooper & Ann C. McGinley, eds. 2011); NAOMI CAHN, DINA FRANCESCA HAYNES & FIONNUALA NI AOLAIN, *ON THE FRONTLINES: GENDER AND POST CONFLICT RECONSTRUCTION* (2011); NANCY E. DOWD, *REDEFINING FATHERHOOD* (2000); Ann C. McGinley, *Harassment of Sex(y) Workers: Applying Title VII to Sexualized Industries*, 18 YALE L. J. & FEMINISM 65 (2006); Kim Shayo Buchanan, *Beyond Modesty: Privacy in Prison and the Risk of Sexual Abuse*, 88 MARQ. L. REV. 751 (2005); David S. 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).

25. See, e.g., Nancy Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J. OF L. GENDER & SOC’Y 213 (2008).

26. Dowd, et al., *supra* note 24, at 26.

27. See Dowd, *supra* note 25, at 213 (discussing the contributions of Michael Kimmel to masculinities theory).

28. See *id.* at 210.

leaves the system shows just how broken it really is; it makes it harder and harder to paper over the cracks.²⁹

Masculinities—the unique ways in which men express their identified manhood through behaviors and norms in relational settings—come into existence at particular times and places and are always subject to change.³⁰ They are fluid and relational.³¹ For that reason particularly, addressing male institutional violence in the military requires systemic study.³² Applying a masculinities lens deepens the inquiry within institutions and broadens the scope of law reform.³³ Masculine norms might be framed differently from the Army to the Navy to the Air Force, for example. Masculinities manifest differently from the military to the family as well. And surely historic military masculinities differ from modern military masculinities.

Masculine violence, in particular, operates on multiple systematic levels, many of which are not adequately contemplated in existing law reform approaches. “[I]ndividuals, programs, and institutions generally fail to extinguish masculine violence because their ameliorative efforts usually focus on a single system level of action, whereas masculine violence has roots in multiple system levels.”³⁴ Institutions like the military are deeply stressful and even violent for all men. But why do some men respond to masculine pressures with hyper-masculine violence, while most do not?

When men fail to conform to unachievable masculine imperatives, it can trigger hyper-masculine acts. Hyper-masculinity is a theory of exaggerated masculinity expressed as a manifestation of insecurities.³⁵ When individual men feel their masculinity has been threatened or masculine norms are unattainable, they might feel

29. Harris O'Malley, *Defining a Modern Masculinity*, THE GOOD MEN PROJECT (Feb. 9, 2014), <http://goodmenproject.com/featured-content/defining-modern-masculinity-hesaid>.

30. R.W. CONNELL, *MASCULINITIES* 185 (2005).

31. *See id.* at 76, 79.

32. *See* Michael Buchhandler-Raphael, *Breaking the Chain of Command Culture: A Call for an Independent and Impartial Investigative Body to Curb Sexual Assaults in the Military*, 29 WIS. J.L. GENDER & SOC'Y 341, 345 (2014) (analyzing military sexual assault reforms, while expanding the lens “to connect the problems concerning reporting and investigation of military sexual assaults with broader issues pertaining to general rape law reform in the civilian system”).

33. *See generally* Francine Banner, *Institutional Sexual Assault and the Rights/Trust Dilemma*, 13 CARDOZO PUB. L. POL'Y & ETHICS 97 (2014) (“[D]espite that sexual violence is a concern common across numerous and varied institutions, however, there has been little impetus toward a holistic approach to dealing with rape and sexual assault.”); *see also* Ashley Anderson & Elizabeth Deutsch, Opinion, *Stop Assaults on Military Campuses*, N.Y. TIMES, May 13, 2015, at A23 (arguing for Title IX approaches to apply to military campuses).

34. Bowker, *supra* note 19, at 1 (proposing an approach to attacking masculine violence across five systems, including economics, social, cultural, and personality systems).

35. JOSEPH H. PLECK, *THE MYTH OF MASCULINITY* 96 (1981).

“guilty, ashamed and—critically—hostile.”³⁶ Hyper-masculine acts occur when an individual “doubles down” on hegemonic masculine traits in response to this sense of inadequacy (e.g., body building, dominance, homophobia).³⁷ Most relevant to this Article’s thesis, perceived masculine inadequacy can lead to hyper-masculine expressions of violence, such as domestic violence and sexual assault.³⁸

Only by adding a masculinities lens to feminist reforms can we reveal and understand how problematic masculine imperatives can yield hyper-masculine acts. An added masculinities lens catalyzes more effective law reform responses by exposing critical complexities, layers, and power dynamics not previously seen through feminist theory alone.

II. THE HARMS OF PERPETUATING THE MYTH OF UNIVERSAL MALE PRIVILEGE

Applying a masculinities lens to feminist law reforms highlights the harms of perpetuating the myth of universal male privilege. These harms include wrongly tethering military masculinities to military efficacy, suppressing the costs to men of masculine violence, and perpetually framing women as outsiders.

A. *The Myth Falsely Tethers Masculinity and Military Efficacy*

Perpetuating the myth of universal male privilege is problematic because it falsely tethers masculinity to military efficacy. If the modern military is strong and effective while seemingly rooted in a dominant masculine warrior paradigm, then it falsely links masculinity to efficacy. The military historically tethered masculinity to

36. O’Malley, *supra* note 29 (emphasis omitted).

37. Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *SEX, GENDER AND SEXUALITY: THE NEW BASICS* 61 (Abby L. Ferber, Kimberly Holcomb & Tre Wentling eds., 2009).

38. See generally Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 *STAN. L. REV.* 777, 781 (2000) (describing how men use violence or the threat of violence as a way of “proving individual or collective masculinity, or in desperation when they perceive their masculine self-identity to be under attack”). Hyper-masculinity has been used to explain some acts of male violence, extreme conservative viewpoints, and bodybuilding behaviors, to name a few. PLECK, *supra* note 35, at 96. Research has revealed, for example, “that the risk of domestic violence in relationships rises when the man feels that he’s no longer the primary breadwinner, especially when his wife earns equal or greater income—thus losing a critical aspect of his masculine identity.” O’Malley, *supra* note 29.

military service directly. Early military service was central to masculinities and to citizenship alike.³⁹ Military service was the institutional site where men became citizens and boys became men.⁴⁰ Military service formally excluded women because they were not political citizens.⁴¹ This created a gendered binary within military service wherein men were positioned as warriors, defenders, and protectors; whereas, women served as vulnerable caregivers in the private sphere.⁴²

The political framing of military service changed dramatically after the Civil War when the military formally became an all-volunteer force.⁴³ Male military service was no longer directly tethered to local militias due to national compulsory registration and draft obligations.⁴⁴ Still, tethering masculinity to military service persisted.

Masculinity still pervades and defines the military even though it is no longer a formal male institution nor a means for performing republican citizenship.⁴⁵ The modern military is formally the most

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

40. See, e.g., R. CLAIRE SNYDER, CITIZEN-SOLDIERS AND MANLY WARRIORS: MILITARY SERVICE AND GENDER IN THE CIVIC REPUBLICAN TRADITION 89–91 (1999); see also Carol Cohn, *Gays in the Military: Texts and Subtexts*, in THE “MAN” QUESTION IN INTERNATIONAL RELATIONS 142–45 (1998) (explaining how the military has historically been a site to “make men out of boys”). 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. See, e.g., Abrams, *supra* note 39, at 168–75. See also Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. CIN. L. R. 1345, 1348 (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”).

