

# The Collateral Consequences of Masculinizing Violence

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## THE COLLATERAL CONSEQUENCES OF MASCULINIZING VIOLENCE

JAMIE R. ABRAMS\*

### ABSTRACT

Before an enraged gunman fired thirty-six deadly shots into an exercise class filled with women, on August 4, 2009, in Pennsylvania, he blogged that his killing spree was the result of his failure to meet society's expectations of him as a man. This violent act tragically affirms that hegemonic masculinity — a dominant form of masculinity whereby some types of men have power over women and over some other men — can directly cause violence against women and reveals both an underlying connection between masculinities scholarship and feminist scholarship and the value in exploring that linkage further in both theory and praxis.

This article examines the victories and collateral consequences of feminist law reforms challenging hegemonic masculinity as codified and perpetuated in the law. This article focuses on expressions of hegemonic masculinity in the family and the military — two institutions that occupy the theoretical feminist “front lines.” It concludes that feminist law reforms launched a foundational challenge to hegemonic masculinity through its domestic violence reforms. Yet these reforms also entrenched hegemonic masculinity in other ways by perpetuating gender stereotypes positioning all men as prone to violence and all women as vulnerable to victimization and displacing the men and women that function outside these binary constructs. These reforms also masculinized the state by positioning it as the surrogate masculine defender of women and of traditional families.

While the domestic violence movement may have contemplated and mitigated these collateral consequences in context, this article examines a previously unexplored angle: how the further entrenchment of hegemonic masculinity migrated to impact women's military

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integration. The momentum of feminist law reform successes criminalizing domestic violence in the family also advanced military integration advocacy, reforming military codes and policies to penalize violence against women. More notable, however, the domestic violence movement successfully contributed to women's expanded access to combat positions, signaling the partial extraction of hegemonic expressions of male violence from the law more broadly — not just to protect women from violence, but to expand professional opportunities for women. But as the victory migrated, so too did the collateral consequences entrenching hegemonic masculinity; indeed they were compounded. Positioning the state as the surrogate masculine protector of women and of traditional families compounded in the military because it reinforced protectionist arguments opposing integration.

This article concludes by examining the implications of this analysis to feminist theory and praxis. It recommends that feminism re-engage its narrative grassroots methodology to absorb more holistically the experiences of women who would wield strength, aggression, and violence in all its forms. This article considers how and why masculinities scholarship reveals the synergistic benefits of generating more complex and interconnected responses to violence against women, women's violence, male violence, and male vulnerability.

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## INTRODUCTION

Seven months before firing thirty-six shots into an exercise class filled with thirty women, killing three and injuring nine, George Sodini wrote these chilling words on his blog:<sup>1</sup>

I actually look good. I dress good, am clean-shaven, bathe, touch of cologne — yet 30 million women rejected me — over an 18 or 25-year period. That is how I see it. . . . A man needs a woman for confidence. He gets a boost on the job, career, with other men, and everywhere else when he knows inside he has someone to spend the night with and who is also a friend. This type of life I see is a closed world with me specifically and totally excluded. Every other guy does this successfully to a degree. Flying solo for many years is a destroyer. . . . Looking back over everything, what bothers me most is the inability to work towards whatever change I choose.<sup>2</sup>

Sodini's blog posts reveal a man filled with anger and "hell-bent" on killing women. These posts reveal a progressively deepening sense of masculine failure, a loss of power and control, and a resulting entitlement to violence against women that Sodini derives directly from these perceived masculine shortcomings.<sup>3</sup> As the doomful date of his

1. Lee Ferran et al., *Pa. Gunman 'Hell-bent' on Killings, Had 4 Guns*, ABC NEWS, Aug. 5, 2009, <http://abcnews.go.com/US/story?id=8255530&page=1>.

2. George Sodini's Blog: Full Text by Alleged Gym Shooter, ABC NEWS, Aug. 5, 2009, <http://abcnews.go.com/US/story?id=8258001&page=2> (quoting Dec. 29, 2008, blog post).

3. See *id.* (revealing that he wrote and maintained an ongoing list of reasons justifying his violent "exit plan") (quoting Dec. 22, 2008, and May 5, 2009, blog posts). Sodini blogged on July 20, 2009, that the "Last time I slept all night with a girlfriend it was 1982.

August 4, 2009, shooting rampage neared, Sodini's writings progressively revealed his reliance on two outlets to release his mounting anger over his loss of power and control: the acquisition of strength (lifting weights) and meticulously plotting his "exit plan" — a large-scale massacre of women.<sup>4</sup> Sodini's self-described failure to meet certain masculine norms thus triggered his hyper-masculine exertions of strength and violence against women.<sup>5</sup> Sodini's blog identifies the source of his rage squarely in hegemonic masculinity roots — his failure to meet social and cultural ideals of male control, power, and heteronormative behavior.<sup>6</sup>

Even when other *men* are subjected to violence induced by hegemonic masculinity, these acts can still perpetuate the subordination of women, because they seek to feminize men and derogate the status of women. The fragility of masculinity and the perceived role of women exacerbating that fragility may have motivated American military personnel's abuses of Iraqi prisoners at Abu Ghraib.<sup>7</sup> The legal and social shock at the involvement of a female soldier in perpetrating these violent acts against male detainees and the relative normality of male involvement demonstrates how violence, strength, and aggression are viewed as masculine activities incongruent with femininity, a phenomenon that I will refer to throughout this article as "masculinized violence."<sup>8</sup>

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Proof I am a total malfunction." *Id.* (quoting July 2, 2009, blog post). He also blogged on August 2, 2009, just two days before the murders, that "If I had control over my life then I would be happier." *Id.* (quoting Aug. 2, 2009, blog post).

4. *See id.* ("I guess strenuous exercise is necessary for a man.") (quoting Dec. 31, 2008, blog post).

5. *See id.* (detailing the various failures Sodini identified in himself and his life).

6. *See* R.W. CONNELL, *MASCULINITIES* 77 (1995) (describing hegemonic masculinity theory).

The hegemonic definition of manhood is a man in power, a man with power, and a man of power. We equate manhood with being strong, successful, capable, reliable, in control. The very definitions of manhood we have developed in our culture maintains the power that some men have over other men and that men have over women.

Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *SEX, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY* 58, 61 (Ferber et al. eds., 2009). Sociologist Erving Goffman explains that a male who can not identify himself as "a young, married, . . . [or has] a recent record in sports" is likely to "view himself . . . as unworthy, incomplete, and inferior." *Id.*

7. *See* Cynthia Enloe, *Wielding Masculinity Inside Abu Ghraib: Making Feminist Sense of an American Military Scandal*, 10 *ASIAN J. OF WOMEN'S STUD.* 89, 99 (2004) (distinguishing from arguments that military personnel were motivated by Iraqi masculinity norms fearing nakedness and homosexuality). "[I]t may have been [the American police and intelligence personnel's] own home-grown American sense of masculinity's fragility — how easily manliness can be feminized — that prompted them to craft these prison humiliations." *Id.*

8. *See id.* at 91 (asserting that only the military women depicted in the photos, not the men, were intensely scrutinized by the media and public); *see also* Kathleen Parker,

Sodini's violent rampage reveals painfully and tragically the intersection between feminist and masculinities scholarship. Violence against women is a direct outlet of hyper-masculine exertions of power and control over women (and other men), positioning violence at the epicenter of feminist and masculinities scholarship. It illuminates vividly how hegemonic masculinity does not just theoretically harm women and men, it can actually lead to violence and the subordination of women. This Pennsylvania tragedy revives and inspires feminist activism to eradicate violence against women and to uncover and address its complex underpinnings.

This article examines how domestic violence reforms impacted hegemonic masculinity in the family and in the military — two institutions that occupy the theoretical feminist “front lines” of masculinized violence. Part I positions the revered legal institutions of the military and the family as fortresses on the feminist “front lines” of hegemonic masculinity, deeply rooted in entrenched and pervasive hegemonic masculinity norms linking masculinity and violence.<sup>9</sup> Indeed popular slogans like “We’re looking for a few good men”<sup>10</sup> and a “man’s home is his castle”<sup>11</sup> depict the traditional legal status of the masculine role physically dominating these institutions. Military law and policy excluding women from combat roles ensured that these “few good men” embodied distinctly masculine-recognized traits of strength, aggression, and violence. Criminal and family laws in turn immunized men from accountability for acts of violence in the home, endorsing masculine violence and the right to exert it at home unfettered.<sup>12</sup> Women are positioned historically as the “gentler sex” in both institutions, rearing children and tending to others, perceived

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*Myth of Equality Aids the Enemy*, KAN. CITY STAR, May 31, 2004, at B5 (concluding that England's involvement meant that “[n]o longer could men be viewed as perpetual perpetrators and women as perpetual victims” — effectively ending the “feminist naivete”).

9. Hegemonic masculinity refers to the “most honored way of being a man”; its characteristics include “heteronormativity, aggression, activity, sports-obsession, competitiveness, stoicism, and not being female or feminine.” David S. Cohen, *No Boy Left Behind? Single-Sex Education and the Essentialist Myth of Masculinity*, 84 IND. L.J. 135, 144 (2009).

10. Michael McCarthy & Darryl Haralson, *The Few. The Proud. The Ad.*, USA TODAY, Mar. 20, 2003, at B3. This slogan was the central recruiting tool of the United States Marine Corps for almost 200 years, until the increasing presence of servicewomen led to the revised 1976 language of “The Few. The Proud. The Marines.” *Id.*

11. WILLIAM AND MARY MORRIS, MORRIS DICTIONARY OF WORD AND PHRASE ORIGINS 374 (2d ed. 1988) (“This saying is as old as the basic concepts of English common law . . .”). Indeed these notions are codified as the “castle doctrine” in many state self-defense laws authorizing an individual to use reasonable force, including deadly force, to protect his or her home without retreat. Paris De Soto, *Feminists Negotiate the Judicial Branch: Battered Woman's Syndrome*, in FEMINISTS NEGOTIATE THE STATE 53, 64 (Cynthia R. Daniels et al. eds., 1997).

12. Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 5-6 (2006).

as incapable of or disinclined to engage in aggressive acts.<sup>13</sup> These outlets for male violence highlight the range of historically accepted male violence ranging from intimate abuse in the criminal and malevolent sense to public occupational military violence.

Part II analyzes feminist law reforms responding to male violence. Existing scholarship generally analyzes these law reform successes in the military and in the family separately and to assess only how the lived experiences and status of women changed.<sup>14</sup> This article examines the intersection and migration of feminist law reform initiatives targeting the military and the family to reveal the impact of these reforms on hegemonic masculinity. This article concludes that feminist law reforms both challenged hegemonic masculinity in its expressions of male violence, while simultaneously entrenching and compounding it.

Part II concludes as a foundational matter that feminist law reforms achieved a remarkable paradigm shift in the extraction of aspects of male violence against women — previously insulated from state response — from legal and societal standards. If male violence is considered an extension of normal masculinity, then the prohibition of certain forms of male violence in legal codes transformed the definition of masculinity itself. Domestic violence reforms in particular achieved unprecedented momentum empowering the state to enter the man's "castle" and respond to male violence punitively.<sup>15</sup> Through nationwide feminist advocacy, legislatures amended state criminal laws,<sup>16</sup> police were prepared to arrest, criminal penalties and sentences

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13. See, e.g., Enloe, *supra* note 7, at 91 (describing traditional views of women as peaceful and nonviolent wives and mothers).

14. Compare, e.g., Suk, *supra* note 12, at 5-6 (exploring the law's intrusion into the home to prosecute violence), and Katharine T. Bartlett, *Feminism and Family Law*, 33 FAM. L.Q. 475, 496 (1999) (noting the development of support service for victims of violence in the home), with Diane H. Mazur, *A Call to Arms*, 22 HARV. WOMEN'S L.J. 39, 66 (1999) (explaining the changing role of women in the military).

15. See Suk, *supra* note 12, at 5-6 (describing the law reforms as a "remarkable and transformative success" in positioning domestic violence as a public issue and reshaping the criminal justice system's response to it).

16. See, e.g., Cynthia R. Daniels et al., *Feminist Strategies: The Terms of Negotiation*, in FEMINISTS NEGOTIATE THE STATE, *supra* note 11, at 83, 91 (citing the New Jersey Prevention of Domestic Violence Act of 1991 as an example of the level of consciousness-raising achieved in the domestic reform efforts). The Act says:

The legislature finds and declares that domestic violence is a serious crime against society . . . . The legislature further finds and declares that even though many of the existing criminal statutes are applicable to acts of domestic violence, previous social attitudes concerning domestic violence have affected the response of our law enforcement and judicial systems, resulting in these acts receiving different treatment from similar crimes when they occur in a domestic context. . . . It is further intended that the official response to domestic violence shall communicate the attitude that violent behavior will not be excused or tolerated, and shall make clear the fact that the existing criminal laws and civil remedies created under this act

stiffened, and support services were provided to victims.<sup>17</sup> Feminists successfully positioned domestic violence squarely in the public sphere as a source of inequality and injustice, no longer insulating these crimes in the private sphere.<sup>18</sup>

Part II positions domestic violence reforms as a foundational feminist challenge to hegemonic masculinity in the family. These institutional reforms were a critical battle in a larger war to dismantle the hegemonic masculinity norms that perpetuate the subordination of women.<sup>19</sup> In battles, even successful ones, there are victories and there are unintended collateral consequences. Domestic violence reforms succeeded in uprooting some of hegemonic masculinity's codification in the criminal law and bringing women's subordination through violence into legal recognition. These reforms also collaterally entrenched hegemonic masculinity, perpetuating binary gender classifications that displace men and women functioning outside these artificial constructs.

The momentum of the domestic violence law reform victories also migrated to military integration reforms. Outrage surrounding the Tailhook sexual abuse scandal, for example, revealed widespread sexual assaults of women in the military, reinforcing that violence against servicewomen would likewise meet punitive responses in the military.<sup>20</sup> The military tightened its prohibitions on violence against servicewomen committed by fellow soldiers, following civilian law reform models. Tailhook importantly revealed that the paradigm shift achieved through the domestic violence reforms — extracting violence against women from codified hegemonic masculinity — had migrated.

Domestic violence reforms may even have advanced women's military integration. Outrage surrounding Tailhook may have led to

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will be enforced without regard to the fact that the violence grows out of a domestic situation.

N.J. STAT. ANN. § 2C:25-18 (West 2005). Indeed, "in a number of states, special domestic abuse statutes treat violence in the domestic context as a *more* serious offense . . . ." Bartlett, *supra* note 14, at 496 (emphasis added) (citing Minnesota as an example).

17. See Anne Sparks, *Feminists Negotiate the Executive Branch: The Policing of Male Violence*, in FEMINISTS NEGOTIATE THE STATE, *supra* note 11, at 35, 51 (concluding that the state became accountable to citizens instead of to abstract principles of justice). By 1994, when the Violence Against Women Act was enacted, at least twenty-two states and the District of Columbia had revised their arrest laws to respond to domestic violence. Bartlett, *supra* note 14, at 496. These reforms have been perceived uniformly as matters of women's rights. See Sparks, *supra* note 17, at 51 (crediting feminists with reforms).

18. See Laurie Naranch, *Naming and Framing the Issues: Demanding Full Citizenship for Women*, in FEMINISTS NEGOTIATE THE STATE, *supra* note 11, at 21, 21 ("[N]o longer is the problem of domestic violence a woman's problem that she must somehow deserve.").

19. See Blythe Leszkay, *Feminism on the Front Lines*, 14 HASTINGS WOMEN'S L.J. 133, 136 (2003) (explaining the larger impact on equality gained by fighting for equal combat rights in the military).

20. See *infra* Part II.C.



increased combat opportunities for women in the Navy and Air Force. Women's expanded access to previously-restricted combat positions signaled the partial extraction of masculinized violence from the law more broadly — not just to protect women from violence, but to expand women's career opportunities.

As the victory migrated, so too did the collateral consequences. Indeed the collateral consequences compounded as domestic violence reforms infiltrated other law reforms and complicated emerging tensions in reconciling strength and vulnerability and in tacitly empowering the state as the protector of women.

The military generally assesses collateral consequences to minimize unintended harms in future battles. Part III accordingly highlights the feminist implications of this analysis. These implications suggest the benefits of feminism re-engaging its narrative grassroots methodology to understand more holistically the experiences of women who would wield strength and aggression, and would commit acts of violence in occupational roles and private relationships. It reveals the synergistic benefits of responding to violence against women, women's violence, male violence, and male vulnerability.

