Affirmative Action and Combat Exclusion: Gender Roles in the US Army

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"Come now, and let us reason together."
—Isaiah 1:18

The issue of women in combat, thought to be resolved by the demise of the Equal Rights Amendment and the conservatism of successive presidential administrations in this decade, is riding the crest of continuously evolving social mores and changing views of sexual politics. Changes in definitions of sex roles and the removal of many traditional barriers to women in the US Army and the other military services insures that this emotional and confrontational issue will not go away soon.

This article contrasts the Army's commitment to affirmative action with the exclusion of women from combat roles. Current policies may provide grounds for challenges to the combat exclusion rule, while some evidence suggests that combat readiness and full gender integration may not be fully compatible goals. A reassessment of current policies may be needed to clarify the relationship between the twin priorities of maximum combat readiness and maximum opportunity for women. The answers to these and related questions may profoundly affect not only the long-term nature of military service in the United States, but the civil-military relationship itself.

Current Policy

Current Army assignment policies for women are based on Title 10 of the US Code, Section 3012, which gives the Secretary of the Army the authority to set personnel assignment and utilization policies for all soldiers.

Unlike the Navy and Air Force, there are no statutory restrictions that prohibit the employment of female soldiers in combat. However, in an effort to ensure a measure of consistency with sister services, Army assignment policies parallel those in the rest of the Department of Defense by restricting women from serving in positions requiring routine exposure to direct combat.[1]

Current policies concerning women in the Army are a product of the rapid expansion of women in the force beginning in the early 1970s. Two significant events were primarily responsible. The first was congressional approval of the Equal Rights Amendment (ERA) in March 1972. The second was the end of the draft in 1973, which caused an immediate decline in the number of qualified males joining the force.[2] Though ratification of the ERA ultimately foundered,[3] legislation was passed in 1975 opening the service academies to women, and soon after the Women's Army Corps was disestablished and women were integrated into male promotion lists.[4]

In 1977 the Secretary of the Army issued a combat exclusion policy prohibiting assignment of women to the combat arms. Problems were quickly identified, since women in some other specialties often collocated with combat units and were exposed to virtually identical measures of risk:

> The rapid growth of women in the Army took place without adequate planning and analysis. . . . There was no established policy of putting the right soldiers in the right jobs based on physical capacity to meet the job requirements. Also, the Army had not made a thorough analysis of where women should serve on the battlefield.[5]

In May 1981 the Army implemented a temporary leveling-off of female accessions at 65,000—the so-called "Woman Pause"—"to permit a review of policies and programs and to determine the effect use of women may have on combat effectiveness and force readiness."[6] A policy review group was established to study these issues. Its report was issued on 12 November 1982, establishing the Direct Combat Probability Coding system that is still in use. Many of the assumptions and conclusions[7] outlined in the 1982 Women in the Army Policy Review continue to guide Army policy today.

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US Army policy in 1989 is that "women will be assigned in all skills and positions except those which, by doctrine, mission, duties of the job, or battlefield location involve the highest probability of direct combat with enemy forces."[8] Direct Combat Probability Coding (DCPC) is the mechanism used to assess and identify those positions closed to women. The DCPC process assigns each position in the Army a ranking from P1 to P7 based on the probability of *routine* engagement in direct combat. Only those positions coded P1 are closed to women. This policy, which is periodically reviewed and updated,[9] is referred to informally as the "combat exclusion" rule. In 1988 the DCPC process was amplified through the "risk rule":

> The risk rule states that *noncombat* units should be open to women unless the risk of exposure to direct combat, hostile fire, or capture is equal to or greater than that experienced by associated *combat* units in the same theater of operations.[10]

At the present time, approximately 750,000 positions in the Total Army[11] can be filled by either sex.[12] Eighty-seven percent of enlisted military occupational specialties (MOSs), 91 percent of warrant officer positions, and 96 percent of officer specialties are open to women.[13] As of the end of the third quarter of FY 1989, females comprise 11 percent of the active force, filling 11,110 officer positions out of 91,443 overall, 435 warrant officer positions out of 14,971, and 72,389 enlisted positions out of 654,537.[14] Today, women are represented in every career management field except infantry, armor, and special operations.

