

DON'T ASK, DON'T TELL, DON'T BE:
A PHILOSOPHICAL ANALYSIS OF THE GAY BAN IN THE US MILITARY

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The issue of gays in the military has been hotly debated since the end of the Cold War, but it has usually been debated (at least superficially) in the context of pragmatic policy analysis. What has almost always been left out of the public discussion is what is truly at the core of the matter: philosophy. Taking the Constitution and other documents as the stated philosophy of the nation, "Don't Ask, Don't Tell, Don't Be: A Philosophical analysis of the Gay Ban in the US Military" presents philosophical arguments for open homosexual service while debunking common philosophical arguments against such service. It further explores parallels of integration and other forms of discrimination and explains why "Don't Ask, Don't Tell" is not significantly different than the policy it replaced.

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Prologue

I think it is important for me to address why I chose this topic. I have a background that is atypical within the officer corps. I was raised in a church that had as members of its congregation a number of open homosexuals. I had a lesbian youth group leader and through the church became friends with several gays of my own age. I was simultaneously very active in the Boy Scouts of America, an organization that has declared homosexuality unwholesome and inappropriate within its ranks. As I grew older, I began to have problems resolving the official stance of the BSA with what I knew to be true of homosexuals from my personal experience. The BSA was something I loved, but I thought its attitude toward homosexuals was harmful to the image of the organization and into the minds of the young men who were involved in Scouting. By virtue of the institution declaring homosexuality to be a negative trait, many scouts found it easy to express prejudice against gays. After all, if the BSA says that gays ought to be excluded from scouting, it is not much of a stretch to see them as labeling gays as not only “morally inferior,” but as inferior in general. It is impossible to say—especially in the eyes of impressionable young men—that a person should be treated with the same respect as others when the policy of the organization is that homosexuals are not good role models, regardless of any aspect of their life except their sexual orientation.

I also noticed that this single policy caused many members of my church to view the Boy Scouts as incongruent with their own beliefs, despite the fact that both organizations were committed to many of the same ideals: community service, care for the environment, charity, moral and ethical development, and general civic responsibility. I came to see the issue of homosexuality as a wedge between two groups that I cherished, a divisive topic to be avoided in both circles.

My cousin came out of the closet to me when I was sixteen, but he kept it from much of my family for more than year after that. He asked me to keep it a secret because he didn't know how my parents would react, and he didn't want to create a rift in the family. I had known other homosexuals who had either experienced family problems because of their orientations or kept their homosexuality a secret for fear of reprisal or disownment. The family did not split apart when my cousin came out to my parents

and sisters, but seeing his pain in having to conceal a vital part of his identity from the people he cared about brought me to appreciate the situation many homosexuals are forced to deal with.

I applied to West Point shortly after being awarded the rank of Eagle Scout and, upon reporting to the Academy, found a similarly disheartening attitude toward gays was common among many of the cadets and officers. After hours and hours of “respect” classes that dealt with racial, religious and sexual discrimination and harassment, one group remained noticeably unaddressed: gays. The silence may as well have been a green light for people to promote a negative, disparaging image of homosexuals. It was made clear that discrimination against women and racial or religious minorities would not be permitted, but although the formal DoD stance towards homosexuals is supposedly one of tolerance, the idea that “committing homosexual acts” somehow made people unfit for military service could not do anything but label them as second-class individuals who were detrimental to the Army.

I wrote my first philosophy paper on the issue of gays in the military. When I began, I thought I would be arguing that the practical considerations of the Army would override the wellbeing of a few soldiers, something that is accepted in the military out of sheer necessity, but I found myself confronted by a smattering of illogical and impractical excuses. I found that despite my best efforts I could not rectify the current policy of the Department of Defense with what I had learned about the practical aspects of homosexual military service.

I believe the Gay Ban, whether in previous guises or in the current “Don’t Ask, Don’t Tell” form, is harmful to the Army psychologically, pragmatically, and morally, but the aim of this paper is not to discuss the practical reasons for why the policy should be abandoned. These will be presented in a cursory manner, but the policy side of this issue has been addressed many times. It is the ethical and philosophical side that has been neglected, a sad sign of how the priorities of the nation have shifted. The Army often talks of doing the harder right rather than the easier wrong, and now it is time to put the policy where the propaganda is. Allowing the open service of gays in the military is the right thing to do, no matter how difficult a transition it may be.

