

The Solidarity Paradox

ABIGAIL L. PERDUE*

*"I am an invisible man . . . because of a peculiar disposition of the eyes of those with whom I come in contact. A matter of the construction of their inner eyes, those eyes with which they look through their physical eyes upon reality. . . . [Y]ou often doubt if you really exist."*¹

*"I live under the power of the fathers, and I have access only to so much of privilege or influence as the patriarchy is willing to accede to me, and only for so long as I will pay the price for male approval."*²

INTRODUCTION

A centuries-old bastion of masculinity and Southern tradition, the Virginia Military Institute ("VMI") first admitted women in 1997 after the Supreme Court of the United States concluded that VMI's single-sex admissions policy violated the Equal Protection Clause.³ These female trailblazers were figurative test subjects in a social experiment exploring relations between the sexes in a hyper-masculine environment, and by all accounts, their presence provoked palpable resistance.

But how did male cadets of color⁴ react to coeducation?⁵ Like women, men

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* Abigail L. Perdue is an Associate Professor at Wake Forest University School of Law. She wishes to thank her parents, Janet and David Perdue, for their unfailing love and support, as well as her outstanding research assistants, Stephen White, Crissy Dixon, and Brittany Colton. She is also extremely grateful to her co-researchers and mentors, Drs. David and Lesley Novack, without whom the study on which the Article relies would not have been possible. She is also grateful to statistics expert, Andrew P. Smiler, for triple-checking her statistical analysis, and Professors Wendy Parker, Kim Forde-Mazrui, Rosa Kim, Gregory Parks, Sharon Rush, and Jonathan Nash for their helpful feedback on the Article. Excerpts of this Article first appeared in Abigail L. Perdue, *Transforming "Shedets" into "Keydets": An Empirical Study Examining Coeducation Through the Lens of Gender Polarization*, 28 COLUM. J. GENDER & L. 371 (2015), and Abigail L. Perdue, *The Stories Told about U.S. v. Virginia*, THE SECOND DRAFT (Sept. 2015). These excerpts are reprinted herein with permission.

1. RALPH ELLISON, *INVISIBLE MAN* 3–4 (1952).
2. ADRIENNE RICH, *OF WOMAN BORN* 40–41 (1977).
3. *United States v. Virginia*, 518 U.S. 515, 523 (1996).
4. As used herein, the phrase "of color" refers to individuals who self-identify as biracial, multiracial, or as a member of a single, specific racial or ethnic group other than White or Caucasian. In doing so, the Article fully acknowledges the significantly different but equally valuable perspectives and lived experiences of distinct groups, racial or otherwise. The designation is used solely for the sake of clarity and convenience. It does not aim to suggest that whiteness is the norm or to minimize the need for group-specific research. Compare Veronica Root, *Retaining Color*, 47 U. MICH. J. L. REFORM 575, 589 n.80 (2014) (using "enrollees of color" to encompass individuals who self-identified as "Black/African American," "American Indian/Alaskan National," "Asian-American," "All Hispanic," "Native Hawaiian/Pacific Islander," and "2 or More Races"); Maria Ong, *Body*

of color have experienced disenfranchisement, inequality, and discrimination, and their initial attempts to integrate universities historically provoked resistance.⁶ Opponents of women's suffrage, equal rights, and assimilation at VMI often recycled arguments once used to fight black suffrage, civil rights, and racial integration, and the U.S. Supreme Court eventually rejected those arguments on similar grounds.⁷

Indeed, the first women to attend VMI followed in the footsteps of courageous men of color, including five African American⁸ men who had

Projects of Young Women of Color in Physics: Intersections of Gender, Race, and Science, 52 SOCIAL PROBLEMS 4, 594 n.3 (2005) (referring to females who self-identify as "Chicana," "Latina," "Filipina American," or "African American" collectively as "women of color" or "underrepresented minorities").

5. This Article does not explore the equal protection analysis of *United States v. Virginia*, 518 U.S. 515 (1996), as existing scholarship on that issue is well developed. Furthermore, for purposes of the Article, the terms "coeducation" and "assimilation" are used interchangeably because VMI referred to the integration of women as "assimilation."

6. As used herein the terms "race" and "racial" refer to the social construct of race with which a person self-identifies. Controversy exists regarding whether biological, specifically genetic, markers, can accurately distinguish one "racial" group from another. See, e.g., D.J. Witherspoon et al., *Genetic Similarities Within and Between Human Populations*, 176 GENETICS 351, 351-59 (2007) ("The proportion of human genetic variation due to differences between populations is modest, and individuals from different populations can be genetically more similar than individuals from the same population. Yet sufficient genetic data can permit accurate classification of individuals into populations. Both findings can be obtained from the same data set, using the same number of polymorphic loci."); Michael Bamshad et al., *Deconstructing the Relationship Between Genetics and Race*, 5 NATURE REVIEWS GENETICS 598-609 (Aug. 2004); Larry Adelman, *Race and Gene Studies: What Differences Make a Difference?*, http://www.pbs.org/race/000_About/002_04-background-01-02.htm (last visited Dec. 21, 2015) (observing that roughly 94% of genetic variation is found among continental populations rather than among distinct "racial" groups). According to Larry Adelman, "there are no characteristics, no traits, not even one gene that turns up in all members of one so-called race yet is absent from others." *Id.* "In 2000, at a White House event celebrating the completion of the first draft of the human genome, Craig Venter of the Institute of Genetic Research and Francis Collins of the National Institute of Health declared that the concept of race had no genetic basis." Jan Sapp, *Race Finished*, 100 AM. SCIENTIST 2 (2012), <http://www.americanscientist.org/bookshelf/pub/race-finished> (reviewing IAN TATTERSALL & ROB DESALLE, *RACE: DEBUNKING A SCIENTIFIC MYTH* (2011)).

7. See generally SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* 9-75 (2011). By way of illustration, the Supreme Court relied on the successful racial integration of VMI to support its decision to invalidate VMI's all-male admissions policy. See *U.S. v. Virginia*, 518 U.S. 515, 545-46 n.16 (1996) (internal citations omitted) ("VMI has successfully managed another notable change. The school admitted its first African-American cadets in 1968. . . . As the District Court noted, VMI established a program on 'retention of black cadets' designed to offer academic and social-cultural support to 'minority members of a dominantly white and tradition-oriented student body.' The school maintains a 'special recruitment program for blacks' which, the District Court found, 'has had little, if any, effect on VMI's method of accomplishing its mission.');" see also *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973) (internal citation omitted) ("[O]ur statute books gradually became laden with gross, stereotyped distinctions between the sexes and, indeed, throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children.").

8. This Article refers to members of the African American community as "African American" for the sake of clarity and consistency, although members of this community self-identify in many ways. See, e.g., Martha Jones, *What's in a name? 'Mixed,' 'biracial,' 'black,'* CNN LIVING (Feb. 19, 2014,

matriculated at VMI nearly three decades earlier.⁹ Yet at the onset of coeducation in 1997, VMI's formerly all-white student body included a sizeable minority of men who self-identified as Black or African American, Hispanic/Latino, Asian, Pacific Islander, American Indian, Alaskan Native, biracial, and multiracial. Thus, VMI unwittingly became the perfect social laboratory to explore what attitudes toward the assimilation of women at VMI persist at the intersection of race and sex in a predominantly white, male-dominated environment, and to what extent, if any, these men's collective experiences as persons of color would correlate with their reaction to the assimilation of women at VMI.

To explore this narrow question, the Article relies upon data collected when a sociologist, psychologist,¹⁰ and I partnered to conduct an anonymous online survey of VMI's entire student population. The Article first explores the intersection of sex and race to explain why the data is broken down along those lines. Next, it recounts VMI's unique history and culture, especially with regard to racial integration and sex assimilation. The Article then shares empirical findings regarding students' familiarity with and perceptions of *U.S. v. Virginia*, perceptions of why members of the opposite sex attend VMI, and attitudes toward coeducation and its impact on VMI. These findings suggest that sex, rather than race, is generally a stronger predictor of a cadet's attitudes toward coeducation at VMI. Finally, the Article explores possible explanations for these findings as well as their potential implications for the future.

I. THE INTERSECTION OF SEX AND RACE

In 1910, a force to be reckoned with in the fight for equality was born.¹¹ Her name was Anna Pauline "Pauli" Murray. A descendant of both slaves and slave owners, Murray went on to study law at Howard University after the University of North Carolina purportedly threatened to build a separate graduate school rather than admit Murray to study there as she had originally hoped.¹² During law school at Howard, Murray experienced the ugly intersection of racism and sexism firsthand – a phenomenon she aptly named "Jane Crow".¹³ And it was sexism, not racism, that led Harvard Law School to reject Murray's application

8:42 AM), <http://www.cnn.com/2014/02/19/living/biracial-black-identity-answers/> (noting the various terms with which members of the African American community have self-identified through the years); F. James Davis, "Who is Black? One Nation's Definition," PBS FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html> (last visited Dec. 21, 2015).

9. See generally Peter Finn, *At VMI, Pioneers Recall Breaking Earlier Barrier*, WASH. POST (Oct. 5, 1997), <https://www.washingtonpost.com/archive/local/1997/10/05/at-vmi-pioneers-recall-breaking-earlier-barrier/bb370fde-f457-4fc1-8249-e09a3e1395ff/>.

10. Dr. David Novack is a Professor of Sociology at Washington and Lee University, a formerly all-male college located across the street from VMI. Dr. Novack teaches and writes on various subjects, including gender and race. Dr. Lesley Novack is a retired Professor of Psychology who formerly taught at Mary Baldwin College. Mary Baldwin College housed the Virginia Women's Institute for Leadership ("VWIL"), which VMI initially created as an all-female military college alternative. However, in *U.S. v. Virginia*, the Supreme Court concluded that VWIL did not cure the equal protection violation.

11. MAYERI, *supra* note 7, at 14.

12. *Id.* at 15.

13. *Id.*

for the Rosenwald Fellowship typically awarded to Howard's number one graduate - Murray - simply because she was not "'of the sex entitled to be admitted.'"¹⁴ Murray would later recount that her rejection on the basis of sex "was a source of mild amusement" to many of her male colleagues at Howard - the same men passionately fighting for racial equality.¹⁵

Exemplifying resilience, Murray pursued a Master's Degree at the University of California-Berkeley. Later, while obtaining her doctorate at Yale, she served on the Civil and Political Rights Committee of the President's Commission on the Status of Women ("PCSW").¹⁶ The PCSW charged Murray with developing creative legal strategies to advance women.¹⁷ According to Serena Mayeri, "[t]he result was a pivotal and widely circulated memorandum that prominently featured analogies between race and sex in equality and proposed a litigation campaign for women's rights modeled on the NAACP's successful struggle against racial segregation."¹⁸ Then in 1965, Murray and Mary Eastwood authored *Jane Crow and the Law: Sex Discrimination and Title VII of the Civil Rights Act of 1964*,¹⁹ which "endorsed a race-sex parallel and provided a template for analogical legal arguments under the Constitution and Title VII."²⁰

Although Murray found parallels between race and sex helpful, she did not aim to equate the severity of those experiences or "argue for identical treatment of race and sex or of men and women".²¹ But like Murray and the courts, advocates, and scholars who followed in her footsteps, exploring the commonalities between race and sex discrimination, while fully acknowledging the significant differences could, as Murray hoped, enrich anti-discrimination scholarship, unite anti-discrimination advocates, and perhaps strengthen the cause of universal equality for which she so passionately fought.²²

The parallels that Murray drew are compelling given that until recently, both race and sex have been considered immutable traits.²³ Both persons of color

14. *Id.*

15. *Id.* (citation omitted).

16. *Id.* at 16.

17. *Id.* at 17.

18. *Id.*

19. Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII of the Civil Rights Act of 1964*, 34 GEO. WASH. L. REV. 232, 233 (1965) ("Discriminatory attitudes toward women are strikingly parallel to those regarding Negroes. Women have experienced both subtle and explicit forms of discrimination comparable to the inequalities imposed upon minorities.").

20. MAYERI, *supra* note 7, at 22.

21. Likewise, in comparing race and sex discrimination, the Article does not intend to diminish the treatment of African Americans or other persons of color in America or to equate the severity or experience of female inequality with the experiences of persons of color. *Id.* at 18 (observing that critics of Murray's strategy argued that she inappropriately equated racial and sex discrimination).

22. *Id.* at 20 (encouraging African American women and white women to collaborate) (citation omitted). Similarly, National Woman's Party member Meta Heller wrote "I only wish all women's organizations would get behind the civil rights movement, forgetting their prejudices for their own advancement." *Id.* at 21 (citation omitted).

23. To the extent that one defines "sex" using biological, phenotypic characteristics, recent technological advances in sex reassignment now make it possible to change one's sex, and there are instances in which one's genotype does not match his or her genetically expressed phenotype. *See, e.g., Defining sexual health*, WORLD HEALTH ORG., http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/ (last visited Dec. 21, 2015) (defining "sex" as the "biological

and women have suffered oppression, albeit in different forms, times, contexts, and places; manifestations of racial discrimination have often been more violent.²⁴ Primarily as a result of white, male privilege,²⁵ men of color and all women have experienced political²⁶ and legal disenfranchisement²⁷ in America

characteristics that define humans as female or male"); see generally Sally Law, *Sex Change Operations: The Science, Sociology and Psychology*, LIVE SCIENCE (June 18, 2009, 1:25 PM), <http://www.livescience.com/9648-sex-change-operations-science-sociology-psychology.html> (noting the "limited statistics regarding the prevalence" of sex change operations); see generally *Number of NHS Sex Change Operations Triples*, TELEGRAPH HEALTH NEWS (Apr. 21, 2010, 10:22 AM), <http://www.telegraph.co.uk/health/healthnews/7613567/Number-of-NHS-sex-change-operations-triples.html> (reporting that the number of sex change operations under the National Health Service in the UK grew from 54 in 2000 to 143 in 2009). However, some have argued that sex is based upon one's chromosomal makeup and thus remains immutable even after a sex change operation. See, e.g., *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 1087 (7th Cir. 1984) (agreeing "with the Eighth and Ninth Circuits that if the term 'sex' as it is used in Title VII is to mean more than biological male or biological female, the new definition must come from Congress"); see also *Chavez v. Credit Union Auto Sales*, 966 F. Supp. 1335, 1348 (N.D. Ga. 2013) (noting that "the Eleventh Circuit has not explicitly addressed whether Title VII prohibits discrimination against transgender or transsexual individuals," but explaining that other courts have held that discrimination against transsexuals for gender non-conformity violates Title VII's sex discrimination provisions under the reasoning of *Price Waterhouse v. Hopkins*); see also *Dobre v. Nat'l R.R. Passenger Corp.*, 850 F. Supp. 284, 286 (E.D. Pa. 1993) (rejecting the argument that Title VII's prohibition of sex discrimination extends beyond "biological or anatomical characteristics" to include transsexualism).

24. See, e.g., Greg Botelho, *ISIS: Enslaving, having sex with 'unbelieving' women, girls is OK*, CNN WORLD (Dec. 13, 2014), <http://www.cnn.com/2014/12/12/world/meast/isis-justification-female-slaves/> (noting that ISIS extremists distributed a pamphlet entitled, "Questions and Answers on Female Slaves and their Freedom"); see also Ivan Watson, *Treated like Cattle: Yazidi women sold, raped, enslaved by ISIS*, CNN WORLD (Nov. 7, 2014), <http://www.cnn.com/2014/10/30/world/meast/isis-female-slaves/> (detailing how male members of ISIS abduct women and subject them to physical and sexual violence, rape, and sexual slavery); see generally *Human Trafficking*, FBI, https://www.fbi.gov/about-us/investigate/civilrights/human_trafficking (last visited Dec. 21, 2015).

25. As used herein, male privilege refers to the power and privilege historically afforded to heterosexual, white males unless specified otherwise. See Bethany Coston & Michael Kimmel, *Seeing Privilege Where It Isn't: Marginalized Masculinities and the Intersectionality of Privilege*, 68 J. SOC. ISSUES 97, 97 (2012).

26. Congress has traditionally been heavily white and predominantly male. As of February 2015, only 46 women had served in the U.S. Senate, and of those, 20 serve in the 114th Congress. *Senate History: Women in the Senate*, U.S. SENATE, http://www.senate.gov/artandhistory/history/common/briefing/women_senators.htm (last visited Dec. 21, 2015). There has never been a female president. By comparison, the 114th Congress contains 44 African Americans in the House and two in the Senate. Associated Press, *New Congress Includes More Women, Minorities*, N.Y. TIMES: POLITICS (Jan. 4, 2015, 12:30 P.M.), <http://www.nytimes.com/aponline/2015/01/04/us/politics/ap-us-congress-by-the-numbers.html>. As of February 2015, Congress had 535 members, including 100 senators and 435 representatives. *Congressional Profile*, OFF. OF CLERK OF U.S. HOUSE OF REPRESENTATIVES, http://clerk.house.gov/member_info/cong.aspx (last visited Dec. 21, 2015). In 1992, Senator Carol Braun of Illinois became the first African American female senator. *Moseley Braun, Carol*, U.S. HOUSE OF REPRESENTATIVES HIST., ART & ARCHIVES, <http://history.house.gov/People/Detail?id=18611> (last visited Dec. 21, 2015). In 2014, Mia Love became the first African American female Republican and first Haitian-American in Congress. Bobby Ilich, *First Black Female Republican in Congress: Mia Love Wins Utah House Seat in Tight Race*, INT'L BUS. TIMES (Nov. 5, 2014), <http://www.ibtimes.com/first-black-female-republican-congress-mia-love-wins-utah-house-seat-tight-race-1719069> (last visited Dec. 21, 2015).

27. See generally Lauren Wigginton, *Heteronormative Identities as Property: Adversely Possessing Maleness and Femaleness*, 23 AM. U. J. GENDER, SOC. POL'Y & L. 1, 139, 142 (2014) (observing that courts recognized "rape" as a trespass against the victim's father, effectively deemed the victim to be the

and struggled to obtain basic civil rights.²⁸ Both groups fought for equality in the Equal Rights and Civil Rights Movements respectively.²⁹ As a result of those powerful movements, the landmark precedent they prompted, and evolving societal norms, Congress and the states enacted comprehensive legislation to prohibit discrimination on the basis of race and sex in diverse areas from housing to employment.³⁰ More recently, women and persons of color have also enjoyed the benefits of affirmative action, which aims, at least in part, to remedy the adverse effects of past discrimination.³¹ Finally, like the assimilation of women, racial integration at VMI primarily resulted from a series of controversial Supreme Court decisions as well as evolving societal norms regarding racial equality.

On the other hand, although the women's suffrage and black suffrage movements both sprang from abolitionism, some African American males, who had once fought alongside women for women's suffrage, later actively campaigned against granting women the right to vote when the men became convinced that doing so could undermine efforts to secure black male suffrage.³²

property of her father and then husband, and limited her property and inheritance rights so as to benefit her husband or male relatives).

28. For example, the U.S. Constitution did not grant African American men the right to vote until 1870, and women did not obtain that right for another fifty years. U.S. CONST. amend. XIV, XIX.

29. MAYERI, *supra* note 7, at 20-21 (observing that when long-time segregationist Rep. Howard Smith (D-VA) proposed adding sex to Title VII, Rep. Emanuel Celler (D-NY), a staunch opponent of the Equal Rights Amendment, opposed the amendment because “[f]or every discrimination that has been made against a woman in this country there has been 10 times as much discrimination against the Negro of this country.”); *id.* at 22 (Murray observed that without including sex, Title VII would only “benefit Negro males and thus offer genuine equality of opportunity to only *half* of the potential Negro work force.”).

30. *See, e.g.*, Grutter v. Bollinger, 539 U.S. 306, 325-26, 343 (2003) (upholding a law school's use of race as a plus factor in admissions and observing that the educational benefits of diversity constitute a compelling government interest). *But see generally* Fisher v. Univ. of Tex. at Austin, 133 S.Ct. 2411, 2421 (2013) (concluding that the lower court had erroneously “confined the strict scrutiny inquiry in too narrow a way by deferring to the University's good faith in its use of racial classifications” and had not properly considered “whether the University has offered sufficient evidence that would prove that its admissions program is narrowly tailored to obtain the educational benefits of diversity”); *see also* Schuette v. Coal. to Defend Affirmative Action, 134 S.Ct. 1623, 1629, 1638 (2013) (upholding a voter-enacted amendment to the Michigan Constitution that prohibits the use of “race, sex, color, ethnicity, or national origin” in the admissions process at the state's public colleges and universities along with public contracting and public employment).

