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## fractured manliness

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John Kang\*

In its most conventional sense, manliness is dangerous. For manliness is about action, and action of a particular stripe: that which entails serious courage and thus that which courts serious physical risk. What, after all, does it mean when we tell a man to “man up”? It means that he cannot become a man in a culturally acceptable sense until he does something gutsy.

This is why we can use the maxim *man up* as a pithy rebuke for those men whom we wish to summon to action, or contemptuously disdain as cowards.<sup>1</sup> So entangled is manliness with courage that we associate the male anatomy itself with courage by dubbing the brave man *ballsy*. To insist on this connection between manliness and courage is not to disparage women in any way. My point is not that men are *in fact* braver than women. It is that men, for good or ill, are *expected* to be braver. Consider that women, if they fail to demonstrate courage, are not treated by society with identical antipathy as are men who so fail. For a man who has failed to demonstrate his balls does not become a woman, with all the gender-specific virtues and charms that society ascribes to females. He becomes rather his own genderless being, an abject coward.

Yet if manliness is a sort of proxy for bravery, manliness also presents a threat to society. For manliness then measures its success not by the good that it does for others, or itself, for that matter, but by how much danger it knowingly endures. An apt example is afforded by the tumultuous novelist Norman Mailer. Married six times, accused of beating his wives, embroiled

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<sup>1</sup> John M. Kang, *Does Manly Courage Exist?*, 13 NEV. L.J. 467, 467–68 (2013).

in bar fights, obnoxious to no end, given to racist and sexist jeers in public, and never willing to concede an inch to his legion of critics, Mailer was ballsy alright, yet in a manner that would seem both needlessly hurtful to others and obstinately self-destructive.<sup>2</sup>

Manliness, then, is a demonstration of courage, and courage is not logically beholden to any moral end. As I said at the essay's beginning, however, manliness is dangerous. How does the government regulate it? In this very brief essay I cannot explore the question in depth. I can, though, highlight two contrasting ways in which the government manages manliness, or tries to. In civil society, the government views manliness, if uncontrolled, as a threat to the public. In war, however, the government cultivates a form of manliness that relishes the opportunity to unleash violence and death on others.

Let us start with civil society. Every law school student, I suspect, will remember a glimmering of the "fighting words doctrine" from her constitutional law class. The student may not remember as well that the case was enveloped in a vocabulary of gender. Introduced in a 1942 case called *Chaplinsky v. New Hampshire*,<sup>3</sup> the Supreme Court had defined fighting words as those which "men of common intelligence would understand would be words likely to cause an average addressee to fight"<sup>4</sup> and "[s]uch words, as ordinary men know, are likely to cause a fight."<sup>5</sup> The reader cannot avoid noticing the thickly gendered references; the fighting words doctrine was targeted at men and drew from their gendered worldview. The Court stated that "*men* of common intelligence" and "ordinary *men*" were the touchstone, and, although women can also theoretically retaliate with violence against men (or women), the Court never even acknowledged their

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<sup>2</sup> See Charles McGrath, *Norman Mailer, Towering Writer with Matching Ego, Dies at 84*, N.Y. TIMES, Nov. 10, 2007, [http://www.nytimes.com/2007/11/10/books/11mailer.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2007/11/10/books/11mailer.html?pagewanted=all&_r=0).

<sup>3</sup> 315 U.S. 568 (1942).

<sup>4</sup> *Id.* at 573.

<sup>5</sup> *Id.*

existence.<sup>6</sup> For the Court, it was men who threatened public peace with their anger and, thus, men who should keep their violence in check unless there was some genuinely unavoidable reason.

