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MANHOOD AND SUBVERSION DURING WORLD WAR I: THE CASES OF EUGENE DEBS AND ALEXANDER BERKMAN

KATHLEEN KENNEDY

This Article re-examines the trials of Eugene Debs and Alexander Berkman during World War I in order to map how court officials, Debs, and Berkman deployed masculinity during their trials. This Article argues that this deployment of masculinity was fundamental to how prosecutors and judges understood the bad tendency of Debs and Berkman's anti-war remarks and the dangers those remarks posed to the public. It also explores how Debs and Berkman's constructions of masculinity critiqued patriotic manhood and the strengths and limitations of those critiques for anti-war discourses.

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Feminist theorists argue that since the early 1980s American citizenship has undergone a remasculinization that rehabilitates the citizen-soldier as the quintessential symbol of American values and protector of American freedoms. They contend that both policy and cultural images increasingly regenerate militarized manhood, linking it to a violent, aggressive, and often misogynist defense of the nation and the heterosexual family. As the American military has deployed to wars in the Middle East these images have only been reinforced to protect the uniquely American values of freedom, liberty, and the integrity of the liberal (often female) individual against an irrational, repressive, wantonly violent, and uniquely pernicious enemy—the Muslim male terrorist. Despite the anxious presence of women in the American military, the national sacrifice that fighting terrorism requires is gendered masculine as men die for the nation while women mourn their deaths. Defense of the nation, while necessitating women’s cooperation, is a uniquely male burden—it requires that the entire nation embrace and celebrate patriotic manhood and the sacrifices it requires. To do otherwise would be disloyal to the nation and the liberal-democratic values it embodies.

These debates, feminist theorists contend, are significant because they determine who exercises ultimate power and even sovereignty in American society. In times of war and national crisis, legal and bureaucratic apparatuses enforce gendered understandings of citizenship that privilege particular understandings of masculinity and femininity and their relationship to citizenship. This Article examines

1. See generally Susan Jeffords, The Remasculinization of America: Gender and the Vietnam War (1990) (suggesting that the arena of warfare is more than “fields of battle” but can also be described as “fields of gender” in which enemies are depicted as feminine, the protection of feminine symbols serve as justification for war, and vocabulary becomes “sexually motivated”); Gendering War Talk (Miriam Cooke & Angela Woolacott eds., 1993) (discussing how gender roles are created in times of war and how values shape those acceptable roles); Carol Cohn, Sex and Death in the Rational World of Defense Intellectuals, 12 Signs 687 (1987) (examining the author’s participation in a summer program that centered on defense technology and arms control and the sexist language which accompanies the nuclear strategic doctrine).


3. See supra note 1.

4. Ramazi, supra note 2, passim.

5. Jeffords, supra note 1, passim. See generally Athena’s Daughters: Television’s New Woman Warrior (Frances Early and Kathleen Kennedy eds., 2003) (discussing the many female “warriors” that appear in popular television shows and their appropriation of violence).
the cases of Alexander Berkman and Eugene Debs, who were charged during World War I with subversion and explores the courtroom as a gendered arena in which legal authorities enforced patriotic manhood and in which defendants challenged some, although not all, of its basic tenets. This Article contends that their cases illustrate how early twentieth-century debates about masculinity and its relationship to citizenship shaped the meaning(s) of subversion that in turn constructed the modern surveillance state. The conditions of wartime enabled the enforcement of particular constructions of citizenship that privileged the experiences and perceptions of nationalists and their understandings of white manhood.6

Part I of this Article sets the context for the trials of Berkman and Debs by detailing how early twentieth century cultural producers understood patriotic manhood and the threats posed to it by the peace movement. It then discusses how World War I and the Wilson Administration's demand for one hundred percent loyalty incorporated nationalists' understanding of appropriate gender roles. Drawing partly on my past work on gender and loyalty, this Article argues that understanding the role of gender is important in understanding the federal prohibitions against dissent.

Parts II and III develop the specific argument by examining the wartime trials of Alexander Berkman and Eugene Debs. Part II argues that Berkman's trial allows for an examination of the relationship between wartime constructions of American identity and gender, as Berkman was prosecuted on the basis of his membership in the "crowd"—that is, those Eastern European immigrants whose failure to embrace uniquely American political values jeopardized those values. Part III explores how Debs and his supporters constructed him as the embodiment of ethical dissent against war and their investment in that construction of manliness.

I. HISTORICAL CONTEXT

A. Debating National Manliness

The recent defense of the United States following September 11th has many of the same characteristics of the older, equally anxious call to arms that took place during World War I. The

6. For more information on the relationship between white manhood and nationalism, see generally GAIL BEDERMAN, MANLINESS AND CIVILIZATION: A CULTURAL HISTORY OF GENDER AND RACE IN THE UNITED STATES, 1880–1917 (1995).
beginning of the twentieth century witnessed a "crisis in masculinity" caused in part by the challenges to the hegemony that white middle-class men enjoyed over American civic life. Historian Edwin Shenk argues that masculine conduct exhibited agency, power, volition, and balance while unmasculine conduct demonstrated latency, impulse, and powerlessness.

World War I presented middle-class Americans with an opportunity to rethink gender and its relationship to citizenship. American women linked maternalism to the international arena, a terrain jealously guarded by middle-class men. To this end, both

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<th>Men</th>
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<tr>
<td>Agency</td>
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<td>Fairness</td>
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7. MICHAEL C.C. ADAMS, THE GREAT ADVENTURE: MALE DESIRE AND THE COMING OF WORLD WAR I passim (1990) (detailing the gender stereotypes that prevailed during the Victorian period and influenced patriotism and the charge into war); BEDERMAN, supra note 6, passim; Peter Filene, In Time of War, in THE AMERICAN MAN 321, 321 (Elizabeth Peck et al. eds., 1980) (describing World War I as the "ultimate test of manliness" due to the cultural perception that work was becoming feminized); Arnold Testi, The Gender of Reform Politics: Theodore Roosevelt and the Culture of Masculinity, 81 J. OF AM. HIST. 1509, 1509–88 (1995).


pro- and anti-war women argued that women’s experiences as mothers uniquely qualified them to participate in international politics and to serve their country.\textsuperscript{10} They argued that this service, whether in pacifist organizations or in preparation for war, entitled women to full citizenship at home.\textsuperscript{11} But most troubling to nationalists were arguments by members of the woman’s peace movement that disengaged citizenship from its military moorings.\textsuperscript{12} The proponents of the peace movement argued that international citizenship should be based on maternal values that led women to conceive of relationships more cooperatively and less competitively than did men.\textsuperscript{13} This approach led women to seek mutually agreeable solutions to international disputes. Challenging long-standing arguments that women lacked the capacity or experience for full citizenship in the United States because of their limited role in international politics, members of the woman’s peace movement claimed citizenship based on their exclusion from war and from the violence it entailed.\textsuperscript{14}

For the generally white, middle-class nationalists who opposed the peace advocates, this challenge to the ideal of the citizen-soldier represented a “national emasculation”\textsuperscript{15} and a threat to white men’s control over citizenship. The outbreak of war in Europe and the competition for empire that preceded it, they argued, necessitated a reconstruction of a masculine and Western European political community that reinforced “white” manhood as a privileged sight for political engagement.\textsuperscript{16} Specifically, early twentieth-century nationalists linked the nation and the values it embodied to patriotic suffrage movement).

\textsuperscript{10}See Kennedy, supra note 9, at 16; Steinson, supra note 9, at 9.

\textsuperscript{11}See Kennedy, supra note 9, at 1–17; Steinson, supra note 9, passim.

\textsuperscript{12}See Kennedy, supra note 9, at 1–17; Steinson, supra note 9, passim.


\textsuperscript{14}See Degen, supra note 13, passim; Schott, supra note 13, passim.


\textsuperscript{16}In a letter to his son, the American ambassador to the Court of St. James argued for American participation in World War I because it “kill[s] the Irish and German influence . . . [and] revive[s] our real manhood—put[s] mollycoddles in disgrace, as idiots and dandies are.” Burton J. Hendrick, The Life and Letters of Walter H. Page 218 (1922) (quoting Letter from Walter H. Page to Arthur Page (Mar. 25, 1917)). For an expanded discussion of the gendered arguments of proponents of war, see Kennedy, supra note 9, at 1–17.
manhood. Soldiering, they argued, was the highest form of citizenship because it allowed men to transcend the limitations of their bodies by serving the higher ideals of civilization. In the words of Josephine Bates, who joined the preparedness movement after her son was killed on the Lusitania, "there are worse things than war and a woman must not warp standards. Make a man a coward to duty, or worse, betray him in principles and ideals vastly more precious than his life." By choosing to protect their son's bodies, members of the Woman's Peace Party denied to men the triumphant transcendence that war proponents argued distinguished free men from slaves and women. Proponents of war argued that men who refused the sacrifices of war could never obtain the attributes of manhood required for full United States citizenship. Their actions degraded their bodies, their character, and civilization itself. Those men were, in the words of Theodore Roosevelt, "the white handed or sissy type [who] represent ... the rotting out of the virile virtues of civilization." For proponents of American participation in the war, the moral adventure of war promised to regenerate masculine citizenship and save the nation from a general "flabiness" caused by the influence of women and immigrants. The moral adventure of war was a way for nationalists to reclaim citizenship for those men whose exclusive rights to national citizenship were being challenged

17. KENNEDY, supra note 9, at 1–17.
18. Id.
19. The British luxury liner, the Lusitania, was sunk by a German submarine on May 7, 1915. THOMAS J. KNOCK, TO END ALL WARS: WOODROW WILSON AND THE QUEST FOR A NEW WORLD ORDER 60–65 (1992). More than 1,000 men, women, and children, including 124 Americans, were killed. Id. For many Americans, especially those in the preparedness movement, the sinking of the Lusitania demonstrated the wanton aggression of Germany and shifted public opinion towards the British. Id. For a discussion of the effects of the sinking of the Lusitania and the subsequent British reports on German war atrocities, see id. at 60–65.
20. STEINSON, supra note 9, at 210 (quoting Josephine Bates). The preparedness movement developed after war broke out in Europe in August of 1918. Its members argued that the United States was ill-prepared for war and lobbied Congress and the President to strengthen the American military in anticipation of American involvement in the war. For more information on the preparedness movement, see MICHAEL PEARLMAN, TO MAKE DEMOCRACY SAFE FOR AMERICA: PATRIOTS AND PREPAREDNESS IN THE PROGRESSIVE ERA 150–58 (1984).
21. JEFFORDS, supra note 1, passim (suggesting that gender and warfare are intimately connected and that war can be a mechanism for renegotiation of social interest, perhaps reinforcing the stability of patriarchal domination that has been challenged over time).
22. Id.
23. ROOSEVELT, supra note 15, at 173.
24. KENNEDY, supra note 9, at 1–17.
by women and new immigrants.25

B. Securing Loyalty

As long as the United States remained on the sidelines, proponents and opponents of American participation in the war argued freely about which conception of citizenship better served the ideals of American society.26 But once the United States entered the war, President Woodrow Wilson preempted this debate. Historians argue that Wilson's ability to define American participation in the war as a crusade to protect endangered American values against an invasive autocratic enemy guaranteed broad support for his war plans, especially among liberals and progressives who had previously opposed the war.27 In his famous war message to Congress, Wilson defined a nation united less by blood than by a spirit whose historic mission was "to unite the world under a democratic vision."28 Historian Nancy Bristow contends that the progressives who supported Wilson's war plans hoped that "out of war would emerge a new American citizen, loyal first and foremost to the nation and united with other citizens through shared values."29 Wilson and his supporters constructed an imagined democratic community endangered by an unreasonable, violent, autocratic, and ambitious enemy.30 Accordingly, any opposition to the war was at best unreasonable and at worst disloyal to the principles of democracy and liberty.