The promulgation of a unified promotion system has been accompanied since its inception by an affirmative action program designed to compensate for the effects of "past personal and institutional discrimination" which may have operated to the disadvantage of female soldiers. This program encompasses minority as well as female-specific promotion and assignment issues. It is intended to counteract the effects of latent or residual discrimination by ensuring that female soldiers enjoy promotion and assignment potential commensurate with their representation in the force. Board instructions include the following guidance to panel members:

> [Discrimination] may manifest itself in disproportionately lower evaluation reports, assignments of lesser importance or responsibility, etc. Take these factors into consideration in evaluating these [soldiers'] potential to make continued significant contributions to the Army. . . . The goal is to achieve a percentage of minority and female selections not less than the selection rate for the number of [soldiers] in the promotion zone (first time considered category) . . . . [P]rior to adjournment, the board must review the extent to which it met this goal and explain reasons for any failure to meet this goal in the report of [soldiers] recommended for promotion.[15]

But what exactly is meant by "affirmative action"? The concept is both an outgrowth and a response to the Civil Rights movement of the 1960s. Affirmative action goes well beyond the establishment of equality of opportunity to insure equality of *result*. In the interest of vigorously moving to correct past injustices, the federal government in general and the armed forces in particular have embraced the *preferment* of insular groups which in the past have suffered from institutional discrimination.[16]

As a group, women in the Army have enjoyed greater promotion success than men for almost a decade.[17] Individually, some less-well-qualified candidates have inevitably been selected for promotion and command—an unavoidable price, perhaps, of a necessary and just commitment to the achievement of parity, but one with unpleasant side-effects just the same. It is this phenomenon that gives rise to the charge of reverse discrimination, most keenly felt by individuals who believe they possess equal or superior qualifications but nevertheless lose out to female or minority peers for promotion or command selection. Although personnel managers avoid using the term "quota" in favor of "goal" or "objective," board results consistently confirm that promotion rates for women meet or exceed the targets set by Department of the Army.[18] At least from an institutional perspective, the Army has lived up to its promise to provide equal promotion opportunities for women by implementing an aggressive and comprehensive affirmative action agenda.

Affirmative action has generated a momentum all its own. While some advocates are critical of policies that inhibit career opportunities for women in *any* way, expansion of career fields and access to previously closed opportunities and positions in the last decade has been impressive by any standard. Few Western military establishments come close to matching the level of participation of American women in the armed forces, as the figures cited above demonstrate. Pressures continue to build, nevertheless, for realization of a gender-neutral Army in the near future.

Judicial Intervention

The courts have led the way in recasting traditional approaches to employment of women in the Army. Case law that arose in the 1970s in the areas of equal protection and gender discrimination provided much of the language and rationale later used to advance the cause of expanded participation for women in the military. It was only in 1971 that the Supreme Court for the first time invalidated a state law on grounds of sex discrimination.[19] In this early phase, gender discrimination cases employed a relatively lenient standard of review. A "rationality" test was made to determine whether the statute in question had been applied in an "arbitrary or irrational" manner. If a reasonable relationship could be demonstrated between a state interest and the statute intended to effect it, intervention by the federal courts was unlikely.

> The two sexes are not fungible. . . . [I]t is only the "invidious discrimination" or the classification which is "patently arbitrary [and] utterly lacking in rational justification" which is barred by either the "due process" or "equal protection" clauses.[20]

In *Frontiero* v. *Richardson*,[21] a landmark eight-to-one ruling with implications that ranged far outside its immediate military compass, the Supreme Court invalidated federal statutes allowing married Air Force males to draw quarters allowances for their wives but requiring service females to prove dependency on the part of their husbands. Although the Court in *Frontiero* narrowly avoided granting "suspect" classification to gender discrimination cases (which would have justified the highest and most searching review[22]), the legal status of military women as equal partners to their male counterparts was firmly established.

Frontiero was quickly followed in 1974 by a series of class action suits filed in California challenging all-male policies at the service academies.[23] Charging sex discrimination and denial of equal protection of the laws by preventing access for women to training, educational and career opportunities in the military, the plaintiffs (the aspiring candidates were joined in the action by their congressmen) sued to open the Naval and Air Force Academies to women the following year.[24] The case was decided against the plaintiffs in the US District Court for the District of Columbia in June 1974, but moved on appeal to the US Circuit Court of Appeals.

The appellate court moved slowly, probably in the knowledge that legislation was brewing in the Congress which could decide the issue without embroiling the courts in such a heavily political matter. Despite Department of Defense testimony strongly opposing the proposed legislation,[25] resolutions in the House and Senate calling for open admission to the academies passed easily. On 8 October 1975, President Ford signed Public Law 94-106, mooting the legal challenges still pending in the courts. The following July, women for the first time joined the entering classes at the Air Force, Naval, and Military Academies.

