Examining Entrenched Masculinities in the Republican Government Tradition

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EXAMINING ENТRENCHED MACСULINITIES IN THE REPUBLICAN GOVERNMENT TRADITION

Jamie R. Abrams

I. INTRODUCTION .............................................................. 166
II. THE “FOUNDAциAL FUSION” OF MILITARY SERVICE, CITIZENSHIP, AND MACСULINITIES ................................................. 168
   A. The Constitutional Roots of the Foundational Fusion .......... 170
   B. Dominant Masculinitie}s Stabilized the Foundational Fusion 172
   C. Enfranchisement Expansions Necessarily Challenged the
      “Foundational Fusion” ............................................. 175
III. SEISMIC SHIFTS IN MILITARY SERVICE, CITIZENSHIP, AND
     MACСULINITIES REBIRTHED REPUBLICAN GOVERNANCE, YET
     ENТRENCHED MACСULINITIES PERSISTED ....................... 178
   A. Nationalized Military Service Transformed Both the Citizen-
      Soldier Tradition and Citizenship Itself .......................... 178
   B. Post-Bellum Masculinities Destabilized ............................ 181
   C. The Endurance of the “Foundational Fusion” and its
      Entrenched Masculinitie}s ....................................... 185
IV. POSITIONING THE NINETEENTH AMENDMENT WITHIN THE
    FOUNDATIONAL FUSION TO RESURRECT ITS RELEVANCE TO MILITARY
    INTEGRATION .................................................................. 191
   A. The State Suffrage Victories Bypassed the Military Integration
      Question Directly ......................................................... 192
   B. The National Suffrage Campaign Leveraged the Foundational
      Fusion and its Entrenched Masculinitie}s ......................... 192
      1. Challenging the Protectionist Underpinnings that
         Excluded Women from the Foundational Fusion .......... 193
      2. The Unavoidable Intersection of Military Service and
         Women’s Suffrage ..................................................... 195
V. BROADENING THE FRAME ON MILITARY INTEGRATION FROM EQUAL
   PROTECTION TO TRANSCENDING MACСULINIZED CITIZENSHIP ...... 198
VI. CONCLUSION ...................................................................... 207

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165
I. INTRODUCTION

"May all our Citizens be Soldiers, and all our Soldiers Citizens," Sarah Livingston Jay toasted to revelers celebrating the Revolutionary War in 1789. She expressly conveyed what this article describes as the "foundational fusion" of republican government traditions coupling the military service of citizen-soldiers with male political citizenship. While the core of this fusion is deep, long-standing, and well-documented, this article explores the implicit tensions conveyed in her toast—the dominant masculinity dimensions of this foundational fusion. How do women and black men historically gain full political citizenship and effectuate republican government guarantees given its anchoring in entrenched dominant masculinities? Examining the masculinities dimensions of the foundational fusion, this Article concludes that entrenched masculinities persist within the republican government tradition—even in its post-Reconstruction rebirth—absent full military integration, thus rendering both the republican government clause and the voting amendments relevant to military integration.

This Article considers how masculinities played a stabilizing and central role in our nation’s founding. Masculinities, the study of how men relate to each other and construct their identity, have historically been unexamined within our legal and social institutions, even as they profoundly shape institutions, histories, politics, and human relations. Masculinities are both omnipresent and invisible. After famously declaring “American men have no history[,]” Michael Kimmel began examining how manhood and masculine relations in America have shaped history, institutions, and social order over time. He explored the changing visions of “ideal” masculinity throughout history and the competing

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2 Throughout the article the term “foundational” refers to the historical period of our nation’s founding and the centrality of this fusion in that era. This article describes the foundational fusion in a historical and descriptive sense to examine its modern relevance. It does not take a normative view of this fusion.
3 Masculinities, the study of how men relate to each other and construct their identity, have historically been unexamined within our legal and social institutions. See, e.g., TODD W. REESER, MASCULINITIES IN THEORY 20 (2010).
4 Todd Reeser explains the symbiotic relationship of masculinities and institutions: “[M]asculinity can be thought of both as created by institutions and as creating them, and the process of the construction of masculinity as a constant back-and-forth movement between masculinity and institutions.” Id.
5 MICHAEL S. KIMMEL, MANHOOD IN AMERICA: A CULTURAL HISTORY 1 (Oxford Univ. Press 3d ed. 2011). Kimmel explained that the task of documenting a history of men as men involved charting the definition of masculinity and how it has changed historically and also how manhood has affected the activities of men. Id.
constructions of masculinities that challenged the normative ideal (characterized as dominant and marginalized masculinities). Masculinities scholarship generally has revealed transformational historical moments during which American masculinities were in crisis as men reinvented and redefined their identities and their social interactions. These masculinities crises or transformational episodic periods aligned with shifts in the foundational fusion of military service and citizenship.

The citizen-soldier tradition fused, not just military service and citizenship, but masculinities squarely within the republican government tradition. Men engaged in collective self-defense, therefore they self-governed. Exploring the masculinities dimensions of the republican government tradition necessarily positioned historical enfranchisement struggles for women and for black men to challenge the foundation of republican government and dominant masculinities itself. The Civil War yielded precisely the seismic shifts necessary for enfranchisement as it transformed masculinities, military service, and citizenship, and therein the republican government tradition to which they were fused. Reconstruction destabilized longstanding dominant masculinities and shifted military service to a duty of national citizenship, weakening its local performative function in all regions and abandoning it in others. Yet it also revealed that “bullets for ballots” was still the driving catalyst for political rights and that entrenched masculinities persisted in political citizenship.

The Nineteenth Amendment is treated in a eulogistic way today. This paper uses a masculinities lens to challenge that treatment, arguing instead that the Nineteenth Amendment cannot be understood without positioning it in its broader constitutional context of citizenship. If military service was constructed in the republican government tradition symbiotically with voting and as an expression of masculinities, then military integration remains essential to equal citizenship today. Revealing the masculinities dimensions of the suffrage movement against the historical backdrop of the morphing foundational fusion suggests that military integration is not just about individual rights, but it is necessary to fulfill republican government guarantees, to eliminate vestiges of coverture and separate sphere ideologies, and to decouple masculinity and citizenship.

6 Id. at 4.
7 Id. at 9–10.
8 "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation." U.S. CONST. amend. XIX.
9 See, e.g., Reva B. Siegel, Collective Memory and the Nineteenth Amendment: Reasoning about "the Woman Question" in the Discourse of Sex Discrimination, in HISTORY, MEMORY, AND THE LAW 131, 132–33 (Austin Sarat & Thomas R. Kearns eds., 2002) (noting that the Nineteenth Amendment "is for all practical purposes an irrelevance").
10 Historian Linda Kerber explains the importance of coverture to United States history, foreshadowing its vestigial role in the military service exclusion:
II. THE "FOUNDATIONAL FUSION" OF MILITARY SERVICE, CITIZENSHIP, AND MASCULINITIES

Military service, citizenship, and masculinities have been fused since our founding. In 1789, Sarah Livingston Jay toasted revelers celebrating the Revolutionary War: "May all our Citizens be Soldiers, and all our Soldiers Citizens." She expressly conveyed deep-rooted founding principles linking republican government, military service, and citizenship. The fusion of military service and citizenship dates back to ancient Greece in republican governance. The connections are symbiotic whereby citizens serve in the military to ensure good governance, and they govern to decide when to wage war. While deep threshold questions exist regarding the fusion of citizenship and military service in political systems, this paper puts that question aside at the outset to focus on the masculinities implications of the fusion to modern citizenship.

The tradition that Jay invokes is notably a performative one. Performative expressions of republican citizenship include military service, voting, and jury service. "[I]ndividuals become republican citizens only as they engage

[Since the Revolutionary War], the substitution of married women's obligations to their husbands and families for their obligations to the state has been a central element in the way Americans have thought about the relation of all women, including unmarried women, to state power. One by one, most of these substitutions have come to seem inappropriate and have been abandoned, but in each case only after a long and complicated struggle.

11 See generally COLLEEN A. SHEEHAN, JAMES MADISON AND THE SPIRIT OF REPUBLICAN SELF-GOVERNMENT 175 (2009) (examining Madison's political thought during the 1790s to understand his view of republicanism).
12 KERBER, supra note 1.
13 R. CLAIRE SNYDER, CITIZEN-SOLDIERS AND MANLY WARRIORS: MILITARY SERVICE AND GENDER IN THE CIVIC REPUBLIC TRADITION 1 (1999). Historian Thomas R. Martin explains that participation in the military was essential to helping poor citizens in ancient Greece gain citizenship. See also THOMAS R. MARTIN, ANCIENT GREECE: FROM PREHISTORIC TO Hellenistic TIMES 64 (2000); JAMES WHITLEY, THE ARCHAEOLOGY OF ANCIENT GREECE 179 (2001) (“In Classical times participation in a city’s navy or army was one of the principal conditions of citizenship.”).
14 SNYDER, supra note 13. James Madison said that “a certain degree of preparation for war is not only indispensable to avert disasters in the onset, but affords also the best security for the continuance of peace[.]” WARREN W. HASSLER, JR., THE PRESIDENT AS COMMANDER IN CHIEF 46 (1971).
15 SANDRA DEL VALLE, LANGUAGE RIGHTS AND THE LAW IN THE UNITED STATES: FINDING OUR VOICES 88 (2003) (“[V]oting is a fundamental issue in the [U.S.] for, in a republican form of government, whoever has control of the ballot box would presumably control the country.”).
16 Jury service was another performatve expression of civic obligation, explained by Thomas Jefferson as “the school by which [the] people learn the exercise of civic duties as well as rights.” Siegel, supra note 9, at 129. See also AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION 83–84 (1998) (explaining that “[j]uries . . . were at the heart of the Bill of Rights[.]” and they were “drawn from the community; like the militia they were ordinary citizens, not permanent government officials on the government payroll[.]”). See generally id. at 81–118.
together in civic and martial practices. Only through such participation do they . . . [exhibit the] patriotism, fraternity, and civic virtue that form the necessary foundation for the possibility of government . . . [for] the common good. "

Performing the citizen-soldier tradition particularly framed the early republic, as the Founders keenly understood the need to stabilize the union and defend against external threats. Militias expressed citizenship, reinforced constitutional values, and structured local communities. They were heavily local, comprised of white men, and intertwined with civic participation. The Militia Act of 1792 codified the local citizen-soldier duty. It required the enrollment of every free, white, able-bodied male citizen between eighteen and forty-five in the "unorganized" or "common" militia of his state and required each man to provide his own weapons. This largely codified existing local practices as nine of the original thirteen state constitutions already compelled male military service.

Militias ritualized citizen-soldier practices locally, featuring civic festivals with military dress and display, resembling a modern sporting event.

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17 Snyder, supra note 13, at 3. This performative expression of citizenship was central to Madison’s republican vision. Sheehan, supra note 11 ("The need to form an active citizenry whose ongoing participation in the life of the polity and responsibility for its destiny was no less part of Madison’s republican vision than the doctrine of separation of powers and checks and balances. It was, in fact, the more overarching concern for him.").

18 See generally Jenna Bednar, The Madisonian Scheme to Control the National Government, in James Madison: The Theory and Practice of Republican Government 217, 238–39 n.3 (Samuel Kernell ed., 2003) (noting that defending the union from "external military threat[s]" was a "primary motivation" for the Founders as they sensed the need to protect the union from threats posed by Great Britain and Spain).

19 Act of May 8, 1792, ch. 33, 1 Stat. 271.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That each and every free able-bodied white male citizen of the respective states, resident therein, who is or shall be of the age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia by the captain or commanding officer of the company, within whose bounds such citizen shall reside. . . . That every citizen so enrolled and notified, shall, within six months thereafter, provide himself with a good musket or firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball: or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder . . . .

Id.

20 Selective Draft Law Cases, 245 U.S. 366, 380 (1918) (noting that this practice was an absolute requirement, and consent was not necessary). See also Kerber, supra note 1, at 242 (quoting historian J.G.A. Pocock and noting that this was an absolute requirement, consent was not necessary).