41. See, e.g., Abrams, *supra* note 39, at 175–78. Women were instead seen as vulnerable caregivers. It was distinctly women’s role in the family unit that supported military exclusion. John Adams summarized this 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.” WOMEN’S RIGHTS IN THE UNITED STATES, A DOCUMENTARY HISTORY 23 (Winston E. Langley & Vivian C. Fox, eds., 1994). This binary has persisted throughout women’s military exclusion.

42. Sara Ruddick, *Mothers and Men’s Wars*, in ROCKING THE SHIP OF STATE: TOWARD A FEMINIST PEACE POLITICS 77 (Adrienne Harris & Ynestra King eds., 1989) (explaining how war mythically portrays men as “warriors” who are sacrificing and courageous).

43. See DAVID BURRELLI, CONG. RESEARCH SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 2 (2012); see also Abrams, *supra* note 39, at 178–81 (describing the impact of the Civil War on military enlistment).

44. The National Defense Act of 1916 further empowered the president to institute a wartime draft. SNYDER, *supra* note 40, at 99–100. The 1917 Selective Service Draft Act required all men to register for the national draft. *Id.* at 100.

45. HELENA CARREIRAS, GENDER AND THE MILITARY: WOMEN IN THE ARMED FORCES OF WESTERN DEMOCRACIES 43 (2006); KAREN O. DUNIVIN, *Military Culture A Paradigm Shift*, No. 10, AIR WAR COLLEGE, Feb. 2007, at 19–20, <http://www.au.af.mil/au/awc/awcgate/maxwell/mp10.pdf>.

inclusive military in history.⁴⁶ Yet it is still largely designed around masculinity⁴⁷ and is entrenched in a “combat, masculine-warrior” paradigm that “tacitly endorse[s] excluding others who contradict their image of the combat, masculine warrior.”⁴⁸

These framings are flawed and inaccurate in modern times. Military service has always reflected deep gender binaries, but often mythical or inaccurate ones.⁴⁹ It has been a basis to produce “exemplary masculinities.”⁵⁰ 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 . . . the techniques of industrialized war have almost nothing to do with the conventions of individual heroism.”⁵¹ Rather, today, very few men take part in war as it is storied.⁵²

The modern military is a powerful political, legal, and social institution that does perpetuate some of the most problematic depictions of men and male violence. But it is *also* an institution that paradoxically and privately reveals real vulnerable expressions of masculinity and even deep caregiving.

46. In 2012, women made up fifteen percent of the active American armed forces, 19.5% of the reservists are women, and over 230,000 females have served in either Afghanistan or Iraq. Steve Griffin, *Fighting for Gender Equality on the Battlefield*, N.Y. TIMES AT WAR: NOTES FROM THE FRONT LINE BLOG (Jan. 31, 2012, 6:28 PM), <http://atwar.blogs.nytimes.com/2012/01/31/fighting-for-gender-equality-on-the-battlefield>; *Statistics on Women in the Military*, WOMEN IN MILITARY SERV. FOR AMERICA MEM’L FOUND., INC., <http://www.womensmemorial.org/Press/stats.html> (last visited Nov. 13, 2015) (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. Eileen Patten & Kim Parker, *Women in the U.S. Military: Growing Share, Distinctive Profile*, PEW RESEARCH CTR. (Dec. 22, 2011), <http://pewsocialtrends.org///-the-u-s-military-growing-share-distinctive-profile>. 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. See BURRELLI *supra* note 43, at 1. The number of women in the United States military has continuously increased ever since enlistment opened to women. NAT’L CTR. ON FAMILY HOMELESSNESS, *supra* note 5, at 9. The number of women in service has risen sevenfold since the military ended its policy of conscription, from two percent to fourteen percent or from 42,000 women to 167,000 women. Patten & Parker, *supra*. These numbers are particularly noteworthy where the overall enlistment rate has decreased by approximately 738,000 members in that same time period. *Id.*

47. See CARREIRAS, *supra* note 45, at 47.

48. DUNIVIN, *supra* note 45, at 16–18.

49. Ruddick, *supra* note 42, at 83 (explaining that these gendered binaries mythically position war itself as masculine and peace itself as feminine and counters “everyday maternal thinking as a whole contrasts . . . with military thinking”).

50. See, e.g., CONNELL, *supra* note 30, at 214.

51. *Id.* at 213–14.

52. Ruddick, *supra* note 42, at 152 (describing how far more are suppliers and bureaucrats).

[W]e 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 men to transcend some of these limits: the rigid constraints that typically prevent men from bonding with other men . . . break down in a controlled but nonetheless real way.⁵³

The popular mythical narrative glorifying combat military service needs to be re-written to reflect the full dimension of real modern military service in ways that equalize opportunities for women and diminish harmful masculine imperatives for men.⁵⁴ Exposing accurate military masculinities includes revealing military men as caregivers and nurturers for each other. It also includes depicting women as resilient, strong, and capable of combat violence and depicting men as vulnerable, dependent caregivers capable of humanitarian and supportive service.⁵⁵

Importantly, institutions *teach* and construct the marginalization of vulnerability within military masculinities. Intimate emotion and extreme loss is systemically channeled toward violence within the context of the military as an institution: “[D]on’t get sad, get even!” was explicit advice given by officers . . . to weeping soldiers who had lost buddies” during the Vietnam War.⁵⁶

Importantly, the institutional strategy of “othering” and “demonizing” the enemy is a unique framework of American military training and is deeply rooted in masculinity framings. In other historical contexts, the “enemy” in war was deeply respected and regarded as honorable, even as an enemy.⁵⁷ This American approach undermines healing in the context of Post Traumatic Stress Disorder (PTSD) because, “restoring honor to the enemy is an essential step in recovery from combat PTSD. While other things are obviously needed as well, the veteran’s self-respect never fully recovers so long as he is unable to see the enemy as worthy.”⁵⁸

53. Cohn, *supra* note 40, at 145.

54. See, e.g., Dave Phillips, *Coming Home to Damaging Stereotypes*, N.Y. TIMES, Feb. 6, 2015, at A11 (describing how harmful stereotypes about military service can complicate re-integration and distort our understandings of military service).

55. *Contra* Cara Hoffman, Opinion, *Giving Women a Fair Fight in the US Military*, TRUTHOUT (July 27, 2014), <http://www.truth-out.org/opinion/item/25197-giving-women-a-fair-fight-in-the-us-military?tmpl=component&print=1> (describing how we often see women’s military service through the lens of “victimhood” and rarely through the lens of “their actual military experiences, their accomplishments, resilience, and, yes, killing”).

56. JONATHAN SHAW, *ACHILLES IN VIETNAM: COMBAT TRAUMA AND THE UNDOING OF CHARACTER* 81 (1995) (reflecting a “conscious motivational technique by military during the Vietnam War”).

57. *Id.* at 110.

58. *Id.* at 115 (stating that “a war against subhuman vermin ‘has no honor’”).

Paradoxically, given the history of disconnecting masculinity from vulnerability and caregiving, soldiers learn to process combat *upon return* in the language of masculine love, intimacy, caregiving, and vulnerability as explored further below. The costs of perpetuating distorted images of military masculinities as the lynchpin to military efficacy are harmful to men and to women.

