

# ENFORCING MASCULINITIES AT THE BORDERS

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### I. INTRODUCTION

“American men have no history,” declared pioneering masculinities scholar, Michael Kimmel.<sup>1</sup> Masculinities, the study of how men relate to each other and construct their identities, can be used as a powerful sociological and legal tool to understand institutions, power structures, and human relations. While the history of American immigration law has revealed rich multi-dimen-

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<sup>1</sup> MICHAEL S. KIMMEL, *MANHOOD IN AMERICA* 1 (2d ed. 2006) [hereinafter KIMMEL, *MANHOOD*]; see also Cliff Cheng, *Marginalized Masculinities and Hegemonic Masculinity: An Introduction*, 7 J. MEN’S STUD. 295, 297 (1999), (concluding that “[m]en as gendered beings usually are not studied” or when they are it is from a point of biological predeterminism).

sional narratives of class, race, and domestic and international politics,<sup>2</sup> sparse historical work has considered the masculinities dimensions of immigration law.<sup>3</sup> This Article considers how unpacking the masculinities dimensions of our paradigmatic shifts in immigration policy might offer an additional—even unifying—dimension to previously disparate and divergent immigration laws worthy of further research. This Article concludes that it is critical to make masculinities visible in immigration law and policy to understand how dominant masculine imperatives shape citizenship itself.<sup>4</sup>

This Article suggests that our immigration laws and policies reinforce dominant masculinities at the border by excluding marginalized masculinities and admitting those who comport with dominant masculinity norms. This Article considers whether the state is not just enforcing immigration laws at its borders but whether it also enforces masculinity norms.

Such an analytical and historical examination might prove influential in modern immigration reform. As private citizens take up guns and machetes to “defend” our nation’s borders,<sup>5</sup> as political movements call for the “taking back of our country,”<sup>6</sup> and as anti-immigrant violence and sentiment escalates to dangerous levels,<sup>7</sup> deepening our understanding of immigration law’s underpinnings in terms of masculinities is acutely important.<sup>8</sup> Contemplating the unifying thread of dominant and marginalized masculinities underlying immigration law suggests a cautionary tale for modern immigration legal responses.

This Article first provides a brief overview of hegemonic, dominant, and marginalized masculinities concepts, revealing the insider/outsider dimensions of masculinities theory that are relevant to its application to immigration law. It

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<sup>2</sup> See, e.g., LIONEL CANTÚ, JR., *THE SEXUALITY OF MIGRATION: BORDER CROSSINGS AND MEXICAN IMMIGRANT MEN* 45 (Nancy A. Naples & Salvador Vidal-Ortiz eds., 2009) (explaining that immigration restrictions have generally been along race, class, gender, sexuality, and political ideology lines).

<sup>3</sup> See, e.g., *id.* at 39.

<sup>4</sup> See, e.g., Hiroshi Motomura, *Who Belongs?: Immigration Outside the Law and the Idea of Americans in Waiting*, 2 U.C. IRVINE L. REV. 359, 379 (2012) (calling for “the next step in identifying the connections between immigration outside the law and the idea of Americans in waiting is to compare, in the framework of these [legalization] programs, which unauthorized migrants can make stronger or weaker claims to being Americans in waiting”).

<sup>5</sup> See, e.g., Greg Magnus, *Vigilantes at Border Won’t Be Tolerated: Police Get Ready for Watchers Today*, SAN DIEGO UNION-TRIB., July 16, 2005, at B4 (explaining that volunteer “Minutemen” once brought machetes, baseball bats, and pepper spray to the border when watching undocumented immigrants cross the border near San Diego, CA).

<sup>6</sup> See, e.g., Son of 1776, *The Plan to Take Back Our Country*, WE THE PEOPLE USA (Sept. 25, 2012), [http://wethepeopleusa.ning.com/group/theplantotakebackourcountry?groupUrl=theplantotakebackourcountry&xg\\_source=activity&id=2482704%3AGroup%3A18717&page=2](http://wethepeopleusa.ning.com/group/theplantotakebackourcountry?groupUrl=theplantotakebackourcountry&xg_source=activity&id=2482704%3AGroup%3A18717&page=2).

<sup>7</sup> See Mark Potter, *Along Mexican Border, US Ranchers Say They Live in Fear*, NBC NEWS (Nov. 25, 2011, 8:13 PM), <http://www.nbcnews.com/id/45440385/#.UVC-IVebZ2o>; see also Sandy Yang, *Activists Urge Arizona to Put Stop to Citizen Patrols Immigration; “It’s Not Their Job to Defend, to Harass People, Stalk People, Injure People. That’s Nobody’s Job”*, OAKLAND TRIB., Dec. 19, 2002.

<sup>8</sup> See, e.g., Doug Brugge, *Pulling Up the Ladder: The Anti-Immigrant Backlash*, in EYES RIGHT!: CHALLENGING THE RIGHT WING BACKLASH 191, 199 (Chip Berlet ed., 1995) (stating that “[t]here is a clear lack of a sense of the history of immigration in the current out-cry”).

then provides examples of how our immigration laws enforce masculinities—admitting immigrant populations that conform to dominant conceptions of western masculinities and excluding marginalized masculinities. Finally, this Article notes the implications of this thesis to modern immigration law in its endorsement of a masculinized state, and the enforcement of a masculinized conception of citizenship. This Article introduces the relevance of this methodology. There is indeed rich and robust work to be done to test these theories and to reveal the value in and the limits of this unitary narrative.

## II. HEGEMONIC AND DOMINANT MASCULINITIES ARE FRAMED RELATIONALLY AND DEPEND ON MAINTAINING A MARGINALIZED “OTHER”

Masculinity is “both omnipresent and invisible.”<sup>9</sup> After famously declaring “American men have no history,” Michael Kimmel—and other masculinities scholars—undertook the monumental task of documenting how manhood and masculine relations in America have shaped history, institutions, and social order, and have evolved over time.<sup>10</sup> He revealed the history of changing conceptions of “ideal” masculinity, but also the competing versions that challenged the normative view.<sup>11</sup> Kimmel’s work identified transformational historical moments during which American masculinities were in crisis as men reinvented and redefined their identities and their social interactions. This Article suggests that these masculinities crises or transformational episodic periods align with peak nativist sentiments and dramatic shifts in our immigration law and policy in notable ways.

Masculinities are distinctly a relational concept as institutions create masculinities and masculinities also construct institutions,<sup>12</sup> rendering them keenly relevant to a thorough account of immigration law. Masculinities are fluid and characteristically dependent on the “other” to define itself, rendering it hard to capture and explore masculinities in isolation without its relational constructs.<sup>13</sup> It is the framing of the “other” to define masculinities that positions masculinities theory as so informative to understanding immigration law. Likewise, our immigration laws explicitly and implicitly reflect a legal, political, and social framing of the “other,” which, this Article reveals, aligns tightly with prevailing masculinities.

This Article particularly relies on concepts of hegemonic masculinity, dominant masculinities, marginalized masculinities, and hyper-masculinity to support its thesis. Hegemonic masculinity has been described as the “defining

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<sup>9</sup> Stefan Dudink et al., *Editor’s Preface: Historicizing Male Citizenship to REPRESENTING MASCULINITY: MALE CITIZENSHIP IN MODERN WESTERN CULTURE* ix, ix (Stefan Dudink et al. eds., 2007).

<sup>10</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 1 (explaining 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).

<sup>11</sup> *Id.* at 4.

<sup>12</sup> TODD W. REESER, *MASCULINITIES IN THEORY: AN INTRODUCTION* 20 (2010).