21 Snyder, supra note 13, at 86–87 (explaining that martial displays reflected a "constitution of patriotism, fraternity, civic virtue, citizenship, and masculinity"); R. Claire Snyder, Machiavelli
Political scientist R. Claire Snyder explained this local connection, foreshadowing the Civil War’s seismic shifts:

[T]he ideal of the Citizen-Soldier required participation in the states’ militias and thus helped constitute not national citizenship but citizenship that was rooted in local communities within particular states. Indeed, the emergence of American nationalism actually corresponded to a decline in the centrality of the Citizen-Soldier ideal to American politics. 22

Military service is both a performative expression of citizenship and also an age-old catalyzing agent to citizenship. 23 In ancient Rome, for example, Rome offered males citizenship in exchange for military service, expressly hinges their stake in the commonwealth on their relative arms investment. 24 As a young republic, the United States also expanded suffrage in ratifying conventions beyond existing standards believing that those who fought in the war should vote on the Constitution: “[i]f denied the right of suffrage it would debase their spirit and detach [sic] them from the interest of the country.” 25 This “foundational fusion” is also embedded in various constitutional provisions.

A. The Constitutional Roots of the Foundational Fusion

This foundational fusion is constitutionally enshrined in the republican government guarantee clause, 26 Second Amendment, 27 jury trial amendments, 28

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22 Snyder, supra note 13, at 90.


24 Pat Southern, The Roman Army: A Social and Institutional History 143-143 (2007) (explaining that non-Roman citizens could gain citizenship through a period of military service).


26 U.S. Const. art. IV, § 4.
commander in chief clause,\(^{29}\) and congressional war powers.\(^ {30}\) The republican

government guarantee clause positioned citizen-soldier defenses centrally. Article IV, Section 4

guaranteed republican government and protection from invasion to every state.\(^ {31}\) It answered the “first

question” of the form of our new government, distinctly contrasting an aristocracy or the monarchy against

which the Founders had fought and linking the type of government to protection from invasion.\(^ {32}\)

Tyrannical King George III and his professional standing army heavily influenced the Founders.\(^ {33}\) If the monarchy involved a standing army that invaded the colonies, then a republican government must protect against invasion within a republican tradition, not by an army of the “king’s men.” Anti-federalists particularly feared a standing army as a threat to liberty, and these fears can be seen in several constitutional provisions.\(^ {34}\)

While the republic would not be protected with the king’s men, the republic’s men would still protect it. The republican government guarantee clause positioned men as the symbiotic constituency in self-governance and self-defense. This reflected citizen-soldier traditions that “those who voted should serve in the military; and those who served should vote.”\(^ {35}\)

\(^{27}\) U.S. Const. amend II.

\(^{28}\) U.S. Const. amend V, VI, VII.

\(^{29}\) U.S. Const. art. II, § 2, cl. 1.


\(^{31}\) U.S. Const. art. IV, § 4 (“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.”).

\(^{32}\) AMAR, supra note 25, at 16 (citing THE FEDERALIST No. 39 (Publius)).

\(^{33}\) EUGENE CONVERSE MURDOCK, PATRIOTISM LIMITED 1862–1865: THE CIVIL WAR DRAFT AND THE BOUNTY SYSTEM 4 (1967). See also HASSLER, supra note 14, at 7 (noting that the Declaration of Independence said that “King George III had ‘affected to render the military independent of, and superior to, the civil power’”); John A. Eidsmoe, The Militia: In History and Today, THE NEW AMERICAN, Mar. 16, 2009, at 33 (explaining how the Founders had mixed feelings about militias and military bodies because, on the one hand, they were to credit largely for the continental army victory, but on the other hand, the standing army of King George had quartered troops and suppressed colonists).

\(^{34}\) SNYDER, supra note 13, at 80–81. Fears of a standing professional army can be seen in several clauses. For example, Article I, Section 8 authorized Congress to raise and support armies, with a limited funding duration of two years. U.S. Const. art. I, § 8, cl. 12 (“To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years[.]”). The same limitation did not apply to the navy, reinforcing the pointed threat of a standing army. See id. Congress could call up the militias to execute the laws, suppress insurrections, and repel invasions. U.S. Const. art. I, § 8, cl. 15 (“To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions[.]”).

\(^{35}\) AMAR, supra note 25, at 323; see also Akhil Reed Amar, Women and the Constitution, 18 HARVARD J.L. & PUB. POL’Y 465, 471 (1995) [hereinafter Amar, Women and the Constitution].
The Bill of Rights further reflected the early republic’s constitutional protection of the performative local functions of jury duty and militia service. The Bill of Rights protected the local traditions of militias and jury service from federal encroachment. The Second Amendment prohibited the federal government from infringing the right of the people—the early militias—to bear arms. The Fifth, Sixth, and Seventh Amendments constitutionally protected the jury roles of the local citizenry.

The Commander in Chief clause centralized military command power in the executive (a citizen civilian) without any requirement of prior military service or mandatory consultation with military leaders. The Commander in Chief power defined the presidency uniquely and centrally, presuming military competence. Performative local militia traditions in the early republic likely ensured that presidents nonetheless had some military training. While central power presented its own risks of abuse, the Founders relied heavily on their faith in George Washington and congressional balancing powers.

The foundational fusion linking military service, citizenship, and republican government is deep in our nation’s history and the constitutional text.

B. Dominant Masculinities Stabilized the Foundational Fusion

The citizen-soldier tradition was also rooted in the prevailing dominant masculinities that both birthed the revolution and stabilized the new republic.

While Jay’s words may have conveyed deep historical traditions, the speaker herself likely also challenged normative conceptions as a woman toasting the citizen-soldier tradition. Women held an ambiguous status in the early

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36 See generally AMAR, supra note 16, at 83–84 (explaining that “juries . . . were at the heart of the Bill of Rights” and they were “drawn from the community; like the militia they were ordinary citizens, not permanent government officials on the government payroll”).

37 U.S. CONST. amend. II. See AMAR, supra note 16, at 51 (explaining the contemporaneous meaning of “militia” in 1789 in which “militia” was “identical to the ‘people’”).

38 U.S. CONST. amend. V, VI, VII.

39 U.S. CONST. art. II, § 2, cl. 1 (“The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”). See HASSLER, supra note 14.

40 Washington first used the Commander in Chief power in 1794 to call up 12,000 state militia troops to respond to the Whisky Rebels. He set the precedent “for the Commander in Chief’s power to mobilize and use the militia to suppress domestic insurrection.” HASSLER, supra note 14, at 29–30.

41 Id. at 8 (noting that George Mason expressed fears that a single commander “without any restraint . . . might make bad use” of the army).

42 Id. at 7–9 (explaining that the basis for this design came from the Founders’ experience with Royal Governorships, which experienced success with “coupling” the control of armed forces with the governor role, when local assemblies had oversight power).

43 KERBER, supra note 1.
Constitution as citizens without full political rights. Jay, a female citizen invoking the citizen-soldier tradition, thus revealed the precise tensions that this article examines. The citizen-soldier tradition fused not just military service and citizenship, but also masculinities.

The word "republic" itself derives from the Latin word "res publica," and "public" comes from the Latin word pubic, which means manhood or maturity. Military service in the early republic allowed men to become citizens and boys to become men. Deep political theory roots base the citizen-soldier tradition in constructions of masculinities. Machiavelli posited that participation in military practices constructed masculinity, soldiers, and citizens. Rousseau positioned ritual male participation in civic and martial practices as "central to masculinity, to citizenship, and to civic life in general." In Machiavelli's civic republicanism, the construction of masculinity involved the denigration of femininity because it threatened the essence of armed masculinity.

The Revolutionary War was "preeminently a crisis of authority" with masculinity undertones. It was at its core a revolt of the American sons against their father, England, and its King. American masculinities scholar Michael Kimmel explained that "the white colonists felt enslaved by the English father,

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44 KIRK H. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 235 (Greenwood Press 1969) (1918) (framing women's role in representative government as "troublesome"). See SALLY GREGORY McMILLEN, SENeca FALLS AND THE ORIGINS OF THE WOMEN'S RIGHTS MOVEMENT 13–14 (2009) (explaining that while some women and men considered that women should have equal rights in the new American republic, ultimately the government established in 1787 did not grant women citizenship or political authority). See also CAROL BERKIN, FIRST GENERATIONS: WOMEN IN COLONIAL AMERICA 195–206 (Eric Foner ed., 1996).

45 SNYDER, supra note 13, at 93. Classical republican theory invoked women's morality. The Ancient Greeks linked women's public role with her sexual availability and lack of virtue. KERBER, supra note 1, at 33.

46 SNYDER, supra note 13, at 2.


48 SNYDER, supra note 13, at 89.

49 See id. at 22–23; J.G.A. POCOCK, THE MACHIAVELLIAN MOMENT: FLORENTINE POLITICAL THOUGHT AND THE ATLANTIC REPUBLICAN TRADITION 201 (2d ed. 2003) ("[I]t may be through military discipline that one learns to be a citizen and to display civic virtue.").

50 SNYDER, supra note 13, at 56.

51 Id. at 26; WENDY BROWN, MANHOOD AND POLITICS: A FEMINIST READING IN POLITICAL THEORY 88 (1988) (stating that Machiavelli's "construction of manliness [] entails not mere opposition to but conquest of woman").

52 KERBER, supra note 1, at 12.

53 KIMMEL, supra note 5, at 15 (describing the Declaration of Independence as a "declaration of manly adulthood").
infantilized, and thus emasculated.” American men had come to seek self-control and autonomy over life, liberty, and property.

While destabilized masculinities were part of the war, they also stabilized the new republic after the war. Masculinities are distinctly a relational concept. They are fluid and characteristically dependent on the “other” to define itself. It is the framing of the “other” to define masculinities that positions masculinities theory as so informative to understanding the foundational fusion and its historical and modern relevance. The citizen-soldier tradition distinctly acted as a stabilizing agent of dominant masculinities. “Manliness and honor were sharply and ritually contrasted with effeminacy and dishonor.” American men stabilized their new American masculinities, in part, by marginalizing British men as effeminate, and by marginalizing women and black men. Historian Linda Kerber summarized that American men “stabilized” the political and social order after the Revolution by “minimiz[ing] differences between white men” relative to before the war, but “heighten[ing] differences between free women and men.” Kerber explained, “it was white men who offered military service, white men who sought its honor, white men who dueled in its defense.”

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54 Id.
55 Id. at 14.
56 REESER, supra note 3.
57 Id. at 38.
58 Id. at 295. Dominant and marginalized masculinities are a hallmark characteristic of Western masculinities—notably, the use of marginalization as an intergroup dynamic to sustain dominant masculinities. Cliff Cheng, Marginalized Masculinities and Hegemonic Masculinity: An Introduction, 7 J. MEN’S STUD. 295 (1999). As Cheng explains, “one’s membership in either the dominant group or a marginalized group is based on our conformity to hegemony: you either conform or belong to the dominant group or you do not conform and you are marginalized because you threaten the dominant hegemonic strand.” Id. at 295. Dominant masculinities refer to the “most common, celebrated, powerful, and/or widespread types” of masculinities. JAMES W. MESSERSCHMIDT, HEGEMONIC MASCULINITIES AND CAMOUFLAGED POLITICS: UNMASKING THE BUSH DYNASTY AND ITS WAR AGAINST IRAQ 159 (2010). Marginalization is the term used to describe “the relations between the masculinities in dominant and subordinated classes or ethnic groups.” R.W. CONNELL, MASCULINITIES 80 (2d ed. 2005). Marginalization is thus always relative to the “authorization of hegemonic masculinity of the dominant group.” Id. at 80–81 (noting that these “terms such as ‘hegemonic masculinity’ and ‘marginalized masculinities’ name not fixed character types but configurations of practice generated in particular situations in a changing structure of relationships”). The exclusion of marginalized and threatening groups has long been a “masculine retreat” in our nation’s history as dominant masculinities have long espoused consistent sentiments of nativism and fears of feminization. Cf. ARMANDO NAVARRO, THE IMMIGRATION CRISIS: NATIVISM, ARMED VIGILANTISM, AND THE RISE OF A COUNTERVAILING MOVEMENT 20 (2009) (“Nativism, the fear of foreigners, was embedded in the country’s immigration experience . . . .”); KIMMEL, supra note 5, at 67.
59 KERBER, supra note 1, at 241.
60 KIMMEL, supra note 5, at 15.
61 KERBER, supra note 1, at 12.
62 Id. at 241.
In that sense, militias hold a complicated place in our nation’s history in both citizenship and masculinities, revealing valuable legal and societal lessons about constitutional principles, citizenship, and status. David Williams summarized that “the best publicized and most malign militia theme is overt racism[,]” and he positioned nativism as another predominant strand. Militias historically played a role enforcing nativism and maintaining racism as militias divided sharply along ethnic grounds in the North and South. In the South, local militias were linked to maintaining white supremacy and policing slave insurrections, reflecting a “white male political fraternity.” Thus, dominant masculinities were historically maintained, in part, through militia service.

