

The Patriarch and the Sovereign: The Malheur Occupations and the Hyper-Masculine Drive for Control

COURTNEY IRONS*

On January 2, 2016, a group of armed protestors seized control of the Malheur National Wildlife Refuge. The occupation followed a long tradition of resistance in western states of federal land management policy, but the members took a stricter approach to federalism than most. The group fully rejected federal sovereignty over the land, and in doing so demonstrated a particularly gendered approach to power and government.

The purpose of this Note is to explore how the occupier's understanding of federalism relates to theories on masculinity. Drawing on statements made during the course of the occupation, news reports, and testimony during the subsequent legal proceedings, this Note will argue the occupiers' patriarchal beliefs about masculinity influenced and informed their understanding of federalism with the belief that doing so may help us understand the growing nationalist and extremist views in conservative movements today.

* Executive Notes Editor, Colum. J.L. & Soc. Probs., 2017–2018. J.D. Candidate 2018, Columbia Law School. The author would like to thank her advisor Professor Christina Duffy Ponsa for her guidance and feedback, and the staff of the *Columbia Journal of Law and Social Problems* for all of their helpful comments and hard work.

I. INTRODUCTION

For forty days in 2016, a group of anti-government protesters occupied the Malheur Wildlife Refuge in Southeastern Oregon.¹ Led by the Bundy family, the group was protesting the resentencing of the Hammonds, a father and son pair convicted of arson on federal land.² More generally, however, the occupation was rooted in tensions between federal land management policies and the rural inhabitants who believed the land should be handed over to local control.³ The occupation only lasted for a month, but it reignited a decades-long conversation about the presence of the federal government in the West.⁴

As a result of westward expansion, the United States federal government at one point owned almost all the land in the western half of the country.⁵ Though it has since transferred the majority of it to states or private actors, the federal government still owns 47% of all land in the West.⁶ This number reaches as high as 80% in some states.⁷ In response, there was a movement in the 1970's and 80's called the Sagebrush Rebellion that pushed for the transfer of that land to state control.⁸ Most of that crusade was fought in political arenas, with legislators in both Congress and at the state level pushing bills that would increase local control over land management.⁹ The Malheur Occupation was in spirit a revival of the original Sagebrush Rebellion, but it took a much more violent turn than the political battles of the past.

1. *Oregon standoff timeline: How the occupation unfolded*, THE OREGONIAN (Mar. 8, 2016), http://www.oregonlive.com/oregon-standoff/2016/03/oregon_standoff_timeline_how_t.html [https://perma.cc/5HWQ-YMZS] [hereinafter *Oregon Standoff Timeline*].

2. *Id.*

3. *Id.*

4. *Id.*

5. See Quoc Trung Bui and Margot Sanger-Katz, *Why the Government Owns So Much Land in the West*, N.Y. TIMES (Jan. 5, 2016), http://www.nytimes.com/2016/01/06/upshot/why-the-government-owns-so-much-land-in-the-west.html?_r=0 [https://perma.cc/P5NH-HUSP].

6. *Id.*

7. Andrew McGill, *The Massive, Empty Lands of the American West*, THE ATLANTIC (Jan. 5, 2016), <https://www.theatlantic.com/politics/archive/2016/01/federal-land-ownership/422637/> [https://perma.cc/WZ6F-4UKQ].

8. Jonathan Thompson, *The first Sagebrush Rebellion: what sparked it and how it ended*, HIGH COUNTRY NEWS (Jan. 14, 2016), <http://www.hcn.org/articles/a-look-back-at-the-first-sagebrush-rebellion> [https://perma.cc/KKP2-PQCF].

9. *Id.*

Indeed, this was not even the occupier's first clash with the federal government.¹⁰ Beginning in March 2014, Cliven Bundy — father of Ammon and Ryan Bundy, who led the Malheur occupation — led an armed standoff against law enforcement after officials from the Bureau of Land Management (BLM) seized Bundy's cattle when he refused to pay grazing fees.¹¹ While the Bundys and several others have since faced multiple federal charges for the incident, including conspiracy to impede and injure a federal officer, at the time the BLM officials retreated and returned the cattle.¹² Many observers worried that this retreat would embolden the Bundys.¹³ Indeed, the Bundys used the arrest of the Hammonds in Oregon as an opportunity to advance their cause of federal land divestiture even further.¹⁴ Their position attracted a

10. See Christi Turner, *Rancher vs the BLM: A 20-year standoff ends with tense roundup*, HIGH COUNTRY NEWS (Apr. 14, 2014), <http://www.hcn.org/blogs/goat/in-nevada-delicate-20-year-standoff-with-blm-ends-in-a-tense-roundup> [https://perma.cc/WDV5-LX7G]. Cliven Bundy is a rancher from Nevada. His fight with the Bureau of Land Management started when the U.S. Fish & Wildlife Service listed the desert tortoise as an endangered species in 1989. In efforts to protect the tortoise, BLM implemented a conservation plan in which they designated land previously used for cattle grazing as protected and started buying back grazing privileges from local ranchers. Bundy continued to graze his cattle on the land, and BLM revoked his grazing permit in 1993 after Bundy refused to pay the subsequent fines. He continued to graze his cattle without a permit, even after a federal judge issued a permanent injunction against him in 1998. In August, 2013, BLM obtained a court order that gave Bundy 45 days to remove his cattle from federal land. Finally, BLM announced in March, 2014 that they were going to round up Bundy's cattle grazing on the protected land. At this point, Bundy allegedly owed over a million dollars in fines for his cattle-grazing. Over the course of the next three weeks, armed protestors gathered at the Bundy ranch and in the neighboring town. On April 9, two participants were injured in a confrontation with BLM officials. On April 12, BLM announced they would not enforce the court order they had obtained. For a more in-depth timeline of events, see Jamie Fuller, *The long fight between the Bundys and the federal government, from 1989 to today*, WASH. POST (Jan. 4, 2016) https://www.washingtonpost.com/news/the-fix/wp/2014/04/15/everything-you-need-to-know-about-the-long-fight-between-cliven-bundy-and-the-federal-government/?utm_term=.f8ec34b1ec15 [https://perma.cc/B7L6-MSQ5].

11. *Id.*

12. See *Superseding Criminal Indictment, U.S. v. Bundy*, No. 2:16-CR-00046, (D. Nev. Dec. 12, 2016), ECF No. 27; Leah Sottile, *Three years after Nevada ranch standoff, Bundy federal trial begins in Las Vegas*, WASH. POST (Nov. 15, 2017), https://www.washingtonpost.com/national/three-years-after-nevada-ranch-standoff-bundy-federal-trial-begins-in-las-vegas/2017/11/15/54be8ba2-ca2e-11e7-b0cf-7689a9f2d84e_story.html?utm_term=.3f4bb8d42f04 [https://perma.cc/9CX8-546G]; Jonathan Allen, *After Nevada ranch stand-off, emboldened militias ask: where next?*, REUTERS (Apr. 17, 2014), <https://www.reuters.com/article/us-usa-ranchers-nevada-militia-insight/after-nevada-ranch-stand-off-emboldened-militias-ask-where-next-idUSBREA3G26620140417> [https://perma.cc/66E4-ZWA2].

13. Laura Gunderson, *After Nevada Standoff, Bundys 'feel above the law'*, THE OREGONIAN (Feb. 22, 2016), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/post_229.html [https://perma.cc/83AX-TUA4].

14. See Ammon Bundy, *Dear Friends*, YOUTUBE (Jan. 1, 2016), <https://www.youtube.com/watch?v=M7M0mG6HUyk&t=1s> [https://perma.cc/U6FM-LXKX] ("This

reasonably wide following. While some were ranchers, others were blue-collar workers.¹⁵ Many were loners, and several had criminal records.¹⁶ Only a handful of them were from Oregon, but most others were from neighboring states.¹⁷ The group was united primarily by one strong belief: the federal government could not legitimately own land in the West, and by claiming ownership over this land it was threatening the liberty of all citizens.¹⁸

In many ways, the Malheur occupiers are an extreme take on a popular sentiment: deep mistrust of the federal government. These occupiers are part of a long line of armed standoffs led against federal officials, but they are also part of a growing number of anti-government militia groups that are responding in their own way to America's role in an increasingly diverse and global society.¹⁹ The Oregon standoff provides an opportunity to explore how violent federalism and those willing to die for local control are part of a hyper-masculine desire to compete against the sovereign.

In this Note, I argue that the militia members' patriarchal beliefs about masculinity influenced and informed their understanding of federalism. Using the occupier's extensive social media postings, their interviews with the media during the occupation, and the legal documents that followed their arrest, I analyze their articulation of federalism through a gendered lens with the understanding that doing so may help us understand the growing nationalist and extremist views in conservative movements today.

In Part II, I provide an overview of the events that led to the occupation, the main leaders of the movement, the occupation

is more than about them [the Hammonds] . . . That if we do not stand and put these things to an end, that what has happened to them will happen to more and more people, and it is that simple, that the violations of the constitution, the blatant violations, will become the normal." (1:10–1:46).

15. *Faces of the Malheur occupation: Meet the militants and their visitors*, THE OREGONIAN (Jan. 22, 2016), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/oregon_militant_profiles_list.html [<https://perma.cc/C2CG-8GVE>].

16. *Id.*

17. *Id.*

18. Bundy, *Dear Friends*, *supra* note 14.

19. See, e.g., Michael Kimmel & Abby Ferber, "White Men Are This Nation": *Right-Wing Militias and the Restoration of Rural American Masculinity*, 65 RURAL SOC. 582, 587 (2000) (stating that "[s]ince the early 1990s, when the first militias began to appear, their numbers have expanded to include between 50,000 and 100,000 members in at least 40 states").

itself, and the legal arguments made by the occupiers. In Part III, I analyze that description of federalism through a gendered lens. I focus first on how theories of nested sovereignty²⁰ apply to the family, the state, and the federal government. I then discuss how the occupiers' reaction to a perceived federal overreach demonstrates their reliance on masculinity in their approach to government. Finally, Part IV argues that the Malheur militia's ideology is an extension of the nationalist and traditionalist rhetoric that we see in modern political discourse. While the occupation in Malheur may seem extreme, the appeal of traditionalism and state's rights is common, and gender can help explain why conservative movements push for federalism.

II. FACTUAL AND LEGAL BACKGROUND

The occupation at the Malheur Wildlife Refuge can be traced back to the legal troubles of the Hammonds, a father-son duo convicted in 2006 of arson after setting fire to the federal lands they had grazing permits to use.²¹ The Hammonds claimed that the fire began on their own property after they set it to destroy an invasive species, while law enforcement argued that the fire was a cover for illegal hunting practices.²² The fire burned 139 acres of public land.²³ The minimum sentence for arson on federal land is five years, but the Hammonds were able to secure sentences of less than a year because the trial judge found the minimum sentence to be unconstitutional cruel and unusual punishment.²⁴ However, after the two men were released from prison, the Ninth Circuit reversed their sentences and ordered them back to prison to serve the full five years.²⁵

The Hammonds' case caught the attention of the Bundys, a family that also had a long history of conflict with the federal

20. Nested sovereignty is a term coined by Audra Simpson. In her book, *Mohawk Interruptus*, she argues that there are sovereignties within sovereignties that can be in conflict with one another when the larger sovereign seems to impede on the boundaries of the inner sovereign. See AUDRA SIMPSON, *MOHAWK INTERRUPTUS* 115 (2014).

21. Press Release, Dep't of Justice, *Eastern Oregon Ranchers Convicted of Arson Resentenced to Five Years in Prison* (Oct. 7, 2015), <https://www.justice.gov/usao-or/pr/eastern-oregon-ranchers-convicted-arson-resentenced-five-years-prison> [https://perma.cc/L5MC-7N93].

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

government.²⁶ Cliven Bundy is a cattle rancher and the family patriarch.²⁷ He, his wife, and their children and grandchildren are practicing Mormons, and often relate their actions against the government back to God's will.²⁸ Cliven Bundy's legal troubles began in 1993 when the U.S. Fish & Wildlife Service designated a tortoise species as endangered.²⁹ The BLM accordingly listed thousands of acres in Nevada as conservation lands, but Bundy refused to stop grazing, even after his permit was revoked.³⁰ He never paid grazing fees again, racking up over \$1 million owed to the BLM over the course of 20 years.³¹ When the BLM threatened to forcibly remove his cattle from federal land in 2014, he, his sons, and several friends and neighbors engaged in an armed standoff with law enforcement.³² Bundy and his supporters pointed weapons at the rangers, kicked a police dog several times, and refused to stand down.³³ The rangers eventually retreated, and no one was injured, though Cliven's son Ammon Bundy was tased after he lunged at the officers.³⁴

After the standoff, the Bundys became icons for the movement against federal land management. Cliven Bundy later told supporters that God told him to act, saying, "The Lord told me . . . if [the sheriff doesn't] take away these arms [from federal agents], we the people will have to face these arms in a civil war. He said, 'This is your chance to straighten this thing up.'"³⁵

26. Fuller, *supra* note 10.

27. Sam Levin, *Rebel cowboys: how the Bundy family sparked a new battle for the American west*, THE GUARDIAN (Aug. 29, 2016), <https://www.theguardian.com/us-news/2016/aug/29/oregon-militia-standoff-bundy-family> [<https://perma.cc/3JMK-ZP43>].

28. *Id.* For example, Ammon Bundy stated in his video manifesto posted on YouTube that "The Lord was not pleased with what happened to the Hammonds." Bundy, *Dear Friends*, *supra* note 14 (4:45–4:48).