B. The Myth Suppresses the Costs of Male Violence to Men

Perpetuating the myth of universal male privilege harms individual men. The dominant masculine warrior archetype surrounding military service suggests an innate masculine ability to process exposure to combat violence. This harms men because it suppresses the vulnerability of military service. Veterans are committing suicide at unprecedented rates, suffering from depression, post-traumatic stress disorder, and other mental health conditions. Soldiers not only increasingly commit mass acts of violence on domestic bases but also while deployed abroad. Their families fracture and strain due to the stresses of combat exposure.⁵⁹

The modern mental health crisis in the military reveals a dissonance for male soldiers in responding to combat violence. Most alarming are the rising rates of suicide and homicide by veterans.⁶⁰

59. Nearly half of all veterans post 9/11 report “strains in family relations” and “frequent outbursts of anger.” STEPHEN L. ROBINSON, NATIONAL GULF WAR RESOURCE CTR., HIDDEN TOLL OF THE WAR IN IRAQ: MENTAL HEALTH AND THE MILITARY (2004), <https://cdn.americanprogress.org/wp-content/uploads/kf/hiddentoll91404.pdf>. Strains in family functioning include increased plans to separate or divorce among married soldiers. TASK FORCE ON MENTAL HEALTH, DEFENSE HEALTH BOARD, AN ACHIEVABLE VISION: REPORT OF THE DEPARTMENT OF DEFENSE TASK FORCE ON MENTAL HEALTH 5 (2007), <http://intransition.dcoe.mil/sites/default/files/MHTFReportFinal.pdf>.

60. Suicide is indeed a complex event and cannot be explained universally. Many factors are relevant, including individual physical and mental health. *See, e.g.*, James Dao & Andrew W. Lehren, *Baffling Rise in Suicides Plagues the U.S. Military*, N.Y. TIMES, May 15, 2013, at A1 (explaining that causation in understanding military suicides is hard and is complicated by drugs, depression, etc.); Deborah Sontag & Lizette Alvarez, *Across America, Deadly Echoes of Foreign Battles*, N.Y. TIMES, Jan. 13, 2008, at A1; *see also* HANNAH FISCHER, CONG. RESEARCH SERV., RS22452, UNITED STATES MILITARY CASUALTY STATISTICS: OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM 1–2 (2009); *Multiple Concussions May be Causing Increase in Military Suicides, Study Finds*, FOXNEWS.COM (May 16, 2013), <http://www.foxnews.com/health/2013/05/16/multiple-concussions-may-be-causing-increase-in-military-suicides-study> (studying the simultaneous increases in concussions and suicidal thoughts and concluding that soldiers with multiple concussions are more likely to have suicidal thoughts).

Undiagnosed PTSD⁶¹ and depression are two leading causes of suicide among veterans.⁶² Current suicide rates in the Army are the highest they have been in over three decades,⁶³ and the Department of Veterans Affairs reports an average of eighteen war veterans committing suicide a day.⁶⁴

PTSD occurs broadly within the general population. But members of the military are diagnosed with PTSD at a higher rate than the civilian population, partly due to the strenuous and violent experiences associated with combat.⁶⁵ Although the mainstream media and political discussions of PTSD and depression following combat exposure are new, the psychological hardships of war are not.⁶⁶ Post 9/11 veterans report substantially higher readjustment difficulties (forty-four percent) than veterans before 9/11 (twenty-five percent).⁶⁷ PTSD has been recorded in over 39,365 cases from

61. Post-Traumatic Stress Disorder (PTSD) is classified as an anxiety disorder, often triggered by a significant life experience involving threat of injury or death. Karen Estrada, *Myths About PTSD and Other Psychological Health Issues*, MILITARY HEALTH MATTERS, <http://www.militaryhealthmatters.com/topic-talk/myths-about-ptsd-other-psychological-health-issues> (last visited Nov. 13, 2015) (describing what PTSD is and what its symptoms are).

62. 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, 189–90 (2011).

63. *Id.*

64. 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) (citing U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-167, VOCATIONAL REHABILITATION, MORE VA AND DOD COLLABORATION NEEDED TO EXPEDITE SERVICES FOR SERIOUSLY INJURED SERVICEMEMBERS, (2005), <http://www.gao.gov/highlights/d05167high.pdf>).

65. 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 hyper arousal symptoms, which include near constant anxiety or tension. See Estrada, *supra* note 61; Jeffrey Norris, *Women May Be at Increased Health Risk Due to PTSD*, UNIV. OF CAL. S.F. NEWS CTR. (Aug. 15, 2012), <http://www.ucsf.edu/news/2012/08/12557/women-may-be-increased-health-risk-due-ptsd>.

66. Soldiers as far back as the Trojan War have reported real mental repercussions surrounding combat exposure. 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). 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. *Id.* Although treatment for some combat-related disorders began as early as World War I, 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. RICHARD FALK, IRENE GENDZIER & ROBERT J. LIFTON, CRIMES OF WAR: IRAQ 404–05 (2006); Cooke, *supra* at 493.

67. *War and Sacrifice in the Post-9/11 Era*, PEW RESEARCH CTR. (Oct. 5, 2011), <http://www.pewsocialtrends.org/2011/10/05/war-and-sacrifice-in-the-post-911-era/>.

2003 to 2009.⁶⁸ Studies show that exposure to combat in Iraq alone resulted in 19.1% of soldiers screening positive for PTSD.⁶⁹ Although almost twenty percent of military service members who served in Iraq and Afghanistan (300,000 personnel) reported symptoms of PTSD or depression, only about half sought out treatment.⁷⁰

A resounding stigma rooted in the construction of problematic gender norms has historically surrounded military personnel obtaining mental health services.⁷¹ 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."⁷² In the extreme, a soldier's admission of mental health may be seen as "malingering to escape service."⁷³ It is a dissonance in reconciling mental health diagnoses and "Army Strong" ideals.⁷⁴ Some of this stigma is rooted in the same exclusionary archetype that feminists are targeting when they fight for the inclusion of women.

Men who do not meet these hegemonic norms will conclude that they are somehow "unworthy, incomplete, and inferior."⁷⁵ These imperatives can particularly undermine the expression of emotion and vulnerability. Gender hierarchies, especially hegemonic constructions, "narrow[] [men's] options, force[] them into conforming roles, dampen[] their emotions, inhibit[] their relationships with other men, preclude[] intimacy with women and children, and impose[] sexual and gender nonconformity."⁷⁶ One

68. McGrane, *supra* note 62, at 186. Thirty-seven percent of soldiers report that "they believe they have suffered from post-traumatic stress," compared to just sixteen percent of veterans before 9/11. RAND CTR., *supra* note 3, at 5.

69. See Brett T. Litz & William E. Schlenger, *PTSD in Service Members and New Veterans of the Iraq and Afghanistan Wars: A Bibliography and Critique*, 20 PTSD RES. Q. 1 (2009).

70. See Charles W. Hoge, *Interventions for War-Related Posttraumatic Stress Disorder*, 5 J. AM. MED. ASSOC. 549, 549 (2011). In addition to PTSD, military personnel may also suffer from mental disorders such as panic disorder, agoraphobia, obsessive-compulsive disorder, depression and substance abuse. AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 424–25 (4th ed., 1994). One study revealed that of 26,613 active-duty personnel polled, six percent engaged in "heavy drinking" after returning from Iraq or Afghanistan. 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>.