For those Americans who refused to see the reason of his war plans, Wilson promised "a firm hand of repression."31 Wilson believed that those who opposed the war allied themselves with the enemy and with the values he embodied—principally, absolutism, tyranny, and irrational violence.32 Because this opposition threatened both the war effort and basic American freedoms, Wilson argued that

25. Id.
26. KENNEDY, supra note 9, at 1-17; see also KNOCK, supra note 19, at 48-69 (outlining the debates between pro-war and anti-war activists).
28. Id.
29. NANCY BRISTOW, MAKING MEN MORAL: SOCIAL ENGINEERING DURING THE GREAT WAR 16-17 (1996). To this end, pro-war progressives created institutions, such as the Civilian Training Camps, that used the military to mold a new kind of man. Id.
30. KENNEDY, supra note 9, at xii-xiii; KNOCK, supra note 19, at 121.
31. President Calls for War-Declaration, Stronger Navy, New Army of 500,000 Men, Full Co-Operation with Germany’s Foes, N.Y. TIMES, Apr. 3, 1917, at 1.
32. KENNEDY, supra note 9, at xii-xiii; KNOCK, supra note 19, at 121.
it required unprecedented legal action. To fight the war at home, Wilson asked Congress to pass a series of laws known collectively as the Wartime Emergency Laws. While initially designed to limit behavior that directly and intentionally sabotaged the war effort, their ambiguity, combined with a broad reading of the bad tendency doctrine in their enforcement, allowed the federal government to use the laws to prosecute individuals who were simply critical of the war or the Wilson Administration in general. The passage of the Espionage and Sedition Acts, the centerpieces of the Wartime

33. See KENNEDY, supra note 9, at xii–xiii; KNOCK, supra note 19, at 121.

34. Throughout the late nineteenth and early twentieth centuries, courts applied the bad tendency doctrine to cases involving radical speech, most often speech that encouraged labor unrest and critiqued capitalism. The bad tendency doctrine assumed that certain types of speech would cause unrest in the public and hence should be regulated by the state. For a full discussion of the bad tendency doctrine and its evolution, see DAVID M. RABBAN, FREE SPEECH IN ITS FORGOTTEN YEARS 132–46 (1997).

35. The purpose of the Wartime Emergency Laws was to provide federal officials with the means to preempt interference with the war effort. Federal officials were especially concerned about the large “alien” population, and Congress designed the Espionage Act to counter the activities of foreign agents, whom they believed encouraged disloyalty among immigrants. But the Espionage Act was sufficiently ambiguous to allow for prosecutions of utterances that were simply critical of the war if federal prosecutors could prove that those utterances were “false” and intended to “interfere with the operation or success of the military or navel forces . . . or cause[d] or attempt[ed] to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or navel forces of the United States or . . . ‘willfully’ obstruct[ed] the recruiting or . . . enlistment service of the United States.” H.C. PETERSON & GILBERT C. FITE, OPPONENTS OF WAR, 1917–1918, at 213–15 (1957). The Espionage Act also allowed the Postmaster General to deny second class mailing privileges to periodicals and newspapers that he believed violated the law.

36. Sedition Act of 1918, ch. 75, 40 Stat. 553 (1918), repealed by Act of Mar. 3, 1921, ch. 136, 41 Stat. 1359 (1921). Supporters of the Sedition Act argued, and many judges and juries agreed, that critical remarks about the Wilson Administration could discredit the war and prevent men from enlisting. Whereas the Espionage Act ostensibly limited prosecutions to utterances that intended to interfere with the war effort, the Sedition Act allowed for the prosecution of speech that was simply critical of the American government or even the Wilson Administration. PETERSON & FITE, supra, at 17, 213–15.
Emergency Laws, led to the arrest of more than 2,000 individuals and convictions and jail time for approximately half of those arrested.\(^3^7\)

C. Historiography of Wartime Repression

Feminist critics and historians have explored how pro-war propaganda gendered the defense of this imagined community on the battlefields of Europe, but they have paid less attention to how the Wilson Administration gendered the battle against disloyalty at home.\(^3^8\) Similarly, the vast literature on the repression that accompanied American participation in World War I has ignored gender.\(^3^9\) Initially, historians defined wartime repression as an aberration caused by the unique conditions of war.\(^4^0\) Since the late

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37. \textit{Kennedy}, \textit{supra} note 9, at xii.

38. \textit{See generally Arms and the Woman: War, Gender, and Literary Representation}, (Helen Cooper et al. eds., 1989) (exploring the relationship between gender and war as figured in literature and discussing the impact of feminism on the battles being fought in Europe during World War I); \textit{Behind the Lines: Gender and the Two World Wars} (Margaret Randolph Higonnet et al. eds., 1987) (discussing how "the deconstruction and reconstruction of gender was another battlefront in the two world wars"); Nicoletta F. Gullace, \textit{Sexual Violence and Family Honor: British Propaganda and International Law During the First World War}, 102 Am. Hist. Rev. 716, 716–25 (1997) (describing how the British government employed images depicting the violation of women to market World War I on the basis of crimes against women and the family); Kathleen Kennedy, \textit{Declaring War on War: Gender and the American Socialist Attack on Militarism, 1914–1918}, 7 J. Women's Hist. 109, 109–31 (1995) (discussing how the gendered images in the socialist press detailed for its readers the events of the war); Michelle Shover, \textit{Roles and Images of Women in World War I Propaganda}, 5 Pol. & Soc'y 467, 469–86 (1975) (discussing how poster art and other war propaganda depicting images of women generated public support for government war policy).

39. \textit{But see Kennedy}, \textit{supra} note 9, at xv (addressing how nationalism and patriotism redefined women's roles).

40. For an example of a work that views wartime repression as an aberration, see generally \textit{James L. Mock, Censorship 1917} (1972) (examining First Amendment repression during World War I and how repressive measures stifled economic, political, and social reform in the peace that followed). For works that emphasize class and or ethnicity in wartime prosecution, see generally \textit{Donald Johnson, The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union} (1963) (discussing the Civil Liberties Movement and civil liberties violations that occurred during the early twentieth century in light of the establishment of the civil liberties bureau and the passing of the Espionage and Selective Service Acts); \textit{Paul Murphy, World War I and the Origins of Civil Liberties} (1979) (discussing the government's wartime program, which "placed sharp limitations on individual actions previously considered permissible and even protected by the Bill of Rights" led to the birth of the "politics of civil liberties"); \textit{Peterson & Fite, supra} note 35 (arguing that wartime repression of dissent was an aberration caused by the conditions of war); \textit{William Preston, Jr., Aliens and Dissenters: Federal Suppression of Radicals, 1903–1933} (1963) (discussing the association in the public's mind between "alien" and "radical" and its impact on immigration laws and practices in the early
1950s, historians have emphasized the special burden placed on non-citizens by the Wartime Emergency Laws and their focus on socialists, anarchists, or leaders of the labor movement. These historians argue that, while unique for its intensity and the creation of a bureaucracy for controlling domestic dissent, the roots of wartime repression were in long-standing American political ideals such as nativism, anti-radicalism, and a hostility to popular revolutions. They locate the significance of wartime repression of dissent in its creation of a federal bureaucracy and a series of laws designed to control domestic dissent.

Few historians would dispute the role that ethnic and class tensions played in the debates over loyalty and the meaning of seditious speech that underlie espionage prosecutions and the modern surveillance state. But, by ignoring the interplay of gender and loyalty, historians have told only part of the story. On their face, the Wartime Emergency Laws were not gendered, nor was gender the reason defendants were arrested or convicted. Nevertheless, gender played a central role in how defendants, prosecutors, judges, and the press understood loyalty, subversion, and citizenship.

D. Gender and Loyalty

The Wartime Emergency Laws were gendered through their application. Specifically, gender shaped how court officials and the press understood why particular utterances were seditious and why particular defendants were especially dangerous. Court officials, the press, and defendants’ assumptions about appropriate masculine and feminine behaviors helped construct the intended meaning of the utterances and actions of defendants. This point is especially important because the Wartime Emergency Laws gained their strength from the broad understanding of intent allowed by the courts’ application of the “bad tendency” doctrine when defendants

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41. MOCK, supra note 40, passim.
42. JOHNSON, supra note 40, passim; MURPHY, supra note 40, passim; PETERSON & FITE, supra note 35, passim.
43. KENNEDY, supra note 9, at xi-xx.
44. Id.
45. KENNEDY, supra note 9, at xvi-xvii.
46. Id. (describing the “bad tendency” test as employed by the Supreme Court in the years between the Civil War and World War I).
claimed the right to free speech. Judges forbade speech that they believed had a “bad tendency to cause unrest in an impressionable public.” Before World War I, the “bad tendency” doctrine was applied to anarchist and labor leaders whose public utterances, state authorities argued, caused or were designed to cause their followers to act violently. During World War I, prosecutors successfully argued for a close correlation between speech and behavior, stressing that the mere presence of draft-aged men in the audience was sufficient to demonstrate the bad tendency of particular utterances. Their cases rested on the assumed relationship between speakers and the draft-aged men in the audience. It is in defining this relationship that federal authorities, court officials, and the press introduced gender to explain how defendants influenced their followers and why their actions were disloyal.

Gender has previously been explored in the cases of women charged with violating the Espionage and Sedition Acts. It has been argued that the defendants in these cases were uniquely conspicuous because they had previously engaged in behavior that stepped outside middle-class understandings of appropriate behavior. Accused women were defined in the courtroom and in the press as “disorderly women”—“women who subverted the political order through gender transgressions that were often understood as appropriations of male gender roles” or a misuse of women’s maternal or sexual roles. Court officials, the press, and even defense teams understood accused women’s wartime behavior through the prism of patriotic

47. David M. Rabban, The Emergence of the Modern First Amendment Doctrine, 50 U. CHI. L. REV. 1205, 1305 (1983); David M. Rabban, The First Amendment in Its Forgotten Years, 90 YALE L.J. 522, 522–95 (1981) [hereinafter Rabban, The First Amendment in Its Forgotten Years]; see also RABBAN, supra note 34, at 132–46 (arguing for an understanding of the evolution of free speech doctrine in the period before World War I and exploring those free speech cases that took place prior to World War I).