31. *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012) (prohibits employment discrimination on the basis of race, color, sex, religion, and national origin); *see generally* Voting Rights Act of 1965, 52 U.S.C. §10101 (2012) (prohibits voting discrimination on the basis of race); Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 (2012) (as amended) (prohibits race discrimination in the formation of contracts and in all aspects of contracting); Fair Housing Act, 42 U.S.C. § 3601 (2012) (prohibits, *inter alia*, racially discriminatory practices in housing); New York State Human Rights Law, N.Y. EXEC. LAW § 290 et. seq (2014) (prohibits discrimination in employment, housing, etc., on the basis of, *inter alia*, race and color). According to Mayeri, the Equal Employment Opportunity Commission appeared to prioritize race discrimination claims over allegations of sex discrimination. MAYERI, *supra* note 7, at 22 (citation omitted).

32. This illustration does not aim to diminish the experiences of other marginalized groups. Compare Roy L. Brooks & Kirsten Widner, *In Defense of the Black/White Binary: Reclaiming a Tradition of Civil Rights Scholarship*, 12 BERKELEY J. AFR.-AM. L. & POL'Y 107, 110 (2010) (“This historic emphasis [on “black/white relations”] provides important context in the ongoing political and academic discourse on race, and does not diminish the very real and important needs and experiences of other

Likewise, more than a century later, NAACP leader Roy Wilkins purportedly announced, “[b]iologically, [women] ought to have children and stay home. I can’t help it if God made them that way and not to run General Motors.”³³ Indeed, recent scholarship suggests that male-dominated civil rights organizations sometimes subordinated the unique needs and concerns of women of color.³⁴ Still today, some research indicates no significant difference between gender role attitudes of African American men and their white male counterparts.³⁵ One study suggests that women, not men, tend to “have more explicit positive attitudes in regard to culturally different individuals” and that “individuals who express more empathy toward individuals from diverse ethnic or cultural backgrounds are likely to have positive perceptions of women in leadership.”³⁶

Thus, while certain similarities in the lived experience of men of color and women invite comparison and contrast, assumptions regarding male cadet attitudes toward assimilation may be misguided to the extent they only take into account the prototypical white male and overlook the potential role of race, ethnicity, and other factors.³⁷ Such assumptions falsely presume that all men share similar attitudes and thus, essentialize notions of maleness.³⁸ To the

subordinated groups.”) with Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thoughts*, 85 CAL. L. REV. 1213, 1213–14 (1997) (asserting that use of a black-white binary may further marginalize persons of color who are not African American and contending that a “mutual and particularized understanding of racism as it affects all people of color has the potential to enhance our abilities to understand each other and to join together to fight the common evil of racism”).

33. MAYERI, *supra* note 7, at 54 (quoting Leslie Bennetts, *Democratic Parley in Contrast with GOP’s on Feminist Delegates and Issues*, NEW YORK TIMES, A14 (Aug. 8, 1980)).

34. *Id.* at 45.

35. See generally Kathleen Blee & Ann Tickamyer, *Racial Differences in Men’s Attitudes about Women’s Gender Roles*, 57 J. MARRIAGE & FAM. 21, 22 (1995) (internal citations omitted) (“A number of studies found no difference in gender role attitudes between African American men and White men . . .”).

36. See, e.g., Nicole L. Cundiff & Meera Komarraju, *Gender Differences in Ethnocultural Empathy and Attitudes toward Men and Women in Authority*, 15 J. LEADERSHIP & ORGANIZATIONAL STUD. 5, 12 (2008) (citations omitted) (“Our results suggest that there is a relationship between empathy toward individuals from different cultural backgrounds and attitudes toward women in authority positions, thus establishing a relationship between two different sources of explicit bias.”). By way of comparison, although the same arguments lodged against interracial marriage were used to oppose same-sex marriage, only a minority of African Americans support same-sex marriage. *Compare Changing Attitudes on Gay Marriage*, PEW RESEARCH CENTER (July 29, 2015), <http://www.pewforum.org/2015/07/29/graphics-slideshow-changing-attitudes-on-gay-marriage/> (36% in 2011) with David Masci & Seth Motel, *5 Facts about Same-Sex Marriage*, PEW RESEARCH CENTER (June 26, 2015), <http://www.pewresearch.org/fact-tank/2015/06/26/same-sex-marriage/> (41% in 2015).

37. As Kiana Cox observes, members of privileged social categories are often viewed as “prototypical group members,” rendering non-prototypical individuals who possess subordinate identities “historically, culturally, politically, and legally invisible. . . . [As such] their stories, viewpoints, and legal claims are often extremely misrepresented or all together ignored . . .” Kiana Cox, *Patriarchy as Salvation: Male Bias and Improving Black Communities*, at 5–6 (forthcoming) (citations omitted).

38. Similarly, the Feminist Movement and Women’s Suffrage Movement that preceded it have been criticized as perpetuating “an essentialist notion of womanhood based on the normative model of middle-class white women’s experiences,” and as a result, failing to adequately address the perspectives and needs of women of color, lesbians, women with disabilities, women of lower

contrary, male attitudes may be “more complicated than has been commonly assumed . . . and [some] studies have documented a variety of masculinities that define manhood differently across racial, ethnic, class, sexual, and regional boundaries.”³⁹ Despite this, courts and scholars often underestimate how sex influences the human experience as a member of a certain race and how race impacts the human experience as a person of a certain sex.⁴⁰

In *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, Kimberle Crenshaw emphasizes the problems inherent in frameworks that address discrimination solely in terms of rigid identity categories like race or sex.⁴¹ Instead, as Crenshaw makes clear, who we are and how we see ourselves cannot be explained in terms of a single categorical identity; rather, personal identity springs from the intersection of various identity categories and discrete experiences working in tandem.⁴² For this reason, an overly simplistic focus exclusively on a single aspect of identity risks creating “a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.”⁴³ Such distinctions ignore the reality that we are each a product of the intersection of our race, sex, and other aspects of our identity. Similarly, VMI’s institutional identity and its reaction to assimilation can only be understood by exploring its unique history and culture, which I will discuss in the section that follows.

II. HISTORY OF VMI

VMI was the nation’s last all-male military college, and still today is heralded by some as the most rigorous military college in America.⁴⁴ It produces citizen-soldiers through an adversative pedagogical model, featuring “[p]hysical

socioeconomic status, etc. See Sharin N. Elkholy, *Feminism and Race in the United States*, <http://www.iep.utm.edu/fem-race/> (last visited Dec. 21, 2015).

39. See generally Blee & Tickamyer, *supra* note 35, at 29 (internal citations omitted) (after observing that some research indicates that “masculinity, too, may be formed and defined within racial categories,” other studies “found no difference in gender role attitudes between African American and White men, or no greater difference between the attitudes of African American men and women than between those of White men and women,” the authors conclude “that African American and White men differ in their attitudes about women’s gender roles . . .”).

40. For instance, in *DeGraffenried v. General Motors*, the court observed, “this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.” *DeGraffenried v. General Motors*, 558 F.2d 480, 483 (8th Cir. 1977) (citing *DeGraffenreid v. Gen. Motors Assembly Div.*, St. Louis, 413 F. Supp. 142, 143 (E.D. Mo. 1976)).

41. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139 (1989); see also Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender, and National Origin*, 37 B.C. L. REV. 771, 771-72, 805-13 (1996) (discussing intersectionality as a tool to understand the experiences of Asian women).

42. *Id.* at 140.

43. *Id.*

44. PHILIPPA STRUM, *WOMEN IN THE BARRACKS: THE VMI CASE AND EQUAL RIGHTS* xi-xii (2002).

rigor, mental stress, absolute equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination in desirable values.”⁴⁵ Other defining features of the unique VMI Experience include a strictly enforced Honor Code, a class system, and a “dyke system” that assigns a senior, or “first classmen,” mentor to each freshman.⁴⁶ VMI contends that this unique educational approach emphasizes overcoming adversity, thriving under pressure, and developing strong character.⁴⁷ VMI aims to promote egalitarianism, honor, integrity, and homogeneity as manifested in its uniforms, haircuts, and even its architecture, which mimics a prison and creates a lack of privacy.⁴⁸

Like everything else at VMI, daily life is spartan and structured.⁴⁹ Four cadets share a room that is less than 300 square feet in size equipped with one sink. Each cadet has a bed, a wall locker, and a clothes rack.⁵⁰ There are no telephones, televisions, air-conditioning, or even pictures on the wall.⁵¹ VMI cadets rise at 6:40am, performing chores for their dykes and completing sit-ups, pull-ups, and a 1.5-mile run before breakfast.⁵² Cadets attend class from 8 am to 3:30 pm, and lights out is promptly at 11:30 pm Monday through Thursday.⁵³

Although VMI’s rigid structure and singular methodology certainly do not appeal to everyone, to its students and alumni, VMI represents a stronghold of masculinity akin to a fraternity or close family. Many cadets forge ironclad male bonds in the hellish environment of the Ratline, a seven-month system of intense hazing that aims to break down each student’s individuality and rebuild him or her into a VMI cadet.⁵⁴ Freshmen “are called ‘rats’ because the rat is ‘probably the lowest animal on earth.’”⁵⁵ Every cadet endures the Ratline, which includes “indoctrination, egalitarian treatment, rituals . . . minute regulation of individual

45. *United States v. Virginia*, 518 U.S. 515, 521 (1996). According to Dianne Avery, “VMI has immersed itself in, and drawn from, the myths and culture of Southern manhood as it has attempted to give content to its mission of educating citizen-soldiers.” Dianne Avery, *Institutional Myths, Historical Narratives and Social Science Evidence: Reading the “Record” in the Virginia Military Institute Case*, 5 S. CAL. REV. L. & WOMEN’S STUD. 189, 197 (1996). Michael Kimmel asserts that “[a]t VMI and the Citadel, it was assumed that the adversative method was a time-honored tradition that was effective and meritorious. As a result, the only question was whether women could be as violent as men, whether they could take the pressure without breaking down.” Michael Kimmel, *Saving the Males: The Sociological Implications of the Virginia Military Institute and the Citadel*, 14 GENDER & SOC’Y 494, 512 (2000).

46. *Virginia*, 518 U.S. at 522. Use of the term “dyke” originates from the phrase to “dyke out” (a mispronunciation of “to get all decked out”), which referred to putting on the white cross belts of a cadet’s dress uniform, which required assistance from another cadet. 2014-2015 NEW CADET HANDBOOK, VA. MIL. INST. 17 (2014). In VMI’s mentorship system, “dyke” refers to the first class mentor assigned to offer advice and support to a “rat” or first-year cadet. *Id.*

47. Transcript of Oral Argument at 4, *U.S. v. Virginia*, 518 U.S. 515 (1996) (Nos. 94-1941, 94-2107).

48. See LAURA FAIRCHILD BRODIE, *BREAKING OUT: VMI AND THE COMING OF WOMEN* 6 (2000); see also STRUM, *supra* note 44, at 44.

49. See STRUM, *supra* note 44, at 44.

50. *Id.* at 44-45.

51. *Id.*

52. *Id.* at 45; *Rat Life*, VMI ADMISSIONS, <http://admissions.vmi.edu/experience/first-year>.

53. STRUM, *supra* note 44, at 45.

54. BRODIE, *supra* note 48, at 6.

55. *United States v. Virginia*, 766 F. Supp. 1407, 1422 (W.D. Va. 1991).

behavior, frequent punishments, and use of privileges to support desired behaviors.⁵⁶ Only the strong survive, which is perhaps the point.⁵⁷ Typically, 4% of cadets leave during the first week, and 25% withdraw by the end of the first year, which is more than twice the attrition rate of federal service academies.⁵⁸

As famed anthropologist Abigail Adams opined, “[r]ats are reborn at VMI.”⁵⁹ “Breakout” is the Ratline graduation ritual formerly used to symbolize the rats’ yearlong struggle to survive the Ratline.⁶⁰ Rats crawled across a muddy field and formed a human chain to scramble up a muddy hill.⁶¹ At first the upperclassmen symbolically pushed the rats down, but eventually they assisted them in ascending the hill.⁶² As with all forms of adversity, only through teamwork and perseverance do rats overcome the obstacles and succeed.

In addition to being one of the most rigorous colleges in America, VMI is also indisputably “a very Southern school in a very Southern town.”⁶³ Despite its designation as “the West Point of the South,”⁶⁴ VMI’s initial goal was “to produce educated and honorable men . . . ready as citizen-soldiers to defend their country in time of national peril.”⁶⁵ Accordingly, the *VMI Code of a Gentlemen* states:

A Gentleman: Does not speak more than casually about his girlfriend . . . Does not go to the lady’s house if he is affected by alcohol . . . Does not hail a lady from a club (Barracks) window . . . Never discusses the merits or demerits of a lady . . . Does not slap strangers on the back nor so much as lay a finger on a lady.⁶⁶

VMI took this mission seriously, prohibiting alcohol and tobacco use on Post, banning gambling and card possession, and even requiring Protestant students to attend Sunday services until 1973.⁶⁷

Not surprisingly, “VMI’s Southern heritage and reverence for tradition have

56. *Id.*; see also Kimmel, *supra* note 45, at 498 (“The brutality of the adversative system implants a deeply felt bonding among the men; solidarity among cadets is intense and loyalty of alumni is fierce.”).

57. According to the District Court, “[t]he ratline is more dramatic and more stressful than Army boot camp or Army basic training. It is comparable to Marine Corps boot camp in terms of both the physical rigor and mental stress of the experience.” *Virginia*, 766 F. Supp. at 1422.

58. STRUM, *supra* note 44, at 48. Although VMI alumni may argue that the high attrition rate results from the fact that the VMI Experience is far more rigorous than that of the federal service academies, our data neither confirm nor contravene this assertion. It is quite possible that other factors, such as the free tuition and international prestige that the service academies offer, may play a role in the different attrition rates.

59. *Id.* Adams conducted an anthropological study of VMI.

60. BRODIE, *supra* note 48, at 312.

61. *Id.* at 102. It is unclear whether this tradition continues.

62. *Id.*

63. *Id.*

64. *Id.*

65. *United States v. Virginia*, 518 U.S. 515, 521–22 (1996) (quotation marks omitted).

66. BRODIE, *supra* note 48, at 13. In fact, VMI served as a teachers’ college for many years and later became the first Southern school to offer courses in chemistry and industrial engineering. HENRY WISE, *DRAWING OUT THE MAN: THE VMI STORY*, 13 (1978).

67. STRUM, *supra* note 44, at 11–12.

influenced its legal struggles⁶⁸ and compelled it to repeatedly assert that coeducation would fundamentally alter and thus ultimately destroy the VMI Experience. Despite such assertions, however, VMI has not remained static through the years.⁶⁹ Instead, it has undergone extensive changes, voluntarily altering its admission standards long before the Supreme Court mandated assimilation. For example, VMI originally only admitted Virginia natives.⁷⁰ However, by the late 1850s, VMI began admitting non-Virginians when extra slots at the school remained, adding geographical diversity to the student body.⁷¹ Today, 47.2% of students in the Class of 2016 come from out of state.⁷²

This trend of expansion continued when in 1905,⁷³ VMI admitted Chinese citizens for the first time.⁷⁴ According to VMI Historian and alumni, Henry Wise,⁷⁵ the Chinese students “made excellent cadets and rendered outstanding service to their country.”⁷⁶ Their success paved the way for applicants from South and Central America, Europe, other Asian countries, and even Canada.⁷⁷ In 2011, 27 of the 1569 cadets were what VMI reported as “non-resident aliens.”⁷⁸ Notably, male students from other countries were able to enroll at VMI long before American citizens who were women or African American males.⁷⁹ In fact, at one time, VMI owned slaves, and after Reconstruction, VMI employed African American servants.⁸⁰ Although *Brown v. Board of Education* overturned the

68. BRODIE, *supra* note 48, at 10.

69. See generally Abigail L. Perdue, *The Stories Told about U.S. v. Virginia*, THE SECOND DRAFT (Sept. 2015).

70. Avery, *supra* note 45, at 205.

71. *Learning the Lifestyle, Self-Selecting for Success*, VMI, <http://www.vmi.edu/Content.aspx?id=10737426170> (last visited Dec. 21, 2015).

72. *Profile of the Class of 2016*, VMI, http://www.vmi.edu/uploadedFiles/Admissions/Class_of_2015%20Sheet1.pdf.

73. Some sources indicate 1904.

74. WISE, *supra* note 66, at 85.

75. Notably, Wise is a VMI graduate and wrote *Drawing Out the Man* in his role as historian for the VMI Alumni Association. *Id.* at xv-xvi (“I do not pretend to be without bias. Who ever tried to write a history of a college unless it meant much to him. Every effort, nevertheless, has been made to be accurate.”).

76. *Id.* at 85; Avery, *supra* note 45, at 208–09 (“Necessarily, some accommodations were made in the academic program to teach English to foreign students who had to overcome the language barrier in addition to cultural barriers. Other accommodations were also necessary. In commenting on the harshness of rat punishment during the 1920s, Henry Wise noted that ‘the Chinese, to avoid possible risk of foreign complications, were exempt from the worst of all this. The young men of Asia made up for it by running a free laundry . . .’ Thus, special treatment of the Chinese cadets mandated by international humanitarian norms and diplomatic concerns produced a set of dominant and subordinate relations in the cadet subculture that was based on racism and racial stereotypes.”).

77. WISE, *supra* note 66, at 85.

78. *Common Data Set 2010*, VA. MIL. INST. (2010), <http://www.vmi.edu/content.aspx?id=8047>.

79. See Avery, *supra* note 45, at 210–11 (“It is ironic, of course, that VMI, purportedly dedicated to training citizen-soldiers, for many years admitted noncitizen males representing many countries and non-African races, while discriminating against African-American male citizens, and that it continues to admit males who are noncitizens, while prohibiting the admission of American citizens who are female.”); see also Peter Wallenstein, *Identity, Marriage, and Schools: Life along the Color Line/s in the Era of Plessy v. Ferguson*, in *THE FOLLY OF JIM CROW: RETHINKING THE SEGREGATED SOUTH* 17, 30 (Stephanie Cole & Natalie J. Ring eds., 2012).

80. See Avery, *supra* note 45, at 205 (“Formal equality had little impact on the status of most

separate-but-equal doctrine in 1954, no African American man attended VMI until 1968.⁸¹

That August, five African American men matriculated - Harry Gore, Richard Valentine, Philip Wilkerson, Larry Foster, and Adam Randolph.⁸² According to Wise, these five “pioneers . . . were the first to complete the application procedure and to meet all entrance standards. There had been no effort by the Institute’s administration to discourage applications.”⁸³ Wise attributes low application rates to the “sellers’ market for academically qualified blacks.”⁸⁴

For the most part, the racial integration of VMI appears to have gone much more smoothly than one might have expected. According to Frank Easterly, “[t]here was a minority, a small minority, who had a strong negative reaction [to racial integration], and they were rather strident and not very tactful in the way they expressed their opinion. But there were no incidents, if that’s the word. It became pretty clear early on that it wasn’t going to be a problem.”⁸⁵ Richard Valentine also described integration at VMI as a “non-event.”⁸⁶ According to Wise:

It cannot be said that integration has been without a single problem, since the Negro heritage and some of VMI’s traditions of 100 years and more are mutually incompatible. Yet integration at VMI has reinforced its proud boast that once a man walks through that arch and becomes a cadet, his background, name, and circumstances do not count. The stand he makes . . . is the stand he takes, whether in the esteem of his fellows, or in the classroom, or in any other facet of cadet life.⁸⁷

Although racial integration was largely a success, the pervasive influence of Confederate symbolism at VMI proved problematic at times. The New Market Ceremony was perhaps the most contentious VMI tradition. On May 11, 1864, a battalion of 241 VMI cadets, affectionately known as the “baby soldiers,” marched 80 miles in four days to bolster Confederate troops at the Battle of New Market.⁸⁸ On May 15, 1887, VMI began commemorating this event by marching

black males associated with the Institute during and after Reconstruction; black servants replaced black slaves.”).

81. Avery, *supra* note 45, at 16–17. The Board of Visitors added a paragraph to VMI regulations stating that if the Admissions Committee doubted an applicant, the applicant must provide letters of recommendation from three alumni. STRUM, *supra* note 44, at 29. This may have had a disparate impact on African Americans. *Id.* However, one African American cadet remarked, VMI “is the most equal place I ever heard of. Here they treat everybody like a ni[**]er.” *Id.*

82. WISE, *supra* note 66, at 287 (observing that “[t]he VMI Cadet as far back as 1956 editorially had recognized that Negroes one day would attend VMI as a matter of course”).