C. Enfranchisement Expansions Necessarily Challenged the “Foundational Fusion”

Given the masculinity underpinnings of the foundational fusion, early suffrage movements implicitly challenged more than the vote. Indeed the institution of slavery was not just about the denial of citizenship, but also about the denial of manhood to black men. Kenneth Karst explains that “[f]or most of our national history these meanings [of masculinity and eligibility for citizenship] have been intertwined; a competence identified with masculinity has seemed a condition of full citizenship, and active participation in the community’s public life has offered men reassurance of their masculinity.”

The women’s suffrage movement also had to overcome the absence of women’s direct military participation, the conception of men as representative governors of women, and the gendered divide between public and private.

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64 Id.
66 Snyder, supra note 13, at 93–94. The Fugitive Slave Law of 1850 positioned some white male fraternity in the north to rounding up slaves. Id. Some states explicitly disarmed blacks “to maintain their servile condition”; for example, one state statute penalized slaves thirty-nine lashes for being armed with a gun. Stephen P. Halbrook, That Every Man Be Armed: The Evolution of a Constitutional Right 96–97 (2d ed. 1994) (noting that a few states took the view that only citizens could have arms). The disarmament of blacks was done through state legislation notwithstanding use of the term “people” in the Second Amendment, rather than the term “citizen.” Id. at 97.
68 Id. at 503.
Women were sharply, normatively, and unequivocally excluded from the citizen-soldier tradition. Indeed prevailing conceptions of gender, citizenship, and public roles were so widely held that the Constitution did not need to expressly exclude women. While the citizen-soldier republican ideology abandoned English traditions of monarchies and professional armies, the Framers retained common law coverture as a critical underpinning of American society. Republican government challenged the King's tyranny over men, but left untouched men's common law governance (or tyranny) over women in the home. Reflecting the republican government tradition in the home, men often bore both the privileges and responsibilities of governance. Early coverture traditions were rhetorically depicted as "privileging women rather than oppressing them . . . [and] shield[ing] [women] from the stresses of public life, from the need to risk property and reputation in political encounter."

To the extent that women sought rights in the early republic, they notably positioned their arguments within the prevailing republican government traditions. Women's suffrage challenged the democratic nature of "virtual representation" by challenging the premise that republican government ordered around male-run household units, rather than individual representation, was consistent with republican government. Abigail Adams famously wrote to John Adams asking him to "[r]emember the [l]adies" and restrain the power of husbands to limit tyranny and explaining that rebellion will be necessary without protections from tyranny. This line of argument leveraged the precise connection between republican government theory and dominant masculinities that had fostered the revolution.

From the founding, women's lack of military service underscored their exclusion from self-governance. John Adams summarized the argument opposing women's suffrage in his famous 1776 letter to James Sullivan, stating that women are "unfit . . . for the hardy enterprises of war, as well as the arduous

\[70\] See e.g., AMAR, supra note 25, at 19 (explaining that in "republican theory, the rights of collective self-government stood shoulder to shoulder with the responsibilities of collective self-defense[,]" a principle that explains why women were not enfranchised; rather men represented their interests). See also Kerber, supra note 69, at 27 (noting, however, that this sweeping logic should not have excluded unmarried women with property).

\[71\] Kerber, supra note 1, at 240 (explaining that while men of the early republic recognized themselves "to be sons breaking free of the control of their political fathers . . . [t]he founders brought the law of coverture virtually intact into the republic").

\[72\] Id. at 11–12 (stating that the law was called "the law of baron et feme" meaning "lord and woman").

\[73\] Husbands could be liable for their wives' crimes under certain circumstances and bound to fulfill their wives' contractual obligations. Id. at 14.

\[74\] Id. at 15.

\[75\] Siegel, supra note 9, at 151.

EXAMINING ENTRENCHED MASCULINITIES

cares of state . . . . Besides, their attention is so much engaged with the necessary nurture of their children, that nature has made them fittest for domestic cares." Thus, long before the women's suffrage movement, the political framing of suffrage fused military service and political life, and it polarized military service and family life.

In this framework, women accordingly had to carve out a form of civic participation that carefully navigated this foundational fusion. They defined roles as "mothers of citizens of the republic." In the "republican mother" tradition, women leveraged indirect principles of service, such as allegiance and loyalty, but women's direct citizenship remained tenuously constructed. Gradually, "republican mothers" moved into public reforms that fostered and cultivated the health of the republic through social and benevolent work. Women advocated for aid to widows, orphans, health care, and other social reforms, positioning women to support the survival, longevity, and health of the republic.

It was not until 1848 that the formal women's suffrage movement began and women pressed for political rights directly. Women's suffrage was the "longest sustained grassroots effort in American history," spanning seventy years. It was not until 1848 that the formal women's suffrage movement began and women pressed for political rights directly. Women's suffrage was the "longest sustained grassroots effort in American history," spanning seventy years.

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79 KERBER, supra note 1, at 241.
80 See, e.g., Kerber, supra note 69, at 29 (explaining the gender ambiguity in the Constitution).
82 Id.
83 WOMEN’S RIGHTS IN THE UNITED STATES: A DOCUMENTARY HISTORY 39–40 (Winston E. Langley & Vivian C. Fox eds., 1994). These social reforms gradually moved from philanthropic work to politically oriented agitation. For example, many women in the nineteenth century became active in the abolitionist movement. See Siegel, supra note 9, at 146–47. Suffrage reforms emerged from the more evangelical temperance and slavery movements as women learned to "turn the cause of women’s rights into a political movement." JOHNSON, supra note 81, at 110.
84 The formal woman’s rights movement began in 1848 with a Call to a Woman’s Rights Convention discussing "the social, civil and religious condition[s] of women." JOHNSON, supra note 81, at 110. Approximately three hundred women convened for two days and published the "Declaration of Sentiments and Resolutions." Id. Regarding suffrage, it "[r]esolved, [t]hat it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise." DECLARATION OF RIGHTS AND SENTIMENTS para. 31 (U.S. 1848), reprinted in SALLY G. McMILLEN, SENeca FALLS AND THE ORIGINS OF THE WOMEN’S RIGHTS MOVEMENT app. A, at 240 (2008). Frederick Douglass responded to the Declaration, expanding on women’s conceptions of equality to reflect full male political rights: "We go farther, and express our conviction that all political rights which it is expedient for man to exercise, it is equally so for woman." 1 HISTORY OF WOMAN SUFFRAGE 75 (Elizabeth Cady Stanton et al. eds., 2d ed. 1881).
years. To win the vote, women needed to convince men to give up their representation of women, risk the demographic upheaval of women’s suffrage, and reconcile women’s role in the public sphere. The Civil War catalyzed the seismic shifts that transformed suffrage for both women and black men.

III. SEISMIC SHIFTS IN MILITARY SERVICE, CITIZENSHIP, AND MASCULINITIES
REBIRTHED REPUBLICAN GOVERNANCE, YET ENTRENCHED MASCULINITIES PERSISTED

The Civil War seismically shifted masculinities, military service, and citizenship. It destabilized Southern masculinities, and it shifted military service to a duty of national citizenship, largely dissolving the local citizen-soldier tradition.

A. Nationalized Military Service Transformed Both the Citizen-Soldier Tradition and Citizenship Itself

The Civil War presented dire shortages in manpower that forever changed military service and citizenship. President Abraham Lincoln first recruited volunteers for the Union army. These efforts were initially quite successful and then quickly proved inadequate. Congress then took the unprecedented step of compelling national male military enlistment and Lincoln signed the

85 Women did not get the vote for another seventy years, following 56 referendum campaigns, 480 state campaigns to put the amendment in front of voters, 47 state constitutional amendment campaigns, 277 fights to put suffrage on party platforms, 30 political party platform fights in presidential elections, and 19 congressional campaigns over 38 years. JOHNSON, supra note 81, at 108.

86 See Siegel, supra note 9, at 143, 152–53 (explaining that our modern understanding of women’s suffrage obscures its radical nature because it is separated from the historical and constitutional narrative history, and historical accounts erase its broader significance).

87 This trajectory was well underway before the Civil War. As American masculinities changed in the 1800s, the centrality of performative military service and the local traditions it fostered had softened too. As the citizenship base expanded in the early 1800s to include more poor, working-class white men, challenges grew to compulsory participation in military practices. The War of 1812 was fought with manpower eighty-eight percent derived from local militias. MURDOCK, supra note 33, at 4–5. A formal national draft system was proposed in 1812, but it was still bitterly challenged as “Napoleonic.” Id. at 5. As a result, more volunteer militia companies replaced compulsory militia roles in the Jackson-era to restore homogeneity. SNYDER, supra note 13, at 93. By the Mexican War in 1848, the fighting force would draw much more heavily on volunteers. MURDOCK, supra note 33, at 4–5.

88 After the 1861 battle at Fort Sumter some 700,000 men answered President Lincoln’s call and enlisted voluntarily. MURDOCK, supra note 33, at 4–5. Indeed, the initial volunteer surge was so sizeable that the Secretary of War closed up its recruiting offices. Id.

89 Only months after initial successes in voluntary enlistment, President Lincoln’s call for enlistment was renewed, and this time, only meager numbers responded, necessitating more aggressive measures. See id.
first American draft act on July 17, 1862. The first compulsory national draft was still notably local in nature, relying on the then-antiquated local militia systems. It authorized the President to call able-bodied men between the ages of eighteen and forty-five into service for a nine-month period on a state-based quota system. Implementation troubles, protests, and fraud quickly dominated the first iterations of the national draft. The exemptions undermined the efficacy and the first draft yielded relatively few men. It nonetheless transformed military service and citizenship in enduring ways.

Deploying the Commander in Chief power in unprecedented ways, Lincoln’s next war measure was the historic Emancipation Proclamation. The Emancipation Proclamation freed slaves in the South, investing them in a Union victory, and empowering them to fight for the Union Army. Almost 200,000
men responded to Lincoln’s call for arms, undermining Southern power and tipping demographics to the North.  

Importantly, the Emancipation Proclamation freed slaves in the seceded states only, excluding Northern slaves and loyal border state slaves. In so doing, it set the stage to dramatically transform black male citizenship and shifted the war momentum and ideology. Yet as historically momentous as arming blacks was, Northern states still segregated blacks in the militias, suggesting that it was military necessity that drove the seismic shifts described here, not paradigm shifts in citizenship or military service directly.

Nonetheless these war measures forever changed the terms of citizenship and military service. After the Civil War, Congress formally repealed the Militia Act and shifted to a nationalized militia system. The 1903 Dick Act asserted a national role over state militias, and created a “reserve militia” (the modern National Guard). The national military was further empowered by 1908 legislation expanding federal control over organized militias (the National Guard) outside the United States. The National Defense Act of 1916 further expanded the National Guard and empowered the president to institute a war-

99 Id.
100 Id. Abraham Lincoln declared freedom:
I do order and declare that all persons held as slaves within said designated States, ['Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (except the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth[,]], and which excepted parts, are for the present, left precisely as if this proclamation were not issued.”] are, and henceforward shall be free.
101 See id.
103 SNYDER, supra note 13, at 99. See Militia Act of 1903 (Dick Act), ch. 196, 32 Stat. 775 (1903) amended by ch. 204, 35 Stat. 399 (1908) (“That the militia shall consist of every able-bodied male citizen of the respective States, Territories and the District of Columbia, . . . and shall be divided into two classes—the organized militia, to be known as the National Guard of the State, Territory, or District of Columbia, or by such other designations as may be given to them by the laws of the respective States or Territories, and the remainder to be known as the Reserve Militia.”) (codified as amended in scattered sections of 10 U.S.C. and 37 U.S.C.).
time draft. The 1917 Selective Service Draft Act required all men to register for the national draft.