As if to further demonstrate its commitment to the principles of affirmative action for women in the military, the Court in 1975 upheld a federal statute that allowed female naval officers twice passed over for promotion to remain on active duty through the 13th year of service. Male officers under the same conditions were involuntarily released from service following the second nonselection for promotion.[26] Although patently establishing a different standard for women in the Navy, the Court felt strongly that service women were operating under reduced opportunities for promotion and that judicial intervention was needed to correct what it saw as inherently biased personnel policies.

The mid-1970s saw the Court move toward a more stringent standard of review with *Craig* v. *Boren*.[27] Though the case did not arise in a military context (at issue were Oklahoma statutes governing legal drinking ages for 3.2 beer), *Craig* raised the threshold of acceptable government action in gender-related cases by requiring the government to prove a *substantial* relationship to an *important* state interest to justify a gender classification—a much more difficult and exacting task for legislators and policymakers.[28] Henceforth, a *reasonable* connection between means and ends would not suffice. Court deference to congressional and presidential autonomy in areas relating to the military began to decline. Throughout this period and in the years since, federal courts in a series of decisions continued to broaden the rights of women in the military, often setting aside (although not completely abandoning) the traditional deference to Congress and the Executive Branch in areas of military policy.[29]

In *Crawford* v. *Cushman*[30] the courts held that substantive constitutional claims against the military were justiciable and struck down mandatory discharge regulations for pregnancy. *Owens* et al. v. *Brown*[31] eliminated blanket restrictions against sea duty for women in the Navy. In *Dillard* v. *Brown* et al.[32] challenges to regulations governing sole parents in the service were ruled reviewable by the courts. And as recently as 1986, the courts in *Hill* v. *Berkman* et al. asserted the right of the judiciary to exercise "jurisdiction to review the classification of a position as combat or combat-supported."[33] Where earlier government claims that pregnancy, sole parent status, and other similar factors degraded readiness had been accepted as "rational," the courts now moved boldly to substitute their own judgment in determining the effects of gender-related phenomena on military efficiency.

Against this backdrop, *Rostker* v. *Goldberg*[34] surfaced in the federal courts. The case involved a 14th Amendment equal protection challenge to selective service legislation exempting females from registration for the draft. Originally introduced in 1968 by males opposed to the draft, the issue had been rejected by the courts 11 times.[35] Goldberg's challenge had languished in the courts since 1973 owing to the end of the draft and draft registration in the Ford Administration, only to be resurrected by Carter's call for registration. On 18 July 1980, the Third US Circuit Court of Appeals accepted Goldberg's arguments and invalidated federal draft registration, scheduled to begin days later. However, the court did not order the government to amend its registration policy to include women as a remedy. Instead, it ordered cancellation of registration for both sexes![36]

Rostker moved quickly to the Supreme Court following an injunction blocking the lower court's ruling. Some felt that the creation of a gender-neutral military establishment was imminent. One Carter official testified before the Congress that he saw no more difference between men and women in terms of military service than he did between blue-eyed and brown-eyed people.[37]

Drawing back from the precipice opening before it, the Court accepted the contention of the Congress that female registration was unnecessary as long as the purpose of the draft was to create a pool of combatants:

> [Congress] determined that any future draft . . . would be characterized by a need for combat troops. [The] purpose of registration, therefore, was to prepare for a draft of *combat troops*. Women as a group, however, are not eligible for combat.[38]