48. Rabban, The First Amendment in Its Forgotten Years, supra note 47, at 544. Rabban also notes that Justice Holmes used the clear and present danger clause in the Court’s significant first amendment cases during World War I in order to limit dissenting speech during the war. For a discussion of how Holmes and other jurists applied the bad tendency doctrine to free speech during World War I, see RABBAN, supra note 34, at 248–98.

49. Rabban, The First Amendment in Its Forgotten Years, supra note 47, at 544.

50. Id. at xiv.

51. See id.

52. Id.

53. Id.

54. Id. at xv.

55. Id. at xv–xvi (citing NATALIE ZEMON DAVIS, SOCIETY AND CULTURE IN EARLY MODERN FRANCE passim (1975)).
motherhood, a middle-class construction of true womanhood in which women reproduced Americanism and patriotism through their maternal roles. Patriotic mothers raised their sons to accept their civic responsibilities, the most important of which was to sacrifice their bodies if called upon by the state. Assuming that female defendants' influence stemmed from their roles as mothers, prosecutors argued that the defendants misused their maternal influence by encouraging young men to question that role. But most defendants rejected motherhood as the dominant prism through which their behavior should be understood; instead, they represented themselves as rational political actors whose legitimacy rested on the quality of their arguments for the preservation of the constitutional principle of free speech. Both of these understandings of citizenship played key roles in the construction of civil liberties politics in the years following World War I.

E. Male Citizenship and Prosecutions for Disloyalty

Feminist legal theorists contend that rather than being a neutral site, the courtroom is a gendered arena in which masculinity and femininity are contested, defined, and made real through the application of law. Only one study in the current historiography focuses on how gender shaped and was shaped by the modern surveillance state and its attendant definitions of Americanism and subversion in the historiography of World War I. But its focus on women tells only part of the story. Men, like women, enter the courtroom as gendered beings. Although men's gendered identities are often less explicitly defined than are women's, in times of a crisis

56. STEINSON, supra note 9, passim.
57. Id.
58. KENNEDY, supra note 9, passim.
60. KENNEDY, supra note 9, passim. The literature on this topic is extensive. See generally MARTHA CHAMALIAS, INTRODUCTION TO FEMINIST LEGAL THEORY (1999) (providing a general overview of feminist legal theory); CORNELIA HUGHES DAYTON, WOMEN BEFORE THE BAR: GENDER, LAW AND SOCIETY IN CONNECTICUT, 1639-1789 (1995) (examining the difference in the legal treatment of men and women in Connecticut over the span of 150 years); SHERENE H. RAZACK, LOOKING WHITE PEOPLE IN THE EYE: GENDER, RACE, AND CULTURE IN COURTROOMS AND CLASSROOMS 88-129 (1998) (examining issues of gender inequality in the context of granting asylum to women persecuted in Third World countries); ANDREW W. TASLITZ, RAPE AND THE CULTURE OF THE COURTROOM (1999) (examining the effect of cultural influences on rape trials).
61. See generally BEHIND THE LINES, supra note 38 (focusing on the influence of the modern surveillance state on gender).
such as war, male gender identity is brought into sharp focus.\textsuperscript{62} Espionage prosecutions during World War I tapped into anxieties over middle-class male identity.

This Section argues that prosecutors aggressively prosecuted anti-war remarks to defend patriotic manhood. In their view, patriotic men accepted military virtues as the core of citizenship and willingly sacrificed their lives in defense of the nation.\textsuperscript{63} That sacrifice or potential sacrifice gave patriotic men unique access to the privileges of citizenship. Defendants' attacks on patriotic manhood endangered the nation because they potentially created legions of men unwilling to make the necessary sacrifices for liberty.

This Article contends that in the wartime trials of Alexander Berkman and Eugene Debs, court officials, along with Berkman and Debs, each claimed the attributes of manhood for their causes. Similarly, each cast their opponents as non-men whose failure to adhere to these attributes of manhood violated proper gender roles, which consequently degraded American citizenship. While gender was not the central, causal factor in the arrests and convictions of Berkman and Debs, it was central to the meanings that the defendants and court officials gave to their cases. Therefore, gender was central to the definitions of loyalty and dissent that emerged from those trials. In the courtroom proceedings of espionage cases, patriotic manhood was enforced through the law. But the ability of the wartime laws to determine loyalty to American values was limited. Defendants and their supporters posited alternatives to patriotic manhood. Yet, these alternatives did not challenge the basic attributes of manhood; instead they placed those attributes in the service of civil liberties and dissent. Despite their common agreement over the basic attributes of manhood, defendants did not agree on what construction of manhood best served their cause. Like those women charged under the Wartime Emergency Laws, men gendered citizenship differently, sometimes adopting the values of nineteenth-century manliness while at other times adopting the progressive emphasis on rationality to claim the rights of masculinity and citizenship.\textsuperscript{64}

\textsuperscript{62} See id. at 1–5.

\textsuperscript{63} See KENNEDY, supra note 9, at 1–17.

\textsuperscript{64} Gail Bederman distinguishes between manliness, a nineteenth-century value that identified those moral values that men should have, and masculinity, an amorphous and fluid adjective that distinguished men from non-men and women. Bederman argues masculinity with its stress on aggression and physical force had become dominant by the 1930s. However, she contends that manliness and masculinity still coexisted in 1917. See
II. THE CASE OF ALEXANDER BERKMAN

A. Background

Arrested in June of 1917 for conspiring to interfere with the draft, Alexander Berkman was consistently overshadowed by his more infamous and flamboyant partner and co-defendant, Emma Goldman.\(^6\) Court officials and the press highlighted Berkman’s relationship with Goldman\(^5\) to underscore both individuals’ gender deficiencies and the relationship between those deficiencies and their disloyalty.\(^7\) In Berkman’s case, the language of manhood remained implicit as the prosecution attacked most directly Berkman’s ethnicity as a Russian Jew and his relationship to the immigrant men and women who composed “the crowd.”\(^6\) According to federal officials, Berkman represented both the male anarchist who bred disorder and a member of Goldman’s “crowd,” those Eastern European immigrants who, swayed by Goldman’s “guiding hand,” attacked and threatened Americanism. Berkman gave form to the amorphous threat that immigrant men posed to patriotic manhood.\(^6\) His conviction and deportation symbolically purged that threat from the American body politic.\(^7\)

Even before his trial in July 1917, Berkman established himself as an enemy of the state. Convicted for his role in the attempted murder of industrialist Henry Frick, Berkman served fourteen years in prison.\(^7\) As a leader in the American anarchist movement, Berkman, like Goldman, was an obvious target for wartime prosecution. Berkman and Goldman gave federal officials the

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\(^{5}\) See generally BONNIE BAALAND, EMMA GOLDMAN: SEXUALITY AND THE IMPURITY OF THE STATE (1993) (noting that Emma Goldman, a long-time colleague of Berkman was born in Russia, became an anarchist, and later a leading voice in the American left in the early twentieth century traveling the nation advocating for labor reform, women’s rights, birth control, and sexual freedom).

\(^{6}\) KENNEDY, supra note 9, at 41–46.

\(^{7}\) Id. at 44–53.

\(^{8}\) Id. at 39–46.

\(^{9}\) Id.

\(^{10}\) See RICHARD GID POWERS, SECRECY AND POWER: THE LIFE OF J. EDGAR HOOVER 80 (1987).

\(^{71}\) See Candice Falk, Forging Her Place: An Introduction, in EMMA GOLDMAN: A DOCUMENTARY HISTORY OF THE AMERICAN YEARS 1, 23 (Candace Falk et al. eds., 2003) Although Goldman was also involved in this attempted murder, she was not prosecuted due to a lack of evidence. See Falk, supra, at 1–23. Goldman and Berkman planned Frick’s murder in revenge for the workers killed during the Homestead Strike. Id.
ammunition they needed soon after President Wilson announced his intention to reinstate the draft. In response, Berkman and Goldman founded the No-Conscription League, "for the purpose of encouraging conscientious objectors to affirm their liberty of conscience and to translate their objection to human slaughter by refusing to participate in the war." While Berkman and Goldman claimed that they only offered support to men who had already decided to resist conscription, federal officials contended that their support was enough to dissuade men from registering. They charged Berkman and Goldman with conspiring to interfere with the draft. Convicted under the provisions of the Selective Service Act, Berkman and Goldman were sentenced to two years in prison after which they were deported to the Soviet Union.

Despite little actual organized resistance to the draft, federal authorities feared that the draft would become a focal point for anti-war activity. The easiest way for a prosecutor to gain a conviction was to demonstrate that certain utterances potentially undercut the draft. Throughout espionage prosecutions, prosecutors argued that utterances made in the presence of draft-aged men held a special status because they could dissuade them from serving. During an espionage trial, Judge Martin Wade reminded the jury: "You have a right to take into consideration the general knowledge which you must have, as everyone else," Judge Martin Wade reminded the jury considering Kate Richards O'Hare's case, "that there is only one way to win a war, and that is to have soldiers."

72. The No Conscription League, 12 Mother Earth Bull. 113 (June 1917).
73. Kennedy, supra note 9, at 40-41.
74. Wilson signed the Selective Service Act of 1917 into law on May 18, 1917. It required men between the ages of twenty-one and thirty to register for the draft on June 5, 1917. The law also forbade anyone from conspiring to interfere with registration or from aiding those who refused to register or resisted the draft. Selective Service Act of 1917, ch. 15 § 40, stat. 1b (1917) (codified as amended at 18 U.S.C.A. § 2388 (2000)).
75. For a discussion of Berkman and Goldman's case, see Kennedy, supra note 9, at 39-53.
77. Id.
78. Espionage Act Cases, with Certain Others on Related Points: New Law in Making Criminal Utterance in Wartime 46 (Walter Nelles ed., 1918) [hereinafter Espionage Act Cases] (quoting Judge Wade's remarks to the jury). Kate Richards O'Hare was arrested in 1917 for a speech she made in Bowman, North Dakota in which she likened American participation in World War I with the needs and desires of capitalism. Kennedy, supra note 9, at 8. A long-standing member of the Socialist Party and popular stump-speaker, O'Hare's arrest was well publicized. O'Hare was convicted and sentenced to five years in prison. Id. at 21. After serving approximately eighteen months, O'Hare was released. Id. at 26. She remained active in politics, writing, and
B. The Prosecution’s Case

Goldman and Berkman were arrested after a series of meetings held by the No-Conscription League in May and June 1917. At these meetings, Berkman and Goldman made several speeches that Wilson Administration officials claimed advocated violence and encouraged men to violate the Selective Service Act.\(^79\) The prosecuting attorney, Harold A. Content, spent most of the trial establishing that Berkman and Goldman conspired to induce men to resist registration and conscription.\(^80\) To this end, he demonstrated that Berkman and Goldman worked together on most of their anti-conscription activities and that they intended that their words would dissuade men from registering for the draft. His primary evidence consisted of transcripts of Goldman’s speeches, the literature of the No-Conscription League, and copies of *Mother Earth Bulletin* and *The Blast*.\(^81\)