#### I. MAPPING THE FEMINIST “FRONT LINES” OF HOW THE FAMILY AND MILITARY EXPRESSED HEGEMONIC MASCULINITY

The military and the family are defining modern feminist battlefields because women have yet to achieve formal equality through full military integration<sup>21</sup> and because, forty years after the feminist movement first identified domestic violence as a form of women's subordination, each year women still endure 4.8 million physical or sexual assaults by intimate partners.<sup>22</sup> These institutions have historically positioned men in positions of dominance and control and endorsed masculine acts of violence, while in contrast positioning women as caretakers disinclined to or incapable of physical violence.<sup>23</sup> Feminist law reforms responded to hegemonic masculinity by targeting masculinized violence in both institutions to achieve different objectives — in the military seeking to integrate women professionally,

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21. Leszkay, *supra* note 19, at 136; Valorie K. Vojdik, *Beyond Stereotyping in Equal Protection Doctrine: Reframing the Exclusion of Women from Combat*, 57 ALA. L. REV. 303, 323-24 (2005); see Mazur, *supra* note 14, at 66 (observing that feminists view the military as “resisting the inevitable evolution” of gender equality).

22. CTR. FOR DISEASE CONTROL & PREVENTION, UNDERSTANDING INTIMATE PARTNER VIOLENCE: FACT SHEET (2006), available at [http://www.cdc.gov/ncipc/dvp/ipv\\_factsheet.pdf](http://www.cdc.gov/ncipc/dvp/ipv_factsheet.pdf).

23. See, e.g., Lara Stemple, *Male Rape and Human Rights*, 60 HASTINGS L.J. 605, 634 (2008) (discussing the social characterization of men as violent and women as passive victims).

while in the family seeking to end domestic abuse.<sup>24</sup> While feminist law reforms did not target hegemonic masculinity directly, focusing primarily on the state's subordination of women instead, feminist reforms inherently transformed hegemonic masculinity nonetheless because of the masculinity underpinnings to these institutions. Examining the feminist law reforms directed at hegemonic masculinity in each institution thus stands to dislodge the hegemonic masculinity pillars that support both and offer new insights to inform feminist theory and praxis.

### A. Codified Institutional Hegemonic Masculinity

Hegemonic masculinity defines a dominant conception of masculinity as “a man *in* power, a man *with* power, and a man *of* power.”<sup>25</sup> Hegemonic masculinity thus refers to the “most honored way of being a man.”<sup>26</sup> Hegemonic masculinity theory explains how the definition of manhood in American culture reinforces the power that some men maintain and wield over women and other men.<sup>27</sup> It embraces and exalts characteristics of “heteronormativity, aggression, activity, sports-obsession, competitiveness, stoicism, and not being female or feminine.”<sup>28</sup> It “is as much about [the] relation to other men as it is about relation to women.”<sup>29</sup> It links traits of strength, success, and control with manhood and reveals how males that do not meet these idealized norms will in turn conclude that they are somehow “unworthy, incomplete, and inferior.”<sup>30</sup> Though hegemonic masculinity exerts pressure on men to conform to its ideals, it need not correspond all that closely to the actual personalities of the majority of men.<sup>31</sup>

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24. *But see* Kingsley R. Browne, *Women at War: An Evolutionary Perspective*, 49 BUFF. L. REV. 51, 56 (2001) (critiquing military integration arguments suggesting that integrating women into military combat would require only “educating men out of their ideology of masculinism”).

25. Kimmel, *supra* note 6, at 61 (quoting sociologist Erving Goffman); *see also* Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 208-09 (2008) (noting that hegemonic masculinity “dominates [the] hierarchy of masculinities”).

26. Cohen, *supra* note 9, at 144 (quoting R.W. Connell & June W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829, 832 (2005)).

27. Kimmel, *supra* note 6, at 61.

28. Cohen, *supra* note 9, at 144.

29. Dowd, *supra* note 25, at 233. While feminist theory has identified that not all women are oppressed or oppressed equally, and that there are instances in which women oppress other women, masculinities scholarship involves the “underlying dynamic . . . that pits every man against every man.” *Id.* Masculinity is a process of comparing and measuring each man against every other man. *Id.*

30. *See* Kimmel, *supra* note 6, at 61 (discussing the comparison of all men with the dominant cultural view of American masculinity).

31. *See* CONNELL, *supra* note 6, at 70 (asserting that few men fulfill normative ideals of masculinity). It is often the creation of models of masculinities that become fantasy figures, like the characters played by Humphrey Bogart, John Wayne, and Clint Eastwood.

Men who hold the most social power, the corporate and state elites, may not represent hegemonic masculinity, but large numbers of men are motivated to support it.<sup>32</sup>

Hegemonic masculinity reinforces the “legitimacy of patriarchy” and maintains gender inequality.<sup>33</sup> As long as hegemonic masculinity is the dominant norm, explains masculinities scholar R.W. Connell, men will benefit from “predominance in the state, professions, and management,” reap more rewards in the money economy, have more access to education and training, homosexuality will continue to be stigmatized, and men will be violent toward women.<sup>34</sup>

Though men as a group are dominant and powerful, many men as individuals do not feel powerful.<sup>35</sup> For these men, a critical component of this feeling of powerlessness is that they cannot ever achieve this dominant picture of masculinity, yet must constantly prove their masculinity to the world.<sup>36</sup> From their sense of powerlessness, men can develop a desire for control; “masculinity is thus to a large degree about fear and shame and emotional isolation.”<sup>37</sup>

Men are socialized, from the time they are young boys, into “lives of isolation, shame and anger.”<sup>38</sup> The “boy code” dictates that boys suppress emotion and live “in a narrowly defined world of developing masculinity in which everything he does or thinks is judged on the basis of the strength or weakness it represents: you are either strong and worthwhile, or weak and worthless.”<sup>39</sup> Manhood is consistently viewed as a test, and “associated with three things: . . . ‘impregnat[ing] women, protect[ing] dependents from danger, and provision[ing] kith and kin.’”<sup>40</sup>

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*Id.* Real life people may be so remote from everyday achievement that these figures represent an unattainable ideal. *Id.*

32. *Id.* at 77 (noting that the concept of hegemony implies a large measure of consent).

33. *Id.*

34. See Dowd, *supra* note 25, at 212 (quoting CONNELL, *supra* note 6, at 229-30) (detailing the harms created by hegemonic masculinity).

35. *Id.* at 213 (quoting MICHAEL KIMMEL, *THE GENDERED SOCIETY* 4-5 (2d ed. 2004)).

36. See *id.* (asserting that men’s feelings of powerlessness stem from the perpetual struggle to achieve masculinity).

37. *Id.*

38. *Id.* at 219 (quoting DAN KINDLON ET AL., *RAISING CAIN: PROTECTING THE EMOTIONAL LIFE OF BOYS*, at ix (1999)).

39. See *id.* (quoting KINDLON ET AL., *supra* note 38, at 79) (stating that this suppression of emotions prevents boys from developing “emotional literacy,” which includes, among other things, the ability to identify and name emotions and understand the situations or reactions that cause different emotional states). The judging of perceived strength and weakness includes “massive amounts of teasing and taunting about being ‘gay’ or a ‘fag,’” which further reinforces the limited acceptable male behaviors. *Id.* (quoting KINDLON ET AL., *supra* note 38, at 79).

40. *Id.* at 221 (quoting DAVID GILMORE, *MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY* 222-23 (1990)) (contrasting the idea that masculinity is stressful and difficult to achieve with the view of femininity).

Another harm of hegemonic masculinity is its relationship with violence. Many scholars position male violence as “extensions of ‘normal’ masculinity.”<sup>41</sup> It is simply a “way of doing gender.”<sup>42</sup> It is a resource used to accomplish masculinity when other potential resources are not available.<sup>43</sup>

The law codified aspects of hegemonic masculinity through masculinized violence in both the family and the military. Feminist law reforms thus necessitated institutional paradigm shifts to challenge hegemonic masculinity. The family and the military are both revered institutions in law and society, and they both historically codified gender roles positioned around strength.

Before the historic domestic violence reforms, the family unit was largely an impervious legal entity with which the state would not interfere. The criminal justice system historically codified men’s dominant role over the family, and thus over women.<sup>44</sup> Law enforcement traditionally failed to enforce crimes against women in the home by “look[ing] the other way.”<sup>45</sup> The criminal justice system treated domestic violence as a purely private matter — outside the scope of police enforcement and public law.<sup>46</sup> This legal treatment effectively privatized male governance of the family.<sup>47</sup>

41. *Id.* at 220.

42. *Id.*

Kimmel also focuses on the construction of gender by the interactions of people and institutions. We “do” gender, not in a vacuum, but in the context of institutions constructed with gender in mind: “Our social world is built on systemic, structural inequality based on gender: social life reproduces both gender difference and gender inequality.” Those institutions include school, work, and families.

*Id.* at 214. (quoting KIMMEL, *supra* note 35, at 113).

43. *Id.* at 220 (quoting JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 85 (1993)) (noting further variances by race and class).

44. See Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 753-54 (2007) (characterizing the state’s traditional failure to intervene in domestic violence as reinforcement of patriarchy).

45. ROSLYN MURASKIN & TED ALLEMAN, IT’S A CRIME: WOMEN AND JUSTICE 303 (1993).

46. See *id.* (stating that police officers thought domestic violence “was really none of their business”).

47. See KIRSTEN S. RAMBO, “TRIVIAL COMPLAINTS”: THE ROLE OF PRIVACY IN DOMESTIC VIOLENCE LAW AND ACTIVISM IN THE U.S. 1 (2009) (noting that “the history of domestic violence . . . [is] inextricably linked with the concept of privacy”).

The courts have been loth [sic] to take cognizance of trivial complaints arising out of domestic relations — such as . . . husband and wife. . . . [B]ecause the evil of publicity would be greater than the evil involved in the trifles complained of; and because they ought to be left to family government. . . . For, however great are the evils of ill temper, quarrels, and even personal conflicts inflicting only temporary pain, they are not comparable with the evils which would result from raising the curtain, and exposing to public curiosity and criticism the nursery and the bed chamber.

*Id.* (alterations in original) (quoting *State v. Rhodes*, 61 N.C. 453 (1868)).

The law then empowered male governance through innumerable regulations structured around marital relationships.<sup>48</sup> The law reinforced the idea that “a man’s home was his castle” and sanctioned violence perpetrated by men against women in the family, implicitly endorsing male violence against women as an extension of “normal” masculinity and familial governance.<sup>49</sup> The legal reverence and deference given to the marital home reinforced these legal standards further, privileging marriage through extensive protections.<sup>50</sup>

The military similarly codified men’s dominant role. The military has been described as “the defining institution of a nation-state.”<sup>51</sup> “If [m]asculinity is traditionally defined around the idea of power[, and] the armed forces are the nation’s preeminent symbol of power[,], then one preeminent symbol of masculinity is military might.”<sup>52</sup> These roles were reinforced by the military historically relegating women to supporting roles nursing the sick and the maimed or caring for their families back home.<sup>53</sup> The legal codification of men’s role defending and protecting the homeland is most evident in the formal legal exclusion of women from certain direct ground combat roles<sup>54</sup> and the male-only draft registration exclusion.<sup>55</sup>

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48. See NANCY D. POLIKOFF, *BEYOND (STRAIGHT AND GAY) MARRIAGE* 11-12 (2008) (crediting feminists in the 1960s and 70s with reforming the traditional marriage laws and social norms that “fostered ‘separate spheres’ for men and women”).

49. See RAMBO, *supra* note 47, at 29 (describing the gender ideologies of the late nineteenth century that “enabled judges to confer an unspoken right of privacy on men as heads of their households and ‘kings of their castles’”).

50. See *id.* at 100 (highlighting cases like *Griswold v. Connecticut*, 381 U.S. 479 (1965), *Eisenstadt v. Baird*, 405 U.S. 438 (1972), and *Roe v. Wade*, 410 U.S. 113 (1973), signifying a reverence for marital relationships).

51. Lorry M. Fenner, *Either You Need These Women or You Do Not: Informing the Debate on Military Service and Citizenship*, in *WOMEN IN THE MILITARY* 5, 23 (Rita James Simon ed., 2001).

52. Julie Yuki Ralston, *Geishas, Gays and Grunts: What the Exploitation of Asian Pacific Women Reveals About Military Culture and the Legal Ban on Lesbian, Gay and Bisexual Service Members*, 16 *LAW & INEQ.* 661, 666 (1998) (alteration in original) (citation omitted) (quoting Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 *UCLA L. REV.* 499, 501 (1981)).

53. See Krystyna M. Cloutier, Note, *Marching Toward War: Reconnoitering the Use of All Female Platoons*, 40 *CONN. L. REV.* 1531, 1535-36 (2008) (noting that women were not allowed to hold jobs outside the Nurse Corps until World War I, and even then it was only to fill temporary clerical needs during the war).

54. See *id.* at 1535-43 (tracing the history of women’s roles in the military, including their exclusion from “combat mission[s]”); Linda Strite Murnane, *Legal Impediments to Service: Women in the Military and the Rule of Law*, 14 *DUKE J. GENDER L. & POL’Y* 1061, 1064-67 (2007) (detailing the history of women’s integration into military service and discussing the law which excludes women from combat positions); see also *CHRONOLOGY OF SIGNIFICANT POLICY CHANGES AFFECTING WOMEN IN THE MILITARY: 1947-2003*, *WOMEN’S RESEARCH & EDUC. INST.*, <http://www.wrei.org/Women%20in%20the%20Military/Women%20in%20the%20Military%20Chronology%20of%20Legal%20Policy.pdf> (including no policy changes allowing women to serve in combat).

55. See *Military Selective Service Act*, 50 U.S.C. app. §§ 451-73 (2006) (requiring the

Recent statistics poignantly reinforce the marginalization and exclusion of women. Women comprise only fourteen percent of military personnel, making the military a clearly male-dominated organization.<sup>56</sup> Ground combat restrictions legally exclude women from “approximately [twenty] percent of all military positions.”<sup>57</sup> Although women have long been an active part of the United States military, they predominately play socialized gender roles,<sup>58</sup> relegating nearly fifty percent of female officers and enlisted servicewomen to administrative and support roles, often in health care and administration (while approximately twenty percent of male servicemen fill these roles).<sup>59</sup> Statistics show that “only [nine] percent [of women officers] are in tactical operations occupations, compared with [forty-two] percent [of male officers].”<sup>60</sup> Even when women have served in historic numbers, women have tended to hold these positions during times of excessive need caused by shortages of “manpower.”<sup>61</sup>

The military has thus been positioned as “man’s work” and the law reinforces it as such. This legal status is magnified by the economic, employment, and political power and benefits bestowed for

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registration of “every male citizen of the United States, and every other male person residing in the United States, who . . . is between the ages of eighteen and twenty-six”).

56. Melissa Sheridan Embser-Herbert, *A Missing Link: Institutional Homophobia and Sexual Harassment in the U.S. Military*, in *IN THE COMPANY OF MEN: MALE DOMINANCE AND SEXUAL HARASSMENT* 215, 215 (James E. Gruber & Phoebe Morgan eds., 2005); ACTIVE DUTY SERVICE PERSONNEL BY BRANCH OF SERVICE, OFFICER/ENLISTED STATUS & SEX AS OF 30 SEPTEMBER 2007, WOMEN’S RESEARCH & EDUC. INST., available at [http://www.wrei.org/sept\\_2007\\_active.pdf](http://www.wrei.org/sept_2007_active.pdf).

57. David R. Segal & Mady Wechsler Segal, *America’s Military Population*, POPULATION BULL., Dec. 2004, at 28, available at <http://www.prb.org/source/ACF1396.pdf>. Women in the Army are “prohibited from serving in units of battalion size or smaller, whose primary mission is ground combat.” *Id.* Similarly, women are prohibited from working in the following occupational fields: infantry, armor, Special Forces, ranger units, ground surveillance radar platoons, combat engineer line companies, and short-range air defense. *Id.* Women in the Navy have historically been excluded from working on submarines, in the SEALs (special forces) unit; working as fire control technicians, missile technicians, and sonar technicians. *Id.* The Navy has recently announced its intent to lift the ban on women working on submarines. See Julian E. Barnes, *Navy Moves to Allow Women on Submarines*, L.A. TIMES (Feb. 24, 2010), available at <http://articles.latimes.com/2010/feb/24/nation/la-na-women-subs24-2010feb24>.

58. See Catherine Toth, *Women and the Military*, in *THE HANDBOOK OF WOMEN, PSYCHOLOGY, AND THE LAW* 328, 329 (Andrea Barnes ed., 2005) (discussing female military nurses).

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

60. *Id.* (alteration in original) (quoting Segal & Segal, *supra* note 57, at 29).