29. Fuller, *supra* note 10.

30. *Id.*

31. *Id.*

32. Ben Botkin & Henry Brean, *Militias 'mobilizing' to support embattled Clark County rancher in clash with federal rangers*, LAS VEGAS REV. J. (April 9, 2014), <https://www.reviewjournal.com/news/nevada/militias-mobilizing-support-embattled-clark-county-rancher-clash-federal-rangers> [<https://perma.cc/VG2G-PDGD>].

33. *Id.*

34. Revolution News, *Armed Federal Agents Taser Bundy Ranch Protesters*, YOUTUBE (Apr. 9, 2014), <https://www.youtube.com/watch?v=D4-jXGh4ANg> [<https://perma.cc/8X5U-QMK5>].

35. Dan Simon & Holly Yan, *Cliven and Ammon Bundy: A family's history of fighting with the federal government*, CNN (Jan. 5, 2016), <http://www.cnn.com/2016/01/05/us/who-are-the-bundys/> [<https://perma.cc/62BA-RXD5>].

The Bundys' reputation fell in the public eye after Cliven made a series of racist remarks.³⁶ And although Cliven and his sons would eventually be indicted for the Arizona standoff in February 2016, for two years it appeared as though the Bundys were not even going to face the possibility of punishment.³⁷ Cliven continued to graze his cattle on federal lands without paying fees, and the family effectively controlled more than a million acres of public lands.³⁸ On the one-year anniversary of the standoff, the Bundys held a weekend-long party at their ranch to celebrate.³⁹ Several observers, including the Southern Poverty Law Center, warned that the Bundys felt as though they were above the law, bolstered by their successful showdown with law enforcement.⁴⁰

In late 2015, Ammon Bundy began showing an interest in the Hammonds' resentencing case. He led a social media campaign in support of the Hammonds in which he emphasized that his support for the Hammonds stemmed from his fears about the federal government taking control of private land.⁴¹ He stated in a video he posted on YouTube that "[i]f [the federal government] can control [the land and resources] then they have ultimate power over the people."⁴² He argued — and would continue to argue throughout the occupation — that the Constitution prevented the federal government from owning land within state boundaries, citing to both the Property Clause and the Enclave Clause as evidence.⁴³ He and several other occupiers argued that

36. See Jonathan Topaz, *Paul slams Bundy racist rant*, POLITICO (Apr. 24, 2014), <https://www.politico.com/story/2014/04/rand-paul-dean-heller-cliven-bundy-105982> [<https://perma.cc/A6FM-VKB5>]. After Bundy's Nevada standoff, several republicans, including Senators Rand Paul and Dean Heller, issued remarks defending Bundy's actions. In a subsequent interview with the New York Times, Bundy made several racist remarks, referring to black people as "negroes" and stating, "And I've often wondered, are they better off as slaves, picking cotton and having a family life and doing things, or are they better off under government subsidy?" After his remarks, both Paul and Heller renounced their support.

37. Michael Martinez and Joshua Berlinger, *Cliven Bundy to be extradited to Nevada to face federal charges in 2014 standoff*, CNN (Feb. 19, 2016), <http://www.cnn.com/2016/02/16/us/cliven-bundy-bail-hearing-oregon/> [<https://perma.cc/JT8J-G5CB>].

38. Gunderson, *supra* note 13.

39. *Id.*

40. *Id.*

41. See Ammon Bundy, *Hammonds need our Help*, YOUTUBE (Nov. 24, 2015), <https://www.youtube.com/watch?v=U1BCMjV83E> [<https://perma.cc/8GM8-PQBP>].

42. *Id.* at 7:46–7:52.

43. See *id.*; U.S. CONST. art. IV, § 3, cl. 2 (The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."); U.S. CONST. art

the Property Clause permitted the federal government to own property only within territories. Once the territory became a state, the federal government had to give up the land unless they could take control of it in the narrow circumstances outlined in the Enclave Clause.⁴⁴

These arguments have no support in constitutional jurisprudence. Indeed, there is a long line of precedent expressly interpreting the Property Clause to simply empower the federal government to own property, even when that property is within a state.⁴⁵ There was even a Supreme Court case reaffirming that the federal government legally owned the Malheur Wildlife Refuge.⁴⁶ Similarly, the Enclave Clause has never been applied in the manner suggested by the occupiers. Instead, the courts have applied the clause liberally, interpreting the language “needful buildings” in the Clause to include those under lawful federal ownership, including dams, national parks, and more.⁴⁷ Despite this legal reality, Bundy continued to argue that the government was acting unconstitutionally and its power needed to be curtailed in order to protect individual liberties, stating, “the federal government does not have authority from the people, it is not in the constitution, for them to go inside states and create wildlife refuges, national parks because there are certain rules that they have to follow in order to do that. And those rules are in Article 1, § 8, 17.”⁴⁸

Bolstered by these arguments, Ammon Bundy and Ryan Payne, another member of the Nevada standoff group, encouraged members from other militia groups to come to Burns, Ore-

I, § 8, cl. 17 (“To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings . . .”).

44. Bundy, *Hammonds need our Help*, *supra* note 41, at 2:49–3:29.

45. See, e.g., *Kleppe v. New Mexico*, 426 U.S. 529 (1976); *U.S. v. City and Cty. of San Francisco*, 310 U.S. 16 (1940); *U.S. v. Gratiot*, 39 U.S. 526 (1840).

46. *U.S. v. Oregon*, 295 U.S. 1 (1935).

47. See Michael C. Blumm & Olivier Jamin, *The Property Clause and Its Discontents: Lessons from the Malheur Occupation*, 43 *ECOLOGY L.Q.* 781, 814 (2017) (discussing the Occupation’s interpretation of the Property and Enclave Clauses).

48. Bundy, *Hammonds need our Help*, *supra* note 41 at 2:15–2:41.

gon to protest the treatment of the Hammonds.⁴⁹ They requested that the local sheriff create a sanctuary for the Hammonds, which the sheriff refused to do.⁵⁰ While the Hammonds initially welcomed the Bundys' social media campaign, they withdrew support from the Bundys' plan once they were warned by prosecutors not to be involved in the protest.⁵¹ In town, the Bundys held a meeting with protestors and community members, and the following day a group of approximately 300 people marched through Burns.⁵² Following the march, Ammon Bundy announced to the crowd that a group of armed militia members was going to the Malheur Wildlife Refuge to occupy the headquarters.⁵³ Most of the protestors rejected the idea, arguing that it was an extreme move in what was at that point a peaceful protest.⁵⁴ However, a splinter group of armed protestors did go to the headquarters and proceeded to occupy the refuge for over a month, until February 11th.⁵⁵

It is unclear how many people were involved in the protest despite the extensive media access allowed by leaders, as people came and went during the course of the occupation.⁵⁶ For the most part, law enforcement kept a low profile, choosing to send in undercover informants rather than directly confront the occupation.⁵⁷ They allowed the leaders of the occupation to come and go.⁵⁸ Ammon Bundy himself regularly ate at a Chinese restaurant in town and went back home to Idaho to visit his wife and children three times.⁵⁹ The occupiers regularly granted journal-

49. Les Zaitz, *Militiamen, ranchers in showdown for soul of Burns*, THE OREGONIAN (Dec. 30, 2015), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2015/12/militiamen_ranchers_in_showdown.html [https://perma.cc/57NA-AQME].

50. *Id.*

51. *Id.*

52. *Oregon Standoff Timeline*, *supra* note 1.

53. *Id.*

54. Tay Wiles, *Malheur occupation, explained*, HIGH COUNTRY NEWS (Jan. 4, 2016), <http://www.hcn.org/articles/oregon-occupation-at-wildlife-refuge> [https://perma.cc/9N3A-W8V9].

55. *Oregon Standoff Timeline*, *supra* note 1.

56. *Id.*

57. Maxine Bernstein, *Defense rests with witness confirming he was an FBI informant and ran occupation's shooting range*, THE OREGONIAN (Oct. 17, 2016), http://www.oregonlive.com/oregon-standoff/2016/10/defense_rests_with_witness_con.html [https://perma.cc/PV2D-W8NP].

58. Martin Kaste, *'Strategic Patience' Pays Off for FBI During Wildlife Refuge Occupation*, NPR (Feb. 12, 2016), <https://www.npr.org/2016/02/12/466512321/during-wildlife-refuge-occupation-fbi-exercised-strategic-patience> [https://perma.cc/6A8Z-4ERL].

59. Bryan M. Vance et al., *Prosecutor Cross-Examines Ammon Bundy For 15 Minutes*, OR. PUB. BROAD. (Oct. 6, 2016), <http://www.opb.org/news/series/burns-oregon-standoff>.

ists access to the refuge and held several press conferences.⁶⁰ Additionally, several members of the occupation posted frequently on social media, particularly YouTube, with detailed explanations of what they were doing and why.⁶¹

The occupation itself adopted conventional gender roles. The most visible leaders of the movement were all men, with the exception of Shawna Cox.⁶² There were several women at the occupation, but they typically took on traditional domestic roles like cooking, cleaning, and organizing supplies, while most of the men took shifts standing guard outside with guns.⁶³ The group was also intent on putting the land from the wildlife refuge to use, meaning that their ultimate goal was to turn over control of the refuge to local ranchers.⁶⁴ Of course, the land was already in use protecting wildlife and preserving Native American cultural sites, but the group was intent on subverting those conservation efforts in favor of farming and ranching. During the course of the occupation, the group tore down a fence along the border of the refuge and then lied to the press about receiving permission from the neighboring rancher.⁶⁵ The militia also dug large trenches near and possibly through sensitive Native American cultural sites, and used at least one of those trenches to store human waste.⁶⁶

bundy-militia-news-updates/ammon-bundy-oregon-standoff-trial-testimony-day-3/
[<https://perma.cc/TH5Q-JDAC>].

60. *Oregon Standoff Timeline*, *supra* note 1.

61. See, e.g., Blaine Cooper, *Breaking Update Burns Oregon FBI Speaks with Ammon!*, YOUTUBE (Jan. 26, 2016), <https://www.youtube.com/watch?v=0XgMgbfmV4c> [<https://perma.cc/L2TU-2QLJ>].

62. *Who is Shawna Cox, the Only Woman Arrested with Bundy's Militia*, WOMEN IN THE WORLD (Jan. 27, 2016), <https://womenintheworld.com/2016/01/27/who-is-shawna-cox-the-only-woman-arrested-with-bundys-oregon-militia/> [<https://perma.cc/WUH5-FCTB>]. As the group did not have a structured hierarchy during the occupation, the term "leader" here will be used to refer to those who regularly spoke to the press and with law enforcement.

63. Amanda Peacher, *Meet The Women Of The Occupied Refuge*, OR. PUB. BROAD. (Jan. 22, 2016), <http://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/oregon-militia-meet-the-women-of-the-occupied-refuge/> [<https://perma.cc/K9ZV-PFUQ>].

64. Luke Hammill, *Oregon standoff: Bundy, militants destroy fence at federal refuge*, THE OREGONIAN (Jan. 11, 2016), http://www.oregonlive.com/oregon-standoff/2016/01/oregon_standoff_bundy_militant.html#incart_river_index_topics [<https://perma.cc/A8GT-BNS9>].

65. Luke Hammill, *Rancher: 'I didn't know anything' about Bundy entering property, destroying fence*, THE OREGONIAN (Jan. 13, 2016), http://www.oregonlive.com/oregon-standoff/2016/01/rancher_i_didnt_know_anything.html [<https://perma.cc/6BXC-YM35>].

66. Ryan Haas, *Militants May Have Dug Latrines near Tribal Sites*, OR. PUB. BROAD. (Feb. 16, 2016), <http://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news->

For the occupiers, “using” the land notably required taking resources and destroying it in the process.

On January 21, the FBI began negotiations with the Bundys after a request from Oregon Governor Kate Brown, but the negotiations came to a halt after the Bundys questioned the legal authority of the FBI to operate within the county.⁶⁷ The occupation reached a turning point on January 26. The leaders of the movement were on their way to a community meeting when the FBI stopped them.⁶⁸ The first car pulled over peacefully, but the second continued on until more officers blocked it.⁶⁹ LaVoy Finicum, the driver, exited the car and was allegedly reaching for his gun when he was shot and killed by the FBI.⁷⁰ The remaining leaders were arrested.⁷¹ Most of the occupiers left after news of the arrest broke, but four remained until February 11, 2016, when they eventually surrendered to the FBI.⁷² Overall, 26 people were indicted on federal conspiracy charges.⁷³ Just two of those charged were women.⁷⁴ Those indicted were charged with conspiracy to impede officers of the U.S. from discharging their official duties through the use of force, intimidation, or threats.⁷⁵ The conspiracy charges were seen as one of the easier charges to prove, but the jury acquitted the first group of occupiers on October 26, 2016.⁷⁶

updates/militants-reportedly-dug-latrines-near-tribal-sites/ [https://perma.cc/9JMZ-8EQQ].

67. *Oregon Standoff Timeline*, *supra* note 1.

68. *Chaotic scene of Lavoy Finicum shooting, explained (Graphic Animation)*, THE OREGONIAN (Mar. 18, 2016), http://www.oregonlive.com/oregon-standoff/2016/03/finicum_shooting_scale_diagram.html [https://perma.cc/EA3X-S382].

69. *Id.*

70. *Id.*

71. *Oregon Standoff Timeline*, *supra* note 1.