These measures formalized the disempowerment of local militias that had begun even before the Civil War, transforming the citizen-soldier tradition. State guards tenuously still existed after the Civil War, but in marginal function. While Northerners, as reformers and industrialists, generally favored a modern and professional military, Southerners generally preferred the citizen-soldier local tradition. As R. Claire Snyder explained, after the Civil War, "the new ideals of nationalism, expertise, and professionalism ran up against the deeply rooted traditions of volunteerism, federalism, and republicanism embodied in the institutions of the state militia."

The Civil War changed military service and its relationship to citizenship dramatically. It solidified a shift from local militia functions to national compulsory registration and draft obligations. This ended the citizen-soldier local performative tradition and significantly weakened its linkage to citizenship. Yet, the foundational fusion still endured in other ways.

B. Post-Bellum Masculinities Destabilized

The Civil War destabilized longstanding masculine power structures by both the war itself and each of the Reconstruction Amendments, yet the entrenched masculinities of the foundational fusion endured and re-emerged as a stabilizing force. Post-bellum masculinities were heavily destabilized by both the war itself and the Reconstruction Amendments. The masculinity of white Southern plantation owners, in particular, was shaped around the legal, economic, and social dominion over plantations. The war dramatically tore apart this struc-

105 Snyder, supra note 13, at 99.
106 Id. at 100. See Kerber, supra note 1, at 251 (explaining that with nationalized military service came wide-scale benefits, beginning with an 1884 Massachusetts state preference in civil service hiring, and ultimately including massive federal GI benefits and privileges episodically).
107 See Eidsmoe, supra note 33, at 38.
109 Snyder, supra note 13, at 97.
110 Id.
111 See James Roark, Masters Without Slaves 157 (1977) (concluding that the South was "nothing less than a world turned upside down").
112 See, e.g., Roark, supra note 111, at 35:

The plantation was the heart of the master’s world. It was the source of wealth, status, power, and often identity itself. The plantation was for the master the concrete expression of what was for many others an elusive abstraction—the "Southern way of life . . . . Each large estate presented in itself all
ture. It provoked a mass exodus of adult white men to fight, leaving women to run plantations and de-mooring plantation owners from their property. The post-bellum Congress required Southern states to enfranchise free slaves to fulfill republican government guarantees. This was a distinct challenge to Southern male governance because Northern states did not universally enfranchise slaves. Thus, plantation owners “struggled to maintain control over their dominions and their subjects[.].”

Just as plantation life structured dominant white masculinities, the condition of slavery marginalized black masculinities. The Honorable John Mercer Langston explained that:

As a slave he has been denied himself, his wife, his children, and his earnings. And when emancipated his freedom has been, in some sense, a mockery, because he has been deprived of those civil and political rights and powers which render enfranchised manhood valuable and dignifies a blessing.

The Reconstruction Amendments destabilized white Southern masculinities by undermining patriarchal governance in the home and male representative governance in the public sphere. The Thirteenth Amendment freed male

the features common to the whole system, and was in itself a reflection in miniature of the entire civilisation of the Southern States.”

Id. (acknowledging that the speaker exaggerates the claim) (quoting Philip Alexander Bruce, Social and Economic Revolution in the Southern States, CONTEMP. REV., July 1900, at 61). See generally ROARK, supra note 111, at 135 (articulating the class tensions in the South).

113 Roark, supra note 111, at 36 (“The whirlwind of revolution descended upon the South. It disrupted and transformed lives, relationships, and values; it crushed old institutions and created new ones; it produced economic catastrophe and political impotence; and it introduced into every home the miseries of destruction and death.”). This disrupted the solidarity that many white men had constructed and produced deep class tensions. Id. at 55. Roark concludes that the war created such competition and scarcity of resources in the South that “free labor threatened to splinter them.” Id. at 135.

114 See id. at 46 (concluding that “by the end of the first year of war, much of the rural South approached a matriarchy”).


116 Roark, supra note 111, at 85.

117 HON. JOHN MERCER LANGSTON, LL.D., FREEDOM AND CITIZENSHIP 99 (Wash., D.C., Rufus H. Darby 1883).

118 See Roark, supra note 111, at 77 (“The legal destruction of the South’s peculiar institution was the product of presidential proclamation, congressional action, state legislation, and constitutional amendment, but the practical destruction of slavery was the product of war. Between Sumter and Appomattox, enormous changes took place within the institutions of slavery. Military defeat finally ended slavery, but vital relationships—that of master to slave and of slave to plantation—were everywhere strained, and sometimes snapped, by the time Federal troops arrived to compel emancipation.”).
and female slaves, transforming gender politics and white male governance in the private and public spheres. The Thirteenth and Fourteenth Amendments pulled black men and women out from under Southern male patriarchal governance and effectively gave them the same civil rights that married white women had before the War. 119

Removing white slaveholders’ power over slaves had critical gender implications too. Many slaveholders had exercised “sexual privileges” over female slaves. 120 Reconstruction “threatened white Southern manhood by subjecting male-female relations to considerable strain.” 121 Karst explained that “the abstract image of pure southern womanhood became identified with a vision of white supremacy. The white woman, as the ‘perpetuator of [white] superiority’s legitimate line,’ had to be kept remote from any sexual approach of the black man.” 122

Post-bellum militias were used distinctly in the South as a destabilizing and stabilizing tool. Post-war, armed black freedmen were positioned in the symbiotic constituency of self-governance and self-defense. Yet the self-defense components of armed citizenry clashed with the lingering vestiges of the exclusionary local militia rooted in dominant masculinities. 123 Southern militias had become oppressive forces of racist violence leaving the black citizenry “at the mercy of the policeman and the men of the State Guard.” 124 The militias were exclusively white and were generally soldiers, often in confederate uniforms, seeking to disarm freedmen. 125 Senator Trumbull reported, for example, that “[n]early all of the dissatisfaction that now exists among the freedmen is caused by the abusive conduct of this militia. Rather than restore order, the militia would typically, ‘hang some freedman or search negro houses for arms.’” 126

These militia abuses led to proposed legislation from 1866–1869 seeking to disband the Southern militias that were disarming and terrorizing the freedmen. 127 While state militias were largely marginal after the Civil War, but

119 Amar, supra note 35, at 468.
120 Karst, supra note 67, at 511.
121 Id. at 515.
122 Id.
123 HALBROOK, supra note 66, at 110.
124 Id. at 149.
126 HALBROOK, supra note 66, at 110.
127 Id. at 135–37. Senator Wilson reported a bill to disband the Southern militias:

[A]ll militia forces now organized or in service in either of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas, be forth-with disarmed and disbanded, and that the further organization, arming, or calling into service of the said militia forces, or any part thereof, is hereby prohibited under any circumstances whatever until the same shall be authorized by Congress.
private militias took over some of the oppressive racial function that local militias had previously played in the South.\textsuperscript{128} The "white rifle companies" that responded to black military participation after the Civil War bred the Ku Klux Klan ("the KKK"), which emerged as a militia-like reaction to black citizenship.\textsuperscript{129} Disbanding and marginalizing formal state militias during Reconstruction shifted attention to the KKK, an organization functioning in a quasi-militia role\textsuperscript{130} and grounding its actions in the performative republican government tradition.\textsuperscript{131} In Mississippi, for example, local clubs organized into armed "irregular militia companies" and engaged in intimidation strategies.\textsuperscript{132} Yet these tactics vastly perverted anything any legitimate public militia had ever deployed, relying on rape, torture, beatings, and arson to compel white power in the South.\textsuperscript{133}

The destabilization of masculinities can be seen keenly through the KKK's activities. Masculinities scholar, Michael Kimmel, summarized that the KKK's goal was distinctly the "reclamation of Southern manhood":

Klan rhetoric was saturated with images of heroic and chivalrous southern manhood. Members were required to demonstrate "manly" character and courage, and initiation rituals were punctuated by prayers that "God, give us Men!" Playing on traditional images of the emasculated southern gentleman and his fears of rapacious blacks and conniving northern reformers, the Klan mobilized southern white men into its "invisible empire" for many decades . . . . The new and powerful fear of the black

\textsuperscript{128} See generally NAVARRO, supra note 58, at 158 (defining unorganized militias as "members of the militias not members of the national guard or state guard").

\textsuperscript{129} SNYDER, supra note 13, at 94–95.

\textsuperscript{130} A post-bellum description of the KKK explained that "their weapons are often new and of improved patterns; and however poor may be the individual member he never lacks for arms or ammunition . . . . In many respects the Ku Klux Klan was an army, organized and officered, and armed for deadly strife." HALBROOK, supra note 66, at 147.

\textsuperscript{131} NAVARRO, supra note 58, at 153–55. Some have explicitly described the KKK as a militia. Id. See also RAUM, supra note 97, at 59 (explaining how the KKK sought to organize in the republican tradition of performative civil duty, protect the Constitution of the United States, the conforming laws, the people, and assist in executing all constitutional laws).

\textsuperscript{132} KENNETH M. STAMPP, THE ERA OF RECONSTRUCTION 1865–1877, at 51 (1972).

\textsuperscript{133} NAVARRO, supra note 58, at 154.
rapist revealed more about southern white men’s fears of lost manhood than about any propensity on the part of black men.134

Militias fostered destabilized masculinities as white men sought to re-moor their masculinities.135

C. The Endurance of the “Foundational Fusion” and its Entrenched Masculinities

Despite the seismic shifts of military service and citizenship and the destabilization of masculinities, the post-war amendments revealed that “bullets for ballots” endured as a catalyst for citizenship. This in turn revealed that vestiges of the foundational fusion and its entrenched masculinities persisted.

The Fifteenth Amendment was a response to the Emancipation Proclamation’s call to arms and was distinctly leveraged within the foundational fusion. The Emancipation Proclamation led black men to fight for the Union and for citizenship. “They believed that military service would allow them to be seen as men, as citizens. Once Northern blacks put on the uniform, they believed, it would be hard to deny them the vote.”136 Blacks had thus fought a “double battle” for the Union for both manhood and citizenship.137 Notably, the Dred Scott decision had specifically cited the exclusion of black men from military service as evidence to support the exclusion of slaves from citizenship.138 Black military service made citizenship conceivable and vindicated their claims.139 The Fifteenth Amendment revealed that “bullets for ballots” was still the dominant citizenship paradigm after the Civil War.

Yet notably, the struggle for the vote coincided with efforts to disarm blacks, suggesting vestiges of the foundational fusion whereby voting, citizenship, and military service remained intertwined around masculinities.140 Indeed

134 KIMMEL, supra note 5, at 66. See also SINGLETARY, supra note 125, at 3 (observing the South in 1875, Charles Nordhoff “expressed amazement in finding that not only the men but even boys of fourteen were frequently armed and that ‘every trifling dispute’ was ‘ended with the pistol’.”).

135 See, e.g., ROARK, supra note 111, at 107 (“Southern planters were particularly ill prepared for the revolution of emancipation” because abolition occurred “lightening-fast compared with abolition in other countries,” leaving slaveholders with no “common, workable set of ideas to replace their old beliefs.”).

136 Karst, supra note 67, at 512.

137 Id. at 510.


139 See RAUM, supra note 97, at 38 (explaining that after the Union victory [black men] “felt, and had a right to feel, that the mighty and victorious people who had given them their freedom would fully protect them in the enjoyment of it”). See also Karst, supra note 67, at 513.

140 See RAUM, supra note 97, at 19, 28 (explaining how South Carolina and Mississippi enacted “black codes” that codified the exclusion of blacks from the state militia and prohibited arms-bearing outside the “purposes of war”).
suffrage arguments for black men expressed a keen understanding of the endurance of the foundational fusion. In stating the black man’s claim for voting rights, John Mercer Langston relied on the foundational fusion, stating that voting is an “inseparable and essential element of self-government” and a “constituent element of manhood” and based the claim for voting rights on the claim that:

[O]ur arms are victorious . . . . As the Government has, for the last four years, needed loyal and earnest men to handle the musket in war, so it to-day needs men of the same character to wield the ballot in sustaining its principles. The ballot is no less potent then the musket.