61. See MATTHEW J. MORGAN, *THE AMERICAN MILITARY AFTER 9/11: SOCIETY, STATE, AND EMPIRE* 48 (2008) (explaining that women’s roles in the military have evolved from women’s limited participation in caretaking support roles to more substantive military service as manpower shortages necessitated increased involvement, such as during the Vietnam conflict); Toth, *supra* note 58, at 329-30 (highlighting women’s military involvement in the Spanish-American War and the World Wars).

military service.<sup>62</sup> Implicit judicial and legislative deference to military decision-making further insulates and empowers military status, and thus the codification of masculine roles.<sup>63</sup> The Supreme Court has often invoked military deference to defeat constitutional challenges under the First Amendment<sup>64</sup> and the Due Process Clause<sup>65</sup> of the Fifth Amendment.<sup>66</sup>

Both the family and the military reinforce hegemonic masculinity by positioning men in positions of control, power, and strength over women (and other men). These roles are reinforced by both legal codes and the societal reverence and deference that buttress these legal standards.

### *B. Entrenched Institutional Stereotypes Perpetuate Hegemonic Masculinity*

Both the military and the family are also entrenched in and constructed around masculine stereotypes that position men as the institutional defenders and protectors. Men are believed to protect and provide for the family, while women rear and care for others.<sup>67</sup>

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62. See Fenner, *supra* note 51, at 25 (noting that men in military service get the privilege and status of military service regardless of whether they serve in a combat role).

63. See Jonathan Masur, *A Hard Look or a Blind Eye: Administrative Law and Military Deference*, 56 HASTINGS L.J. 441, 444 (2005) (critiquing the Supreme Court's "deference to the Executive's wartime factual determinations").

64. See, e.g., *Goldman v. Weinberger*, 475 U.S. 503, 509-10 (1986) (noting that freedom of religion did not override an Air Force regulation prohibiting the plaintiff from wearing a yarmulke while on duty and in uniform). Congress subsequently adopted legislation permitting religious apparel except in limited circumstances. 10 U.S.C. § 774 (2006).

65. See, e.g., *Weiss v. United States*, 510 U.S. 163, 179 (1994) (holding that unfixed terms of office for military judges do not violate due process because there are other means of preserving judicial impartiality). The military seems to receive some deference in equal protection analysis as well. See, e.g., *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981) (concluding that because men and women were not similarly situated in the military, Congress could distinguish between them in authorizing men but not women to register for the draft).

66. Since the 1970s, the Supreme Court has consistently applied the "Military Deference Doctrine" to cases that involve an infringement on constitutional rights. Daniel McFadden, Note, *A First Amendment Analysis of Military Regulations Restricting the Wearing of Military Uniforms by Members of the Individual Ready Reserve Who Participate in Politically Themed Theatrical Productions*, 49 B.C. L. REV. 1131, 1153 (2008) ("The doctrine recognizes that, although the subjects of military control have constitutional rights, the degree to which courts may intervene to protect those rights is more limited than the protection afforded to comparable rights of a person under purely civil authority.").

Shannon Gilreath posits that the military's "don't ask, don't tell" policy violates the First Amendment but has been allowed to stand because of military deference, or the "defense is different" rationale. Shannon Gilreath, *Sexually Speaking: "Don't Ask, Don't Tell" and the First Amendment After Lawrence v. Texas*, 14 DUKE J. GENDER L. & POL'Y, 953, 962-63 (2007).

67. See KENNETH CLATTERBAUGH, CONTEMPORARY PERSPECTIVES ON MASCULINITY: MEN, WOMEN, AND POLITICS IN MODERN SOCIETY 15 (1990) (positioning this view at the core of conservatism).

At home, masculine stereotypes are deeply rooted in traditional conservative views of men as the defender and “king of the castle.”<sup>68</sup> A man’s ability to successfully provide for his family defines his masculinity.<sup>69</sup> The masculine role, historically and stereotypically perceived as the protector and defender of the family, has clear limits, leaving men to find “masculine-affirming work” to achieve fulfillment,<sup>70</sup> and relegating parenting as secondary to financial providing.<sup>71</sup>

Conversely, women are historically and stereotypically positioned in the family as the recipients of male providing and the provider to children.<sup>72</sup> Conservative characterizations, for example, would position these gender roles as not just idyllic, but as the essence of a functioning society.<sup>73</sup> Women are historically characterized as vulnerable and powerless in need of protection and security.<sup>74</sup> Pioneering feminist theorist Catharine MacKinnon described how patriarchal systems have defined what it is to be a “woman” in very domesticated and vulnerable terms:

Contemporary industrial society’s version of her is docile, soft, passive, nurturant, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, made for child care, home care, and husband care. . . . Women who resist or fail, including those who never did fit — for example black and lower-class women who cannot survive if they are soft and weak and incompetent, assertively self-respecting women, women with ambitions of male dimensions are considered less female, lesser women.<sup>75</sup>

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68. See JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009), available at [http://www.law.berkeley.edu/files/At\\_Home\\_in\\_the\\_Law\(1\).pdf](http://www.law.berkeley.edu/files/At_Home_in_the_Law(1).pdf) (explaining the traditional Anglo-American view of security in the home). “Insofar as a man’s home was his castle, it was also a woman’s prison.” *Id.* This depiction of women “evoked a legal analogue: coverture, the common law of marital status wherein married women’s legal existence [was] ‘covered’ and subordinate to their husbands.” *Id.*

69. See Dowd, *supra* note 25, at 221 (noting that “manhood is associated with three things: one must impregnate women, protect dependents from danger, and provision kith and kin”) (quoting GILMORE, *supra* note 40, at 222-23).

70. CLATTERBAUGH, *supra* note 67, at 17.

71. See Dowd, *supra* note 25, at 239 (explaining how hegemonic masculinity positions men to prefer the “breadwinner” role to child rearing). Hegemonic masculinity dictates that men, perhaps above all else, avoid being feminine. *Id.* at 222.

72. See *id.* at 241 (noting that feminists advocate fathers taking bigger roles in childcare and housework, as well as having mothers’ family care “recognized in a way that does not leave mothers economically subordinated”).

73. See CLATTERBAUGH, *supra* note 67, at 17 (describing the conservative belief that gender roles manifest inherent natures that society must promote to be successful).

74. See Stemple, *supra* note 23, at 634 (discussing how sexual violence is female-specific — i.e., violence against women — and juxtaposes all men, as villains, against all women, as “damsels in distress”).

75. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515, 530 (1982).



The family thus “produce[s] and reproduce[s] . . . not merely the activity and artifact of domestic life, but the material embodiment of wifely and husbandly roles, and derivatively, of womanly and manly conduct.”<sup>76</sup>

Hegemonic masculinity pervades and defines sex roles in the military too. Notions of a “male-dominated military culture [are] so deeply ingrained in history that it seems” axiomatic to conceive of “men [as] naturally warlike” and aggressive and “women [as] naturally nurturing.”<sup>77</sup> Historian John Keegan, author of *A History of Warfare*, explains that: “If warfare is as old as history and as universal as mankind, we must now enter the supremely important limitation that it is an entirely masculine activity.”<sup>78</sup>

The military is largely designed around male traits<sup>79</sup> and entrenched in a “combat, masculine-warrior [ ] paradigm,” that “tacitly endorse[s] excluding others who contradict their image of the combat, masculine warrior.”<sup>80</sup> Masculine values pervade military culture and define the essence of the job: “to fight and to win wars.”<sup>81</sup> The military is “a proving ground for masculinity,” frequently seen as “a rite of passage, transforming boys into men.”<sup>82</sup> The archetypal soldier is white, heterosexual, and male.<sup>83</sup> Male within this definition means more than just biological sex — it requires the right amount of masculinity.<sup>84</sup> Indeed the military embodies a hegemonic masculinity hierarchy.<sup>85</sup>

Yet the strong masculine norms governing the military are not entirely romanticized as mythical warriors either. Moral conservatives, for example, would cite the all-male military and the “violent,

76. Candace West & Don H. Zimmerman, *Doing Gender*, in *SEX, GENDER, AND SEXUALITY*, *supra* note 6, at 43, 53.

77. Toth, *supra* note 58, at 329.

78. MORGAN, *supra* note 61, at 46-47; *see also* CLATTERBAUGH, *supra* note 67, at 41 (noting that a world without war might thus be intertwined with dethroning patriarchy and masculine ideals).

79. MORGAN, *supra* note 61, at 47.

80. KAREN O. DUNIVIN, *MILITARY CULTURE: A PARADIGM SHIFT?* 1, 16-17 (Air War College, Maxwell Paper No. 10, 1997), *available at* <http://www.au.af.mil/au/awc/awcgate/maxwell/mp10.pdf>.

81. *Id.* at 2.

82. HELENA CARREIRAS, *GENDER AND THE MILITARY: WOMEN IN THE ARMED FORCES OF WESTERN DEMOCRACIES* 41 (2006) (emphasis omitted); *see also* CLATTERBAUGH, *supra* note 67, at 41 (“[S]ome radical writers believe that overt violence is the ultimate test of masculinity.”).

83. *See* Ralston, *supra* note 52, at 672 (describing the gender and racial qualifications of the stereotypical military member).

84. *See id.* (quoting Karst, *supra* note 52, at 505) (noting that military masculinity requires the gender line to be “clearly demarcated” and power to be “rightfully distributed among the masculine in proportion to their masculinity”).

85. Fenner, *supra* note 51, at 20.

destructive, and competitive” environment that it cultivates as an example of the “barbaric” tendencies of men, thus reinforcing the civilizing forces of women and family in society.<sup>86</sup>

The exclusion of women from certain combat positions reinforces stereotypes that “true soldiers” are men.<sup>87</sup> Women are excluded from the ground combat positions that “are considered to be the most ‘macho.’”<sup>88</sup> The ground combat exclusion positions women as second-class citizens, judged by their biological womanhood that inherently does not conform to the universal male warrior image.<sup>89</sup> Male superiority is repeatedly reinforced in the military even during basic training when soldiers are referred to as “girls” as an insult and equipment is given different women’s names.<sup>90</sup> Military service is perceived as an atypical career track for women, creating entry barriers, such as family resistance to female enlistment.<sup>91</sup> Women who seek more active, physical roles in the military are seen as “abnormal, mentally impaired, or morally corrupt” because such a role does not comport with images of women as nurturers.<sup>92</sup>

The female soldier is thus caught in the military culture in which she is either a “whining little girl[.]” or a “granite-jawed real m[a]n” who must prove she is not weak in order to survive.<sup>93</sup> This played out in Lynndie England’s role in Abu Ghraib.<sup>94</sup> She was convicted of

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86. See CLATTERBAUGH, *supra* note 67, at 18. Moral conservatives would cite the violent crime and drug use statistics of single men to prove that men control their impulses by acting as providers and protectors. *Id.* at 35.

87. Ralston, *supra* note 52, at 676. Other than the Coast Guard, all branches of the military exclude women from some jobs: for instance, “[i]n 2003, the Marines allowed women to serve in 92% of the occupational categories, but only 62% of the positions within these categories were open to women. . . . Combat restrictions effectively and legally exclude women from approximately 20% of all military occupations.” Cornett, *supra* note 59, at 101-02.

88. Ralston, *supra* note 52, at 676-77; see also Scott E. Dunn, *The Military Selective Service Act’s Exemption of Women: It Is Time to End It*, 2009 ARMY LAW 1, 18 (2009) (quoting Memorandum from Sec’y of Def. to the Sec’ys of the Army, Navy, Air Force, Chairman Joint Chiefs of Staff, Assistant Sec’y of Def. (Personnel & Readiness), and Assistant Sec’y of Def. (Reserve Affairs) on Direct Ground Combat Definition and Assignment Rule (Jan. 13, 1994)) (“As a matter of DOD policy promulgated by Secretary of Defense Les Aspin in 1994, women are currently restricted ‘from assignment to units below the brigade level whose primary mission is to engage in direct combat on the ground.’”).

89. DUNIVIN, *supra* note 80, at 18.

90. CARREIRAS, *supra* note 82, at 43.

91. See Mady W. Segal et al., *Gender and the Propensity to Enlist in the U.S. Military*, in *WOMEN IN THE MILITARY*, *supra* note 51, at 49, 67 (speculating how masculinity norms influence disparate enrollment statistics by gender).

92. Toth, *supra* note 58, at 329.

93. Ta-Nehisi Coates, *She Held the Leash: G.I. Jane in the Torture Room*, THE VILLAGE VOICE, May 4, 2004, available at <http://www.villagevoice.com/2004-05-04/news/she-held-the-leash>.

94. The recent Abu Ghraib military scandals represent one of the most highly publicized and horrific incidents of prisoner abuse and brutality conducted by American troops

military crimes,<sup>95</sup> but from a masculinity analysis, in one scholar's view, she may also have committed the crime of "transgress[ing] the role[s] still often expected of women."<sup>96</sup> The surprise and outrage voiced in response to her involvement certainly reinforced society's resounding linkage of masculinity and violence, viewing women as military mothers and wives, nurses, or victims of war-related violence, not "wielders of violence," particularly not in its most malevolent forms.<sup>97</sup> The masculinity stereotypes that pervade the family and the military thus reinforce and entrench hegemonic masculinity in the law.

*C. Defining the Spectrum of Masculinized Violence from Private Malevolent Acts to Public Occupational Uses*

While these two institutions similarly expressed and reinforced hegemonic masculinity norms linking masculinity and strength, they notably position violence differently. The military positions violence as an occupational qualification that is taught, refined, celebrated, and publicly discussed, whereas the family insulates violence as

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during wartime. In the spring of 2004, photographs surfaced revealing American soldiers torturing Iraqi detainees at Abu Ghraib, one of Saddam Hussein's cruelest prisons and the largest detention facility in Iraq situated near Baghdad. Seymour M. Hersh, *Torture at Abu Ghraib*, THE NEW YORKER, May 10, 2004, available at [http://www.newyorker.com/archive/2004/05/10/040510fa\\_fact](http://www.newyorker.com/archive/2004/05/10/040510fa_fact). The photographs were broadcast throughout the world. *Id.* The pictures revealed a female soldier, Private Lynndie R. England, with a cigarette dangling from her mouth, giving a thumbs-up sign and pointing at the genitals of a young Iraqi. *Id.* The Iraqi is masturbating, completely naked except for a sandbag over his head. *Id.* Three other Iraqi prisoners are shown in line, hooded and naked, hands crossed over their genitals. *Id.* Another photograph depicts England standing arm in arm with Specialist Charles A. Graner as both smile and give the thumbs-up behind seven naked Iraqis, piled on top of each other in a pyramid. Yet another photograph captures Lynndie England holding what appears to be a dog's leash wrapped around a naked detainee's neck. *Profile: Lynndie England*, BBC NEWS, Sept. 27, 2005, <http://news.bbc.co.uk/2/hi/americas/4490795.stm>.

95. Associated Press, *Abu Ghraib Scandal Haunts Lynndie England*, June 29, 2009, available at <http://www.military.com/news/article/June-2009/abu-ghraib-scandal-haunts-lyndie-england.html> (noting that England was convicted of conspiracy, mistreating detainees, and committing an indecent act by the Army courts-martial and sentenced to three years in prison). England was "one of [eleven] soldiers found guilty of wrongdoing at Abu Ghraib." *Id.*

96. Shira Tarrant, *Who's Accountable for the Abuse at Abu Ghraib?*, OFF OUR BACKS: THE FEMINIST NEWSJOURNAL, Sept.-Oct. 2004 (noting that government lawyers tried to cast "England as a willful, out-of-control soldier"). Shira Tarrant suggests that "England is being punished for taking part in exactly what the culture of militarism fosters" — the objectification of women. *Id.*

97. Enloe, *supra* note 7, at 91; see also Coates, *supra* note 93, at 38 (describing the ways in which images of Lynndie England as a female torturer in Abu Ghraib challenged traditional notions of female behavior); Jodi Enda, *Female Face of Abuse Provokes Shock*, WOMEN'S ENEWS, May 10, 2004, <http://www.womensenews.org/article.cfm/dyn/aid/1828> (discussing the reaction to England's actions in the Abu Ghraib abuse).

silent, invisible, and unspoken. Yet violence in both its public and private forms is deeply interconnected with dynamics of power and control and it is distinctly masculine.