72. *Id.*

73. See Press Release, FBI, *FBI Arrests All Remaining Occupiers at the Malheur National Wildlife Refuge*, (Feb. 11, 2016), <https://www.fbi.gov/contact-us/field-offices/portland/news/press-releases/fbi-arrests-all-remaining-occupiers-at-the-malheur-national-wildlife-refuge> [https://perma.cc/VQN5-HQ3L]; Maxine Bernstein, *New six-count indictment unsealed in Malheur refuge occupation case*, THE OREGONIAN (Mar. 10, 2016), http://www.oregonlive.com/oregon-standoff/2016/03/new_six-count_indictment_unsea.html, [https://perma.cc/3MQX-ZE7G].

74. *Id.*

75. *Id.*

76. Leah Sottile, *Jury acquits Ammon Bundy, six others for standoff at Oregon wildlife refuge*, WASH. POST (Oct. 27, 2016), https://www.washingtonpost.com/news/post-nation/wp/2016/10/27/jury-acquits-leaders-of-armed-takeover-of-the-oregon-wildlife-refuge-of-federal-conspiracy-charges/?utm_term=.f565a7a3270e [https://perma.cc/M6DS-FCHN]; Amelia Templeton et al., *All 7 Defendants Found Not Guilty In Refuge Occupation Trial*, OR. PUB. BROAD. (Oct. 27, 2016), <http://www.opb.org/news/series/burns-oregon->

III. THE BATTLE FOR CONTROL OVER LAND AND FAMILY

A. PRESERVATION OF THE FAMILY UNIT

The Malheur militia defines the federal government through what it cannot do. It cannot own land within the territories, it cannot exercise jurisdiction over their criminal cases, and it cannot take away their guns, to list a few examples.⁷⁷ This definition is primarily antagonistic. It pits the federal government in opposition to the occupiers themselves and the citizenry as whole. While distrust of the federal government is certainly not a unique mindset, the extent to which this group challenges the legitimacy of the government to act in any way is. This highly limited view of governmental authority can be explained in part through masculine competition and the desire to preserve male sovereignty within the family unit.

1. *Tension Lines Between Sovereigns*

The tensions between the occupiers and the federal government can be illustrated through the concept of “nested sovereignties.” In her book *Mohawk Interruptus*, Audra Simpson argues that there are groups within larger sovereignties that function as independent bodies with their own rules, norms, and authorities.⁷⁸ While they are generally subject to the larger sovereign’s

standoff-bundy-militia-news-updates/ammon-bundy-verdict-oregon-standoff-malheur-court/ [https://perma.cc/V6JP-C4DD]. Since the first trial, several occupiers described as “mid-level” leaders have been convicted of conspiracy and other charges related to the occupation. See Conrad Wilson & Amanda Preacher, *2 Occupiers Found Guilty of Conspiracy for Roles in Oregon Standoff*, OR. PUB. BROAD. (Mar. 9, 2017), <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/verdict-second-trial-guilty-patrick-ryan-ehmer-thorn/> [https://perma.cc/74G4-E6JT]; Amelia Templeton, *Montana Man Spars with Federal Judge Before Sentencing for Refuge Occupation*, OR. PUB. BROAD. (Jan. 24, 2018), <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/jake-ryan-sentence/> [https://perma.cc/SE56-NGPU].

77. Ryan Bundy, *The Constitution of the United States on Federal Land Ownership*, BUNDY RANCH BLOG (Dec. 7, 2015 3:12 PM), <http://bundy ranch.blogspot.com/2015/12/the-constitution-of-united-states-on.html> [https://perma.cc/LS25-UXZ9]; Maxine Bernstein, *Ammon Bundy to challenge authority of feds to prosecute Oregon standoff defendants*, THE OREGONIAN (Apr. 26, 2016), http://www.oregonlive.com/oregon-standoff/2016/04/ammon_bundy_to_challenge_autho.html [http://perma.cc/F3MK-NEQQ]; Ammon Bundy, *“Update” Bundy Family Targeted as Domestic Terrorists*, BUNDY RANCH BLOG (Nov. 5, 2014 6:25 AM), <http://bundy ranch.blogspot.com/2014/11/update-bundy-family-targeted-as.html> [https://perma.cc/P7JC-X3HL].

78. SIMPSON, *supra* note 20 at 10 (describing the Iroquois movement border between the U.S. and Canada as “an international border that cuts through their historical and

authority, they can also reject and challenge that authority when it is seen as impeding on the sphere of the nested body.⁷⁹ Sometimes this is done through legally establishing certain boundaries and agreements, but often it is done through forms of civil disobedience. While these groups can co-exist peacefully, there is tension at the boundaries between them. When that tension occurs, the nested sovereign will likely push back, often by applying its own interpretation of the rules.⁸⁰ Simpson argues that these smaller bodies “interpret and employ their own sovereignty in ways that deny the absolute sovereignty.”⁸¹ Through this resistance, the nested sovereign reveals cracks in the authority of the larger body.⁸²

The concept of nested sovereignty presents a lens for examining relationships in our own system of federalism. In the balance of powers, the way the states push back against the federal government is often an attempt to deny the supremacy of the federal government and the legitimacy of federal actions. In our system, this balance goes down further to the states and municipalities, and those systems can clash in a number of areas — ranging from antidiscrimination legislation to smoking bans.⁸³ Pushback can come in the form of direct rebukes to federal power, such as Texas’ recent lawsuit to end the Deferred Action for Child Arrivals program; or more subtly through workarounds to federal power, such as efforts by Democratic-led states to limit the impact of the elimination of the state and local tax deduction in the Tax Cut and Jobs Act.⁸⁴

contemporary territory and is, simply, in their space and in their way. It is through their actions and, in particular, their mobility that Indigenous border crossers enact their understandings of history and law.”).

79. *Id.* at 115.

80. *Id.*

81. *Id.*

82. *Id.*

83. See, e.g., Valerie Bauerlein & John Kamp, *Cities Clash With State Governments Over Social and Environmental Policies*, WALL STREET J. (July 7, 2016), <http://www.wsj.com/articles/cities-clash-with-state-governments-over-social-and-environmental-policies-1467909041> [<https://perma.cc/8F5S-6CPM>].

84. Joe Palazzolo, *Judge Rules States Can Sue to Preserve DACA*, WALL STREET J. (Nov. 9, 2017), <https://www.wsj.com/articles/judge-rules-states-can-sue-to-preserve-daca-1510271764?mg=prod/accounts-wsj> [<https://perma.cc/7YGR-AVAR>]; Ben Casselman, *Democrats in High-Tax States Plot to Blunt Impact of New Tax Law*, N.Y. TIMES (Dec. 31, 2017), <https://www.nytimes.com/2017/12/31/business/high-tax-states-law.html> [<https://perma.cc/3UF9-B2SH>].

Non-governmental structures also impact this dynamic. While federalism refers to the relationship between the national and state government, private power structures have their own role in the balance of political power. In several ways, the family can also be seen as its own sovereignty within our larger society.⁸⁵ Though the family has undoubtedly changed in response to the feminist movement and economic developments, it remains an important structure in society and still retains its hierarchal structure in many ways that consolidate power in male heads of households.⁸⁶ Although the government can regulate private life, pushback against interference with the family can be severe, particularly when such interference threatens male control at home.⁸⁷ The government and families may function in different ways, but on a broader level the two intersect and mirror one another.⁸⁸ Feminist theory has long been interested in the blurred distinction between the private and the public. As Susan Gal noted, “the ‘personal is political’ in part because private institutions such as families often operate, like the polity, through conflict, power hierarchies, and violence. By the same token, political acts conventionally categorized as public are frequently shaped by sentiment and emotion.”⁸⁹

In federalism, regulation of the family has been the site of relentless tension. Attempts by the federal government to regulate family life receive some of the most severe pushback from the states out of fear that federal regulation of “private” matters would undermine the sovereignty of the family unit. Indeed, fam-

85. See, e.g., GEORGE LAKOFF, MORAL POLITICS: WHAT CONSERVATIVES KNOW THAT LIBERALS DON'T 63 (1996) (arguing the modern American conservative/liberal divide can be explained by the public's two corresponding family models — the “strict father” and the “nurturant-parent family”).

86. One such change is to the laws that now permit married women to own property. For a more detailed explanation of the economic and political changes in marriage, see Holly J. McCammon et al., *A Radical Demand Effect: Early US Feminists and the Married Women's Property Acts*, 38 SOC. SCI. HIST. 221 (2014).

87. Kristin A. Collins, *Federalism's Fallacy: The Early Tradition of Federal Family Law and the Invention of States' Rights*, 26 CARDOZO L. REV. 1761, 1851 (2004) (“What appears to have changed the most after the Civil War was not the fact of the federal government's involvement in domestic relations, but the explosion of interested and debate over the proper place of the family in the federal system. Several social and legal transformations in the late nineteenth century were viewed as threats to the (white) American family.”).

88. For a more detailed explanation of the growth of the state out of the family unit, see LAKOFF, *supra* note 85.

89. Susan Gal, *A Semiotics of the Public/Private Distinction*, 13 DIFFERENCES: A J. OF FEMINIST CULTURAL STUD. 77, 78 (2002).

ily law is regularly cited as the quintessential state domain, as apparent in decisions regarding gun control laws, divorce requirements, parental kidnapping, and more.⁹⁰ While this battle is often over the parental relationship, the relationship between husband and wife is also a source of tension in federalist debates.

These arguments were clearly present in the debate over women's suffrage. While many states took steps early on to give women the right to vote, there was significant backlash against the national movement that was often cloaked in terms of federalism. Opponents of national women's suffrage invoked concepts of "local self-government" to argue that the family was within the jurisdiction of the state.⁹¹ Federal attempts to regulate issues that would affect the structure and hierarchy of the family unit were considered arguably beyond the power of the federal government.⁹² These arguments raised an interesting assumption — primarily that the federal government was a threat to the sovereignty of the husband within his family, while the state government was not. These arguments focused on the idea that state governments permitted a degree of democracy not possible in the larger, more distant federal government. The federal government, according to these arguments, was an outside influence, while more local levels of government more closely reflected personal values for the most intimate decisions regarding the family.

90. Jill Hasday, *Federalism and the Family Reconstructed*, 45 *UCLA L. REV.* 1297, 1303-05 (1998) (citing *United States v. Lopez*, 514 U.S. 549 (1995); *Thompson v. Thompson*, 484 U.S. 174 (1988); *Sosna v. Iowa*, 419 U.S. 393 (1975)). Hasday argues that the court frequently relies on the assumption that family law is within the exclusive domain of the state. In *Lopez*, she notes, "[t]he strongest image that the Court could summon to suggest the overbreadth of the United States' view of its authority was to posit that the federal government's interpretation of the Commerce Clause would permit Congress to regulate 'family law (including marriage, divorce, and child custody).'" *Id.* at 1303.

91. Reva B. Siegal, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 *HARV. L. REV.* 947, 998 (2002). Opponents in this debate framed women's suffrage as a private family matter because it could impact gender dynamics within marriages and disrupt traditional family structures. Siegal argues, "Antis who argued that woman suffrage threatened marital unity were quite explicit in discussing how the prospect of women voting challenged male household authority. Either women would continue to submit to male governance, or their self-assertion would produce conflicts in marriage." *Id.* at 994.

92. *Id.* at 998-99 ("[M]any 'states' rights' proponents offered federalism arguments for restricting the use of Article V that incorporated the gendered premises of the antisuffrage argument itself. For example, the 1884 Judiciary Committee report, quoted above, continued explaining its objections to enfranchising women by constitutional amendment by emphasizing that the proposed reform involved questions of marital status law beyond the reach of federal power. . . .").

However, key to this notion was that the “self” in “self-governance” was always the husband. Siegal argues, “In the suffrage debates, ‘local self-governance’ presumes a traditional common-law understanding of the family: the ‘self’ must refer to a male head of household and his dependents; otherwise, the phrase ‘local self-governance’ would not make sense as a rallying cry against women’s demands for political self-governance.”⁹³ In this sense, the local governance touted in these debates is not intended to protect truly individual liberties from an overbearing government, but rather to protect the sovereign structure of the family. Siegal argues that this gendered approach to federalism is sexualized by framing the political disputes as arising out of jealousy. Control over the domestic sphere really meant control over women because laws that influence families directly impacted the degree of control that men were able to exercise over their wives. Federal influence on domestic relations was considered a threat to this system of control. Siegal argues, “the structure of federalism is sexualized, with each of the several states retaining local control over its own women through local control of its family law.”⁹⁴

For example, opponents of abortion use federalist arguments. Clarke Forsythe and Stephen Presser argue for a constitutional amendment declaring there to be no federal right to an abortion.⁹⁵ Their declared intent for such an amendment is to return the issue of abortion regulation back to the states, and the authors make only a cursory statement that they believe “states would likely enact an array of policies in the aftermath of Roe with the goal of reducing abortions and teen pregnancies” and “[p]rigor to Roe, the states treated the woman as the second victim of abortion, not as a principal involved in a crime, and it is almost certain that the states would continue to do so if Roe were overturned.”⁹⁶ Setting aside the characterization of women who get abortions as “victims,” the author’s arguments rely on the

93. *Id.* at 1000. For support of her claim, Siegal cites to the Minority Report of the Senate Committee on Woman Suffrage of 1882, which states “Among the powers which have hitherto been esteemed as most essential to the public welfare, is the power of the States to regulate, each for itself, their domestic institutions in their own way.” S. REP. NO. 47-686, pt. 2, at 2 (1882).