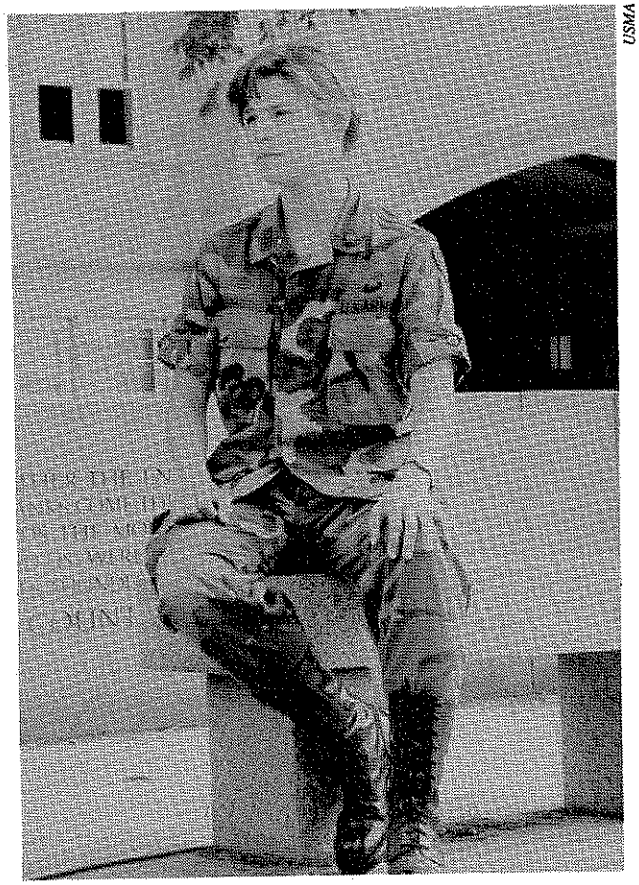
Citing Congress's greater expertise in matters of national defense as well as the government's compelling interest in raising and supporting armies, the Supreme Court ruled against the plaintiffs in upholding the constitutionality of female exemption from registration and the draft. At this critical juncture, deference to Congress returned as a guide to judicial resolution of a crucial and controversial civil-military issue.

How can we interpret these seemingly contradictory signals from the courts? A steady succession of court victories has validated the transfer of private-sector women's rights into the military sphere. Many barriers long thought to be relevant to the efficiency and readiness of the armed forces have fallen or are under increasingly heavy challenge through direct or indirect judicial intervention.[39] For the fundamental issues of direct participation of women in combat and registration and conscription of women, the courts have continued to defer to the legislative and executive branches as the ultimate guardians of the war-making power. Yet even here the courts have asserted their right to review and, ultimately, to intervene.

Normative Approaches

Few issues in the areas of civil rights and civil-military relations are as value-laden or as controversial as those involving the role of women in the armed forces. Advocates on both sides find it difficult to address these issues calmly and without emotion. Nevertheless, objectivity and balance are needed to maintain an appropriate perspective on this most difficult of issues. What are the dominant arguments defining the continuum of debate on gender roles in the US Army and in the military as a whole?

Proponents of a gender-neutral military establishment envision the participation of women in all phases of military life, to include membership in and command of "combat" organizations such as maneuver battalions and brigades, naval warships, and fighter and bomber squadrons. They rely heavily on legal arguments borrowed from the civil rights and feminist movements to attack gender distinctions as inherently discriminatory or violative of fundamental constitutional guarantees of equal protection and due process. One central tenet is lack of opportunity for promotion to the highest grades, traditionally reserved for officers possessing combat specialties. Another is a



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In the summer of 1989 Cadet Kristin Baker became the first woman to be named First Captain at West Point, famed for its production of combat leaders.

declining pool of eligible male volunteers, which can be offset by recruiting larger numbers of females into previously closed specialties.

Because expanded roles for women in the military have been accompanied by defensive weapons training as well as doctrinal requirements for transient exposure in forward areas, it is often argued that traditional distinctions between combat and non-combat or combat support roles have become blurred or are no longer meaningful. Technological advances in nuclear and conventional weaponry, accompanied by a proliferation of rear area threats, buttress this claim. Integrated military training in precommissioning schools, in officer and enlisted initial entry or basic courses, and in many service schools is often cited as proof that no practical distinctions exist between male and female performance in basic combat tasks.

Although these individuals and organizations do not always claim to represent the views of the majority of women in the United States, they insist that the right of *individual* women to pursue fulfilling and rewarding careers in the military cannot be abridged by "traditional" views of sexual roles which

overstate sex differences and devalue female strengths and capabilities. Differences in physical capacity or behavior patterns are believed to be largely irrelevant or distorted by bias in the structure of test instruments or interpretation of test data.[40] Sexual issues[41] that do not lend themselves easily to this interpretation can be solved, it is argued, by the application of better, more equitable leadership and training programs.[42] Finally, advocates for gender neutrality in the military posit an irrebuttable presumption that opposition to their views is proof of sexual bias.[43] Thus they can frequently seize the moral high ground and force their opponents to respond reactively and defensively.