83. *Id.*

84. *Id.* at 288.

85. Finn, *supra* note 9.

86. *Id.* (“Unlike the 30 women who broke VMI’s gender barrier this fall, the school’s first black cadets had little sense of their pioneering role. Wilkerson and Valentine, like Gore, said they decided to attend VMI before they knew they would be integrating the school.”).

87. WISE, *supra* note 66, at 289.

88. *Id.* at 39–40; *Battle of New Market, May 1864: VMI Cadets Timeline*, VA. MIL. INST. <http://www.vmi.edu/archives.aspx?id=6053> (last visited Dec. 21, 2015).

in full dress to the old cadet cemetery, saluting the graves.⁸⁹ In the 1950s, the ceremony evolved to include a march from the parade ground down Letcher Avenue and an “eyes right” salute to the graves of those who died in the Battle of New Market.⁹⁰ The band typically played “Dixie” during the march and displayed the Confederate flag.⁹¹ African American cadets objected to this tradition.⁹² Many African American cadets traded guard duty with white cadets so as to avoid participation in the ritual.⁹³ That all changed on May 15, 1972, just before the graduation of the first three African American cadets.⁹⁴ The cadets who had traded guard duty were ordered to join the New Market formation and were reported for direct disobedience when they refused.⁹⁵ The superintendent resolved the situation, and VMI assessed minor penalties.⁹⁶ African American cadets argued that VMI cadets fighting at the Battle of New Market carried the VMI, not the Confederate, flag, and there was no mention of “Dixie” in the VMI Archives.⁹⁷ Opponents of modifying the ceremony argued that it was “solely a tribute to intrepid young men who had put duty above self irrespective of political beliefs”⁹⁸ and that objectors knew about the ceremony before enrolling.⁹⁹

African American cadets also objected to other traditions deeply entrenched in Confederate symbolism. For example, VMI cadets traditionally saluted Lee Chapel, the burial site of famous Confederate General Robert E. Lee, whenever they passed.¹⁰⁰ The first African American cadets refused to salute the Confederate flag that VMI still had on display and also steered clear of Lee Chapel.¹⁰¹ One of the African American cadets served as a drummer in the regimental band and would stop drumming when the band played “Dixie” at sporting events.¹⁰² VMI initially “chose to ignore their civil disobedience,” but after a while “their presence—and quiet protests—sparked a debate over the

89. WISE, *supra* note 66, at 348; see also *A History of the VMI New Market Ceremony*, VA. MIL. INST., <http://www.vmi.edu/archives.aspx?id=21777> (last visited Dec. 21, 2015) (noting that formal ceremonies commemorating the Battle of New Market started as early as 1878).

90. WISE, *supra* note 66, at 348.

91. *Id.* at 349.

92. *Id.*; see also Finn, *supra* note 9. Interestingly, debate regarding Confederate symbolism still wages today. See Athena Jones & Deirdre Walsh, *House Confederate flag debate leads to embarrassment for GOP*, (July 9, 2015, 4:35PM), <http://www.cnn.com/2015/07/09/politics/house-gop-confederate-flag-embarrassment/>.

93. WISE, *supra* note 66, at 349.

94. *Id.*

95. *Id.*

96. *Id.* at 350.

97. *Id.*

98. *Id.*

99. *Id.* at 351.

100. *Id.*

101. *Id.* Although there is some debate on the issue, many historians report that Lee opposed slavery and owned no slaves, at least as of the date of onset of the Civil War. K.M. KOSTYAL, *ABRAHAM LINCOLN’S EXTRAORDINARY ERA: THE MAN AND HIS TIMES* 103 (2009). Indeed, Lee was asked to lead the Union forces, but after much deliberation and internal conflict, he ultimately decided that he could not take up arms against his fellow Virginians. *Id.* Thus, he declined the offer and fought for the Confederacy. *Id.*

102. See Finn, *supra* note 9; see also WISE, *supra* note 66, at 351 (indicating that the band stopped playing Dixie in 1973).

place of Confederate symbolism at VMI and ultimately led to much of its elimination."¹⁰³ For example, in 1969, VMI stopped playing Dixie at sporting events¹⁰⁴ and no longer required cadets to salute Lee Chapel.¹⁰⁵ In 1992, VMI removed the Confederate flag from its class ring.¹⁰⁶ Yet some potentially contentious traditions remain. For instance, although some African Americans also protested saluting Confederate General and former VMI Professor Stonewall Jackson's statue when leaving Barracks, that tradition survives.¹⁰⁷

Although the integration of African Americans arguably had a late and slow start at VMI, during the seventies, the Corps typically included between 20 and 30 African American cadets.¹⁰⁸ Indeed, when the litigation in *U.S. v. Virginia* began in the 1990s, there were approximately 84 African American students at VMI, 1 Native American, 19 Latinos, and 41 Asian Americans.¹⁰⁹ As of the time of the VMI litigation, the student body was about 7% African American.¹¹⁰ Justice Clarence Thomas's son was among them, which is why Justice Thomas recused himself from *U.S. v. Virginia*.¹¹¹ By 2013, 71 students self-identified as "African American or Black," 73 as "Hispanic," 73 as "Asian," 12 as "Native Hawaiian or other Pacific Islander," 26 as "Two or more races" and 3 as "American Indian or Alaska Native."¹¹² Although these numbers remain small, men of color consistently outnumber the women who attend VMI. Yet even that number has steadily increased, jumping from 30 women during the 1997-1998 school year¹¹³ to 144 women, including 51 rats, in the 2010-2011 school year.¹¹⁴ In 2014, 188 women, including 66 rats, matriculated.¹¹⁵

Racial integration of VMI arguably paved the way for VMI's subsequent admission of women by demonstrating VMI's ability to successfully transform itself in response to evolving moral, cultural and societal norms. In the decades prior to assimilation, VMI accommodated different racial and cultural subgroups of students into a cohesive student community. Its egalitarian ethos could potentially discourage disparate treatment for any reason, race or otherwise. VMI's successful integration of men of color later undermined its legal argument

103. Finn, *supra* note 9.

104. WISE, *supra* note 66, at 348 ("Another irritant to that minority group, rendition of 'Dixie' at athletic contests, was dropped.").

105. *Id.* at 30.

106. BRODIE, *supra* note 48, at 10; *see also* Avery, *supra* note 45, at 206-07 (stating that traditions such as the Confederate flag were eventually abandoned).

107. WISE, *supra* note 66, at 348 ("saluting General Stonewall Jackson's Statue was like getting stuck with a rose thorn.").

108. *Id.* at 290.

109. STRUM, *supra* note 44, at 31.

110. *United States v. Virginia*, 766 F. Supp. 1407, 1437 (W.D. Va. 1991).

111. Joan Biskupic, *Supreme Court Invalidates Exclusion of Women by VMI*, WASH. POST, June 17, 1996, at A1.

112. *Common Data Set 2013*, VA. MIL. INST. (2013), <http://www.vmi.edu/content.aspx?id=8047>.

113. Peter Finn, *VMI Women Reach End of Rat Line*, WASH. POST (Mar. 17, 1998), <http://www.washingtonpost.com/wp-srv/local/longterm/library/vmi/vmi0317.htm> (noting 30 female rats in 1997-98); *Common Data Set 2010* (144 women, including 51 rats).

114. *Common Data Set 2010*, *supra* note 78 (176 women, including 43 rats).

115. *Common Data Set 2014*, VA. MIL. INST. (2010), <http://www.vmi.edu/content.aspx?id=8047> (188 women, including 66 rats).

that admitting women would destroy the VMI Experience because, as Avery observes, there was “no reason why the Institute could not survive this change [coeducation] as it has survived other profound changes [including racial integration] in its past.”¹¹⁶

III. U.S. v. VIRGINIA

Given the changing legal landscape regarding equality of the sexes, it was no surprise that VMI’s all-male admissions policy eventually came under fire. Although it was well known that VMI was single-sex, 347 women inquired about admission to VMI between 1988 and 1990.¹¹⁷ VMI responded to none.¹¹⁸ That all changed in 1990 when VMI denied admission to an anonymous female high school student.¹¹⁹ In response, she filed a Complaint with the Attorney General, which prompted the United States Department of Justice to sue the Commonwealth of Virginia, alleging that VMI’s all-male admissions policy violated the Equal Protection Clause of the Fourteenth Amendment.¹²⁰ VMI countered with a Catch-22 argument: if VMI were forced to become coeducational, neither men nor women would be able to enjoy the unique VMI Experience because the presence of women would destroy the very aspects of VMI that set it apart.¹²¹

On June 26, 1996, a 7-1 majority of the Supreme Court held that VMI’s refusal to admit women violated the Equal Protection Clause.¹²² Writing for the Majority, Justice Ruth Bader Ginsburg – a longtime advocate for equal rights – concluded that VMI had not been established as an all-male school in order to increase diversity in Virginia’s educational system.¹²³ She emphasized that “[i]nherent differences’ between men and women . . . remain cause for celebration, but not for denigration of the members of either sex or for artificial

116. Avery, *supra* note 45, at 211.

117. *United States v. Virginia*, 766 F. Supp. 1407, 1436 (W.D. Va. 1991). Because VMI had never attempted to recruit women and VMI’s well-known single-sex admissions policy had likely preempted most women from applying, there was little or no hard evidence, aside from the inquiries, regarding women’s interest in attending VMI. *Id.*

118. *United States v. Virginia*, 518 U.S. 515, 523 (1996). VMI originally sent letters to female applicants informing them that VMI was single-sex but had adopted a no-response policy in the two years prior to the litigation. *Virginia*, 766 F. Supp. at 1436.

119. *Virginia*, 518 U.S. at 523; BRODIE, *supra* note 48, at 11; STRUM, *supra* note 44, at 86; *see also* Juliette Kayyem, *The Search for Citizen-Soldiers: Female Cadets and the Campaign against the Virginia Military Institute – United States v. Commonwealth of Virginia*, 852 F. Supp. 471 (W.D. Va. 1994), 30 HARV. C.R.-C.L. L. REV. 247, 264 (1995) (noting that “[t]he young woman whose letter sparked the United States’ interest in VMI dropped out of the picture fairly quickly,” and “her identity was never disclosed in any of the court opinions”).

120. *Virginia*, 518 U.S. at 523.

121. *Id.* at 540.

122. *Id.* at 515. Justice Clarence Thomas recused himself. *See* Biskupic, *supra* note 111.

123. *Virginia*, 518 U.S. at 535-36 (“[J]ustifications proffered in defense of categorical exclusions . . . must describe actual state purposes, not rationalizations for actions in fact differently grounded.”); *id.* at 539 (“In sum, we find no persuasive evidence in this record that VMI’s male-only admission policy ‘is in furtherance of a state policy of “diversity.”’”). According to Avery, VMI initially argued that coeducation would undermine its mission to produce citizen-soldiers and did not focus heavily on its diversity argument until midway through the litigation. Avery, *supra* note 45, at 223.

constraints on an individual's opportunity."¹²⁴ Nor may "[s]tate actors . . . exclude qualified individuals based on 'fixed notions concerning the roles and abilities of males and females.'"¹²⁵ She stressed that "*some* women can meet the physical standards now imposed on men,"¹²⁶ VMI's adversative educational style "could be used to educate women,"¹²⁷ and "that some women may prefer it to the methodology a women's college might pursue."¹²⁸ As she explained, "[i]t is on behalf of these women that the United States has instituted this suit, and it is for them that a remedy must be crafted, a remedy that will end their exclusion from a state-supplied educational opportunity for which they are fit."¹²⁹

Justice Ginsburg rejected the assertion that coeducation would destroy the essence of VMI. In so doing, she noted the District Court's findings that VMI had "established a program on 'retention of black cadets' designed to offer academic and social-cultural support to minority members of a dominantly white and tradition-oriented student body' . . . [and operated] a 'special recruitment program for blacks' which, the District Court found, 'has had little, if any, effect on VMI's method of accomplishing its mission.'"¹³⁰ She further observed, "[t]he notion that admission of women would downgrade VMI's stature, destroy the adversative system and, with it, even the school, is a judgment hardly proved, a prediction hardly different from other 'self-fulfilling prophec[ies]' once routinely used to deny rights and opportunities."¹³¹ For these reasons, the Majority determined that VMI had failed to show an exceedingly persuasive justification to exclude women and thus, its single-sex admissions policy was unconstitutional.¹³² In a scathing dissent, Justice Antonin Scalia criticized the Majority opinion as "'politics-smuggled-into-law'" and observed that being all

124. *Virginia*, 518 U.S. at 533; *see also id.* at 541 (concluding that the District Court's findings on gender-based developmental differences are generalizations and "fixed notions concerning the roles and abilities of males and females." (quoting *Miss. Univ. For Women v. Hogan*, 458 U.S. 718, 725 (1982)). Avery criticizes Judge Kiser's factual findings as follows: "Packaged as facts, many of these conclusions are nothing more than simplistic or reductionist summaries of complex and sometimes controversial research and scholarship findings that are stripped of their underlying assumptions, caveats and qualifications. Moreover, many of the adjudicative facts about VMI are shaped by Judge Kiser's apparent acceptance of the Institute's mythic image of itself. But the trial record presented only a small and incomplete sampling of the historical and cultural narratives that can be—or have been—told about VMI." Avery, *supra* note 45, at 270. In addition, Department of Justice expert, Professor Carol Jacklin, testified that there were no sex differences in how people learn. Regarding other psychological traits, there were some sex differences observed, but they were minimal compared to the "'very large individual differences'" among men as a group and women as a group. *Id.* at 301.

125. *Virginia*, 518 U.S. at 541–42 (quoting *Hogan*, 458 U.S. at 725).

126. *Id.* at 525 (emphasis added) (quoting *United States v. Virginia*, 976 F.2d 890, 899 (4th Cir. 1992)).

127. *Id.* at 540 (quoting *United States v. Virginia*, 852 F. Supp. 471 (W.D. Va. 1994)); *see also id.* at 541 (emphasizing that VMI's mission of producing citizen-soldiers is not inherently unsuitable for women).

128. *Id.* at 540; *see also id.* at 542 ("Education, to be sure, is not a 'one size fits all' business.").

129. *Id.* at 550–51 (footnote omitted).

130. *Id.* at 545–46 n.16 (internal citations omitted).

131. *Id.* at 542–43 (internal citation omitted); *see also id.* at 550 ("generalizations about 'the way women are,' estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.").

132. *Id.* at 545–46.

male was “essential” to the VMI Experience.¹³³

Cadet responses to the decision “ranged from anger, to apathy, to determined professionalism.”¹³⁴ For the most part, however, the VMI community mobilized to make the mission of coeducation as successful as possible: “hundreds of people on VMI’s Post—from cadets, to faculty, to laundry workers—all came together to prepare for the arrival of women.”¹³⁵ According to Lieutenant General Winfield S. Scott, former Superintendent of the Air Force Academy, “no other military college had done so much to prepare for the arrival of women.”¹³⁶

In any event, the epic legal battle of the sexes that had been waging in federal courts for years had finally come to an end. On August 18, 1997, the first women arrived.¹³⁷ In a welcome address to the first coeducational class in VMI history, VMI Superintendent Josiah Bunting made clear, “We do not care if you are poor or rich, black or white, female or male, Taiwanese or Virginian. We care about your heart and your determination. We care about your integrity.”¹³⁸

IV. METHODOLOGY, RESULTS, AND DISCUSSION

A. Methodology

To explore the impact of coeducation at VMI, my co-researchers and I surveyed VMI’s student population via an anonymous online questionnaire.¹³⁹ Data were then inputted and analyzed using SPSS. 364 students responded, including 311 men (85.44%) and 53 (14.56%) women.¹⁴⁰ 37 students self-identified as persons of color,¹⁴¹ including 9 women of color¹⁴² and 28 men of color.¹⁴³ 295 respondents self-identified as “White” or “Caucasian.” The

133. *Id.* at 569 (Scalia, J., dissenting).

134. BRODIE, *supra* note 48, at 99.

135. *Id.* at xiv.

136. *Id.*

137. *Id.* at 197.

138. *Id.* at 217. That was the sole mention of coeducation in General Bunting’s opening remarks. *Id.*

139. Approximately 1300 students attended VMI at the time of the litigation. *United States v. Virginia*, 518 U.S. 515, 521 (1996).

140. *Common Data Set 2010*, *supra* note 78. This marked sex disparity is unsurprising given that in the fall of 2010, VMI’s student body consisted of 1425 males but only 144 females. *Id.* at 2.

141. *Compare* Ong, *supra* note 4, at 593–94 n.3, 601 (following “36 aspiring physicists,” including 8 white women and 10 men of color, but drawing conclusions regarding the barriers women of color experience when pursuing science degrees based on the narratives of the 10 college and graduate physics students who self-identified as Chicana, Latina, Filipina American, or African American).

142. Some groups were underrepresented or not represented. For example, no woman who self-identified as “American Indian or Alaskan Native,” “Black or African American,” or “Native Hawaiian or Other Pacific Islander” responded to the survey. Thus, these viewpoints were not overlooked but rather were unavailable from the data. Female respondents self-identified as “Puerto Rican,” “Hispanic,” “Indonesian-White,” “Asian,” and “Asian-Caucasian”.

143. As mentioned earlier, for purposes of this Article, the term “of color” encompasses respondents who self-identified as biracial (e.g., “Asian/White,” “Asian/Indian,” “Black/White,” “Native American/Irish American,” etc.), multiracial, or as a member of a specific racial group other than Caucasian (e.g., “Black,” “Hispanic,” “Asian,” “Vietnamese,” “Non white,” etc.). Specifically,

remaining students (32) either skipped the question regarding racial or ethnic background, declined to state their race or ethnicity, or self-identified in a way that was too imprecise for accurate numerical coding (e.g., “American,” “Human,” etc.). By comparison, during the 2010-2011 school year, 1318 students self-identified as White, 81 self-identified as Black or African American, 57 self-identified as Hispanic/Latino, 74 self-identified as Asian, 5 self-identified as American Indian or Alaskan Native, none self-identified as Native Hawaiian or Other Pacific Islander, and 7 self-identified as two or more races.¹⁴⁴ This Article breaks down the data produced from our survey by sex and race to assess student perceptions of *U.S. v. Virginia*, presumptions of why members of the opposite sex attend VMI, and student attitudes toward the impact of coeducation.¹⁴⁵ Notably, the findings reveal only correlation, not causation. Yet they are probative nonetheless.

Response rates per class were fairly proportional. 100 first classmen, including 85 men and 15 women; 83 second classmen, including 72 men and 11 women; 87 third classmen, including 73 men and 14 women; and 94 fourth classmen, including 81 men and 13 women participated in our survey.¹⁴⁶ Most respondents—236 students—planned to enter the military. Of these, 208 were male, and 28 were female. 74 men and 17 women did not plan to accept a military commission.¹⁴⁷

male respondents self-identified as “Black,” “Asian,” “Asian/Indian,” “Atlantic Islander,” “Cuban American,” “Native American/Irish American,” “Asian/White,” “Caucasian/Japanese,” “Black/White,” “African American,” “Hispanic,” “Mexican/White,” “Filipino,” “Mexican-American,” “Vietnamese,” “Hispanic/White,” and “Non-white”).

144. *Common Data Set 2010*, *supra* note 78. Interestingly, VMI’s student body appears to be becoming more diverse. For example, during the 2014 school year, the number of Hispanic/Latino students had jumped from 57 to 82, the number of Native Hawaiian or Other Pacific Islander had increased from 0 to 13, and the number of biracial or multiracial students had quadrupled. *Common Data Set 2014*, *supra* note 115.

145. *Compare with Cundiff & Komaraju*, *supra* note 36, at 9 (discussing findings from a study involving 317 college students in which 63.1% self-identified as “European American,” 21.5% as “African American,” and the “remaining 15.4% of the participants reported being African, European, Mexican or Mexican American, Asian or Asian American, Biracial, or Other”); Root, *supra* note 4, at 589, 642 (using “enrollees of color” to refer to individuals who self-identified as “Black/African American,” “American Indian/Alaska National,” “Asian-American,” “All Hispanic,” “Native Hawaiian/Pacific Islander,” and “2 or More Races,” failing to break down the data by sex, and then applying the data to offer suggestions to improve the “retention rates of black and Hispanic attorneys at elite, large law firms”); Ong, *supra* note 4, at 594 n.3 (referring to women who self-identify as “Chicana, Latina, Filipina American, or African American” collectively as “women of color” or “underrepresented minorities”); Blee & Tickamyer, *supra* note 35, at 22 (citations omitted) (focusing exclusively on a comparison of African American men and White men after acknowledging research indicating that “masculinity, too, may be formed and defined within racial categories”). Like the aforementioned studies, the sample size and methodological limitations of our results do not permit sweeping conclusions regarding the attitudes of men of color.