The federal government, indeed, wants to encourage men to develop their feminine side. In 1993, Congress passed the Family and Medical Leave Act.<sup>7</sup> The Act entitled employees to take up to 12 work weeks of unpaid leave each year to attend to a spouse, child, or parent who was suffering from a “serious health condition.”<sup>8</sup> The Act empowered an employee who had been denied such leave to sue the employer for damages.<sup>9</sup> On its face, the Act did not appear to be concerned with issues of gender. However, according to the Supreme Court, the intent of Congress in passing the Act was to prohibit employers from discriminating against men.<sup>10</sup> Traditionally, employers had permitted their female employees to take such leave, but male employees had not been afforded similar liberties. Employers felt that the responsibility for taking care of sick family members fell to women, not men. This view, the Supreme Court declared in *Nevada Department of Human Resources v. Hibbs*, was an intolerable stereotype that wrongly presumed that men, by virtue of their gender, were incapable of being caregivers.<sup>11</sup> In effect, the Court argued that men too could properly assume those roles that are regarded as feminine.<sup>12</sup>

But *Hibbs*, like *Chaplinsky*, took place in civil society. It took place in a setting that encouraged the quiet resolution of conflicts and a familial environment built on nurture and care. Manliness is expected to perform a very different function in the field of military combat, however.

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<sup>6</sup> *Chaplinsky* involved two men. *See id.* at 569 (emphasis added).

<sup>7</sup> Family Medical Leave Act, 29 U.S.C. § 2612 (1993), *declared unconstitutional* by *Coleman v. Court of Appeals of Maryland*, 132 S. Ct. 1327 (2012).

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

<sup>9</sup> *Id.* at § 2615(a)(1).

<sup>10</sup> *Nevada Dep’t of Human Res. V. Hibbs*, 538 U.S. 721, 737 (2003).

<sup>11</sup> *See id.* at 737.

<sup>12</sup> *Id.*

The military cultivates a manliness that is violent, obsessed with honor and its correlates, and frequently brutal—a manliness that is *hypermasculine*. What the military yearns for, then, is a manliness that the Supreme Court, in its iteration of the fighting words doctrine, had expressed fear over. Philip Caputo, in his memoir as a combat soldier in Vietnam, said the following: “Some attempts were made to instill in us those antisocial attributes without which a soldier fighting in the jungle cannot long survive.”<sup>13</sup> Caputo added: “[a soldier] has to be stealthy, aggressive, and ruthless, a combination burglar, bank robber, and Mafia assassin.”<sup>14</sup> Consider each of the personas that Caputo put on offer: burglar, bank robber, and Mafia assassin—each would be a deadly felon in society. In combat, however, they were paragons.

One of Caputo’s Marine instructors offered this lesson:

He came into the classroom, let out a spine-chilling war cry, and buried a hatchet in one of the wooden walls. Without saying a word, he wrote something on a small blackboard, concealing it with his V-shaped back. He stepped aside, pointing to the writing with one hand and to a marine with the other. “You, what does that say?” he asked.

Marine: “It says ‘ambushes are murder,’ sergeant.”

Sergeant: “Right.” Shouts, “AMBUSHES ARE MURDER,” then returns to the blackboard, writes something else, and again asks, “What does that say?”

Marine: “And murder is fun.”

Sergeant: “Right again.” . . . “Now, everybody say it, AMBUSHES ARE MURDER AND MURDER IS FUN.”

Class, hesitantly, with some nervous laughter: “Ambushes are murder and murder is fun.”

Sergeant: “I can’t hear you, marines.”

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<sup>13</sup> PHILIP CAPUTO, *A RUMOR OF WAR* 36 (1977).

<sup>14</sup> *Id.*

Class, this time in unison: “AMBUSHES ARE MURDER AND MURDER IS FUN.”<sup>15</sup>

Elsewhere, Caputo elaborated that “[t]hroughout, we were subjected to intense indoctrination, which seemed to borrow from Communist brainwashing techniques. This included the chant ‘Pray for war!’”<sup>16</sup> Caputo remarked that “[l]ike the slogans of revolutionaries, these look ludicrous in print, but when recited in unison by a hundred voices, they have a weird hypnotic effect on a man.”<sup>17</sup>

This vignette plainly requires the help of many others to make its claim that the military works vigorously to inculcate a hypermasculinity among its soldiers. However, it should suffice for the reader that the contrast on offer speaks to how society expects men to behave in ways that can be described as a state of fractured manliness.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 12.

<sup>17</sup> *Id.*