94. *Id.* at 1001.

95. See Clark D. Forsythe & Stephen B. Presser, *Restoring Self-Government on Abortion: a Federal Amendment*, 10 TEX. REV. L. & POL. 301 (2006).

96. *Id.* at 329.

same flaws present in the debates on women's suffrage. While arguing that state control over the issue will allow for "self-government," the result of their position would be a return to pre-Roe conditions which limited women's autonomy and perpetuated male control over their bodies.⁹⁷ These arguments use federalism to advance male control over domestic issues.

Retaining local or semi-local control over issues relating to the family was a way to retain the patriarchal structure of the family and thus preserve the power and authority of the male heads of household. Ensuring that these issues remained a matter of state rather than national concern was an effective way to employ the power of state and local governments to enforce male dominance in the family sphere. While the federal government was a threat to this gendered order, state and local governments were not because it was easier to block political changes affecting families within these smaller spheres.⁹⁸ As Siegal explains,

As a general matter, citizens can either identify with the national government and experience it as expressing the collective identity, values, and will of the citizenry, or disidentify with the national government and experience it as an outside force that is imposing its identity, values, and will upon the citizenry.⁹⁹

Those that reject federal intervention may thus see changes on the federal level not as part of a collaborative process in which they have input, but as an outside threat which should be guarded against. In the context of families, Siegal argues that, "when federal law divests men of traditional authority in the family protected by the common law, jurisdictional conflict can thus assume imaginative form as a conflict among men for control over women

97. While authors are careful to emphasize that the immediate result of overturning *Roe v. Wade* would be to move the abortion debate back to the states, they also note that such states would be able to return to their pre-Roe laws. *Id.* at 339–40. At the time *Roe v. Wade* was decided, 30 states banned abortion in all circumstances, 16 banned abortion except in cases of special circumstances (such as rape or health to the mother), 3 states allowed residents to obtain abortions, and just one allowed abortions generally. Rachel Benson Gold, *Lessons from Before Roe: Will Past be Prologue?*, 6 GUTTMACHER POL'Y REV. 8, 9 (2003), <https://www.guttmacher.org/gpr/2003/03/lessons-roe-will-past-be-prologue> [https://perma.cc/Z77N-DZLG].

98. Siegal, *supra* note 91, at 1001.

99. *Id.*

and children.”¹⁰⁰ The attempt (and eventual success) on the national level to ensure women’s suffrage was seen as a violation of the sovereignty of husbands and fathers.¹⁰¹ Kristin A. Collins agreed with this characterization, citing Justice Daniel’s dissent in the case *Barber v. Barber*, in which he argued that federal enforcement of a state’s alimony decree would overstep federal powers because the family was considered a private matter, best regulated on the state level.¹⁰² Anti-suffragists directly tied familial power structures to the “allocation of power between federal and state government,” arguing that changing the dynamics within families to give women more authority would simultaneously give the federal government more authority over the states.¹⁰³ Conversely, any changes to the balance of federalism with regards to gender issues also directly impacted the sovereignty of the husband within the family unit.¹⁰⁴ At risk with this balance was not a legal concern for the balance of powers between the federal and the state government, but a concern for preserving patriarchal authority of traditional families.

2. *Control and the Masculine Lens*

These insights on federalism closely mirror theories on the driving forces of patriarchy, a system of male dominance. To understand the tensions over domestic relations within the federal context, it is helpful to review the extent to which control is central to preserving patriarchal structures. Allan Johnson expands on this notion in his book *The Gender Knot* to argue that under the patriarchy, men and masculinity are privileged through the centering and domination of men.¹⁰⁵ As a result of this privilege, Johnson identifies two major characteristics prevalent among men under our patriarchal system: an “obsession with control”¹⁰⁶

100. *Id.*

101. *Id.* (“Senator Morgan imagined the federal government enfranchising women in the form of a man meddling in another’s marital business.”).

102. Collins, *supra* note 87 at 1846 (citing *Barber v. Barber*, 62 U.S. 582, 602 (1858) (Daniel, J., dissenting)).

103. *Id.* at 1852.

104. *Id.*

105. ALLAN G. JOHNSON, *THE GENDER KNOT: UNRAVELING OUR PATRIARCHAL LEGACY* 4–5 (3d ed. 2014).

106. *Id.* at 5.

and a persistent “male-centeredness.”¹⁰⁷ Both of these attributes are reflected in conflicts surrounding the federalist balance.

First, Johnson refers to patriarchy as a system.¹⁰⁸ As he describes it, “a society is patriarchal to the degree that it promotes male privilege by being male dominated, male identified, and male centered.”¹⁰⁹ In our patriarchal system, societal forces deeply impact our relation to sex, identity, and each other.¹¹⁰ Johnson argues that the gender binary and hierarchy within our culture is a societal construction, not a biological inevitability.¹¹¹ To him, “words like ‘female’ and ‘male’ are cultural categories that have as much (if not more) to do with creating reality as they do with objectively naming it.”¹¹² Johnson challenges readers to acknowledge how “our intensely personal experience of ourselves as sexual beings is profoundly shaped by the society we live in and ways of thinking.”¹¹³ As part of this, our patriarchal system defines masculinity in part by a series of qualities which the ideal man must possess: “control, strength, competitiveness, toughness, coolness under pressure, logic, forcefulness, decisiveness, rationality, autonomy, self-sufficiency, and control over any emotion that interferes with other core values (such as vulnerability).”¹¹⁴

Johnson believes one of the prime motivating forces of patriarchy is the need for control.¹¹⁵ He argues that, “[a]s with any system of privilege that elevates one group by oppressing another, control is an essential element of patriarchy: men maintain their privilege by controlling women and anyone else who might threaten it.”¹¹⁶ While this description of gender hierarchy seems like a basic explanation of sexism, it is important to take notice of the way that the desire to maintain privilege and gendered power imbalances take form. Johnson argues that control under our patriarchal system is gendered in how it encourages men to control women, but also in how it encourages men to seek to control

107. *Id.* at 10.

108. *Id.* at 5.

109. *Id.* Johnson’s description of patriarchy is general, but his examples are typically within the context of Western liberal democracies. For the purposes of this Note, I will refer to “patriarchy” as it functions within the United States.

110. *Id.* at 19.

111. *Id.* at 21.

112. *Id.*

113. *Id.* at 19.

114. *Id.* at 7.

115. *Id.* at 13.

116. *Id.* at 14.

other men.¹¹⁷ In systems of privilege like the patriarchy, control becomes “the cultural standard for a truly superior human being.”¹¹⁸ Because the patriarchy is a system of privilege and hierarchy, having control over others is a signal that one has privilege within that system.¹¹⁹ The greater control a man has, the more successful he is in fulfilling patriarchal standards of masculinity.¹²⁰ However, since control is inherently relational, this need for control can extend to other men. As Mary Becker synthesizes, “male distrust and fear of other men [is] patriarchy’s core motivating force,”¹²¹ meaning that because men feel that control is central to their masculine identity, they are driven to control one another as well as women. These conflicting interests create a system in which men compete with one another for control over each other, women, and the resources and opportunities in their lives.

One of the many drawbacks of such a system is the resulting isolation men may feel. Johnson notes that “the more men see control as central to their sense of self, well-being, worth, and safety, the more driven they feel to go after it,”¹²² meaning that when men subscribe to strong patriarchal beliefs about masculinity, they feel compelled to seek as much control within their lives as they can. Furthermore, Johnson suggests that “the more men participate in the system, the more likely they are to see themselves as separate, autonomous, and disconnected from others.”¹²³ Because the need for control is competitive, it often rejects collaboration. Isolation becomes both a way to protect and gain power. As Johnson states, “[p]atriarchy encourages men to seek security, status, and other rewards through control; to fear other men’s ability to control and harm them; and to identify being in control as both their best defense against loss and humiliation and the surest route to what they need and desire.”¹²⁴ For men within patriarchal systems, the fear is that one must either control or be controlled. This control requires a disconnect, “because control

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, 1999 U. CHI. LEGAL F. 21, 24 (1999) (citing JOHNSON, *supra* note 105, at 28–29).

122. JOHNSON, *supra* note 105, at 14.

123. *Id.*

124. *Id.* at 50.

involves a relationship between controller and controlled . . . [in order] [t]o control something we have to see it as a separate ‘other’.”¹²⁵ This otherization and the belief that one has the right to control another both contribute to another major characteristic of men within patriarchal systems: self-centeredness.¹²⁶

Johnson identifies self-centeredness as another major characteristic of men within our patriarchal system. He argues that the main focus for men in patriarchal systems is on themselves and how they compare to ideals of masculinity.¹²⁷ Johnson describes masculine ideals as “larger than life.”¹²⁸ By valorizing masculinity above all else, the patriarchy creates a system in which masculinity is the ultimate goal. However, because masculinity is so idealized, it is also impossible to maintain. Johnson notes that “patriarchal expectations that place men at the center paradoxically perch men just a short drop away from feeling like they are not at the center — and, therefore, on some level, like they don’t exist at all.”¹²⁹ When a man’s sense of worth is tied into patriarchal standards of masculinity, those standards have significant impacts on his satisfaction. By valorizing masculinity to such a degree, the patriarchal society creates a scenario through which men are constantly seeking to achieve a status of “masculine” that is at least unrealistic and often downright impossible.¹³⁰ As Johnson notes, most men are not that powerful in society.¹³¹ However, because masculinity is so idealized, “if men want to satisfy the human need to be seen and acknowledged by others, it will be through what they do and how well they live up to the standards of patriarchal manhood.”¹³² In seeking to meet the standard of masculinity, men within the patriarchy often feel to some degree that they should have more — more control, more power, more money.¹³³ There is an element of entitlement in this equation. To feel such a strong desire to control and to have such a strong focus on oneself requires one to feel, at least to a certain extent, that one deserves that control.¹³⁴ Particularly within our

125. *Id.* at 14.

126. *Id.* at 12.

127. *Id.*

128. *Id.* at 13.

129. *Id.* at 13–14.

130. *Id.* at 13.

131. *Id.* at 5.

132. *Id.* at 11.

133. *Id.* at 13–14.

134. *Id.* at 13–15.

patriarchal system in which control is so central, “it becomes the cultural standard for a truly superior human being.”¹³⁵

B. MALHEUR’S GENDERED CONFLICT OVER FAMILY AND LAND

By applying these theories on gender to federalism, the Malheur militia’s arguments and extreme aversion to federal control become more predictable. During the course of the occupation, the militia made several extreme federalist arguments, and repeatedly questioned any federal authority beyond that explicitly stated in the Constitution.¹³⁶ Coupled with the fact that they responded to this perceived federal overreach with a violent occupation, the Malheur occupiers are certainly beyond the bounds of the normal federalism debate. They apply their own interpretation of the rules, and seem to genuinely believe that by engaging in armed conflicts with the government, they are being patriotic and performing their duty as citizens and community members.¹³⁷ This extreme view of the limitations of the federal government becomes clearer after an exploration of the militia’s views on masculinity and what it means to them to be men.

It is extremely difficult to examine the dynamics of a family from the outside, and I will not attempt to do so with the Bundys, except to say that it is apparent that family was an exceedingly important part of the Bundy’s decision to occupy Malheur. Cliven and his wife have 14 children, and each of those children in turn

135. *Id.* at 13.

136. *See, e.g.*, Ammon Bundy, *What authority are they acting on?*, YOUTUBE (Sept. 11, 2015), https://www.youtube.com/watch?time_continue=8&v=FpaL0qWC0lo [<https://perma.cc/K25A-N9S6>] (where Ammon Bundy argues the federal government is one of limited powers and does not have the authority to regulate healthcare, the environment, and calling the federal government “modern day conquerors”) (9:52–9:54); Bundy, *The Constitution of the United States on Federal Land Ownership*, *supra* note 77 (arguing the federal government cannot own land in the states); Ryan Haas, *Ryan Bundy Declares Himself An ‘Idiot’ Not Subject to US Courts*, OR. PUB. BROAD. (July 28, 2016), <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/ryan-bundy-incompetent-subject-federal-law/> [<https://perma.cc/B3EY-UXG2>] (where Ryan Bundy argues he is a sovereign citizen not subject to the laws of the United States).

137. *Update on Bundy Political Prisoners*, BUNDY RANCH BLOG (Feb. 24, 2016 11:44 AM), <http://bundyranh.blogspot.com/2016/02/update-on-bundy-political-prisoners.html> [<https://perma.cc/W372-LFW8>] (where the family blog describes Cliven, Ammon, and Ryan Bundy as “political prisoners”); Sam Levin, *Oregon militia stand their ground but local residents want ‘these thugs’ gone*, THE GUARDIAN (Jan. 9, 2016), <https://www.theguardian.com/us-news/2016/jan/09/oregon-militia-wildlife-refuge-harney-county-residents-wary> [<https://perma.cc/K3N2-9NMF>] (quoting Malheur Occupier Debra Pope as saying, “[w]e are not bad people. We are patriots and we love our country”).

have several children, resulting in a large, multi-generational family with over 60 grandchildren.¹³⁸ Ammon and Ryan Bundy led the Malheur Occupation at the urging of their father.¹³⁹ Throughout the occupation, Ammon Bundy cited his family as the reason he was there, stating, for example, in his video call for others to join him at Malheur, “I know that we are to stand now and that we are to do these things now or we will not have anything to pass on to our children. That they will be placed under the same exact measures that the Hammonds have been placed under.”¹⁴⁰ By regularly referencing family obligations, the Bundys framed the dispute over federal land ownership as a domestic issue.