146. At VMI, freshmen are referred to as “rats” until “Breakout” and “fourth classmen” thereafter. *United States v. Virginia*, 766 F. Supp. 1407, 1422-23 (W.D. Va. 1991). Sophomores are “third classmen,” juniors are “second classmen,” and seniors are “first classmen.” *Id.*

147. *Common Data Set 2010*, *supra* note 78. Twenty-seven men and 5 females did not yet know if they would join the service. *Id.*

B. Results and Discussion

1. Perceptions of *U.S. v. Virginia*

Interestingly, although 73.4% of students claimed to be familiar with *U.S. v. Virginia*, more men (77.0%) than women (51.1%) claimed such familiarity.¹⁴⁸ This is ironic since *U.S. v. Virginia* is the decision that opened VMI's doors to women and solidified the intermediate scrutiny standard now applied in constitutional challenges involving classifications made on the basis of sex. Yet nearly half of female cadets—48.9%—were unfamiliar with *U.S. v. Virginia*, even though it has been heralded as an important victory in the ongoing battle for sex and gender equality.

Cadets' framing of *U.S. v. Virginia* is also quite revealing. Many males, often regardless of race, describe *U.S. v. Virginia* as "forcing" VMI to admit women.¹⁴⁹ However, contrary to popular belief, *U.S. v. Virginia* did not mandate that VMI become coeducational. Instead, VMI had several options, such as becoming a private, all-male military college, a coeducational military college, a non-military college, or closing.¹⁵⁰ Rather than attempting to raise the funds necessary to go private and remain all-male, perhaps via increased tuition, VMI's Board of Visitors voted 9-8 to admit women.¹⁵¹ In other words, VMI made a choice, but that choice seems to have largely been forgotten in the institutional narratives transmitted from one generation to another regarding coeducation.

Despite this reality, approximately 132 respondents referred to the decision as mandating coeducation. Typical responses included "because [VMI] was forced to by the Supreme Court," "[t]he Supreme Court ordered us to," and "[t]he Supreme Court made [VMI] admit women." For example, one "nonwhite" male said "they were forced to by the [S]upreme [C]ourt," while a Hispanic male said, VMI "got sued and forced to accept women." Another Hispanic male attributed coeducation to "girls want[ing] to act big and play soldier." Yet another Hispanic male remarked, "a woman wanted to come here but wasn't accepted because she's a woman, so her father called his lawyer who sued the school." An Asian American male conceded that "the Institute had no choice," while another Asian male attributed assimilation to "societal pressure." An African American male observed that VMI had no choice but to admit women because "[o]therwise they would pull the ROTC programs." Other common responses, which similarly cast the reasoning underlying the decision in a negative light, include bowing to "political correctness," "political pressure," "government pressure," "societal

148. The survey did not capture students' familiarity with *Brown* because the survey aimed primarily to assess the impact of coeducation at VMI.

149. STRUM, *supra* note 44, at 82-83. Several respondents specifically blamed Justice Sandra Day O'Connor for coeducation, even though Justice Ruth Bader Ginsburg authored the majority opinion in *United States v. Virginia*. *Id.* This may reflect the respondents' lack of familiarity with authorship of the majority opinion, confusion of Justice O'Connor and Justice Ginsburg, or perhaps more skeptically, the androcentric view that "all women are the same." Likewise, historians have noted that during their first few years on the Supreme Court, some litigants and journalists occasionally confused Justice O'Connor and Justice Ginsburg. *Id.*

150. See Mary Anne Case, *Two Cheers for Cheerleading: The Noisy Integration of VMI and the Quiet Success of Virginia Women in Leadership*, 1999 U.CHI. LEGAL F. 347, 362-63 (1999).

151. BRODIE, *supra* note 48, at 66.

pressure," "pressure from other military schools," to avoid "a ridiculous amount of lawsuits from women's rights activists" or "bad publicity." Another ascribed the decision to "the weakening of American society."

Many responses reflect continued resistance to coeducation and disagreement with *U.S. v. Virginia*. Such responses may imply resentment of what some students perceive as court-imposed coeducation mandated by "outsiders" unfamiliar with VMI who, in the minds of the VMI community, did not fully understand or appreciate VMI's unique culture; perhaps assimilation would have been more well received had it been a consensual decision made by VMI for VMI (or perhaps it never would have happened at all). Indeed, *U.S. v. Virginia* was commonly criticized because it was made by individuals who had neither visited nor attended VMI.¹⁵² As one cadet remarked, "[p]eople who do not understand the military in general or VMI in particular decided to make policy on an issue that they were almost entirely ignorant of." Another opined, "[s]ociety disconnected from VMI didn't understand the culture of VMI and saw it as just another school, rather than the more professional fraternity style atmosphere it truly is." By contrast, although racial integration did not occur for over a decade after issuance of *Brown*, the decision to racially integrate VMI did not directly result from a highly publicized and expensive lawsuit, which placed VMI at the heart of a heated, national controversy. By stark contrast, *U.S. v. Virginia* subjected VMI to public scrutiny and widespread criticism. VMI and its students likely perceived such attacks as obstacles to the Institute accomplishing what it believed to be its noble and important mission.

Yet no military force surrenders easily. At one point, VMI was so opposed to outside pressure to admit African Americans that VMI initially refused to accept funding from philanthropic organizations that hinged their donations on compliance with *Brown*.¹⁵³ With both integration and assimilation, however, fears over the loss of federal funding may have played a primary role in VMI's decision to alter its admission policy. The critical role of funding was not lost on survey respondents, several of whom recognized that financial considerations played a role in VMI's decision to admit women. Some observed that women were admitted "to keep state funding," "to get more money from the state," "so [VMI] didn't have to go private," or "under threat of defunding." However, they typically characterized coeducation as coerced, not consensual. A Puerto Rican female described the reason as "state funding."

Yet, even the narratives that acknowledged the role of funding often portray VMI as having had no choice but to surrender. For example, one student remarked that "[t]he Supreme Court *legally forced* VMI to accept women by stating that without such action, VMI would lose all funding from the state; an action which would have bankrupted [VMI]." Likewise, a "black" male observed, "VMI was basically forced to admit women into the institute or go private and the institute could not support being private." Although these

152. Biskupic, *supra* note 111 (noting that Justice Clarence Thomas recused himself because he had a son attending VMI during the pendency of the case). Ironically, the same connection that perhaps provided Justice Thomas with the best opportunity to gain insight into the perspective from inside the VMI community also required him to recuse himself.

153. Avery, *supra* note 45, at 205-06.

attitudes come more than two decades after the onset of the VMI litigation, they echo many of the same concerns over coeducation expressed at the outset of the case. Even though most people had anticipated an eventual challenge to VMI's single-sex admissions policy, reaction to the challenge was "emotional and fractious."¹⁵⁴

Significantly, some respondents did pinpoint the constitutional issue at the heart of *U. S. v. Virginia*, which involved whether VMI's all-male admissions policy violated the Equal Protection Clause of the Fourteenth Amendment by discriminating against women on the basis of sex. Such respondents noted that "it would be unconstitutional for [VMI] to only admit males" or "courts found it unconstitutional to prohibit women." These arguments resonated with some respondents of color, regardless of sex. For example, a Vietnamese male observed that VMI became coeducational "for fairness reasons." A Hispanic female noted it was for "equal opportunities." An African American male stated that "it is fair game, women does [sic] a good job in the military as well as men . . ."

Notably, some cadets acknowledged that the Supreme Court framed the issue as an equal protection challenge but cast that characterization in a negative or demeaning light. For example, one cadet remarked, "[b]ecause liberals complained that it was unfair, equal rights even though the majority [didn't] want it." Another referred to the "flawed separate but equal clause." One respondent even called the female litigant who initiated the lawsuit "selfish" and part of the "me generation" because she fought to attend VMI but then left the Ratline because she "changed her mind." However, her decision had a lasting impact.

Several students attributed the decision to evolving societal norms regarding social equality - advances with which many disagreed. For example, one respondent commented, "VMI began to accept women because of our changing culture. Women feel that 'equality' means being the same as men and felt like they deserved to be allowed to attend an all male school. VMI allowed this because of the support of the liberal media and other liberal groups who want to ruin America." Other common responses included: "[b]ecause society was changing and VMI needed to conform to society;" "[l]egal pressure to conform to a further liberalization of society. No real gain to admitting women;" "[t]o cater to the women who felt they belonged. . . Liberals convinced the women of society that they belonged. . . the bastards buckled under the pressures of society and admitted the weaker sex into our school."

These perceptions of *U.S. v. Virginia* appear prevalent at VMI. When woven into the institutional narratives about coeducation, they may impact cadets' attitudes about coeducation as well as the opposite sex. Although the findings do not capture empirical evidence of the following, male cadets who view coeducation at VMI as a result of coercion, not choice, may be likelier to resent female peers who they perceive as intruders or infidels who do not really belong. The institutional myth that the all-male VMI of yesteryear was harder, tougher, and better than the coeducational VMI of today may be transmitted from one dyke to another, from VMI alumni to current students, and from family members

154. BRODIE, *supra* note 48, at 11.

to VMI legacies, exacerbating the ever-present tension between male and female cadets. As one student remarked:

Women should not be here. They breed trouble. There are a few women who are tough enough to meet the cut. But most are worthless and weak. My father went here when it was just guys and I wish it had stayed that way. If women want to go a military college, what is Mary Baldwin? That's an all girl school so they can go there and not come to my school. But no they have to have everything equal.

Although it is unclear whether the cadet is expressing his personal beliefs or simply regurgitating what his father had told him regarding the impact of coeducation, his response tends to support the theory of myth-transmission. Likewise, female cadets may anticipate resistance and stigmatization, even where none exists, because they expect their male peers to resent coeducation because it is perceived as imposed, instead of consensual. Female dykes, alumna, and female relatives may transfer their own institutional narrative of gender tension, inequality, and resistance to coeducation from one generation of women to another, shaping female students' views of the opposite sex before they ever set foot on campus.¹⁵⁵

That being said, not all cadets characterized *U.S. v. Virginia* in a negative way. Some responses mentioned "equality," "because it was sexist to keep [women] out," "to allow women the same opportunities as men," "women were paying taxes in the state of Virginia and they thus had a right to receive the benefits of VMI," "women are excelling just as quickly and efficiently as men and they are just useful as many in many career fields," and "under gender fairness females wanted to be treated the same." One respondent decried VMI's history with regard to coeducation as "embarrassing." Another commented, "it is impractical for a military school to be single-sex in the 21st Century. In today's military, it is almost a guarantee that at one point in an officer's career, he will be working under a woman. So, in order to appropriately prepare military officers at a military college, it is necessary to have women enrolled at the school." Yet another observed, "We're in the 20th century and if women were in the military they might as well be trained in an institution in which they can actually learn and be proficient officers." A Filipino male said to "develop the aspect of having to work with women in the civilian and military fields." Another student stated, "the change of norms within society . . . have determined that men and women are equally able to perform their jobs. VMI . . . needed to accept this reality which the armed forces had already accepted in order to adapt to the change in society and perception of gender equality."

In sum, many respondents, often regardless of race, frame the reasons underlying VMI's decision to admit women as an unavoidable, albeit unfortunate, surrender. Only a minority acknowledges equality or equal opportunity as playing any part in the decision. It remains unclear to what extent this characterization of *U.S. v. Virginia* is inculcated into cadets before, during, and after their admission to VMI. Nor do the findings indicate how and by

155. Whether or not the VMI Experience with the opposite sex affects cadets' viewpoints toward women in the military will be discussed in a future article.

whom it is perpetuated. However, it is plausible that the perception of coeducation as court-imposed, rather than consensual, may impact the acceptance of coeducation and relatedly, of women at VMI. Indeed, perhaps racial integration of VMI went more smoothly at least in part because it was not a direct result of a highly public and contentious litigation. This naturally causes one to wonder whether most cadets agree or disagree with VMI's decision to admit women, which the next section explores.

2. Attitudes toward Coeducation

Table One¹⁵⁶
Breakdown by Sex:
Do you believe VMI should have become a coeducational institution?¹⁵⁷

Response	Response Percent	Response Count	Male (#)	Male (%)	Female (#)	Female (%)
Strongly yes	12.57%	45	15	4.89%	30	58.82%
Somewhat yes	12.01%	43	31	10.10%	12	23.53%
Neutral	9.78%	35	29	9.45%	6	11.76%
Somewhat no	20.95%	75	72	23.45%	3	5.88%
Strongly no	44.69%	160	160	52.12%	0	0%
Total		358	307		51	

Chi square = 141.05

Sig. < .001¹⁵⁸

156. For the ease of the reader, the formatting of each table and presentation of the data therein is tailored to the specific information presented in the related subsection of the Article.

157. Six students skipped this question.

158. Statistical significance is attained when a p-value (or "Sig.") is less than the significance level, here 0.05. The p-value is the probability of observing an effect given that the null hypothesis is true. If the p-value is less than the significance level, one can reasonably conclude that the observed effect reflects the characteristics of the population rather than sampling error. Use of Sig.<.05 indicates that the odds of obtaining this extreme result are less than 5 in 100, or 5%. Some results in this paper are at $p < 0.001$, which indicates that the probability is exceedingly small (less than 1 in 1,000 or .01%).

Table Two
Breakdown by Race:
Do you believe VMI should have become a coeducational institution?¹⁵⁹

Response	Response Percent (all respondents)	Response Count (all respondents)	White (#)	White (%)	Persons of Color	Persons of Color (%)
Strongly yes	13.07%	43	34	11.60%	9	25%
Somewhat yes	11.55%	38	34	11.60%	4	11.11%
Neutral	10.03%	33	26	8.87%	7	19.44%
Somewhat no	20.67%	68	63	21.50%	5	13.89%
Strongly no	44.68%	147	136	46.42%	11	30.56%
Total		329	293		36	

Chi Square = 10.684

Sig. = .030

The data reflect a statistically significant difference in attitudes toward coeducation based on sex and race. Perhaps not surprisingly, female cadets are predictably in favor of coeducation (82.3%), but even two decades after the onset of *U.S. v. Virginia*, most male cadets still oppose it (75.6%), with over half being strongly opposed. By comparison, 5 male cadets of color and 7 female cadets of color agree with coeducation. Thirteen (36.11%) cadets of color, including 7 out of 9 female cadets of color, believe that VMI should have become coeducational. Six out of the 27 male cadets of color who responded to this question, or 22.2%, strongly or somewhat support coeducation. These cadets self-identified as "Black," "Asian," "Mexican/White," and "Black/White". Notably, 2 of the 3 cadets who self-identified as "Black or African American" agreed with coeducation. Yet 16 male cadets of color (59.26%) did not believe VMI should have admitted women even though the decision ensures equal opportunity for another marginalized, minority group – women – who had suffered the same exclusion from VMI that men of color had faced decades earlier. Most white cadets – 199, or 67.92% – agree. Seven (19.44%) respondents of color, including 5 male cadets of color and 2 female cadets of color, remained neutral on the issue as compared to only 26 (8.87%) white cadets.

3. Perceptions of Why Members of the Opposite Sex Attend VMI

Examining student perceptions of the reasons why members of the opposite sex attend VMI may shed light on the dynamics underlying students' sharply

159. Two students who self-identified as white and a male student who self-identified as "Filipino" skipped this question.

contrasting views regarding coeducation. Some male respondents reported that women attend VMI “to prove something,” “to feel equal,” “because they are ‘manly,’” “to get an education and commission,” “to ‘hunt’ men,” “because they are raging lesbians,” “because of athletics,” “to find husbands,” “to get a VMI degree,” “to be in a physically and mentally challenging environment,” and “to get a military commission.” Many of these perceptions are negative and relate to unsubstantiated (and arguably misguided) beliefs about the sexual orientation or sexual proclivities of most female cadets. At least some male cadets of color shared these views. For example, one Hispanic male commented, VMI women “realize they might look cuter with fewer girls around . . .” Another Hispanic male observed, women “wanted to act like they are big and strong and wanted to dress up and play soldier.”

While many male cadets, often regardless of race, characterized women’s motivations for attending VMI in a negative light or one entirely divorced from the reasons the women provide, female cadets typically framed men’s reasons for attending VMI more positively and in terms that more closely relate to factors integral to the VMI Experience, such as preparedness for military service (e.g., “to get a military commission”), male solidarity (e.g., “because of the brotherhood”), VMI’s history of academic excellence and high ranking (e.g., “for the education”), and VMI’s unique traditions (e.g., “because of the tradition”).¹⁶⁰ Female cadets tend to view men’s decisions to attend VMI as stemming from their desires to serve in the military, to become leaders, to function in a male-dominated society, to have “bragging rights,” and to demonstrate their masculinity.¹⁶¹

These dramatically contrasting views regarding why members of the opposite sex attend VMI may result from many male cadets, often regardless of race, viewing female cadets as violating gender norms and boundaries. One obvious indication of this is male cadets’ reference to female cadets as “raging lesbians” and as being “manly.” In *Gender Diversity*, Serena Nanda observes that Americans tend to dichotomize what is feminine and masculine and to fuse sex, which is biological, and gender, which is arguably a social construct.¹⁶² Thus, men must look and act masculine, while women must appear and behave in traditionally feminine ways. Any attempt to breach this dichotomous and fused

160. According to Avery, “VMI has re-created itself many times to accommodate both external and internal pressures to alter or abandon certain formal and informal rules and practices.” Avery, *supra* note 45, at 197. She challenges VMI’s “myths of continuity” by exploring how VMI has already transformed in response to, *inter alia*, the admission of African American cadets in 1968. *Id.* at 200–218. Furthermore, VMI only admitted Virginia students until 1858 and thereafter, only admitted students from other Southern states if spots were open. *Id.* at 257. However, over 41% of the incoming class of 2018 were out-of-state matriculants. *Profile of the Class of 2017*, VA. MIL. INST., <http://admissions.vmi.edu/wp-content/uploads/2013/09/class-profile-17.pdf> (last visited Dec. 21, 2015). Avery also observes that after the Civil War, VMI avoided closure by reinventing itself from Virginia’s “first normal school” primarily producing teachers into a vanguard “scientific and technical school” offering courses in fine arts, agriculture, and engineering. Avery, *supra* note 45, at 257, 259–60.

161. According to Michael Kimmel, the VMI litigation had a “hidden subtext . . . that had less to do with women’s educational opportunities and more to do with the making of men.” Kimmel, *supra* note 45, at 496. Case seems to hope that VMI will someday abandon its “tenaciously maintained hyper-masculinity.” Case, *supra* note 150, at 380.

162. SERENA NANDA, *GENDER DIVERSITY: CROSSCULTURAL VARIATIONS* (1999).

sex-gender cultural template is stigmatized and viewed as an instance of undesirable gender diversity. Accordingly, individuals like female cadets who are perceived as crossing boundaries are often subjected to degradation, discrimination, and cruelty.