The military centrally reveres and refines violence, positioning soldiers “by doctrine” as “managers of violence.”<sup>98</sup> Strength and aggression are requirements of the job.<sup>99</sup> Combat positions are synonymous with being a soldier.<sup>100</sup> The military publicly defends its exclusively male framework. The integration of the historically all-male military institutions vividly demonstrated this point. In *United States v. Virginia*, for example, the integration of the Virginia Military Institute (VMI) revealed that alumni and institutional stakeholders were willing to expend vast resources to defend the use of the adversative instructional model in a male-only institution.<sup>101</sup> VMI positioned the “adversative method” used to groom citizen-soldiers as sacred and irreconcilable with femininity.<sup>102</sup> VMI reflected a very public battle to maintain a masculine environment.<sup>103</sup> VMI also reveals that combat instruction is taught through a well-delineated and uncompromising chain of command, which reinforces control and power dynamics within masculinities.<sup>104</sup> Indeed the military structure could be described as a microcosm of hegemonic masculinity in action.<sup>105</sup>

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98. Marie deYoung, *Sexuality: Histories, Behaviors, and Lifestyles that Impact Unit Readiness and Cohesion*, in *WOMEN IN THE MILITARY*, *supra* note 51, at 135, 160.

99. *See DUNIVIN*, *supra* note 80, at 2 (noting that the military’s primary responsibility is fighting and winning wars).

100. *See id.* at 18 (noting that many military leaders “define[] soldiering as a [combat] role”). Being a combat, masculine warrior (CMW) thus defines what “soldiering” is and, in doing so, excludes women. *Id.* Women do not fit into the image of a CMW. *Id.* Indeed, the military has been described as the most nontraditional of all career fields for women. *Cf. Toth*, *supra* note 58, at 373 (highlighting the percentage of women who enter selective military academies — i.e., 14.6% of the West Point class of 2007 — and the percentage of women who enter selective colleges and universities — i.e., approximately 50% of the Yale class of 2007).

101. *United States v. Virginia*, 518 U.S. 515, 523 n.3, 527 (1996). The Court rejected Virginia’s proposed parallel institution for women, the Virginia Women’s Institute for Leadership. *Id.* at 526, 555-56. The state found it preferable to invest millions of dollars into a separate women’s institute, including \$220 million from VMI itself, than to admit women into VMI. *Id.* at 527.

102. *See id.* at 540 (finding unpersuasive Virginia’s argument that alterations to VMI’s adversative method of training “would necessarily be ‘radical,’ so ‘drastic,’ . . . as to transform, indeed ‘destroy,’ VMI’s program”). Virginia further argued that mandatory admission of women would not only “downgrade VMI’s stature,” but it would destroy the school. *Id.* at 542.

103. Toth, *supra* note 58, at 335 (“On the day that the first females (thirty in all) were beginning . . . at the Virginia Military Institute, thirty dead laboratory rats were found on the parade grounds along with a sign reading ‘Save the Males.’”).

104. *See id.* at 335-39 (discussing the training used at military academies, meant to test and strengthen character, including screaming at the cadets, ordering them to relinquish personal belongings, and not being allowed to drive any motor vehicles, even at home, until after spring break of junior year).

105. Cohen, *supra* note 9, at 144 (describing heterosexuality and aggression as defining

While formal limitations on violence against military spouses and fellow service members exist, statistics reveal that abuse of female service members is nonetheless pervasive in the military.<sup>106</sup> There are formal constraints on violence in the military, but enforcement mechanisms and penalties are generally soft and sporadic.<sup>107</sup> Violence can be a central job requirement in the military and efforts to reign in non-conforming violence can be murky.<sup>108</sup> The military thus expresses hegemonic masculinity and it prominently reinforces the role of violence, strength, and aggression within the military as an institution.

Family violence is also positioned as a distinctly masculine act.<sup>109</sup> Yet, it is generally very private, often unspoken and unreported.<sup>110</sup> Women often hide this violence from their colleagues and families, insulating the conduct in the home tightly.<sup>111</sup> Family violence is also not limited to physical conduct alone.<sup>112</sup> It involves complex components of “power and control.”<sup>113</sup> The act of abuse itself is a “‘moment’

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characteristics of hegemonic masculinity). Many scholars see male violence as “extensions of ‘normal’ masculinity.” Dowd, *supra* note 25, at 220. Violence is simply a way of “doing gender.” *Id.* Because the military’s primary activity is combat, which subordinates women, *see supra* notes 99-100 and accompanying text, the military may be characterized as a “preeminent symbol of masculinity.” Ralston, *supra* note 52, at 666.

106. *See* T.S. NELSON, FOR LOVE OF COUNTRY: CONFRONTING RAPE AND SEXUAL HARASSMENT IN THE U.S. MILITARY 11 (2002) (“It is estimated that nearly two-thirds of female service members experience unwanted, uninvited sexual behavior in the military.”); *see also* Cornett, *supra* note 59, at 99 (“78% of women experience unwanted sexual behavior in the U.S. military.”); Embser-Herbert, *supra* note 56, at 232 (indicating that sixty-five percent of heterosexual women and eighty-one percent of lesbian and bisexual women experienced harassment).

107. *See* NELSON, *supra* note 106, at 82-85 (discussing the percentage of reported sexual assault and rape cases that are tried and the percentage that are convicted). For instance, the Family Advocacy Program (FAP) identifies and responds to reports of violence in military families. *See* U.S. DEPT OF DEF., Directive No. 6400.1, Family Advocacy Program, § 4 (Aug. 23, 2004), available at <http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf> (specifying the goals of the program, including identification, intervention, prevention, and rehabilitation). A military-sanctioned committee will conduct a hearing to substantiate allegations, the potential consequences of which might include a formal court-martial and separation. *Id.* § E1 (defining “substantiated” as a situation in which a “preponderance of available information indicates that abuse has occurred”).

108. NELSON, *supra* note 106, at 82.

109. *See* Suk, *supra* note 12, at 11 (“Indeed wife beating, as a form of chastisement and discipline of wives, was overtly approved and reserved as a right of the man of the house.”).

110. KRISTIN A. KELLY, DOMESTIC VIOLENCE AND THE POLITICS OF PRIVACY 1 (2003) (noting that because family violence takes place in the privacy of the home, it is hard to obtain accurate statistics; however, studies indicated that between 1.8 and 3-4 million women are battered each year). According to the National Crime Survey of Victimization, only 14.5% of domestic assaults are reported. *Id.* at 3.

111. *See* ELIZABETH PLECK, DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT 185 (Oxford U. Press 1987) (explaining that rape and “wife beating” were “taboo” and “rarely discussed in public”).

112. ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 22 (2000).

113. *Id.*

in a larger continuum” of male power.<sup>114</sup> Physical, sexual, and psychological abuse are all forms of domestic violence that “control, isolate, threaten, [and] intimidate” victims.<sup>115</sup>

The family and the military thus express hegemonic masculinity because of the codification of male violence, the revered status of these institutions, the entrenched masculinity stereotypes, and the different positioning of violence.

## II. HOW DOMESTIC VIOLENCE REFORMS TARGETING VIOLENCE AGAINST WOMEN IMPACTED HEGEMONIC MASCULINITY: BATTLES AND COLLATERAL CONSEQUENCES

Given the underpinnings of hegemonic masculinity that historically supported both the family and the military, feminist institutionalized reforms inherently positioned feminist reforms to reform masculinity itself.<sup>116</sup> This section identifies these challenges to hegemonic masculinity as expressed in these institutions, examining the law reform victories and their collateral consequences.

### *A. The Foundational Feminist Challenge to Masculinized Violence: Responding to Male Violence Against Women Through Domestic Violence Reforms*

History primarily celebrates the feminist movement for making the “invisible visible,” naming and framing violence against women and constructing legal responses to it.<sup>117</sup> Feminists identified violence

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114. *Id.*

115. *Id.* “[V]iolence restricts women’s ability to move freely and confidently into the world and therefore hinders their full development. The fear of violence robs women of possibilities, self-confidence, and self-esteem. In this sense, violence is more than a physical assault; it is an attack on women’s dignity and freedom.” *Id.* (quoting SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN’S MOVEMENT* (1982)).

116. *See, e.g.*, CLATTERBAUGH, *supra* note 67, at 59 (revealing profeminist critiques that position male sexual violence too prominently as the source of patriarchy, undervaluing poverty, exclusion, and other factors that support patriarchy).

117. Alice M. Miller, *Sexuality, Violence Against Women, and Human Rights: Women Make Demands and Ladies Get Protection*, 7 HEALTH & HUM. RTS. 16, 29 (2004) (“Feminists stressed making the invisible visible and de-naturalizing the harm to women); *see also* PLECK, *supra* note 111, at 3-4 (providing important historical context to domestic violence reform efforts and debunking myths that family violence reform began in the 1960s); SUK, *supra* note 68, at 6 (“Over the last forty years feminists have advocated transforming the way that the home as a legal institution is perceived and treated, particularly by the criminal justice system. With the great success of this movement, the ideas that drive the reform are no longer new or radical to legal actors. They have laid down roots in legal doctrine, theory, and practice, as intellectual and ideological forces in lawmaking, adjudication, and legal culture. They are now at home in the law.”).

against women as an important issue in the de-subordination of women.<sup>118</sup> Feminists employed a range of techniques to advocate for these reforms, including class action lawsuits challenging systematic failures to protect women,<sup>119</sup> and the creation of community treatment services, such as shelters and hotlines.<sup>120</sup> Feminist law reforms legislated more formalized efforts to protect the victim and to prosecute the perpetrator.<sup>121</sup> Specific state legal reforms ensured that police responded to “domestic incident” calls.<sup>122</sup>

This article identifies the foundational feminist challenge to hegemonic masculinity and masculinized violence as the extraction of violence against women from legal and social parameters of masculinity. If male violence is defined as an “extension[] of ‘normal’ masculinity,”<sup>123</sup> then the exclusion of certain forms of male violence from legal codes transformed the definition of masculinity itself. Given the entrenchment of masculinity norms and stereotypes, and the institutional reverence of the family, the successful movement of violence against women from a private harm to a public issue signaled a masculinity paradigm shift.<sup>124</sup>

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Suk analyzes feminist law reforms addressing violence against women, but certainly feminist law reforms predate this era of activism. SUK, *supra* note 68, at 6. Pleck chronicles two significant periods of family violence reform movements from 1640 to 1680 and from 1874 to 1890. PLECK, *supra* note 111, at 4.

118. JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 29 (2006). As Halley summarized in her partial genealogy of feminist theory, “power feminists and cultural feminists began in the early 1980s to identify some family specific targets of activism — rape and other forms of direct violence . . . of women.” *Id.*

119. See Emily J. Sack, *Battered Women and the State: The Struggle for the Future of Domestic Violence Policy*, 2004 WIS. L. REV. 1657, 1667-68 (2004) (crediting civil lawsuits with changing arrest policies).

120. See SCHNEIDER, *supra* note 112, at 21 (describing the hotline at one of the nation’s first domestic violence shelters); see also Gruber, *supra* note 44, at 757 (“[E]arly reforms did not mandate that victims’ wishes necessarily coincide with the state prosecutorial aims,” but instead provided victims with “access [to] the legal system or external services if they so desired.”).

121. See Gretchen Arnold, Social Movement “Success”: The Battered Women’s Discourse and Institutional Change 5 (unpublished paper presented at the Annual Meeting of the American Sociological Association) (Aug. 14, 2004), available at [http://www.allacademic.com/meta/p109112\\_index.html](http://www.allacademic.com/meta/p109112_index.html) (explaining that new legislation “(1) defined adult abuse in broad terms, including not only attempted or actual physical harm but also putting another in fear of harm; (2) provided emergency orders of protection for the victim; (3) enabled a judge to issue a vacate order to the abuser and provide temporary child custody to the victim and child support for her children”).

122. See Sack, *supra* note 119, at 1671 (discussing changes in police procedure “mandated by statute or implemented as police policy”); see also *id.* at 1662-63 (explaining that because domestic violence calls were historically non-criminal calls the police assigned these calls low priority and were often slow in responding, if they responded at all).

123. Dowd, *supra* note 25, at 220.

124. Starting in the 1960s, feminist activists worked in a myriad different ways on the issue of domestic violence. See SCHNEIDER, *supra* note 112, at 20 (noting the “rebirth of

State law reforms reveal this masculinity paradigm shift. Criminalization of domestic violence removed the implicit immunity afforded to men in violent male family governance and penalized it.<sup>125</sup> Mandatory arrest laws and policies legislated a polar shift from a “do-nothing” response or a “cooling-off period” to an affirmative requirement that police officers arrest a domestic violence suspect when the victim shows signs of injury, a weapon is involved, or the officer has probable cause to believe that the accuser has violated a restraining order.<sup>126</sup> Other states did not affirmatively require arrest, but nonetheless imposed an affirmative reporting obligation on officers to complete a domestic violence incident report and document why an arrest was not made.<sup>127</sup> All states reformed their criminal laws to expand police power to arrest suspects in cases of domestic assault.<sup>128</sup> In time, these reforms reached the federal level. In 1984, the United States Attorney General’s Task Force on Family Violence recommended that “‘family violence should be recognized and responded to as a criminal activity’ and encouraged law enforcement agencies to ‘establish arrest as the preferred response in cases of family violence.’”<sup>129</sup> These reforms punitively responded to male violence through significant exertions of state power and resources, leading to longer periods of

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feminism in the 1960s”). Women’s Advocates founded one of the first shelters in the United States in St. Paul, Minnesota. *Id.* at 21. The shelter had a hotline that women could call for help, which eventually became a twenty-four-hour crisis line. *Id.* Activists brought class-action suits in New York City and Oakland, California, demanding that police arrest domestic violence offenders. *Id.* at 44. Feminist activists also helped develop civil protective or restraining orders. *Id.* Importantly, feminists were the first to “name[] and explain[]” several forms of violence against women, such as battering and acquaintance rape. *Id.* at 46-47.

125. *See, e.g.*, Sack, *supra* note 119, at 1669-70 (noting that the domestic violence reform movement prompted nearly every state to reform their penal codes to allow officers to make warrantless arrests).

126. *Compare id.* (noting that the domestic violence reform movement prompted nearly every state to reform their penal codes to allow officers to make warrantless arrests), with Albert R. Roberts & Karel Kurst-Swanger, *Police Response to Battered Women*, in HANDBOOK OF DOMESTIC VIOLENCE INTERVENTION STRATEGIES: POLICIES, PROGRAMS, AND LEGAL REMEDIES 101, 111 (Albert R. Roberts ed., 2002). For a list of all state mandatory arrest statutes see G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservativization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237, 239 n.2 (2005).

127. Roberts & Kurst-Swanger, *supra* note 126, at 111.

128. *See id.* (specifying that these statutes require or suggest arrest when there is probable cause). There were nearly 500 battered women’s shelters in the United States by 1981. TAMSEN STEVENSON AND CINDI LOVE, SAFE NETWORK, HERSTORY OF DOMESTIC VIOLENCE: A TIMELINE OF THE BATTERED WOMEN’S MOVEMENT (1999), available at <http://www.mincava.umn.edu/documents/herstory/herstory.html>. By 1989, there were 1200 battered women programs sheltering 300,000 women and children a year. *Id.*

129. Arnold, *supra* note 121, at 5-6 (citing Atty. Gen.’s Task Force on Family Violence, Final Report 10-17 (1984)).



incarceration for domestic offenders, more punitive attitudes towards defendants, and increasing support for victims.<sup>130</sup>

Historically, courts required domestic violence victims to sign formal complaints positioning the victim as the accuser initiating criminal charges, thus differentiating domestic crimes from other crimes.<sup>131</sup> “No drop” reforms now empower the state to prosecute domestic violence offenders absent witness testimony or the consent of the victim.<sup>132</sup> Prosecutors instead rely on the arresting officer’s documentation, gaining more power to break the cycle of violence, and reinforcing the depth of the state’s willingness to reform masculine violence in the family.<sup>133</sup>

The criminal domestic violence reforms successfully extracted violence against women from codified legal norms of masculinized violence, thus launching the foundational challenge to hegemonic masculinity. While these domestic violence reforms successfully amended legal codes to extract male violence against women, achieving a legal paradigm shift, that is not to say that these reforms achieved the precise *intended* paradigm shift.<sup>134</sup> The law reforms achieved notable victories and the accompanying collateral consequences are discussed in Part II.B.

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130. See Arnold, *supra* note 121, at 7 (noting that many police department guidelines on responding to domestic violence reports are premised on the idea that “wife beating is a widespread and serious problem, that the perpetrator should be held accountable for his actions, and that the victim is deserving of protection and help”).

131. Albert R. Roberts & Karel Kurst-Swanger, *Court Responses to Battered Women and Their Children*, in HANDBOOK OF DOMESTIC VIOLENCE STRATEGIES, *supra* note 126, at 127, 135 (noting that this policy placed the burden of charging the offender with a crime on the victim, which victims were reluctant to do out of fear of retribution).