<sup>13</sup> *See id.* at 38.

gender performance of Euro-American males.”<sup>14</sup> Hegemonic masculinity theory defines a dominant conception of masculinity as synonymous with power.<sup>15</sup> It explains how definitions of manhood in American culture reinforce the power that some men maintain and wield over women and other men.<sup>16</sup> It is a “culturally idealized form of masculine character.”<sup>17</sup>

Hegemonic masculinity frames manhood as the *quest* to acquire and retain the symbols that express manhood,<sup>18</sup> such as strength, success, and control.<sup>19</sup> Hegemonic masculinity imperatives exert pressure on men to conform to its ideals, but these cultural traits need not correspond closely to the actual personalities of the majority of men.<sup>20</sup> Hegemony is thus described by the “successful claim to authority,” distinct from actual authority.<sup>21</sup> Indeed, while men as a group may be dominant and powerful, most men *as individuals* do not feel powerful.<sup>22</sup> The hegemonic model only actually represents a small number of men, but large numbers are “complicit in sustaining the hegemonic model.”<sup>23</sup> Men who do not meet these hegemonic norms will conclude that they are somehow “unworthy, incomplete, and inferior.”<sup>24</sup> Hegemonic masculinities are thus a relational concept, “not a fixed character type, always and everywhere the same,” and “always contestable.”<sup>25</sup>

Hegemonic masculinity is sustained by the quest for a dominant strand of masculinity and the perceived powerlessness that men can derive from the constant pressure to achieve this masculinity.<sup>26</sup> This perception of inadequacy can lead to hyper-masculine expressions. Hyper-masculinity is a theory of exaggerated masculinity expressed as a manifestation of one’s insecurities.<sup>27</sup> Hyper-masculinity is a “hedge, an effort to offset feelings of masculine inadequacy.”<sup>28</sup> Hyper-masculinity has been used to explain some acts of male violence,

<sup>14</sup> Cheng, *supra* note 1, at 298 (noting how “in addition to being white and male, important demographic characteristics include being able-bodied, heterosexual, Christian . . . , first world . . . , and ranging in age from 20 to 40”).

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<sup>15</sup> See R.W. CONNELL, *MASCULINITIES* xviii (2d ed. 2005) (explaining that the concept of hegemonic masculinity was first introduced in the 1980s and has since come under some critique leaving the lingering question whether to discard, reconstruct, or reaffirm framing of hegemonic masculinity).

<sup>16</sup> Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, in *SEX, GENDER AND SEXUALITY: THE NEW BASICS, AN ANTHOLOGY* 58, 61 (Abby L. Ferber et al. eds., 2009) [hereinafter Kimmel, *Masculinity as Homophobia*].

<sup>17</sup> Cheng, *supra* note 1, at 297 (citation omitted) (internal quotation marks omitted).

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<sup>18</sup> *Id.* at 300.

<sup>19</sup> Kimmel, *Masculinity as Homophobia*, *supra* note 16, at 61.

<sup>20</sup> CONNELL, *supra* note 15, at 77.

<sup>21</sup> *Id.*

<sup>22</sup> Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 *Wis. J.L. GENDER & SOC’Y* 201, 213 (2008).

<sup>23</sup> Cheng, *supra* note 1, at 297 (citation omitted) (internal quotation marks omitted).

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<sup>24</sup> Kimmel, *Masculinity as Homophobia*, *supra* note 16, at 61 (quoting ERVING GOFFMAN, *STIGMA* 128 (1963)).

<sup>25</sup> CONNELL, *supra* note 15, at 76.

<sup>26</sup> Dowd, *supra* note 22, at 213.

<sup>27</sup> JOSEPH H. PLECK, *THE MYTH OF MASCULINITY* 96 (1981).

<sup>28</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 161.

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extreme conservative viewpoints, and bodybuilding behaviors, to name a few expressions.<sup>29</sup>

Dominant and marginalized masculinities are hallmark characteristics of Western masculinities—particularly, the use of marginalization as an inter-group dynamic to sustain dominant masculinities.<sup>30</sup> As Cheng explains, “[O]ne’s membership in either the dominant group or a marginalized group is based on our conformity to hegemony”: you either conform and belong to the dominant group or you do not conform and you are marginalized because you threaten the dominant hegemonic strand.<sup>31</sup> Dominant masculinities refer to the “most common, celebrated, widespread, or powerful” types of masculinities.<sup>32</sup> Marginalization describes “the relations between the masculinities in dominant and subordinated classes or ethnic groups.”<sup>33</sup> Marginalization is thus always relative to the “authorization of hegemonic masculinity of the dominant group.”<sup>34</sup>

The exclusion of marginalized and threatening groups has long been a “masculine retreat” in our nation’s history, as dominant masculinities have espoused consistent sentiments of nativism<sup>35</sup> and fears of feminization.<sup>36</sup> Hegemonic masculinity is distinctly framed “in relation to femininities and subordinated and marginalized masculinities.”<sup>37</sup> It necessitates a hierarchy by positioning masculinity in a hierarchical relationship to femininity.<sup>38</sup> It refers to the “cultural dynamic by which a group claims and sustains a leading position in social life. At any given time, one form of masculinity rather than others is culturally exalted.”<sup>39</sup> It is thus framed heavily by what it is not: namely, that men *not* be gay and *not* be feminine. Connell described “gayness” as the “repository” of what is “symbolically expelled from hegemonic masculinity . . . .”<sup>40</sup> Masculinity is historically anchored in an exclusionary paradigm, systematically excluding women, immigrants, and gays.<sup>41</sup> Hegemonic masculinity is also historically anchored in nativism and shaped by governing race relations.<sup>42</sup>

<sup>29</sup> PLECK, *supra* note 27, at 96.

<sup>30</sup> Cheng, *supra* note 1, at 300.

<sup>31</sup> *Id.*

<sup>32</sup> JAMES W. MESSERSCHMIDT, HEGEMONIC MASCULINITIES AND CAMOUFLAGED POLITICS: UNMASKING THE BUSH DYNASTY AND ITS WAR AGAINST IRAQ 159 (2010).

<sup>33</sup> CONNELL, *supra* note 15, at 80.

<sup>34</sup> *Id.* at 80–81 (emphasis omitted) (noting that “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”).

<sup>35</sup> ARMANDO NAVARRO, THE IMMIGRATION CRISIS: NATIVISM, ARMED VIGILANTISM, AND THE RISE OF A COUNTERVAILING MOVEMENT 20 (2009) (“Nativism, the fear of foreigners, was embedded in the country’s immigration experience.”).

<sup>36</sup> KIMMEL, MANHOOD, *supra* note 1, at 62.

<sup>37</sup> Cheng, *supra* note 1, at 297 (citation omitted).

<sup>38</sup> MESSERSCHMIDT, *supra* note 32, at 164.

<sup>39</sup> CONNELL, *supra* note 15, at 77.

<sup>40</sup> *Id.* at 78.

<sup>41</sup> KIMMEL, MANHOOD, *supra* note 1, at 62; *see also* CONNELL, *supra* note 15, at 78–80.

<sup>42</sup> *See* CONNELL, *supra* note 15, at 80.

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Masculinity is historically fluid, rendering it rich for analysis in immigration law.<sup>43</sup> R.W. Connell explains, “To recognize gender as a social pattern requires us to see it as a product of history, and also as a *producer* of history.”<sup>44</sup> Masculinity is often deployed as a political tool,<sup>45</sup> as this Article will examine. The next sections of this Article examine how paradigmatic shifts in immigration law and policy have aligned with masculinities in crisis and how masculinities have shaped the ultimate direction of immigration law.

### III. MAINTAINING DOMINANT MASCULINITIES AT THE BORDERS THROUGH THE EXCLUSION OF MARGINALIZED MASCULINITIES

This Article considers how immigration law reinforces hegemonic masculinity imperatives. Perhaps the two most explicit examples are the exclusion of gays and the treatment of women immigrants.<sup>46</sup> This section considers the Chinese Exclusion Act and the Quota Acts distinctly because they align with transformational episodic shifts in masculinities.

#### A. *Marginalized Effeminacy and the Chinese Exclusion Act*

Chinese immigrants have been described as “[b]y far . . . the worst received of all the immigrant groups. . . . They were discriminated against, segregated, physically attacked, lynched, and were victims of ‘ethnic cleansing.’”<sup>47</sup> The dimensions of this discrimination have been unpacked in terms of race, class, nativism, and more, yet its masculinity dimensions have been far less theorized.<sup>48</sup>

This Article considers whether changing and destabilized American masculinities prompted the hyper-masculine rejection of marginalized masculinities, further explaining the Chinese Exclusion Act in historical context. The United States experienced an economic transformation from 1800 to 1840 as it constructed mass transit, expanded commerce, expanded westward, and urbanized.<sup>49</sup> These shifts were both liberating to men and deeply destabilizing to masculinities because they uprooted the stability that land, craftsmanship, and small towns previously provided.<sup>50</sup> Masculinity in the nineteenth century

<sup>43</sup> See generally *id.* at 183–224.

<sup>44</sup> See *id.* at 81; see also KIMMEL, *MANHOOD*, *supra* note 1, at 2 (explaining that “we . . . cannot fully understand American history without understanding masculinity”).