Notably, however, some male cadets attributed women's choice to attend VMI to more neutral or positive reasons, such as to get a good education or military commission. One white male observed, "to prove they can and for the education," while another noted that women attend VMI "in order to challenge themselves and pursue a military commission." Several male cadets of color shared these views. One male cadet of color stated that women attend VMI "for the same reason men do. They want a challenge." A Vietnamese male observed that women attend VMI because of "the challenge [and] opportunity to commission." An African American male observed, "to prove themselves." A "black/white" male observed that women attend VMI for the "challenge. Prove themselves. Commission/Athletics." An "Asian Indian" male observed that women attend VMI "for the same reason I do, to get a good education, a degree from a school that is respected. . . ." A "black" male observed "to get the same prestige the institute offers." A Caucasian/Japanese male stated, "the same reasons everyone does, leadership and a great education". Perhaps *these* male cadets of color less rigidly enforce gender boundaries because they, too, could be accused of crossing racial boundaries by attending a formerly all-white college emblematic of the Confederacy. Indeed, perceived violations of racial boundaries, such as sit-ins, were common during the Civil Rights Era and often provoked violence and hostility.¹⁶³

In conclusion, perceptions of the reasons why women attend VMI may elucidate, at least in part, why many male cadets, regardless of race, still oppose coeducation. However, at least some male cadets, both white men and men of

163. See, e.g., *The Greensboro Chronology*, INT'L CIV. RTS. CTR. & MUSEUM, <http://www.sitinmovement.org/history/greensboro-chronology.asp> (last visited Dec. 21, 2015) (chronicling the sit-ins in the winter of 1960 by African American North Carolina A&T students and other local schools to protest Woolworth's racially segregated lunch counter in Greensboro, North Carolina, and white citizens' taunting and abuse of the students in response); *id.* ("By August 1961, more than 70,000 people had participated in sit-ins, which resulted in more than 3,000 arrests. Sit-ins at 'whites only' lunch counters inspired subsequent kneel-ins at segregated churches, sleep-ins at segregated motel lobbies, swim-ins at segregated pools, wade-ins at segregated beaches, read-ins at segregated libraries, play-ins at segregated parks and watch-ins at segregated movies."); *This Day in History: The Death of Emmett Till*, HISTORY.COM, <http://www.history.com/this-day-in-history/the-death-of-emmett-till> (last visited Dec. 21, 2015) (describing the brutal murder of African American fourteen year-old Emmett Till in Mississippi by white men because Till flirted with and whistled at a white woman in a store); *Little Rock School Desegregation (1957)*, THE MARTIN LUTHER KING, JR. RES. AND EDUC. INST., STANFORD UNIV., http://kingencyclopedia.stanford.edu/encyclopedia/encyclopedia/enc_little_rock_school_desegregation_1957/ (last visited Dec. 21, 2015) (describing white mobs and the need for police and National Guard escorts as nine African American students attempted to enter Central High School on the first days of racial integration in Little Rock, Arkansas, in September 1957, and noting the unsuccessful attempt to close all Little Rock public high schools in 1958 in order to avoid racial integration); Margot Adler, *Before Rosa Parks, There Was Claudette Colvin*, NAT'L PUB. RADIO (Mar. 15, 2009, 12:46 AM), <http://www.npr.org/templates/story/story.php?storyId=101719889> (recounting the narrative of Claudette Colvin, a fifteen year-old African American student arrested in Montgomery, Alabama, for refusing to give up her bus seat to a white passenger—this incident occurred nine months before Rosa Parks sparked a bus boycott in the same city after refusing to give up her seat on a segregated bus).

color, recognize that most women attend VMI for the same reasons as their male counterparts. Still, these perceptions prompt related questions regarding whether cadets perceive coeducation as having had a positive or negative overall impact on VMI, which the next section explores.¹⁶⁴ The findings indicate a statistically significant difference in perceptions of the impact of coeducation by sex but not by race.

4. Perceived Impact of Coeducation

Table Three
Breakdown by Sex:
What overall impact, if any, do you believe coeducation has had on VMI?¹⁶⁵

Response	Response Percent	Response Count	Male (#)	Male (%)	Female (#)	Female (%)
Very positive impact	5%	18	8	2.58%	10	20%
Somewhat positive impact	18.3%	66	35	11.29%	31	62%
No impact	3.3%	12	12	3.87%	0	0%
Somewhat negative impact	34.7%	125	117	37.74%	8	16%
Very negative impact	38.6%	139	138	44.52%	1	2%
Totals		360	310		50	

Chi square = 114.74

Sig. < .001

164. I hope to explore data regarding other hallmarks of the VMI Experience in future articles.

165. Four students did not respond to this question.

Table Four
Breakdown by Race:
What overall impact, if any, do you believe coeducation has had on VMI?

Response	Response Percent (all races)	Response Count (all races)	White (#)	White (%)	Persons of Color (#)	Persons of Color (%)
Very Positive Impact	5.44%	18	15	5.08%	3	8.33%
Somewhat Positive Impact	18.43%	61	49	16.61%	12	33.33%
No Impact	3.32%	11	10	3.39%	1	2.78%
Somewhat Negative Impact	34.14%	113	102	34.58%	11	30.56%
Very Negative Impact	38.67%	128	119	40.34%	9	25%
Total		331	295		36	

Chi Square = 7.632

Sig. = .106

Responses differ significantly by sex. The vast majority of male cadets – 255 men or 82.26% – stated that coeducation had negatively impacted VMI, with almost half indicating that it had had a “very negative” impact. Surprisingly, 9 women, or 18% of female respondents, agreed even though coeducation made their attendance possible. Although the survey did not capture the source of these opinions, it is possible that alumni, dykes, and/or relatives could perpetuate potentially harmful institutional myths regarding the adverse impact of coeducation that effectively predispose cadets against it. Predictably, most women – 82% – view coeducation as having had a positive impact at VMI; only 13.9% of men share this view.

Responses do not differ significantly by race. Notably, however, a sizeable minority of cadets of color – 15 students or 41.67% – believed that coeducation has had a positive impact at VMI. Seven were male cadets of color, including men who self-identified as biracial, “Black,” “Asian,” and “Filipino”. All 8 female respondents of color agreed.¹⁶⁶ Sixty-four white cadets or 21.69% agreed, primarily women. Ten white cadets, or 3.39%, and one male cadet of color believed that coeducation has had no impact. The vast majority of white cadets – 221 or 74.92% – believed that coeducation had negatively impacted VMI. Twenty cadets of color, all male, agreed. Put differently, 71.43% of male cadets of color believe coeducation has negatively impacted VMI. However, although the

166. One woman who self-identified as “Asian” skipped this question.

difference in responses based on race was not statistically significant, more white cadets (40.34%) as opposed to cadets of color (25%) believed that the overall impact of coeducation at VMI was “very negative.” In addition, many more persons of color (33.33%) than white respondents (16.61%) indicated that coeducation had had a “somewhat positive impact” on VMI.

These results may suggest that many male cadets, often regardless of race, prefer a sex-segregated environment where females cannot invade their masculine domain. This appears true despite the fact that critics of assimilation often recycled some of the same arguments against assimilation that had been lodged against racial integration decades earlier.

5. Self-Identification as Cadet First or Sex First

A primary goal of VMI’s Ratline and adversative educational style is to break down each student, removing all traces of individuality or difference, and rebuild him or her into a VMI cadet— the educated and honorable citizen-soldier.¹⁶⁷ As Colonel N. Michael Bissell, then Commandant of Cadets at VMI, observed, “VMI literally dissects the young student that comes in there, kind of pulls him apart, and through the stress, everything that goes on in that environment, would teach him to know everything about himself.”¹⁶⁸ As such, the Ratline involves the indoctrination of “desirable values,” egalitarian treatment, a spartan living environment, unique rituals and traditions (such as walking the Ratline), minute regulation of individual behavior, frequent punishments for deviation, and use of privileges to reinforce desired behaviors.¹⁶⁹ All rats must endure the Ratline and are supposed to be treated identically.¹⁷⁰ To further effectuate this purpose, VMI creates a culture of homogeneity and egalitarianism manifested in its uniforms, buzzed haircuts, and even its prison-like architecture, which affords cadets little or no privacy.¹⁷¹ Thus, the Article next explores how cadets prioritize cadet status, sex, and other aspects of personal identity, such as race or religious affiliation.

167. See BRODIE, *supra* note 48, at 6 (“The ostensive purpose of the school’s infamous ratline is to ‘break down’ individual freshmen into one ‘rat mass’ and rebuild them as ‘VMI Men.’”).

168. *United States v. Virginia*, 766 F. Supp. 1407, 1421 (W.D. Va. 1991).

169. *Id.* at 1422.

170. See STRUM, *supra* note 44, at 43 (“[T]hey are all treated exactly alike . . .”).

171. See BRODIE, *supra* note 48, at 6; STRUM, *supra* note 44, at 44.

Table Five
Breakdown by Sex:
“How do you define yourself first, as a man/woman or a cadet?”¹⁷²

	Sex First, then Cadet	Cadet First, then Sex	Other	Total
Male	106 (36.43%)	140 (48.11%)	45 (15.46%)	291
Female	16 (32.65%)	30 (61.22%)	3 (6.12%)	49
Total Respondents	122 (35.88%)	170 (50%)	48 (14.12%)	340

Chi Square = 4.201

Sig. = .122

Table Six
Breakdown by Race:
“How do you define yourself first, as a man/woman or a cadet?”

	Sex First, then Cadet	Cadet First, then Sex	Other	Total
Persons of Color	11 (34.38%)	16 (50%)	5 (15.63%)	32
White	100 (35.34%)	143 (50.53%)	40 (14.13%)	283
Total Respondents	111 (35.24%)	159 (50.45%)	45 (14.29%)	315

Chi Square = 0.54

Sig. = .973

Responses to this question do not differ significantly by sex or race. Fifty percent (170/340) of respondents, regardless of sex, identified as cadet first, then as a man or woman. Only 35.88% identified as a man or woman first. Indeed, roughly 35% of cadets of color identified by sex first, and roughly 50% of cadets identified as cadet first. 15.63% of respondents of color and 14.13% of white respondents self-identified first as “other,” which most typically included

172. 291 men and 49 women (totaling 340 students) responded to this question, but 24 students skipped this question. The framing of the question may impact the results, making it likelier for respondents to respond with sex or cadet status. However, the survey did provide a response for “other”, and 14.29% of respondents selected that option, defining themselves as “American first,” “Christian,” “Catholic, American, organ donor, everything before cadet . . .” “young adult,” “a creature of Honor and Reason,” and “I define myself as me.” Interestingly, however, no cadets indicated that they resisted categorization into the categories of male or female. Approximately 14% (48) self-identified in another way first, such as a Christian or a Muslim. Two respondents self-identified as “Brother Rat” then cadet, distinguishing between rats and cadets. Interestingly, only one student of color first identified as his race or ethnicity – Anglo-Indian – and even he self-described as an “Anglo-Indian male,” which arguably combines race, ethnicity, and sex.

religious affiliation or national origin, not race.

Although the difference is not statistically significant, the breakdown of the data is still somewhat revealing. More women – 61.22% – than men – 48.11% – self-identified as cadet first. Only two women of color identified as sex first. Two women of color skipped the question, and a third identified as a “student first, then athlete, then cadet.” Four women of color identified as cadet first. By comparison, 3 men of color skipped the question, but one noted in the text box accompanying the response, “I am an Anglo-Indian male cadet”. Nine men of color identified as sex first, and 10 identified as cadet first. Additionally, three men of color responded as “other” but indicated self-identification as “cadet first” in their corresponding textual responses. For example, a “black” male selected “other” but then identified as “just a cadet,” while a Filipino male identified as a “cadet first, does not matter which gender. The actions of the cadet will determine who I am.” Similarly, an “Asian/White” male also selected “other” but then noted that he identified “only as [a] cadet”.

These responses may suggest that otherized cadets who view themselves and the world through polarized, androcentric, and/or ethnocentric lenses may, as a result, perceive their sex and race as disadvantages or a stigmatized deviation from the “norm” at VMI. Thus, these cadets may be likelier to shed this stigma and self-identify as the arguably more androgynous and praiseworthy category of cadet first, rather than woman or person of color.¹⁷³ This is especially likely considering that VMI is a predominately male-gendered and white institution¹⁷⁴ that seems to place a premium on attributes and behaviors traditionally associated with maleness.¹⁷⁵ Although studies indicate that reliance on Afrocentricity and other cultural messages can act as a buffer against psychological harm resulting from racism, students of color may still eagerly shed an identity, if they perceive it as stigmatized, and instead self-identify as the more revered identity of cadet.¹⁷⁶ As such, advancement in polarized

173. “Women who could do so would be allowed to fit themselves into a mold designed for men, in the same way that non-white Anglo-Saxon Protestant immigrants had been permitted to become part of the United States. ‘Look as much as possible as we do,’ generations of newcomers had been told. ‘Speak only our language; celebrate only our culture and our holidays; make our values your own.’” STRUM, *supra* note 44, at 311; *see also* Osamudia James, *Race, Resilience, and Universality in the Law*, 6–7 (forthcoming) (observing that “a black male wishing to downplay his racial identity might insist on identifying himself first and foremost as ‘a human being’ or refuse to acknowledge race or racism as an impediment to progress for racial minorities”).

174. According to Bem, “the cultural debate about sexual inequality must be reframed so that it addresses not male-female difference but [rather] how androcentric institutions transform male-female difference into female disadvantage.” SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY* 176–77 (1993).

175. Just as Kimmel argues that institutions can be gendered, perhaps institutions like VMI may possess their own institutional racial identities. *See* Kimmel, *supra* note 45, at 512 (“The gender of institutions does more to shape the behaviors of the people in them than the gendered identities of individuals who populate them That institutions are as gendered as the individuals who inhabit them leads to certain binds for tokens, for gender nonconformists.”); *see also* BEM, *supra* note 174, at 183 (According to Catherine MacKinnon, “what is ultimately responsible for every aspect of female inequality . . . is not male-female difference but a social world so organized from a male perspective that men’s special needs are automatically taken care of while women’s special needs are treated as special cases or left unmet.”).

176. STRUM, *supra* note 44, at 311.

environments like VMI may come at a “formidable emotional cost” to persons of color and women – in this case, perhaps prompting them to dissociate from their racial and gender identities.¹⁷⁷ By contrast, because hyper-masculinity is prized at VMI, male cadets may be less inclined to prioritize their status as cadet over their personal masculine gender identities.¹⁷⁸

6. Summary of Findings

These findings may suggest that despite similarities in their lived experience and historic exclusion from VMI, for the most part, many male cadets of color disagree with coeducation and believe that, on the whole, it has negatively impacted VMI. This is true despite the fact that racial integration made it possible for men of color to attend VMI.¹⁷⁹ Many males, regardless of race, framed VMI’s decision to admit women as a lost battle, often stating that the Supreme Court had forced VMI to become coeducational or lose funding, and VMI had no choice but to surrender. Although persons of color have frequently relied upon the Equal Protection Clause to protect their fundamental freedoms and to ensure equal treatment, many did not acknowledge the equal protection issue at the heart of *U.S. v. Virginia*. A majority of male cadets of color did not believe that VMI should have become coeducational. Five male cadets of color remained neutral on that question, perhaps lending support to the notion that cadets of color may actively dissociate from controversies regarding other marginalized groups. Most respondents of color who agreed with coeducation were female, and one can conjecture that their sex, not their race, better explains their favorable attitudes toward coeducation at VMI. However, some male cadets of color did exhibit a more accurate understanding of why women attend VMI, often acknowledging women’s desires to challenge themselves and receive an unmatched military education.

Turning to the perceived impact of coeducation on VMI, a sizeable minority of cadets of color believed that coeducation had positively impacted VMI. However, most male cadets of color indicated that coeducation had negatively impacted VMI or remained neutral, even though assimilation is remarkably similar to the racial integration that made their own attendance at VMI possible. For these respondents, maleness may trump racial identity. This is perhaps

177. BEM, *supra* note 174, at 190.

178. Notably, our data did not capture *when* this prioritization of identification begins, and we have not yet analyzed whether identification as a cadet first is more prevalent among upperclassmen who have been subject to VMI’s indoctrination process for a longer period of time or less prevalent among certain racial groups.

179. By comparison, in 2011, only 36% of African-Americans supported same-sex marriage even though many of the same arguments lodged against racial integration and interracial marriage had been used to oppose same-sex marriage. See *Changing Attitudes on Gay Marriage*, PEW RESEARCH CENTER (July 29, 2015), <http://www.pewforum.org/2015/07/29/graphics-slideshow-changing-attitudes-on-gay-marriage/>. As of 2015, 41% of African-Americans supported same-sex marriage. See David Masci & Seth Motel, *5 Facts about Same-Sex Marriage*, PEW RESEARCH CENTER (June 26, 2015), <http://www.pewresearch.org/fact-tank/2015/06/26/same-sex-marriage/>. See also Kim Forde-Mazrui, *Live and Let Love: Self-Determination in Matters of Intimacy and Identity*, 101 MICH. L. REV. 2185, 2200-02 (2003) (reviewing RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY AND ADOPTION* (2003)) (observing that opponents of same-sex marriage recycled some of the same arguments used to oppose interracial marriage).

unsurprising given that VMI's adversative educational methodology aims to break down anything that distinguishes or separates one "rat" from another, including racial identity, so that the "rat" can be reborn into a cadet virtually indistinguishable from his peers. There may be little or no room for individuality in the Ratline to the extent individuality undermines the solidarity that VMI's singular adversative system aims to cultivate.

In sum, for the most part, our findings indicate that sex, rather than race, is a more accurate predictor of cadet perceptions of coeducation at VMI.¹⁸⁰ Despite certain similarities between the lived experience of female cadets and male cadets of color, many male cadets of color appear unable or unwilling to exercise their moral imaginations to better understand and empathize with the hardships that female cadets endure. Although our data only captures the correlation between a cadet's race and sex and his or her attitudes toward coeducation, rather than the cause of these attitudes, the next section explores some possible explanations for these findings.

V. POSSIBLE EXPLANATIONS

A. The Overriding Role of Predominant Personal Identity at the Intersection of Race and Sex

As discussed earlier, Intersectionality Theory posits that we are each a complex product of the interaction of all aspects of our identity as well as our discrete set of personal experiences.¹⁸¹ Thus, a single individual may possess multiple subordinate identities¹⁸² (e.g., a lesbian woman of color) or a combination of privileged and subordinate identities (e.g., a white, affluent, homosexual male with a disability).¹⁸³ Yet our findings seem to suggest that at the intersection of sex and race, one aspect of personal identity may predominate. This Article refers to that aspect as one's *predominant personal identity*¹⁸⁴ and predicts that, rather than being static, a person's predominant personal identity may vary by individual, environment, or circumstance.

1. Race

With this in mind, the predominant role of race may offer an explanation for our results. Cheryl Harris argues that whiteness, or more precisely, the

180. To be clear, the conclusions herein are specific to the unique, hypermasculine setting of VMI, but it is possible that they are also applicable to other male-dominated environments.

181. See Crenshaw, *supra* note 41, at 140, 149.

182. See generally Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 *SEX ROLES* 377 (2008) (exploring the hypothesis that "possessing multiple subordinate-group identities renders a person 'invisible' relative to those with a single subordinate-group identity").

183. Coston & Kimmel, *supra* note 25, at 98, 110 (investigating the existence of "sites of inequality within an overall structure of privilege" and concluding that "[p]rivilege is not monolithic . . . Among members of one privileged class, other mechanisms of marginalization may mute or reduce privilege based on another status").

184. James, *supra* note 173, at 3-4 n.4 (defining "identity" as "who we understand ourselves to be . . . a person's internal sense of self as well as an association of that self with a particular group or groups").

“embodiment of white privilege,”¹⁸⁵ is best conceived of as “usable property” that a white person enjoys “whenever she t[akes] advantage of the privileges accorded white people simply by virtue of their whiteness.”¹⁸⁶ Indeed, “the law has accorded ‘holders’ of whiteness the same privileges and benefits accorded holders of other types of property,” including “the right to transfer or alienability, the right to use and enjoyment, and the right to exclude others.”¹⁸⁷

This reconceptualization of racial identity as property may explain the attitudes of male cadets of color toward coeducation at VMI. Assuming most women who attend VMI are white,¹⁸⁸ then in the eyes of male cadets of color, their whiteness may trump their sex. Male cadets of color may believe that the benefits these female cadets enjoy due to their white privilege offset or outweigh any discrimination or disadvantage arising from their perceived violation of sex or gender boundaries. Put differently, there is no reason to feel empathy for them because even if they are women, they are still white, and their race trumps their sex. Male cadets of color may even assume, consciously or not, that white women’s privileged racial identity will shield them from the worst forms of discrimination, so while they still do not enjoy equality with white males, they still enjoy more privilege than men of color, even if only *outside* the VMI community.

2. Sex

The overarching role of sex may further illuminate our results. Like race, sex

185. In *PRIVILEGE REVEALED*, Stephanie Wildman defines privilege as a “systemic conferral of benefit and advantage triggered by affiliation, conscious or not and chosen or not, to the dominant side of the power system.” Stephanie M. Wildman, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 29 (1996).

186. Cheryl Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1709, 1734 (1993). According to Harris:

[W]hiteness is still perceived to be valuable. The wages of whiteness are available to all whites regardless of class position, even to those whites who are without power, money, or influence. Whiteness . . . serves as compensation even to those who lack material wealth. It is the relative political advantages extended to whites, rather than actual economic gains, that are crucial to white workers Because Blacks are held to be inferior . . . by virtue of their position on the bottom, it allows whites – all whites – to ‘include themselves in the dominant circle. [Although most whites] hold no real power, [all can claim] their privileged racial identity.’ . . . Whiteness . . . remains a concept based on relations of power, a social construct predicated on white dominance and Black subordination.