It was in his closing remarks to the jury that Content most clearly articulated Berkman’s threat to Americanism and the substance of his disloyalty. Content began by explaining the precise nature of the charges against Berkman and Goldman and attacking anarchism for its contempt and disregard of the law.\(^82\) Content defended the Selective Service Act as a reasonable law because “service in the army should be based upon a universal and democratic liability to service of all male citizens or persons who have declared their intention to become citizens.”\(^83\) He took for granted that citizenship was grounded in military service and that reasonable men would agree with this assumption. Furthermore, Content argued that the Selective Service Act was reasonable because it was enacted by a republican government acting within constitutionally prescribed principles.\(^84\) By encouraging men to violate the Selective Service Act, Content argued that Berkman and Goldman had “willfully . . . set

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79. KENNEDY, supra note 9, at 43–53.
81. The prosecutor relied on transcripts taken by two police officers in which Goldman was alleged to have stated that, “you say that it is Law. I defy your law!” Goldman denied making this statement. For a copy of the transcript used by the prosecution, see Emma Goldman, Speech Against Conscription, Forward Hall (June 14, 1917) (on file with the North Carolina Law Review).
82. Content Closing Argument, supra note 80, at 1–10.
83. Id.
84. See id. at 58.
themselves above the provisions” of the law. They threatened the entire fabric of American society, not simply because they opposed one law but rather because they advocated “the defeat of an act of Congress that was passed by the people in their sovereignty.” Presiding Judge Mayer reinforced Content’s position. In his instructions to the jury, Mayer reminded them: “Obedience to the law is the fundamental basis of American life. Once that basis disappears or is destroyed, the whole fabric is destroyed, and the foundation upon which a Government of free men rests, disappears.” Mayer and Content turned Berkman’s disagreement with the Selective Service Act in particular and absolute obedience to law in general into an irrational and violent revolutionary gesture aimed at the very heart of American democracy—the sovereignty of the people.

Content located the danger of Berkman and Goldman’s disagreement with conscription not only in their ideas but also, and more significantly, in their personalities and relationship with each other. It is here that Content gendered their threat. He warned the jury against accepting Berkman’s courtroom performance as indicative of his character; instead, Content urged the jury to look to Berkman’s relationship with Goldman. To illustrate this point, he focused on Goldman, who he believed was far more dangerous than her injured and less astute colleague. Content construed Goldman’s danger as her ability to take “her powerful personality and impress it upon the minds of ignorant, weaker and emotional people of the type you have seen called as witnesses in these proceedings.”

Political philosopher Michael Rogin has noted that this rhetorical maneuver, “transform[s] interest conflicts into psychologically based anxieties over national security and American identity.” According to Rogin:

[T]he creation of monsters as a continuing feature of American politics by the inflation, stigmatization, and dehumanization, is a central feature of countersubversive politics .... The demonologist splits the world in two, attributing magical,

85. Id. at 6.
86. Id. at 11.
88. Content Closing Argument, supra note 80, at 54.
89. Berkman had injured his ankle prior to his arrest. For a description of their arrest and Berkman’s injury, see EMMA GOLDMAN, LIVING MY LIFE 609–13 (1970).
90. Content Closing Argument, supra note 80, at 53.
pervasive power to a conspiratorial center of evil. Fearing chaos and secret penetration, the countersubversive interprets local initiatives as signs of an alien power. Discrete individuals and groups become, in the countersubversive imagination, members of a single political body directed by its head.92

Content's words suggested that Goldman was the head of this subversive monster and Berkman was part of its body—the crowd composed of immigrant men and women.93 He presented Berkman as a concrete example of that crowd and its threat to American values and the war effort he claimed protected those values.94 By doing so, Content denied that Goldman and Berkman's critique of the Selective Service Act was political; instead he redefined it as the result of a disorderly personality.95 Content implied that, like the crowd itself, Berkman lacked the attributes of manhood necessary for citizenship because he was under Goldman's spell and could not act independently or rationally.96

To make this point, Content urged the jury to view Berkman's courtroom demeanor as a performance guided by Goldman: "And the Alexander Berkman you have seen here who controlled himself so skillfully under the guiding hand of Miss Goldman—can't you hear him say that he hoped these people did prepare the bomb for Rockefeller?"97 Content continued:

But you got a taste once of his other self; and that was when he lost control of himself, this Berkman who under Miss Goldman's clever influence has controlled himself—once he lost control of himself and protested against something that was 'a damned outrage,' as he termed it, but which was really a perfectly proper piece of legal procedure, the offer of something in Miss Goldman's handwriting, and His Honor

92. Id.
93. KENNEDY, supra note 9, at 43–46.
94. Id. at 43
95. Id. at 43
96. Content ridiculed Berkman's claims to equal citizenship with Goldman stating: Mr. Berkman says 'why didn't they take my speech?' The answer to that is perfectly obvious. In spite of Mr. Berkman's modest claim to be put in the class with Jesus Christ and Martin Luther and Garibaldi and Thomas Jefferson, the fact is that he was not quite as well known as Emma Goldman and it was perfectly apparent that the police gave instructions to go up there and take Miss Goldman's speech. And they hadn't anyone else in mind. It was very unfortunate that at that time Mr. Berkman wasn't quite as prominent as Miss Goldman; but such is fame.
Content Closing Argument, supra note 80, at 25.
97. Id. at 54.
admitted it. That is the Berkman who speaks at the meetings. Those are the people who are plotting from day to day against the peace and security of the United States and who impose their personalities upon the weak minds of ignorant foreigners who come to this country, come from persecution from Russia, and instead of being taught that they should give credit to this country for freedom of worship, freedom of education, they are taught that they ought to bring about a rebellion against this country, the same as they were taught in Russia to bring about rebellion against the tyrannous rule of the czar.98

Content argued that, in spite of Goldman's best efforts, Berkman nonetheless revealed himself as part of that body when he praised those who would kill Rockefeller and objected to a legitimate effort by the prosecution to introduce evidence. Goldman represented the dangers of the woman on top.99 The woman on top assumed a man on the bottom who took on the characteristics of the body—emotion, irrationality, dependency, and physical weakness.100 In these moments, Berkman took on the attributes of the body, specifically the crowd composed of "ignorant foreigners who come to this country,"101 whose histories of submission under autocratic rule combined with their own weaknesses of mind left them unprepared to exercise the prerogatives of democratic citizenship. Like the crowd, Berkman was most dangerous under Goldman's guiding hand. If left to his own devices, Berkman would be unable to conceal the irrational violence that underlay his personality and message and would be easily identified as alien to the American body politic. Berkman was dangerous, Content suggested, because he could, when helped by Goldman, perform the role of the rational man.

Both the prosecution and the press carefully linked Goldman's participation in No-Conscription League meetings with the violence that often erupted at those meetings.102 That violence most often resulted from the actions of police and soldiers who either attempted to breakup these meetings or went through the audience looking for men who refused conscription.103 But the prosecution urged the jury

98. Id. at 54–55.
99. KENNEDY, supra note 9, at 45.
100. Id.; see also Emma Goldman & A. Berkman Behind Bars, N.Y. TIMES, June 16, 1917, at 1 (reporting that Berkman was not "nearly so brave or defiant as his female companion").
101. Content Closing Argument, supra note 80, at 55.
102. KENNEDY, supra note 9, at 41–42.
103. Id. at 41.
to view that violence as a reasonable extension of their service to the country:

Gentlemen of the jury, can you blame these young men in uniform who have enlisted in the country's service, who are ready to lay down their lives in defense of the principles upon which this government is founded and for which it stands, who have to sit there and listen to people of this kind insult the President of the United States, defy the laws of the United States, desecrate the nation[al] emblem and heap ridicule upon the national anthem. Is it any wonder that the bonds of restraint must burst once in a while when people of this sort will presume beyond the endurance of a normal, free American citizen?104

Content contrasted the "normal free American citizen" who serves his country with the ignorant foreigner who endangers the nation not only with his refusal to enlist but also with his public defiance of the law. He defined the American citizen as something other than the crowd—those Eastern European immigrants who resisted conscription and brought disorder to the street. Such men and women were aliens; and, as aliens, they were legitimate targets of the soldiers' violence. That violence, Content implied, was justified because it protected the nation from this invasive foreign enemy. Content reminded the jury that patriotic manhood required that they act in defense of the nation against this enemy.

In emphasizing the role that gender played in Content's construction of Berkman and Goldman's relationship with each other and with the crowd, it is important not to underestimate the role of ethnicity in Content's assumptions about manhood.105 In his description of the crowd, Content employed a nativist reading of history that linked immigrant men's actions with their historical background.106 Within this reading of history, particular races were less capable of democratic citizenship because of their long histories of autocratic rule.107 In contrast, "the normal free American" was the product of a history in which patriotic men created and defended liberty.108 Content implored the jury to preserve democracy by convicting Goldman and Berkman: "And I say to you gentlemen of

104. Content Closing Argument, supra note 80, at 56.
105. See KENNEDY, supra note 9, at 43-46.
107. Id. at 429, 435.
108. Id. at 439-40.
the jury that the court democracy for which Washington and Jefferson and Madison and Jackson and Lincoln fought and bled, that great democracy, that great orderly republican government must not succumb to and shall not be destroyed by the attacks of people like these two defendants who seek to abolish that very democracy that our forefathers have laid down their lives in defense."  

Content's reinterpretation of American history is partly explained by his desire to counter efforts by Goldman and Berkman to claim that history for their cause. But his words were nonetheless revealing. In his hyperbole, Content forgot that not all of the "founding fathers" served in the military, as Madison's and Jefferson's major contributions to the Republic were in articulating the republican ideals of the new nation, including their famous protests against the Alien and Sedition Acts. Consistent with the demands of patriotic manhood, Content located the origins of American democracy in the blood of the "founding fathers," thereby linking the Republic and the values it represents with the sacrifices required by war. Content argued that democracy was inseparable from and impossible without the blood of patriotic men. Berkman and the Eastern European men and women that he came to represent stood outside this history and required exceptional action on the part of the state to protect the nation from their influence and actions.

C. Berkman's Defense

Although Berkman and Goldman challenged the prosecution's charges that they advocated violence and violated the Selective Service Act, they believed that their convictions were a forgone conclusion. Consequently, they conducted a "revolutionary trial" that served as a forum for their ideas. Berkman and Goldman retained noted labor lawyer Harry Weinberger for advice, but they questioned all of the witnesses and made the opening and closing

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109. Content Closing Argument, supra note 80, at 60.
110. KENNEDY, supra note 9, at 48.
112. Goldman, supra note 89, at 613; see also The Trial and Conviction of Emma Goldman and Alexander Berkman, 12 MOTHER EARTH BULL. 129, 150-67 (July 1917) [hereinafter Trial and Conviction] (presenting Emma Goldman's speech to the jury).
113. KENNEDY, supra note 9, at 46.
statements themselves. Berkman recognized that his defense would be a performance in which he presented himself to the jury as a rational citizen whose consistent and frank adherence to principle was consistent with the most fundamental ideals of American liberty. Berkman did not explicitly use the language of manhood, but he nonetheless performed those attributes that the middle-class men on the jury would recognize as the core ideals of manhood.