For the Bundys, access to land is an essential part of providing for their families.¹⁴¹ The general fixation on providing for one’s family can be a way of reinforcing gender roles within that family, but it takes on a very specific context in terms of land and ranching.¹⁴² Cliven Bundy provided for his family through his utilization and control of the land around him. Although Ryan and Ammon are not ranchers themselves, they grew up in this household and feel deeply that control of land is central to liberty.¹⁴³ However, outside the Bundys’ family unit, they do not actually have that much control. Ammon Bundy lost his home in a foreclosure in 2012.¹⁴⁴ Ryan Bundy’s legal problems date back

138. Levin, *Rebel cowboys*, *supra* note 27.

139. THE OREGONIAN, *Faces of the Malheur occupation*, *supra* note 15.

140. Bundy, *Dear Friends*, *supra* note 14, at 18:51–19:07.

141. Bundy, *Hammonds need our help*, *supra* note 41, at 8:27–8:29 (“[A]ll wealth generates from the land.”).

142. In traditional family structures, men are typically seen as the “providers,” meaning they bring in the income and the resources, while the women are “caretakers” whose role is tend to the children, the house, and the husband. Modern proponents of this family structure tend to view the role of provider and caretaker on equal footing in terms of power, and certainly caretaking is an essential role within the family that is consistently undervalued. However, rigid gender roles that consistently place men as the providers tend to reinforce male control over the family. As providers, these men have more autonomy over how they spend their time. They control the family resources, and they tend to have more interaction with people outside their direct family. These (among others) are some of the reasons why there is such resistance to women becoming providers or coproviders in families. See Linda Thompson and Alexis J. Walker, *Gender in Families: Women and Men in Marriage, Work, and Parenthood*, 51 J. OF MARRIAGE AND FAMILY 845 (1989).

143. Bundy, *Hammonds need our help*, *supra* note 41 (7:53–8:03) (“This is what the ancient, if you will, conquerors understood that all they had to do is go in and control the land and the resources and they can control the whole people.”).

144. Laura Gunderson, *Ammon Bundy: His history and a \$500,000 federal loan*, THE OREGONIAN (Jan. 5, 2016), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/ammon_bundy_his_history_and_a.html [https://perma.cc/7XZP-YASX].

ten years.¹⁴⁵ More specifically, as much as the Bundy family asserts their rights over the land that they graze their cattle on, the federal government is the primary owner of that land.¹⁴⁶ As a result, the federal government has a significant impact on what they perceive as central to their ability to provide, and therefore their position within their family. When the federal government owns the land, it decides what grazing ranchers can do, how much it will cost, and what regulations the ranchers will be subject to. The Sagebrush Rebellion considered federal land management to be an affront to individual liberty for precisely this reason — it speaks to the ability of ranchers to make money.¹⁴⁷ Ammon Bundy explains this idea further in a video about the Hammonds, in which he urges viewers to recognize that everything we own “comes from the land” and that if the government is able to control the land and natural resources, it has “ultimate power over the people.”¹⁴⁸

Key to this assumption is the idea that the federal government is an oppressive entity, not a participatory one. When the federal government manages land in Western states, there is a strong sentiment that the federal government is entirely independent of — and removed from — the individual ranchers.¹⁴⁹ Rather than being a familiar entity they engage with through voting and other civil actions, the federal government is an “other” that is interfering with the ranchers’ lives and rights. This theory was in full force during the Malheur Occupation. The occupation leaders spoke about the federal government as an antagonist, with Ammon Bundy calling the federal government “modern day conquer-

145. In 2006, Ryan was cited for burning without a permit. In 2007 he was arrested for suspicion of interfering with a legal arrest. In 2012, he was arrested on misdemeanor theft charges. In 2014, he was charged with interfering with an animal control officer after the officer had found his horse running loose near an airport and Bundy broke into the shelter to get the horse back. Carli Brosseau, *Ryan Bundy fought with government long before Oregon standoff*, THE OREGONIAN (Jan. 7, 2016), http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/01/ryan_bundy_resisted_government.html [<https://perma.cc/95S6-3WW2>].

146. THE OREGONIAN, *Faces of the Malheur occupation*, *supra* note 15.

147. John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics, and Federal Lands*, 14 U.C. DAVIS L. REV. 317, 343 (1980) (“As the reality of such restrictions has become apparent, those most affected . . . have begun to chafe at this reduction in their freedom of exploitation.”).

148. Bundy, *Hammonds need our help*, *supra* note 41, at 7:50–7:52.

149. See Richard D. Clayton, *The Sagebrush Rebellion: Who Should Control the Public Lands?*, 1980 UTAH L. REV. 505, 509 (1980) (stating that the federal government has been seen as “an internal enemy” and a “perfidious absentee landlord who resides along the Potomac”); Leshy, *supra* note 147, at 317–18.

ors.”¹⁵⁰ Cliven Bundy’s blog regularly features posts in which he describes government corruption through references to modern day America as “Zion.”¹⁵¹

These concerns closely mirror those described by Johnson regarding masculinity. These arguments involve both a central concern over control and feature prominent self-centered assumptions. By pitting the federal government against the ranchers, the occupation places the dispute over land management policy squarely in terms of a dispute over control. The federal government has been able to regulate and manage land that ranchers use because the federal government has control of the land. However, because the federal government has control, the Bundys do not. There is a clear mistrust of other actors in this system and a belief that when those actors exercise power it is at the expense of the ranchers.

This understanding is not inaccurate — the federal government does own the land and ultimately has the power to regulate the rancher’s use. However, this authority is exercised with input from the ranchers on a number of levels, ranging from basic voting to dialogues resulting in cooperative plans that permitted grazing on the Malheur Refuge land itself.¹⁵² This perception of democratic governance through which all actors have some degree of input is utterly rejected in favor of a zero-sum characterization. Rather than accepting the position of government as a regulator or even accepting the legitimacy of government property, this militia rejects any form of control that the federal government may have over this issue.

Criticism of federal land management in the West is common. Federal officials — particularly the BLM — have been accused by both liberals and conservatives of mismanagement of federal lands, on issues ranging from drilling permits, to fire prevention, to local input on land management plans.¹⁵³ The more main-

150. *Id.*

151. Cliven D. Bundy, *Liberty Freedom For God We Stand!*, BUNDY RANCH BLOG (Jan. 31, 2016, 5:15 PM), <http://bundyranch.blogspot.com/2016/01/cliven-d.html> [<https://perma.cc/EPK4-B773>].

152. Hal Bernton, *The story behind the Malheur National Wildlife Refuge, ranchers and armed anti-government Protestors*, SEATTLE TIMES (Jan. 9, 2016), <http://www.seattletimes.com/seattle-news/politics/occupied-oregon-wildlife-refuge-known-for-listening-to-ranchers/> [<https://perma.cc/LUD5-SAHD>].

153. Federal officials, particularly at the BLM, have been accused by both liberals and conservatives of mismanagement of federal lands, on issues ranging from drilling permits, to fire prevention, to local input on land management plans. For examples of such cri-

stream argument against federal land management is that the federal government has mishandled the land and should transfer it to the states to be better managed by the people who live there.¹⁵⁴ There are also more complicated economic issues over the costs of grazing on public versus privately owned land.¹⁵⁵ However, while the Bundys certainly agree that the federal government has mismanaged federal land in the West, this is not the basis of their argument.¹⁵⁶ Nor do they cite economic reasons for their mistrust. Rather, the Bundys believe the federal government has no authority to own land within the states whatsoever.¹⁵⁷ This militia is not just criticizing the government's policies, but rather denying any governmental authority within the field at all. This rejection of federal control mirrors Johnson's description of the centrality of control in patriarchal systems¹⁵⁸, and ownership over lands in the West becomes a battleground for masculine dominance beyond the normal level of political opposition.

tiques *see, e.g.*, Terry L. Anderson, Opinion, *Federal Land Management Has Been Disastrous*, N.Y. TIMES (Jan. 7 2016), <https://www.nytimes.com/roomfordebate/2016/01/07/who-should-control-the-west/federal-land-management-has-been-disastrous> [https://perma.cc/56FQ-MCKD]; Holly McKay, *Federal land management to blame for out of control fires, say critics*, FOX NEWS (Sept. 17, 2015), <http://www.foxnews.com/us/2015/09/17/poor-steward-federal-land-management-to-blame-for-out-control-fires-say-critics.html> [https://perma.cc/2QXF-J8JG]; Eric Lipton, *Drillers in Utah Have Friend in U.S. Land Agency*, N.Y. TIMES (July 27, 2012), <http://www.nytimes.com/2012/07/28/us/politics/bureau-of-land-managements-divided-mission.html> [https://perma.cc/8UV3-T9H4]; Matt Ford, *The Irony of Cliven Bundy's Unconstitutional Stand*, THE ATLANTIC (Apr. 14, 2014), <https://www.theatlantic.com/politics/archive/2014/04/the-irony-of-cliven-bundys-unconstitutional-stand/360587/> [https://perma.cc/AHL4-H86S] (in which Cliven Bundy states, "I believe this is a sovereign state of Nevada. I abide by all of Nevada state laws. But I don't recognize the United States government as even existing.").

154. *See, e.g.*, McKay, *supra* note 153.

155. The upfront cost of grazing cattle on public land is significantly cheaper than the price of grazing on privately owned land. However, to maintain a public grazing permit, ranchers have to do work to maintain the property they graze on, such as maintaining the fences and water troughs. Private grazing fees generally include such maintenance in the cost. As a result, the price of grazing on public and private lands is somewhat comparable, though it varies depending on the state. For a more detailed explanation, *see* Jes Burns & Tony Schick, *Controversial Federal Grazing Fees Not A Great Deal For Anyone*, OR. PUB. BROAD. (Jan. 6, 2016), <https://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/federal-grazing-fees/> [https://perma.cc/8ZXL-HWP2].

156. *See* *BLM Destroying Ranches by Fire - Hammond Update*, BUNDY RANCH BLOG (Dec. 6, 2015 2:52 PM), <http://bundy ranch.blogspot.com/2015/12/blm-destroying-ranches-by-fire-hammond.html> [https://perma.cc/62LM-SKQJ].

157. *The Federal Government Does Not Have Authority to be Acting the Way They Are*, BUNDY RANCH BLOG (Sept. 11, 2015 10:06 PM), <http://bundy ranch.blogspot.com/2015/09/the-federal-government-does-dot-have.html> [https://perma.cc/V7RS-5QJ5].

158. *See supra* Part III.A.2.

The centrality of the family unit here explains why that desire for control is so strong. By controlling the land, the federal government is threatening men's role as providers, and by threatening their role as providers, the federal government is threatening their position of authority within their families. When the militia leaders spoke of protecting their family, they were speaking of protecting their roles as fathers and husbands and therefore providers within the family. Just as this rhetoric was used during the debates on women's suffrage to argue that government interference in women's suffrage would harm the sanctity of the family, this concern over who controls the land is deeply tied to maintenance of the traditional family structure.¹⁵⁹ This reaction mirrors the sexual jealousy apparent in the appeals to federalism during that time, which signified that national intervention in women's suffrage was regarded by many as a threat to male control of families.¹⁶⁰ In the suffrage debates, access to the vote would have provided women with new political influence and independence outside of direct control by their husbands or other men. As such, efforts on the part of the states to prevent a federal amendment could be described as jealously guarding their women.

The occupiers also couch their arguments in federalist terms as an attempt to protect their own privilege and authority. As discussed previously, Johnson describes self-centeredness as one of the primary characteristics of masculinity in patriarchal systems.¹⁶¹ Federally owned land in the West is ultimately communally owned land. The land that Cliven Bundy unlawfully grazed his cattle on was conservation land.¹⁶² Theodore Roosevelt established the Malheur Wildlife Refuge after hunters severely threatened bird populations.¹⁶³ The Refuge was also home to thousands of Native American artifacts and was the site of a Paiute burial ground.¹⁶⁴

159. Siegal, *supra* note 91, at 947.

160. *Id.* at 1000–01.

161. JOHNSON, *supra* note 105, at 12.

162. Fuller, *supra* note 10.

163. *About the Refuge*, U.S. FISH AND WILDLIFE SERV., <https://www.fws.gov/refuge/Malheur/about.html> [<https://perma.cc/VKD4-DT4S>] (last visited Feb. 2, 2018).

164. Sam Levin, *Fresh outrage after militia seen rifling through tribal artifacts at Oregon refuge*, THE GUARDIAN (Jan. 21, 2016), <https://www.theguardian.com/us-news/2016/jan/21/oregon-militia-standoff-malheur-wildlife-refuge-native-american-artifacts-paiute-tribe> [<https://perma.cc/FC2U-FG47>].