<sup>45</sup> See CANTÚ, *supra* note 2, at 45.

<sup>46</sup> See KEVIN R. JOHNSON, *THE “HUDDLED MASSES” MYTH: IMMIGRATION AND CIVIL RIGHTS* 134 (2004) (explaining how women who married immigrants lost their citizenship).

<sup>47</sup> NAVARRO, *supra* note 35, at 25.

<sup>48</sup> See, e.g., Karen J. Leong, “A *Distinct and Antagonistic Race*”: *Constructions of Chinese Manhood in the Exclusionist Debates, 1869–1878*, in *ACROSS THE GREAT DIVIDE: CULTURES OF MANHOOD IN THE AMERICAN WEST* 131, 132 (Matthew Basso et al. eds., 2001) (concluding that “[s]cholars have examined how gendered arguments for exclusion relied on the image of the Chinese prostitute, yet largely have neglected complementary constructions of Chinese and Anglo-American working-class masculinity.”). See generally FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 20 (2002) (explaining how “Asian Americans [as a group] have been excluded by the very terms used to conceptualize race”).

<sup>49</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 16.

<sup>50</sup> *Id.* at 18 (quoting Alexis de Tocqueville’s observation that each citizen was “equally impotent, poor and isolated” and democracy “breaks the chain and frees every link”).

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shifted to the capitalist market, individual pursuits, increased mobility, and wealth.<sup>51</sup>

As artisans and tradesmen sensed destabilization, they increasingly opposed women in the workplace and prioritized native-born men.<sup>52</sup> Kimmel summarized antebellum masculinities: “[T]he American working class . . . was self-consciously white, native-born, and male, rooted as much in racism, sexism, and xenophobia as in craft pride and workplace autonomy—a combination that has haunted its efforts to retrieve its lost dignity and organize successfully . . . .”<sup>53</sup> Masculine insecurity abounded: “[H]is sense of himself as a man was in constant need of demonstration. Everything became a test—his relationships to work, to women, to nature, and to other men.”<sup>54</sup>

Chinese immigration escalated just as American masculinities were destabilizing in the mid-1800s following a combination of economic opportunities in the United States and political upheaval in China.<sup>55</sup> This coincided with the first expansive wave of immigration in the United States from 1840 to 1860.<sup>56</sup> The Chinese immigrants were predominately male.<sup>57</sup> Many worked on the railroads, in mines as laborers or cooks, and in laundries.<sup>58</sup> Early on, Chinese immigrants provoked mixed responses in the United States, with some immediately hostile to the Chinese and others embracing the labor.<sup>59</sup>

Ninety percent of all Chinese immigrants resided in eleven far Western states.<sup>60</sup> Masculinities in general were acutely exaggerated in California as the California gold mines drew primarily men in an individualist pursuit—indeed ninety-three percent of the California population from 1849 to 1850 was male.<sup>61</sup> One observer explained that women were scarcer than gold.<sup>62</sup>

<sup>51</sup> *Id.* at 17 (explaining how “equal opportunity meant equal opportunity to either succeed or to fail”).

<sup>52</sup> *Id.* at 23 (describing how riots erupted after nativists demonstrated against immigration).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 30–31 (explaining how there was no anchored patriarchal lineage anymore).

<sup>55</sup> Chin Kim & Bok Lim C. Kim, *Asian Immigrants in American Law: A Look at the Past and the Challenge Which Remains*, 26 AM. U. L. REV. 373, 376 (1977). The Chinese had been immigrating to the United States for over thirty years before the anti-Chinese sentiment hit its peak. LUCY E. SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW 7 (1995).

<sup>56</sup> NAVARRO, *supra* note 35, at 19. A total of 6.6 million immigrants came to the United States from Western Europe during this wave, mostly from Germany, Ireland, Great Britain, Canada, and France. *Id.* This volume of immigration exceeded the existing native population. *Id.* A myriad “pull” and “push” factors led to this immigration wave, including a robust American economy and abundant land opportunities drawing immigrants to American shores and a population explosion, political struggles and conflicts pushing migration. *Id.*

<sup>57</sup> CANTÚ, *supra* note 2, at 46.

<sup>58</sup> SALYER, *supra* note 55, at 7.

<sup>59</sup> *Id.* at 8.

<sup>60</sup> Roger Daniels, *Chinese and Japanese in North America: The Canadian and American Experiences Compared*, in 1 THEMES IN IMMIGRATION HISTORY 91, 94 (George E. Pozzetta ed., 1991).

<sup>61</sup> See *Gold Rush*, 1 ENCYCLOPEDIA OF U.S. LABOR AND WORKING-CLASS HISTORY 531 (Eric Arnesen ed., 2007); see also Susan Lee Johnson, *Bulls, Bears, and Dancing Boys: Race, Gender, and Leisure in the California Gold Rush*, in ACROSS THE GREAT DIVIDE: CULTURES OF MANHOOD IN THE AMERICAN WEST, *supra* note 48, at 45, 45 (concluding that Anglo male “nostalgia took on a special meaning in California’s Southern [gold] Mines,” particularly as the absence of white women challenged male restraint); KIMMEL, MANHOOD,

The Civil War propelled a broad debate about American masculinity into the “nation’s consciousness”; it was not only a war about slavery, states’ rights, and economic roots, it was also a “gendered war in which the meanings of manhood were bitterly contested.”<sup>63</sup> Kimmel concludes that it reclaimed northern masculinities, claimed manhood for black men, and vilified southern manhood as feminized.<sup>64</sup> Masculinities remained deeply destabilized—even exacerbated—after the Civil War by rampant industrialization, the closing of the frontier, women entering the public sphere, and the presence of both freed slaves and immigrants.<sup>65</sup>

The anti-Chinese sentiment rose around 1870, catalyzed by labor leaders’ economic concerns.<sup>66</sup> A severe depression in California from 1873 to 1878 helped spurn the animosity toward the Chinese, as some felt threatened by the job shortages and the lower wages that the Chinese immigrant population might intensify.<sup>67</sup>

Centuries of scholars have considered the race and class dimensions to this campaign of discrimination.<sup>68</sup> This Article observes that masculinities scholars have also examined how dominant Western masculinities were part of the underpinnings of Chinese restrictionist legislation.<sup>69</sup> The Chinese exclusion movement framed a “broad-ranging, gendered argument” effectively “[measuring] Chinese men against normative standards of Anglo-American masculinity and find[ing] them wanting.”<sup>70</sup> The exclusionary argument from a masculini-

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*supra* note 1, at 37 (explaining how women acted as a “moral restraint, since men, alone, were not capable of retaining their [ ] emotions, their violence, their aggressive, competitive, acquisitive edge”).

<sup>62</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 42 (explaining how male behavior, language, and dress changed in the West, the observer commented that “all the *restrictive influence* of fair women is lost, and the ungoverned tempers of men run wild” (internal quotation marks omitted)).

<sup>63</sup> *Id.* at 49.

<sup>64</sup> *Id.* at 49, 51.

<sup>65</sup> *Id.* at 52–53 (“Such a large-scale loss of control as a civil war, the new political and social claims of women and freed blacks, and failed attempts at escape all signaled the inadequacy of the various strategies American men had developed upon which to ground a secure sense of themselves as men.”). Industrial output in the United States increased dramatically by 500% from 1870 to 1900, positioning large factories to dominate employment. *Id.* at 57. Americans also increasingly urbanized. In 1830, about one in fifteen Americans lived in municipalities greater than 8,000 people, one in three by 1900, and one in two by 1910. *Id.* at 58.

<sup>66</sup> SALYER, *supra* note 55, at 12.

<sup>67</sup> *Id.* at 9. Certainly some Americans, fresh off a Civil War spurred by treating another population of racial minorities as morally inferior, understood the risks in the hostility toward the Chinese and opposed this rising hostility. *See id.*

<sup>68</sup> Anti-Chinese sentiments were motivated by strong overarching characterizations of their work as “menial,” international political fears, racism, and fears of assimilation. *See, e.g.*, SALYER, *supra* note 55, at 15 (noting an underlying belief that the Chinese would not or could not become American); *see also* LEONARD DINNERSTEIN ET AL., *NATIVES AND STRANGERS: A HISTORY OF ETHNIC AMERICANS* 233 (5th ed. 2010).

<sup>69</sup> *See* CANTÚ, *supra* note 2, at 45–46 (explaining how sex intersects with the racial dimensions of Chinese exclusion).