Methodology

Given my personal involvement in the issue, the danger of letting emotion or personal experience overrun my logic is a real one. I will not bother to feign dispassion in this matter; by my own admission, I am biased at the personal level. Yet I think it would be foolish to hold my personal interest in this subject against me. Philosophy may be articulated in the language of logic and reason, but feeling passionately about the subject of one's work does not necessarily work against the credibility of the argument. On the contrary, a person with an intense personal interest must, if he is truly committed to his beliefs, pursue the most rigid and disciplined approach to the subject at hand. To put up a false premise as evidence, or to allow myself to give the benefit of the doubt to my own biases would only undermine the validity of my argument and work against my own interests. My argumentation must be thorough and undertaken carefully and properly.

To this end, I must first establish the context for the debate. The regulation at the heart of this debate, the infamous "Don't Ask, Don't Tell" policy, is quoted in its entirety below:

E3.A1.1.8.1.1. Homosexual conduct is grounds for separation from the Military Services under the terms set forth in subparagraph E3.A1.1.8.1.2., below. *Homosexual* conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates *a likelihood that the member engages in or will engage in homosexual acts. A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service under this section unless manifested by homosexual conduct in the manner described in subparagraph E3.A1.1.8.1.2.*ⁱ
(Italics theirs; see Appendices I&II for definitions and discharge criteria)

Essentially, the regulation reads that service members will not be separated because of their sexual orientation, but for either being caught engaging in a homosexual act or for making a statement indicating a propensity to engage in those acts. DoD officials cannot ask a service member her sexual orientation, thereby giving the impression that a homosexual in the military does not have to lie about her orientation. But the truth is that gay service members will be forced to lie on any number of other occasions, and to "lie in action" by pretending to be something they are not. In a technical sense, though,

the policy does not prohibit homosexuality. It prohibits homosexual acts, which, according to regulations, includes something as simple as stating that one has the urge to engage in homosexual acts.ⁱⁱ It is for this reason that the policy is so offensive to my instincts. If DoD policy were that homosexuals were simply not allowed to serve and the people who made the regulation were willing to stand up and acknowledge that, it would at least be an indication of courage and honesty on their part. Instead, the policy pretends to allow homosexuals to serve, but denies homosexuals the right to exercise any of the practices that define their sexual orientation. This is akin to saying that a person may be Roman Catholic but cannot receive the sacrament in public or even let it be known that he desires to participate in Communion. I will ultimately conclude with deeper argumentation supporting this perspective: to deny someone personal and public expression of his own nature is fundamentally no different than denying the legitimacy of his nature.

My eventual aim is to show that the current Department of Defense policy is no better than the one preceding it in terms of discriminating against homosexuals. The real challenge lies in showing that this sort of discrimination is both incoherent and wrong. I will show that the core of the founding principles of the nation is respect for individual rights and government neutrality towards the preferences of individuals. From there, I will argue that the Army must reflect the fundamental principles of the nation it serves, except when doing so would place the Army or nation at risk. I will then show why a person's sexual orientation is just as fundamental to her identity as race, religion or gender. Common arguments against allowing the open service of homosexuals will be addressed and logically evaluated, bringing me back to the issue of "Don't Ask, Don't Tell," which I will demonstrate is a wholly unacceptable "compromise" that does nothing to advance the rights of homosexuals in the Armed Forces, and may actually undermine the legitimacy of the Armed Forces more than an outright ban.

The Values of the Nation

The notion of "values" in the public arena is a contentious one. The term itself has become synonymous with religious ideals or grandiose humanistic virtues, more commonly known as "thick" conceptions of the good. Thick conceptions of the good represent an ordered and often very particular

view of how things ought to be, from a Christian kingdom or Islamic Shari'ah state to a Communist utopia. Supporters of these sorts of belief systems hold them to be exclusive; a Communist state cannot abide people who are not willing to obey the collective will of the people.

America, however, was not founded (at least in principle) on ideals of uniformity or exclusion. On the contrary, John Locke's liberal democratic values of "life, liberty and property" are individual rights, rights the government is bound to respect rather than collective values the individual is forced to conform to.ⁱⁱⁱ Locke's writings were a major influence on the attitudes and political beliefs of the founding fathers. His ideas permeate both the legal documents and personal writings of the nation's founders; his fundamental rights—life, liberty and property, the things over which each citizen is sovereign—are included in the Fifth Amendment and paraphrased in the Declaration of Independence.^{iv v} They are the essence of liberal society, a thin conception of the good formed around the legal equality of individuals.

Life and property are easily defined; a person's life is his existence and his property is the sum of the things he owns. Liberty, on the other hand, is an abstract. The very word "liberal" is rooted in the idea of liberty, yet it is difficult to make tangible the abstracts that define the concept around which our entire society is based. In the context of an individual's relationship with his government, however, I propose that it means this: respect for and protection of individual rights and neutrality toward the preferences of the individual.