It is important to note that this perspective is not confined to fringe elements or to small but vocal groups operating on the periphery of the policy-making apparatus. Many women (and not a few men) in each service support a more gender-neutral approach, a point of view that tends to dominate service literature on the subject.[44] Their views enjoy widespread currency and support in the academic, media, and legal communities. This movement is no mere exercise in advocacy. It represents a powerful and broad-based constituency with considerable prospects for eventual implementation of its views.

Opponents of combat roles for women focus on two essential themes. The first is the effect on readiness and efficiency of sexually integrated combat units and the impact of a female presence in the "fighting" components. The second is the social impact of female mass casualties which would surely follow commitment of a fully integrated military force to combat under modern conditions.[45]

For "traditionalists," the argument that physical, psychological, or social/cultural differences are irrelevant to military efficiency is risible. They cite medical evidence that documents male advantages in upper body strength, cardiovascular capacity, lean muscle mass, and leg strength to demonstrate significant differences in physical capacity.[46] Physiological research suggesting a higher incidence of injury in training for women augments this thesis.[47] Emphasis on the *aggregate* effect of women in the force is stressed, for while the physical capacity of individual females may equal or exceed that of the male mean, they are sparsely represented among the population. Reduced physical capacity, primarily a factor in tasks requiring heavy lifting or stamina, is predictable when females are compared to males according to this view.

For this school, psychological, social, and cultural factors are inextricably embedded in the physical differences between the sexes. They are much harder to quantify, but it is argued that their influence is nonetheless profound. While sexual roles have been greatly redefined in the last 25 years, sexual role differentiation remains central to our way of life. Combat exclusion proponents insist that sexual behavior traits, whether genetic (inherited) or environmental (learned), cannot be wished away. Their potential impact on the performance of combat units must be factored into the equation.

Crime statistics are often used to demonstrate that female participation in violent crime is dwarfed by that of males—implying much higher levels of aggression for men. Biomedical and genetic research supports the hypothesis that sex role characteristics are by no means purely environmental or social/cultural products.[48] These and other studies are believed to complement what is perhaps the most strongly held normative assumption of all: that in the aggregate, females lack the aggressiveness and psychological resistance to combat-generated stress of males and are therefore less suited for the rigors and demands of extended combat.

An important factor, not to be overlooked according to advocates of more traditional roles for female soldiers, is the effect of female presence on the fragile psychological basis that is the foundation of cohesion and esprit in traditionally all-male combat units. Thus it is argued that sexual integration of these units, even with females screened for physical capacity, would destroy or impair fighting efficiency by introducing elements such as protectiveness, sexual attraction, social role inversion, and leader/follower conflict based on gender stereotypes, among others.[49]

While this assumption is dismissed by combat exclusion opponents as sexist, or at most curable with good leadership and proper training, it is frequently asserted by combat veterans familiar with the unique psychological stresses and demands of the battlefield.[50] They insist that the psychological "chemistry" of combat units is regulated and defined by adherence to and reinforcement of the traditional sex roles of warrior and protector. To dilute this crucial but delicate balance by adding females merely to promote feminist values of full equality—values that do not reflect the aspirations of women as a group—would destroy the sexual identity that lies at the root of the combat ethos.

Observations

Affirmative action in its broadest sense commits the armed forces to policies that ultimately collide with the combat exclusion rule. Because no official attempt is made to articulate the basis for excluding women from combat beyond vague references to "the implied will of Congress," it is difficult from an institutional perspective to mount a reasoned defense against those who move for full sexual integration of the military. Indeed, evolving policies on women in the Army already embrace most of the arguments of those who advocate a gender-neutral force.

For example, current policy does not restrict females from any career field or position because of physical requirements. Although the 1982 Policy Review recommended "matching the soldier to the job" on a gender-neutral basis using physical demands analysis during medical screening, such testing

is conducted on an "advisory" basis only—leaving final determination of acceptability to recruiters already pressed to fill recruiting quotas:[51]

> [Physical capacity] testing is done at the MEPS (Military Entrance and Processing Station) and we don't even get involved. The same test is given regardless of the MOS . . . [and] in two years I've never had a recommendation for a rejection yet. The bottom line is, if they have the minimum smarts and can pass the physical, I sign them up. That's what I get paid for.[52]

In 1976, the General Accounting Office notified Congress of emerging concerns that women were being assigned to positions "without regard to their ability to satisfy the specialties' strength, stamina, and operational requirements."[53] Company-grade commanders of integrated units report identical problems in the force today—13 years later:[54]

> Although I had upwards of seventy women in my unit I could not employ many in the MOSs they held due to their inability to perform the heavy physical tasks required. So I used them in headquarters or administrative jobs. . . . Complaining to higher headquarters wasn't really an option. These things were considered "leadership" problems.[55]

Assignment of female soldiers without regard to their physical ability to do the job can only degrade unit readiness and damage both self-esteem and successful integration of the female soldiers affected.