71. See Estrada, *supra* note 61.

72. Jeremy Schwartz, *Soldiers Find Comfort at Tattoo Shops, Churches and Other Refuges*, AUSTIN AMERICAN-STATESMAN (Dec. 12, 2009), <http://www.statesman.com/news/news/soldiers-find-comfort-at-tattoo-shops-churches-a-1/nRWgB/>.

73. *Id.*

74. McGrane, *supra* note 62, at 191; Frank M. Ochberg, Letter to the Editor, *The Hearts and Minds of Soldiers*, N.Y. TIMES, Jan. 28, 2009, at A30.

75. Kimmel, *supra* note 37, at 61.

76. Gardiner, *supra* note 18, at 5.

man described the quest to conform with dominant masculinities as follows:

[F]or me masculinity always felt like a veil, a shroud that must be worn to reflect an *appropriate* image of maleness to the world. Appropriate to whom, I was never that clear. Disconnected from my natural inclinations for tenderness and abundant expression I was taught this strange dance from birth. The only thing I was clear on was what a young man was *not* supposed to be. Anything slightly feminine, emotional, tender or too expressive were suspect.⁷⁷

Although “strength, courage and fearlessness” underpin dominant masculinities, “grand paradox of masculinity” leaves men feeling inadequate, vulnerable, and fearful.⁷⁸ Hegemonic masculine imperatives yield the suppression of vulnerability narratives.⁷⁹

The book *Achilles in Vietnam*, often read by soldiers re-integrating after combat, describes vividly how the *absence* of vulnerability and dependence in military masculinities undermines soldiers’ re-integration in harmful ways.

We can never fathom the soldier’s grief if we do not know the human attachment which battle nourishes and then amputates. As civilians we have no native understanding of the soldier’s grief. Combat calls forth a passion of care among men who fight beside each other that is comparable to the earliest and most deeply felt family relationships.⁸⁰

This quote reflects, perhaps ironically, that military re-integration aims to help soldiers process the vulnerability and dependency that combat required.⁸¹

77. James Maynard, *The Roots of Fear and Loathing: The Paradox of Fearless Masculinity*, THE GOOD MEN PROJECT (June 2, 2014), <http://goodmenproject.com/featured-content/the-roots-of-fear-and-loathing-the-paradox-of-fearless-masculinity-kt>.

78. *Id.* (describing a “fear of the core self, fear of inadequacy, fear of questioning the roles, fear of anything or anyone different that may threaten our tenuous grasp on masculinity as a lived concept”).

79. *See, e.g.*, Rimalt, *supra* note 4, at 1119 (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”).

80. SHAW, *supra* note 56, at 39.

81. *Id.* at 16 (“[N]ote the dependency of every man on others: The sleeping men on the one on watch, the one on watch with night-vision equipment supplied by others, all of them upon the radio sets connecting the bunker with the CP. They depend upon the radio The vast and distant military and civilian structure that provides a modern soldier with his orders, arms, ammunition, food, water, information, training, and fire support is ultimately a

Consider some of the following excerpts describing the experiences of combat reframed in family and caregiving terms:

- “[T]he reality of combat calls forth the language and emotion of the earliest and strongest family relationships in every place and era.”⁸²
- “[I]t’s a closeness you never had before. It’s closer than your mother and father, close[r] than your brother or your sister, or whoever you’re closest with in your family We needed each other to survive.”⁸³
- “While the kin relationship of brother seems to be the most frequent symbol of the relationship between combat soldiers who are closest comrades, in our culture the powerful territory of feeling and symbolism of *mother* often seems to apply just as well.”⁸⁴

Suppressing masculine vulnerability also deeply marginalizes male victims of sexual assault and domestic violence.⁸⁵ The myth of men as universally integrated and privileged in the military complicates social acceptance of men as victims. It is well documented that men are often overlooked as victims in sexual assault.⁸⁶ Sexual assaults are actually perpetrated against male personnel more often than against female personnel, although women are statistically more likely to be assaulted than their male peers.⁸⁷ In the era of

moral structure, a fiduciary, a trustee holding the life and safety of that soldier. The need for an intact moral world increases with every added coil of a soldier’s mortal dependency on others. The vulnerability of the soldier’s moral world has vastly increased in three millennia.”).

82. *Id.* at 40.

83. *Id.*

84. *Id.* at 42.

85. James Dao, *In Debate Over Military Sexual Assault, Men are Overlooked Victims*, N.Y. TIMES, June 24, 2013, at A12 (quoting one soldier stating “I walked around for a long time thinking: I don’t feel like a man”).

86. *See id.* (reporting that the majority of sexual assaults each year are actually men assaulted by other men, but they struggle to report because of “a great deal of shame, embarrassment, and fear that others will respond negatively”).

87. David S. Cloud, *Air Force Member’s Allegation of Sex Assault Brings Him More Grief*, L.A. TIMES (Dec. 13, 2013), <http://articles.latimes.com/print/2013/dec/30/nation/la-na-military-male-rape-20131231> (fifty-three percent of the estimated 26,000 troops who were raped or forced into sex last year were men). In total, 6.1% of women are victims of sexual assault and 1.2% of men are victims of sexual assault. *Id.* Lolita C. Baldor, *Male Military Sex Assault Victims Slow to Complain*, AP NEWS, Dec. 8, 2014 (reporting on a recent Pentagon survey concluding that “nearly 1 percent of males in the U.S. military said they had experienced unwanted sexual contact, compared to 4.3 percent of women,” which “equates to about 10,500 men and 8,500 women”). The Department of Defense and the Obama administration have acknowledged that sexual assault in the military undermines military efficacy and reflect “scourge” and “blight” on the military. Kathleen Hunter & Tony Capaccio, *Gillibrand Vows to*

“don’t ask, don’t tell,” reporting sexual assault by a male risked accusations of homosexuality and the grave consequences to military service that came with these accusation.⁸⁸ But even today men still face great stigma in reporting sexual assault.⁸⁹

C. *The Myth Leaves Women as Perpetual Outsiders*

The myth of universal male military privilege complicates women’s integration in combat by positioning women as inherent outsiders, requiring gendered conformity when they are insiders, and threatening hyper-masculine expressions of violence against them. Positioned as perpetual outsiders, women who seek more active physical roles in the military are seen as “abnormal, mentally impaired, or morally corrupt” because these roles do not comport with images of women.⁹⁰ Military service is perceived as an atypical career track for women, thus gendered stereotypes create entry barriers, such as parental resistance to female enlistment.⁹¹

Women statistically work in more administrative and support roles than men do within the armed services.⁹² Nearly fifty percent of female officers and enlisted service women fill administrative and support roles, often in health care and administration, while approximately twenty percent of male servicemen fill these roles.⁹³ Only nine percent of “women officers are in tactical operations occupations, compared with forty-two percent of male officers.”⁹⁴ Even when women achieve insider military status they are still compelled to conform to masculine norms unrelated to military efficacy. Women’s success in the military also requires some measure of conformity with governing masculinities.

Pursue Military Sexual-Assault Legislation, BLOOMBERG BUS. (Dec. 10, 2013), <http://www.bloomberg.com/news/articles/2013-12-10/gillibrand-vows-to-pursue-military-sexual-assault-bill>.

88. Buchhandler-Raphael, *supra* note 32, at 351 (male victims are particularly unwilling to report sexual assault because they “do not want to view themselves as victims of sex crimes with the attached shame and stigma”); Cloud, *supra* note 87 (describing a male soldier who reported sexual assault after enduring deep “bouts of anger, guilt and depression so severe that he contemplated suicide several times”).