Critically, however, the depth of the suffrage victory for black men was short-lived as history revealed a century-plus struggle for black men to exercise the right to vote free from discrimination, violence, and harassment. Black
women voters would later face these obstructions as well.144

Because black male suffrage was achieved within the foundational fusion tradition, even in its dramatic rebirth,145 women necessarily were expressly excluded. Women’s loyalty and indirect support of the war were inadequate alone. While the women’s suffrage movement was largely dominant during the Civil War,146 suffragists seized the apparent opportunity created by the Emancipation Proclamation and pressed Lincoln to extend the same freedoms to the loyal, patriotic women who were actively serving in the Union army.147

Indeed the war had allowed women to prove that they were “capable of performing work and duties commonly identified as masculine, and thus it stood to open up new rights and opportunities in public life.”148 Yet women had to

144 The suffrage “victory” was deeply compromised by racism toward black women. Black women faced the discriminatory burdens of race and gender and were quickly subjected to the same violence, intimidation, and harassment that black men experienced. See, e.g., ROSALYN TERBORG-PENN, AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE 1850–1920, at 160 (1998) (explaining how there were two fractures in the suffrage movement—first when black women had unique historical burdens of racial and gender discrimination as a barrier to vote—and second when black women lost it and white women did not); Rosalyn Terborg-Penn, African American Women and the Woman Suffrage Movement, in ONE WOMAN ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 151–52, 154 (Marjorie Spruill Wheeler ed. 1995) (chronicling how black women were quickly disenfranchised in the South by property taxes and literacy tests and how white women largely abandoned activism on these issues).


146 Fort Sumter brought the direct women’s suffrage movement to a near halt, yet suffragists still understood that they might leverage their military service to political advantages. See Andrea Moore Kerr, White Women’s Rights, Black Men’s Wrongs, in ONE WOMAN ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 63 (Marjorie Spruill Wheeler ed., 1995). Susan B. Anthony wanted to continue the suffrage movement during the war, but she was overpowered by others who convinced her to put the issue aside and contribute to the war effort. See BILL SEVERN, FREE BUT NOT EQUAL, HOW WOMEN WON THE RIGHT TO VOTE 74, 77 (1967) (noting that women contributed to the war efforts in many ways, including managing households and affairs previously tended to by men).

147 Women supported the war effort by nursing the wounded. See, e.g., BARBARA CUTTER, DOMESTIC DEVILS, BATTLEFIELD ANGELS, THE RADICALISM OF AMERICAN WOMANHOOD 1830–1865, at 162 (2003) (describing the heroine images of battlefield nurses described as “angels of the battlefield”). More than 20,000 Northern women nursed during the Civil War. Id. at 172. Women even rarely contributed to military strategy. RECOGNITION OF ANNA ELLA CARROLL’S MILITARY CONTRIBUTION TO THE CIVIL WAR (1881), reprinted in WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 123. On November 30, 1861, Anna Ella Carroll wrote to the Assistant Secretary of War, Thomas A. Scott, and advised him of a weakness in Union military strategy. Id. She explained how military operations focusing on the Mississippi should be shifted to the Tennessee River to split the Confederacy. Id. This plan was taken seriously and sent to the President. Id. The strategy worked. Id. Some military historians describe this as crucial. Id. Her identity was originally secret, but was revealed and recognized by the House Committee on Military Affairs in 1881. Id. at 124. Other women engaged in forms of espionage or disguised themselves as men to serve. See CUTTER, supra, at 183. Approximately 500–1000 women disguised themselves as men and served in union and confederate armies. Id.

148 CUTTER, supra note 147, at 156.
maneuver their service carefully within the masculine paradigm of the military and its gender-performative citizenship functions.  

Women keenly understood their morally tenuous role in the paradigmatically public male institution. One recruiting ad notably called for women who were “plain looking,” so as to not arouse men or create moral peril.  

Women in service carefully positioned themselves as “redemptive wom[e]n.” Many women navigated military service by transferring the family paradigm into the military to justify their roles. Many soldiers called nurses “mothers” and many nurses called their patients “boys or sons.” Yet even in this gendered paradigm, women conceived of themselves as active participants in the war efforts. Women’s military service marked the beginnings of women transcending gender in the public sphere; women retained their moral and nurturing values, while acquiring a taste of the heroic bravery of male military service.

After the Emancipation Proclamation, Elizabeth Cady Stanton sought to leverage women’s war efforts, writing to Lincoln on behalf of the Women’s National Loyal League to ask him to “finish the work by declaring . . . justice and protection” for women. Stanton explained that she too was “inspired by true patriotism” and was working under the “national flag.”

Yet importantly—this paper posits—entrenched masculinities within the persistent foundational fusion posed underlying obstacles to women’s suffrage. Women did not fulfill the dire manpower shortages and thus the same conditions for women’s suffrage were not planted as a strategic war measure . . . at least not in this war. The “woman question” was deferred for another day, another war.

The largest setback for women’s suffrage was the word ‘male’ inserted for the first time in relation to voting apportionment. This buttressed univer-

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

150 Id. at 185.

151 Id. at 188.

152 Id. at 189.

153 Many letters home reflected a “nursing soldier” narrative. Id. at 190.

154 CUTTER, supra note 147, at 193.

155 THE LOYAL WOMEN OF THE COUNTRY TO ABRAHAM LINCOLN (1863), reprinted in WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 125.

156 Id. at 125–26 (“By a mere stroke of the pen you have emancipated millions from a condition of wholesale concubinage. We now ask you to finish the work by declaring that nowhere under our national flag shall the motherhood of any race plead in vain for justice and protection . . . .”).

157 Kerber, supra note 69, at 31. This reality was troubling for suffragists in the backdrop of the divisive question at the outset of the war of whether to get involved in the war effort or continue suffrage activism. See generally Kerr, supra note 146, at 63 (articulating the competing claims of race and sex).

158 See U.S. CONST. amend. XIV, § 2. See also SEVERN, supra note 146, at 83–89 (detailing suffragist efforts to keep “male” out of the Fourteenth Amendment).
sal principles of male governance, supporting this entrenched masculinities thesis over broader equality principles. One editorial described the Fourteenth Amendment to a "spider-crab [walking] backwards," laying "legal disabilities" on women. The word male revealed the changing political paradigm regarding citizenship and sex. While implied disenfranchisement of women was enough in the founding era, increased agitation for public roles necessitated careful drafting after the Civil War to avoid enfranchising women. The Fourteenth and Fifteenth Amendments worked together to accomplish this.

While it was not the "woman's hour" after the Civil War, the Fifteenth Amendment became the structural parallel to the Nineteenth Amendment. Indeed many Southerners viewed the Nineteenth Amendment as "an extension" of the Fifteenth Amendment, an amendment they deeply resented. The Fifteenth Amendment was distinctly about political rights yielded directly by military service. The Fourteenth Amendment at that time was distinctly framed around civil rights, separate from political rights (the right to vote, hold office, serve on a jury, and serve in a militia). Black men's enfranchisement was notably not just about voting; it was about attaining the full rights and responsibilities of the

159 Suffragists launched a "New Departure" strategy to test the Fourteenth Amendment, but this campaign was unsuccessful. See, e.g., Kerber, supra note 69, at 32. Success was unattainable because Section 2 ensured that states would not "abridge the privileges or immunities of citizens of the United States." U.S. CONST. amend. XIV, § 2. Susan B. Anthony's historic voting prosecution rejected the argument that voting was a privilege and immunity within the meaning of the Fourteenth Amendment. See id. The Supreme Court confirmed this interpretation when it held that the Fourteenth Amendment did not confer the vote on women, upholding women's exclusion from Missouri voting legislation in Minor v. Happersett. See 88 U.S. 162 (1874) (explaining that this proposed interpretation of the Nineteenth Amendment cannot come from the court, but rather needs a constitutional amendment or federal statute).


161 See, e.g., Cooper, supra note 115, at 12 (redefining citizenship in masculine terms as it relates to voting).

162 See DuBois, supra note 96, at 84.

163 Siegel, supra note 9, at 147.

164 See generally Marjorie Spruill Wheeler, A Short History of the Woman Suffrage Movement in America, in One Woman One Vote: Rediscovering the Woman Suffrage Movement 9 (Marjorie Spruill Wheeler ed., 1995). A South Carolina Senator said in 1919, "Here is exactly the identical same amendment applied to the other half of the Negro race. The southern man who votes for the Susan B. Anthony Amendment votes to ratify the fifteenth amendment." Reva B. Siegel, She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family, 115 Harv. L. Rev. 947, 951 (2002) (citing 58 Cong. Rec. 618 (1919)).

165 Amar, supra note 25, at 471.

166 Id. at 467 (noting that today when we talk about civil rights we mean voting, but when the Fourteenth Amendment was ratified it meant to own property, to contract, to sue, to pursue a career, to inherit, to worship, to assemble, etc.).
political domain. Parallel statutes worked in harmony with the Fifteenth Amendment to position black men to serve on juries and to stand for political office. Because the Fifteenth Amendment was about *male* political rights, overt discussion of the military service obligations it imposed was mooted. This obscured questions of women's full political citizenship after the Nineteenth Amendment.

The arguments used to oppose women's suffrage after the Civil War also reinforced the endurance of the foundational fusion. Opponents framed the debate by adapting the same republican government traditions and separate spheres arguments that had normatively excluded women since the founding. Men protected women and represented them; white men did not protect or represent black (men) consistent with republican government guarantees. Therefore black men needed self-governance to protect their political rights. Frederick Douglass articulated the distinction in powerful terms:

> With us, the matter is a question of life and death, at least, in fifteen States of the Union. When women, because they are women, are hunted down through the cities of New York and New Orleans; when they are dragged from their houses and hung upon lamp-posts; when their children are torn from their arms and their brains dashed out upon the pavement; when they are objects of insult and outrage at every turn; . . . then they have an urgency to obtain the ballot equal to our own.

Another Civil War veteran explained that "memories of the violence" supported the argument that those "who had not been vulnerable to cannon fire were not politically equal." Contemplating women's suffrage, the New York World published that:

> [W]oman, being exempted by her sex from military duties and responsibilities, holds all her rights by sufferance. . . . The capacity of men for political life does not depend upon their ability to drink tea . . . or spout speeches, but on the hardihood and strength of character which nerves them for military service at

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167 Id. at 468.
168 Id. at 471.
170 Kerber, *supra* note 1, at 243.
the call of the state. . . . It is female soldiering, not public tea-drinking, that must efface this distinction.\textsuperscript{171}

Reflecting the growing fracture in the suffrage movement,\textsuperscript{172} suffragists divided sharply over the enfranchisement of black men; some agreeing that it was “the Negros’s hour” and others believing that women’s suffrage demanded constitutional redress.\textsuperscript{173} Some suffragists were outraged because they had devoted themselves to the abolitionist movement and the war effort only to be excluded from the resulting rights expansions, betrayed by abolitionist arguments that this was not the woman’s hour for suffrage, and fearful of exactly how long it would take to undo the setbacks. (Indeed it would take over half of a century.\textsuperscript{174})

Post-bellum women’s suffrage arguments failed—this paper argues—in part, because of the endurance of the foundational fusion that entrenched masculinities within the republican government tradition of the citizen-soldier. Women were excluded from the Fifteenth Amendment (and the proposed Sixteenth Amendment failed)\textsuperscript{175} because exclusive male governance remained consistent with entrenched masculinities within the republican government tradition and because “bullets for ballots” remained the predominant paradigm for rights.

IV. POSITIONING THE NINETEENTH AMENDMENT WITHIN THE FOUNDATIONAL FUSION TO RESURRECT ITS RELEVANCE TO MILITARY INTEGRATION

After seventy years of grass-roots activism, women won the right to vote when the Nineteenth Amendment was ratified on August 18, 1920.\textsuperscript{176} Two

\begin{footnotes}
\item [171] Id. (quoting WOMAN’S JOURNAL, Apr. 2, 1870 reprint of New York World Article).
\item [173] See, e.g., TERBORG-PENN, supra note 144, at 135–45 (documenting the fierce fracture in the women’s suffrage movement over the Fourteenth and Fifteenth Amendments and the suffrage movement’s organizational splits). Some suffragists exacerbated the segregationist sentiment of the Jim Crow laws in their advocacy. Id. at 135–36.
\item [175] JOHNSON, supra note 81, at 113–14. In February 1869, Representative George W. Julian (Republican – Indiana) submitted a proposed women’s suffrage amendment, primarily on the grounds of women’s political literacy. Id.
\item [176] MELVIN I. UROFSKY & PAUL FINKELMAN, A MARCH OF LIBERTY, A CONSTITUTIONAL HISTORY OF THE UNITED STATES 608 (2d ed. Oxford Univ. Press 2002) The Nineteenth Amendment was approved on Aug. 18, 1920, after Tennessee became the thirty-sixth state to ratify it. Id. This democratic achievement nearly doubled the number of eligible voters. Id. The achievement was a “capstone of a multigenerational effort to change the terms of the original constitutional
\end{footnotes}
aspects of suffragists’ Nineteenth Amendment strategy inform its relevance to women’s military integration: the shift from state to federal suffrage campaigns and leveraging the foundational fusion and its entrenched masculinities.