Detractors of the founding fathers are quick to point out that their values on paper may not have matched their personal practices. Many of them were slave owners; some even fathered children with those slaves. They failed to give women voting rights in the Constitution and allowed for the oppression and exploitation of Native Americans. It is clear, then, that many of the values we hold dear today were not necessarily embraced by the founding fathers. How can their legacy be the basis for a thoughtful, modern discussion of political philosophy?

This objection would be well-made except that it misunderstands the argument. This is not a blind appeal to the founding fathers, who are oft-abused by those who paint them as infallible geniuses,

but the identification of the basic ideals of the nation. These ideals—which have perhaps blossomed further in the last two centuries than any of the founding fathers could have predicted—transcend generations. If these ideals were exclusive to the conventions of the 18th century or any other time in history, it would be a sad commentary on the state of moral advancement in our nation if they were held as absolutes several generations after such a time. It is the basic principles—which our flawed fathers did not necessarily meet—that must be preserved, not the peculiar aspects of 18th-century colonial American society. They are ideals to strive for, nothing more or less.

If government policy is to reflect and further those ideals, the government must make the utmost effort to treat all citizens equally under the law, protect individual freedoms and guarantee the rights of all minorities—ethnic, political, or religious—from the tyranny of the majority. Though early American society did not reflect an ideal system, the fundamental concepts upon which it was founded still ring true. The Constitution as a document is designed almost entirely to prevent the abuse of power and the arbitrary persecution of minority groups, no matter how unpopular.

Yet there are those who hold that the founding fathers intended for the nation to reflect a thick conception of the good, namely, a state that endorsed Christian values. While 18th-century America was predominantly Christian and the authors of the Constitution reflected that reality, the Constitution is notably devoid of meaningful religious content.^{vi} Though the authors held that the ideals embodied therein would be righteous in the eyes of God, religion does not play an active role in the construction of the state. Unlike the traditional monarchies of Europe whose rulers claimed “divine right,” and the English, who established an official state church largely for political reasons, the American ideal was to respect God but to keep religion from becoming intertwined with the political system. Indeed, the Founding Fathers even broke with their philosophical predecessor John Locke, who specifically referenced the Bible as a precedent for establishing political systems and orders.^{vii} This is, if not entirely conclusive, reasonable evidence that the foundation of American liberalism is secular—not religious—in nature, and that any attempt to enforce a religious or otherwise “thick” interpretation of the good is counter to the spirit in which the nation was founded. American citizens are guaranteed the right to life,

liberty, and the pursuit of happiness, the limits of which are bound only by observing the rights of others, not by any thick conception of the good.

Given the grandiose scope of the undertaking, how does the government go about promoting and protecting this ideal of personal liberty? It creates laws that prevent the violation of the rights of its citizens and treats all citizens as equals before the law, beliefs and personal characteristics of the citizens notwithstanding. Hindus have the same set of rights and obligations under the law as Christians, blacks the same as whites, women as men, and Communists as Libertarians, etc. The only distinction the government is permitted to make is based on the actions of those individuals. Discrimination on any other grounds without a very compelling reason goes against the legal and ethical principles on which the nation was founded.

Ethics of the Army

From this point on I will use the terms “Army” and “soldiers” to describe the situation at hand. I could say that I use them as a generic reference, but, in truth, it is this organization and these people that I have experience with. In addition, these terms are far less cumbersome than their broader counterparts, “Department of Defense” and “service members,” and using this terminology allows a more precise and coherent language to be used. The message I seek to convey translates to all services, however.

The message is simple: an Army must—to the extent that it is able—reflect the values of the nation that supports it. It does not take long in the military to realize that many of the things that make it special are those things that do not reflect civilian life. Everything from housing to promotions to education to culture is different in some regard when you talk about the military. Special demands are made of the military and special permissions are given in recognition of the challenges it must face. Those who volunteer for military service understand that they must, by the nature of the institution, accept limitations on their speech and expect limited “democracy” within the ranks. After all, how could a unit be commanded if every decision was open to criticism and was able to be voted down? It takes a special sort of person to serve in the military, and not just in terms of sacrificing personal liberties.

The majority of Americans are not fit for military service on medical grounds.^{viii} Most fail to meet even the entrance requirements for physical fitness or body composition, not to mention the stringent screening for physical defects ranging from colorblindness to asthma. A much smaller percentage may be accurately described as “conscientious objectors,” those whose beliefs prohibit their involvement in war. The Army is granted the right to discriminate against these people on the grounds that they are unfit for military service in a tangible way. It is given far more leeway than most civilian employers for the simple reason that military service requires all soldiers to be physically able and mentally willing to perform their duties in combat.