89. Dao, *supra* note 85.

90. See Catherine Toth, *Women and the Military*, in *THE HANDBOOK OF WOMEN, PSYCHOLOGY, AND THE LAW* 328–53 (Andrea Barnes ed., 2005).

91. See Mady W. Segal et al., *Gender and the Propensity to Enlist in the U.S. Military*, in *WOMEN IN THE MILITARY* 49, 67 (Rita James Simon ed., 2001) (speculating on the impact of masculinity norms influencing disparate enrollment statistics).

92. See Toth, *supra* note 90, at 329.

93. Jessica L. Cornett, *The U.S. Military Responds to Rape: Will Recent Changes Be Enough?*, 29 *WOMEN’S RTS. L. REP.* 99, 102 (2008).

94. *Id.*

Gendered analysis of combat integration in Israel, for example, reveals that women have integrated successfully, but only by embracing the masculine ideals of service.⁹⁵ Israeli women soldiers in combat “embrace those masculine bodily and discursive practices because they associate masculinity with military authority, . . . it appears that masculinity gives [women] power and legitimizes them as ‘real soldiers.’”⁹⁶ This research suggests that women’s integration is reaffirming underlying masculine hierarchies, rather than challenging them.⁹⁷ This re-affirmation of the masculinized military after women’s integration is “paradoxical” and “complex”:

While those women who occupy newly available combat roles manage to cross traditional gender lines on an individual basis, their presence and involvement in masculine roles in the military does not seem to bear any impact on the gendered culture of the institution On the individual level, [women] truly break gender boundaries within the army and their personal gains cannot be underestimated. Yet, viewed against the broader gendered regime in which those gains are achieved, one can clearly see the paradoxical link between women’s individual empowerment in the military and the simultaneous preservation of gender inequality.⁹⁸

This is particularly complex for the gender integration of combat roles, a slow and statistically complex exercise facing various degrees of resistance and support internally. Men process combat exposure as “a love that transcends anything [one has] ever known.”⁹⁹ Women, however, are often left isolated and lack comparable support when deployed. As one female veteran put it, “It’s like, I got all of the downside of serving in the Army and none of the upside, the camaraderie.”¹⁰⁰

Perpetuating the myth of universal male privilege can also trigger hyper-masculine expressions of violence against women. This violence occurs when men fail to conform to unachievable perceptions of masculinities or when men perceive women as the

95. Rimalt, *supra* note 4, at 1098 (“[W]omen’s recent integration into traditionally masculine roles in the military does not seem to undermine the gendered structure of this institution.”).

96. *Id.* at 1109 (summarizing the work of Sasson-Levy).

97. *Id.*

98. *Id.* at 1115–16.

99. See, e.g., Carey, *supra* note 11 (quoting David Marlowe, the founder of the Army’s behavioral health unit).

100. *Id.*

source of their loss. These hyper-masculine expressions might include, for example, domestic violence or sexual assault.

Relative Deprivation of Masculinities provides a theoretical framework to address the question of why some men handle masculine imperatives with ease and why others resort to illegitimate means and hyper-masculine expressions.¹⁰¹ Conway defines relative deprivation as the perception of a deficit between what a man expects to achieve and what he actually has achieved.¹⁰² The theory examines how this perceived deficit can lead to men resorting to illegitimate acts of gender violence to attempt to overcome the perceived gap.¹⁰³ Men who cannot meet these idealized discourses of masculinity, such as wealth, athletics, or physical appearance, can use physical and sexual violence as an alternative illegitimate attempt to perform dominant masculinities.¹⁰⁴ This can happen in at least three different ways: decremental, aspirational, and antithetical deprivation of masculinities.

Decremental deprivation of masculinities describes how some men commit hyper-masculine acts of violence because they perceive themselves to have lost an aspect of their masculinity that they once had.¹⁰⁵ For example, modern efforts to integrate combat units might cause this response. If military standards are lowered or modified to facilitate women's success, male military personnel may feel directly threatened by this form of relative deprivation of masculinities, paradoxically yielding a more dangerous institutional culture for women.

Aspirational deprivation of masculinity might occur when some men experience an increase in the idealized discourses of masculinity as set by peers, community, and the media, but they cannot realize the heightened discourses.¹⁰⁶ This category of men might be more prone to commit hyper-masculine violence out of frustration in their inability to achieve unattainable standards.¹⁰⁷ For example,

101. Matthew Conway, *Relative Deprivation of Masculinities: A Theory for Gender Violence 2* (working paper), http://www.academia.edu/276791/Relative_Deprivation_of_Masculinities_A_Theory_for_Gender_Violence.

102. *Id.* at 4 (explaining how "value expectations" apply to images and discourses of masculinity—i.e., through the media, peer subcultures, history, etc.—within a given society that certain populations of men aspire to embody" while "'value capabilities' refers to men's capabilities to reach these idealized concepts of masculinity, of which often falls short").

103. *Id.* at 4.

104. *Id.*

105. *Id.* at 5.

106. *Id.* at 6–7.

107. *Id.*

movies like *American Sniper*¹⁰⁸ perpetuate mythical images of combat soldiers that only a miniscule subset of men actually meets.

Antithetical deprivation of masculinities might occur when men experience both a decline in the ability to reach an idealized discourse of masculinity *and* an increase in the expectations set by the idealized discourses.¹⁰⁹ Men, thus, experience a widening gap whereby the ideals increase and the ability to reach the ideals decrease.¹¹⁰ This category is “ultimately the most explosive pattern” because the gap is so great.¹¹¹ This category reflects the high stakes nature of women’s integration today. Mythical images of military heroes, such as Chris Kyle featured in *American Sniper*, flourish; *and* women integrate a military that shifts toward more “armchair combat” in the technological age. As a result, the divergence between masculine imperatives and the ability to achieve them grows dangerously wide.¹¹²

Indeed, the connection between military masculine imperatives and gender violence are critical to explore. 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.¹¹³ Deployment puts great stress on military families. Experts associate recurrent deployments and the likelihood of combat trauma with increases in the risk of domestic violence.¹¹⁴ Military personnel with a diagnosis of PTSD¹¹⁵ are significantly more likely to perpetrate domestic violence against a

108. *American Sniper* was a Warner Bros. film released in 2014 depicting the life story of U.S. military sniper, Chris Kyle.

109. *Id.* at 8–9.

110. *Id.* (The gap widens such that “[t]o increase their gender performance, these men often commit acts of gender violence to reach ideal images of masculinity, rather than seeking legitimate social, political, and economic means or decreasing their idealized conception of masculinity”).

111. *Id.* at 9.

112. See Jamie Abrams, *Is Armchair Warfare the Newest Threat to Institutional Masculinities?*, GENDER & THE L. PROF BLOG (May 22, 2014), http://lawprofessors.typepad.com/gender_law/2014/05/is-armchair-warfare-the-newest-threat-to-institutional-masculinities.html.

113. Lizette Alvarez & Deborah Sontag, *When Strains on Military Families Turn Deadly*, N.Y. TIMES, Feb. 15, 2008, at A1.

114. See *id.*; see also FIANNA SOGOMONYAN & JANICE L. COOPER, NAT’L CENTER FOR CHILDREN IN POVERTY, TRAUMA FACED BY CHILDREN OF MILITARY FAMILIES: WHAT EVERY POLICYMAKER SHOULD KNOW 6 (2010) (concluding that veterans with PTSD commit acts of domestic violence at rates greater than veterans without PTSD, and at rates greater than the general population).