A. The State Suffrage Victories Bypassed the Military Integration Question Directly

Because the suffrage movement maneuvered from a state to a federal campaign at transformative times in military history, the suffrage debate subdued and bypassed the direct question of military integration. In the late 1800s, suffrage trudged through the Western states at a glacial pace. It lacked the momentum and support for a full-fledged federal campaign. Importantly, during this tedious progress of the state suffrage movement, the state militia function was largely dissolved—it certainly no longer played a performative citizenship function locally.

Absent compulsory state militia service, women’s enfranchisement at the state level bypassed any discussion of the correlating obligations of citizenship through military service. Indeed women’s suffrage did yield their right to serve on juries in many state suffrage victories. Women were integrated on juries in Utah in 1898, Washington in 1911, Kansas in 1913, California in 1917, New Jersey in 1917, and Michigan in 1918, all just years after women got the vote. Given the transformative shift from local militias to the national military discussed above, these states never had to consider women’s corollary commitments to state militias.

B. The National Suffrage Campaign Leveraged the Foundational Fusion and its Entrenched Masculinities

Viewing the Nineteenth Amendment through the foundational fusion informs its relevance to military integration today legally, historically, and politi-

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177 In 1890, Wyoming came into the union as the first state to enfranchise women. CHRISTINE LUNARDI, FROM EQUAL SUFFRAGE TO EQUAL RIGHTS 2 (1986). Colorado and Utah followed in 1893 and 1896, respectively, then Idaho. Id. at 2–3. It was another fourteen years before Washington enfranchised women (1910) and fifteen until California followed suit (1911). Id.

178 Id. at 2–3. Women needed state victories to catapult and catalyze their call for suffrage to a national level. Id. An 1887 Washington Post article bluntly stated that women were wasting their time at the federal level. JOHNSON, supra note 81, at 116. Rather, women should be active in the states to show Congress that this was a plausible and politically tenable movement. Id. The New York Times reported that “[i]t is, with all due respect to the advocates of woman suffrage, absurd to ask Congress to propose an amendment on this point requiring the assent of three-fourths of the states, when not a single State has adopted unqualified woman suffrage.” Id. Political leaders on the national level strongly believed that suffrage was appropriately a matter of state politics. Id. at 126. (Wilson certainly thought this, see id.).

179 See JOHNSON supra note 81, at 137 (listing women’s state suffrage victories).
EXAMINING ENTRANCED MASCLINITIES

Part of the national suffrage victory entailed women’s successful deployment of the foundational fusion and its entrenched masculinities as advocacy strategies.

1. Challenging the Protectionist Underpinnings that Excluded Women from the Foundational Fusion

Suffragists ultimately won the vote by successfully leveraging their loyalty and military service within the foundational fusion and its prevailing masculinities. Importantly, the suffrage battle exploded on a viable national stage at precisely the same time that Congress and the President were codifying national draft obligations. ¹⁸⁰

From 1913–1920 the suffrage movement experienced a “revitalization of dramatic proportions,” shifting from the state to the national level.¹⁸¹ This shift followed the momentum of state suffrage victories, the progressive era reforms,¹⁸² and critical new framings of suffrage arguments within a national¹⁸³ and international lens¹⁸⁴ as existing legal and historical accounts document. This article adds new accounts within the context of the foundational fusion.¹⁸⁵

¹⁸¹ LUNARDI, supra note 177, at xiii.
¹⁸² The late nineteenth century was a time of rapid social and economic change. Women championed wide-scale social reforms in literacy, poverty, homelessness, working conditions, fair wages, and temperance. WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 135. In these reform activities, women engaged the government directly, positioning women to use social rights as a platform for women’s political activism. Id. at 136. These reform efforts benefited women because women were often the victim of social ills such as drunkenness and licentiousness. Id. While women often agitated on moral and local grounds, they invoked the protectionist role of the federal state politically in new ways. Id. at 135–36.
¹⁸³ See LUNARDI, supra note 177, at 25. Alice Paul and other suffragists keenly understood how Roosevelt’s “bully pulpit” had changed the office. Id. She understood that the presidency was a strong national and party leader in the progressive era. Id. “Win the President and you win the battle.” Id. The suffrage movement also strengthened its national base as the country celebrated its centennial. As the early suffragists had done in the Declaration of Sentiments, women seized on the democratic founding principles and the Founder’s own words. Id. As Susan B. Anthony powerfully claimed at the nation’s centennial in Philadelphia, “The aristocracies of the old world are based upon birth, wealth, refinement, education, nobility, brave deeds of chivalry; in this nation, on sex alone; exalting brute force over moral power, vice above virtue, ignorance above education, and the son above the mother who bore him.” WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 163. See generally Alexander Tsesis, Representative Self-Government and the Declaration of Independence, 97 CORNELL L. REV. (forthcoming May 2012), available at http://ssrn.com/abstract_id=1855230 (last revised Sept. 19, 2011) (positioning the Declaration of Independence as a document relevant to collective self-governance and chronicling its use as an advocacy tool in suffrage campaigns).
¹⁸⁴ One particularly famed moment of suffragists’ protest included the banner in front of the White House stating: “Kaiser Wilson: Have You Forgotten Your Sympathy With the Poor Germans Because They Were Not Self-Governed? 20,000,000 American Women Are Not Self-
From the founding, republican government traditions positioned men as the representatives of women distinctly framed in a protectionist role. Supfragists carefully challenged the protectionist ideologies of national leaders to undermine this prevailing assumption. This implicitly challenged the foundational fusion and prevailing masculinities. For example, Alice Paul and the National American Woman Suffrage Association ("NAWSA") staged the famed March 3, 1913 suffrage parade attempting to upstage Wilson’s inauguration and shift the suffrage movement to a national stage, yet the parade played a much bigger role than anticipated. The parade was a “near-riot” as police stood idly by as hostile onlookers antagonized and attacked marchers, doing nothing to restore order. Paul and NAWSA strategically used this event to challenge the protectionist assumptions that supported separate sphere ideologies and republican government. Harriot Stanton Blanch of the Women’s Political Union, wrote to Wilson: “[T]he Government, which is supposed to exist for the good of all, left women, while passing in peaceful procession in their demand for political freedom, at the mercy of a howling mob on the very streets which are at this moment so efficiently officered for the protection of men.” Suffragists successfully used this imagery and the protectionist contradictions to stir national support for a federal amendment. Paul and others continued this campaign by publicizing widely their later arrests and the brutality of their state confinements. These tactics successfully challenged protectionist assumptions, which

Governed. Take the Beam Out of Your Own Eye.” Suffragist Banner Outside the White House (1918), available at http://memory.loc.gov/cgi-bin/query/h?ammem/mnwp:@field(NUMBER+@band(mnwp+160030)). These tactics marked dramatic transformations in women’s political activity—from the highly deferential strategies of early suffragists to direct personal challenges undermining male authority within the republican government tradition.

See, e.g., Valorie Vojdik, At War: Narrative Tactics in the Citadel and VMI Litigation, 19 HARV. WOMEN’S L.J. 5 (1996) (explaining how litigation regarding integrating single-sex military educational institutions “excluded from their narrative any mention of the history of these military institutions or their role in Southern history and culture”).

Johnson, supra note 81, at 126 (noting that President Wilson held traditional views about women’s place in the home framed around protectionist arguments).

Id. at 29.

Id. at 9, 29 (crediting Alice Paul with critical tactical shifts in the suffrage movement as she brought a dynamic force that “propelled American suffragism to its successful end”). Paul sought to hold the political leaders directly “responsible for the fate of a federal suffrage amendment.” Id. at 20.

Johnson, supra note 81, at 106–07.


Dodd, supra note 191, at 404–07.
simultaneously challenged the republican government principles that historically justified women’s exclusion from political citizenship.

In so doing, suffragists were simultaneously tapping into the exclusory ideologies of the foundational fusion in troubling ways. One historian describes this fracture, explaining that women secured the vote by “embrac[ing] the white, middle-class, nativist, racist sentiments prevalent during the Progressive Era under the guise of expediency.” Troubling tales emerged from the suffrage movement as suffragists excluded black women and revealed pervasive prejudices in their advocacy and ideologies. Indeed Southern legislators even attempted to limit the Nineteenth Amendment to white women.

The Nineteenth Amendment advocacy, when read through a masculinities lens, reveals the invocation of entrenched masculinities to advocate for suffrage in important ways that expand the relevance of the Nineteenth Amendment today.

2. The Unavoidable Intersection of Military Service and Women’s Suffrage

The suffrage movement also successfully leveraged women’s military contributions and service to win suffrage. Suffragists understood—within the foundational fusion and its entrenched masculinities—that women’s service and loyalty created an “opportunity” for women’s enfranchisement and they successfully cast suffrage as a war measure.

The pinnacle of the federal suffrage debate occurred contemporaneous with the first national draft legislation and within a distinct “war measure” frame that successfully leveraged the foundational fusion. On May 17, 1917, Wilson sent the draft law to Congress. The National Defense Act of 1916 had

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194 Id. at 268–70 (noting racism within the woman suffrage movement and detailing the movement to exclude Ida Wells-Barnett from the famous suffrage parade in March 1913 because NAWSA sought to “keep our delegation entirely white”).
195 TERBORG-PENN, supra note 144, at 147–49 (explaining how suffragists tried to seize the vote by advocating that white women would “counter the negro vote in the South”). Terborg-Penn chronicles the deep racism within women’s clubs, organizations, etc. Id. at 147–48.
196 Id. at 149.
197 See, e.g., SEVERN, supra note 146, at 167 (explaining how suffragists paraded mothers of enlisted soldiers and nurses visibly in the 1917 suffrage parade).
198 See generally Fowler, supra note 180, at 301 (explaining how Carrie Chapman Catt recognized the value of “patriotic service” and cast the suffrage movement in such terms to position women to be “repay[ed]” for service with the vote).
199 This provoked a legal challenge. In January 1918, the Supreme Court upheld the draft as constitutional under Congress’s Article I power to raise and support armies, to provide and main-
further nationalized the National Guard and empowered the President to institute a wartime draft.200 The 1917 Selective Service Draft Act required all men to register for the national draft.201 This inextricably intertwined national citizenship and military service.202

Wilson successfully invoked his Commander in Chief power to declare suffrage a vital war measure. Wilson advocated in December 1918 in his State of the Union address that “women were important in the war effort and ‘the least tribute we can pay them is to make them the equals of men in political rights.’”203 Wilson spoke on thirty minutes notice to the Senate chamber, declaring the amendment “vital to the winning of the war.”204 Americans had to “give justice to women.”205 “I tell you plainly that this measure which I urge upon you is vital to the winning of the war and to the energies alike of preparation and of battle.”206 Wilson critically positioned women as loyal partners central to the war effort. In doing so, he invoked the long-standing tradition of military service catalyzing enfranchisement and leveraged the new national tenor of military service within his Commander in Chief power.