Yet in all of these cases, the distinctions made between those who are fit for duty and those who are not is based on either the ability or willingness of a person to enter combat. While medical problems or a lack of physical fitness can be shown to at least undermine and in some cases completely preclude a soldier’s ability to perform these tasks, these issues are distinctly 1) individual and 2) clinically detectable. That is, they represent the *physical condition* of a person. This condition is tangible, provable and, most importantly, recognized by medical professionals as a condition that indicates either permanently limited abilities (colorblindness, for example) or an unsatisfactory level of physical fitness (forty percent body fat).

Nobody questions the Army’s reasoning for demanding certain physical capabilities of its soldiers, though the specifics of those requirements may be debatable. Physical fitness and abilities have a direct effect on how a person performs his job. Mental problems, too, may be ground for dismissal from the Army, for the fairly obvious reason that a mentally unstable person may endanger himself or others in the course of carrying out military duties. Further, those with felony convictions are not eligible for military service on the grounds that serious criminals are likely to undermine unit discipline and are statistically likely to commit such crimes again.^{ix} Imagine an Army that was unable to discriminate in order to ensure that everyone in the military could meet the stresses of combat and perform their duties successfully; after all, failure to perform one’s duties in combat may mean injury or death for individuals or defeat for the unit. Obviously, an Army must have the ability to discriminate.

Now imagine an Army in which discrimination is based on personal beliefs, practices or interests. For the purposes of the argument, let us assume that these matters are pursued only on a person's personal time (i.e. PFC Smith is not cross-dressing or casting spells while on CQ duty). Should the Army be able to discriminate based on what soldiers do in their spare time? Could applications to enlist contain questions like "Do you play Dungeons and Dragons?" or "Do you watch NASCAR?" To those who would say that I am simply being silly, what if they wanted to know your favorite sexual position? The point is that these choices are personal, private and outside the scope of affecting a soldier's ability to do his duty. For the Army to discriminate based on these aspects of a person's life goes against the primary instinct of the American conscience. If distinctions between people are to be made, they must be made on the basis of their relevance to the issue at hand. If the issue is performing soldierly duties, the answers to the previous questions are irrelevant, and the questions themselves are out of line. The personal lives of citizens should not be subject to government scrutiny unless said citizens are reasonably suspected of committing a crime and a soldier's personal life should not be subject to scrutiny unless it affects her ability to do her job.

This principle—that privacy should be preserved unless a person's private life affects his working or public life—is fundamental to the American way of life. Based on the ultimately secular nature of American government and the idea that individual liberty is to be held in the highest regard, it becomes impossible to argue a moral reason for the government to interfere with the legal personal doings of its citizenry.

There are those who would argue that the law is supposed to reflect the (religious) morality of the nation. Advocates of such a system point out that government exists to promote the welfare of its citizens. In their minds, what is immoral should be illegal, and this system would promote the "good" of the citizens by keeping them from lives of sin.

To even the casual observer, the notion that morality and legality are or ought to be one and the same is apparently not the norm on which American society's laws are based. If it were, the law would look much different than it does today. After all, speeding by a few miles per hour is illegal but probably

not sinful, while cheating on one's girlfriend is, in the minds of most Americans, an immoral practice. Failing to report the two hundred dollars your son earned mowing lawns this summer is a violation of tax law, but publicly desecrating a religious text (tearing apart a Bible in Times Square, for instance) is not only tacitly accepted, but an act of *protected* speech. Morality in the sense of promoting or protecting some thick sense of "the good," then, is not the accepted basis of government action in modern America; it is only when a person's actions violate or endanger the rights of others that it is appropriate for the government to take action. Murder is illegal in the United States not because it is a violation of the Ten Commandments, but because it violates the victim's right to life.

What relevance does this have to the issue of open homosexual service in the military? First, the precedents described above serve to dismiss the idea that if an action or pattern of behavior is immoral, it can be legislated against. Morality in the thick sense has nothing to do with the extent to which government becomes involved. Government action—in this case, discrimination—must be based on the actions—not the nature—of the individual in question, and those actions must violate the rights of others, not simply offend their sense of morality.

The questions then become those of whether an openly serving homosexual is violating the rights of another person by simply performing his duty as a soldier while being a homosexual and whether his participation in homosexual acts undermines his abilities as a soldier. Sodomy laws, by their very nature, make criminals out of all sexually active homosexuals, but this fact does not impugn the character of the soldiers who violate this law as much as it demonstrates the prejudice and bizarre moral posturing that remains a part of the military legal system. Sodomy laws are being ruled unconstitutional across the country for the very reasons I would argue they are outside the scope of legitimate government power: sodomy (as it relates to humans) is a victimless crime that involves an act of consensual physical intimacy between two people whose practice cannot be reasonably shown to violate the rights of any other person.^x The fact that sodomy laws—even when they do not specifically target homosexuals—are really only applied to homosexuals again demonstrates the bias that has been slowly built into the legal system. Unless the charge is *forcible* sodomy, a crime that is entirely different in both intent and effect from

consensual sodomy and is frequently pursued when rape cannot be proven, I defy any supporter of such laws to show how such laws have been applied to heterosexual acts of oral or anal sex in recent history. It would not surprise me to find that a very large number of soldiers not only have performed acts of sodomy, but continue to do so on a fairly regular basis.