Current policy also admits of no potential impact on readiness or efficiency because of other gender-related factors. Of 19 areas identified as possible areas of concern, only pregnancy made the cut as a female-specific issue. The rest, which included fraternization, assignment and management of military couples, sole parenting, sexual harassment, professional development, attrition and retention, and privacy and field hygiene issues, among others, were classified as "institutional" matters and referred to appropriate Army staff agencies for resolution.[56] In short, they were dismissed as having

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little relevance to the formulation of over-arching policies governing utilization of women in the Army.

It would be unfair as well as inaccurate to say that all of these factors pose insurmountable problems that cannot be coped with in many, if not most, unit environments. It is just as inaccurate, however, to say that they are irrelevant to combat readiness and efficiency. Perhaps no bright line exists to show where fairness and equity should give way to prudence and necessity. Still, the question must be asked—and, more important, answered.

Conclusions

In the military as elsewhere, resolution of completing claims involving constitutionally protected rights is an exercise in line-drawing. Here the first imperative for any armed force—the maximum possible level of combat readiness and efficiency—stands in potential conflict with bona fide institutional desires for equal opportunity. Evolving policies have predictably attempted to define these twin imperatives as mutually supportive, not mutually exclusive. Since the end of the Vietnam War, the US Army has repeatedly demonstrated its commitment to the fullest possible range of opportunities for women in the force. Yet nagging contradictions persist.

If, for example, it is the implied will of Congress that women not serve in direct combat, then doctrinal proliferation of females in forward areas[57] in the absence of a clear delineation between combat roles and support roles confuses the issue. Congress and the courts may find it impossible to sustain what may *appear* to be an increasingly artificial distinction. Risk of death or capture is, after all, a function of position on the battlefield as well as unit mission.

Despite judicial support for ever-broadening female participation in the military, a healthy deference to the leading role of the executive and legislative in military matters still exists. By dismissing most gender-related factors as irrelevant to military efficiency, defense policymakers have reduced

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the arguments against total gender-neutrality to one: popular opinion. As the record shows, popular opinion often carries little weight with federal judges concerned to protect individual freedom and opportunity. There must be substance to the combat exclusion rule or it will surely fall.

The organizational structure of military units is highly flexible and can adapt to many of the changes that necessarily accompany the expansion of women in the Army. This should not be confused with a priori assumptions equating equal opportunity with gender-irrelevancy in terms of battlefield performance. The price of error, however well-intentioned, could be fatal.[58]

Expanded opportunities for women have enhanced the quality of the service, binding it closer to the lives of the people and aspirations of the society it serves. The contributions and professional dedication of female soldiers serving throughout the force now make sex-based distinctions in many areas unsustainable. Many barriers have fallen, revealed as discriminatory obstacles without a rational basis. To the extent that sexual integration and overall combat efficiency are found to be in harmony, there can be little excuse for restricting female participation.

Sexual differentiation nevertheless remains a fact of life. The differences between men and women can be muted, compensated for, and even exploited to enhance military performance—up to a point. It is dangerous to assume, however, that physiological, psychological, cultural, and social distinctions rooted in gender are meaningless on the battlefield.

There is a substantive and important difference between those units whose primary purpose is direct, sustained ground combat and those which support them. In combat, ground maneuver units will continue to suffer the heaviest casualties, place the heaviest demands on the physical abilities of soldiers, and endure the highest levels of psychological trauma and stress. At the sharp end of the force, sexual differentiation may matter very much indeed. The combat exclusion rule reflects this basic premise as a matter of policy. Without a clear articulation of its basis in logic and fact, a task of important and immediate consequence, a gender-neutral Army could be imminent.

NOTES

1. Army policies are, however, more liberal in permitting women to serve in combat zones and forward areas of the battlefield. Information paper provided by representatives of the Human Resources Division, Office of the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 10 March 1989, hereinafter cited as "HRD/ODCSPER."

2. In the decade of the 1970s the number of women in the American military increased by 350 percent. Jean Yarbrough, "The Feminist Mistake: Sexual Equality and the Decline of the American Military," *Policy Review* (Summer 1985), 48.