<sup>70</sup> Leong, *supra* note 48, at 132. *See* JOHNSON, *supra* note 46, at 7 (citing John Higham’s study of nativism that concluded that much of America’s intolerance for immigrants has come from deviations from “the perceived Anglo-Saxon norm”).

ties lens—succinctly stated—was that “Chinese men did not meet the ideal of Anglo-American masculinity and thus could not be virtuous republican citizens [which] ideologically justified restricting Chinese immigrant labor.”<sup>71</sup> Nativist strategies thus framed the effeminacy of non-white men to support their exclusionist agenda.<sup>72</sup>

While the racist underpinnings were evident, much of the anti-Chinese sentiment was also rooted in an expression of hegemonic and dominant masculinities. The Workingman’s Party bluntly concluded that the Chinese “have no sex.”<sup>73</sup> Contradictory images emerged of the Chinese as both hyper-masculine and effeminate.<sup>74</sup> Dominant American conceptions of masculinities were deployed to frame Chinese men as lacking honor and “feminized.”<sup>75</sup> Diplomat Peter Parker complained of the “ ‘painful want of manliness and sincerity’ of Chinese officials.”<sup>76</sup> The Chinese state was feminized in the Western community.<sup>77</sup> Ruskola summarized that “[i]ndeed, Western observers often went beyond innuendo in impugning the norms of Chinese masculinity. Asia . . . had been associated with sodomy . . . [and some commentators were] convinced that sodomy was widely practiced among Chinese men.”<sup>78</sup> Nativists heavily exploited images of the Chinese prostitute<sup>79</sup> to justify prevailing rejections of Chinese manhood, suggesting that Chinese men exploited women in ways that failed “to protect female virtue—and revealed their unsuitability as Americans.”<sup>80</sup> The focus on Chinese prostitutes and the “illicit sexuality associated with Chinese laborers implicated the Chinese male as immoral, uncivilized, and fundamentally unfit for American citizenship.”<sup>81</sup> Ruskola explained how “international law provided a vocabulary and a racialized and sexualized logic for transforming China’s desire to define its own sovereignty into a perverse, queer ‘arrogance’ that was represented in turn as a violation of European states’ rights of sovereign equality.”<sup>82</sup>

<sup>71</sup> Leong, *supra* note 48, at 132. The Chinese suffered from Western stereotyping that positioned Asian culture as “*submissive*: culturally prone to be physically unaggressive, politically docile, and accommodating.” *Racial Violence Against Asian Americans, in 4 ASIAN INDIANS, FILIPINOS, OTHER ASIAN COMMUNITIES AND THE LAW* 382, 387 (Charles McClain ed., 1994) (noting that these stereotypes “in part, [stem] from Western interpretations of certain Asian cultural and aesthetic values.”). These stereotypes were catalyzed by the ideological underpinnings of Social Darwinism. Social Darwinism was used to support arguments of racial and ethnic inferiority, but also dominant masculinity norms. KIMMEL, *MANHOOD*, *supra* note 1, at 62–64.

<sup>72</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 64.

<sup>73</sup> Leong, *supra* note 48, at 144.

<sup>74</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 65.

<sup>75</sup> See, e.g., Teemu Ruskola, *Raping Like a State*, 57 *UCLA L. REV.* 1477, 1516 (2010) (noting that “[f]or many, the lack of honor in China was primarily a corollary of its feminized nature. . . . Chinese associated ‘true glory’ with literary pursuits, while being a soldier was ‘derogatory to honour’ ” and recognizing the “trope of Chinese effeminacy”).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1532–33.

<sup>78</sup> *Id.* at 1517.

<sup>79</sup> See, e.g., Leong, *supra* note 48, at 131.

<sup>80</sup> *Id.* at 132.

<sup>81</sup> *Id.* at 131–32.

<sup>82</sup> Ruskola, *supra* note 75, at 1518–19.

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The House Committee on Education and Labor issued a report on Chinese immigration in 1878 finding three reasons why Chinese men would be “undesirable citizen[s]”: their effect on the labor markets, their societal effects, and their inability to assimilate.<sup>83</sup> This report concluded that “the Chinese evidenced peculiar moral habits in ‘their treatment of women’ by profiting from their sexual servitude.”<sup>84</sup> It found that “Chinese men failed to establish nuclear family households”; they “distinguished themselves from other immigrants” because they did not bring their wives or families with them.<sup>85</sup>

And marginalized masculinities were also invoked in response to anti-Chinese sentiments. One political strategy, for example, involved the Chinese explicitly chastising the Irish immigrant population as “always drunk and fighting,” suggesting that the Irish posed a greater threat worthy of exclusion.<sup>86</sup> Indeed, the Irish were also heavily ridiculed and “stamped with a problematic masculinity,” labeled as primitive, uncivilized, and inferior.<sup>87</sup>

#### *B. Masculinities in Crisis Coincides with the Nativist Sentiment and Peak Restrictionist Legislation*

This Article next considers how destabilized masculinities might likewise offer further depth to historical understandings of the immigration quota system. The United States experienced its historic second wave of immigration from 1870 to 1920, yielding an unprecedented twenty-six million immigrants.<sup>88</sup> Both nativism and immigration law underwent a transformational paradigm shift between the late 1800s and the early 1900s.<sup>89</sup> While some nativist sentiment festered in the mid-1850s, the anti-immigrant sentiment largely abated during the Civil War.<sup>90</sup> Nativism<sup>91</sup> resurged and “cast an increasingly wider net” in the 1900s.<sup>92</sup> This section posits that this expansion was spurred, not only by economic conditions and vast immigration expansions,<sup>93</sup> but also by changing masculinities.

<sup>83</sup> Leong, *supra* note 48, at 133.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> SALYER, *supra* note 55, at 43.

<sup>87</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 23.

<sup>88</sup> NAVARRO, *supra* note 35, at 22. Like the first wave of immigrants, the second wave immigrants came to American shores through a combination of push and pull factors. Widespread poverty, unemployment, and instability in Europe combined with the United States’ need for cheap industrial labor catalyzed the second wave. The first part of this second wave migrated from Germany, Great Britain, and Ireland. From 1890 to 1920, the migration patterns shifted from Northern Europe to Central and Eastern Europe, including immigrants from Italy, Austria-Hungary, and Russia. *Id.* at 22–23.

<sup>89</sup> SALYER, *supra* note 55, at 245 (concluding that fundamental principles governing immigration law were established between 1891–1924).

<sup>90</sup> See NAVARRO, *supra* note 35, at 22.

<sup>91</sup> See BRUCE DORSEY, *REFORMING MEN AND WOMEN: GENDER IN THE ANTEBELLUM CITY 201–02* (2002) (breaking apart various strands of nativism, such as political nativism and religious nativism).

<sup>92</sup> See SALYER, *supra* note 55, at 121.

<sup>93</sup> See, e.g., *id.* at 121–22 (arguing that the state of the economy has been a critical trigger to nativist movements).

A profound shift in this historical period transformed measures of masculine power from physical strength to wealth.<sup>94</sup> It left men punching a time clock, working for corporations and dependent on them, and performing work that “every woman [knew] she could easily undertake.”<sup>95</sup> Predominant historical narratives have concluded that restrictionist legislation enacted from 1875 to 1924 was spurred by fears of overcrowding, crime, poverty, job threats, wage depreciation, and assimilation concerns.<sup>96</sup> Yet masculinities were also destabilized and in crisis during this rise in nativism. Historically, manhood in America had been characterized by self-control and autonomy, but the rise in industrialization, urbanization, and immigration “often emasculated life.”<sup>97</sup> Andrew Kimbrell summarized that “[t]he advance of the Industrial Revolution cost men their independence, dignity, and the sense of personal responsibility and creativity associated with individual crafts and small-scale farming.”<sup>98</sup> The “industrialized male” became “the victim of two enclosures,” becoming “dispossessed” as he moved into smaller quarters with less land and spending long hours in the industrial workplace away from his family.<sup>99</sup> These changes disrupted “virtually every personal and social relationship a man had, changes that are with men to this day.”<sup>100</sup>

Kimmel also chronicled how the early 1900s challenged and overwhelmed prevailing American masculinities.<sup>101</sup> The presence of freed blacks and immigrants in the workplace threatened “native-born white men for dominance on what had been their turf.”<sup>102</sup> For many men the only retreat was to restore “historical notions of masculine virtue”; for some, the prescription was to stop the “rising tide of color,” as one observer described it, that immigrants and blacks created; for some, the prescription focused on threats presented by women, gays, and lesbians.<sup>103</sup> A sentiment festered that masculine identity could be retained “by excluding the ‘others.’”<sup>104</sup>

The very definition of manhood changed at the turn of the century. The more modern term “masculinity” replaced the term “manhood.”<sup>105</sup> Masculinity was distinctly defined in its juxtaposition to femininity: “Masculinity was something that had to be constantly demonstrated, the attainment of which was

<sup>94</sup> KIMMEL, MANHOOD, *supra* note 1, at 16–17.