What does this mean? It means that a large number of heterosexual soldiers are engaging in the very same acts that, when committed with a member of the same sex, are supposed to make a soldier unfit to serve. The distinction lies only in the gender of the people involved in the acts, for the mechanics of oral and anal sex do not change much regardless of who is performing or receiving it. To say that homosexual sodomy makes a person unfit to serve while ignoring the prevalence of heterosexual sodomy is like saying that stealing from a person of the same gender is a far worse crime than stealing from a person of the opposite sex. The distinction between how the crimes are treated is unjustifiable, and any argument to the contrary is incoherent. Because we have established that simple “immorality” is not sufficient reason to ban a practice, these homosexual acts would have to be somehow tangibly different and have different effects than their heterosexual counterparts. Such a distinction cannot be made; it simply does not exist. Because it does not exist, and because sodomy laws are not enforced on heterosexuals except when such acts are committed by force (which makes the crime entirely different by virtue of its coercive nature), there is no precedent in our “thin conception” of the good that justifies such prejudicial treatment.

A Fundamental Aspect of Identity

It is not enough to show that the logical basis of the Gay Ban is flawed. Although these flaws begin to expose the ulterior motive behind the Gay Ban—personal discomfort about or perhaps even hatred toward homosexuals—it is necessary for a comprehensive argument against such a ban to show how the ban is not only logically incoherent but harmful and morally reprehensible in and of itself. Even if sodomy laws were enforced regarding consensual heterosexual acts (something I certainly do not advocate) and sodomy were shown to have a negative impact on troop readiness or some other militarily

relevant factor, the Gay Ban would still be unethical because it discriminates against a group of people based on a fundamental aspect of their identity.

The Army necessarily prohibits or restricts some forms of expression. For example, soldiers are not allowed to attend political rallies or make endorsements while in uniform. Soldiers may not make racist statements or advocate racist policies in a professional context, either. This does not mean that all soldiers are apolitical or that there are no racists in the Army, only that soldiers may not express these ideas in a professional context. In light of these restrictions, how is the Army wrong to tell homosexuals that they may not admit to being homosexual or engage in homosexual activities? These cases illustrate two principles, which, though related to one another, are distinct in their justifications, neither of which provides a suitable parallel on which to justify the Gay Ban.

First is the issue of political expression. This restriction has its roots in the fundamental ideas on which the US Army was founded, namely that the military should place its allegiance first and foremost with the US Constitution. Unlike in virtually all armies that predated it, the officers in the US Army would swear not to serve a leader, office, ethnic group or clan, but the perpetual document of the Constitution. The separation of military and political power and the subsequent subjugation of all military personnel to their duly elected civilian leadership is fundamental to the maintenance of the Republic. How could there be stability if political parties had their own armed factions who were more loyal to a party than to the institution of government? Indeed, if the “trouble spots” in the world are evaluated, it is easy to see that such allegiances are, if not the cause of all political instability, usually the result of a failed political system.

In order to prevent democracy from self-destructing, the US military has taken outward political neutrality as part of its standards of behavior. For a uniformed soldier to make overt partisan political statements not only undermines this separation but also likely constitutes an unethical influence over his peers or subordinates. Thus, the restriction is justified because it prevents the corruption of a principle that is essential to the stability of the civil-military relationship outlined in the Constitution. The rationale for banning racist speech and practices in the military is similar but ultimately distinct.

Racism is contradictory to everything the nation stands for. Most Americans—whether they can articulate it or not—would acknowledge that racism is immoral in a very real sense. It is immoral because it goes against a fundamental aspect of our common “thin” conception of the good: the basic equality of individuals. The US military, funded by US taxpayers’ dollars, should therefore represent this moral stance if possible. If a soldier denigrates the status of the Army (and, by extension, the nation) with racist speech or behavior, that soldier ought to be punished for his transgressions, if not separated outright. Here is a clear-cut case of the Army taking a moral stance and sticking by it. Opponents of homosexual service might argue that homosexuality is immoral in the same sense; that is, homosexuality is wrong in the same fundamental way that racism is, and if the Army can keep racists from expressing their ideas, it can just as well justify keeping gays from openly practicing homosexuality.