Id. at 1759–61. *But see* James, *supra* note 173, at 3–4 n.4 (noting the existence of “a positive investment that Blacks have in their racial identity”).

187. See Bela August Walker, *Privilege as Property*, 42 *WASH. U.J.L. & POL’Y* 47, 55 (2013) (citing e. christi cunningham, *Identity Markets*, 45 *How. L.J.* 491, 530 (2002)). The theory of racial identity as property was first advanced more than a century ago in *Plessy v. Ferguson*. Mr. Plessy’s attorney, Albion Tourgee, unsuccessfully argued that since “most white persons if given a choice, would prefer death to life in the United States as a colored person . . . is it possible to conclude that the reputation of being white is not property?” *Id.* at 52–53. More than a century later, Andrew Hacker would seemingly confirm Mr. Tourgee’s theory when he asked a group of white students how much money they would seek if they were changed from White to African American; they estimated approximately \$50 million or \$1 million per year. *Id.* at 55.

188. Because the Common Data Set available online does not break down the number of women by race, we can only conjecture that most women at VMI are white based on the fact that there were only 9 women of color among our 53 female respondents.

can also be reconceptualized as a property right since male privilege seemingly transcends nearly all races, religions, cultures, and geographical borders.¹⁸⁹ This is perhaps especially true in the hyper-masculine culture of VMI. Sex impacts how one experiences racial discrimination just as race affects how one experiences sex discrimination.¹⁹⁰ Thus, according to Harris, “policing the boundaries of race require[s] regulating gender and policing the boundaries of gender required regulating race.”¹⁹¹

Such boundaries are typically more rigid when they are perceived to be under threat. For example, according to Susan Faludi, after The Citadel admitted women, pressure to be hyper-masculine intensified and students were likelier to demean students who did not conform to masculine gender norms.¹⁹² Similarly, even in communities where African Americans and whites had lived relatively peaceably, race relations initially deteriorated and violence often erupted after

189. See generally Lauren Wigginton, *Heteronormative Identities as Property: Adversely Possessing Maleness and Femaleness*, 23 AM. U. J. GENDER SOC. POL'Y & L. 1, 139-62 (2014) (arguing that “certain heteronormative identities developed as forms of status property – similar to whiteness – through the legalized subordination of women and lesbian, gay, bisexual, and transgender (‘LGBT’) persons”); see also Cox, *supra* note 37, at 4-5 (suggesting the existence of “black male privilege” by demonstrating through a study of organizational leaders that “leaders overwhelmingly view men as prototypical African Americans and [that] this view is associated with the types of issues they believe their communities are concerned about as well as the issues they report their organizations are active on”); Malgorzata Mikolajczak & Janina Pietrzak, *Ambivalent Sexism and Religion: Connected Through Values*, 70 SEX ROLES 387, 388 (2014) (suggesting that “[b]y placing emphasis on uniquely female versus male traits and the interdependence between the genders, justifying the division into traditional roles, Catholicism may contribute to the popularity of favorable attitudes that are directed only towards women who fit their ‘God-given’ roles such as that of a mother”); *Female Genital Mutilation*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs241/en/> (last visited Dec. 21, 2015) (discussing medically harmful yet widespread “procedures that involve partial or total removal of the external female genitalia” carried out on girls or young women mainly in twenty-nine African and Middle Eastern countries for cultural, social, and religious reasons); *id.* (“Though no religious scripts prescribe the practice, practitioners often believe the practice has religious support.”); *id.* (“[Female genital mutilation] is recognized internationally as a violation of the human rights of girls and women.”); David Masci, *The Divide over Ordaining Women*, PEW RES. CENTER, (Sept. 9, 2014), <http://www.pewresearch.org/fact-tank/2014/09/09/the-divide-over-ordaining-women/> (“While many major religious denominations in the United States now allow women to pastor churches and synagogues, only 11% of American congregations were led by women in 2012 Many of the nation’s largest denominations, including Roman Catholics, Southern Baptists, Mormons (Latter-day Saints), and the Orthodox Church in America, do not ordain women or allow them to lead congregations.”).

190. See Cheryl I. Harris, *Finding Sojourner’s Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 313 (1996) (“[R]acial domination is structured and experienced differently through gender while women’s subordination is expressed and experienced differently through race.”). Indeed, Cox argues that African American men enjoy “black male privilege” because they are often viewed as prototypical African Americans and as a result, are the primary “focus of strategies for African American Advancement.” See, e.g., Cox, *supra* note 37, at 4-5; *id.* at 7-8 (citation omitted) (defining “black male privilege” as a “system of built in and often overlooked systematic advantages that center the experience and concerns of Black men while minimizing the power the Black males hold”).

191. *Id.*

192. See SUSAN FALUDI, *STIFFED: THE BETRAYAL OF THE AMERICAN MAN* 116-17 (1999) (“[I]f you are not doing what you are supposed to do, you are not a man, you are a woman, and that is the way you are disciplined in the barracks every day, every hour.”).

the onset of the Civil Rights Movement.¹⁹³ African American students attending white schools were subjected to heightened discrimination because whites perceived *Brown* as an assault on their white privilege. This may explain, at least in part, why even peaceful demonstrations, such as sit-ins, provoked extreme, disproportionate reactions from white citizens.¹⁹⁴ A similar, albeit far less extreme, phenomenon may be happening at VMI today.

Like racial integration, the admission of women fundamentally altered VMI's cultural landscape, destabilizing the educational environment. Such environmental instability, whether physical or cultural, is often associated with increased pressure toward polarization and heightened majority-group dominance, which, at VMI, likely took the form of white male privilege.¹⁹⁵ Thus, men's staunch resistance to coeducation may, at base, concern ownership and control of what it means to be a man and by extension, what it means to be a woman. Men, regardless of their race, want the exclusive right to negotiate the terms of male privilege and the right to exclude women from challenging those notions. In fact, W.E.B. Du Bois once observed, "the race question at bottom is simply a matter of ownership of women; white men want the right to use all women, colored and white, and they resent the intrusion of colored men in this domain."¹⁹⁶ Historically, white males defined a "real woman" as a demure, uneducated, delicate, passive, feminine, non-laborer, which implicitly justified the abuse and exploitation of working women and female slaves by perpetuating the stereotype that as laborers, they were not real women.¹⁹⁷ White women's adoption of such beliefs, even if only implicit, divided women and as a result, bolstered white male privilege.¹⁹⁸ This phenomenon still occurs at VMI today, where males often define womanhood in ways that exclude VMI women, perhaps, justifying their disparate treatment, at least in the minds of their male peers. For example, most VMI males reported that VMI women are more masculine than non-VMI women and likelier to be either sexually promiscuous or homosexual.¹⁹⁹

It is quite likely that male cadets, often regardless of race, perceive assimilation as a threat to the hyper-masculine VMI Experience or even to their own individual masculine identities. In *Saving the Males*, Michael Kimmel, who served as the Department of Justice's expert witness on "masculinity" during *U.S. v. Virginia*, explores this peculiar question. He recounts overhearing a VMI cadre shouting to a male cadet, "What's wrong with you, skirt? There are women who can do more push-ups than you. When I was in the army, there was a

193. *Id.*

194. *Id.*

195. YOLANDA MURPHY & ROBERT F. MURPHY, *WOMEN OF THE FOREST* 205 (2d ed. 1985).

196. Harris, *supra* note 190, at 337 (citing PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* (1984)).

197. According to Harris, "[b]y saying that true women were not part of the public sphere of work, Black women could be justifiably worked 'like a man' as they were not really women." *Id.* at 341.

198. *Id.*

199. Abigail L. Perdue, *Transforming "Shedets" into "Keydets": An Empirical Study Examining Coeducation Through the Lens of Gender Polarization*, 28 *COLUM. J. GENDER & L.* 371, 403-04 (2014).

woman who could do 100 push-ups. You can't even do 50."²⁰⁰ This suggests that at VMI, women and all things feminine represent weakness, failure, and the low bar of performance – a denigrated status to avoid, not one to which one would aspire. Accordingly, many white male cadets and male cadets of color appear to resent the intrusion of women into their hyper-masculine domain and perceive VMI women as a threat to their masculinity. Thus, the data may simply reflect the racialized and male-gendered story about VMI women that VMI men tell themselves and which sadly may be deeply engrained in institutional narratives about coeducation.

Thus, in VMI's cult of masculinity where difference is discouraged, maleness often trumps racial identity. Accordingly, hyper-masculine male cadets, often regardless of race, prefer a gender-polarized and androcentric educational environment where females neither invade their male domain, nor challenge their hyper-masculine gender identities. After all, if our gender-polarized, androcentric American society traditionally associates attributes, such as physical weakness, with women, then what does it mean to the average male cadet when a woman survives the rigors of the Ratline, outperforms him during the physical fitness exam, or holds rank over him? These concerns may be doubly problematic to a male cadet of color already battling feelings of marginalization or by any cadet who is outperformed by a female cadet of color, since women of color are often doubly discriminated against on the basis of both race and sex.

B. Manifestations of Unconscious Gender and Racial Polarization

For some respondents, sex may constitute the predominant personal identity because cadets view one another through the reality-altering lenses of gender and racial polarization. *Gender polarization* involves the separation of sex and gender²⁰¹ into opposite poles representing masculine and feminine domains in order to interpret sex and gender differences.²⁰² According to Sandra Bem, "gender polarization homogenizes women and men, rather than allowing either the diversity that naturally exists within each sex or the overlap that naturally exists between the two sexes to flower in social and psychological life."²⁰³ Internalization of gender polarizing views may result in *gender schematicity*, or "the imposition of a gender-based classification on social reality, the sorting of persons, attributes, behaviors, and other things on the basis of the polarized

200. Kimmel, *supra* note 45, at 494–95.

201. As used herein, *sex* and *gender* are distinct concepts. Sex is a biological phenomenon, while gender is a social construct. See, e.g., *Ulane v. E. Airlines, Inc.*, 742 F.2d 1081, 1087 (7th Cir. 1984) (agreeing "with the Eighth and Ninth Circuits that if the term 'sex' as it is used in Title VII is to mean more than biological male or biological female, the new definition must come from Congress"); *Defining Sexual Health*, WORLD HEALTH ORG., http://www.who.int/reproductivehealth/topics/sexual_health/sh_definitions/en/ (last visited Dec. 21, 2015) (defining "sex" as the "biological characteristics that define humans as female or male").

202. See BEM, *supra* note 174, at 2 (referring to gender polarization as a lens involving "hidden assumptions about sex and gender . . . embedded in cultural discourses, social institutions, and individual psyches that invisibly and systemically reproduce male power in generation after generation").

203. *Id.* at 193.

definitions of masculinity and femininity that prevail in the culture.”²⁰⁴ Thus, gender polarization often legitimates the place and power of men to the detriment of women. Due in part to Americans’ tendency to view one another through a gender-polarized lens, many female cadets at VMI are perceived as “non-males” who are violating normative gender boundaries.²⁰⁵ As a result, their attempts to assimilate are often perceived as threatening male privilege and often provoke staunch resistance.²⁰⁶

As used herein, the related concept of *racial polarization* refers to the classification of individuals with various degrees of racial diversity²⁰⁷ into separate racial categories that represent distinct racial domains, such as non-white versus white.²⁰⁸ Like gender stereotypes, racial myths and stereotypes pervade American society, often legitimizing white privilege to the disadvantage of persons of color. For example, some whites used propaganda regarding purported African American inferiority to justify slavery and the appalling designation of a slave as three-fifths of a person.²⁰⁹ Such racially polarized views were also used to rationalize the exclusion of persons of color from constitutional rights and freedoms, including the right to vote and to attend all-white public schools. Even peaceful assertions of the right to equal treatment, such as Rosa Parks’ refusal to move to the back of the bus, were perceived as assaults on the place and power of whites. Such attempts often provoked violence and hostility.²¹⁰ Thus, as a formerly all-male and all-white Southern stronghold

204. *Id.* at 125.

205. *See generally* Perdue, *supra* note 199.

206. *Case, supra* note 150, at 358.

207. Some scholars agree that like gender, race is a social construct, at least in part. *See generally* Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L.L.REV. 1, 11 (1994) (“There are no genetic characteristics possessed by all Blacks but not by non-Blacks; similarly, there is no gene or cluster of genes common to all Whites but not to non-Whites.”); F. James Davis, *Who is Black? One Nation’s Definition*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html> (last visited Dec. 21, 2015) (observing that America is the only nation, which classifies a person as black if he or she has one black ancestor).

208. Admittedly, the term *racial polarization* has most often been used in the context of politics and voting rights. *See, e.g.*, Charles Stewart III, Nathaniel Persily, & Stephen Ansolabehere, *Regional Differences in Racial Polarization in the 2012 Presidential Election: Implications for the Constitutionality of Section 5 of the Voting Rights Act*, 126 HARV. L. REV. F. 205 (Apr. 26, 2013); Steven Taylor, *Racial Polarization in the 2008 U.S. Presidential Election*, 35 THE W. J. OF BLACK STUDIES 118, 121 (2011) (observing that in 2008, 95% of African Americans supported biracial President Barack Obama, while only 4% supported white candidate, Senator John McCain. By contrast, 55% of whites supported Senator McCain, and 43% supported President Obama).

209. U.S. CONST. art. I, § 2, cl. 3 (“Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”). *See also* The Leadership Conference on Civil & Human Rights, *Civil Rights Chronology*, CIVIL RIGHTS 101 (2001), <http://www.civilrights.org/resources/civilrights101/chronology.html> (observing that in order to reach an infamous compromise between northern and southern states, delegates to the United States Constitutional Convention agreed that slaves would be counted as three-fifths of a person for purposes of determining political representation and taxes).

210. *See Case, supra* note 150, at 358 (observing that women’s assimilation attempts at VMI sometimes provoked resistance).

located in the heart of the former Confederacy,²¹¹ one might expect VMI to be a hotbed of both gender and racial polarization.²¹²

Taken together, the existence of racial and gender polarization as well as androcentrism²¹³ at VMI may serve to legitimate white male privilege and to undermine solidarity between male cadets of color and female cadets. As Bem explains, “[b]ecause society is not only gender polarizing but androcentric, the males and females living within it become androcentric and gender polarizing themselves.”²¹⁴ They tend to construct racial and gender identities consistent with the lenses through which they view their world.²¹⁵

As a historically all-white and all-male military institution utilizing the hyper-masculine adversative educational method and steeped in Confederate tradition, VMI cadets likely view one another through these reality-altering, polarized lenses.²¹⁶ Any attempt to challenge or change this stronghold of whiteness, masculinity, and Southern tradition would likely provoke staunch resistance.²¹⁷ Indeed, conclusions reached as a result of viewing male cadets and female cadets through these lenses appear to have provoked fierce opposition to coeducation at VMI and may continue to impact the gender identities of male and female cadets.²¹⁸

C. Identity Prioritization

Life at the intersection of race and sex may sometimes require individuals to make choices, prioritizing one facet of identity over another. Historical patterns reflect the implications of these difficult choices, which sometimes lead members of identity categories to dissociate when doing so proves politically advantageous. For example, although the Equal Rights/woman suffrage and

211. Dr. Lesley Novack & Dr. David Novack, *Gendered Views on Coeducation at a Military College: The Impact of Gender Polarization*, at 2 (on file with author). VMI only admitted Virginia natives until the late 1850s. Mary Price, *Learning the Lifestyle, Self-Selecting for Success*, VA. MIL. INST. (Oct. 31, 2013), <http://www.vmi.edu/Content.aspx?id=10737426170>. In May 1861, the capital of the Confederate States of America was relocated from Montgomery, Alabama, to Richmond, Virginia, and to Danville, Virginia, after Richmond fell to the Union army. *Capital Cities of the Confederacy*, CIVIL WAR TRUST, <http://www.civilwar.org/education/history/warfare-and-logistics/logistics/capital.html> (last visited Dec. 21, 2015).

212. Perdue, *supra* note 199, at 374.

213. *Androcentrism* signifies a male-centeredness that treats men and maleness as the norm and women as “other.” See BEM, *supra* note 174, at 41 (“[M]ales and male experience are treated as a neutral standard or norm for the culture or the species as a whole, and females and female experience are treated as a sex-specific deviation from that allegedly universal standard.”). Put differently, male experience is the “reference point or the standard for the culture.” See *id.* According to Bem, Charlotte Perkins Gilman first articulated the concept of “androcentrism”, which she described as “man being held the human type; woman a sort of accompaniment.” *Id.*

214. *Id.* at 139.

215. See *id.* (“[O]nce these gender lenses have been internalized, they predispose the child, and later the adult, to construct an identity that is consistent with them.”); see generally Perdue, *supra* note 199, at 391–92.

216. Novack & Novack, *supra* note 211, at 2.

217. According to Susan Faludi, the first female cadet at The Citadel purportedly withdrew due to harassment. See FALUDI, *supra* note 192, 116–17, 119–20 (1999) (“Physically ill from and psychologically wrecked by the unremitting fury of her peers, she withdrew.”).

218. Perdue, *supra* note 199, at 390.

Civil Rights/black suffrage movements arguably sprang from the same ideological source—abolitionism—African American males, who had once fought alongside women for universal suffrage, later actively campaigned against woman suffrage when they faced political pressure, indicating that support of woman suffrage could undermine efforts to secure black suffrage.²¹⁹ Likewise, woman suffragists occasionally resorted to racialized rhetoric to advance their cause.

According to Ellen DuBois, “[b]orrowing from anti-slavery ideology, [women] articulated a vision of equality and independence for women, and borrowing from anti-slavery method, they spread their radical ideas widely to challenge other people to imagine a new set of sexual relations.”²²⁰ Indeed, the “[A]bolitionist [M]ovement provided the particular framework within which the politics of women’s rights developed [T]he development of American feminism was inseparable from the unfolding of the antislavery drama.”²²¹ Although many scholars claim that the Abolitionist Movement made women aware of their own oppression, DuBois contends that it taught women how to turn their grievances “into a political movement. Abolitionism provided them with a way to escape clerical authority, an egalitarian ideology, and a theory of social change.”²²²

In the beginning, there were no national or state organizations devoted exclusively to women’s advancement. However, women’s involvement in the Abolitionist Movement was seen as more acceptable because it was often viewed as an outgrowth of their natural feminine benevolence and concern for others.²²³ Thus, the women’s movement largely rode on the coattails of the Abolitionist Movement and was thus constrained by that movement’s resources and agenda. For this reason, abolitionists, including African American males, played an integral role in the genesis of the Equal Rights Movement. In fact, Frederick Douglass was initially one of Elizabeth Cady Stanton’s biggest supporters at the Seneca Falls conference.²²⁴ “[T]he movement’s strongest, most reliable, and most

219. This section aims to provide one illustration of identity prioritization. However, the exclusive focus on black suffrage and women’s suffrage does not aim to diminish the experiences of other marginalized groups, such as other persons of color, members of minority religious groups, persons with disabilities or of low socioeconomic status, members of the LGBT community, etc. Compare Brooks & Widner, *supra* note 32 (contending that focus on the black-white binary does not diminish the experiences, struggles, and needs of other marginalized groups) with Perea, *supra* note 32 (asserting that use of a black-white binary may further marginalize persons of color who are not African American).

220. ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMAN’S MOVEMENT IN AMERICA 1848-1869*, at 22 (1978).

221. *Id.* at 31.

222. *Id.* at 32.

223. See *id.* (“Women’s involvement in abolitionism developed out of traditions of pietistic female benevolence that were an accepted aspect of women’s sphere in the early nineteenth century.”); Joellen Lind, *Dominance and Democracy, The Legacy of Woman Suffrage for the Voting Right*, 5 *UCLA WOMEN’S L.J.* 103, 139 (1994) (suggesting that the Garrisonian abolitionist movement was “quite consistent with the ideal of females as loving, nurturing, spiritual, and apolitical”).