The occupation often framed its arguments in terms of democratizing the land. The occupiers repeated that the land ought to belong not to the federal government, but to the people and local governments.¹⁶⁵ Ammon Bundy declared in a press conference, “The land titles need to be transferred back to the people.”¹⁶⁶ LaVoy Finicum similarly told reporters on one of the first days of the occupation, “We’re not making demands. We’re here to work. These buildings here belong to Harney County. These are Harney County public lands. The state of Oregon, this is theirs. This is their land. This is their state. It’s theirs. And so we’ve come here to work.”¹⁶⁷ However, the occupation’s treatment of the land often didn’t line up with its statements. Though the land supposedly belonged to the locals, the militia members paved a road through it.¹⁶⁸ They also tore down a fence on a neighboring property without permission from the landowner.¹⁶⁹ LaVoy Finicum posted a video of himself going through Paiute tribe artifacts and declaring, “we want to make sure these things are returned to their rightful owners.”¹⁷⁰ Paiute tribal leaders spoke out against the occupation. Chairwoman Charlotte Rodrique told the press, “This land belonged to the Paiute people as wintering grounds long before the first settlers, ranchers and trappers ever arrived here. We haven’t given up our rights to the land. We have protected sites there. We still use the land.”¹⁷¹ She also stated, “[a]rmed protesters don’t belong here. By their actions they are desecrating one of our sacred traditional cultural properties.

165. Ammon Bundy, *Protesters Hold Press Conference in Oregon*, NBC NEWS (Jan. 4, 2016), <https://www.nbcnews.com/video/ammon-bundy-protesters-hold-press-conference-in-oregon-595580995710> [<https://perma.cc/SXD6-4AHR>] (1:30–1:50).

166. The Oregonian, *Ammon Bundy holds press conference at wildlife refuge headquarters*, YOUTUBE (Jan. 6, 2016), <https://www.youtube.com/watch?v=vwQ-jHg00Ns> [<https://perma.cc/R64S-3F25>] (1:48–1:51).

167. Ammon Bundy, *Protesters Hold Press Conference in Oregon*, *supra* note 165, at 1:30–1:50.

168. Sam Levin, *Oregon militia’s behavior increasingly brazen as public property destroyed*, THE GUARDIAN (Jan. 16, 2016), <https://www.theguardian.com/us-news/2016/jan/16/oregon-militias-behavior-increasingly-brazen-as-public-property-destroyed> [<https://perma.cc/QW64-QYBS>].

169. Hammill, *supra* note 65.

170. LaVoy Finicum, *Jan 20 Native American Artifacts*, YOUTUBE (Jan. 21, 2016), <https://www.youtube.com/watch?v=EzFhWAcu3i0&feature=youtu.be> [<https://perma.cc/F4UY-KMNC>] (0:29–0:32).

171. John M. Glionna, *How the Oregon militia standoff became a battle with a Native American tribe*, THE GUARDIAN (Jan. 6, 2016), <https://www.theguardian.com/us-news/2016/jan/06/oregon-militia-malheur-wildlife-refuge-paiute-indian-tribe-sacred-land> [<https://perma.cc/FN2N-NC4E>].

They are endangering our children, and the safety of our community, and they need to leave.”¹⁷² The insistence on Oregonian ownership of the refuge also raises a natural question: if the land belongs to Oregonians, why was the group occupying it composed of people primarily from out of state?¹⁷³ The militia’s actions, though regularly framed as in the public interest, were actually taken for self-interested purposes.

The patriarchy also helps to explain why these arguments were so appealing to those who did not live within these traditional family structures. Many of the occupiers were loners with criminal records.¹⁷⁴ Several of them had military experience, and others lied and said that they did.¹⁷⁵ Most were not even ranchers, but rather blue collar workers who experienced economic struggles and blamed them on the federal government.¹⁷⁶ Although these militia members may not have had a similar family structure to the Bundys, they did have something to gain from supporting a patriarchal structure — namely that as men they benefitted from the perpetuation of systems that prize masculinity.¹⁷⁷ These benefits are sometimes tangible in the form of economic advantages, but they also exist more intangibly as the satisfaction of fulfilling a masculine ideal. The anti-government ide-

172. *Id.* The Malheur Wildlife Refuge was established on land the Paiute tribe lived on for tens of thousands of years. After white settlers moved into the areas, the settlers forced the tribe onto a reservation. Even then, settlers continued to encroach on reservation land until in 1978 when the Paiute joined with the Bannock tribe in an uprising known as the Bannock War. The conflict lasted just a few months, but the Paiutes were forcibly removed to Washington. By 1883, President Chester Arthur converted the reservation into public, federally owned land. Since this time, the Paiute tribe has again acquired land in the area to form the Burns Paiute Indian Reservation. The refuge itself is protected under an agreement between the tribe and the federal government, and the tribe still uses the land for religious and cultural ceremonies. For more information and analysis on the history between the federal government and the Paiute tribe, see Glionna, *supra* note 171; Char Miller, *The complicated history of who really ‘owns’ the occupied land in Oregon*, WASH. POST (Jan. 7, 2016), https://www.washingtonpost.com/posteverything/wp/2016/01/07/the-complicated-history-of-who-really-owns-the-occupied-land-in-oregon/?hpid=hp_no-name_opinion-card-c%3Ahomepage%2Fstory&utm_term=.3b19640b8d8a [<https://perma.cc/22T4-PMFK>]; Cain Allen, *Malheur Indian Reservation*, THE OR. HIST. PROJECT (2005), <https://oregonhistoryproject.org/articles/historical-records/malheur-indian-reservation/#.Wj1NX1Q-fOR> [<https://perma.cc/L3M9-W2QP>]; Minerva Soucie, *The End of a Way of Life: The Burns Paiute Indian Tribe*, in THE FIRST OREGONIANS: AN ILLUSTRATED COLLECTION OF ESSAYS ON TRADITIONAL LIFEWAYS, FEDERAL-INDIAN RELATIONS, AND THE STATE’S NATIVE PEOPLE TODAY (1991).

173. THE OREGONIAN, *Faces of the Malheur Occupation*, *supra* note 15.

174. *Id.*

175. *Id.*

176. *Id.*

177. JOHNSON, *supra* note 105, at 5.

ology espoused by the Bundy's and the other leaders created a worldview in which these loners could take control and thus gain more masculinity. The control and authority they lacked in their personal lives could be acquired through this armed assertion over the federal government.

Ultimately, this belief that a severely limited federal government is central to the protection of liberty is based on the notion that control is a zero-sum game. The occupiers have separated themselves so entirely from the federal government that it becomes an enemy actor. When that actor exercises control over the land, it exercises control over the militia member's lives and threatens their livelihood and ability to serve as providers within their families. As their role as provider is central to their familial, gendered hierarchy, control over the land is a threat to these men's control over their families.

C. WARFARE AND LEGAL ACTIVISM

Hyper-masculinity can also explain the methods the militia used. The most conspicuous aspect of the occupation was its physicality. The occupation was characterized by the threat of violence as the militia both forcibly occupied territory and heavily relied on guns to maintain control and to support the mythology of their cause. However, this patriarchal approach to governance also manifested itself in other ways, most notably through Occupation members' particular interpretations of the law and the relegation of women to supportive roles.

1. *Physical Responses*

First, physical violence is perhaps the most obvious manifestation of the role masculinity plays in anti-government protests. War and other kinds of political violence serve as a mechanism to act out masculinity.¹⁷⁸ Because the patriarchy is driven by competition between men for control, war is a manifestation of both the practical desire to acquire more power and the valorization of

178. Joane Nagel, *Masculinity and Nationalism: Gender and Sexuality in the Making of Nations*, 21 RACIAL AND ETHNIC STUD. 242, 251–52 (1998).

acts intended to achieve masculinity.¹⁷⁹ Masculinity as a status, rather than a characteristic, is key to understanding why the occupiers reacted to the perceived overreach in such a drastic manner. By creating the perception of masculinity as something that is “larger than life,” men must be constantly working to achieve it.¹⁸⁰ Johnson notes that “[a]s part of men’s training, they are affirmed through what they accomplish,”¹⁸¹ meaning that men’s adherence to patriarchal standards is defined through their actions, not the character traits that they demonstrate. By centering the peak human experience in masculinity and then defining masculinity through actions, the patriarchy encourages a persistent and endless comparison on the part of men in which they constantly question how well they meet the standards of masculinity.¹⁸² Physical violence is a classic method through which men assert their masculinity, their dominance and control over those around them. The militia members accomplished this through their reliance on guns.

Guns played a particularly strong role in the ideology of the occupation. During the occupation, the leaders encouraged supporters specifically to bring their guns to the refuge to join in the cause.¹⁸³ Ryan Bundy told reporters during the occupation that without guns, the militia would show a “lack of seriousness,” and in his testimony in the resulting trial, Ammon Bundy stated that the occupiers’ guns “allowed [them] to express [their] First Amendment rights.”¹⁸⁴ The occupiers also routinely referred to the occupation in language typically reserved for war. They stat-

179. *See id.* (“Whether conquering the US frontier or ‘protecting’ the western hemisphere from European colonialism, Roosevelt’s masculinity depended on a chauvinistic, militaristic nationalism.”).

180. JOHNSON, *supra* note 105, at 13.

181. *Id.* at 12.

182. *Id.*

183. Sarah Dee Spurlock, FACEBOOK (Jan. 2, 2016) (1:16–1:17) <https://www.facebook.com/sarah.d.sandell/videos/vb.100000025532024/1112061878804653/?type=2&theater> [<https://perma.cc/EJD7-4PE7>] (Ammon Bundy calls for people to join them at Malheur, stating “we need you to bring your arms”).

184. John Sepulvado, *Ryan Bundy: Guns Show We’re Serious*, OR. PUB. BROAD. (Jan. 9, 2016), <http://www.opb.org/news/series/burns-oregon-standoff-bundy-militia-news-updates/ryan-bundy-of-the-malheur-occupation-guns-show-were-serious/> [<https://perma.cc/L4P7-QCDN>]; Maxine Bernstein, *Ammon Bundy: Guns allowed Oregon refuge occupiers to express First Amendment rights*, THE OREGONIAN (Oct. 6, 2016), http://www.oregonlive.com/oregon-standoff/2016/10/prosecutors_brief_cross-examin.html [<https://perma.cc/H3E2-7MHZ>].

ed that this was a cause they would die for.¹⁸⁵ After the 2014 standoff in Arizona, LaVoy Finicum stated on social media that he was “willing to die standing on this line.”¹⁸⁶ For the occupiers, central to their theory of liberty and freedom was the notion that physical violence might be necessary to protect their rights from the federal government, and that they were willing to engage in that violence.

While violence is often the response to perceived oppression by government regimes, the Malheur Occupation was unique in its offense-oriented approach. The occupation was often framed in defensive terms. The occupiers said that they needed to protect their families and their communities from government overreach.¹⁸⁷ However, even in contrast to the Bundys’ prior standoff with federal agents in 2014, the Malheur Occupation was particularly aggressive. In 2014, the family’s land and property was at risk. The government was seen as the aggressor because it was threatening to seize and impound Cliven Bundy’s cattle on federal land because of his failure to pay grazing fees.¹⁸⁸ For the Malheur Occupation, the occupiers had no direct personal stake. In theory, they were responding to the resentencing of the Hammonds, but in reality their grievances were with federal land management as a whole. They took over the wildlife refuge in an aggressive act to make their point about individual liberty and to attempt to force negotiations with the BLM.¹⁸⁹

This posturing is important. For one, while many in the Bundy family had joined and supported the 2014 standoff over the family property, the takeover of a federal building was considered much more surprising and ill-advised, particularly to many of the

185. Siobhan Fenton, *Oregon Occupation: Militia ‘willing to kill or be killed’ occupy US wildlife reserve*, INDEPENDENT (Jan. 3, 2016), <http://www.independent.co.uk/news/world/americas/oregon-occupation-militia-willing-to-kill-or-be-killed-occupy-us-wildlife-reserve-a6794366.html> [https://perma.cc/2MSX-PTLG].

186. LaVoy Finicum, *I thought I would share this exchange from Youtube between me and another person who sees things differently than me*, BUNDY RANCH BLOG (June 3, 2014, 9:21 PM), <http://bundy ranch.blogspot.com/2014/06/i-thought-i-would-share-this-exchange.html#comment-form> [https://perma.cc/3RXT-B8HK]. LaVoy Finicum was the only occupier who died during the occupation.

187. Bundy, *Dear Friends*, *supra* note 14, at 17:00–17:50.

188. Levin, *supra* note 27.

189. Maxine Bernstein, *Lawyers present starkly different portraits of refuge occupation in closing arguments*, THE OREGONIAN (Oct. 18, 2016), http://www.oregonlive.com/oregon-standoff/2016/10/lawyers_present_starkly_differ.html [https://perma.cc/63XU-RBSP].

women in the family.¹⁹⁰ The occupation of the Malheur Wildlife Refuge was ultimately just that — an occupation. The fact that it was an aggressive action speaks to the positioning of masculinity as a series of actions. If the occupiers believed that the government threatened their masculinity, defensive actions alone would not have served to reinforce their dominance. Rather, by taking the affirmative step of occupying the refuge, the occupiers demonstrated that they possessed both the characteristics of patriarchal manhood (namely aggression, control, etc.) and the hyper masculine need to fulfill those characteristics. Johnson argues that “[i]n order to feel normally alive, patriarchal men must be larger than life. This makes it difficult to develop an acceptable sense of self as an ordinary human being with a relatively stable center from which to relate to other people.”¹⁹¹ An overdedication to masculine ideals under the patriarchy can help explain why this group responded to the mere existence of federally owned land and the reality of taxes in such an extreme manner. There are certainly other factors that would contribute. The economic hardships apparent in rural communities certainly played a role, and likely a more obvious one than hyper masculinity. However, economic hardship alone does not explain the drastic actions taken by the group, nor does it capture the distinctly gendered ways in which the group responded to the perceived federal overreach.