The problem with this perspective is that racism—manifested in any official sense—is condemned by the Constitutional Amendments that were created after the Civil War. These amendments were specifically intended to institute blacks as full and equal citizens, and were later enforced by federal legislation. They were not made out of some particular thick conception of the good (as discussed earlier), but from the basic thin conception of the good that America claims as its founding premise: that all men are created equal. Equality before the law is a fundamental American value, and the Army is right in insisting that its soldiers not represent it as being otherwise.

Barring homosexual behavior because some people believe it to represent immorality plays to a particular thick conception of the good. Even if a large majority of Americans believe that homosexual acts are sinful, such a belief cannot be considered an “American value” because it crosses the line between permissive government that allows for equality and individual freedom and a form of government that actively endorses and enforces a particular morality. The distinction between these forms of government must remain firmly maintained, for the most essential aspect of American values—those values that the nation and the military must represent—is that they protect the basic freedoms of the American people.

These freedoms are not without bounds, however. If the first guarantee of the American system of government is that citizens have the greatest amount of personal freedom possible, the second is that those rights must be exercised in a manner in which they do not infringe on the rights of others. While declaring oneself to be racist does not necessarily infringe on another person's rights, it does undermine the principles on which those rights are founded, namely the basic equality of individuals. A declaration of homosexuality (that is, the simple acknowledgement of homosexual tendencies that the UCMJ defines as a homosexual act in and of itself) does not undermine any such principle. Instead, it is the equivalent of saying "I am black" or "I am Buddhist."

Whether by nature or choice, homosexuality is a fundamental part of someone's identity, and a person has a right not only to feel or believe what she wants, but to claim her identity publicly. Again, this is different from making racist statements because the Army has the right and responsibility to support and defend the Constitution, and all soldiers bear that responsibility as well. The Army is a voluntary organization, an organization that brings with it certain restrictions that pertain to the mission of the Army. Therefore, it is well within its bounds to insist that soldiers not undermine the Constitution (as racist sentiments or actions do), but it does not have the authority to impose standards against victimless "immoral" behavior. In fact, to do so undermines the very document the military is sworn to uphold.

Practical Issues of Integration

Until this point, I have examined the logical fallacies of the ideological reasons people have given to maintain a ban on open homosexual military service. The final and most foreboding justification for the Gay Ban is that openly serving homosexuals would harm unit cohesion. This may be true. It would certainly bring up issues of privacy within the ranks, and may even increase certain types of disciplinary problems. Openly gay soldiers may be put at increased risk if virulent homophobes—military or not—decide to engage in "gay bashing." There is at least the potential that integration would undermine military readiness, and the potential that it would bring absolutely no tangible benefits. Although I do not find these dire predictions to be credible, it is not my place to argue the practical reasons for permitting

integration or for maintaining the de facto ban. A double standard is being applied here, and it is one that is hard to justify.

I will not for a moment pretend that allowing the open service of gay soldiers is the same as integrating the military racially. This would be false on many grounds, some internal to the nature of the group being discriminated against and some based on social realities. The fact is that the social situation that faced blacks in the 1940s and 50s was far worse than the situation facing homosexuals in contemporary society. When President Harry S. Truman signed Executive Order 9981 in July of 1948, civil rights legislation at the federal level was nonexistent. Much of America was still under the shadow of segregation, and in states where Jim Crow laws were in effect, blacks could hardly be considered equal under the law. Compare this situation to a climate of general public acceptance, where primetime TV is flush with gay and lesbian characters, where gay marriages are being pronounced (legally or not) in cities and states around the country, where homosexuals enjoy a significant lobbying capability in Washington. Nobody is putting dogs or fire hoses on “gay pride” marches, and it doesn’t take the 101st Airborne to get a lesbian student into high school with her straight peers. This is not the 1960s, and gays are in a far better social position today than racial minorities were when the armed forces integrated. In fact, between sixty-four and sixty-seven percent of US citizens want the Gay Ban to be lifted, while roughly sixty three percent of Americans opposed racial integration at the time Truman’s order was given.^{xi} This statistic, while not in and of itself a good reason to change policy, is yet another good indication of how accepted (or at least tolerated) homosexuality is in modern society.

But as has been discussed, the Army is not the same as society at large. It may react quite differently to openly serving homosexuals than modern America reacts to *Will and Grace* and middle-aged women saying their vows in a Massachusetts courthouse. Allowing homosexuals to serve openly in the armed forces may well cause increased tension, feelings of discomfort or even—in the worst case scenario—violence against newly out-of-the-closet gays. Although there is a good amount of research based on the integration experiences of other western militaries that runs contrary to these predictions, the issue of whether there will or will not be problems is tangential to this debate.^{xii} The truth is that nobody

knows for sure what will happen and what accommodations will have to be made, but the fact remains that the Army has undertaken such risks before, and in far more dire social circumstances. For the Army to integrate racially, to allow women into nearly all MOS's and to protect the right of Wiccans to conduct pagan rituals on government property—all issues that were hotly contested and arguably more divisive—and then *not* allow gay soldiers the right to simply acknowledge their sexual orientation in public is discrimination of the most naked sort.