Many anti-suffrage arguments accordingly positioned their opposition squarely within the male citizen-soldier republican government tradition, positioning the “bullets for ballots” paradigm front and center. Consider some of the following opposition arguments distinctly invoking the foundational fusion:

- “[Women,] they cannot bear their proportion and share of the public burdens. Men represent them in the Army and in the Navy; men represent them at the polls and in the affairs of the Government.”207
- “[W]hen the women of this country come to be sailors and soldiers . . . then it will be time to talk about making [them]

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200 SNYDER, supra note 13, at 99.
201 Id. at 100.
202 UROFSKY & FINKELMAN, supra note 176, at 602.
203 JOHNSON, supra note 81, at 132. The historic moment that triggered Wilson’s famed speech to the Senate was Senator Benet’s switch to oppose woman suffrage. Senator Benet squarely challenged Wilson’s war measures argument first raised in his State of the Union Address. In Senator Benet’s high-profile about-face, he stated: “I do not think woman suffrage is necessary at this time[.] I cannot regard it as a war measure. I fail to see how politics can have anything to do with it. I put principle above party interests and I put war measures above anything else.” Id.
204 LUNARDI, supra note 177, at 145.
205 Id.
206 JOHNSON, supra note 81, at 132.
207 WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 140 (quoting Senator George H. Williams of Oregon on suffrage).
voters; but until that time, the question is not fairly before the country.'\textsuperscript{208}

- "[They] are not called upon to serve the Government as the men of America are. They do not bear the bayonet, and have not that reason why they should be entitled to the ballot; and... the God of our race has stamped upon them a milder, gentler nature, which not only makes them shrink from, but disqualifies them for the turmoil and battle of public life."\textsuperscript{209}

- "[T]o extend the rights of suffrage to the negroes in this country I think is necessary for their protection; but to extend the right of suffrage to women, in my judgment, is not necessary for their protection."\textsuperscript{210}

Some suffragists responded to questions of women’s military obligations directly. At least some sought the vote on fully equal political terms, as expressed by Tennie Claflin: "[T]hough women can never be like man, she can be his equal in all the rights and privileges of life."\textsuperscript{211} This included women’s military service. Claflin’s response directly invoked the citizen-soldier republican government tradition, carefully emphasizing women’s volunteer service and their inclination toward governing for the collective good: 

> It is frequently advanced as an argument or rather set off against giving woman the right of the ballot, that if she votes she should be subject to draft for military duty. Well, we have no objection. All we would ask is that when the conscription is made, none may be accepted save those who are really physically competent. ... But in case of a call for volunteers, there is not a doubt if women were permitted to serve, a great many more would come forward at their country’s call than would be found able to carry arms. Let women do as they please. Restrict them by no laws that would not equally bind men. Give to both men and women the guide of a properly educated and developed conscience, and there will be no need of arbitrary laws binding either to their separate duties ... If women should not vote be-

\textsuperscript{208} \textit{Id.} (quoting Senator George H. Williams of Oregon).
\textsuperscript{209} \textit{Id.} at 140–41 (quoting Senator Frederick T. Frelinghuysen of New Jersey on suffrage).
\textsuperscript{210} \textit{Id.} (quoting Senator George H. Williams of Oregon on suffrage).
\textsuperscript{211} \textsc{Tennie C. Claflin}, \textit{Constitutional Equality: A Right of Woman} 9 (\textsc{Law Books Exchange, Ltd. 2008}) (1871).
cause they are non-combatants, then all non-combatants should be deprived of the ballot.212

Understanding the persistence of the foundational fusion reveals a new dimension of women’s modern military exclusion, explored in Section V.

V. BROADENING THE FRAME ON MILITARY INTEGRATION FROM EQUAL PROTECTION TO TRANSCENDING MASCULINIZED CITIZENSHIP

The rights and obligations of military service have historically been reciprocal to citizenship.213 In a symbiotic context, even today, depriving women of full access to collective self-defense inherently undermines their role in self-governance. This troubles women’s political participation in war, frames citizenship in masculine terms, and undermines women’s presidential candidacies.

This Article suggests that the Nineteenth Amendment is a tool for women’s military integration when understood in the context of the foundational fusion. As Akhil Amar explained, the Nineteenth Amendment works as “a kind of estoppel argument.”214 Because the Nineteenth Amendment affirmed women’s political equality, certain arguments using sex-based differences to support differential treatment are impermissible.215 This estoppel argument applies both to women’s jury service and to women’s military integration. Just as the Fifteenth Amendment was not just about voting; it was about attaining the full rights and responsibilities of the political domain, so too could the Nineteenth Amendment. Because the Fifteenth Amendment was about male political rights, overt discussion of the military service obligations it imposed was mooted.

Indeed after the Nineteenth Amendment, women’s jury service became the next question of political equality. Former suffrage activists, such as the League of Women Voters waged expansive and expensive movements for women’s jury service.216 Several states accordingly amended their codes to make women eligible for jury service by construing the Nineteenth Amendment’s broader equality mandate:217 “The spirit of equality of the sexes which [the Nineteenth Amendment] breathes moved the Legislature of New Jersey in 1921 to amend our act concerning jurors so as to include . . . women as well as men.”218 Linda Kerber positioned this jury integration argument as relevant to

212 Id. at 44–45.
213 Kerber, supra note 1, at 304.
214 Amar, supra note 35, at 472.
215 Id.
216 Johnson, supra note 81, at 137 (noting that the League of Women Voters particularly championed women’s jury duty: “getting the word ‘male’ out of jury statutes is requiring something very like a second suffrage campaign—laborious, costly, and exasperating”).
217 Id. (explaining that after the Nineteenth Amendment was ratified many state statutes automatically triggered women’s jury service).
218 See Siegel, supra note 9, at 162 (quoting State v. James, 114 A. 553, 556 (N.J. 1921)).
military service, too: "The doubled significance of arms-bearing is in some respects analogous to the doubled meaning of jury service. In both, individual vulnerability to an obligatory service simultaneously functions as the empowerment of the citizen and a constraint on governmental power."219

Opponents of women's jury service challenged women's capabilities relative to male intellectual norms. One Washington State Supreme Court Justice argued, for example, that "'the labor and responsibility which [jury service] imposes [is] so onerous and burdensome, and utterly unsuited to the physical condition of females'" that the legislature could not have intended to impose such an obligation.220 Women could not have the "masculine will and self-reliant judgment of man."221

Modern military integration opposition arguments are also grounded in the same protectionist arguments that were estopped by the Nineteenth Amendment. Justice Sutherland's opinion in Children's Hospital v. Adkins, broadly noted that

[in view of the great—not to say revolutionary—changes... in the contractual, political, and civil status of women, culminating in the Nineteenth Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point...[W]oman is accorded emancipation from that old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships.222

Rhetorically depicting women as privileged by the right to serve without the obligation to serve is "residue of the old system of domestic relations, the system of coverture."223 As the historical and structural framing presented in Sections I through VI of this article revealed, when revived from its "historical erasure," the Nineteenth Amendment is a powerful modern weapon for women's full political equality.

Before the Equal Rights Amendment was proposed some courts and legislative bodies also interpreted the Nineteenth Amendment to support full political equality.224 Reva Siegel's groundbreaking Nineteenth Amendment work uncovered early expansive interpretations of the Nineteenth Amend-

219 KERBER, supra note 1, at 240.
221 Id. at 13.
222 Siegel, supra note 9, at 157 (citing Adkins v. Children’s Hosp., 261 U.S. 525, 553 (1923)).
223 KERBER, supra note 1, at 304.
224 See Siegel, supra note 9, at 161. Siegel’s work reveals how the Supreme Court and Congress sporadically interpreted the Nineteenth Amendment “as reflecting and embodying a commitment to disestablish the gender-status norms of the common law.” Id.
ment, revealing its relevance to political equality more broadly and suggesting elements of historical erasure. The Equal Rights Amendment ("ERA"), introduced just four years after the Nineteenth Amendment, may have ironically muted the impact of the Nineteenth Amendment’s broader mandate. The National Women’s Party sought to position the ERA as implicitly enshrined in the Fourteenth and Nineteenth Amendments. This argument was a tricky one—simultaneously demanding a necessary constitutional amendment yet arguing that it implicitly existed anyway. Yet the ERA debate addressed the complexities of women’s military service in ways that might have sidelined the Nineteenth Amendment’s relevance. ERA advocates emphasized the existence of motherhood exemptions and other exclusionary practices of military recruitment to soften political fears of full military integration.

By the time that women’s military integration emerged on the feminist agenda in the 1970s, “an act of historical erasure” had excluded the Nineteenth Amendment’s deeper historical roots from its modern functional understanding. By the 1970s, dramatic strides in racial discrimination—achieved largely through court interpretations of the Fourteenth Amendment’s equal protection clause—transformed women’s rights advocacy. With a rich body of race-based discrimination cases emerging, courts considering sex discrimination never seriously examined the history of the Nineteenth Amendment. For example, Justice Brennan in Frontiero presented the historical discrimination of women

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225 Immediately after Nineteenth Amendment was ratified, some courts read it to convey the “normative commitments leading to its adoption, and so concluded that it had constitutional significance in matters other than voting.” Id. at 154. For example, Maine interpreted the Nineteenth Amendment to overturn a state constitutional provision prohibiting women from serving as Justice of the Peace, holding that “[e]very political distinction based upon consideration of sex was eliminated from the Constitution by the ratification of the amendment. Males and females were thenceforth, when citizens of the United States, privileged to take equal hand in the conduct of government.” Id. at 161–62. In 1922, women lobbied for the Cable Act to allow women to keep their citizenship if they married foreign nationals. Congress, one year before the ERA, understood the Nineteenth Amendment’s relevance. One congressman said: “[I]n my judgment there was no particular force in the demand for this bill until the nineteenth amendment became part of the organic law of the land. . . . At that moment the doctrine of dependent or derived citizenship became as archaic as the doctrine of ordeal by fire.” Id.

226 WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 137; DEBORAH G. FELDER, A CENTURY OF WOMEN: THE MOST INFLUENTIAL EVENTS IN TWENTIETH-CENTURY WOMEN’S HISTORY 270 (1999) (noting the ERA was introduced in 1923).

227 Siegel, supra note 9, at 165. Supreme Court Justice Ruth Bader Ginsburg has said “there was always a view that once the Nineteenth Amendment was passed and it made women full citizens, that was, in effect, an Equal Rights Amendment. . . . Many people thought that you could put the Fourteenth Amendment together with the Nineteenth Amendment and that was essentially the Equal Rights Amendment. But it didn’t happen.” Id. (citing Comments of Ruth Bader Ginsburg in John Marshall Law School Alumni News December 1994, at 45).

228 WOMEN’S RIGHTS IN THE UNITED STATES, supra note 23, at 292–93.

229 Siegel, supra note 9, at 166, 168 (“[B]y 1970, there was a sketchy body of precedents that viewed the Nineteenth Amendment as recognizing women’s equal civic status.”).

230 Id. at 168.
as relevant only as the discriminatory history relates to blacks, never citing the Nineteenth Amendment, despite a constitutional challenge to a military benefit. 231 Nor did Justice Ginsburg explore the Nineteenth Amendment's relevance to the Virginia Military Institute's quest to turn men into citizen-soldiers. 232 As Siegel concludes, this "effaces the history of women's treatment in the American legal system." 233

Bearing arms for one's nation has long been recognized as the highest duty a citizen can provide. 234 Ninety years after the Nineteenth Amendment was passed, women remain excluded formally from fully participating in this "fundamental civic obligation" 235 voluntarily and they bear no obligation to serve. For over two hundred years women's military exclusion has been rooted in the foundational fusion of citizenship, military service, and masculinity. This reality suggests that military integration is about more than individual rights, but cuts to the core of political citizenship entirely.

If the Nineteenth Amendment offered women full political equality, perhaps we have eulogized the Nineteenth Amendment prematurely. 236 Women have played a role in every war since our country's founding. Moreover they have maneuvered within the complex and pervasive gender norms of the prevailing citizen-soldier traditions of the era and found a way to voluntarily participate in every war "outside the boundaries of reciprocity and entitlement." 237

Yet formal and substantive discrimination still pervades the military. 238 Women are still formally excluded from many combat positions in the milit

231 Id. at 170 (citing Frontiero v. Richardson, 411 U.S. 677 (1973)).
233 Siegel, supra note 9, at 170–71.
234 Kerber, supra note 1, at 246 (citing Chief Justice Edwards Douglas White).
236 Women routinely vote in federal, state, and local elections, run for all political offices, sit on juries, and generally experience unencumbered access to politics. See Firsts for Women in Politics, Center for American Women in Politics, http://www.cawp.rutgers.edu/fast_facts/resources/Firsts.php (last visited Oct. 10, 2011). The recognized voting "gender gap" shows that women do not just cast votes, but wield real political power. Statistics from the 2008 election show that women accounted for more than half of votes nationwide and female voters outvoted their male counterparts by nearly 10 million votes. Gender Differences in Voter Turnout, Center for American Women in Politics, http://www.cawp.rutgers.edu/fast_facts/voters/documents/genderdiff.pdf (last visited Oct. 10, 2011). In addition, the 2008 election featured exceedingly viable female presidential contenders in Hillary Rodham Clinton and Vice Presidential candidate Sarah Palin. These points might suggest that the Nineteenth Amendment is a celebratory relic of the nineteenth and twentieth centuries' women's suffrage movement, seemingly irrelevant today in a functionalist sense. We might well hoist the Nineteenth Amendment "mission accomplished" flag on these accounts alone.
237 Kerber, supra note 1, at 223.
238 Office of the Assistant Sec'y of Def. for Pers. and Readiness, Table C-25: FY 2009 Selected Reserve Officers by Occupational Area, Component, and Race/Ethnicity, Population Representation in the Military Services 2009, available at
Women are not compelled to register for the draft under the Military Selective Service Act. Women still comprise only fifteen percent of military personnel, making the military a clearly male-dominated organization. Ground combat restrictions effectively and legally exclude women from approximately twenty percent of all military occupations. Women still occupy heavily gendered roles in the military and experience relatively low enlistment.

http://prhome.defense.gov/MPP/ACCESSION%20POLICY/PopRep2009/appendixc/c_25.html (last visited Sept. 20, 2011) (showing that white military personnel hold more positions than minority military personnel in all occupational areas).