<sup>95</sup> *Id.* at 58–59 (internal quotation marks omitted).

<sup>96</sup> *See* NAVARRO, *supra* note 35, at 24 (noting that there were very few national policies about immigration before 1875).

<sup>97</sup> KIMMEL, MANHOOD, *supra* note 1, at 58 (explaining how fewer Americans owned shops, farms, etc.).

<sup>98</sup> ANDREW KIMBRELL, THE MASCULINE MYSTIQUE: THE POLITICS OF MASCULINITY 41 (1995).

<sup>99</sup> *Id.* at 38–39.

<sup>100</sup> *Id.* at 39 (emphasizing heavily the impact that industrialization had on fatherhood).

<sup>101</sup> KIMMEL, MANHOOD, *supra* note 1, at 62.

<sup>102</sup> *Id.* at 59.

<sup>103</sup> *Id.* at 62 (some internal quotation marks omitted).

<sup>104</sup> *Id.* at 62; *see also* Joe L. Dubbert, *Progressivism and the Masculinity Crisis*, in THE AMERICAN MAN 303, 310 (Elizabeth H. Pleck & Joseph H. Pleck eds., 1980) (concluding that “[t]he evidence clearly suggests that around 1900 tensions between American men and women were building considerably, judging by the frequent discussions of marital tensions”).

<sup>105</sup> KIMMEL, MANHOOD, *supra* note 1, at 81.

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forever in question—lest the man be undone by a perception of being too feminine.”<sup>106</sup> In the 1890s, one historian described the “fear of feminization” as reaching a “national psychic crisis.”<sup>107</sup> Differing accounts exist as to why men feared feminization so deeply. Some believed that cultural feminization emerged from the cultural invasion of the “others,” while others attributed the city environment to fears of feminization, some believed that it arose from the predominance of women in the lives of boys, or the demands of American culture itself.<sup>108</sup>

As masculinities destabilized, renewed and heightened prejudices emerged against immigrants in the late 1800s and the early 1900s.<sup>109</sup> Immigrants became lightning rods of blame upon which native-born white men directed the plight of urbanization and depressed economic conditions.<sup>110</sup> Kimmel summarized the role masculinities played in the nativist movement of the early twentieth century:

Racial exclusion and anti-immigrant nativism were again a recourse for some who searched for a foundation for secure manhood. Successive waves of immigrants were depicted as less mentally capable and less manly—either as feminized and effete or wildly savage hypermasculine beasts—and thus likely to dilute the stock of “pure” American blood.<sup>111</sup>

The nativist movement had legal, cultural, and social dimensions to it. The movement sought to increase assimilation through literacy tests and other measures; it sought to purge the “undesirables,” such as prostitutes, beggars, anarchists, and imbeciles, from the population; and it sought to restrict the total number of immigrants regionally.<sup>112</sup>

Prior to the Civil War, most immigrants were from Northern and Western Europe.<sup>113</sup> The nativist movement led to the Quota Act of 1921 and the Quota Act of 1924.<sup>114</sup> The Quota Act of 1921 was “one of the most radical and far-reaching events in the annals of immigration legislation.”<sup>115</sup> It imposed a temporary quota effectively restricting the total number of immigrants to 350,000,

<sup>106</sup> *Id.* at 81–82 (explaining how “[m]asculinity required proof, and proof required serious effort . . .”).

<sup>107</sup> Dubbert, *supra* note 104, at 303 (explaining how this was “doubly provoked by the announcement of the closing of the frontier and the strident militarism so characteristic of the age”).

<sup>108</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 82–83.

<sup>109</sup> DINNERSTEIN ET AL., *supra* note 68, at 170 (noting how much of this prejudice was based on flawed scientific theories and shifting socio-economics).

<sup>110</sup> *See id.*; *see also* DORSEY, *supra* note 91, at 201.

<sup>111</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 128.

<sup>112</sup> *See* NAVARRO, *supra* note 35, at 27–31 (noting that these nativist measures drew pointed lines between old immigrants and new immigrants, suggesting that the new immigrants were not contributing as the old immigrants had); *see also* SALYER, *supra* note 55, at 121.

<sup>113</sup> A.W. Carlson, *One Century of Foreign Immigration to the United States: 1880–1979*, in 1 *AMERICAN IMMIGRATION & ETHNICITY* 65, 66 (George E. Pozzetta ed., 1991).

<sup>114</sup> SALYER, *supra* note 55, at 121.

<sup>115</sup> SALYER, *supra* note 55, at 134–35 (internal quotation marks omitted). The quota system notably benefits existing immigrants as the proportions were structured to skew numbers to benefit the existing population.

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seeking to curb immigration particularly from Southern and Eastern Europe.<sup>116</sup> It limited the total number of immigrants to three percent of the total foreign-born population residing in the United States at the time of the 1910 census.<sup>117</sup> The Immigration Act of 1924 further increased Northern European quotas and decreased Southern and Central European quotas,<sup>118</sup> cutting the total annual quota to about 165,000, and making the quota system permanent.<sup>119</sup> It reduced the immigration cap from three percent to two percent of the foreign born population in the United States and cued the triggering census data from the 1890 census instead of the 1910 census.<sup>120</sup> Salyer described the Quota Act of 1924 as the “pinnacle of its success” for the nativist movement.<sup>121</sup>

Throughout the debates surrounding the Quota Acts, “[r]acist impulses” regarding immigration continued to be “suffused with gender imagery.”<sup>122</sup> Anti-immigration arguments were built on gendered hierarchies that were rife with contradictions but fundamentally challenged “non-conforming” masculinities.

#### IV. EMBRACING THE “HUDDLED MASSES” THAT CONFORM TO PREVAILING MASCULINITIES

Just as masculinities have shaped who we exclude from our nation’s borders, masculinities have also defined which of the “huddled masses” we allow in. This section provides two representative historical examples of which populations *have* conformed to prevailing masculinities.

##### A. *Breadwinners at the Borders*

Family unification has been the “touchstone” of American immigration law since 1965.<sup>123</sup> This immigration law transformation aligned with transforming masculinities of the period. After masculinities destabilized in the early twentieth century by the end of World War II, one masculine retreat for restabilization had become the colonization of the home and the family.<sup>124</sup> In suburban post-war America, the fatherhood role came to embody masculinity and the suburban home became the “new arena for proving one’s manhood.”<sup>125</sup> Being a male “breadwinner and family provider remained the centerpiece of

<sup>116</sup> NAVARRO, *supra* note 35, at 30–31; *see also* Act of May 19, 1921, Pub. L. No. 67-5, § 2(a), 42 Stat. 5.

<sup>117</sup> § 2(a), 42 Stat. at 5; *see also* NAVARRO, *supra* note 35, at 30–31.

<sup>118</sup> NAVARRO, *supra* note 35, at 31.

<sup>119</sup> *See id.*; *see also* Immigration Act of 1924, Pub. L. No. 68-139, § 11(a)–(b), 43 Stat. 153, 159.

<sup>120</sup> § 11(a)–(b), 43 Stat. at 159 (reducing the quota even further to 150,000 in later years). The act set a minimum quota from any one country at one hundred.

<sup>121</sup> SALYER, *supra* note 55, at 135.

<sup>122</sup> KIMMEL, MANHOOD, *supra* note 1, at 128–29. Filipinos, for example, were cast as both too much and too little of a real man: “effete and effeminate: small with delicate features, great dancers who possessed an obsessive concern with clothing and appearances” yet also as “hypermasculine ‘jungle folk,’ ‘scarcely more than savages . . . .’” *Id.* at 129.

<sup>123</sup> *See, e.g.,* Brugge, *supra* note 8, at 196.

<sup>124</sup> KIMMEL, MANHOOD, *supra* note 1, at 105, 149.