Perhaps openly serving gays would cause rifts in units, perhaps not. Some will argue that the Army has the right to do as it sees fit in order to maintain maximum readiness, that to lose even one iota of effectiveness is unacceptable. Moral and ethical considerations aside, that may be a perfectly justifiable position. It is not, however, consistent with the policies the military has pursued regarding other minority groups, even when the integration of those groups posed a more legitimate threat to combat effectiveness—at least in the short term—of individual units and the military as a whole.

Some people may acknowledge every one of the above arguments. They may agree that the military should allow gays to serve openly, but not immediately. “We are at war,” they will say, “we don’t want to throw a wrench in the works.” To this I can answer that the Army is a dynamic organization. If we were not at war, we would still be in a state of transition, either building up or cutting back, restructuring, realigning, or redefining units. If the point is to wait for a “good” time to put open service into effect, the Army could be waiting an eternity. The Army is in a constant state of evolution; there is no good time to add another variable to the equation. But soldiers are used to this and are fully capable of rising to meet yet another potential challenge. The military adage “adapt and overcome” is something soldiers live by, and it is a mistake to think that soldiers will have insurmountable problems accepting a policy that permits open service.

One need only spend some time at the Military Academy to see how rapidly regulations can change, and that is in a secure environment. Units that are engaged in combat operations in Iraq and Afghanistan are being constantly retrained as new doctrine is developed and new weapons and equipment are introduced. Leaders at the smallest levels in the Army are making command decisions under fire

every day. Individual soldiers regularly make life or death choices, identify and engage targets with minimal oversight, and deal with potentially politically volatile situations involving other soldiers, insurgents and noncombatants. To say that discovering that a soldier in their platoon is gay—which assumes that none of them had suspicions to begin with—will distract soldiers from the mission or detract from readiness seems not only silly, but wrongly and offensively underestimates the professionalism of the American soldier. Is a soldier that can resist the urge to execute prisoners who just shot a member of his platoon going to immediately succumb to prejudices against a fellow soldier, particularly a soldier that has been in combat with him? If anything, the bonds formed during wartime would seem to reinforce the cohesion of the unit rather than make it more susceptible to fracturing.

Conclusion

The military should abandon the false acceptance of “Don’t Ask, Don’t Tell” and allow the open service of homosexuals immediately. The ban undermines the principles of equality the United States was founded on, secular principles at whose core was and is the rights of the individual. Pragmatic reasons for maintaining the ban are thinly justified and incongruent with past efforts made to accommodate other minorities despite the fact that, for the first time, society has widely accepted the minority in question before the military has.

Current policy is an unacceptable “compromise.” As has been discussed throughout this dissertation, the notion allowing homosexuals to serve in secret is somehow a step up from an outright ban is preposterous. The only thing “Don’t Ask, Don’t Tell” changed is whether a soldier can be directly asked about her sexual orientation; even mentioning that she is attracted to other women or has a desire to engage in sexual activity with them—the same sorts of things that would have betrayed her sexual identity in the pre-1993 Army—is itself considered a homosexual act. “Don’t Ask, Don’t Tell” has done nothing but allowed government officials to pretend that it is a soldier’s conduct—not sexual orientation—that is the issue when in reality “homosexual acts” are defined so broadly as to eliminate the distinction.

Even if these acts were truly at the root of the discrimination against gay and lesbian service members, the policy is still wrong. It wrongfully deprives individuals of personal freedom based solely

on their sexual preferences, preferences that neither harm other people nor infringe on their rights. Current policy cannot be rationally explained except as a reflection of the personal prejudices of those who create and enforce it and, rationalized by faulty logic and double standards though the explanation may be, such grounds not only fail to meet standards for reasonable policy but undermine the very legitimacy of the institution Army policy should serve. “Don’t Ask, Don’t Tell” is a black mark on the military, a loathsome policy that only hurts service members and undercuts the distinction and high regard in which society holds it. Right or wrong, policy reflects on the soldiers that must abide by it, and the reflection this policy creates is one that ought not and need not be perpetuated any longer.