115. 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>

partner than either a civilian or military member without such condition.¹¹⁶ The military rates of domestic abuse are notably higher for severe domestic abuse than in the civilian population.¹¹⁷ For example, in a six-week period at Fort Bragg in North Carolina, three Special Forces sergeants returned from Afghanistan and murdered their wives. Two of the three men then killed themselves immediately, and the third hanged himself in jail.¹¹⁸ A fourth soldier at the same base also killed his wife in those six weeks.¹¹⁹

As these examples illustrate, the stakes are grave. It is critical to reveal the harms in perpetuating the myth of universal male privilege. These harms impact military efficacy, women, and men.

III. FROM STAGNANT MYTHS TO LASTING INSTITUTIONAL REFORMS

Debunking the myth of universal male privilege would yield three critical consequences. It would connect previously segmented and isolated law reform initiatives, minimize the likelihood that feminist law reforms will exacerbate hyper-masculine acts, and offer new entry points to women's successful military integration.

A. Tethering Gender Equality to Military Efficacy

Previously segmented law reform projects that address issues such as sexual assault, domestic violence, mass base shootings, and military mental health are potentially more interconnected than previously understood. Each of these problems reflect hyper-masculine expressions of violence in response to problematic institutional masculine imperatives.

The military mental health crisis—leaving eighteen veterans a day committing suicide—has been understood previously as central to military efficacy, but unrelated to gender equality. Injecting masculinities theory to feminist law reforms reveals that underlying the well-documented military mental health crisis sits a stark reality:

is-ptsd.html (last visited Nov. 13, 2015). PTSD is characterized by distinct biological and psychological changes, which routinely affect a soldier's ability to "function in social or family life." *Id.*

116. See NAT'L CTR. ON FAMILY HOMELESSNESS, *supra* note 5, at 10–11.

117. See Heyman & Neidig, *supra* note 5, at 239–42, n.2. 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).

118. Alvarez & Sontag, *supra* note 113.

119. *Id.*

combat violence is not an inherently or innately masculine act.¹²⁰ This reality makes feminist law reform goals critically relevant to solving the military mental health crisis. In fact, actual male military service has always been tightly constructed around hidden aspects of male vulnerability and dependence.

There is a troubling bifurcation in law reform approaches between gender equality and military efficacy. Military sexual assault reforms are analyzed as gender issues whereas the military mental health crisis is analyzed as a military efficacy issue without gendered analysis. Applying a masculinities lens to feminist law reforms reveals the interconnection of all of these issues.

Emerging research and anecdotal accounts have catalyzed a national veteran's mental health movement which recognizes combat-related disorders and emphasizes the need for professional assistance.¹²¹ Reforms and responses are being framed exclusively as veterans' issues,¹²² however, and not as gender issues as well. Existing conversation about the mental health crisis among military families is missing two critical symbiotic components—feminist advocacy and masculinities theory. The reactions and struggles with mental health following combat exposure are deeply connected to masculine imperatives and gender.¹²³ The narratives of veteran reintegration “reveal a shifting sense of self and conflicted masculinity, patterned after their own fathers and honed to comply with their peers.”¹²⁴

Acknowledging the underlying dependencies and vulnerabilities of the human condition align with feminist goals as well, but such acknowledgment is rare in political and legal discourse. Rather, liberal political thought often “conceive[s] of citizens as autonomous adults, rather than members of families.”¹²⁵ But citizens are “born completely dependent and live in near total dependence on others for roughly the first decade of their lives.”¹²⁶ This dependence can

120. See e.g., RAND CTR. FOR MILITARY HEALTH POLICY RESEARCH, *supra* note 3, at 5; Russell, *supra* note 3 (describing the situation surrounding the mental health needs of United States military personnel as a “mental health crisis”).

121. Cf. Milaninia, *supra* note 64, at 342.

122. MARTA CAMINERO-SANTANGELO, *THE MADWOMAN CAN'T SPEAK: OR WHY INSANITY IS NOT SUBVERSIVE* 5–6 (1998).

123. In one study of Vietnam War veterans, scholars conclude that masculine norms in society and the military reinforced that men should show little emotional sensitivity and avoid expressing vulnerability or weakness. TRACY XAVIA KARNER, *ENGENDERING VIOLENT MEN: ORAL HISTORIES OF MILITARY MASCULINITY*, in *MASCULINITIES AND VIOLENCE* 200 (Lee H. Bowker ed., 1998) (describing men raised in the 1950s and serving in Vietnam).

124. *Id.* at 202.

125. MAXINE EICHNER, *THE SUPPORTIVE STATE* 3–4 (2010).

126. *Id.*

be left open to gendered exploitation as we depict women as dependent and as caregivers to the dependent.¹²⁷

Feminists' engagement in the mental health of military men would be further beneficial because of the direct impact that military mental health has on spouses and families. The number of outpatient mental health visits provided to children of active duty parents doubled from one million to two million between 2003 and 2008.¹²⁸ Spouses of active duty and reserve personnel likewise report increases in marital problems (forty-four and thirty-nine percent) due to deployment related stress.¹²⁹ Reframing gendered binaries in the military specifically stands to catalyze larger changes to gender norms in society, law, and politics.¹³⁰

Masculinities expand the lens of our understanding of gendered violence beyond just sexual assaults. Rises in deadly soldier-on-soldier violence and mass shootings by military veterans reveal the harms in conflating masculinities with military efficacy. Consider, for example, the accounts surrounding the 2009 mass shooting at Camp Liberty in Baghdad by Sergeant John Russell.¹³¹ Russell had been contemplating suicide, sought mental health treatment, and displayed such clear signs of distress that his first lieutenant removed the firing pin from his M16 assault rifle.¹³² In the dawn hours before the shooting, Russell met with a chaplain who scheduled a mental health appointment for him and emailed a psychiatrist, expressing concerns that Russell was mentally "deteriorating."¹³³ Russell subsequently used a stolen gun to kill five comrades on the base of Camp Liberty in Iraq.¹³⁴ At the time of the

127. *Id.* at 22.

128. SOGOMONYAN & COOPER, *supra* note 114, at 5.

129. *Id.* at 6.

130. See, e.g., EICHNER, *supra* note 125, at 48 ("Once we adjust the image of citizens to account for the dependency in the human life cycle, however, respect for human dignity entails more than just protecting citizens' individual rights: The importance of caretaking and human development come to the fore as every bit as important to human dignity as safeguarding citizens' liberty and security.").

131. See, e.g., Jomana Karadsheh, et al., *U.S. Soldier Charged with Murder in Iraq Shooting Death*, CNN (May 12, 2009), <http://www.cnn.com/2009/WORLD/meast/05/12/iraq.soldiers.killed/#cnnSTCText>.

132. Eliot Blair Smith, *Military Mental Health Crisis Exposed with Camp Liberty Killings*, BLOOMBERG BUS. (Aug. 1, 2012), <http://www.bloomberg.com/news/articles/2012-08-01/military-mental-health-crisis-exposed-with-camp-liberty-killings>.