<sup>125</sup> *Id.* at 150, 155, 162 (noting that this idea was further endorsed by social science). This was a careful line to navigate, however. Fathers needed to “get involved—but not *too*

middle-class masculinity.”<sup>126</sup> There was an almost “frantic” movement to reinvigorate “traditional norms.”<sup>127</sup> The father became an anchor of masculine stability. There emerged a movement for “emotional normality of the nuclear family, as father and mother embodied instrumental and expressive functions, both of which are necessary for social order and stability.”<sup>128</sup> At the same time, femininity was starkly defined in domestic terms.<sup>129</sup> This post-war conception of manhood remained steeply framed around the “other”—“[i]f the suburban breadwinner father didn’t exactly know who he was, he could at least figure out who he wasn’t.”<sup>130</sup> Failing to conform to the domestic breadwinner model risked accusations of homosexuality.<sup>131</sup>

Following these masculinities shifts, the national immigration law underwent a correlating paradigmatic shift. Phase one of the paradigm shift was codified in the 1952 Immigration and Nationality Act, which retained the 1924 national origins quota system, but also created a preference for skilled workers and relatives of citizens or lawful permanent residents.<sup>132</sup> Certainly, some objected to retaining the national origins quota system based on changing national values.<sup>133</sup>

Phase two of the paradigm shift was realized in the Immigration and Nationality Act of 1965, in which the historic quota system was abolished entirely.<sup>134</sup> The dominant narrative supporting the 1965 legislation is that vast cultural changes catalyzed by the civil rights movement altered American’s views toward race. Importantly, however, the cultural shifts reflected in the 1965 Act encompassed the new family focus of American masculinity as well.

The quota system was replaced with an annual cap on immigration regardless of country of origin.<sup>135</sup> Senator Edward Kennedy heralded the act as a victory over “radicalism” and “reaction,” celebrating the shift away from a system “conceived in a . . . period when bigotry and prejudice stalked our streets,

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involved.” *Id.* at 162. This “presented an exceedingly thin line between feminization of the overdomesticated dad and the irresponsibility of the absentee father . . . .” *Id.*

<sup>126</sup> *Id.* at 161 (explaining how “[r]eal men were breadwinning men”).

<sup>127</sup> *Id.* at 155.

<sup>128</sup> *Id.* at 150.

<sup>129</sup> Charlotte Hooper, *Masculinist Practices and Gender Politics: The Operation of Multiple Masculinities in International Relations*, in *THE “MAN” QUESTION IN INTERNATIONAL RELATIONS* 28, 35 (Marysia Zalewski & Jane Parpart eds., 1998).

<sup>130</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 155.

<sup>131</sup> Hooper, *supra* note 129, at 35.

<sup>132</sup> Immigration & Nationality Act, Pub. L. No. 82-414, §§ 201(a), 203(a), 212(a), 66 Stat. 163, 163, 175–83 (1952) (codified as amended at 8 U.S.C. § 1101 (2012)).

<sup>133</sup> President Truman attempted to veto the legislation stating that:

These are only a few examples of the absurdity, the cruelty of carrying over into this year of 1952 the isolationist limitations of our 1924 law.

In no other realm of our national life are we so hampered and stultified by the dead hand of the past, as we are in this field of immigration.

Harry S. Truman, *Veto of Bill to Revise the Laws Relating to Immigration, Naturalization, and Nationality*, in *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: HARRY S. TRUMAN 1952–53*, at 441, 443–44 (1966).

<sup>134</sup> Act of Oct. 3, 1965, Pub. L. No. 89-236, § 201(e), 79 Stat. 911 (amending the Immigration & Nationality Act).

<sup>135</sup> Carlson, *supra* note 113, at 68.

when fear and suspicion motivated our actions toward the world around us.”<sup>136</sup> The Act allowed a total of 290,000 visas a year, 170,000 from Eastern hemisphere countries with a 20,000 per country limit and 120,000 from Western countries with no per-country limit.<sup>137</sup> Critically, however, there were no annual limits on immediate relatives (spouses, unmarried children, or parents of American citizens).<sup>138</sup> It created a tiered-preference system with various levels, prioritizing four tiers for family of lawful permanent residents, then three tiers for employment-based immigration with professional skills, and one tier reserved for refugees.<sup>139</sup> These immigration preferences coincided with and reflected back the new cultural ideals emphasizing the nuclear suburban family and the American male’s role in that family structure. Much of this framework remains intact today.

### B. *Constructing Warriors and Citizens*

Masculinities are often expressed through institutions. The military is largely designed around male traits<sup>140</sup> and entrenched in a “combat, masculine-warrior” paradigm that “tacitly endorse[s] excluding others who contradict their image of the combat, masculine warrior.”<sup>141</sup> The military is a “proving ground for masculinity,” frequently seen as “a *rite of passage*, transforming boys into men.”<sup>142</sup>

Military service has long been a proving ground for both masculinity and a transformative ground for citizenship.<sup>143</sup> The military’s role in citizenship is important because it is a tool that “reshapes relationships not only between

<sup>136</sup> See *U.S. Catholic Bishops and Immigration: Background: 1965 Legislation*, AM. CATHOLIC HISTORY RESEARCH CTR. & UNIV. ARCHIVES, <http://cuomeka.wrlc.org/exhibits/show/immigration/background/1965-intro> (last visited Mar. 26, 2013) (internal quotation marks omitted).

<sup>137</sup> See Carlson, *supra* note 113, at 68; see also Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911 (amending the Immigration & Nationality Act).

<sup>138</sup> *Id.* (amending the Immigration and Nationality Act of 1952 to read that qualifying family members (spouse, child, parent) of qualifying citizens and lawful residents are entitled to a non-quota immigrant status).

<sup>139</sup> Employment First Preference (E1) goes to priority workers. Employment Second Preference (E2) goes to professionals holding advanced degrees and persons of exceptional ability. Employment Third Preference (E3) is for skilled workers, professionals, and unskilled workers. See *Employment-Based Immigration Visas*, U.S. DEP’T OF STATE, [http://travel.state.gov/visa/immigrants/types/types\\_1323.html](http://travel.state.gov/visa/immigrants/types/types_1323.html) (last visited Mar. 26, 2013); see also Carlson, *supra* note 113, at 69.

<sup>140</sup> HELENA CARREIRAS, *GENDER AND THE MILITARY: WOMEN IN THE ARMED FORCES OF WESTERN DEMOCRACIES* 49 (2006).

<sup>141</sup> KAREN O. DUNIVIN, *MILITARY CULTURE: A PARADIGM SHIFT?* 1, 16–17 (Air War College, Maxwell Paper No. 10, 1997), available at <http://www.au.af.mil/au/awc/awcgate/Maxwell/mp10.pdf>.

<sup>142</sup> CARREIRAS, *supra* note 140, at 41; see also KENNETH CLATTERBAUGH, *CONTEMPORARY PERSPECTIVES ON MASCULINITY: MEN, WOMEN, AND POLITICS IN MODERN SOCIETY* 41 (1990) (stating that some radical writers position violence as the “ultimate test of masculinity”).

<sup>143</sup> Ronald R. Krebs, *Rights and Gun Sights: Military Service and the Politics of Citizenship* 1 (2003) (unpublished Ph.D. dissertation, Columbia University), available at <http://search.proquest.com/docview/276312273> (testing the conventional view that armed forces have been “guardians of national virtues”).

groups and agents of the state, but among groups as well.”<sup>144</sup> Theodore Roosevelt explained that “a shared military experience would forge a unified nation out of the mass of newcomers.”<sup>145</sup> Notably, throughout our nation’s history, military service has been a tool to make male warrior citizens under terms entrenched in hyper-masculinity. Krebs summarized that minorities historically have used military service to “proceed[ ] from the margins to the center by exploiting the military’s dependence on their human capital and by extracting concessions from the state.”<sup>146</sup>

At times, this proved challenging. The Irish immigrants, for example, quickly joined militia companies to “claim[ ] for themselves a badge of respectable manliness and citizenship . . . .”<sup>147</sup> They then used their military service to mitigate nativist challenges by emphasizing their patriotic service and heroism.<sup>148</sup> Yet this was a tenuous position for immigrants to occupy.<sup>149</sup>

American immigration law and policy has consistently positioned military service as a bridge to citizenship in our nation’s history in ways that are paradigmatically entrenched in hyper-masculinity and framed in hegemonic masculinity. Foreign-born immigrants have disproportionately populated the American Army,<sup>150</sup> despite episodic concerns about their loyalty.<sup>151</sup> From the 1820s to the 1880s, 25%–75% of soldiers in the United States Army were foreign born, while the population as a whole ranged from 10% in 1850 to 15% foreign born from 1860–1900.<sup>152</sup> These military personnel were largely European—70%—of which 60% were from Ireland, 20% from Germany, and 12% from England or Scotland.<sup>153</sup> In World War I, one-sixth of those drafted were immigrants, again reflecting an over-representation.<sup>154</sup> Again, in World War II, the total population was 15.4% foreign born, yet 18% of military personnel were foreign born.<sup>155</sup>

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<sup>144</sup> *Id.* at 78.