132. *Id.*

133. See *id.* at 135 (observing that when prosecutors sign complaints and file charges themselves, they signal that “domestic violence is a serious crime against the state, not [simply] a private matter”).

134. See, e.g., PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE, at iii (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf> [hereinafter EXTENT, NATURE, AND CONSEQUENCES] (“[A]pproximately 4.8 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually . . . .”); PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, at iv (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (“Approximately 1.3 million women and 835,000 men are physically assaulted by an intimate partner annually in the United States.”); see also MATTHEW R. DUROSE ET AL., U.S. DEP’T OF JUSTICE, FAMILY VIOLENCE STATISTICS: INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 31 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs.pdf> (“Females made up 80% of spouse violence victims and 82% of those victimized by boyfriends or girlfriends.”); CALLIE MARIE RENNISON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001, at 1 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf> (“Intimate partner violence made up 20% of [nonfatal] violent crime against women in 2001.”).

*B. How Collateral Consequences of Domestic Violence Reforms Re-Entrenched Hegemonic Masculinity in the Family*

With this foundational feminist challenge to hegemonic masculinity and the resulting extraction of violence against women from masculine norms came at least two collateral consequences: (1) the entrenchment of binary roles positioning men as potential perpetrators of violence and women as vulnerable to victimization;<sup>135</sup> and (2) the empowerment of the state as the surrogate masculine defender of women and families.<sup>136</sup> These collateral consequences collectively entrenched aspects of hegemonic masculinity in the law. Central to the feminist response to domestic violence was the positioning of domestic violence as a form of male aggression and a mechanism of state-sanctioned subordination of women.<sup>137</sup> This collateral consequences analysis considers whether some of these domestic violence reforms “expressly aimed at remedying the defects and inadequacies of traditional legal responses — inadvertently end[ed] up reinforcing the problems they [sought] to rectify.”<sup>138</sup> Examining the masculinity implications of feminist law reforms thus raises the question of whether binary characterizations positioning women as potential victims and men as potential aggressors exacerbate hegemonic masculinity in the law; and, if so, what are the implications.<sup>139</sup>

Successful rights recognition on a large political scale necessarily involves other stakeholders and political alliances, which risks the “damaging ‘misrecognition’” of those rights by others.<sup>140</sup> While law reforms targeting violence against women were born out of the

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135. See, e.g., CLATTERBAUGH, *supra* note 67, at 70 (articulating the men’s rights response to feminism as portraying men as the “oppressor, victimizer, abuser, user, exploiter, chauvinist, sexist pig” and portraying women as “the oppressed, victimized, abused, used, exploited, maligned, passive, blameless, helpless victim”).

136. See Jill Radford & Elizabeth A. Stanko, *Violence Against Women and Children: The Contradictions of Crime Control Under Patriarchy*, in *WOMEN, VIOLENCE AND MALE POWER: FEMINIST ACTIVISM, RESEARCH AND PRACTICE* 77 (Marianne Hester et al. eds., 1996) (arguing that police and relevant professionals have responded to feminist activism but in a way that negates feminists goals).

137. See Gruber, *supra* note 44, at 775 (asserting that victims’ reforms “decrease[] the rights of the worst-off and legitimize[], rather than challenge[], subordinating institutions”).

138. Melanie Randall, *Domestic Violence and the Construction of “Ideal Victims”: Assaulted Women’s “Image Problems” in Law*, 23 ST. LOUIS U. PUB. L. REV. 107, 107 (2004).

139. See *supra* note 137 and accompanying text.

140. Renée Römken, *Law as a Trojan Horse: Unintended Consequences of Rights-based Interventions to Support Battered Women*, 13 YALE J.L. & FEMINISM 265, 283 (2001) (“[S]uccessful campaigns in the politics of [rights] recognition win on terms set not by the rights holders but by larger institutional forces. The political interests and values of these institutions do not always converge with the individual’s, and thus the demand for recognition often entails damaging ‘misrecognition’ by others.”).

feminist movement and in its origins fit into the feminist agenda, achieving such widespread reforms involved a substantial integration with the historically overlapping criminal reform movements.<sup>141</sup> Addressing the criminal justice system's lack of response, feminists had to engage the state for legislative reform and financial resources.<sup>142</sup> This was a paradox to the extent that feminists sought women's autonomy from the state, but had to seek remedies through state institutions.<sup>143</sup>

Feminist law reforms involved strategic partial alliances with social and religious conservatives which led to collateral masculinity consequences.<sup>144</sup> President Reagan in the 1980s positioned crime as a major social ail.<sup>145</sup> Reagan's approach to crime control was "a return to 'law and order,'" seeking stricter enforcement and punishments for those convicted of crimes.<sup>146</sup> He sought the transformation of the state and federal legal systems to "acknowledge[] principles that lie at the heart of modern conservatism. Right and wrong matters, individuals are responsible for their actions. Society has a right to be protected from those who prey on the innocent."<sup>147</sup>

The alliance offered certain tangible benefits such as criminal deterrence of violent behavior and the symbolic value of the prominent placement of violence against women on the national agenda.<sup>148</sup> Even so, the shared goals of the state's conservative politics and the feminist movement to end violence against women did not align perfectly. The state, for example, was largely interested in the conviction of criminal defendants whereas feminists were largely interested in the empowerment and safety of women and formal and substantive equality.<sup>149</sup> The resulting criminal laws positioned domestic violence

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141. See Gruber, *supra* note 44, at 748-49 ("[F]eminists spearheaded the domestic violence and rape-reform movements and described gendered crimes as manifestations of larger patriarchal attitudes and policies infecting society in general.").

142. See Daniels et al., *supra* note 16, at 83 (describing these changes as necessary to establish "credibility or influence in the social welfare and criminal justice arenas").

143. *Id.*; see also Suk, *supra* note 12, at 15 (describing early ambivalence to engaging with the state).

144. HALLEY, *supra* note 118, at 29.

145. President Ronald Reagan, Remarks at Ninth Annual Conservative Political Action Conference Dinner (Feb. 26, 1982), available at <http://www.reagan.utexas.edu/archives/speeches/1982/22682b.htm> (describing crime as an issue "whose gravity cannot be underestimated").

146. NANCY E. MARION, A HISTORY OF FEDERAL CRIME CONTROL INITIATIVES, 1960-1993 145 (1994).

147. Reagan, *supra* note 145.

148. Gruber, *supra* note 44, at 759-60; see also Sack, *supra* note 119, at 1670-71 (noting that legal reform efforts sent the message that the state would not condone domestic violence).

149. See Sparks, *supra* note 17, at 51 (explaining that victims may be concerned with curbing future violence rather than prosecuting past violence).

as a general “law and order” issue.<sup>150</sup> They provided rights to support and protect victims and to punish offenders.<sup>151</sup> Reforms included jail terms and weapon bans as the strategies to reduce crime.<sup>152</sup>

These criminal justice reform solutions were not necessarily feminist *prescriptions* to reduce violence against women, but they achieved important changes.<sup>153</sup> The domestic violence reforms achieved great successes, but they were not without collateral consequences, some of which are revealed through this masculinity analysis. Consider the following: “‘Is the feminist social movement to be remembered for its influence on criminal law . . .?’ Is much of today’s feminism nothing more than a subset of the crime victims’ rights movement and its tough-on-crime goals?”<sup>154</sup> This question posed by Renée Römken introduces the centrality of the criminalization reforms to end domestic violence, and underscores the contextual positioning of these reforms in the broader agenda.<sup>155</sup>

Law reforms therein can be a “double-edged sword” in the legislative line-drawing that needs to occur:

The law inevitably controls, monitors and potentially punishes, at the same time that it empowers, protects and enhances freedom. The shift of domestic violence into the legal and public policy domain creates a need to establish and define general categories that fit the bureaucratic administrative system, while working with limited budgets to answer the question, ‘Which victims deserve support?’<sup>156</sup>

The lines that are drawn carry the risk of perpetuating stereotypes or “misrecognition.”<sup>157</sup> The criminal law reform initiatives necessarily had to simplify complex aspects of domestic violence from its theoretical feminist underpinnings.<sup>158</sup> For example, the notion of victim

150. See Rachele Brooks, *Feminists Negotiate the Legislative Branch: The Violence Against Women Act*, in FEMINISTS NEGOTIATE THE STATE, *supra* note 11, at 65, 79 (discussing the consolidation and placement of VAWA in the Crime Bill).

151. See Römken, *supra* note 140, at 284 (noting the “impact of legalizing a complex social and personal conflict like violence against women in intimate relationships”).

152. Brooks, *supra* note 150, at 79.

153. See *id.* (noting that feminists had to compromise in order to get the Crime Bill passed).

154. Gruber, *supra* note 44, at 791 (alteration in original) (citing Symposium, *Battered Women and Feminist Lawmaking*, 10 J.L. & POL’Y 313, 344 (2002)).

155. See, e.g., Sack, *supra* note 119, at 1712-18 (criticizing the characterization of domestic violence as linked to male dominance exclusively and learned helplessness, fearing that it loses the broader strength of domestic violence survival).

156. Römken, *supra* note 140, at 267.

157. See Cheryl Hanna, *The Paradox of Hope: The Crime and Punishment of Domestic Violence*, 39 WM. & MARY L. REV. 1505, 1560-61 (1998) (recognizing the tendency to essentialize and stereotype both victims and perpetrators of domestic violence).

158. See *id.* at 1518-20 (explaining that criminal law reforms allowed easier access to the domestic violence issue for the public and for law enforcement officials).

non-cooperation did not reconcile easily with a “law and order” approach.<sup>159</sup> Criminal reform agendas also ran into binary characterizations in the mainstream public sentiment, polarizing victims as helpless and defendants as monsters.<sup>160</sup> Positioning domestic violence on the feminist agenda as a criminal reform initiative also created the question of how to deal with male victimization and female violence.<sup>161</sup> In achieving domestic violence reforms, feminists consequently “faced a critical choice — forge ahead with criminalization policies and come up with arguments minimizing the importance of victim resistance or scale back on criminalization policies and focus elsewhere on the problem.”<sup>162</sup>

### 1. Binary Strength Stereotypes

While feminist law reform initiatives achieved successes through criminal law reforms, these reforms and the conservative political alliances necessary to achieve them led to an unintended misrecognition — the entrenchment of gender stereotypes of men and women along a continuum, positioning men as capable and prone to physical and violent behavior and positioning women as powerless potential victims.<sup>163</sup> These binary characterizations collaterally entrenched hegemonic masculinity. The implications of these entrenched assumptions are problematic for women as aggressors, men as victims, and women as victims of female abusers.<sup>164</sup> The victim-aggressor dichotomy pathologizes women’s violence and normalizes male violence, thus reinforcing aspects of hegemonic masculinity.

Inherent in the masculinization of the aggressor are assumptions about male behavior, assumptions that all men are prone to and

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159. *Id.* at 1555 (relating an anecdote about an uncooperative victim).

160. See Gruber, *supra* note 44, at 763 (“This choice must be understood in light of the competing theoretical forces reformers encountered.”).

161. See Liz Kelly, *When Does the Speaking Profit Us?: Reflections on the Challenges of Developing Feminist Perspectives on Abuse and Violence by Women*, in *WOMEN, VIOLENCE AND MALE POWER*, *supra* note 136, at 34, 36-37 (“Including women’s use of violence [in the theory conversation] is only a threat to a version of feminism which views men and women, masculinity and femininity as fixed, unchanging, biologically based, which defines violence as an inherent potentiality in men. A feminism which begins from understanding gender as a social construct, which recognizes the variability with which gendered selves and individual biography combine, can locate women’s use of violence within its existing framework.”).

162. Gruber, *supra* note 44, at 762.

163. See, e.g., CLATTERBAUGH, *supra* note 67, at 70 (articulating the men’s rights response to feminism as portraying men as the “oppressor, victimizer, abuser, user, exploiter, chauvinist, sexist pig” and portraying women as “the oppressed, victimized, abused, used, exploited, maligned, passive, blameless, helpless victim”).

164. See Kelly, *supra* note 161, at 35 (discussing the problem of violence by women in feminist theories).

capable of violence. “Assumptions that real men are sexual aggressors and never victims promote harmful perceptions about the ‘one’ way to be a man. They can justify violent behavior as an archetypal manifestation of maleness, promoting a sense of inevitability about its continuation. Such perceptions may influence behavior.”<sup>165</sup> These assumptions perpetuate aspects of hegemonic masculinity in the law.

Indeed, study findings suggest that respondents react more strongly to men as perpetrators of domestic violence and deem them more deserving of punishment, whereas they experience more sympathy for female abusers.<sup>166</sup> Respondents rated the exact same conduct “as more serious when the perpetrator-victim gender dynamic was male-female than when it was female-male, female-female, or male-male.”<sup>167</sup> One interpretation of these findings is that respondents perceived men as “more capable of inflicting serious injury on a woman” and women “were assumed to have suffered more serious injuries than” men.<sup>168</sup> These findings underscored the entrenchment of “gender-role stereotypes of women as weak and vulnerable and men as dominant and threatening.”<sup>169</sup> Conceptions of “men as a monolithic perpetrator class,” can perpetuate “regressive norms about masculinity rather than challenging the harmful status quo.”<sup>170</sup> This dichotomy entrenches the connection between masculinity and violence and marginalizes female aggressors, male victims, and female victims of female perpetrators.

The statistic most frequently cited in the domestic violence movement is that more than seventy-five percent of domestic abuse is committed by men, but implicit in this statistic is the reality that some of these acts are committed by women.<sup>171</sup> Male victims of domestic violence face legal and social bias and marginalization for not comporting with these binary norms. For example, research suggests that “police are two times more likely to arrest male perpetrators of

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165. Stemple, *supra* note 23, at 634.

166. See Amanda J. Schmesser, Note, *Real Men May Not Cry, But They Are Victims of Domestic Violence: Bias in the Application of Domestic Violence Laws*, 58 SYRACUSE L. REV. 171, 175-76 (2007).

167. *Id.* at 178 (finding that the majority believed that the best response to the male-female abuse was to call the police, while the best response to the three other situations was to leave the couple alone).

168. *Id.* (citing Sheila M. Seelau & Eric P. Seelau, *Gender-Role Stereotypes and Perceptions of Heterosexual, Gay and Lesbian Domestic Violence*, 20 J. FAM. VIOLENCE 363, 368 (2005)).

169. *Id.* at 180 (“Female victims were perceived to be in greater need of assistance than male victims and male perpetrators were seen as more threatening than female perpetrators.”).

170. Stemple, *supra* note 23, at 634.

171. DUROSE ET AL., *supra* note 134, at 1.

domestic violence than female perpetrators of domestic violence.”<sup>172</sup> Frequently, when police officers learn that the victim of a domestic violence crime is male, they will not take the male victim’s charges against the female perpetrator seriously.<sup>173</sup> Male victims may face barriers when they seek restraining orders against women, such as more hesitation, slower processing, higher standards, and an increased likelihood of receiving a “mutual restraining order,” which brands the male victim as a perpetrator.<sup>174</sup>

This bias is based on the assumption that men are aggressive and violent and, because women are perceived as physically weaker, they need the protection of the state.<sup>175</sup> Police officers may be driven by gendered stereotypes “that a ‘real man’ should be able to keep a woman under control.”<sup>176</sup> These stereotypes plague male victims throughout the criminal justice system. Male victims often face a higher burden when requesting a restraining order against the female perpetrator, and prosecutors are less likely to bring charges against a female perpetrator than a male perpetrator of domestic abuse.<sup>177</sup> Survey data shows that female-male partner violence is less likely to be prosecuted than male-female violence.<sup>178</sup> Convicted female perpetrators of domestic abuse are much more likely to be sentenced to a term of probation, and much less likely to be sent to prison than their male counterparts.<sup>179</sup>

Hester, Radford, and Kelly articulate the masculinity complexities of this dynamic:

[F]or a man or boy to be victimized fits uneasily with stereotypes of masculinity; the most usual comment which follows this observation is that, therefore, it must be ‘worse’ for boys to be abused, especially by a woman. Apart from the revealing other side of this statement — the relative acceptability of the victimization of girls, and normalization of men’s abusive behavior — this is not necessarily how boys and men respond. A substantial number of young men reporting abuse in a recent prevalence study were

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172. Schmesser, *supra* note 166, at 174.

173. *Id.* (suggesting that male victims of female violence “may not receive equal protection under the law”).

174. *Id.* at 200.

175. *Id.* at 198.