In his questioning of witnesses and legal arguments, Berkman attempted to undermine the prosecution's depiction of him as a non-man. But Berkman's closing statement was his most important gendered performance. In that statement, he summarized his defense, explained the basic philosophies of anarchism and claimed for himself those characteristics of manly conduct that the prosecution had called into question. He also sought to portray Content as less manly than himself. Berkman's defense employed the same gender dichotomies used by the prosecution. Men were rational, intelligent, ordered, frank, brave and willing to sacrifice for their principles; non-men were hysterical, stupid, violent, dishonest and cowardly.

Berkman based his defense upon the principles of anarchism. He argued that the principles of anarchism forbade him from instructing men not to register for the draft. Berkman explained:

I would never advise anyone to do anything that does not endanger me . . . . If I were willing and ready to resist tyranny I may advise others to resist tyranny, because I myself would do it. I would be with them and take the responsibility. But I was excepted from that registration business. I did not have to register. I was beyond the age. I was not in danger . . . . Never would I advise anybody to do a thing that is dangerous and I not be there or I not be in danger, because the registration law excludes me. That is why I did not advise people not to register.

Berkman did not deny that he might, under certain conditions,
encourage men and women to disobey an unjust law, but his sacrifice would be equal to theirs. Unlike those who enforced conscription, he would not send men into battle without sharing their fate. To do so, Berkman suggested, would be hypocritical, cowardly, and unmanly.

Advising men to resist conscription, Berkman argued, would also violate the most sacred of anarchist principles—the right of each individual to act in accordance to his or her conscience and to freely choose his beliefs and actions. While he had an obligation to render advice to those who freely chose to resist conscription, he had an equal obligation not to influence their choice. Since he was a man of principle above all, logic dictated that he would not advise men to break the law.

The goal of Berkman’s performance was to situate himself as representing the rational, frank, and ultimately truthful position in the courtroom debate over the meaning of patriotic manhood. He promised the jury that, unlike the prosecution, he would not “evade any issue” nor would he resort to subterfuge. By representing himself as the rational man in the courtroom who was willing to tell the jury the truth, Berkman distinguished himself from Content, who he mocked as irrational, desperate, silly, and “stupid.”

Although Berkman denied charges that he endorsed violence, he distanced himself from the pacifists and their complete rejection of violence. Manhood required rational action that under certain circumstances might demand the judicious use of violence. “I believe in universal peace,” Berkman told the jury, “but I am not a pacifist. I am a fighter and all my life I have been fighting for liberty. I am not a pacifist. I want that emphasized. I believe in war under certain circumstances. I believe in fighting.” This fighting, however, was not the random violence that the prosecutor claimed underlay Berkman’s actions. Rather, it was a principled and carefully conceived fight to protect individual choice and conscience.

118. Id.
119. See id.
120. Id. at 146.
121. See id. at 146–47.
122. Id.
123. See id.
124. Id. at 140.
125. Id. at 143.
126. Id. at 140.
127. Id. at 140.
128. Id. at 143.
Berkman claimed that under the right circumstances, all rational men could support violence. "You all support the war, which is nothing but wholesale violence," Berkman reminded the jury, "and therefore it will appeal to your common ordinary sense that this general statement of violence or belief in violence, or even disbelief in violence is the statement of an unthinking person."  

Berkman turned to American history to illustrate that violence enacted for the cause of individual liberty was both just and reasonable. He argued that the importance of his trial lay in the preservation or rejection of this American principle of liberty. Like the abolitionists or even the early Christians who were crucified for their beliefs, he had an obligation to sacrifice for liberty. "Life is dear but not so dear that I should be at liberty without self-respect," Berkman told the jury, "I would rather be in prison than be outside with my soul damned in my own estimation." The real issue at stake in this trial was the meaning of sacrifice. Berkman declared:

You believe that free speech is necessary, whether you believe that the grandfathers, the founders of this Republic sacrificed their lives in vain, whether free speech should be permitted, whether we should throw on the dungheap all those things for which they fought, for which people have bled, for which the martyrs of all countries have bled: Free speech and liberty of expression and freedom of conscience.

Like Content, Berkman argued that the jury's verdict sanctified the blood sacrifice of patriotic men. But Berkman claimed those sacrifices for transcendent principles of free speech and dissent rather than the strict adherence to the rule of law that Content argued and Judge Mayer decided was at the root of American liberty. While Content's heroes were the founding fathers/soldiers of the nation, Berkman's were abolitionists like William Lloyd Garrison and John Brown and the early Christian martyrs crucified by the Romans for their civil disobedience. Each argued that the past sacrifices of men loyal to the founding principles of the nation had protected liberty. And each believed that rational (manly) citizenship required a continuing loyalty to those principles. They disputed, however, the fundamental meaning of liberty and the role of law in its preservation.

129. Id.
130. Id. at 140.
131. Id.
132. Id. at 148.
133. Id. at 149.
134. Id.
Berkman located liberty in the individual and his conscience, while Content located it in the law. But for each, the basic attributes of (manly) citizenship were the same; it entailed rational action, independence, sacrifice, and the use of justified violence.

III. THE CASE OF EUGENE DEBS

A. Eugene Debs, American Socialism, and World War I

While Berkman’s role in the attempted murder of Henry Frick and his reputed involvement in the assassination of President William McKinley alienated him from even the majority of the left, Eugene Debs epitomized the best attributes of manhood for many progressives and socialists. His supporters used his trial and conviction under the newly amended Espionage Act to critique the patriotism it demanded and the ideologies of militarism that underlay that patriotism. Much of this critique was standard socialist fare—charges that capitalists orchestrated the war and that workers had no stake in fighting such wars. But in Eugene Debs, socialists argued that Americans had an alternative image of manhood that could challenge the violence embedded within the ideals of patriotism. To this end, Debs, with the aid of his contemporary allies and even future historians, constructed himself as the savior of American liberty, who literally embodied a Christ-like redemptive manliness necessary for a truly just society.


137. See GINGER, supra note 135, at 326–42; Brommel, supra note 135, passim.

138. See GINGER, supra note 135, at 329; Brommel, supra note 135, at 146–51.

Soon after Congress declared war, American socialists met in St. Louis, Missouri to discuss the Party’s response. In the months preceding official American participation in the war, socialists had disagreed over maintaining their initial opposition to war. Although the majority of American socialists opposed American participation in the war, some key socialist intellectuals and leaders supported the necessity of American participation. John Spargo, Graham Stokes, and May and Algie Simmons, to name a few, argued that the war would facilitate both democracy and socialism. Most pro-war socialists left the Socialist Party after it issued its anti-war statement, the St. Louis Manifesto. They supported the Wartime Emergency Laws as necessary measures that protected the nation from sabotage by their more unreasonable former colleagues.

Debs was angry with pro-war socialists and feared that American socialists, like their European counterparts, would forgo internationalism in favor of nationalism and patriotism. Sick and unable to participate in the St. Louis Convention, Debs nonetheless urged his socialist colleagues to take a strong anti-war stance. “Now is the time for the Socialist Party to prove itself and to make revolutionary history for the working class,” Debs wrote, “[t]here can be no fear, no evasion, and no compromise. The crisis forced upon us by the ruling class must be faced squarely by an aroused and determined working class. Our enemy is not abroad but within our [own] borders.”

Blaming an “American plutocracy with its prostituted press and pulpit” for the war and the repression that accompanied it, Debs contended that the war “must be exposed, denounced and revisited to the limit if every jail in the land is chocked with rebels and revolutionaries.” As Debs had hoped, the Socialist Party took a

141. WEINSTEIN, supra note 140, passim.
142. Id.
143. Id.
145. Id.
147. Id.
strong anti-war stance in the St. Louis Manifesto.\textsuperscript{148} Penned in part by Debs’s friend, Kate Richards O’Hare, the St. Louis Manifesto condemned the war and reiterated the Socialist Party’s commitment to internationalism.\textsuperscript{149} Most controversially, the St. Louis Manifesto committed socialists to actively resisting the war and conscription, a position that even Debs found imprudent.\textsuperscript{150} This position led pro-war socialists and federal officials to argue that adherence to socialism and membership in the Socialist Party was tantamount to disloyalty itself.\textsuperscript{151} Prosecutors, including those in Debs’s case, introduced the St. Louis Manifesto into espionage cases as proof that socialists intended to disrupt the American war effort.\textsuperscript{152}

Despite his bravado, Debs had been sick, depressed, and alienated from his socialist colleagues since his run for the Presidency in 1912.\textsuperscript{153} In spite of socialists’ strong anti-war stance, this depression and alienation from politics only increased with American participation in the war and with the enforcement of the federal Wartime Emergency Laws.\textsuperscript{154} According to historian Ray Ginger, Debs was a “changed man since the war began, more restrained, seemingly older, unhappier as the images of young men killed and dismembered in Europe haunted his mind and dreams.”\textsuperscript{155} By the time the United States entered the war, Ginger contends, “America had become a strange land, in which Eugene Debs was a bewildered and unnoticed vagabond.”\textsuperscript{156} The war provided Debs with an opportunity to once again assert himself as the “father” of the American socialist movement and its most important counter-symbol to patriotic manhood.

As more of Debs’s colleagues were arrested and convicted under the Espionage Act, his determination to add his name to those

\footnotesize{\begin{itemize}
  \item \textsuperscript{148} GINGER, \textit{supra} note 135, at 341–42.
  \item \textsuperscript{149} WEINSTEIN, \textit{supra} note 140, passim; Kennedy, \textit{supra} note 140, passim; see also \textit{The Majority and Minority Reports of the St. Louis Convention, in American Socialists and the War} 38, 39–41 (Alexander Trachtenberg ed., 1973) [hereinafter \textit{Majority and Minority Reports}] (expressing the American Socialist Party’s anti-war position). For a full report of the proceedings, see generally \textit{Proceedings of the Emergency Convention of the Socialist Party of America at St. Louis (1917)}, microformed on HX89S75 1917 (Western Historical Manuscript Collection, University of Missouri-St. Louis). The controversial passage read that socialists should take “continuous, active, and public opposition to the war, through demonstrations, mass petitions, and all other means within our power.” \textit{Id.}
  \item \textsuperscript{150} WEINSTEIN, \textit{supra} note 140, passim.
  \item \textsuperscript{151} \textit{Majority and Minority Reports, supra} note 149, passim.
  \item \textsuperscript{152} \textit{Id.}
  \item \textsuperscript{153} GINGER, \textit{supra} note 135, at 313, 317.
  \item \textsuperscript{154} \textit{Id.} at 348–50.
  \item \textsuperscript{155} \textit{Id.}
  \item \textsuperscript{156} \textit{Id.} at 347.
\end{itemize}}
enacting a meaningful protest against such repression increased.\textsuperscript{157} When his close friends, Kate Richards O’Hare and Rose Pastor Stokes, were convicted and sentenced to long prison terms for their anti-war remarks, Debs felt a personal obligation to join them.\textsuperscript{158} In June of 1918, buoyed by the Russian Revolution, a still-sick Debs embarked on a speaking tour designed in part to taunt federal officials and bait them into arresting him.\textsuperscript{159} Debs believed that to do otherwise would be cowardly and unmanly.\textsuperscript{160}