133. *Id.*

134. *Id.*

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.¹³⁵

But why did Russell choose to commit this mass shooting and why then? On the morning of the shooting, Russell visited the stress clinic for the fourth time in four days, where he lost his weapon privileges.¹³⁶ After a series of interventions, personnel took away his weapon for fear of his instability.¹³⁷ In an atmosphere that places a "premium on strength, physically, mentally, [and] emotionally," disarming a soldier in the field may leave him feeling especially vulnerable and violated, paradoxically increasing the risk of violence.¹³⁸ For Russell, the perceived loss of status and military privileges may have been critical triggers to his hyper-masculine act. This account of the Camp Liberty shootings suggests a symbiotic benefit to men and women alike in extracting the masculinities underpinning the mental health crisis. These mass killings reflect a very different form of gendered violence, but one deeply rooted in masculinities.

Staff Sergeant Robert Bales's high profile trial for killing sixteen Afghan civilians in March 2012, mostly women and children, could be understood as a particularly egregious example of hyper-masculine expressions of violence. In Bales's trial, the defense tried to depict Bales as a "dedicated soldier and good father who snapped after four wartime deployments," particularly emphasizing his dissatisfaction with his family, his deep debt, and his bitterness at being passed over for an army promotion.¹³⁹ The defense focused on Bales's lack of a stable family, wealth, and career success, which are all critical aspects of a hegemonic masculine identity.

There are many other episodic examples of mass acts of soldier-on-soldier violence or of military veterans committing mass acts of violence, such as the murder-suicides at Fort Bragg in 2002, the massacre at Haditha in 2005, the murders at Fort Carson in 2009,

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

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

137. Smith, *supra* note 132.

138. Robert H. Reid, *John M. Russell Charged in Shooting of 5 U.S. Soldiers in Iraq*, HUFFINGTON POST (June 12, 2009), http://www.huffingtonpost.com/2009/05/12/john-russell-charged-in_s_n_202028.html.

139. Jack Healy, *Defense Tries to Soften Image of Soldier Who Killed 16*, N.Y. TIMES (Aug. 21, 2013), http://www.nytimes.com/2013/08/22/us/defense-tries-to-soften-image-of-soldier-who-killed-16-afghans.html?_r=0.

and the mass shooting at Fort Hood in 2009. Understanding and processing vulnerability is every bit as important to military efficacy as strength and aggression are. Hyper-masculinity can be just as threatening to military efficacy broadly as it is to women's integration more narrowly.

B. Exposing the Risks of Exacerbating Gendered Violence

Debunking the myth of universal male privilege reveals real weaknesses and risks in certain feminist law reform approaches. Analysis of the Military Justice Improvement Act (MJIA) reveals how law reforms that do not acknowledge underlying masculinities risk exacerbating gendered violence.¹⁴⁰ After extensive feminist and bipartisan legislative advocacy, the 113th Congress failed to adopt the MJIA, a bill that sought to reform the procedural obstacles that survivors of sexual assault in the military face when seeking prosecution of perpetrators.¹⁴¹ The bill aimed to remove the Commanding Officer's ("CO's") authority to oversee sexual assault investigations, relying instead on prosecutors.¹⁴² It ultimately failed because critics argued that COs must be able to discipline and retain authority within their unit to remain consistent with military hierarchy and structure.¹⁴³

The MJIA targeted the formal masculine hierarchy in ways that risked entrenching the underlying hierarchies instead of diffusing them. Senator Kirsten Gillibrand (D-NY) presented the MJIA as a tool to facilitate a necessary "cultural shift" for the military.¹⁴⁴ Gillibrand was responding to "disturbing evidence" that commanders were refusing to prosecute sexual assault cases.¹⁴⁵ The Act sought to remove the COs from the central role of responding to sexual assaults, and replace COs with independent prosecutors.

The opposition to the bill reflected the longstanding obstacles to law reform in a heavily masculine institution. Opponents argued

140. Jeremy Herb & Ramsey Cox, *Senate Blocks Gillibrand Sexual Assault Bill*, THE HILL (Mar. 6, 2014), <http://thehill.com/policy/defense/200124-senate-defeats-gillibrand-military-sex-assault-bill>.

141. Military Justice Improvement Act, S.B. 113-967 (2013). This bill was introduced in May 2013 by New York Senator, Kirsten Gillibrand, but it was not passed, nor were related bills.

142. *Id.* at § 7.

143. See, e.g., Hunter & Capaccio, *supra* note 87; Alexandra Lohman, Note, *Silence of the Lambs: Giving Voice to the Problem of Rape and Sexual Assault in the United States Armed Forces*, 10 Nw. J.L. & Soc. POL'Y 230, 254 (2015) ("In the end, the MJIA's evisceration of commander discretion was its downfall.").

144. See Kageyama & Lardner, *supra* note 5.

145. See *id.*

that this reform undermined military order and efficacy, and they questioned whether a prosecutor would be more effective.¹⁴⁶ Critics, such as Senator Lindsey Graham (R-SC), argued that “taking [the] commander out of the loop never solved any problem” and instead would “dismantle the military justice system beyond sexual assaults” and “take commanders off the hook for their responsibility to fix this problem.”¹⁴⁷ Feminist proposals, such as the MJIA, came from outsiders seeking to change military structures. Military insiders vehemently rejected these proposals because of the systemic role of the commander-led hierarchy and its interconnectedness to military efficacy.¹⁴⁸

The limitations of the MJIA can be better understood and critiqued by adding a masculinities lens to the feminist law reform goal. Rather than changing the culture of the military, the MJIA risked exacerbating the dangers of masculine imperatives. The MJIA represented an outside feminist law reform trying to change a procedural obstacle to prosecuting sexual assault claims. However, it did so in a way that was isolated, untethered from military efficacy, and disregarded how the military constructs masculinities and shapes masculine imperatives.

By analyzing the reform proposal through a masculinities lens, one can see that the masculine imperatives shaped by the chain of command and hierarchy of authority could alternatively be understood as a *catalyst* to change. The powerlessness that men and women feel at the bottom of the military hierarchy can lead to men wielding violence as a tool to reclaim a sense of masculine entitlement and power. It might be misleading to conclude that the problem sits at the top of a hierarchy in a heavily masculine institution. The problem is how we train men to understand their masculinity at the bottom of the hierarchy and how they react when they perceive an inability to meet institutional norms. Bringing in

146. See, e.g., Buchhandler-Raphael, *supra* note 32, at 371–72 (“The military has long opposed proposals to strip commanders of their authority to dispose of cases, contending that military commanders must retain sole responsibility and authority to exercise investigative and prosecutorial discretion.”); Amy Davidson, *What Gillibrand Got Wrong About Military-Sexual Assault*, NEW YORKER (Mar. 7, 2014), <http://www.newyorker.com/online/blogs/cloread/2014/03/what-gillibrand-got-wrong-about-military-sexual-assault.html>; Jonathon S. Tobin, *The Impact of Politics on Military Justice*, COMMENTARY MAGAZINE (Mar. 10, 2014), <https://www.commentarymagazine.com/american-society/military/the-impact-of-politics-on-military-justice-jeffrey-sinclair-kirsten-gillibrand>.

147. Kageyama & Lardner, *supra* note 5.

148. See Jonathan Lurie, *The Transformation of Article 32: Why and What?*, 29 WIS. J. L. GEN. & SOC’Y 409, 415 (2014) (“Stripped of verbiage, [opponents’] argument is simply that the military knows best and outsiders should not interfere. Because civilians are outside of the military, they are presumably unable to understand the nuances of military life and should, to use a bit of military jargon, ‘butt out.’”).

an independent prosecutor does nothing to change the underlying culture and masculinities within the institution; if anything, it allows the existing culture to demonize an “outsider.” The result is not to change any cultural practices or norms, but perhaps to reinforce and entrench them.