176. *Id.* (quoting THOMAS B. JAMES, DOMESTIC VIOLENCE: THE 12 THINGS YOU AREN’T SUPPOSED TO KNOW 240 (2003)).

177. EXTENT, NATURE, AND CONSEQUENCES, *supra* note 134, at 51-52.

178. Schmesser, *supra* note 166, at 199.

179. *See id.* (explaining that in 1991 the Department of Justice concluded that women violent offenders are sentenced an average of thirty-nine months shorter sentences than male perpetrators of violent crimes).

able through constructions of masculinity to ‘rewrite the script,’ defining experiences as seduction, or something they actively wanted, or initiated, or enjoyed, and this was more likely if the abuser was female.<sup>180</sup>

Just as this binary victim-aggressor dichotomy plagues male victims, so too does it create legal tension in responding to female violence. The Battered Women’s Syndrome (BWS) is an example of this implication. Indeed, the denotation of a “women’s syndrome” alone suggests that there is something pathologically different about female violence than male violence. BWS emerged as a psychological explanation of women in abusive relationships who kill their abuser.<sup>181</sup> It involves two characteristics of domestic abuse survivors: the “cycle theory of violence” and “learned helplessness.”<sup>182</sup> Under this theory, battered women develop a heightened ability to cope and survive in an abusive environment at the expense of the development of “escape skills,” and perpetually perceive their environment as hostile and dangerous, even when the male perpetrator is exhibiting non-confrontational behavior.<sup>183</sup> The syndrome’s emergence educated jurors and mental health professionals about the common attributes shared by survivors of domestic violence.<sup>184</sup> BWS emerged as “a pattern of symptoms used to describe the effects of abuse on the victim[s]” and how it might lead to acts of violence against abusers in self-protection.<sup>185</sup> It provides an evidentiary basis for women to defend against a criminal charge resulting from their use of violence as a means to protect themselves from the cycle of violence.<sup>186</sup>

While scholars have extensively analyzed the BWS in domestic violence advocacy,<sup>187</sup> from a masculinity analysis, this distances — indeed pathologizes — both malevolent violence and more benign exertions of strength and aggression from the feminine experience and entrenches them with the masculine. Creating an evidentiary

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180. Kelly, *supra* note 161, at 44-45 (citation omitted).

181. See Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. REV. 211, 219-20 (2002) (describing the accepted use of the BWS as self-defense, and rarely as a duress defense).

182. *Id.* at 222.

183. *Id.* at 224.

184. See *id.* at 221 (noting the use of expert testimony to explain battered women’s behavior); see also Sarah M. Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN’S L.J. 217, 266 (2003) (discussing the education of jurors on the impact of psychological abuse, coping mechanisms, and race).

185. Buel, *supra* note 184, at 296.

186. *Id.* at 218, 224 (noting that BWS helps “explain the reasonableness of [the woman’s] behavior and state of mind”).

187. *E.g., id.* at 296-97.



legal argument rooted in “the myth of the helpless, hysterical, unstable woman” further masculinizes violence.<sup>188</sup> Indeed, Buel asserts that “BWS has been used to buttress insulting, unrealistic female stereotypes such as docility, instability, weakness, and inability to protect oneself.”<sup>189</sup> It perpetuates images of women as the “helpless . . . powerless, pure-of-heart battered woman.”<sup>190</sup> It reinforces a societal message “that women are not supposed to use physical violence in self-protection; it is not our prerogative, our role, our right.”<sup>191</sup>

Domestic violence treatment programs, such as anger management programs and victim shelters, are likewise built upon binary characterizations of domestic violence as a mechanism of exclusively male aggression and female victimization.<sup>192</sup> The domestic violence treatment programs work to dismantle the female victim’s psychological subordination, or the male perpetrator’s aggression/anger management.<sup>193</sup> Therefore, domestic violence treatment programs are often not able to effectively treat female perpetrators of domestic abuse (or male victims) because it largely conflicts with the underlying assumption of domestic violence as a violent crime against women.<sup>194</sup> Domestic violence law reforms thus simultaneously extracted male violence against women from the legal codification of hegemonic masculinity in the family, yet collaterally entrenched it by perpetuating binary gender characterizations of victimization and aggression.

## *2. Masculinizing the State as the Surrogate Protector of Women and Families*

Another collateral masculinity consequence of feminist law reforms was the implicit empowerment of the state to enter the home in a surrogate masculine role to protect women and traditional family

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188. De Soto, *supra* note 11, at 64.

189. Buel, *supra* note 184, at 297.

190. Gruber, *supra* note 44, at 793.

191. *See* De Soto, *supra* note 11, at 60 (internal quotations omitted) (referring to the conviction of “battered women who kill”).

192. *See* Liz Kelly, *Disabusing the Definition of Domestic Abuse: How Women Batter Men and the Role of the Feminist State*, 30 FLA. ST. U. L. REV. 791, 844 (2003) (discussing the Duluth Model — “the most widely imitated treatment model”). Kelly also notes that domestic violence is “one of the most brutal and explicit expressions of patriarchal domination.” *Id.* at 818 (quoting R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES*, at ix (1979)).

193. *See id.* at 844-46 (discussing treatment approaches).

194. *Id.* at 847. “[R]esidential and nonresidential services offered by shelters [are] extended almost exclusively to female victims of domestic violence. Only a handful of men’s [domestic violence] shelters have ever existed” as a result of the legal and societal denial of female violence and the resultant stigma attached to male victims of domestic violence. *Id.* at 850.

structures. This reinforced the positioning of masculinity as the governing centerpiece of the family structure and masculinized the state as a protective actor.

A masculinity analysis suggests that the state is driven by both traditional family norms and the preservation of male familial control in domestic violence law reforms. Many domestic violence laws position the state to reinforce traditional family structures. Some versions of state mandatory or preferred arrest laws, for example, directly excluded unmarried couples or same sex couples.<sup>195</sup> This suggested a state value in responding to intimate violence only when the integrity of family values were jeopardized. Reinforcing heterosexual norms and marginalizing same-sex violence undermines the criminal justice system's broader understanding of sexuality and family diversity, narrowly casting families in traditional terms and jeopardizing intervention and enforcement of same-sex domestic violence.<sup>196</sup>

Efficacy statistics show that mandatory arrest policies are a more effective deterrent when the abuser is married and employed, but they actually increase the likelihood of future violence when the abuser is unemployed.<sup>197</sup> Other data suggests that mandatory arrest policies deter domestic violence victims from reporting the abuse in the first place, suggesting that the mandatory arrest policy actually "mirror[s] the battering relationship itself, reinforcing a patriarchal system in which women have little power."<sup>198</sup>

The state is thus arguably driven to reform family violence "to clean up its public face and to restore its legitimacy as a safe institution for women."<sup>199</sup> In doing so, the state ensures that "these sacred institutions of patriarchy are preserved intact and patriarchal gendered relations are reaffirmed, reproduced and represented as in the best interests of women and children."<sup>200</sup> It positions the state to redistribute living arrangements, property rights, and family relationships, without necessarily considering the victim.<sup>201</sup>

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195. Roberts & Kurst-Swanger, *supra* note 126, at 111-12.

196. Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. CAL. REV. L. & WOMEN'S STUD. 81, 85-86 (2003).

197. Roberts & Kurst-Swanger, *supra* note 126, at 112.

198. *Id.*

199. Radford & Stanko, *supra* note 136, at 78 (describing state domestic violence reforms as a policing effort of the family and heterosexuality at the expense of feminist politics).

200. *Id.*

201. See Suk, *supra* note 12, at 8-9, 66 (arguing that this redistribution is unavoidable because domestic violence laws have revised the "traditional legal construction of the home").

It also suggests that male violent behavior is “immutable in the absence of state intervention.”<sup>202</sup> Aspects of the domestic violence reforms and the conservative alliance thus empower the state to act as the surrogate protector of women, a role that has been described as “smack[ing] . . . of paternalism.”<sup>203</sup> Jeannie Suk describes this relationship as “a distinctive nexus between the objective of state control backed by the public interest and the derogation of individual autonomy. The coercive reordering of property and intimate relationships in the home becomes a normal use of the ‘heavy artillery’ of the criminal law.”<sup>204</sup>

*C. The Feminist Masculinity Challenge to Violence Against Women Faces Misrecognition and Migrates to the Military Integration Agenda*

The paradigm shift described in Part II.B also filtered into military integration reforms. While the feminist law reform efforts in the military were primarily intended to achieve formal and substantive equality through integration, much of the leverage gained in the domestic violence movement migrated to military law reform projects as an additional catalyst.<sup>205</sup> Importantly, however, the successes were largely queued off the gendered victim narrative, foreshadowing troubling tensions.

As the stories of domestic violence emerged from the private realm of the family, so too did these experiences emerge from the public realm of the military.<sup>206</sup> Feminists worked to achieve full equality and access to the military ranks and combat roles in the face of strong and entrenched opposition.<sup>207</sup> Feminist challenges to women’s

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202. *Id.* at 21.

203. Gruber, *supra* note 44, at 759.

204. Suk, *supra* note 12, at 68.

205. See, e.g., J. Richard Chema, *Arresting “Tailhook”: The Prosecution of Sexual Harassment in the Military*, 140 MIL. L. REV. 1, 8 (1993) (noting that the definition of sexual harassment adopted by the military is “simply a reformulation of the employment” definition).

206. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L. J. 1683, 1693 (1998) (describing the 1991 Tailhook convention as follows: “[S]eventy Navy and Marine aviators pushed more than two dozen women, some of them Navy officers, down a gauntlet in which the drunken men shouted sexually suggestive remarks, ripped the women’s clothes, and groped at their bodies.”).

207. See MARY FAINSDO KATZENSTEIN, FAITHFUL AND FEARLESS: MOVING FEMINIST PROTEST INSIDE THE CHURCH AND MILITARY 46 (describing feminist activism in the military) (1998). Testimony of a military general during the congressional hearings reveals this sentiment:

SENATOR COHEN: Suppose you had a woman pilot, she is an instructor pilot of superior intelligence, great physical conditioning, in every way she

role in the military invoked difficult legal and social questions regarding the registration of women for selective service, women's role in combat, the implications of pregnancy in military service, and the appropriate gender protocols for intensive military training.<sup>208</sup> Feminists advocated for their military reform agenda to noteworthy results.<sup>209</sup> Women achieved access to over ninety percent of active-duty jobs across all branches.<sup>210</sup> Substantially more combat positions were opened to women through feminist advocacy,<sup>211</sup> particularly in the Navy and Air Force;<sup>212</sup> military academies integrated women;<sup>213</sup> and the military enacted policies to address sexual violence and harassment of military servicewomen.<sup>214</sup>

Many of these successes can be traced directly to the domestic violence movement and its migration to military reforms. The epicenter of these movements overlapped in the Tailhook scandal which revealed the prevalence of violence against military women at the height of the federal domestic violence agenda and the Persian Gulf Conflict.

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was superior to a male counterpart vying for a combat position. Would your personal judgment be because you would not want to see the risk to her life increased by putting her in a combat role that you would pick the male over the female under those circumstances?

GENERAL MCPPEAK: That is correct.

SENATOR COHEN: So in other words you would have a military less effective situation because of a personal view.

GENERAL MCPPEAK: Well, I admit it doesn't make much sense, but that's the way I feel about it.

*Id.* at 50.

208. *Id.* at 56 ("These questions posed a new vision of gender equality in which women were to be recruited, educated, trained, assigned, and promoted in ways that were similar to rather than different from those experienced by their male counterparts.")

209. *Id.* at 61-62. Reform techniques included internal military leadership, lobbying, non-profit advocacy, media campaigns, and legal challenges. *Id.* at 63-65.

210. Segal et al., *supra* note 91, at 49.

211. Elaine Donnelly, *Constructing the Co-Ed Military*, 14 DUKE J. GENDER L. & POL'Y 815, 829 (2007); see also U.S. GEN. ACCT. OFFICE, GENDER ISSUES: INFORMATION ON DOD'S ASSIGNMENT POLICY AND DIRECT GROUND COMBAT DEFINITION 2-3 (1998), available at <http://www.gao.gov/archive/1999/ns99007.pdf> [hereinafter DOD'S ASSIGNMENT POLICY] (detailing how positions other than combat roles opened to women). *But see* Donnelly, *supra* note 211, at 830 (pointing out that women are still excluded from some assignments, including the Rangers and Navy SEALs).

212. DOD'S ASSIGNMENT POLICY, *supra* note 211, at 2.

213. *Id.* at 1; see *Unites States v. Virginia*, 518 U.S. 515, 558 (1996) ("There is no reason to believe that the admission of women . . . would destroy the Institute . . .").

214. See Sara Rimer, *At Maryland Post, Talk is of Shame*, N.Y. TIMES, Nov. 14, 1996, at B13 (noting that the military's "zero tolerance" sexual harassment policy is "like a mantra"; soldiers watch videos, take classes, and are often heard repeating the phrase). *But cf.* Diane H. Mazur, *The Beginning of the End for Women in the Military*, 48 FLA. L. REV. 461, 464 (1996) (denouncing the "zero tolerance" policy as being "a parody of itself, more accurately referring to things the military doesn't really care to do anything about").

The Violence Against Women Act (VAWA)<sup>215</sup> reflected federal mobilization of state law reform successes and the imposition of new civil remedies.<sup>216</sup> It also underscored that the family law masculinity paradigm shift reached national endorsement.<sup>217</sup> Domestic violence advocates successfully mobilized on the federal level in the early 1990s to pass VAWA, creating a civil rights remedy for gender-motivated violence crimes.<sup>218</sup> VAWA was enacted as a piece of a consolidated crime legislation bill.<sup>219</sup> It reinforced state legal reforms by prohibiting interstate domestic violence.<sup>220</sup> It allowed victims to testify at pre-trial detention hearings to vet issues of safety, provided a means of victim restitution for losses resulting from violence, and mandated enforcement of valid protection orders across state lines.<sup>221</sup> Although VAWA was later declared unconstitutional in part, VAWA notably created historically a federal cause of action for victims of violent crimes motivated by gender under a civil rights theory of liability.<sup>222</sup>

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215. Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 16, 20, 28, and 42 U.S.C.) [hereinafter VAWA].

216. David M. Fine, Note, *The Violence Against Women Act of 1994: The Proper Federal Role in Policing Domestic Violence*, 84 CORNELL L. REV. 252, 259-62 (1998) ("VAWA's provisions tell victims that the nation takes their plight seriously . . . and provide them with civil remedies . . .").

217. *See id.* at 301-02 ("[VAWA] sends a message to the nation . . . that Congress considers domestic violence a serious national epidemic.").

218. *See Brooks, supra* note 150, at 68-76 (discussing the introduction of the legislation). The act was first introduced by then-Senator Joe Biden. *Id.* at 69. It took four years to pass the act in 1994. *Id.* at 76. Congressional debate largely centered on the positioning of domestic violence as a civil rights violation. *Id.* at 70. Congress heard extensive legislative testimony recounting personal and institutional experiences of domestic abuse. *Id.* at 69-70. Congress recognized the insidious effects of domestic violence as a gender-motivated crime. *Id.* at 70.

219. *See id.* at 79 (noting that consolidation in a crime bill meant that domestic violence was categorized with other violent crimes and viewed as an issue appropriate for the criminal justice system). To conservatives, the domestic violence movement was an instrument of expanding their "war on crime." *See Gruber, supra* note 44, at 794 (explaining conservative responses to domestic violence). As early as 1984, with the Reagan Administration's Final Report of the Attorney General's Task Force on Family Violence, the conservative agenda expressly advocated for tougher domestic violence penalties in keeping with their tough on crime agenda. *Id.* at 794-95. Furthermore, the Final Report illustrated the conservative agenda's emphasis on protecting family values. *See id.* at 795-96 (concluding that families are "the bedrock of civilization"). John Ashcroft, a member of the task force stated, "when families are wracked by violence and abuse, values are corrupted." *Id.*

220. 18 U.S.C. § 2261(a)(1) (2006).