2. *Legal Responses*

Additionally, the militia responded to the perceived overreach in a particularly legal way. As discussed in Part II, the occupiers made several arguments about the legality of federal land ownership, which were largely inaccurate in their interpretation of the Constitution in light of precedent. They took a similar approach to the rest of their legal arguments. For one, the initial catalyst in this protest was the resentencing of the Hammonds, which

190. Levin, *supra* note 27. Shiree Bundy, Cliven’s oldest daughter, told The Guardian, “I thought, ‘Oh my gosh, what are they thinking?’ In my personal opinion, I did not think it was a good idea.” Bailey, another daughter, said she found out about the plans while watching the livestream. She described feeling, “just kind of shocked, because none of us knew. I had to catch myself up to try to understand. Why would they take over a federal building?” *Id.*

191. JOHNSON, *supra* note 105, at 13.

Bundy labeled corrupt and illegitimate.¹⁹² Before the protest even began, the Bundys sent a letter to the sheriff in Burns asking him to defy federal officers by placing the Hammonds in protective custody to prevent their arrest.¹⁹³ They also relied on a broad interpretation of the Tenth Amendment, stating in a blog post that: “In the 10th Amendment only a very few enumerated powers are given by the people to the federal government. All other powers and rights are reserved to the states respectively or to the people.”¹⁹⁴ They posted a “Notice: Redress of Grievance” on the Bundy Ranch blog before the occupation as well, in which they speculated that Congress doesn’t have the authority to set minimum sentences, that the grand jury that indicted the Hammonds was fake, and the federal government was abusing the court system to force the Hammonds to sell their property.¹⁹⁵ This argument was a running theme for the militia: that the government was acting outside its legal bounds of authority.

As expected, this messaging continued throughout the trial in Oregon. The occupiers attempted to argue that the entire trial was illegitimate because the federal government didn’t own the land they had occupied.¹⁹⁶ Whenever the judge ruled against the defendants, the family declared the whole ordeal was a “kangaroo court.”¹⁹⁷ Three of the leaders, Ryan Bundy, Kenneth Meden-

192. Bundy, *Dear Friends*, *supra* note 14 at 15:50–17:12.

193. Press Release, Cliven Bundy, Bundy Ranch Blog (Jan. 2, 2016 9:58 AM), <http://bundryranch.blogspot.com/2016/01/for-immediate-press-release-cliven-d.html> [<https://perma.cc/HY9K-8NHY>].

194. Bundy, *Liberty Freedom For God We Stand!*, *supra* note 155.

195. *Notice of Redress of Grievance*, BUNDY RANCH BLOG (Dec. 11, 2015, 7:07 AM), <http://bundryranch.blogspot.com/2015/12/notice-redress-of-grievance-action.html> [<https://perma.cc/NEJ9-KMYJ>]. The Supreme Court declared the Tenth Amendment to be a truism in *United States v. Sprague*, 282 U.S. 716, 733–34 (1931) (“It added nothing to the instrument as originally ratified, and has no limited and special operation, as is contended, upon the people’s delegation by Article V of certain functions to the Congress.”).

196. Decl. for Def. Ammon Bundy’s Unopposed Mot. to Extend Deadline for Mot. to Dismiss for Lack of Jurisdiction at 1–2, *United States v. Ammon Bundy*, No. 3:16-CR-00051 (D. Or. Apr. 22, 2016), ECF No. 454. These arguments rely on their interpretations of both the Enclave and the Property Clauses in the constitution. Under the militia’s interpretation, the Property Clause permitted the federal government to own property only within territories. Once the territory became a state, the Federal Government had to give up the land unless they could take control of it in the narrow circumstances outlined in the Enclave Clause. Again, these arguments are out of line with judicial precedent in the area. *See* Blumm and Jamin, *supra* note 47.

197. Bundy Ranch, FACEBOOK (Oct. 17, 2016), <https://www.facebook.com/bundryranch/posts/1131158176960989> [<https://perma.cc/V86J-LUGJ>]; Bundy Ranch, FACEBOOK (Oct. 24, 2016), <https://www.facebook.com/bundryranch/posts/1137367599673380> [<https://perma.cc/GRY3-J9B7>].

bach, and Shawna Cox, all represented themselves in court, and the judge almost required Bundy and Medenbach to have legal representation after Bundy repeatedly challenged the court's jurisdiction.¹⁹⁸ Judge Brown stated in her order that Ryan Bundy raised "frivolous issues," including those "related to this Court's jurisdiction under Article III of the United States Constitution, the Court's asserted failure to provide him with a bill of particulars, and the false contention that he has not been provided any discovery in this case."¹⁹⁹ In her order to show cause threatening to suspend Bundy's right to proceed pro se, Judge Brown stated that Bundy had acted with "open defiance of the Court's authority in this case."²⁰⁰ After the main leaders of the occupation had been arrested and LaVoy Finicum killed,²⁰¹ Cliven Bundy declared on the blog that: "The US Constitution lays out a very plain simple form of inspired government. We as a nation only need to follow it!"²⁰² The militia members regularly dismissed judicial precedent in favor of their own interpretation of the Constitution, a mindset exemplified by the specific type of pocket Constitutions they carried around with them.²⁰³ Specifically, the militia used the Skousen Constitution, a version which includes the full text in the original spelling, but is also annotated with quotes from the Founding Fathers about the importance of religion to governance.²⁰⁴ The group regularly referred to these Con-

198. Steven Dubois, *Ryan Bundy can continue as own lawyer in Oregon refuge case*, STATESMAN J (Aug. 31, 2016), <http://www.statesmanjournal.com/story/news/2016/08/31/ryan-bundy-can-continue-own-lawyer-oregon-refuge-case/89646320/> [https://perma.cc/TUR9-R7TT].

199. Order to Show Cause as to Def. Ryan Bundy at 1–2, U.S. v. Ryan Bundy, No. 3:16-CR-00051 (D. Or. Aug. 24, 2016), ECF No. 1101.

200. *Id.* at 5.

201. Julie Turkewicz et al., *3 More Arrests in Oregon as Protest Leader Says 'Go Home,'* N.Y. TIMES (Jan. 27, 2016), <https://www.nytimes.com/2016/01/28/us/oregon-standoff.html> [https://perma.cc/4HGE-JZVJ]; *1 dead, 8 arrested after leaders of armed group occupying refuge clash with FBI*, KATU (Jan. 26, 2016), <http://katu.com/news/local/leader-of-oregon-occupation-ammon-bundy-three-others-arrested> [https://perma.cc/UYM6-A8AL].

202. Bundy, *Liberty Freedom For God We Stand!*, *supra* note 155.

203. Nigel Duara, *Oregon armed protestors invoke the Constitution — annotated by a conspiracy theorist*, L.A. TIMES (Jan. 21, 2016), <http://www.latimes.com/nation/la-na-ff-oregon-standoff-constitution-20160121-story.html> [https://perma.cc/QKR6-SE9D]. While the militia's rejection of judicial authority was particularly apparent during the trial, their entire scheme was based on a rejection of hundreds of years of judicial precedent regarding the ability of the federal government to own and manage land within states. See Blumm & Jamin, *supra* note 47.

204. Duara, *supra* note 203.

stitutions during the course of the occupation, and could be seen carrying them in their pockets at several interviews.²⁰⁵

The legal arguments made by the Malheur occupiers are twofold: first, that the federal government has wrongly interpreted the Constitution and is acting beyond the intended scope of its authority in most everything it does, and second, that the militia knows better than federal courts or Congress what the Founding Fathers intended. This fixation on unsupported legal arguments — and the belief that they alone know how to properly interpret the Constitution — is a particularly interesting aspect of the occupation, and brings together the concerns related to nested sovereignty and masculinity as well. Simpson argues that one of the methods through which nested sovereignties assert their own sovereignty and deny the authority of the absolute sovereign is by employing their own interpretation of the governing rules.²⁰⁶ For the Malheur Occupation this involves reimagining the terms of the Constitution. Since *United States v. Gratiot*, the Supreme Court has declared that Congress has the power to own and control land within states “without limitation.”²⁰⁷ By denying the controlling interpretations of the Constitution, the occupiers subvert the authority of the federal authorities and the federal judiciary. They reinforce the sovereignty of their own family unit against the absolute sovereign by literally refusing to play by its rules, while continuing to insist that they are the real patriots. That fact is key — they don’t deny the existence or the validity of the rules (the Constitution) themselves, just their application by the sovereign. In their eyes, they win the battle of patriotism because they understand the nation’s rules and moral obligations better than the sovereign.

The arena of nationalist politics is ripe for hyper-masculine grandstanding. Nagel argues that “nationalist politics is a major venue for ‘accomplishing masculinity’” because of the hierarchal structure and militaristic values that nationalistic politics tend to espouse.²⁰⁸ The use of constitutional interpretation in these circumstances to reject all federal authority over their actions was an opportunity for the occupiers to assert their masculinity. As Nagel argues, “[p]atriotism is a siren call that few men can resist,

205. *Id.*

206. SIMPSON, *supra* note 20 at 115.

207. *United States v. Gratiot*, 39 U.S. 526, 537 (1840).

208. Nagel, *supra* note 178, at 251–52.

particularly in the midst of a political ‘crisis.’”²⁰⁹ Framing the scenario as one in which the values and the future of the country were at risk from the threat of an unhinged, authoritative federal government allowed the militia to portray themselves in particularly masculine roles. They are protectors of their families and communities in both economic and legal ways. The economic fears related to control of natural resources may have ignited this patriarchal response, but the legal and political framing allowed the occupiers to paint themselves in particularly moralistic terms, couching their controversial views in fundamental concerns for liberty and equality and thus aggrandizing their cause.²¹⁰ Therefore, employing and relying on their own legal vision for the United States was a powerful tool to assert masculine dominance over the perceived threat brought by federal land management.

Finally, the role that women played in the occupation is a particularly strong lens through which to examine the gender hierarchy present in the anti-government protest. While the men of the movement were more reluctant to speak in explicitly gendered terms, the women themselves openly reinforced traditional gender roles. This is clear both for the women that actually participated in the occupation and the wives of the occupation leaders.

Johnson explains that women’s primary role in patriarchal structures is to act as “mirrors.”²¹¹ Women play an important part within the patriarchy of assuring men that they are men. They act as figures men can assert control over, particularly when those men have very little power elsewhere in the patriarchy.²¹² They provide a link to emotions when men are otherwise taught to suppress those emotions, and serve as sexual objects for men to use.²¹³ Women in the patriarchy play the role of encour-

209. *Id.* at 252.

210. See JOHNSON, *supra* note 105, at 13 (“Even the losers and the male spectators share in the reflective glow of the noble masculine striving after the coveted opportunity to stand before the mirror that makes us look better than we are.”).

211. *Id.* at 12 (citing VIRGINIA WOOLF, *A ROOM OF ONE’S OWN* (1929), in which Woolf says that women serve as “looking glasses possessing the magic and delicious power of reflecting the figure of man at twice its nature size”). Johnson argues that women in the patriarchy are trained to reinforce the self-centered expectations of men. *Id.* Mary Becker expands on this point by arguing “women assuage male egos.” Becker, *supra* note 121, at 27. She explains that women contribute to the centering of masculinity and men by “deferring to them, by allowing them to set the agenda and do most of the talking, and by stroking their egos in countless other ways.” *Id.*

212. Becker, *supra* note 121, at 27.

213. *Id.* at 28.

aging and allowing men to focus on their own masculinity, both in their assurances that these men are fulfilling masculine ideals and by providing opportunities for men to take affirmative masculine actions.

The women at the refuge during the occupation played highly traditional roles. In the day-to-day routine of the occupation, the men took shifts standing guard around the refuge while the women performed supportive domestic duties. Oregon Public Broadcasting explained that “[w]hile the men militants give press briefings, lecture reporters on the constitution, and stand guard with semi-automatic rifles, the women sort incoming supplies, make giant pots of chili, and wash clothes.”²¹⁴ Unlike the men, the women rarely carried weapons and spent most of their time in the kitchen.²¹⁵ When speaking to reporters, many of the women emphasized the way that the men were serving as protectors, while the women served in supportive roles. Melissa Cooper, wife of Ammon’s right-hand man Blaine Cooper, told reporters, “They need women here. These guys go out there and sit in this cold, in two degrees. They’re protecting me.”²¹⁶ Another woman, Debra Bass, said she believed that the occupation could end if the militia and the government were just able to get together to negotiate peacefully, while insisting “[b]ut I’m a nobody.” She said she would stay to cook at the refuge “for as long as it takes. We women, we are helpers. That’s how we are created, and that’s what we do here.”²¹⁷ So the women of the occupation cooked meals for the men. They did laundry, cleaned, and set up new arrivals.²¹⁸ They even re-organized a fitness area into a stock room for supplies.²¹⁹ Both Cooper and Bass worked outside the home in traditionally masculine jobs prior to the occupation.²²⁰ Cooper was a warehouse worker before quitting her job and joining her husband at the occupation.²²¹ Bass is an Air Force veteran and former Sheriff’s deputy.²²² Yet within the confines of the wildlife

214. Peacher, *supra* note 63.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

refuge, these women served the cause by taking on the domestic roles that conform to stereotypes of femininity.