Alternatively, the MJIA could achieve more lasting success by directly tackling the underlying masculinity norms that prop up the commanding officer hierarchy and seeking more systemic change.¹⁴⁹

C. Shifting from Incident-Based Reforms to Training and Recruiting

Adding a masculinities lens reveals new starting points to long-standing problems plaguing women’s military integration. Shifting the frame highlights the importance of understanding the construction of masculine hierarchies at the recruiting and training stages. This shifts the law reform approach from an incident-based intervention to a conscious recruiting and training effort. By debunking the myth of universal male privilege and adding a masculinities lens to feminist law reforms, we can better screen for and train men less likely to experience a relative deprivation of masculinities.

In 2011, the Department of Defense employed 1.41 million active service members.¹⁵⁰ An efficient fighting force must contemplate emotional and psychological health upon entry, and not just upon exit from service.¹⁵¹ Enlistment in the military is generally perceived as an admirable service to one’s country. However, the reasons that compel an individual to join the armed forces are fluid and vary significantly among the civilian population.¹⁵² The

149. But see Ann Marie Woods, Note, A “More Searching Judicial Inquiry”: The Justiciability of Intra-Military Sexual Assault Claims, 55 B. C. L. REV. 1329 (2014) (arguing for greater civil accountability for military victims of sexual assault).

150. OFFICE OF THE UNDER SEC’Y OF DEF., PERS. & READINESS, POPULATION REPRESENTATION IN THE MILITARY SERVICES: SUMMARY STATISTICS: FISCAL YEAR 2011 SUMMARY REPORT 4, <https://cna.org/pop-rep/2011/summary/summary.pdf>.

151. TASK FORCE ON MENTAL HEALTH, *supra* note 59, at 5 (emphasizing the importance of military enhancing the “resilience and recovery” of combatants and the “provision of effective preventative strategies”); see also Gerry Everding, *Military Service Changes Personality, Makes Vets Less Agreeable*, WASH. UNIV. IN ST. LOUIS NEWSROOM (Feb. 9, 2012), <http://news.wustl.edu/news/pages/23381.aspx> (concluding that “[m]ilitary service, even without combat, has a subtle lingering effect on a man’s personality” and “suggest[ing] personality traits play an important role in military training, both in the sort of men who are attracted to the military in the first place, and in the lasting impact that this service has on an individual’s outlook on life”).

152. ANNI P. BAKER, *LIFE IN THE U.S. ARMED FORCES: (NOT) JUST ANOTHER JOB* 16 (2008).

current all-volunteer military force relies on market dynamics to fill its ranks.¹⁵³

Historically, opportunity for adventure was considered to be a primary motivation for people to enlist in the Army.¹⁵⁴ Modern soldiers may still intrinsically desire adventure and have deep-rooted patriotic pride,¹⁵⁵ but there are many more reasons one could find enlisting attractive. For example, enlistment can be, and often is, extrinsically motivated by one's potential material gain from service.¹⁵⁶ Relatively good pay, government benefits, subsidized college education, and job security are popular reasons among youth and minorities to join the military.¹⁵⁷ In addition, non-citizen immigrants on temporary visas can use military service to expedite the naturalization process, which would otherwise take them years to complete.¹⁵⁸

Military efficacy has always required effective recruiting, but it has never considered the broader gender characteristics of the men it recruits. Doing so would reveal that modern military recruiting has changed dramatically from historic recruiting. And it results in a very different profile of military personnel, one that might be much more susceptible to masculinity imperatives and hyper-masculine expressions when understood through the relative deprivation theory described above. For example, military personnel "enter single and marry young." Military men aged eighteen to twenty-four are nearly twice as likely as their civilian peers to be married.¹⁵⁹ The military is also disproportionately young relative to the population as a whole: fifty percent of the force is between seventeen to twenty-four years old.¹⁶⁰ These points are quite noteworthy when understood through an added masculinity lens. It suggests that—just as men are entering a heavily masculine institution with dominant masculine imperatives—they are also navigating a shift within their family structure as well. This occurs at the same time as their transition from boyhood to manhood. Given the housing dynamics and intimacies of military service, young personnel

153. Ryan Kely, Meredith Kleykamp & David Segal, *The Military and the Transition to Adulthood*, 20 FUTURE OF CHILDREN 181, 182 (2010).

154. MARY BARBIER, *THE U.S. ARMY: AMERICA'S ARMED FORCES* 5 (2005).

155. BAKER *supra* note 152, at 17.

156. *Id.* at 16.

157. Annalyn Kurtz, *Getting Into the Military is Getting Tougher*, CNN (May 15, 2013) <http://money.cnn.com/2013/05/15/news/economy/military-recruiting/>.

158. Julia Preston, *Pentagon Reopens Program Allowing Immigrants With Special Skills to Enlist*, N.Y. TIMES (Oct. 27, 2012), http://www.nytimes.com/2012/10/28/us/pentagon-reopens-program-allowing-immigrants-with-special-skills-to-enlist.html?_r=0.

159. Kely, Kleykamp & Segal, *supra* note 153 at 190.

160. *Id.* at 183.

might struggle to cabin the military masculinities norms appropriately. More explicit and thoughtful efforts to help men adapt their masculine identity to the family unit could be a new and effective starting point to reducing domestic violence.

Although the military cannot flawlessly screen personnel for the propensity to engage in gendered violence,¹⁶¹ it could add masculinities as a critical dimension to enhance training approaches. In his book *Angry White Men*, sociologist Michael Kimmel describes an explosive rage among economically downwardly-trodden white men as they perceive a loss of their masculine entitlement.¹⁶² This raises questions that require further consideration. Might the economic motivations for enlistment and the quest for advancement of status be more likely to provoke hyper-masculine responses to perceived inadequacies in the modern military? Might the presence of women and minority personnel exacerbate white male hyper-masculinity as they perceive a loss of entitlement and a displacement? These types of questions are critical to consider with further research and feminist engagement.

CONCLUSION

This Article shifts the dialogue about women's military integration and gender equality away from a focus on women as victims of sexual assault and domestic violence. Rather, we must counterintuitively inject masculinities understandings to feminist law reforms. Embedded within existing law reform proposals is the unstated assumption that the current military structure privileges or benefits most of the men that operate within it. This myth creates a false gender binary that frames women as outsiders breaking into a male military institution and men as insiders defending the male military culture, often in the name of military efficacy. This shift in approach reveals that sexual assault, domestic violence, and even mass shootings on bases are hyper-masculine expressions of violence in response to masculinities imperatives. It suggests the need for generating unified law reform responses, vigilance to law reforms that risk exacerbating gender violence, and a shifted focus on recruitment and training. Now that the Secretary of Defense has announced that no military jobs will be closed to women, it is time

161. See generally E. Jones, K C Hyams, & S. Wessely, *Screening for Vulnerability to Psychological Disorders in the Military: An Historical Survey*, 10 J. OF MED. SCREENING (2003) (conducting a literature review and historical summary of efforts to screen for psychological vulnerability to stress-induced breakdowns, but concluding that this goal "has been elusive").

162. MICHEL KIMMEL, *ANGRY WHITE MEN* (2013).

to begin in earnest the critical work on achieving meaningful substantive integration to build and sustain a military that is both effective and gender-inclusive.