3. Despite a congressional extension of the ratification deadline, the amendment fell three states short of ratification. See Jo Freeman, "Women and Public Policy: An Overview," in *Women, Power and Policy*, ed. Ellen Boneparth (New York: Pergamon, 1982), p. 55.

4. Jeanne Holm, *Women In the Military* (Novato, Calif.: Presidio Press, 1982), p. 276.

5. Discussion paper, "Assimilation of Women in the Army: Problems and Lessons Learned," 17 February 1988, HRD/ODCSPER.

6. HQDA Letter 616-81-1, Office of the Adjutant General, Subject: "Women in the Army Policy Review," dated 11 May 1981.

7. A significant exception is the Review Group's recommendation that "all soldiers [be] matched to their job through demonstrated physical capability at least equivalent to that required of the job" through gender-neutral physical demand analysis (also known as MEPSCAT) administered at the reception station. See US Department of the Army, *Women in the Army Policy Review*, ODCSPER, 12 November 1982, p. 5-6 (hereinafter cited as *WITA Policy Review*). MEPSCAT evaluation is conducted as an "advisory" exercise only. In practice it is not used solely to deny a recruit entrance into a career management field for which he or she is otherwise fully qualified.

8. Ibid.

9. The latest such review, a Secretary of Defense-directed study of women in the military released in January 1988, approved the opening of a further 11,138 positions to both male and female soldiers on a gender-neutral basis. Tom O'Brien, "New Jobs Open to Women," *Soldiers*, February 1989, p. 10.

10. Emphasis in the original. *Report of the Secretary of Defense to the Congress On the 1990/1991 Biennial Budget* (Washington: GPO, 9 January 1989), p. 104.

11. "Total Force" includes the Army Reserve and National Guard units and positions as well as the active force.

12. O'Brien, p. 10.

13. Ibid.

14. Data provided by Major Karen Habitzreuther, Women in the Army Policy Action Officer, HRD/ODCSPER, 29 September 1989.

15. Representative sample of guidance for Army promotion boards, provided by representatives of Promotions Branch, US Total Army Personnel Command (PERSCOM), ODCSPER, March 1989.

16. Henry J. Abraham, *Freedom and the Court*, 5th ed. (Oxford: Oxford Univ. Press, 1988), p. 517.

17. Carolyn H. Becraft, "Personnel Puzzle," *U.S. Naval Institute Proceedings*, April 1989, p. 44.

18. Female representation in grades above 07 remains very limited due to the dominance of the combat arms at those levels and because expansion of female soldiers throughout the rest of the force is still a relatively recent phenomenon.

19. *Reed* v. *Reed*, 404 U.S. 71 (1971).

20. *Gutierrez* v. *Laird*, 346 F. Supp. 289 (1972).

21. 411 U.S. 677 (1973).

22. To date, suspect classification remains solely reserved for cases involving alienage or race. In practical terms, governmental action imposing important distinctions between identifiable groups can be "fatally" compromised by the heightened standard of judicial review applied to suspect classifications. See Gerald Gunther, *Individual Rights in Constitutional Law*, 4th ed. (Mineola, N.Y.: The Foundation Press, 1985), p. 254.

23. *Edwards* et al. v. *Schlesinger*, 377 F. Supp. 1091 (1974) and *Waldie* et al. v. *Schlesinger*, 377 F. Supp. 1091 (1974).

24. Albert P. Clark, "Women At the Service Academies and Combat Leadership," *Strategic Review*, 5 (Fall 1977), 66.

25. A high percentage of academy graduates were commissioned into naval warfare specialties, combat flying positions, and maneuver combat arms closed to women. Clark, p. 67.

26. *Schlesinger* v. *Ballard*, 419 U.S. 498 (1975).

27. 429 U.S. 190 (1976).

28. Abraham, p. 507.

29. See Yarbrough, p. 48.

30. 531 F. 2d 1114 (1976).

31. 455 F. Supp. 291 (1978).

32. 625 F. 2d 316 (1981).

33. 635 F. Supp 1228 (1986).

34. 453 U.S. 57 (1981).

35. Holm, p. 373.

36. Registration had been revived as part of the government's reaction to the invasion of Afghanistan and was to begin in a matter of days. Interestingly, the Carter Administration had vigorously opposed congressional initiatives to resurrect registration only the year before. Holm, p. 348.