Women in the Army and Marines are prohibited from serving in units of battalion size or smaller, particularly in units where the primary mission is ground combat; similarly woman are prohibited from working the following occupational fields: infantry, armor, Special Forces, ranger units, ground surveillance radar platoons, combat engineer line companies, and short-range air defense. Women in the Navy are excluded from working on submarines, special forces (SEALS); working as fire control technicians, missile technicians, and sonar technicians. David R. Segal & Mady Wechsler Segal, America’s Military Population, POPULATION BULL., Dec. 2004, at 28, available at http://www.prb.org/source/ACFl396.pdf (last visited Oct. 17, 2011).

Even when women have filled the military in historic numbers, women have tended to hold these positions during times of excessive need caused by shortages of "manpower." No woman has ever served as President of the United States (the Commander in Chief) or Secretary of Defense.

Even where women are serving in the military in meaningful numbers, the military remains a paradigmatically masculine institution. Men can construct their masculinities both by military service itself and by the formal exclusion and marginalization of women and gays. The landmark Virginia Military Institute case revealed the extent to which citizen-soldiers are still entirely masculine and still constructed on the same notion of "the other" as our early militias within the foundational fusion. As the Virginia Military Institute's Public Relations Director said: "We know how to train young men to be men. We don't know how to train young women to be men." Our modern military still trains men to be masculine citizens, despite the Nineteenth Amendment's implicit command for women's full political equality and despite all of the changes to our modern military institutions.

Women's exclusion from full combat roles distorts modern understandings of military service. Modern warfare has largely eroded traditional understandings of the citizen-soldier. Modern soldiers no longer train in the town square with muskets and bayonets. Male military obligations create a "valorization of male violence" that extends beyond the military to broader cultural masculine norms. "Simply inserting ‘women’ into a misogynistic warrior culture

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244 Segal, supra note 242, at 28.
245 See Toth, supra note 243, at 329–30 (highlighting the Spanish-American War and the World Wars as examples of women’s military involvement). See also MATTHEW J. MORGAN, THE AMERICAN MILITARY AFTER 9/11: WOMEN IN THE MILITARY 48 (2008) (explaining that women’s roles in the military have evolved from women’s limited participation along gender lines to more substantive military service as manpower shortages necessitated more involvement, such as the Vietnam War).
249 See Vojdik, supra note 185, at 19 (“By constructing women as “the other,” the VMI decisions perpetuate the myth that women are fundamentally and naturally different from men.”).
250 SNYDER, supra note 13, at 137.
251 See, e.g., KERBER, supra note 1, at 301.
252 Id. at 300. See also Valorie Vojdik, Beyond Stereotyping in Equal Protection Doctrine: Reframing the Exclusion of Women from Combat, 57 ALA. L. REV. 303, 305 (2005) (explaining that the ground combat exclusion is better framed as “an institutional practice that constructs warriors as male and masculine while demeaning women”).
does not eliminate the conflation of soldiering with ‘masculinity,’ but rather produces sexual harassment and rape, as evidenced by the broad array of recent scandals within the American military. Because of traditional dichotomous constructions of gender, female individuals are viewed not as ‘soldiers,’ but as ‘women.’”

Women’s political rights were shaped by contemporaneous contextual limitations. While it certainly cannot be said that women’s seventy-year campaign for suffrage was affirmatively seeking military integration, read in historical, structural, and rhetorical context, women were advocating for sweeping reforms rooted in challenging the foundational fusion of citizenship, military service, and masculinities. Given the radicalism of suffrage itself, even if the suffrage movement was not waged directly for military integration, that does not foreclose its deep relevance now.

Framing women’s military integration within the Nineteenth Amendment’s historical and structural context reveals a more sustainable and tenable advocacy strategy than equal protection alone. Siegel explores how modern advocates’ frame women’s rights arguments within the Equal Protection Clause through its nexus to race discrimination. This approach is inherently limited for all of the constitutional and historical narrative reasons that Siegel raises and for two additional ones when applied to military integration. The Equal Protection Clause is about individual rights. To frame military integration advocacy around individual rights positions the movement at the margins. It leaves advocates and courts to resolve the claims of the minority of women who affirmatively seek combat or to respond to the minority of men who challenge obligatory service.

Suffrage activists once believed that their greatest obstacle to the vote was not male opposition, but female indifference. The same might be said today about women’s military integration. Kerber compared it directly to women’s exclusion from jury service, “It took nearly a century to develop a precise understanding of the behaviors required of jury service and to arrive at a general consensus that jury service is an obligation that rests equally on citizens regardless of gender. But on bearing arms there is still nothing resembling a

253 Snyder, supra note 13, at 7.

254 See, e.g., Wheeler, supra note 172, at 9 (explaining that suffrage was “a symbol of women’s equality and individuality and a means of improving women’s legal and social condition”); Patricia Grimshaw, Women’s Suffrage in New Zealand Revisited: Writing from the Margins, in SUFFRAGE AND BEYOND, INTERNATIONAL FEMINIST PRESCRIPTIVES 25 (Caroline Daley & Melanie Nolan eds., 1994) (“This new history of suffrage must acknowledge suffragists’ unstable speaking positions and embrace the discontinuities in their texts, rather than seek to iron out ambiguities in the interests of a smooth linear narrative.”).

255 Severn, supra note 146, at 66 (“[M]ost of America’s women showed little interest at first in the crusade to win them the right to vote.”).

256 See generally Diane Mazur, A MORE PERFECT MILITARY 190 (2010) (explaining how we have a growing “civil-military gap” that pushes solutions “farther out of reach”).
consensus.” Yet military service is every bit as essential to our civic society as jury service, indeed perhaps more so. To not agitate or obtain the obligations of military service undermines women’s full political participation.

Scholar Valorie Vojdik keenly argued for the conceptualization of gender as something that is produced at the institutional level, not just the individual level, “a social process of exclusion that distinguishes persons based on their sex, simultaneously reinforcing a hierarchy that privileges the male and masculinity, and subordinates women.” This Article suggests that we should layer on additional understandings of how the state endorses and enforces institutional gender even as it transforms historically. This article reveals that masculinities—and the state’s construction of masculinities within the foundational fusion—have persisted as a tool of women’s military exclusion.

The implications of military integration are further relevant to women’s war related activity and presidential candidacies, suggesting broader concerns of political citizenship. Women’s war-related political activity must still navigate gendered landmines, just as it has since our founding. Consider, for example, Kathryn Abrams’s study of three groups of women who mobilized around gender in war resistance. Abrams explained that women’s political voices are suppressed during war as “bearings arms” becomes the fundamental obligation of citizenship. In war, male citizens have privilege to mount a political protest, because they “are the paradigmatic citizens whose obligation extends to dying for their country, whereas women are almost never subject to mandatory military service.” To gain political legitimacy, women have to invoke their moral and gendered experiences, just as the suffragists did to secure the vote. They speak as actual mothers who lost sons or as metaphorical mothers who give life and preserve it, rather than approaching the state as a citizen with a vested interest in collective self-governance.

Notably, the only exception to Abrams’ conclusions regarding “moral mother” war protests are the “women in black” who protest Israeli occupation of

257 KERBER, supra note 1, at 299.
258 Military historian Walter Milis explains, “Military institutions and their consequences are as essential elements of our social and political history as are religious, economic, legal or partisan political institutions.” HASSLER, supra note 14, at 17.
260 Abrams, supra note 243, at 131.
261 Id. at 132–33.
262 Id. at 133. *See generally DIANE MAZUR, A MORE PERFECT MILITARY* 4 (2010) (explaining how public policy debates are stifled by sentiments that nonveterans “have not earned the right to speak because, in an era of voluntary service, they made the choice to let others carry the burden for them”).
263 Abrams, supra note 243, at 134 (studying Cindy Sheehan’s war protest, the unapologetically angry mother of a son who was killed in service who established the highly-publicized Camp Casey Vigil outside President Bush’s house demanding to know the “noble cause” for which her son died).
the West Bank and Gaza in Palestine. These women uniquely invoke no gendered family connection as mothers, sisters, or daughters; in fact they detach themselves from their family roles, and invoke their role as citizens to demand equality and accountability. Although Abrams directly examined how they are uniquely able to invoke a citizenship protest without gender, it seems that these Gaza women have more political legitimacy in war protests because the perceived "burdens" they bear are related more directly to military service. All persons in the Gaza region are subject to the violence of war daily. The Israeli army conscripts both male and female soldiers and has some fully integrated combat units. While Palestinian women are not drafted, some engage in highly publicized martyrdom and many more have been the direct victims of attack. The relative differences in "front line" engagement that these protesting women experience may very well support their political legitimacy as citizens, absent the moral authority that women might otherwise need to invoke.

The implication of women's military exclusion likewise undermines their presidential candidacies. Given the unique framing of our Commander in Chief presidency, it may very well be a primary reason why women have not been consistently viable political candidates for this highest office. Consider, for example, the television show featuring Geena Davis as a woman president. The show's title, Commander in Chief, suggests that a female presidency is most notably defined by the perceived novelty of a woman commanding troops. Presidential qualifications have always involved qualifications to command. If we cannot conceive fully of women soldiers yet, it is hard to conceive fully of women commanding soldiers. This leaves women presidential candidates to navigate the same delicate waters of "equal" and "difference" equality, positioning women to run as mothers and moral leaders, unable to assert full political equality. Women's military integration remains deeply relevant to effectuating full political citizenship and equality.

264 Id. at 152.
266 Defence Service Law, 5746-1949, SH No. 25 p. 271 (Isr.) (law requiring all Israeli citizens, men and women, of a certain age to serve in the Defence Army of Israel).
268 Of the thirty-six presidents between Washington and Nixon, for example, eighteen had military experience. HASSLER, supra note 14, at 14. Ten of the thirty-six were generals. Id.
Enlisting the Nineteenth Amendment to frame military integration reveals a more holistic and inclusive battle for political equality. Kimmel explained this vision that:

[W]e need a different sort of manhood, a “democratic manhood.” The manhood of the future cannot be based on obsessive self-control, defensive exclusion, or frightened escape. We need a new definition of masculinity in this new century... a definition that is capable of embracing differences among men and enabling other men to feel secure and confident rather than marginalized and excluded.

The prospect of diffusing military service (even violence) from masculinities produces a more inclusive citizenship model that benefits men and women. It does not just respond to women’s equal protection arguments seeking inclusion, but it also responds to masculine imperatives and dominant gender conformity pressures.

VI. CONCLUSION

The historical fusion of citizenship, military service, and masculinity has persisted in critical ways that are troubling to modern political citizenship. While the Nineteenth Amendment has historically been eulogized as the finale of the women’s suffrage movement, this paper positions the Nineteenth Amendment within a broader historical narrative about republican government traditions and masculinities that suggests a broader relevance. Women’s military integration is about fulfilling the founding visions of republican govern-
ment, \(^{273}\) effectuating women's full political citizenship, and removing the masculinity constructions that surround and define citizenship.

\(^{273}\) See, e.g., SNYDER, supra note 13, at 7 ("I am interested in reconstructing republican citizenship so that all individuals, regardless of gender, can be included as republican citizens.").