

Panel Proposal:
Gender, Soldiering, and Citizenship in the Twentieth Century United States
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Chair: Jill Hasday, University of Minnesota Law School

Presenters: Rebecca Rix, Department of History, Princeton University
Melissa Murray, University of California, Berkeley School of Law
Serena Mayeri, University of Pennsylvania Law School

Commentator: Gretchen Ritter, Department of Government, University of Texas at Austin

Panel Description

This proposed panel examines how the government's treatment of veterans shaped the gendered division of labor, constitutional law, and state-building in twentieth-century America. The first paper examines the problem posed in the 1910s by the need for modern military preparation as the Great War loomed. The paper probes how the experience of World War I was a crucible for redefining men's citizenship, as well as legitimating the use of Congress's taxing power for social welfare provision. The second paper moves us forward in time to the post-World War II period, considering the G.I. Bill and veterans' preferences in employment in the context of other gendered social provisions like AFDC and Social Security. The third paper picks up on the theme of gender and veterans' preferences in the post-Vietnam era, considering constitutional challenges to those schemes as part of a larger civil rights/feminist litigation strategy focused on "disparate impact" or effects-based analysis. While the papers range chronologically, they share an underlying conceptual interest in the soldier-citizen and his relationship to the state and to the federal constitution at key moments of historical change.

Paper Abstracts

*“No Longer the Men of Lexington”:
Unfit Draftees and the Changing Meaning of “the General Welfare” During World War I*

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This paper explores how the disastrous state of the young male citizen-soldiery revealed by the draft in World War I helped change the political and legal meanings of the “general welfare.” Traditionally the purview of interstate commerce and the common defense, Congress’s power to tax and spend for the general welfare underwent a transformation during the 1910s. This transformation legitimated the Children’s Bureau and other organizations’ use of taxpayer money for social welfare purposes, as social welfare programs became part of the war effort. With one-third of the young men drafted ultimately being rejected as illiterate or physically unfit to serve, military modernizers like Assistant Secretary of Defense Henry Breckinridge, social welfare reformers like anti-suffragist Elizabeth Lowell Putnam and the United States Children’s Bureau’s Chief, Julia Lathrop, and suffragist Carrie Chapman Catt found common cause in driving forward important programs to transform motley young Americans into good republican sons. Drawing on the personal papers and archives of reformers, newspaper accounts, caselaw, and the congressional record, I explore this change in relation to other social reform movements, including woman suffrage, the Children’s Bureau’s programs, to state-building literature on the military and the income tax, and constitutional history.

“Made with Men in Mind”: Veterans’ Benefits, Gender, and Social Policy

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Personnel Administrator of Massachusetts v. Feeney often is used to illustrate the difficulty of challenging the constitutionality of gender-neutral statutes that nonetheless have discriminatory effects. However, the case also reveals the way in which veterans’ benefits and preferences, though nominally gender-neutral, have produced staggering gender inequalities in the workforce and in everyday life. Although scholars have explored the gender implications of other public policies, such as Social Security benefits and public assistance, veterans’ benefits and preferences largely have been shielded from such inquiry, in part because they are seen as an entitlement for extraordinary service and sacrifice. This essay remedies this void by critically examining the G.I. Bill and the veterans’ preference scheme challenged in *Feeney*. The essay

argues that while these military entitlements were gender-neutral in their terms, they were structured and implemented with particular gender roles firmly in mind. The policies were aimed at helping veterans transition from their wartime role as soldiers to their civilian roles as workers. Because the military and the workforce were understood to be male institutions, these policies also were socially understood to benefit men. As such, veterans' benefits and preferences not only disadvantaged women, as Helen Feeney argued, they reflected and reinforced traditional gender norms that positioned men as protectors and providers and women as their home-bound dependents.

*Preferred Veterans, Prison Guards, and Pregnant Workers:
Attacking "Disparate Impact" in the 1970s*

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In the late 1960s and early 1970s, legal feminists focused their energies on securing for women freedom from disparate treatment based on sex. By the mid-1970s, it became clear to advocates for women that a strategy based on formal equality had both strategic and substantive limitations. Accordingly, they turned from a sex-blindness model to a conception of discrimination that included apparently neutral laws with a disproportionately negative impact on women. A crucial arena in which this transformation occurred was the constitutional challenge to veterans' preferences in civil service employment. Drawing on archival sources ranging from the records of feminist organizations to the papers of Supreme Court Justices, this paper places the battle over veterans' preferences in the context of a larger civil rights and feminist legal strategy, exploring the increasingly complicated relationship between race and sex discrimination theory, litigation, and jurisprudence, and the boundaries of women's citizenship in the post-Vietnam era. The paper connects veterans' preferences to other venues in which feminists pursued a disparate impact theory of discrimination, including workplace pregnancy discrimination and efforts to secure employment for women in prisons and other traditionally male preserves. Feminists' and civil rights advocates' success in promoting disparate impact analysis in an increasingly conservative political climate was significant but ultimately limited. Ironically, if not entirely surprisingly, feminists' gains in the struggle for formal equality came at the expense of the more expansive conceptions of justice they envisioned.