221. VAWA §§ 2263-65 (codified at 18 U.S.C. §§ 2263-65).

222. Fine, *supra* note 216, at 261. *But see* Catherine A. MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 HARV. L. REV. 135 (2000) (commenting that in *Morrison*, the Supreme Court invalidated § 13981, which provided a civil rights remedy for victims of gender motivated crimes). Congress passed VAWA under both its Commerce Clause powers and the Enforcement Clause of the Fourteenth Amendment. *Id.* at 135. The majority in *Morrison* held that Congress did not permissibly use its power

Thus, as Tailhook hit the media, domestic violence reforms were nationally mainstream and had acquired unprecedented success and momentum.<sup>223</sup>

Indeed Tailhook is synonymous with feminist efforts to dismantle the entrenchment of masculine excesses and misconduct in the military.<sup>224</sup> Tailhook reveals the extent of the success of feminist law reforms in transforming certain aspects of hegemonic masculinity, and the extent to which the state and society would respond to behavior that violated these changing legal norms. At the Navy's 35th Annual Tailhook Symposium in September 1991, at least ninety victims were assaulted in a high-profile scandal that captured congressional and media attention.<sup>225</sup> "[I]t was a watershed event" in the military's treatment of women, graphically revealing underlying values and attitudes toward women in the military.<sup>226</sup>

Direct feminist responses to Tailhook led to revised sexual harassment and assault policies in the military, stronger accountability mechanisms for commanding officers, and extensive training.<sup>227</sup> In 1993, the Navy instituted a new sexual harassment policy, which "define[d] sexual harassment and ma[de] violation of [the regulation] punishable under the Uniform Code of Military Justice (UCMJ)."<sup>228</sup>

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to pass VAWA, effectively limiting VAWA enforcement and redress for victims of gender-motivated crimes to the state. *Id.* at 135-36.

223. See Cynthia Daniels, *Introduction: The Paradoxes of State Power, in FEMINISTS NEGOTIATE THE STATE*, *supra* note 11, at 1, 2 ("Across the political spectrum, domestic violence is now recognized as an issue which demands state response.")

224. See DUNIVIN, *supra* note 80, at 25 (noting that Tailhook was a "watershed" event in the Navy's treatment of women).

225. OFFICE OF THE INSPECTOR GEN., U.S. DEP'T OF DEF., THE TAILHOOK REPORT: THE OFFICIAL INQUIRY INTO THE EVENTS OF TAILHOOK '91, at vii (2003) [hereinafter TAILHOOK REPORT].

226. See DUNIVIN, *supra* note 80, at 18, 25 (examining the military's prevailing combat/warrior identity and concurrent view of "warrior" as male only).

227. See TAILHOOK REPORT, *supra* note 225, at ix (describing these outcomes as a "cultural change in . . . progress").

228. Chema, *supra* note 205, at 2; see also SEC'Y OF THE NAVY, DEP'T OF THE NAVY, POLICY ON SEXUAL HARASSMENT INSTRUCTION 5300.26B (Jan. 6, 1993). This regulation was updated in 1997. See SEC'Y OF THE NAVY, DEP'T OF THE NAVY, POLICY ON SEXUAL HARASSMENT INSTRUCTION 5300.26C §§ 4, 8 (Oct. 17, 1997) [hereinafter SECNAV INSTRUCTION 5300.26C], available at [http://uscg.mil/hq/cg00/cg00h/History\\_files/NavySexualHarassment.pdf](http://uscg.mil/hq/cg00/cg00h/History_files/NavySexualHarassment.pdf). The regulation permits a "full range of administrative and disciplinary actions" to remedy sexual harassment incidents, including "informal counseling, comment in fitness reports and evaluations, administrative separation, and punitive measures under the UCMJ." *Id.* at § 8(b). The UCMJ permits commanding officers to utilize nonjudicial punishment, or convene court-martial. Michael I. Spak & Jonathan P. Tomes, *Sexual Harassment in the Military: Time for a Change of Forum?*, 47 CLEV. ST. L. REV. 335, 340 (1999). Trial by court-martial consists of *ad hoc* tribunals, with the court members (the military equivalent of a jury) selected by the convening commander. *Id.* at 343. The defendant must be proven guilty beyond a reasonable doubt by at least two-thirds of the court members. *Id.* at 353.

Tailhook was pivotal in reforming masculinity norms beyond criminalization too. It was a catalyst in “shifting from an exclusionary masculine-warrior paradigm to a more inclusionary, egalitarian paradigm of warrior.”<sup>229</sup> The Tailhook proceedings were about women in combat as much as they were about sexual abuse.<sup>230</sup> The Tailhook investigation proceeded under the “political pressure” of “the collective guilt of the institution for failing to incorporate women fully.”<sup>231</sup> The momentum of feminist domestic violence reforms carried over into integration victories, softening the hard, exclusionary line linking masculinity and violence in military service.<sup>232</sup>

In 1991, with VAWA strongly on the federal legislative agenda and Tailhook in the spotlight, Congress again considered the role of women in combat roles, following the unprecedented involvement of women in the Persian Gulf War of 1990 and 1991.<sup>233</sup> In 1991, the Defense Authorization Act “created a presidential commission to ‘assess the laws and policies restricting the assignment of female service members.’”<sup>234</sup> The commission debate reflected society’s ongoing division over the issue of women in combat.<sup>235</sup> Opponents to military integration argued that women belonged in limited military roles and femininity was not compatible with a “male warrior” role.<sup>236</sup> Supporters of military integration positioned “women as an equal sex” and advocated for “total equal opportunity and responsibility” in combat.<sup>237</sup>

Thus, Tailhook brought to the surface critical narratives of women’s victimization in the military. From those narratives emerged increasing government and public awareness about the extent of women’s contributions to the military, including the integrality and

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229. DUNIVIN, *supra* note 80, at 25; William L. O’Neill, *Women and Readiness*, in *WOMEN IN THE MILITARY*, *supra* note 51, at 171, 183 (“The Navy despite, or perhaps because of, Tailhook, has made a concerted effort to put women aboard ships . . .”).

230. Kingsley R. Browne, *Military Sex Scandals from Tailhook to the Present: The Cure Can Be Worse Than the Disease*, 14 *DUKE J. GENDER L. & POL’Y* 749, 763 (2007) (opposing women’s military integration).

231. *Id.* (emphasizing that the political pressure to place collective blame on the military instead of individuals was the pressure needed to lift the ban on women serving in combat positions within the Navy and the Air Force).

232. *See* Donnelly, *supra* note 211, at 827 (discussing how the embarrassment in the aftermath of the Tailhook scandal led to the opening of combatant ships and aircrafts to women).

233. *See Military Debates: Should Women Fight?*, *ST. PETERSBURG TIMES*, June 19, 1991, at A1 (noting that “[t]he role of women in combat [became] a hot political issue since during the Persian Gulf War 35,000 of the troops were females, five women died in action, [twenty-one] were wounded and two were taken prisoner”).

234. DUNIVIN, *supra* note 80, at 5.

235. *See id.* at 5-6 (noting that commissioners were divided).

236. *Id.* at 6.

237. *Id.*

extent of their involvement in the successful Operations Desert Shield and Storm.<sup>238</sup> These narratives also undermined opponents' arguments suggesting that military missions would be thwarted by masculine instincts to protect women when Tailhook starkly revealed male abuse of female personnel.<sup>239</sup> These experiences thus framed the debate of women's integration in new ways. Supporters of full integration used the Tailhook scandal to reveal the disingenuous integration of military women.<sup>240</sup> Opponents of integration seized on the victimization narratives to argue for the removal of women from military environments.<sup>241</sup>

Following these hearings, and in the backdrop of the Tailhook outcry, women secured unprecedented integration, demonstrating the extent of the masculinity victory of feminist law reform.<sup>242</sup> The Defense Authorization Act opened combat vessel and aircraft positions to women.<sup>243</sup> In 1993, the Aspin regulations<sup>244</sup> revised the definition of "direct ground combat" and eliminated the Department of Defense Risk Rule, allowing women to be assigned to direct ground combat units.<sup>245</sup> The Aspin regulations opened hundreds of military specialties to female soldiers, approximately 80,699 land positions and 259,199 positions overall throughout the military.<sup>246</sup>

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238. See Fenner, *supra* note 51, at 17 (revealing the public's surprise and relative unawareness about this involvement).

239. See *id.* at 19 (contrasting starkly the reality of male violence against women with the perception of protectionist behavior).

240. See Donnelly, *supra* note 211, at 826 (noting that "the history of gender integration . . . has been marred by convoluted double standards"). "Rep. Patricia Schroeder . . . berated the Joint Chiefs for 'not getting it.'" *Id.* Others "threatened to withhold [funding] for personnel and weapons systems . . . if Navy officials did not make amends for Tailhook." *Id.*

241. See, e.g., Eric Schmitt, *Role of Women in the Military Is Again Bringing Debate*, N.Y. TIMES, Dec. 29, 1996, at 14 (summarizing some conservative republicans' views that incidents of sexual misconduct support abolishing sex-integrated barracks and returning to gender segregation in the military).

242. TAILHOOK REPORT, *supra* note 225, at ix (quoting Adam Kelso, Chief of Naval Operations). These successes were in stark contrast to the 1980 Senate Commission consideration of the Military Selective Service Act limiting registration to male citizens. Congress declined to register women after legislative deliberations. S. Rep. No. 96-826, at 156-57 (1980) ("[T]he starting point for any discussion of the appropriateness of registering women for the draft is the question of the proper role of women in combat.").

243. See Brenda L. Moore & Schuyler C. Webb, *Equal Opportunity in the U.S. Navy: Perceptions of Active-Duty African American Women*, in WOMEN IN THE MILITARY, *supra* note 51, at 83, 84 (noting that the act excluded direct combat positions and direct combat support positions).

244. Memorandum from Sec'y of Def., *supra* note 88.

245. See Donnelly, *supra* note 211, at 829 (noting that the "Risk Rule" reflected the dominant view that female soldiers' "risk of injury, death, or capture" should be minimized by excluding women from serving in close combat units).

246. *Id.* at 829-30 (pointing out that women are still excluded from some assignments, including the Rangers and Navy SEALs); see also DOD'S ASSIGNMENT POLICY, *supra* note 211, at 2 (outlining the opening of positions to women).



The masculinity victory of feminist law reform initiatives de-codified significant aspects of masculinized violence in both the family and the military. These initiatives allowed for increased legislation of state responses to domestic violence, defined violence against women as a civil rights violation, tightened responses to sexual abuse in the military, and achieved the largest historical integration of women in the Navy.

*D. How the Collateral Consequences of Re-Entrenching Hegemonic Masculinity Migrated and Compounded in the Military*

The collateral consequences described in Parts II.B and II.C compounded when they migrated to other law reform initiatives in at least two ways.

*1. Reconciling Strength and Vulnerability*

Utilizing criminal law reform approaches to achieve institutional change creates tensions in integrating women in the military. Mazur highlights the tensions in transporting this victim methodology for women in military service:

Identification from the standpoint of victims seems to require enemies, wrongdoers, victimizers. Those identified as victims (“we”) stand in stark contrast to others (“they”), whose claim to superior knowledge becomes not only false but suspect in some deeper sense: conspiratorial, evil-minded, criminal. You (everyone) must be either with us or against us. Men are actors — not innocent actors, but evil, corrupt, irredeemable. They conspire to protect male advantage and to perpetuate the subordination of women.<sup>247</sup>

Feminists reformed aspects of the military through responses to institutional sexual violence and harassment. Yet categorizing women as potential victims and men as potential aggressors risks undermining

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247. Mazur, *supra* note 14, at 50 (citing Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 876 (1990)). Sarah Buel also criticizes the battered women’s movement:

By essentializing the definition of women to exclude anyone who is not a white, middle-class, stay-at-home mom, traditional BWS invites the legal system to distinguish between deserving and undeserving victims. When battered women do not conform to the essentialist BWS victim model, they are disbelieved and prevented from using any positive aspect of BWS in their self-defense actions.

Buel, *supra* note 184, at 297.

the long-term and sustained success of military women, without fully embracing the existence of successful women service members.<sup>248</sup> This characterization may collaterally communicate that military women are “pejoratively, debilitatingly different” than their male peers.<sup>249</sup>

There is some risk in categorizing women as vulnerable to victimization that it may undermine the perceived status and responsibility of military women. Indeed military personnel may turn women’s potential vulnerability on them in harmful ways. Consider one particularly chiding articulation of this view: “if women whine about guys having a little fun, how will they handle combat and enemy abuse as a POW?”<sup>250</sup> Other opponents to women’s integration find it irreconcilable to position women as “helpless victims of sexual harassment” by male service members, while contemplating women as “fearless warriors” in direct ground combat.<sup>251</sup> Even less malevolent articulations of this view reveal problematic tensions for military women in the contradictory images of warriors and vulnerability. As Miller explains,

By simultaneously portraying women soldiers as helpless victims of sexual harassment and yet potentially fierce warriors in battle, activists have put forth contradictory images that undermine their efforts. Because activists often treat the military culture’s ideal man as accurately reflecting all military men, activists have not yet identified and taken advantage of men who do not fit the stereotype and who would support their goals. Furthermore, they alienate women who simply do not find their male coworkers to be “the enemy.”<sup>252</sup>

These views reveal deeply problematic entanglements in which opponents to military integration perceive vulnerability as wholly irreconcilable with military service. Miller summarizes that “[t]he simultaneous agenda, however, to portray military women as victims to male power and to argue their potentially equivalent strength to men in battle, works against itself in the minds of many soldiers.”<sup>253</sup> These tensions reveal limitations to the law reform agenda entrenching stereotypes of men and women and their relationship to violence.

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248. Mazur, *supra* note 14, at 50.

249. *Id.* (quoting Kathryn Abrams, *Gender in the Military: Androcentrism and Institutional Reform*, 56 LAW & CONTEMP. PROBS. 217, 228 (1993)).

250. Fenner, *supra* note 51, at 19. At least one military scholar goes so far as to suggest that, as a matter of policy, victims of domestic violence should be excluded from military service because the recovery from a pathology of “learned helplessness” is not conducive to the military environment. deYoung, *supra* note 98, at 150-51.

251. Laura L. Miller, *Feminism and the Exclusion of Army Women from Combat*, in WOMEN IN THE MILITARY, *supra* note 51, at 103, 129.

252. *Id.* at 104.

253. *Id.* at 129.

Lost in these binary characterizations are the innumerable military experiences that position women and men as neither victims nor masculine warriors, thus leaving tough integration questions unresolved. “By dismissing arguments about differences in strength between genders with references to Amazons and Olympic athletes, rights-based activists have left military women to explain and manage their physical limitations on their own.”<sup>254</sup> Likewise, binary characterizations about military integration marginalize many military women.

*2. Empowering the State as the Surrogate Masculine Protector of Women and Traditional Families*

This framework reinforces aspects of hegemonic masculinity that position men in positions of power over the family. It suggests that men who still behave violently within the family — the bedrock of the conservative social structure — require state intervention and punishment, whereas men who commit acts of intimate violence in relationships that are not state-sanctioned are somehow different.

The state acting as a surrogate to protect women and traditional families from sexual misconduct likewise reinforces the underlying protectionist stereotypes that simultaneously impede women’s full military integration. Congressional consideration of women’s integration, for example, reveals concern that women’s absence from the home will place “unprecedented strains on family life” because a young mother may be drafted to combat services while the father stays home.<sup>255</sup> Legitimizing the state intervening in the family risks implicitly supporting these arguments.

Protectionist military arguments are also strengthened and feminist responses compromised by this framework. Legal and societal discomfort linger in accepting women as agents of aggression, strength, or violence, necessitating a feminist response. Democratic Representative George Hochbrueckner articulated this perspective: “Most men don’t want to put women in jeopardy. We’re willing to put ourselves in jeopardy more readily than we are with women. It’s a visceral reaction.”<sup>256</sup> A retired military general agreed, characterizing women killing in combat as “uncivilized” and stating matter-of-factly that “women can’t do it.”<sup>257</sup> He said: “Women give life, sustain life,

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254. *Id.* at 127 (noting that women are “reminded constantly” about the challenges of physical integration with men).

255. S. REP. NO. 96-826, at 159 (1980).

256. Stephanie Saul, *Equal Opportunity Combat? Rules Banning Women Could Be Rescinded*, NEWSDAY, May 21, 1991, at 4.

257. *Combat Role for Women Debated*, THE VICTORIA ADVOCATE, June 19, 1991, at C1 (quoting former Marine Corps commandant, retired General Robert H. Barrow).

nurture life, they can't take it' . . . 'If you want to make a combat unit ineffective, assign women to it.'"<sup>258</sup> Fears about unit cohesion and risks of sexual interaction were important themes of integration opponents. One retired admiral summarized, "You put men and women together and they get attracted to one another. It's prejudicial to good order and discipline in the ship. You get favoritism and little trysts and circles that develop."<sup>259</sup> The 1989 Defense Advisory Committee chairwoman added, "There is a strong concern about women in hand-to-hand combat. A lot of people don't want to see women in foxholes, don't want to see them with bayonets."<sup>260</sup>

These protectionist roles complicate military service in opponents' view because men are inherently inclined to protect women from enemy harm,<sup>261</sup> risking that they become "overprotective" of their female comrades and may jeopardize the success of a mission.<sup>262</sup> Opponents also focused on the relative physical aptitudes of women, suggesting that military leadership needed to assign women less physically demanding tasks.<sup>263</sup> Opponents further challenge integration by citing studies that show, for example, that forty-one percent of service members feel that placing women in combat units hinders cohesion and morale.<sup>264</sup>

The state's role intervening in the family to police its integrity and protect women thus risks legitimizing the state role in other contexts too. To the extent that the state is limiting the "power, prestige, [and] privilege" of men, the state acquires that power over the family and thus over women itself.<sup>265</sup>

### III. THE IMPLICATIONS OF RE-ENTRENCHED HEGEMONIC MASCULINITY TO FEMINIST THEORY AND PRAXIS

Feminist legal theory has the potential to "throw into visibility different stakes which we then distribute when we act politically and legally. Theory produces reality not only by making it visible,

258. *Id.* (quoting Marine Corps commandant, retired General Robert H. Barrow).