224. DUBOIS, *supra* note 220, at 41; see also Frederick Douglass, *NAT’L PARK SERVICE*, <http://www.nps.gov/wori/historyculture/frederick-douglass.htm> (last visited Dec. 21, 2015).

visible support came from abolitionist ranks, particularly from the women,”²²⁵ and this support went both ways. Indeed, the forerunners of the Equal Rights Movement – Elizabeth Cady Stanton and Susan B. Anthony – organized the National Loyal Women’s League to fight for the constitutional abolition of slavery²²⁶ and collected over 400,000 signatures in support of the Thirteenth Amendment, abolishing slavery.²²⁷

Feminist leaders hoped that enactment of the Thirteenth Amendment would prompt the American Anti-Slavery Society and other abolitionist organizations to seek universal suffrage.²²⁸ This assumption seemed natural considering the historical involvement of women in the Abolitionist Movement, the common disenfranchisement of African Americans and women, and the fact that many of the same arguments were equally persuasive with regard to black and universal suffrage. However, the increased political power of abolitionists that resulted from the Thirteenth Amendment made many abolitionists more reluctant to support what they viewed as peripheral feminist demands. As a result, the American Anti-Slavery Society refused to merge with the Equal Rights Movement to form a single national organization to fight for equal rights and universal suffrage.²²⁹ Similarly, Equal Rights advocates had lobbied for the enfranchisement of women as well as elimination of a discriminatory \$250 property qualification for African American men; however, in 1867, the Republican party’s Suffrage Committee Chair recommended removal of the \$250 fee but cautioned against giving women the right to vote.²³⁰ As a result, in 1866, women’s rights advocates like Susan B. Anthony organized the first women’s rights convention since the Civil War in 1866.²³¹ At the convention, Martha Coffin Wright moved for creation of the American Equal Rights Association, which would advocate for universal suffrage.²³² Despite the official divide, Stanton and others remained hopeful that anti-slavery organizations and women’s rights

225. DUBOIS, *supra* note 220, at 51.

226. *Id.* at 53; *see also* Lind, *supra* note 223, at 151–52 & n.237.

227. DUBOIS, *supra* note 220, at 53; *Senate History: Women’s Loyal National League*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/civil_war/WomensNationalLoyalLeague.htm (last visited Feb. 11, 2015).

228. *See* DUBOIS, *supra* note 220, at 55 (“The initial political strategy that feminists developed for Reconstruction attempted to make black suffrage and woman suffrage equal and inseparable demands. This strategy, rather than leading abolitionists back to support woman suffrage, drove them further away.”); *id.* at 62 (“Lucy Stone explained, ‘we resolved to make common cause with the colored class – the only other disfranchised class – and strike for equal rights for all.’”); *see also* Lind, *supra* note 223, at 153–54 (discussing political conflict over “whether the Reconstruction Amendments would be used not only to enfranchise Black males, but also to enfranchise women”).

229. DUBOIS, *supra* note 220, at 63 (“The feminists’ first step was to invite the American Anti-Slavery Society to merge with the women’s rights movement into a single national organization for equal rights and universal suffrage . . .”).

230. *Id.* at 87; *see also* Lind, *supra* note 223, at 165 (“Thus, Republicans were in no mood to support woman suffrage when they drafted the Fifteenth Amendment – that might cost them even more white male voters in the North. Thus, in drafting the Fifteenth Amendment, they refused to prohibit state restrictions imposed on the franchise on the basis of gender.”).

231. *See* DUBOIS, *supra* note 220, at 63–64 (“Their campaign was inaugurated at the first women’s rights convention since the Civil War, which was held in New York City in May 1866.”).

232. *Id.* at 64; SHERREY H. PENNEY & JAMES D. LIVINGSTON, *A VERY DANGEROUS WOMAN: MARTHA WRIGHT AND WOMEN’S RIGHTS* 178 (2004).

organizations could someday merge.²³³

This hope was not far-fetched given that many of the same arguments in favor of black suffrage were equally powerful with regard to women's suffrage. For example, Frederick Douglass argued that *all* citizens should be entitled to the right to vote in part because disenfranchisement engenders feelings of inferiority.²³⁴ Yet he later remarked, black suffrage "is a question of life and death When women, because they are women, are hunted down . . . [and] when they are dragged from their houses and hung upon lamp-posts . . . they will have an urgency to obtain the ballot equal to our own."²³⁵ Many other supporters of black suffrage similarly argued that black suffrage was a far more pressing concern given the unique vulnerability of former slaves, overlooking the fact that black suffrage would only protect freed men, not women.²³⁶ Such attitudes pitted universal suffragists like Stanton against other abolitionists, including women who thought their voting rights were adequately fulfilled by their husbands or who believed it was too selfish or premature to press for universal suffrage before African Americans had received full constitutional protection.

As abolitionists gradually took center stage in national politics, Equal Rights advocates increasingly got bumped to the fringe. Anti-Slavery Society leaders even prevented Equal Rights advocates from gaining access to their resources and closed their journals as well.²³⁷ In Philadelphia, male abolitionists, including eight African American men, "prevented the introduction of woman suffrage onto the floor of the local Anti-Slavery Society."²³⁸ When universal suffrage was debated, abolitionist journals published edited versions of the debate that omitted all mention of universal suffrage.²³⁹ As DuBois explains, the growing "tension between abolitionism and feminism . . . forced feminists to abandon their efforts to anchor woman suffrage to black suffrage and led them to make an open break with abolitionists."²⁴⁰

This break was nowhere more apparent than during the Kansas Campaign of 1867 when the Kansas legislature authorized popular referenda for black suffrage and women's suffrage.²⁴¹ To achieve their political goals, abolitionists had aligned with Lincoln's Republican party.²⁴² While the Equal Rights

233. DUBOIS, *supra* note 220, at 65.

234. *See id.* at 56 ("By disenfranchising black people, [Douglass] explained, 'you declare before the world that we are unfit to exercise the elective franchise, and by this means lead us to undervalue ourselves.'").

235. *Id.* at 187-88; *see also id.* at 169 (explaining that, according to Francis Bird, "[n]egro suffrage, being a paramount question, would have to be settled before woman suffrage could receive the attention it deserved").

236. *See id.* at 56-57.

237. *Id.* at 73.

238. *Id.* at 70-71.

239. *Id.* at 73.

240. *Id.* at 77; *see also* Lind, *supra* note 223, at 165 (discussing Stanton and Anthony's active resistance to the Fourteenth and Fifteenth Amendments as written because the "experience of being excluded from two political deals involving suffrage by the very men they had helped in the past deeply embittered Stanton and her supporters").

241. DUBOIS, *supra* note 220, at 79.

242. *Id.* at 93 ("Provoked by Republican antifeminism, Stanton and Anthony took an important

Association sunk most or all of its resources into the Kansas Campaign, state Republicans launched an antifeminist campaign to prevent the issue of women's suffrage from even being presented to Kansas voters.²⁴³ As DuBois explains, Republicans viewed "antifeminism as a strategy for ensuring the victory of black suffrage."²⁴⁴ Abolitionists who had recently benefited from their alignment with Republicans remained inert rather than risk losing that beneficial new connection.²⁴⁵

In response, feminists formed an uneasy alliance with Democrats, including George Francis Train whom DuBois describes as "a flamboyant racist, [whose] attacks on the intelligence and integrity of black people were basic to his political arsenal."²⁴⁶ This controversial association – a union likely forged from political desperation – undermined "the historical traditions and political principles" of the early universal suffrage movement.²⁴⁷ Indeed, Train argued that white women should be permitted to vote so that their votes could be used "as a weapon . . . against the specter of black supremacy."²⁴⁸ Utilizing heavily racialized propaganda that overtly pitted African American men against white women, Train urged the public to choose "Beauty, Virtue, and Intelligence" over "Muscle, and Color and Ignorance."²⁴⁹ Notably absent from the debate were the concerns regarding the plight of African American women. Ultimately, Kansas voters rejected black suffrage three to one and women's suffrage received even less support – two thousand votes.²⁵⁰ Thus, the Equal Rights/Women's Suffrage Movement emerged from Kansas as an entirely "autonomous" movement.²⁵¹

The post-Kansas, post-abolitionist brand of feminist rhetoric became increasingly "racist and elitist."²⁵² For example, in opposing the Fifteenth Amendment, Stanton argued:

American women of wealth, education, virtue and refinement . . . if you do not wish the lower orders of Chinese, Africans, Germans and Irish, with their low ideas of womanhood to make laws for you and

step away from the high-minded political campaign they had . . . intended the Equal Rights Association to conduct."); *Legal Strategies of Susan B. Anthony*, PBS, http://www.pbs.org/stantonanthony/resources/index.html?body=legal_strategies.html (last visited Dec. 21, 2015).

243. *Id.* at 89.

244. *Id.*

245. *See id.* at 80.

246. *Id.* at 93.

247. *Id.* at 94. Anthony's association with Train subjected her to significant criticism. She responded that women's rights advocates should be free to ally with whomsoever they choose given that the abolitionists had done much the same in securing their cause. *Id.* at 95.

248. *Id.* at 94 (stating that Train even argued that "[w]oman votes the black to save, The black he votes to make the woman slave, Hence when blacks and 'Rads' unite to enslave the whites, 'Tis time the Democrats championed woman's rights").

249. *Id.* at 95.

250. *Id.* at 96; *see also* Lind, *supra* note 223, at 163.

251. DUBOIS, *supra* note 220, at 103 (explaining that the Kansas experience "led Stanton and Anthony to reorganize woman suffrage as an autonomous feminist movement"); *see also* Lind, *supra* note 223, at 163 ("In the aftermath of the Kansas referendum, the woman suffrage leadership was more politically isolated than ever in the face of the impending crisis over the Fourteenth Amendment.").

252. *Id.* at 174.

your daughters . . . awake to the danger of your present position and demand that woman, too, shall be represented in the government[.]²⁵³

The Equal Rights Movement now primarily consisted of upper and middle-class white women who believed themselves superior to and thus more entitled to vote than the African American men who now possessed it, many of whom were illiterate.²⁵⁴ The ideological split was so pronounced that Stanton and Anthony were ultimately asked to resign from the Equal Rights Association because they had “ridiculed the negro and pronounced the 15th Amendment infamous.”²⁵⁵

Even utilizing this new brand of racist, classist propaganda, efforts to secure woman suffrage failed, and in February of 1869, Congress passed a version of the Fifteenth Amendment that gave African American men, but no women, the right to vote.²⁵⁶ It would take another half century for women of any race to be granted that right through the Nineteenth Amendment.²⁵⁷ Yet the fight for women’s equality was just beginning. Undeterred by defeat and empowered by small victories, through the decades, women would wage new battles for equality in every aspect of their lives from gaining access to contraceptives²⁵⁸ and abortion²⁵⁹ to achieving equal employment and educational opportunities from sex discrimination²⁶⁰ and sexual harassment.²⁶¹ In *U.S. v. Virginia*, women won yet another battle, but as the findings reveal, female cadets must still wage a war

253. *Id.* at 178. Stanton came from a wealthy family and utilized her social connections to advance woman suffrage. *Id.* at 178–79.

254. *See id.* at 174–75 (“The women among whom it was growing were white and middle-class and believed themselves the social and cultural superiors of the freedmen.”).

255. *Id.* at 187.

256. *Id.* at 172; *see also Passage of the Fifteenth Amendment*, PBS, <http://www.pbs.org/wgbh/americanexperience/features/general-article/grant-fifteenth/> (last visited Dec. 21, 2015).

257. In 1919, the House and Senate finally passed the amendment that Susan B. Anthony wrote and introduced into Congress in 1878. It was ratified in 1920. *19th Amendment*, HISTORY.COM, <http://www.history.com/topics/womens-history/19th-amendment> (last visited Dec. 21, 2015). Notably, Mississippi did not ratify the Nineteenth Amendment until March 22, 1984. *Id.*

258. An entity commonly on the frontlines of cultural controversies since the 1940s, the American Civil Liberties Union (“ACLU”) established a Committee on Discrimination Against Women in Employment that sought equal pay for equal work and the abolition of laws prohibiting the distribution of birth control information and contraceptive use. STRUM, *supra* note 44, at 59. The ACLU was the first national organization to call for a right to abortion, and it also supported passage of the Equal Rights Amendment. *Id.*; *see, e.g., Eisenstadt v. Baird*, 405 U.S. 438 (1972) (establishing the right of unmarried people to possess contraception); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (announcing a constitutionally protected right of privacy and legalizing the use of contraception by married couples).

259. *See, e.g., Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992); *Roe v. Wade*, 410 U.S. 113 (1973).

260. *See* STRUM, *supra* note 44, at 55. In *Jane Crow and the Law*, Pauli Murray and Mary Eastwood argue that sex discrimination and race discrimination are both extremely important issues even though manifestations of the latter have been more “brutal.” *Id.* at 59. *See, e.g.,* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2012); Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2012); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (2012); Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq.; Pregnancy Discrimination Act, 42 U.S.C. § 2000e (2012); Violence against Women Act, 42 U.S.C. § 13925 et seq.; Exec. Order 10980, 26 Fed. Reg. 12059 (Dec. 16, 1961); Exec. Order 11126, 28 Fed. Reg. 11717 (Nov. 1, 1963); Exec. Order 11,375, 3 C.F.R. 684 (1967).

261. *See, e.g., Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

everyday to be perceived and treated as equal. And as the data indicate, the same competing interests that created a wedge between black suffragists and feminists may still persist at VMI, undermining the development of solidarity between female cadets and male cadets of color.

D. Implicit Bias and In-Group Loyalties

Implicit bias and in-group loyalties could also explain how and why individuals prioritize one facet of identity over another and thus, further elucidate the findings. “The vast and growing body of research on implicit²⁶² social cognition suggests that individuals lack absolute awareness of their own thoughts” and thus, may be less in control of the ensuing behavior that results from such thoughts.²⁶³ Such mental processes include implicit attitudes²⁶⁴ and implicit stereotypes.²⁶⁵ Although an individual may be completely unaware, his or her implicit attitudes and stereotypes may differ markedly from the person’s explicit attitude about an individual, category, or thing.²⁶⁶ Such mental dissociations are particularly prevalent in attitudes toward stigmatized groups, such as the female cadets at VMI.²⁶⁷ Taken together, implicit attitudes and stereotypes may, in turn, give rise to implicit bias, or an unconscious bias for or against a particular person, group, or category. Implicit bias may provoke in-group favoritism and out-group discrimination. However, a person may also unknowingly possess an unconscious bias against members of his or her own group.²⁶⁸

Implicit bias research may further illuminate our findings.²⁶⁹ First, VMI’s hyper-masculine culture may foster an implicit attitudinal preference for all things masculine in each cadet, regardless of race or sex. Thus, solidarity with other males may trump out-group empathy for women and perhaps even trigger

262. Herein, “implicit” connotes a lack of explicit or express access to memory, perception, attitudes, and the like. See Abigail L. Perdue & Gregory S. Parks, *The Nth Decree: Examining the Intra-racial Use of the N-word in Employment Discrimination Cases*, 64 DEPAUL L. REV. 65, 92–93 (2014).

263. *Id.*

264. Implicit attitudes have been defined as “introspectively unidentified (or inaccurately identified) traces of past experience that mediate favorable or unfavorable feeling, thought, or action toward social objects.” Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1464 n.1 (1998).

265. An implicit stereotype is an “introspectively unidentified (or inaccurately identified) traces of past experience that mediate attributions of qualities to members of a social category.” Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 PSYCHOL. REV. 4, 8 (1995).

266. Perdue & Parks, *supra* note 262, at 92–93.

267. *Id.*

268. *Id.* at 98–99; Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GROUP DYNAMICS: THEORY, RES., & PRAC. 101, 105 (2002); Luigi Castelli et al., *Implicit Ingroup Metafavoritism: Subtle Preference for Ingroup Members Displaying Ingroup Bias*, 34 PERSONALITY & SOC. PSYCHOL. BULL. 807 (2008). *But see generally* Samuel R. Bagenstos, *Implicit Bias, “Science”, and Antidiscrimination Law*, 1 HARV. L. & POL’Y REV. 477 (2007); Gregory Mitchell & Philip E. Tetlock, *Antidiscrimination Law and the Perils of Mindreading*, 67 OHIO ST. L.J. 1023 (2007) (criticizing the science underlying implicit bias theory and its use in legal and policy decision-making).

269. *See generally* Brian A. Nosek, *Moderators of the Relationship Between Implicit and Explicit Attitudes*, 134 J. EXPERIMENTAL PSYCHOL. GEN. 565 (2005); *see also* Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 958 (2006).

male cadets of color to dissociate from female cadets. Thus, even if male cadets of color feel heightened empathy for female cadets, they may intentionally or unconsciously disassociate from any attachment or linkage to stigmatized female cadets. Even in the absence of an implicit attitudinal preference, a male cadet of color's explicit attitudes toward a female cadet may be distinct from his implicit attitudes toward the opposite sex, and survey responses may not encompass or adequately capture these implicit attitudes. In the alternative, outward expression of such empathy, even in a survey, is likely frowned upon by racial and sex in-groups. Accordingly, overt expressions of out-group solidarity with female cadets could diminish individual in-group status and perhaps damage the collective status achieved and enjoyed by male cadets of color as a group. Such in-group allegiance may outweigh feelings of solidarity with female cadets.

In the alternative, male cadets of color may experience an implicit attitudinal preference for the attitudes of the dominant in-group around which VMI's culture revolves – white male cadets. As a natural byproduct of that preference, male cadets of color may, consciously or not, adopt the attitudes and behaviors of white male cadets, including disapproval of coeducation and perhaps even animosity toward female cadets. Some research bolsters this theory. For example, Baron and colleagues found that many young African Americans do not exhibit an in-group preference.²⁷⁰ Similarly, Spicer found that among African American adults there is considerable variability in African Americans' implicit racial preferences, though overall, African Americans show a significant preference for whites over African Americans.²⁷¹ Spicer and Monteith demonstrate that between 50% and 65% of African Americans exhibit implicit out-group bias in favor of whites.²⁷² Assuming men of color at VMI have similar implicit biases for the dominant racial group, then their resultant adoption of their attitudes toward coeducation may explain, at least in part, the attitudes of men of color toward coeducation.

Use of demeaning sex-based slurs, such as “shedet,” as well as widespread, well-known opposition to coeducation could further undermine solidarity between females and men of color at VMI. By way of illustration, social psychologists Jeff Greenberg and Tom Pyszczynski asked African American and white college students to judge a debate but planted audience members who, immediately after the debate, either referred to the African American students as the N-word, criticized them in a non-racial manner, or said nothing. Observers who overheard the slur were likelier to lower their evaluation of the African

270. Andrew Scott Baron & Mahzarin R. Banaji, *The Development of Implicit Attitudes: Evidence of Race Evaluations from Age 6 and 10 and Adulthood*, 17 *PSYCHOL. SCI.* 53, 57 (2006).

271. C. Vincent Spicer, *Effects of Self-Stereotyping and Stereotype Threat on African Americans' Intellectual Performance* (1999) (unpublished Ph.D. dissertation, University of Kentucky) (on file with William T. Young Library, University of Kentucky).

272. John T. Jost et al., *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 *POL. PSYCHOL.* 881, 895 (2004); see also Leslie Asburn-Nardo et al., *Black American's Implicit Racial Associations and Their Implications for Intergroup Judgment*, 21 *SOC. COGNITION* 61, 73 (2003) (concluding that 60% of African Americans show a pro-white implicit bias, although they express highly favorable in-group attitudes on explicit measures); see Nosek et al., *supra* note 268, at 105–07 (noting that African Americans expressed in-group favoritism on explicit measures (65.4%) more so than on implicit measures (40.1%)); Jost et al., *supra* note 272, at 897 (observing that African Americans show strong in-group favoritism explicitly but not implicitly).

American debaters. This suggests that racial slurs “can indeed cue prejudiced behavior in those who are exposed.”²⁷³ It is no great stretch then to assume that at VMI, opposition to coeducation coupled with common usage of denigrating, sex-based slurs like “shedet” and “skirt” as well as sexist phrases like “don’t be a pussy” may similarly “cue” prejudiced behavior and negative attitudes toward women.

E. Unintended Consequence of Coping Strategies

In the alternative, perhaps the attitudes of male cadets of color toward coeducation are an unintended consequence of coping strategies. If members of marginalized groups, such as female cadets or cadets of color, experience heightened psychological stress and difference anxiety, they utilize coping strategies to maintain mental and emotional well-being.²⁷⁴ Ironically, deployment of these strategies can actually undermine inward feelings and especially outward expressions of empathy for and solidarity with members of other marginalized groups.