B. Background of the Debs Case

Until Debs visited Canton, Ohio, on June 16, 1918, his tour had drawn little attention from federal officials, who did not believe that Debs’s remarks violated the law.\textsuperscript{161} As was often the case in espionage prosecutions, a local Attorney General, in this case, E.S. Wertz, believed that he could convince a local jury that Debs’s remarks were seditious.\textsuperscript{162} He sent transcripts of Debs’s speech in Canton hoping to gain enough evidence for a trial.\textsuperscript{163} Although Justice Department officials continued to discourage prosecution, Wertz nonetheless indicted Debs.\textsuperscript{164} When Debs arrived in Cleveland a week after his Canton speech, federal authorities arrested him and charged him under the Sedition Act.\textsuperscript{165} His trial took place four months later in Cleveland. The jury convicted Debs, and the judge sentenced him to ten years in prison.\textsuperscript{166} After an unsuccessful appeal to the Supreme Court, Debs served two years in federal prisons in West Virginia and Georgia until President Harding commuted his sentence following an organized broad-based amnesty campaign by Debs’s supporters.\textsuperscript{167} Debs never regained his health and died five years after his release.\textsuperscript{168}

Debs, his contemporaries, and sympathetic historians constructed his conviction and time in prison as a redemptive sacrifice

\textsuperscript{157} Id. at 353–54.
\textsuperscript{158} Id. at 353–59.
\textsuperscript{159} Id. at 350–51.
\textsuperscript{160} Id. at 348–50.
\textsuperscript{161} Sterling, supra note 136, at 19–21.
\textsuperscript{162} Id. at 20.
\textsuperscript{163} Id. at 20–21.
\textsuperscript{164} Id. at 21.
\textsuperscript{165} See sources cited supra notes 135–36 (providing the basis for the historical reconstruction of the events described above).
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
that solidified his place as the quintessential symbol of ethical dissent. His speech to the Canton jury is widely regarded by civil libertarians as one of the most important and elegant defenses of an American patriotism in which love for country is demonstrated through critical engagement rather than the blind obedience demanded by wartime patriotism. According to his contemporaries and even some historians, Debs's trial functioned as a religious ritual that anointed him as the savior of American liberty. In the words of historian Nick Salvatore:

The very ritual of his repetition in the face of the most extensive repression the nation had experienced to that time prepared the alter of sacrifice. The giant man with the burning eyes had affirmed the commitment of his comrades by giving of himself as best he knew and fulfilled, by his own definition, the obligations of true manliness. In that very act Debs served notice to his country, as he had in 1894, that to resist oppression was at least as much a part of the American tradition as compliance with the dictates of corporate leaders. In the process he provided Socialists everywhere with the moral encouragement to continue the struggle.

Like other historians, Salvatore identifies "the obligations of manliness" as central to Debs's identity and the rituals he enacted to construct himself as a living embodiment of principled dissent. But despite this recognition, most historians have assumed rather than analyzed the relationship Debs drew between manliness and citizenship. This Article underscores how this relationship constructed a uniquely masculine conception of anti-war citizenship that challenged patriotic manhood but not necessarily the gender system on which it stood.

C. Debs's Construction of Socialist Manhood

Debs detailed his understanding of the relationship between manhood, militarism, and dissent in anti-war speeches given in Canton and during his trial. As historian Jonathan Hansen argues, at

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169. Darsey, supra note 135, at 444–45.
170. See generally Hansen, supra note 27 (describing the crisis of civic identity leading up to World War I and proposing solutions under the meaning of liberalism).
171. Ginger, supra note 135, at 377; Salvatore, supra note 135, at 293–94.
172. Salvatore, supra note 135, at 294.
173. See Ginger, supra note 135, passim; Darsey, supra note 135, passim; Salvatore, supra note 135, at 294.
174. Salvatore, supra note 135, passim; Darsey, supra note 135, at 438–49.
the heart of his anti-war speeches was "the conviction that 'manhood' resided in the individual's ability to think autonomously and express him or herself openly." For Debs, "manhood" served as a metalanguage for the type of political engagement that he expected socialists to undertake. Debs understood freedom as an essential component of manhood and slavery as a condition of non-men. Those who failed to question the patriotism demanded by capitalism and the militarism of the Wilson Administration lacked manhood because they allowed the state to dictate their conscience. Debs told his audience at Canton: "I would rather a thousand times be a free soul in jail than to be a sycophant and coward in the street." While "the weak and cowardly will falter and fail and desert," Debs argued that those who "have the moral courage to stand erect and assert their convictions ... [were] writing their names in faceless letters in the history of mankind." "If you would be respected you have got to begin by respecting yourself," Debs reminded his audience, "[s]tand up squarely and look yourself in the face and see a man!"

"If you would be respected you have got to begin by respecting yourself," Debs reminded his audience, "[s]tand up squarely and look yourself in the face and see a man!"

Debs's speeches advocated the central characteristics that Historian Edwin Shenk attributes to early twentieth century white middle-class manhood. Men act; they seize authority; they speak directly; and their reason dictates their principles and actions. Those who failed to exercise these qualities were, in Debs's estimation, non-men. Historian James Darsey argues that direct speech was an attribute of manliness that Debs prized. During his speeches, Debs paced the stage, stopped, made eye contact with

175. Hansen, supra note 27, at 177.
177. Id.
178. Id.
179. Id.
180. Id.
181. Shenk, supra note 8, passim.
182. Id.
members of his audience and pointed.\textsuperscript{184} In his actions and words, Debs projected himself as a living embodiment of manhood. He berated his audience and challenged them to cast off the mental and physical chains of industrial capitalism.\textsuperscript{185} That action, he reminded his audience, took courage, but the personal price of failure was far greater than the potential sacrifices that could result from resisting patriotic manhood.\textsuperscript{186} Those in the audience who accepted patriotic manhood or refused to act against it degraded themselves and consequently their colleagues and future historians would cast them off.

The prosecutor constructed this manner of speech as central to Debs's subversion.\textsuperscript{187} As in other cases, the prosecutor noted the presence of "women and young men" in the audience.\textsuperscript{188} He expressed outrage over Debs's "sneering attitude toward patriotism and his attempt to make patriotism as we commonly understand it, ridiculous and absurd."\textsuperscript{189} Most importantly, the prosecutor argued that Debs's "forceful and earnest delivery" was at the heart of the threat that his utterances posed to the "morale of the people."\textsuperscript{190} His emotional words, such as "slavery" and "cannon fodder," Wertz contended, threatened to dissuade men from their military obligations.\textsuperscript{191} While Wertz granted to Debs the central attributes of manhood, he also implied that Debs's appeal was essentially emotional and reduced the men in his audience to those emotions.

\textbf{D. Debs's Critique of War}

Like many white middle-class men and women, Debs accepted a vision of masculinity that embraced progress.\textsuperscript{192} "If it had not been for the men and women who, in the past, have had the moral courage to go to jail, we would still be in the jungles," Debs told his audience at Canton.\textsuperscript{193} In this vision, masculinity was both a symptom of and necessary to human progress and civilization. Manliness guaranteed ethical interaction. In his emphasis on sacrifice, courage, and progress, Debs shared many of the manly values espoused by pro-war

\begin{itemize}
  \item \textsuperscript{184} \textit{Id.}
  \item \textsuperscript{185} Debs, supra note 176, at 5.
  \item \textsuperscript{186} \textit{Id.}
  \item \textsuperscript{187} HANSEN, supra note 27, at xiii.
  \item \textsuperscript{188} \textit{Id.}
  \item \textsuperscript{189} \textit{Id.}
  \item \textsuperscript{190} \textit{Id.}
  \item \textsuperscript{191} Sterling, supra note 136, at 20.
  \item \textsuperscript{192} BEDERMAN, supra note 6, passim.
  \item \textsuperscript{193} Debs, supra note 176, at 1.
\end{itemize}
But while proponents of war such as Roosevelt argued that such progress required a continuous regeneration through violence, Debs argued that it required a regeneration through conscience. Men and, by extension, nations, evolved by exercising virtue and by speaking the truth. Such moral action was essential to the nation's survival and progress. War, he suggested, represented the antithesis of progress.

Rather than enabling men to transcend their bodies in the performance of a higher ideal of citizenship as claimed by proponents of war, Debs contended that wars reduced men to their bodies. Since the early nineteenth century, reformers used graphic descriptions of violated bodies to symbolize "the violation of human dignity and the destruction or 'unmaking' of the civilized world."\textsuperscript{195} Also emphasizing the physical brutality of war, pro-war propagandists likewise used pained and violated bodies to demonstrate the evil of warfare, but they displaced the evil of war onto the enemy.\textsuperscript{196} Pro-war propaganda portrayed that enemy as dark, hairy, and beast-like creatures who violated women and children.\textsuperscript{197} In contrast, the American soldier was white, honorable, and healthy.\textsuperscript{198} By fighting for a just cause, nationalists argued that patriotic men transcended the degradation of war.\textsuperscript{199} Debs challenged this assumption. He described the war's destruction of men's bodies as a sexual assault in which men were reduced to quivering flesh and scattered body-parts. "Gentlemen, I abhor war," Debs explained to the jury, "I would oppose the war if I stood alone. When I think of a cold, glittering steel bayonet being plunged in the white, quivering flesh of a human being, I recoil with horror."\textsuperscript{200} He continued:

I can hear the shrieks of the soldiers of Europe in my dreams. I have imagination enough to see a battlefield. I can see it strewn with the legs of human beings, who but yesterday were in the flush and glory of their young manhood. I can see them at eventide, scattered about in remnants, their limbs torn from

\textsuperscript{194} For a discussion of how ideals of progress and evolutionary theory influenced nationalists construction of manhood, see Bederman, supra note 6, passim.


\textsuperscript{196} For examples of pro-war propaganda, see Gullace, supra note 38, passim; Shover, supra note 38, passim; Kennedy, supra note 38, at 18–68.

\textsuperscript{197} See Gullace, supra note 38, passim; Shover, supra note 38, passim.

\textsuperscript{198} Id.

\textsuperscript{199} Id.

\textsuperscript{200} Karsner, supra note 135, at 28 (quoting Eugene Debs's address to the jury during his trial in Canton, Ohio).
Debs's words were not atypical. Socialist critics of the war commonly emphasized the bodily destruction wrought by war in order to challenge patriotic manhood. For example, political cartoons published in the socialist press represented war as the devolution of civilization, a return to a state of bestiality in which men were controlled by their basest attributes. These depictions potentially demystified patriotic manhood and threatened to restore violence to the body, rather than abstract ideals, as the primary ethical basis on which debates about war should rest. As philosopher Elaine Scarry argues, ideologies such as patriotic manhood hide the fact that the "main purpose and outcome of war is injuring." War, according to Scarry, "requires both the reciprocal infliction of massive injury and the eventual disowning of the injury so that its attributes can be transferred elsewhere, as they cannot if they are permitted to cling to the original site of the wound, the human body." By reconstructing this contest over the art of injuring and maiming bodies into masculinity's ultimate, triumphant transcendence, patriotic manhood enabled injury to slip from view.