<sup>145</sup> *Id.* at 1. “[M]ilitaries mold nations by molding individuals, one person at a time.” *Id.* at 5.

<sup>146</sup> *Id.* at 81–82.

<sup>147</sup> DORSEY, *supra* note 91, at 227 (using military service as a vehicle to “display their ‘patriotic manhood’”).

<sup>148</sup> *Id.*

<sup>149</sup> “‘In times of peace we Irish are not fit to enjoy ‘life, liberty, and the pursuit of happiness,’ but when the country needs our aid, we are capital, glorious fellows.’ Military service thus offered Irish men an early opportunity to claim their status as white citizens and men.” *Id.* (quoting a writer for the Catholic Boston *Pilot*). Tension emerged, for example, when Irish men were recruited to the military with promises of citizenship, yet the United States War with Mexico proved problematic because the military was burning and attacking Catholic churches. NAVARRO, *supra* note 35, at 21.

<sup>150</sup> SUE E. BERRYMAN, WHO SERVES? THE PERSISTENT MYTH OF THE UNDERCLASS ARMY 23 (1988).

<sup>151</sup> *Id.* at 57.

<sup>152</sup> *Id.* at 23, 57 (noting that 50%–70% of the Navy was foreign born in the nineteenth century).

<sup>153</sup> *Id.* at 23.

<sup>154</sup> *Id.* at 34–35 (noting that 13.2% of deferments of draft were for “alien allegiance”).

<sup>155</sup> *Id.* at 37, 57 (explaining that government leaders worried about loyalty, particularly for Germans and Austrians).

This trend continues today. In 2009, there were approximately 29,000 foreign-born military personnel who were not citizens.<sup>156</sup> Most recently, the military announced a path to accelerated citizenship to those immigrants willing to serve.<sup>157</sup> Military service has long been—and remains—a path to citizenship or expedited citizenship that rewards dominant masculinities.

#### V. HYPER-MASCULINITY CHARACTERIZES AND PROBLEMATIZES MODERN IMMIGRATION RESPONSES

Recent immigration patterns have shifted, positioning today's immigrants more heavily from Central America and Asia than Western Europe.<sup>158</sup> Immigration patterns over the past seventy years have shifted heavily to our nation's southern borders. From 1950 to 1990, two million Mexicans immigrated to the United States, more than from any other country in the world.<sup>159</sup> This has been referred to derogatorily as the "browning" of America and has led to spikes in "immigrant bashing and scapegoating."<sup>160</sup>

Examining the masculinity underpinnings of historical immigration trends sets up the importance of a modern inquiry to understand how current dominant masculinities shape and drive immigration law and policy. The terrorist attacks of September 11, 2001, dramatically catalyzed sweeping changes in immigration law and policy. While September 11, 2001, offered a message of national security imperatives, critically the seeds of today's anti-immigration activism and rhetoric began earlier with shifting masculinities and escalating nativism.<sup>161</sup>

Modern masculinities have left men again feeling "beleaguered and besieged, working harder and harder for fewer and fewer personal and social rewards."<sup>162</sup> The underpinnings of masculinity previously included economic autonomy, social mobility, and domestic control, yet each of these foundations has eroded.<sup>163</sup> In the 1980s, 1990s, and 2000s, downward mobility was more common than upward mobility for many men in their twenties.<sup>164</sup> Native-born men faced increased competition for scarce jobs, particularly men in segments of the economy that "cling[ ] most tenaciously to the ideology of self-made masculinity," such as small shopkeepers, farmers, and skilled manufacturing

<sup>156</sup> Julia Preston, *U.S. Military Will Offer Path To Citizenship*, N.Y. TIMES, Feb. 15, 2009, at A1.

<sup>157</sup> BETH BAILEY, *AMERICA'S ARMY: MAKING THE ALL-VOLUNTEER FORCE* 251 (2009). The military will recruit skilled immigrants with temporary visas, offering them a pipeline to citizenship in as short as six months. Preston, *supra* note 156, at A1 (noting that immigrants with green cards have long been eligible to enlist, but this program opens access to temporary immigrants).

<sup>158</sup> NAVARRO, *supra* note 35, at 117.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* at 118 (internal quotation marks omitted).

<sup>161</sup> DEEPA FERNANDES, *TARGETED: HOMELAND SECURITY AND THE BUSINESS OF IMMIGRATION* 212 (2007) (positioning the rise of today's anti-immigration politics in the neo-Nazi and white supremacy movements of the 1990s and nationalizing with the 1996 immigration reform legislation).

<sup>162</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 197.

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

<sup>164</sup> *See id.*

workers.<sup>165</sup> Many of the economic clashes directly squared native-born white American men with newly arrived immigrants as these men “faced increased competition for those scare jobs from newly arrived immigrants.”<sup>166</sup>

Men began to perceive themselves as the “real victims in America.”<sup>167</sup> Many men’s rights political groups formed to assert this position explicitly.<sup>168</sup> The men’s rights groups sought to reassert traditional masculinity by excluding the “other” men from idealized masculinity, including non-whites, non-native-born men, and gay men.<sup>169</sup> Yet, in many ways, this is just history repeating itself, as prior generations of men have similarly sought to deploy exclusionary techniques to restore what they perceived as lost masculinity.<sup>170</sup>

The key defining characteristic of this generation of masculinities in crisis is its resorting to anger, even violence, in response to threatened masculinities.<sup>171</sup> This can be viewed as an expression of hyper-masculinity. Kimmel answers the critical question: “How did the chronic restlessness of the nineteenth century self-made man, which became the general malaise and discontent of twentieth-century masculinity, morph into the explosive rage of the twenty-first century?”:

For one thing, the very adherence to traditional ideals of masculinity now leaves so many [men] feeling cheated, unhappy, and unfulfilled.

American white men bought the promise of self-made masculinity, but its foundation has all but eroded. Instead of questioning [these] ideals, they fall back upon those same traditional notions of manhood—physical strength, self-control, power—that defined their fathers’ and their grandfathers’ eras, as if the solution to their problem were simply “more” masculinity.<sup>172</sup>

Sometimes this anger is self-directed in the form of depression, but often it is an external “lash[ing] out at ‘them,’ the ‘others,’ who now occupy the positions that once belonged to native-born middle-class white men.”<sup>173</sup> Simply stated, many men feel like victims “deprived of their entitlement” as the “government . . . doles it out to everyone else—nonwhites, women, and immigrants.”<sup>174</sup>

A resurgence of hate groups in America, labeled the “White Wing,” bears testament to this anger-motivated victimization model of masculinity. The Southern Poverty Law Center reports 1,018 active hate groups operating in the United States as of 2011.<sup>175</sup> While their ideologies are explicitly racist, homophobic, and nativist, their positions are also steeped in masculinity under-

<sup>165</sup> *Id.* at 216.

<sup>166</sup> *Id.* (explaining how downward mobility hit the lower middle class especially hard as union jobs went overseas, farmers lost their farms, and shop owners were driven out of business).

<sup>167</sup> *Id.* at 199.

<sup>168</sup> *Id.* at 201 (identifying many of the groups and their political agendas).

<sup>169</sup> *Id.* at 203.

<sup>170</sup> *Id.* at 211 (explaining how these efforts have “haunted men for a century”).

<sup>171</sup> *Id.* at 217.

<sup>172</sup> *Id.* at 218.

<sup>173</sup> *Id.* at 220.

<sup>174</sup> *Id.* at 230.