1. Emphatic Sameness

One such strategy—*emphatic sameness*—involves downplaying one’s stigmatized identity to “fit in” to the majority group.²⁷⁵ Empirical and “anecdotal” indicating that most cadets identify as cadet first and sex second may support the utilization of this coping strategy at VMI. For example, by some accounts, in 1997, several female rats voluntarily shaved their heads to blend in with their male counterparts.²⁷⁶ Females rejected the term “Sister Rat,” preferring to be called “Brother Rat”. According to Major Sherrise Powers, “many of the [VMI] women feel that they have to be just like the men.”²⁷⁷

This strong desire to be “one of the guys” appears to undermine in-group bonding.²⁷⁸ Indeed, VMI women reportedly showed no special allegiance to other women and tended not to sex segregate.²⁷⁹ Indeed, VMI recruited female exchange students to serve as female role models to female rats, but some female rats refused to call the female exchange students “ma’am,” and snubbed them.²⁸⁰

Emphatic sameness and the more extreme related phenomenon of gender passing are not uncommon among women who infiltrate male-dominated environments.²⁸¹ Historically, women warriors masculinized their dress,

273. RANDALL KENNEDY, *NIGGER: THE STRANGE CAREER OF A TROUBLESOME WORD* 48 (2002).

274. See Kimmel, *supra* note 45, at 505 (describing gender coping strategies as “ways of doing gender”).

275. *Id.*; Mia Smith Bynum, E. Thomaseo Burton & Candace Best, *Racism and Psychological Functioning in African American College Freshmen*, 13 *CULTURAL DIVERSITY AND ETHNIC MINORITY PSYCHOLOGY* 64, 65 (2007).

276. See BRODIE, *supra* note 48, at 220–22.

277. *Id.* at 286–87.

278. *Id.* at 286. Another female cadet remarked, “‘We’re all treated the same. We’re all brother rats.’” Case, *supra* note 150, at 375.

279. BRODIE, *supra* note 48, at 286.

280. *Id.* at 303.

281. Emphatic sameness refers to adopting behaviors traditionally associated with the dominant group to blend in with that group. By contrast, passing involves representing oneself as a member of

appearance, and behavior in order to gain social acceptance in the heavily masculinized areas of the military and war.²⁸² Passers and copers are often viewed as less threatening to rigid gender boundaries, while those who refuse to assimilate more frequently evoke hostility and resistance.²⁸³ Still today, women attempting to succeed in traditionally male-dominated fields like law enforcement and investment banking may intentionally adopt traditionally masculine traits, dress, and behaviors, such as increased use of profanity or binding breasts, to minimize perceived difference and to enhance their professional development.²⁸⁴

Racial minorities may also employ emphatic sameness to blend into a predominantly white environment like VMI.²⁸⁵ In *Racial Passing*, Professor Randall Kennedy recounts the stories of light-skinned African Americans who passed as white to escape slavery, obtain better employment, educational opportunities, and medical care, and gain access to segregated restaurants and other public facilities.²⁸⁶ Some dissociated with other African Americans, attended predominantly white schools and universities instead of historically black colleges and universities, moved into whitewashed neighborhoods, and married individuals outside their racial group.²⁸⁷

another group. See generally Ong, *supra* note 4, at 603 (defining passing as a “fragmentation strategy”, which involves “the act of establishing a false social identity through corporeal self-representation, performance, and management of social interactions”); *id.* at 598 (“Women of color in physics similarly assume risks for crossing familiar, comfortable gender boundaries, though perhaps in a less dramatic fashion.”).

282. According to Karen Abbott, as many as 400 women posed as men and fought in the Civil War. KAREN ABBOTT, *LIAR, TEMPTRESS, SOLDIER, SPY* 16 (2014).

283. See generally VIRGINIA VALIAN, *WHY SO SLOW?: THE ADVANCEMENT OF WOMEN* 15 (2000) (“A woman who is very feminine runs the risk of seeming less competent; the more she typifies the schema for a woman, the less she matches the schema for a successful professional. On the other hand, a woman with masculine traits runs the risk of appearing unnatural and deviant.”). “Gendered expressions of power,” including sexual harassment or sex-based slurs, may be used to sanction refusals to assimilate. See Ong, *supra* note 4, at 611 (observing that only a few weeks after a woman of color began wearing pink to the science lab, her male co-worker of two years posted a pin-up of a “scantly clad white woman” in the lab’s communal office).

284. See generally Ong, *supra* note 4, at 603–04 (quoting an African American student who noted that “[a]ll the women I found in the sciences . . . are not . . . very feminine . . . the ones . . . being seen . . . have very masculine tendencies . . . it’s almost like we have become more quote-unquote masculine in order to make it.”).

285. In the fall of 2014, 316 of VMI’s 1700 cadets were racial or ethnic minorities. *Common Data Set 2014*, *supra* note 115. Although VMI has made concerted efforts to recruit persons of color and dramatically improved its diversity, its student body and faculty remain mostly white. See, e.g., Ong, *supra* note 4, at 595 (observing that women of color in academic scientific environments deploy gender passing and racial passing to “organize themselves to be seen as community members or non-members” or “to organize the appearance of competence”); James, *supra* note 173, at 6 (citation omitted) (“racial identity performance must correspond to symbolic representations that are culturally understood as evocative of a particular racial identity,” so “a black male wishing to express ‘authentic’ black identity might subscribe to progressive or liberal political ideology, live and socialize in a black community, or marry a black person”).

286. See generally RANDALL KENNEDY, *Racial Passing*, 62 OHIO STATE L. J. 1145 (2001).

287. Rachel Dolezal, who was born Caucasian, recently turned the phenomenon of “passing” on its head by choosing to live as an African American woman and dramatically altering her appearance to do so. See generally Greg Botelho, *Ex-NAACP leader Rachel Dolezal: ‘I identify as black’*, CNN: US (June 17, 2015), <http://www.cnn.com/2015/06/16/us/washington-rachel-dolezal-naACP/> (last

Thus, a male cadet of color who feels “otherized” due to race or ethnicity may actively dissociate himself from other marginalized groups, including women or even other men of color, in an attempt to be regarded as “one of the guys.” He may feel that in order to fit into the mainstream VMI culture, he must disassociate with female cadets most of whom are still perceived as unwanted outsiders and “shedets” undeserving of a place at VMI. He may set aside his inward feelings because outward expressions of empathy toward the marginalized “shedets” would be heavily proscribed and socially risky since empathy toward female cadets or support of coeducation still appear to be countercultural, unpopular views at VMI. Thus, to blend in, male cadets of color may adopt and express the attitudes and behaviors typical of the majority group – here, white males. Although they may pass to gain the benefits of social acceptance with male peers and/or to cope with difference anxiety,²⁸⁸ passers often experience tremendous social distress that may outweigh the benefits of any acceptance gained.²⁸⁹

2. Strategic Overcompensation

A related coping strategy—strategic overcompensation—may also explain the findings, at least in part.²⁹⁰ Strategic overcompensation occurs when members of the dominant group are presumed to be competent till proven otherwise, while minorities feel that they must constantly demonstrate their competence to earn others’ respect.²⁹¹ Such feelings are particularly pervasive in destabilized environments like VMI, where stigmatized individuals like female cadets are perceived as violating well-established boundaries and norms. As one female VMI cadet explained, “[w]e are going to have to prove ourselves . . . We are going to have to prove the point that we can be here.”²⁹²

At VMI, female cadets utilizing strategic overcompensation sometimes take extreme measures to distinguish themselves from non-VMI women and to deemphasize traditionally feminine dress, appearance, and behaviors.²⁹³ According to Bem, the lenses of androcentrism and gender polarization can even cause the expression of a physiological need or function, such as sweating, belching, growing body hair, or farting, to be associated with masculinity and maleness.²⁹⁴ Perhaps not surprisingly, VMI women are rumored to curse and

visited Aug. 3, 2015). *But see* Osamudia James, *What Rachel Dolezal Doesn’t Understand: Being Black is About More Than Just How You Look*, WASH. POST: POSTEVERYTHING (June 12, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/06/12/what-rachel-dolezal-doesnt-understand-being-black-is-about-more-than-just-how-you-look/>.

288. *See, e.g.*, Kimberlyn Leary, *Passing, Posing, and “Keeping it Real,”* 6 CONSTELLATIONS 85, 85 (1999); James, *supra* note 173, 25 (citation omitted) (“members of out-groups sometimes make their racial identities salient to the in-group in order to secure social or economic benefits”).

289. BRODIE, *supra* note 48, at 256.

290. Kimmel, *supra* note 45, at 505.

291. BEM, *supra* note 174, at 158

292. BRODIE, *supra* note 48, at 305.

293. *Compare* Ong, *supra* note 4, at 605 (A woman of color observed that she wore pants to lab instead of a skirt in an attempt “to make herself more ‘masculine’, or at least more ‘androgynous’ and thus purchased (literally) her credibility as a scientist.”); James, *supra* note 173, at 6–7.

294. *See* BEM, *supra* note 174, at 162.

drink more to fit in with the guys.²⁹⁵ As VMI Major Sherrise Powers observed, VMI “women feel that they have to do the very same things [as the men], to the point that they will acquire language that they would not normally use; they will start spitting on the stoop.”²⁹⁶ Female cadets may adopt these masculine-gendered attitudes and behaviors to overcompensate for the traditionally feminine traits that they believe undermine their ability to assimilate and gain full acceptance from male peers.

Strategic overcompensation may also explain, at least in part, why many male cadets of color still oppose coeducation. Male cadets of color experiencing difference anxiety may strategically overcompensate by intentionally adopting attitudes toward women, dress, behaviors, and even manners of speaking that are stereotypically associated with whites. They may deliberately develop close associations with white males rather than women or other cadets of color in part because they assume that such relationships will confer more social benefits and decrease their feelings of difference anxiety. They may even make concerted efforts to more actively distance themselves from all things associated with their minority group in an attempt to downplay their racial identity.²⁹⁷ Yet doing so may come at a high price.²⁹⁸

In conclusion, these coping strategies may allow otherized cadets, whether women or persons of color, to evade their stigmatized status within VMI’s polarized environment while still being denied full and equal access to the benefits inherent in white, male privilege.²⁹⁹ To fit into VMI’s hypermasculine culture, female cadets must often deemphasize their feminine gender identity, adopting traditionally masculine language, behavior, and dress to assimilate.³⁰⁰ They must identify as cadet first and woman second, if at all. Similarly, most male cadets of color seem to identify as cadet first, male second, and then other more unique aspects of personal identity, such as religious affiliation. As such, they may adopt and express attitudes toward coeducation and perceptions of its impact that are not significantly different from the beliefs of their white counterparts.

VI. POTENTIAL IMPLICATIONS

In sum, sex, rather than race, appears to be a better predictor of cadet attitudes toward assimilation at VMI. For many male cadets of color, maleness and masculinity predominate. Thus, while solidarity is undoubtedly a hallmark of the VMI Experience, that solidarity primarily exists among the “brotherhood,”

295. BRODIE, *supra* note 48, at 288.

296. *Id.* at 286–87.

297. Jonathan Capehart, *Obama Goes There on Acting “White,”* WASH. POST (July 22, 2001), <http://www.washingtonpost.com/blogs/post-partisan/wp/2014/07/22/obama-goes-there-on-acting-white/>.

298. James, *supra* note 173, at 28 (discussing a link “between racial identity and positive psychosocial adaptation”).

299. See generally ERVING GOFFMAN, *RELATIONS IN PUBLIC: MICROSTUDIES OF THE PUBLIC ORDER* (1971) (observing that when humans interact with each other, bits of our identity are encoded in that behavior and exchanged).

300. See generally Perdue, *supra* note 199, at 414–15.

rather than between men of color and women, despite those groups' common lived experience in a formerly all-male, all-white institution. To the extent these attitudes reflect feelings of empathy toward female cadets, this is significant since male cadets of color who express less empathy toward female cadets may be likelier to express this bias through discrimination and exhibit less acceptance of women in authority.³⁰¹

The findings could also have implications for the future of antidiscrimination law and scholarship. First, the findings could add another dimension to Intersectionality Theory, perhaps shedding light on how race and sex interact when we observe discrimination and stereotyping of other marginalized groups. The findings may suggest that, at least in hypermasculine environments like VMI and among the individuals who choose to engage in them, sex may play a more pivotal role than race in shaping attitudes toward assimilation and more generally, gender roles.³⁰² Such conclusions must be carefully drawn, however, given that the individual who chooses to attend VMI is likely not representative of the prototypical man or woman in society at large. VMI's hypermasculine environment is also atypical. However, despite VMI's unique environment and student body, it is plausible, perhaps even probable, that the same or similar attitudes persist in other male-dominated spheres. Thus, the insights gained from this survey may have implications for those environments as well.

Going further, these findings may suggest the need for such hyper-masculine, male-dominated spheres, particularly within the context of higher education, to provide a safe, nonjudgmental forum where men and women of all backgrounds can fully and compassionately engage with one another. Meaningful opportunities for compassionate engagement could engender empathy by enabling each person to exercise his or her moral imagination to more fully understand the lived experience of an out-group member.³⁰³ Such spheres should further consider adopting empathy and egalitarianism as core values integral to the institutional experience and developing effective ways to cultivate those values.³⁰⁴ They should make concerted efforts to strengthen existing organizations that provide support networks for otherized groups and encourage these organizations to meaningfully engage. They should also encourage diversity and inclusion training,³⁰⁵ provide conflict resolution

301. See generally Cundiff & Komaraju, *supra* note 36, at 12 (internal citations omitted) (“[I]ndividuals who have empathy toward people from different ethnic or cultural backgrounds are also likely to have less explicit bias against women in authority.”).

302. To be clear, the Article makes no generalizations regarding men of color in the population as a whole or attitudes toward coeducation *outside* VMI. Conclusions drawn from the data must be limited given that a person who chooses to become a VMI cadet is likely not representative of the population as a whole, and VMI's environment is quite unique.

303. Cundiff & Komaraju, *supra* note 36, at 13 (“[T]raining programs aimed at increasing awareness of biases and reduction of guilt and fear could enable employees to be more accepting”); see generally NORAH VINCENT, *THE SELF-MADE MAN: ONE WOMAN'S JOURNEY INTO MANHOOD AND BACK AGAIN* (2006) (recounting one woman's experience living as a man for several months).

304. Cundiff & Komaraju, *supra* note 36, at 13.

305. *Id.* (“[D]iversity training emphasizing understanding and acceptance of disadvantaged groups should be administered . . . training individuals . . . to be more empathetic is likely to assist in

workshops,³⁰⁶ regularly conduct climate surveys, and facilitate deliberative dialogue sessions regarding implicit bias, empathy, diversity, discrimination, sexual harassment, stereotype threat, and cultural competency.³⁰⁷ They should further consider hosting privilege workshops and inviting guest speakers who will challenge stereotypes regarding sex, gender, race, disability, sexual orientation, etc. Specifically, predominantly white, male-dominated institutions of higher education should perhaps consider adding courses such as *Race and Ethnic Relations*, *Diversity and Discrimination*, and/or *Sex and Gender Relations* into the required first-year curriculum and encourage faculty to highlight the societal contributions of women, persons of color, and other marginalized groups in their courses and scholarship.³⁰⁸

Finally, the findings call into question the practicality of Martha Fineman's Vulnerability Theory, an emerging, contemporary approach to antidiscrimination. In 2008, Fineman proposed this "post-identity" alternative to the traditional discrimination framework. Vulnerability Theory encourages a shift away from focusing on discrimination against protected identity categories and a move toward a broader focus on the "universal and constant [vulnerability], inherent in the human condition."³⁰⁹ While the rationale for this approach is certainly laudable, it may be impractical. Despite a shared experience of disenfranchisement, discrimination, and segregation, many men of color seem unable or, more skeptically, unwilling to exercise their moral imagination to feel heightened empathy for VMI women. For many of them, their shared vulnerability appears lost in translation. In light of this, will an even broader framework rooted in global, often unobservable, human vulnerability work? Will Americans be able to exercise that kind of moral imagination and feel empathy for individuals from different walks of life, especially those outside the realm of observable experience? And if not, would Vulnerability Theory ever work in practice? These findings suggest perhaps not or more optimistically, not yet.³¹⁰

the acceptance of disadvantaged groups, such as women . . .").

306. *Id.* (internal citation omitted) ("[C]onflict resolution workshops have been used to increase empathy by training employees on addressing solutions to problems rather than focusing on competition, while having participants express needs and fears.").

307. *Id.* at 12 (internal citations omitted) (observing that individuals who speak negatively about a female supervisor could also potentially react adversely to culturally or ethnically different coworkers, "demonstrat[ing] a need for diversity training . . . and training to improve empathetic skills, which could assist in increasing prosocial behaviors and liking toward out-group members").

308. See, e.g., Kenya Downs, *The 'Black, Queer, Feminist' Legal Trailblazer You've Never Heard Of*, NPR (Feb. 19, 2015), <http://www.npr.org/sections/codeswitch/2015/02/19/387200033/the-black-queer-feminist-legal-trailblazer-youve-never-heard-of>; ABBOTT, *supra* note 282.

309. Martha A. Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1 (2008). Vulnerability Theory has been both praised and criticized, but a discussion of various reasons in support of or in opposition to the theory exceeds the scope of this Article. See generally Nina A. Kohn, *Vulnerability Theory and the Role of Government*, 26 YALE J.L. & FEMINISM 1 (2014); see also Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, 83 WASH. L. REV. 513 (2008). But see generally James, *supra* note 173, at 3–4 (discussing "potential costs for subordinated identities in the shift to universal or post-identity legal frames" because "Blacks have invested in their racial identity to cultivate social resilience in the face of discrimination and bias, to animate emancipatory political movements, and to demand dignified engagement with the state").

310. Indeed, our societal skepticism of this phenomenon is perhaps reflected in precedent ensuring a fair trial by a jury composed of peers. See generally *Batson v. Kentucky*, 476 U.S. 79 (1986)

CONCLUSION

Attitudes toward race and sex are deeply engrained and slow to change. Thus, outward expressions of acceptance may sometimes cloak unconscious, implicit resistance to female cadets' perceived boundary-crossing. Such resistance is especially likely whenever a privileged group is threatened. Nowhere is this more evident than at VMI where the problems inherent in male privilege persist even decades after assimilation.³¹¹

Not surprisingly, many male cadets of color oppose coeducation, perhaps out of a desire to preserve their cherished male domain and to maintain a firm grip on the masculine identity that they believe is under assault due to assimilation. Like many of their white male counterparts, they defend their hyper-masculine domain and the resultant privileges of inclusion in VMI's cult of masculinity. Some men of color appear to prioritize their masculine identities and view women as unwelcome intruders violating established sex and gender boundaries. Preserving the cherished male domain maintains male privilege and a firm grip on the masculine identity that some men may perceive as being under attack.

As a result of the pervasive, polarizing attitudes that persist at VMI, otherized cadets may experience a pressure to "fit in" that is both invisible but powerful.³¹² Every day these invisible men and women walk the hallowed halls of VMI, shamefully cloaking many of the beautiful and unique aspects of their identities that make them who they are. What is worse, this painful and damaging invisibility "occurs [entirely] because of the peculiar disposition of the eyes of those [cadets] with whom" they come into contact.³¹³ Although these otherized students become virtually invisible to assimilate and evade stigma, perhaps they unintentionally and unknowingly forfeit a vital part of their personal identities.³¹⁴

Ironically, the same pressure to gain white, male approval that drives otherized cadets to dissociate from one another may simultaneously undermine their ability to obtain the equality, support, and strength they seek. Although each identity category has a singular lived experience, the lack of full and complete common ground or identical lived experience does not mean that they cannot share at least *some* common goals and work effectively together to achieve them. Because there is strength in solidarity, alliances of several sub-groups

(prohibiting peremptory challenges based on race to ensure a fair trial by a jury of peers); *Taylor v. Louisiana*, 419 U.S. 522 (1975) (holding that women cannot be excluded from a jury pool on the basis of having to register for jury duty in part to ensure that female defendants are not generally tried by an all-male or male-dominated jury).

311. See BRODIE, *supra* note 48, at 341.

312. See generally JOANE NAGEL, RACE, ETHNICITY, AND SEXUALITY: INTIMATE INTERSECTIONS, FORBIDDEN FRONTIERS (2003) (in discussing performance, which focuses on the actual behaviors of people, and performativity, which refers to the underlying normative frameworks that operationalize these behaviors, Nagel focuses on the invisible gender identities and related beliefs that guide human behavior).

313. ELLISON, *supra* note 1, at 3-4.

314. See, e.g., Ong, *supra* note 4, at 612 ("Achieving acceptance [into the male-dominated physics community] often comes at too high a cost, demanding identity fragmentation."); James, *supra* note 173, at 3-4 n.4 (contending that racial identity is a source of resilience).

could transform into a single, strong conglomerate. Through collaboration, these groups would not only have greater leverage to demand equal opportunity but also a broader support network to help alleviate difference anxiety and psychological stress without resorting to potentially harmful coping strategies. After all, solidarity is strength, and in its absence, the voices of these isolated, marginalized groups will grow fainter. Those who are invisible will become voiceless as well. Unseen. Unheard. But not unequal.