Like his friend Kate Richards O'Hare, Debs sought to refocus attention to the injured body and to judge the war by the injury it did to those bodies. The attention that federal authorities and prosecutors paid to such remarks illustrates their potential threat to patriotic manhood. Prosecutors argued that such arguments were "disrespectful" to soldiers and demonstrated O'Hare's and Debs's contempt for the American military in general. By putting the injuries of war in front of the audience's eyes, government officials argued that Debs and O'Hare degraded the sacrifices of patriotic men and discouraged men from registering.

201. Id. at 42-43.
203. Id. at 31-32.
204. Both Elaine Scarry and Vaheed Ramanzi argue that the purpose of these fictions is to cast from view the injuring of human bodies, which is at the heart of war. See generally ELAINE SCARRY, THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD 62 (1985) (arguing that war is a "startling blend of the real and the fictional"); Vaheed Ramazani, The Mother of All Things: War, Reason, and the Gendering of Pain, 54 CULTURAL CRITIQUE 27, 32-33 (2003) (arguing that however reasonable or moral a purpose for going to war may be, it is neither reasonable, nor moral to claim that purpose without also acknowledging the bodily damage that the purpose necessarily entails).
205. SCARRY, supra note 204, at 64.
206. KENNEDY, supra note 9, at 18-38.
207. Id.
E. Gendering Dissent: Comparing the Cases of Debs and Kate Richards O’Hare

How gender functioned in this critique is apparent if we examine more closely the relationship between Debs’s criticism of the injuries of war and those of O’Hare. O’Hare was convicted of violating the Espionage Act in June 1917 for a speech she gave in Bowman, North Dakota. While O’Hare’s speech was two-hours long and focused principally on critiquing capitalism, prosecutors focused on one paragraph in which O’Hare challenged the sacrifices demanded by patriotic womanhood. What O’Hare actually said was disputed. Nevertheless, the prosecution based its case on a version of O’Hare’s speech provided by a government stenographer who recorded that O’Hare had called soldiers “fertilizer” and their mothers “brood sows.” According to that stenographer, O’Hare made the following remarks:

“any person who enlisted in the army of the United States for service in France would be fertilizer, and that was all that he was good for, and that the women of the United States were nothing more than brood sows to raise children to get into the Army and [be] made into fertilizer.”

O’Hare’s conviction resulted primarily from the challenge these words posed to patriotic motherhood and the effects that challenge may have had on draft-aged men. The prosecutor along with the presiding Judge, Martin Wade, held that these words constituted a bad tendency because they both insulted soldiers and their mothers and potentially dissuaded the draft-aged men in her audience from enlisting. Wade clarified this point in his sentencing of O’Hare. Speaking on behalf of those loyal women who understood the

208. Id. at 18–21.
209. Id. at 18–19.
210. O’Hare claimed that she did not make these remarks but instead stated that:

When the governments of Europe and the clergy of Europe demanded of the women that they give themselves in marriage, or out, in order that men should breed before they die, that was not the crime of maddened passion, it was the brutal crime of brutal selfishness, and by that crime the women of Europe were reduced to the status of breeding animals on a stock farm.

KATE RICHARDS O’HARE, SELECTED WRITINGS AND SPEECHES 121, 131 (Sally M. Miller et al. eds., 1982); see also KENNEDY, supra note 9, at 18–38 (including a more complete discussion of the O’Hare case).

211. ESPIONAGE ACT CASES, supra note 78, at 46 (quoting United States v. O’Hare (D. N.D. 1917)).
212. KENNEDY, supra note 9, at 18–38.
213. Id. at 19–23.
necessity of sacrifice, Wade admonished O'Hare: "This is a nation of free speech, but this is a time of sacrifice, when mothers are sacrificing their sons, when all men and women who are not at heart traitors are sacrificing their time and hard-earned money for defense of the flag." Even more strongly, Wade warned O'Hare that "American sons are not going to allow their mothers to be linked unto brood sows and American fathers and mothers are not going to submit to having their sons assigned to no more glorious destiny than that of fertilizer." Simply stated, the nation could not afford to place the injured body in view as it could overwhelm the performative enunciations that defined the soldier's sacrifices as meaningful. As a father and a son, Wade stated that he had an obligation to defend those sacrifices by making an example of O'Hare; he sentenced her to five years in prison and a ten thousand dollar fine.

While O'Hare was not arrested because of her gender, a gendered understanding of patriotism determined the bad tendency of her words. Patriotic mothers willingly accepted the sacrifices of war by raising their sons to be soldiers and by encouraging them to fulfill their duty to the state. For this sacrifice, women gained honor but not necessarily the rights of citizenship. O'Hare's remarks potentially demystified patriotic motherhood by suggesting that it reduced motherhood to its biological function—that is, the production of spare parts for war. By reducing their bodies to machines in the service of war production, O'Hare argued that patriotic motherhood alienated women from their most important social function—motherhood.

O'Hare's words haunted Debs's case. His outrage over her conviction and long prison sentence solidified his decision to challenge the federal government to arrest him. The prosecution used Debs's affinity with O'Hare and cited his support for her as evidence that he intended for his remarks to violate the law. Consequently, Debs compared himself to O'Hare and defended her against charges that her anti-war comments violated true womanhood. Debs told his Canton audience: "All who know Mrs.

214. Espionage Act Cases, supra note 78, at 47 (quoting Judge Wade's remarks to the jury).
215. Id.
216. Id.
217. See generally Jean Berthke Elshtain, Women and War (1987) (citing what is regarded as a classic study of the role of women in times of war).
218. Kennedy, supra note 9, at 19.
220. Debs, supra note 176, at 8.
O'Hare know her to be a woman of unquestioned integrity. And they also know that she is a woman of unimpeachable loyalty to the Socialist movement."²²¹ "Think of sentencing a woman to the penitentiary simply for talking," Debs continued, "[i]f this be treason, let them make the most of it."²²² Debs’s defense of O’Hare demonstrated how deeply his conception of manhood was intertwined with a nineteenth-century image of true womanhood. Debs told the Judge Westenhaver just before he passed sentence:

I have no fault to find with this court or with the trial. Everything in connection with this case has been conducted upon a dignified plane, and in a respectful and decent spirit—with just one exception. Your Honor, my sainted mother inspired me with a reverence for womanhood that amounts to worship. I can think with disrespect of no woman, and I can think with respect of no man who can. I resent the manner in which the names of two noble women were bandied within this court. The levity and wantonness in this instance were absolutely inexcusable. When I think of what was said in this connection, I feel that when I pass a woman, even though it be a sister of the street, I should take off my hat and apologize to her for being a man.²²³

According to Debs’s supporters, Debs had originally intended much stronger words for the prosecutor who Debs believed insulted O’Hare and Stokes in his closing statement.²²⁴ Those supporters convinced Debs to temper his words to maintain an appearance of charity.²²⁵ Despite their advice, Debs still questioned the prosecutor’s manhood and in the process demonstrated his adherence to nineteenth-century ideals in which women deserved special protection and reverence.²²⁶ This image of womanhood also predominated pro-war propaganda that stated women needed the protection of patriotic men.²²⁷ It relied on a clear gender dichotomy that privileged men's roles on the battlefield over women's activities on the homefront.²²⁸ While Debs and O’Hare accepted this basic

²²¹. Id.
²²². Id. at 7.
²²³. KARSNER, supra note 135, at 48–49.
²²⁴. Id.
²²⁵. Id.
²²⁶. Filene, supra note 135, passim.
²²⁷. KENNEDY, supra note 9, at 10–11.
²²⁸. See generally ELSHTAIN, supra note 217 (presenting a classic discussion of the dichotomy of women and men’s roles during war); Margaret Randolph Higonnet &
gender dichotomy, they also complicated it. O’Hare’s comments reminded the public how intertwined motherhood was with the fighting of wars and exposed the political function of motherhood. In extending that reverence to O’Hare, Rose Pastor Stokes, and even “a sister of the street,” Debs disengaged true womanhood from its class and ethnic moorings. At the same time, both understood manliness and womanhood as complimentary but fundamentally different gender identities. While both men and women had a responsibility to combat patriotic manhood, their responsibilities of citizenship were still defined by their different social roles as laborers and mothers.

Both Debs and O’Hare respectfully staked their citizenship and the meaning they hoped it would acquire on conceptions of sacrificial manhood and womanhood. While both placed their bodies in jeopardy in defense of civil liberties, those bodies and the nature of their sacrifices were differently gendered. Like Debs, O’Hare constructed her imprisonment as a sacrifice made due to both her unique responsibility as a leader and citizen in the socialist movement, and like Debs she drew on Protestant middle class language to define how that sacrifice would save the nation. While Debs linked his sacrifice to a remasculinized Christ, O’Hare drew on the image of martyred motherhood. Throughout her arrest, imprisonment, and amnesty work, O’Hare performed the role of the violated mother. She constantly reminded her audience, although incorrectly, that she was the only mother imprisoned for anti-war utterances.

O’Hare and her husband, Frank O’Hare, published a series of letters in the socialist press that O’Hare ostensibly wrote to her children while she was in prison. These letters were designed to construct her imprisonment as an attack on the family and a violation

Patricia L.R. Higonnet, *The Double Helix*, in *BEHIND THE LINES*, supra note 38, at 31 (describing the social and economic roles of women during the two world wars); Nancy Huston, *The Matrix of War: Mothers and Heroes*, in *THE FEMALE BODY IN WESTERN CULTURE* 119 (Susan Rubin Suleiman ed., 1986) (discussing men and women’s roles in war and reproduction). For a recent review of this literature, see Ramazani, *supra* note 204, at 26–46.

230. Id. at 25.
231. Id.
232. Id.
233. Id. Minnie Geibel was also imprisoned for violating the Espionage Act, and she too was a mother. For information on Geibel’s case, see *Application for Executive Clemency* (Mar. 12, 1919), (on file with the National Archives, Washington, D.C., Records of the Office of the Pardon Attorney, RG#33-422, folder 1).
of motherhood. The execution of Edith Carvell, an English nurse accused by the Germans of spying, was an effective propaganda device for pro-war forces whose propaganda demonized German soldiers by highlighting their “murder” of women and children. Carvell came to symbolize the unique barbarity of German militarism. O’Hare linked her sacrifice with that of Carvell’s and, by doing so, also negated the Wilson Administration’s claim that the war protected true womanhood. Throughout these letters, O’Hare underscored what she believed to be the hypocrisy of the Wilson Administration’s imprisonment of a woman with young children at home and its claim that the war protected the bodies of women. At the same time, she reassured her children that her sacrifice was necessary for their future. These letters constructed O’Hare as a Christian martyr who ministered to the needs of those less capable than her of leading the fight against state repression.