The women at the refuge supported the hyper-masculine endeavor by performing the role of mirrors. As women often do within patriarchal systems, these women contributed to the image of the male occupiers as masculine, dominating figures by reflecting a magnified image of their masculinity back at them. They emphasized that the men were “protecting” the women, further perpetuating the image of these men as providers and guardians of their community. They also deferred to the men’s decisions, allowing them to speak to the press, explain their constitutional beliefs, and otherwise lead negotiations with law enforcement.²²³ Both of the women quoted had experience with guns, and yet both allowed the men to stand guard instead.²²⁴ Bass, who was former law enforcement, chose to stay inside and cook rather than patrol. These women helped to confirm the male occupation leaders’ masculinity by assuring the men that they were in control, they made the decisions, and they played the primary role in the community. This fulfilled men’s expectations that they will “see only themselves and their needs reflected back in relationships with individual women.”²²⁵

Shawna Cox was the only woman among the occupation’s leaders. She was arrested during the same highway stop as the Bundys, and was in the car that LaVoy Finicum drove. She stands out as the only woman charged in connection to the occupation, and in many ways was the only woman representing the occupation. However, she too played a highly traditional role. She was involved in the 2014 standoff in Arizona and was described as the “Bundy’s live-in personal secretary.”²²⁶ She acted as a spokeswoman during the course of the occupation, and sought to explain the occupation and its message by publishing her writing. She wrote a book after Cliven Bundy’s 2014 standoff about the details of the event and the Bundy family’s beliefs about the government, insisting on the book’s back cover that the standoff was “not about cows, but something much bigger.”²²⁷

223. *Id.*

224. Peacher, *supra* note 63.

225. Becker, *supra* note 121, at 27.

226. *Who is Shawna Cox*, *supra* note 62.

227. SHAWNA COX, *LAST RANCHER STANDING: THE CLIVEN BUNDY STORY A CLOSE-UP VIEW* (1st. ed. 2014).

Cox — though a more public figure within the occupation than the women working in the kitchen — was allowed a leadership position only because she fulfilled a feminine role. She was a secretary — a helper in the same way the women in the kitchen described their roles as helping the men. She shaped the message of the occupation by dramatizing the men at its helm, portraying them as idealists, classic cowboys, and rebels. In her role as recorder, she retold the events to the men themselves in ways that confirmed and emphasized their masculinity. She remained a distinctly feminine figure within the occupation. When law enforcement pulled over the car she was in, one of her fellow militia members responded to shots fired by law enforcement by telling them that there were “women in the car.”²²⁸ While the rest of the men lacked titles, Cox stood out in her official role as “secretary,” thus emphasizing her role as support, not leader.

The wives of the occupation leaders also encouraged the hyper-masculine image their husbands sought. Throughout the occupation, these women supported the perception that their husbands were protecting their families. The reality of the occupation is that the wives of Ryan and Ammon Bundy were left alone to care for their children — 14 between the two of them — while their husbands went off to occupy the Malheur Refuge.²²⁹ After Ammon, Ryan, and two of their other brothers were jailed, they left their wives with 25 children and almost no income.²³⁰ From a purely economic standpoint, it is counterintuitive to believe that their husbands’ actions helped the family. Nonetheless, these women continued to emphasize their husbands’ dedication as fathers. Many of the women were active on social media, and on those accounts there were several pleas to let the men out of prison so that they could come home to their children.²³¹ Much of the language insisted that any absence on the part of the fathers was the fault of the government, not the fathers themselves. One Bundy wife wrote on the Facebook page, “that is why our hus-

228. Maxine Bernstein, *Oregon standoff defendant Shawna Cox takes stand, plays video of her arrest*, THE OREGONIAN (Oct. 13, 2016), http://www.oregonlive.com/oregon-standoff/2016/10/oregon_standoff_defendant_shaw.html [<https://perma.cc/7AQ9-4XAF>].

229. Levin, *supra* note 27.

230. *Id.*

231. See, e.g., Bundy Ranch, FACEBOOK (May 3, 2016), <https://www.facebook.com/bundyranch/photos/a.624209630989182.1073741827.623383454405133/1013315395411935/?type=3&permPage=1> [<https://perma.cc/Z2CY-T877>]; *This is Back in the Good Old Days*, BUNDY RANCH BLOG (Mar. 8, 2016, 11:50 AM), <http://bundyranch.blogspot.com/2016/03/this-is-back-in-good-ol-days-when-these.html> [<https://perma.cc/4PLN-TLDJ>].

bands and children have been ripped apart from each other.”²³² In an interview, Lisa Bundy, Ammon Bundy’s wife, stated that she felt her family was doing God’s work at the refuge, saying “God is in control and we’re just trying to be tools in his hands.”²³³

The work these women did to encourage their husbands is not unusual for women. Under the patriarchy, masculinity is valued above all else, and women participate in this valorization.²³⁴ Joane Nagel noted this phenomenon in the context of war, saying that “counter to the common stereotype of mothers attempting to hold back their sons as they march off to war, Boulding . . . reports that many mothers of conscientious objectors during World War II opposed their sons’ pacifism.”²³⁵ Women who support the patriarchal centering of masculinity can actually encourage men to take masculine actions even when it is counter to their interests because they believe it is ultimately how men should act.²³⁶ By doing so, women once again act as “mirrors,” reflecting their husbands’ masculinity and amplifying it back to them by agreeing and insisting that those traditionally masculine actions are for the women’s benefit and protection.

The occupiers’ various responses to their disagreement with federal land management signify their reliance on patriarchal assumptions of masculinity. The physical force used to take over the federal refuge and the threat of violence used to maintain it were a classic way to assert dominance over federal officials, but their reliance on the Constitution also provides an interesting opportunity to examine how hyper-masculine competition functions in legal frameworks.

IV. CONCLUSION

Characterizing federalism as just a balance between the federal government and the states misses the community and local power structures that are protected through limitations on the

232. Bundy Ranch, FACEBOOK (Dec. 5, 2016), <https://www.facebook.com/bundyranch/posts/1179388745471265> [<https://perma.cc/XT7L-UXPB>]. The post is signed by Briana Bundy, wife of Mel Bundy, who is Cliven’s second-eldest son.

233. shuff1111, *Interview with Lisa Bundy at Malheur Refuge 2-25-2016*, YOUTUBE (Feb. 25, 2016), https://www.youtube.com/watch?v=imZjv_pe1FI [<https://perma.cc/SLA4-8SEG>].

234. JOHNSON, *supra* note 105, at 12–13.

235. Nagel, *supra* note 178, at 252.

236. *Id.*; see also Steve Bearman et al., *The Fabric of Internalized Sexism*, 1 J. OF INTEGRATED SOC. SCI. 10 (2009).

federal government. For the Malheur Occupiers, at risk in federal land management is the traditional structure of the family unit, with the patriarchal head asserting control and dominance over his dependents through his control of the resources. When this control is threatened, the militia responded through violence and a rereading of the legal rules at play.

The occupation of the Malheur National Wildlife Refuge can easily be dismissed as a group of extremists, out of touch with the realities of governance and the twenty-first century advances that have moved the country away from ranching and farming. Yet, the group's extreme take on federalism is not out of step with more mainstream conservative arguments that are as much of a threat to progress as the Malheur militia. Conservatives still rely on states' rights as an argument against abortion rights, nationalized healthcare, and more.²³⁷ Federalism at its best is a devotion to the democratic process. It promotes civic engagement, and encourages a tailored form of governance that adapts to the people who live there. But federalism is too often cited to protect structural inequalities and stymie social change. Advocates that frame traditionally domestic issues as "state's rights" often do so not because it's truly an issue that would benefit from the flexibility and responsiveness of local government, but because decentralizing the issue prevents real challenges to traditional gender roles. We should be critical of any attempt to "leave it to the states" when that call is simply a front to permit local discrimination that is losing favor on the national stage. The Malheur occupation is an extreme example, but it is a logical progression of the ideology that once rejected women's suffrage and protected slavery and now seeks to limit abortion and trans rights. Federalism as a concept can provide meaningful freedoms, but when wielded to protect patriarchal dominance over women in rural communities, it is an enemy to the freedom it espouses.

The Malheur occupation is particularly concerning in light of its popularity and successes. The failure of law enforcement to follow up on the 2014 standoff in Arizona directly encouraged the

237. Robert King, *States rights vs. access at the heart of abortion case*, WASH. EXAMINER (Nov. 14, 2015), <http://www.washingtonexaminer.com/states-rights-vs-access-at-heart-of-abortion-case/article/2576335> [<https://perma.cc/575G-BQEF>]; Francis Wilkinson, *Conservatives and the Rotten Smell of States' Rights*, BLOOMBERG (Sept. 23, 2017), <https://www.bloomberg.com/view/articles/2017-09-23/conservatives-and-the-rotten-smell-of-states-rights> [<https://perma.cc/99EH-JPHG>].

Bundys to take more aggressive steps at Malheur. After the federal jury in Oregon acquitted the leaders in October 2016 for their actions at Malheur, the Bundys once again got away with initiating armed conflicts with the federal government.²³⁸ Even after the family eventually faced charges for their 2014 standoff in Arizona, the judge declared a mistrial in the case because federal prosecutors withheld key evidence from the defense.²³⁹ The judge also dismissed the case with prejudice, so prosecutors will not get another chance.²⁴⁰ The repeated failure of the federal government to successfully prosecute the family risks encouraging the Bundys and others to take similar actions.

Additionally, the occupation brought the issue of federal land transfer back to the national conversation. The Republican National Committee has endorsed the prospect of turning federal land over to State governments or private control,²⁴¹ and the House of Representatives recently approved rule changes that expedites the process of that transfer.²⁴² Those efforts were stalled in February 2017, when Congressman Jason Chaffetz introduced a bill that would have required the Secretary of the Interior to sell 3.3 million acres of national public land, and then withdrew the bill after opposition from both conservationists and hunters.²⁴³ As a political candidate, Donald Trump appeared to support federal land transfer, and in December 2017, President

238. Courtney Sherwood and Kirk Johnson, *Bundy Brothers Acquitted in Takeover of Oregon Wildlife Refuge*, N.Y. TIMES (Oct. 27, 2016), <https://www.nytimes.com/2016/10/28/us/bundy-brothers-acquitted-in-takeover-of-oregon-wildlife-refuge.html> [https://perma.cc/Q3JT-KXWY].

239. Leah Solittle, *Judge declares mistrial in case against rancher Cliven Bundy, sons and militiaman*, WASH. POST (Dec. 20, 2017), https://www.washingtonpost.com/national/judge-declares-mistrial-in-case-against-rancher-cliven-bundy-sons-and-militiaman/2017/12/20/49d91c24-e5c8-11e7-a65d-1ac0fd7f097e_story.html?utm_term=.3f5c1b662e2b/ [https://perma.cc/2RZU-G5YR].

240. Maxine Bernstein, *Cliven Bundy standoff case thrown out in another stunning blow to government*, THE OREGONIAN (Jan. 8, 2017), http://www.oregonlive.com/oregon-standoff/2018/01/cliven_bundy_standoff_case_thr.html [https://perma.cc/ANM2-Z9YV].

241. Stephanie Mencimer, *It's Not Just Militia Members Who Want to Take Over Federal Land*, MOTHER JONES (Nov. 2015), <http://www.motherjones.com/politics/2016/01/kenivory-federal-land-bundy> [https://perma.cc/K85E-UDZU].

242. Stuart Leavenworth, *House opens door for transfer of federal lands: Will Trump play ball?*, DESERET NEWS (Jan. 14, 2017), <http://www.deseretnews.com/article/865671140/House-opens-door-for-transfer-of-federal-lands-Will-Trump-play-ball.html> [https://perma.cc/NQZ8-CU9X].

243. Caty Enders, *Republicans back off bill to sell 3.3m acres of public land after public outcry*, THE GUARDIAN (Feb. 2, 2017), <https://www.theguardian.com/environment/2017/feb/02/republican-selling-public-lands-bill-withdraw-jason-chaffetz> [https://perma.cc/6H67-BVJL].

Trump reduced the size of two national monuments in Utah by almost 2 million acres.²⁴⁴

Couched in claims of freedom, the rejection of federal land management signifies a much larger concern for the authority and privilege of white rural Christian men. Anxieties about diminishing racial and gender privileges have fueled an uptick in extremist, anti-government militias,²⁴⁵ and increasingly the mainstream political discourse has embraced these anxieties. The 2016 presidential election was characterized by allegations of sexual assault, racist rhetoric, and the overall goal of “Making America Great Again.” Like the Malheur militia, this election appealed to a return to the past and a demonization of the national political forces that have helped propel America into the future. The Malheur militia members may be extreme in the degree to which they deny federal sovereignty, but they are not alone in doing so. Nor are they alone in their desire to preserve the patriarchal family structures that have held feminism back at every turn.

244. Donald J. Trump, *Trump: Nevada, US need a president who obeys rule of law*, RENO GAZETTE J. (Jan. 7, 2016), <http://www.rgj.com/story/opinion/voices/2016/01/07/trump-nevada-us-need-president-who-obey-rule-law/78422530/?from=global&sessionKey=&autologin=> [https://perma.cc/5DXT-BSCJ]; Keith Schneider, *In an unprecedented action, Trump dramatically shrinks two national monuments in Utah*, L.A. TIMES (Dec. 4, 2017), <http://www.latimes.com/nation/la-fg-trump-national-monuments-20171204-story.html> [https://perma.cc/5MD7-77WJ].

245. Kimmel & Ferber, *supra* note 19; AMY COOTER, AMERICANNES, MASCULINITY, AND WHITENESS: HOW MICHIGAN MILITIA MEN NAVIGATE EVOLVING SOCIAL NORMS (2013) (unpublished Ph.D. dissertation, University of Michigan).