<sup>175</sup> *Hate & Extremism*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/what-we-do/hate-and-extremism> (last visited Mar. 26, 2013) (“Since 2000, the number of hate groups has increased by 69 percent. This surge has been fueled by anger and fear over the

tones.<sup>176</sup> Many of these groups are focused on our nation's borders. The Southern Poverty Law Center has tracked massive expansion from approximately forty rogue, private "border patrol" groups in the spring of 2005 to over 144 groups by the spring of 2007.<sup>177</sup> Much of the growth has been made possible by the increased emphasis on national security following 9/11, making the movement "palatable" to a broad audience.<sup>178</sup> The Southern Poverty Law Center further reports that the number of armed "Patriot groups" rose by 755% in the first three years of Obama's presidency, from 149 in 2008 to 1,274 in 2011.<sup>179</sup>

Today's anti-immigrant movement aligns with the masculinity crisis squarely. The most central component of the modern "anti-immigrant campaign is its ability to deflect anger about the negative effects of the current US 'economic restructuring' onto the scapegoat of immigrants."<sup>180</sup>

This modern wave of immigration reform is distinctly characterized by a hyper-masculine response to immigration reform in its exclusionary paradigm, the role of citizen militias, militarized borders, and anti-immigrant rhetoric. In 1986, Congress again turned its attention to immigration with the Immigration Reform and Control Act.<sup>181</sup> The Act shifted to a stronger enforcement mechanism regime. The Act imposed requirements on employers to attest to the immigration status of their employees, criminalized the knowing recruitment and hiring of undocumented immigrants, and granted amnesty to certain immigrant groups.<sup>182</sup> Federal policy became known as the "militarization of the Cactus Curtain," as U.S. Border Patrol deployed militaristic equipment, infrared technology, and radar to apprehend 1.13 million undocumented migrants in 1991 and 1.5 million in 1992.<sup>183</sup> Importantly, as Navarro concludes, "no evidence existed that supported the effectiveness of the . . . border militarization operations in halting . . . the flow . . . of the migrant[s]."<sup>184</sup>

Yet ten years later, illegal immigration remained a "pressing public policy action issue."<sup>185</sup> The next major immigration reform came in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.<sup>186</sup> As the name of the legislation suggests, this legislation was distinctly enforcement oriented. The most distinct provisions in the bill dramatically increased enforcement at

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nation's ailing economy, an influx of non-white immigrants, and the diminishing white majority, as symbolized by the election of the nation's first African-American president.").

<sup>176</sup> KIMMEL, *MANHOOD*, *supra* note 1, at 229–30 (explaining how these groups recruit what they describe as "real men").

<sup>177</sup> ROXANNE LYNN DOTY, *THE LAW INTO THEIR OWN HANDS: IMMIGRATION AND THE POLITICS OF EXCEPTIONALISM* 36 (2009).

<sup>178</sup> NAVARRO, *supra* note 35, at 160, 178–80 (playing to fears in the media by suggesting that Al Qaeda would infiltrate the United States through Mexico).

<sup>179</sup> SOUTHERN POVERTY LAW CENTER, *supra* note 175.

<sup>180</sup> Brugge, *supra* note 8, at 192.

<sup>181</sup> Immigration Reform & Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

<sup>182</sup> *Id.* § 101, 100 Stat. at 3360–61, 3369.

<sup>183</sup> NAVARRO, *supra* note 35, at 127–29 (applying militaristic names to immigration control efforts such as "Operation Hold the Line" and "Operation Gatekeeper").

<sup>184</sup> *Id.* at 130.

<sup>185</sup> *Id.* at 120.

<sup>186</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546.

the nation's borders, allocating millions of dollars to militarize the border with increased agents, fencing, and state-of-the-art technology.<sup>187</sup> The Act also markedly increased the penalties for illegal border crossings and created an entry-exit database.<sup>188</sup>

Fueled by high-profile terrorist attacks and increased anti-immigrant fervor directed at Latinos,<sup>189</sup> immigration policy shifted formally toward militaristic border patrols and informally toward vigilante, militia-style, citizen patrols. In addition to the armed government presence at our borders, a critical piece of the modern immigration movement is the rise of self-proclaimed citizen militias, as watchdogs policing America's borders.<sup>190</sup>

## VI. CONCLUSION: MASCULINIZED CITIZENSHIP

Gender permeates our culture. It establishes "patterns of expectations for individuals, orders the social processes of everyday life, is built into the major social organizations of society, such as the economy, ideology, the family, and politics, and is also an entity in and of itself."<sup>191</sup> It is critical to make masculinities visible to understand how dominant masculine imperatives shape politics, law, and citizenship.<sup>192</sup> This Article seeks to illuminate the role that masculinities have played in shaping immigration law and policy.

The role of masculinities shaping immigration law and policy historically is both problematic and insightful as we think about modern immigration reforms. James Messerschmidt stresses the importance of examining masculinities, particularly as they are camouflaged. He highlights how masculinities can be used and camouflaged and manipulated in ways that contribute to discourse in a "manufactured fiction."<sup>193</sup> In *Representing Masculinity*, masculinities scholars highlight the central question another way, advocating that we unpack how the "implicit masculinity of the abstract individual has shaped modern

<sup>187</sup> *Id.* §§ 101–04, 110 Stat. at 3009–553–55.

<sup>188</sup> *Id.* §§ 105, 110 Stat. at 3009–556, 3009–558–59.

<sup>189</sup> NAVARRO, *supra* note 35, at 127–28 (explaining how anti-immigrant sentiment rose in the early 1990s in response to the World Trade Center bombing and "ongoing media coverage helped foment a resurgence of xenophobia, nativism, and racism specifically directed at Mexicanos").

<sup>190</sup> Amy Bach, *Vigilante Justice*, NATION, June 3, 2002, at 18; *see also* DOTY, *supra* note 177, at 36. There is certainly a stark difference between the militia rhetoric and the reality. Not all of the activity is truly an expression of hyper-masculine militarism. Armando Navarro says that some describe the movement's actors as "wannabe militia vigilantes," noting that the volunteers are "disproportionately retired, elderly, White males, some armed, who sat in lawn chairs, under an umbrella with flags from their respective states flying, drinking cold beer while listening to radios, and some using binoculars . . ." NAVARRO, *supra* note 35, at 181. Border vigilantism has become a "sport of sorts." *Id.* at 162 (emphasis omitted).

<sup>191</sup> Cheng, *supra* note 1, at 296 (citation omitted).

<sup>192</sup> Dudink et al., *supra* note 9, at xiii.

<sup>193</sup> MESSERSCHMIDT, *supra* note 32, at 157 (applying masculinities theory to examine the ways that President Bush Sr. and President Bush Jr. used masculinities to sell war). Messerschmidt concludes that "both presidential forms of communicative social action constructed a metaphorical hierarchical gender relationship between a hegemonic masculine hero and emphasized feminine and infantile victims, and between that hero and toxic masculine villains . . ." *Id.* at 155–56.

political culture from its origins in the late eighteenth century until the present” and concluding that “the implicit masculinity of the abstract individual resulted in the political exclusion of women and of men who were considered unmanly.”<sup>194</sup>

When we unveil the implicit or camouflaged masculinities underlying immigration law we see masculinities as an undercurrent to both who we have let into our nation’s borders and who we have excluded. We see appeals to “a common masculinity” that is “continuously produced within” a culture and a “specific, contextually defined political process[ ].”<sup>195</sup> This embeds an implicit masculinity within constructions of citizenship itself. Gendered framings suggest a problematic layering of masculinities norms on citizenship directly.<sup>196</sup> It suggests that the state is being used as a tool to maintain dominant masculinities, or is itself a direct actor.

This Article reveals how immigration law has historically been—and continues to be—used as a vehicle to reflect prevailing dominant masculinities. It has examined just a few historical examples; indeed, there are countless others.<sup>197</sup> There is more work to be done to disaggregate masculinities from the prevailing race and class accounts to uncover the full masculinity underpinnings of our immigration law. As our immigration reform efforts continue to divide, polarize, and stagnate, however, this work seems imperative to achieve a lasting immigration reform that reflects broader societal values.

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<sup>194</sup> Dudink et al., *supra* note 9, at xii.

<sup>195</sup> *Id.* at xiii.

<sup>196</sup> See, e.g., DORSEY, *supra* note 91, at 219–20 (“And because citizenship rights were inseparable from masculine identity in nineteenth-century America, nativism spilled over into a controversy about manliness in northern cities.”).

<sup>197</sup> See, e.g., CANTÚ, *supra* note 2, at 70–73 (explaining how gays and lesbians have navigated American immigration law).