259. Saul, *supra* note 256, at 4 (quoting retired admiral Robert F. Dunn).

260. *Id.* (quoting 1989 Defense Advisory Committee chairwoman Becky Constantine).

261. *See* KATZENSTEIN, *supra* note 207, at 48, 50 (detailing instances of military attempts to protect women).

262. *See* MORGAN, *supra* note 61, at 52 (noting instances of overprotectiveness during training of cadets at West Point).

263. *See id.* (summarizing debates regarding "favoritism" or "special treatment" of female cadets at West Point).

264. *See id.* at 50 (noting, however, that other studies have shown that the Navy's efforts in the 1990s to integrate women into combat units actually increased unit cohesion as compared to segregated units).

265. *See* CLATTERBAUGH, *supra* note 67, at 37 (quoting John Stoltenberg's perspective of masculinity in "Toward Gender Justice").

moreover, but by shifting the available terms for consciousness, desire, and thus interest.”<sup>266</sup> This section highlights the prospective implications of analyzing feminist law reforms to discern their impact on masculinity and violence and to discern how victories and collateral consequences migrate and reveal unexplored tensions that warrant new responses.

*A. Generating Holistic and Interconnected Feminist Responses to Male and Female Violence and Vulnerability*

The analysis in Part II reveals the need to theorize in more holistic ways about violence itself and its gender underpinnings. This analysis shows that law reforms targeting violence in its malevolent form — criminal violence against women — likewise impact and transform violence in the occupational sense — military service. This takeaway is critically important to feminist theory. It underscores that there is tremendous value in looking at violence itself as a legal and social question to better understand its relationship to femininity and that perhaps extracting male violence against women from the broader range of violence yields narrower prospects for law reform success.

The analysis in this article suggests that violence — and its masculine underpinnings — is part of a broader continuum on which strength and aggression and other forms of more socially acceptable physical exertions lie. Indeed violence against women is a polar extreme of this continuum as it is criminal and malevolent. The other extreme of this continuum is occupational, trained military violence. Throughout this continuum lie countless other exertions of violence, strength, and aggression, ranging from contact sports to weight-lifting to bullying and harassment. Conceiving of violence on a continuum suggests that — no matter how far disconnected violence against women is from other forms of violence — the feminist need to eradicate violence against women as a misogynistic form of subordination cannot be fully actuated without generating cohesive feminist responses to violence along the continuum more fully, including women’s roles wielding violence and male vulnerability. Indeed George Sodini’s massacre of women underscores this takeaway, as he relied on both weight-training and violence against women as outlets for his perceived masculine failures.<sup>267</sup>

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266. HALLEY, *supra* note 118, at 4.

267. *See supra* notes 1-6 and accompanying text.

Conceptions of hegemonic masculinity have long theorized about the intersection of violence and masculinity in masculinities scholarship. Accordingly, how does violence fit within women's lived experiences and feminist responses in all its facets? The analysis in Part II reveals that feminist theory effectively responded to both ends of this violence continuum — women as victims of malevolent violence and women wielding occupational strength in its most public form. Feminist legal theory has absorbed and responded to women's experiences of victimization for decades. It has also addressed protectionist and paternalistic arguments suggesting that women are incapable of or ill-suited for occupational violence.

The next era in feminist responses — and accordingly, this article posits, a critical component to eradicating violence against women — involves constructing feminist responses through the same organic law reform roots that so aptly positioned the domestic violence movement for its successes. Successful domestic violence reforms were informed by the direct and lived experiences of female victims: the domestic violence movement began in the grassroots framework, using hotlines, shelters, and community services to understand the experiences of women in abusive relationships.<sup>268</sup> The domestic violence law reforms emerged organically through the construction of feminist responses to these experiences and the building of political coalitions.

There is important and synergistic work yet to be done to understand how violence, anger, aggression, and strength relate and reconcile with femininity.<sup>269</sup> “[W]e can’t make decisions about what to do with legal power in its many forms responsibly without taking into account as many interests, constituencies, and uncertainties as we can acknowledge.”<sup>270</sup> Feminist theory cannot afford to minimize these strength narratives, because they are impactful to the eradication of violence against women and other feminist initiatives in sports, sexual harassment, and the military, for example.<sup>271</sup>

Compiling and analyzing male and female experiences of strength, aggression, and victimization, including gay and lesbian

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268. See PLECK, *supra* note 111, at 183-84, 199 (articulating that the domestic violence grassroots advocacy began by sharing feminine experiences of “wife beating,” and grew into a shelter movement); SCHNEIDER, *supra* note 112, at 20-21 (discussing the development of shelters).

269. See, e.g., Kelly, *supra* note 161, at 37 (beginning to address this issue).

270. HALLEY, *supra* note 118, at 9.

271. See Mazur, *supra* note 14, at 62 (describing the phenomenon as “an ostrich-like sensibility to most feminist scholarship about the military that seems to hope that the institution will go away if it is just ignored, that it will change if it is just criticized, and that it will become a more feminist place even if feminists do not become a part of it”).

men and women, can prove useful in generating feminist responses.<sup>272</sup> Understanding more deeply the experiences of men and women in the military, for example, can prove useful in dispelling stereotypes that romanticize masculinity and military service. Just as victimization narratives achieved change in the family, so too might violence, aggression, and strength narratives advance the law reform agenda in the military, in sports, and in other areas.

Generating holistic and nuanced feminist responses to violence could be transformative in advancing subsequent law reform initiatives. In the military context, for example, while reforms have targeted women's access to positions within the military, the underlying "question of whether the maintenance of an efficient fighting force requires adherence to traditional masculinist models of military prowess" requires extensive political and legal exploration.<sup>273</sup> Such exploration might transform these prevailing mythical warrior images to represent more accurate and informed legal and societal understandings of service in today's military, revealing innumerable military roles that are not defensive or protective and extend beyond strength, aggression, and violence to include vulnerability.<sup>274</sup> Broader

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272. See, e.g., Sunila Abeysekera, *Maximizing the Achievement of Women's Human Rights in Conflict-Transformation: The Case of Sri Lanka*, 41 COLUM. J. TRANSNAT'L L. 523, 532 (2003) (examining such experiences in Sri Lanka).

Women civilians and women members of armed forces on all sides of an ethnic divide have been known to engage in acts of violence and abuse against members of the "enemy" community. In Sri Lanka, the Liberation Tigers of Tamil Eelam's ("LTTE") women cadres and suicide squads, in particular, raise questions as to the ideological and political basis for their extremism. The interaction between traditional notions of womanhood and femininity and the transformation of these notions in the context of conflict has provoked great academic interest. While some inquiries have focused on the changing roles of women as to conflict-related displacement, widowhood, assumption of head of household status, and imposed independence, others have looked at the impact of the process of transformation of the woman's role from mother and wife to armed militant. Women who belong to communities where group identity is the defining factor in self-identification find themselves torn between different loyalties — to their community and to that of women. They are inhibited from raising issues that are significant for women or that advance equality within the community, since this is often perceived as being contrary to the interests of the community. Also, they cannot easily maintain contact with women outside of the community, because outsiders often belong to other social groups and, consequently, are perceived as hostile. This situation restrains women's ability to act collectively, and places them, at times, in opposition to female members of other social groups.

*Id.*

273. KATZENSTEIN, *supra* note 207, at 81.

274. See, e.g., DUNIVIN, *supra* note 80, at 19 (concluding that distortions of the military and masculinity can turn off both men and women); Miller, *supra* note 251, at 127

narratives might alter exclusionary stereotypes of men as warriors and define roles in inclusive ways that transcend race, sex and sexual orientation stereotypes.<sup>275</sup> Such a reflective and discerning analysis may help distinguish in sophisticated ways between masculinity ideals, gender stereotypes, and job requirements and the relatedness of these.

There is great value in developing the factual context and experiential understanding of women in the military, beyond the experiences of victimization in the military.<sup>276</sup> The relationship between feminists and the military is complex<sup>277</sup> and it may not position feminists in the “trenches” to discern and capture these experiences organically.<sup>278</sup> The implications of achieving military reform from within the institution is undoubtedly complex for women, often described as the choice of “exit, voice [or] loyalty.”<sup>279</sup> These institutional complexities present tough issues necessitating feminist responses. Integrating women into combat jobs and reducing the instances of violence against military women are important victories. This article reveals, however, that existing frameworks address the experiences of some women and may displace other women and some men. This underscores the law reform limitations in achieving the full extent of institutional reforms that are necessary to achieve an institutional paradigm shift in the military (and other institutions) under existing frameworks.<sup>280</sup>

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(arguing that better understandings of the unique contributions of women will improve the military). Indeed, only one in six enlisted members are engaged in combat. DUNIVIN, *supra* note 80, at 24.

275. DUNIVIN, *supra* note 80, at 25; *see also* Moore & Webb, *supra* note 243, at 97 (describing how the “double burden of a sexist and racist society takes a profound toll on the health and happiness of African American female sailors” and stating that the racial complexities of service are rarely identified).

276. *See* Mazur, *supra* note 14, at 41 (asserting that feminists have traditionally failed to do so); *see also* Miller, *supra* note 251, at 126-27 (using survey data to show that the experiences of many army women are not reflected in current agenda-setting).

277. *See* Mazur, *supra* note 14, at 41 (“The divide that separates feminists of influence in our legal institution from feminists of influence in our military institution is nearly absolute.”). Additionally, only recently have women of military service been elected to Congress. *Id.*

278. *See id.* at 67 (concluding that feminists do not have enough factual exposure to military service, but noting that perhaps this is part of a broader social trend by which the military is more distant from civilian society in general).

279. KATZENSTEIN, *supra* note 207, at 80 (alteration in original) (quoting ALBERT O. HIRSCHMAN, *EXIT, VOICE AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS AND STATES* (1970)).

280. *See* DUNIVIN, *supra* note 80, at 31 (“[T]he military is still tinkering at the margins rather than implementing fundamental social change that it disapproves.”); *see also* deYoung, *supra* note 98, at 167 (concluding that policies targeting sexual harassment get at the symptom but not at the root cause of the illness).



Likewise, while the wielding of violence in the family is certainly malevolent use, understanding how female violence differs from male violence is nonetheless valuable to informing feminist theory.<sup>281</sup> While acts of domestic violence perpetrated by female offenders may be different from those committed by men,<sup>282</sup> better understanding of social and economic underpinnings will inform broader understandings of femininity and its relationship to violence, strength, and aggression. It follows that, if masculinity is linked to violence ranging from its most malevolent to its most occupational forms, then feminist legal responses necessitate holistic responses too.

This analysis further reveals that feminist legal responses to masculinized violence have historically focused on institutional reforms and agendas, the military and the family being prominent targets and the focus of this article, but have also focused on other areas such as the workplace.<sup>283</sup> Line drawing in successful feminist law reforms position victims and aggressors in binary categories. These characterizations can be perceived as blaming and demonizing men and purifying women.<sup>284</sup> This is undoubtedly an example of the kind of “misrecognition” that Römken contemplated and the impact of it stands to alienate would-be supporters of feminist reform.<sup>285</sup>

Recasting the legal response to masculinized violence in the law around the fulfillment of citizenship may alleviate some feminist

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281. See Kelly, *supra* note 161, at 36 (“The crucial question today is not whether feminists will face up to the issue of abuse by women, but *how* we use feminist politics to make sense of, and respond to it.”).

282. Buel, *supra* note 184, at 230.

[V]iolence perpetrated by women is different than violence perpetrated by men, with distinctly dissimilar intentions, fear, levels of injury, and perception of options. When the asymmetrical nature of abusive relationships goes unnoticed by police, prosecutors, defense attorneys, and judges, these officials are also likely to ignore the distinctions between the victim’s pre-emptive and defensive violence.

. . . [Dr. Jeffrey] Edleson cautions interveners not to be manipulated by those purporting that men and women are battered equally, but instead to recognize that a small minority of women are the primary physical aggressors and need the same intervention programs as male batterers. He further describes the myth that women are as violent as men as a politically motivated backlash designed to intimate true victims.

*Id.*

283. See, e.g., Vojdik, *supra* note 21, at 317 (discussing the Supreme Court’s decision upholding the constitutionality of the Family Medical Leave Act).

284. See CLATTERBAUGH, *supra* note 67, at 70 (describing the impact as compounding masculine stereotypes); see also deYoung, *supra* note 98, at 143 (“[A]dvocates for gender integration have relied heavily on aggressive legal strategies, prosecuting men who are cast as predators or exploiters of women soldiers with whom they are physically close.”).

285. See, e.g., Miller, *supra* note 251, at 128 (suggesting that this alienates men and women).

tensions that emerge in existing frameworks.<sup>286</sup> Building on the institutional law reforms of the domestic violence movement, a citizenship strategy might consider the extent to which citizenship itself masculinizes violence and generate feminist responses in that framework. Thus, rather than fighting on a battlefield cast around the role of women in combat, which centers on biology and social norms often triggering conservative masculine normative arguments, the question may be framed around the citizenship implications of women's exclusion from combat positions, such as the ability to garner military credentials and political appointments.<sup>287</sup> Does full and equal citizenship include exertions of force or aggression?<sup>288</sup> Is military service a part of citizenship explicitly or implicitly? These questions cannot be answered without the more robust understanding of a broader base of women's perspectives on the military and on women's relationship to strength and violence.<sup>289</sup> This approach ensures an inclusive approach that positions many stakeholders in the dialogue.<sup>290</sup>

## CONCLUSION

Existing feminist frameworks have extensively responded to violence against women in both the family and the military. These

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286. See Fenner, *supra* note 51, at 23 (concluding that the debate should center around the meaning of citizenship and the extent to which citizenship includes the right and obligation to serve in the military).

287. See Mazur, *supra* note 14, at 59 (arguing that feminists should have followed *Rostker* with a credible call for women's involvement in the military).

288. See *id.* at 62-63 (suggesting that women need to understand how they are harmed by separation from the military — is it just reputational? Is it more?); see also Fenner, *supra* note 51, at 24-25 (“Does citizenship require the willingness to fight the liability for, or actual fighting, dying, killing, or enduring enemy capture?”).

289. Mary E. Becker, *The Politics of Women's Wrongs and the Bill of "Rights": A Bicentennial Perspective*, 59 U. CHI. L. REV. 453, 496, 498-99 (1992) (“Without participation there is no influence, not in the military and not, for that matter, in any other realm. . . . Were women present in the military and in combat positions in proportion to their presence in the population, we probably would treat girls differently. There probably would be less violence against women, because women would be less passive physically and because military training would be less sexist. Were women and men trained in the same system, they would be more likely to interact as equals elsewhere . . . . The exclusion of women from combat means that women have less authority in government than men. Women within legislative bodies are regarded as having less authority on military matters than their male colleagues because they have not ‘been there’; they are regarded as less qualified to serve on military oversight committees and as having less authority if on such committees.”).

290. See Fenner, *supra* note 51, at 28 (“[M]aking everyone liable for service in the state's legitimate use of force in support of national interests, demands that everyone take responsibility for defining those interests and deciding when to use state-sponsored violence to achieve them.”).

law reforms achieved extraordinary results in changing legal and social paradigms governing masculinized violence. They also carried collateral consequences in that they entrenched binary stereotypes positioning all men as prone to and capable of violence and all women as potential victims. These collateral consequences compound in law reforms like military integration that seek to position women in positions of strength and physical dominance. Generating holistic and nuanced feminist responses that fill in the full range of women's experiences lying between women's military service and women's victimization will better inform feminist theory as it relates to masculinized violence. This framework suggests a new vision of future law reforms incorporating both masculinities and feminist scholarship to explore, examine, and dislodge the legal and social underpinnings that link masculinity and violence and endorse hegemonic masculinity.