Epilogue

I would like to end much as I began, with a personal note of intent. I did not intend to insinuate that the leaders of the nation or military are homophobic, only that their continuation of this policy is wrongfully discriminatory. I believe that many people have been indoctrinated with the belief that the Gay Ban is somehow morally justifiable and necessary for good order and discipline within the ranks. I hope to have shed some new light on the topic, addressing it from a philosophical rather than a policy analysis perspective and hopefully avoiding moral platitudes. I have no illusions about “closing the book” on this issue; rather, I hope to have opened it. I feel that this is a subject that many people in the military would rather ignore or dismiss with shrugged shoulders and a change of topic than seriously discuss. This saddens me. Ethics is and must always be an integral part of the profession of arms. It is time that we as professionals addressed the manner in which we treat our own soldiers as fervently as we discuss the way we ought to treat prisoners of war.

Appendix I: Definitions

E2.1.15. Sexual Orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.

E2.1.16. Statement that a Member Is a Homosexual or Bisexual or Words to That Effect. Language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

Sodomy, UCMJ Article 125d: It is unnatural carnal copulation for a person to take into that person's mouth or anus the sexual organ of another person or of an animal; or to place that person's sexual organ in the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation with an animal. (Taken from "Constitutional and Military Law Supplementary Materials," USMA Department of Law, 2004.)

Appendix II: Discharge Regulations

E3.A1.1.8.1.2. A member shall be separated under this section if one or more of the following approved findings is made:

E3.A1.1.8.1.2.1. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

E3.A1.1.8.1.2.1.1. Such acts are a departure from the member's usual and customary behavior;

E3.A1.1.8.1.2.1.2. Such acts under all the circumstances are unlikely to recur;

E3.A1.1.8.1.2.1.3. Such acts were not accomplished by use of force, coercion, or intimidation;

E3.A1.1.8.1.2.1.4. Under the particular circumstances of the case, the member's continued presence in the Armed Forces is consistent with the interest of the Armed Forces in proper discipline, good order, and morale; and

E3.A1.1.8.1.2.1.5. The member does not have a propensity or intent to engage in homosexual acts.

E3.A1.1.8.1.2.2. The member has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a Service member that he or she is a homosexual or bisexual, or words to that effect, creates *a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts*. The Service member shall be advised of this presumption and given the *opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts*. *Propensity to engage in homosexual acts* means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether a member has successfully *rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts*, some or all of the following may be considered:

E3.A1.1.8.1.2.2.1. Whether the member has engaged in homosexual acts;

E3.A1.1.8.1.2.2.2. The member's credibility;

E3.A1.1.8.1.2.2.3. Testimony from others about the member's past conduct, character, and credibility;

E3.A1.1.8.1.2.2.4. The nature and circumstances of the member's statement;

E3.A1.1.8.1.2.2.5. Any other evidence relevant to whether the member is likely to engage in homosexual acts. (This list is not exhaustive; any other relevant evidence may also be considered.)

E3.A1.1.8.1.2.3. The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

ⁱ Department of Defense Directive: Enlisted Administrative Separations, Number 1332.14

(December 21, 1993) 26.

ⁱⁱ DoD Directive 1332.14, 28.

ⁱⁱⁱ John Locke, *Second Treatise of Government*, available online at <http://www.constitution.org/jl/2ndtreat.txt>

^{iv} Constitution of the United States of America, Amendment V.

^v The Declaration of Independence of the Thirteen Colonies.

^{vi} Constitution.

^{vii} Locke.

^{viii} Figure given by Dr. Aaron Belkin, CSSMM, in an address to the USMA Department of Behavioral Science and Leadership, 23 March 2005.

^{ix} Patrick A Langan. and David J. Levin, "Recidivism of Prisoners Released in 1994" (NCJ-193427), (Washington, DC: Department of Justice, and Greenfield, L. A. 2002).

^x UCMJ, Section 125. See Appendix 1.

^{xi} Figures from Belkin lecture, 23 March 2005.

^{xii} A sizeable body of research has been conducted and collected by the Center for the Study of Sexual Minorities in the Military. Founded and directed by civil-military relations expert Dr. Aaron Belkin at the University of California at Santa Barbara, the CSSMM focuses on gathering objective accounts of the effects of the "Don't Ask, Don't Tell" and the open service of homosexuals in other militaries around the world. The CSSMM has put together numerous reports regarding the ongoing costs—both monetary and political—which the military incurs with the continuation of the Gay Ban. It has further evidence that the ban is hurting the military in tangible ways and that the doomsday predictions of Gay Ban proponents have not come true, even in militaries that resemble our own both structurally and culturally. Dr. Belkin has been published in *Parameters* and has spoken to various military organizations, including the Army War College and the US Military Academy. His research and that of his colleagues demonstrates the costs of the Gay Ban in real terms, and unlike many writings on both sides of this issue, avoids name-calling and invoking political rhetoric. The majority of the Center's publications can be found online at www.gaymilitary.ucsb.edu, a website that is both easy to use and regularly updated.