Like Debs, O’Hare continued to play this role after her release from prison. She organized the Children’s Crusade to highlight the plight suffered by the families of espionage prisoners. The Children’s Crusade utilized Christian imagery to define amnesty and civil liberties politics as a moral crusade that cleansed the nation of its sins—war and state repression. The Children’s Crusade suggested that American society condemned its children to poverty because of its imprisonment and degradation of their fathers. It underscored the relationship that O’Hare drew between gender, citizenship, and state responsibility as it highlighted the failure of the state to protect women and children. To O’Hare, it was the still the responsibility of women to morally regenerate a society that had abdicated its most important responsibilities—the care and feeding of its citizens.

Gender also helps explain why O’Hare failed as a living

234. See Dear Sweethearts, in PAPERS OF KATE RICHARDS O’HARE, microformed on MC 213/M-23 (Schlesinger Library, Radcliffe College) [hereinafter Dear Sweethearts]. For example, in one of her letters, O’Hare referenced a powerful pro-war symbol when she wrote that “it would be far better, for one to be an enemy spy at the mercy of the German Army officers than to be an American mother at the tender mercy of the Wilson administration.” Letter from Kate Richards O’Hare, to Her Children (Aug. 17, 1919), in Dear Sweethearts, supra.

235. KENNEDY, supra note 9, at 25.

236. See id. at 18–38; Dear Sweethearts, supra note 234.

237. KENNEDY, supra note 9, at 24–26.

238. Id. at 33.

239. Id. at 33–34.

240. Id. at 35.

241. Id. at 33–34.

242. Id.
embodiment of sacrifice. Unlike Debs, O’Hare was unable to translate herself into a living symbol capable of rallying the left or solidifying her historical place among its great leaders. Part of this failure must be attributed to the suspicions that surrounded O’Hare’s work. The leadership of the Socialist Party accused O’Hare and her husband of using the Children’s Crusade to raise funds for her newspaper, and Debs privately criticized her for putting herself in front of other workers when she pressured the Socialist Party to lobby the Wilson Administration on her behalf. Women’s sacrifices were by definition secondary to men’s because in the political economy of war, women could only be victims of violence or symbols of a greater violence done to the nation; only men’s sacrifices saved that nation. As such, men’s sacrifices gave them a greater claim to citizenship than women’s sacrifices.

Debs’s gender allowed him to draw on the most powerful Christian symbol of sacrifice—the passion of Christ. Although he was not executed for his threat to the established order as was Christ, Debs’s supporters emphasized that like Christ, he put his body in jeopardy and suffered to redeem humankind from the sins of an oppressive and ignorant regime. Already ill before he went to prison, Debs supporters argued that his imprisonment could kill him. His death five years after his release solidified his martyrdom. While O’Hare feminized the moral message of Christianity, Debs remasculinized Christ. As Darsey argues, Debs’s Christ was the angry Christ of the New Testament. Debs identified with the Christ who was in constant warfare with those who oppressed the poor and those who required men to accept slavery. In Debs’s words:

I told my friends of the cloth that I did not believe Christ was meek and lowly, but a real, living, vital agitator who went into the Temple with a lash and a knout and whipped the oppressor of the poor, routed them out of doors and spilled blood-got silver on the floor .... I did the same thing ... but I fared better than Christ. They nailed him [to] the cross and they threw me in here .... If Christ could go to the cross for his principles, surely I can go to prison for mine, and I want nothing more than the strength to be able to serve in this slight

243. For further discussion of these issues, see id. at 28–30.
244. GINGER, supra note 135, at 414.
245. See Darsey, supra note 135, at 441 (drawing on a similar argument made by Salvatore); see also SALVATORE, supra note 135, at 50 (presenting the story of Christ’s destruction of the market at the money temple).
way those who have done so much for me.246

Debs's Christ was not a pacifist. He accepted the basic values of nineteenth-century manhood, which included, in Debs's estimation, the use of violence to punish the "oppressor of the poor."247

At the same time, Debs's Christ also forgave those who wronged him. Debs's anger at those in power, his supporters emphasized was tempered by his usual generosity of spirit and ability to love even those who put him behind bars.248 Debs's supporters constructed his courtroom performance to highlight his generosity in the face of personal injustice.249 According to David Kasner, who covered Debs's trial daily in *The New York Call*, Debs publicly forgave those who testified against him.250 Kasner wrote:

> During the ten-minute recess that day Debs walked to the back of the court room where young Steiner [the stenographer hired by the government] was sitting, and putting his hands on the shoulders of the boy, assured him that he had done the best he could under the circumstances, and reassured him that he should not feel humiliated in the least.251

Karsner claimed that Debs's absolution brought Steiner to tears.252 And on another occasion, Debs approached the Cleveland reporter who had testified against him and told him:

> Mr. Miller, all that you said about me is true. You quoted me straight and accurate. I don't want you ever to feel that you have done me an injury by testifying against me. You had to do it, and you did it like a gentleman. We all do what we cannot possibly help doing, and no blame or stigma attaches to any of us for doing that.253

Debs's words resonated with those of Christ who while on the cross murmured the words, "Father, forgive them; for they know not what they do."254

This charity in the face of great injustice constructed Debs as a

247. KARSNER, supra note 135, at 10.
248. Id. at 20–21.
249. Id. at 21.
250. Id.
251. Id. at 20–21.
252. Id. at 21.
253. Id.
man above the petty disagreements of normal men. When Debs did show anger, his supporters emphasized that it was in defense of those weaker than him such as the poor and women. Like Christ, Debs inspired a unique devotion from his followers. According to O'Hare, "[f]or forty years Gene Debs served the working class of the United States as Jesus of Nazareth served the working class of Judea. Priest, architect and builder he renewed the faith in men that had been crushed by poverty and social injustice." His supporters constructed Debs as a prophet who regenerated the spirit of his followers. This ability enabled Debs to turn his follower's pain into action and power. According to Ginger, nowhere was this talent more apparent than in his final speech to the court:

Many spectators scarcely heard the sentence. They had been transported into a cleaner, better land by the speech of Eugene Debs, which caused many a strangled gasp in the courtroom. He had appeared as a gigantic bridge, a man who stood with one foot firmly anchored in the present, the other in the future, while the multitude walked across his shoulders. A portion of humanity felt purified in the sacramental vision of Eugene Victor Debs.

In Ginger's estimation, Debs's speech distilled decades of ideas and actions into one monumental performance. His speech to the jury was his historical moment, and like all great men of history, he seized that moment to offer his supporters a vision of a nation purified of its sins and welcoming of them. In doing so, Debs placed himself alongside the other great prophets of American history, most notably Abraham Lincoln who, according to this myth, led the nation from the abyss of sin and death into a future that promised all its citizens freedom and sustenance.

255. KARSNER, supra note 135, at 25.
256. Darsey, supra note 135, at 443.
257. GINGER, supra note 135, at 376.
258. Id.
259. See id.
260. While in prison, Debs continued to serve as the quintessential symbol of ethical defense. As the war ended, peace advocates and members of the left turned their attention to commuting the sentences of those jailed under the wartime emergency laws. While these efforts would eventually coalesce into the American Civil Liberties Union, in its early stages, the amnesty movement was composed of numerous small groups that often disagreed over strategy and goals. The night before they went to prison, Berkman and Goldman asked their friends Eleanor Fitzgerald and Lucy Lang Robins, to form a movement that would fight for a general amnesty for all of those in prison. But Robins soon decided that an emphasis on Debs's case would be more effective because unlike most espionage prisoners, Debs was beloved by laborers in general. Similarly, the
CONCLUSION

This Article argues that both prosecutors and defendants in espionage cases deployed manhood to legitimize their place in an imagined American community. For prosecutors and judges, only patriotic men who accepted the necessity of military service and the sacrifices of war, could defend that community from its external and internal enemies. In casting Debs and Berkman from their imagined community, judges and prosecutors suggested that each lacked the attributes of manhood necessary for citizenship. Gender transgression, they implied was part and parcel of disloyalty. Those men who lacked the attributes of manhood were more likely to succumb to the irrational and violent rhetoric of the enemy, and since any reasonable person would support Wilson's war plans, lack of support could only be attributed to a lack of rational capacity, dependency, or cowardice.

Neither Berkman nor Debs challenged the basic attributes of early twentieth century manhood. Rather, they placed those attributes in the service of dissent. Both prized rational action, sacrifice for principle, and independence of mind. True patriots, they contended, fought for the principles of liberty. To do otherwise was to sacrifice their self-respect and claim to history. They argued that critical engagement with authority rather than blind obedience to the state preserved liberty.

Despite these similarities, Berkman's and Debs's conceptions of manly citizenship had important differences. Berkman did not explicitly gender his understanding of principled citizenship. Emma Goldman, like Berkman, claimed citizenship by claiming rationality. But as Joan Scott argues, gender is often present even when it is not explicitly invoked. Berkman's conception of the rational individual, while including women, still privileged and drew upon the attributes of manhood.

Unlike Berkman, Debs explicitly gendered his conception of citizenship. He believed that capitalism and war degraded manhood and that men who failed to stand up to the state sacrificed those attributes essential to manhood and citizenship. In doing so, he

Socialist Party emphasized Debs's case hoping that he would put a human face on amnesty and challenge the image of the espionage prisoner as a violent alien, such as Berkman. See generally Kathleen Kennedy, In the Shadows of Gompers: Lucy Robins and the Politics of Amnesty, 1918-1922, 25 PEACE & CHANGE 22, 22-51 (2000) (providing a more detailed analysis of the controversies surrounding the Debs case).

261. See generally Joan W. Scott, Gender as a Useful Category of Analysis, 91 AM. HIST. REV. 1053 (1986) (examining the history of the meaning of gender in society).
deployed nineteenth-century ideals of manliness that placed men and women in fundamentally different political and social roles. At the same time, Debs did not exclude women from citizenship. He praised O'Hare and Rose Pastor Stokes for their defense of liberty and challenged his male audience to follow their example. Still, their convictions affronted his manhood. As he reminded the courtroom, women should be revered and protected. He ultimately believed that it was men's responsibility to place their bodies and freedom in jeopardy, not women's. His vision of the ethical dissenter was a distinctly masculine one that privileged men's experiences and the values of nineteenth-century manliness.

While neither Berkman nor Debs could stem the tide of wartime prosecutions, their cases did generate organized resistance to the Wartime Emergency Laws. But ultimately Debs proved to be a more valuable symbol for civil liberties politics than did Berkman. While the reasons for this success need to be more fully explored, one could speculate that Berkman's association with the crowd—the nameless, faceless immigrant men (and a few women) convicted, often en masse, for violating the Espionage or Sedition Acts—made him a less sympathetic symbol than the respectable and humble Debs. Debs emerged as the quintessential symbol of the irrationality of the Wartime Emergency Laws because he was able to embody transcendent principles that many Americans identified as essential to Americanism. While many Americans no longer accepted Debs's construction of patriotism or supported his defiance of the Wartime Emergency Laws, they recognized in Debs's words and person those values of an older, still valued imagined community. Unlike Berkman, whose support of violence and foreignness cast him outside of this community, Debs remained an American son.

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262. See Kennedy, supra note 260, at 22–51.