37. Yarbrough, p. 49.

38. Emphasis in the original. Mr. Justice Rehnquist writing for the majority, cited in Gunther, p. 321.

39. In some cases policies have been changed through statute or by executive decree in anticipation of their eventual invalidation by the courts. Previous restrictive policies in areas such as pregnancy, fraternization, sole parenting, commissioning programs, promotion and retention, assignment, and service benefits have felt the impact, directly or indirectly, of judicial reach.

40. "We question the validity of much of the research on women conducted by the military. We believe there is a clear bias against women. . . . The assumption was made that women cannot withstand stress, are not ready for awesome responsibility, and that they cause problems. Can an institution with these biases be trusted to do objective research?" (Carol C. Parr, National Organization for Women, speaking in testimony before the Subcommittee on Priorities and Economy in Government, Joint Economic Committee, Congress of the United States, 1 September 1977.)

41. Such as higher incidence of training injuries, for example.

42. "The Army must objectively analyze female capabilities . . . and avoid irrelevant comparisons with male soldiers. I strongly believe that healthy women properly led, trained, equipped, and motivated are capable of filling any Army position, including those from which they are presently excluded." (Robert L. Nabors, "Women in the Army: Do They Measure Up?" *Military Review*, 62 [October 1982], 60).

43. One such example is James Webb, former Secretary of the Navy and author of a controversial article based on his personal experiences in ground combat and critical of expanded roles for women in combat units. In the wake of controversy following publication of the article, Webb was quickly fired from the faculty of the US Naval Academy. See James H. Webb, "Women Can't Fight," *Washingtonian* (Spring 1979).

44. This is not, however, to say that most males in the armed forces support combat roles for women. For examples of military literature sympathetic to combat roles for women see Barry J. Coyle, "Women On the Front Lines," *U.S. Naval Institute Proceedings*, April 1989, pp. 37-40, and Michael A. Andrews, "Women in Combat?" *Military Review*, 59 (July 1979), 28-34.

45. It is true that under current policy many female casualties would be incurred in a mid- or high-intensity conflict. Modern estimates continue to project, however, that just as in World War II, Korea, and Vietnam, the overwhelming majority of casualties would be sustained in the combat arms, specifically in the ground maneuver arms of infantry and armor/cavalry. The difference in potential impact on society between the two scenarios is highly significant and should not be viewed as one and the same.

46. The 1982 *WITA* study reported the following measurements of median physical capacity for women as compared to men: leg extensor strength—65 percent; upper body strength—58 percent; trunk flexor strength—68 percent; aerobic capacity—78 percent; lean body mass—75 percent. See *WITA Policy Review*, p. 2-15.

47. One study reported a 54-percent incidence of injury sustained by females in an eight-week basic training cycle, with an average training loss of 13 days. See Dennis M. Kowal, "Nature and Causes of Injuries in Women Resulting From an Endurance Training Program," *The American Journal of Sports Medicine*, 8 (Number 4, 1980), 265-68.

48. In virtually all societies where statistics are kept, male participation in violent crime exceeds that of females on the order of 9:1. Sex role differentiation is reflected in differences in brain configuration between the sexes in all mammals (including humans) while laboratory experimentation confirms that artificial variation in hormone levels produces profound behavioral changes in "normal" sexual and social behavior. "The Sexual Brain," *Science Journal*, Public Broadcasting Service, 13 April 1989.

49. The point here is not so much whether concepts such as sex role identification or protectiveness are legitimate. It is whether they predominate in the society from which soldiers are drawn. Clearly this appears to be so. To eliminate such behavioral distinctions, particularly in the compressed training cycles common in wartime, would appear to be a truly daunting task—particularly if they have physiological and psycho-chemical determinants as well as strictly social ones.

50. See Webb, *Women Can't Fight*.

51. Telephone interview with then-Captain Karen Habitzreuther (see n. 14), 5 April 1989.

52. Interview with USAREC (US Army Recruiting Command) company commander, 13 April 1989.

53. GAO Report FPCD-76-26, "Job Opportunities for Women in the Military; Progress and Problems," cited in *WITA Policy Review*, p. 1-6.

54. Interview with a recent commander of a 280-member logistics unit in the United States.

55. Interview with a company-grade logistics commander.

56. *WITA Policy Review*, p. 1-14.

57. While female pilots cannot be assigned to attack helicopter units, they may, for example, fly troops forward of friendly lines in assault helicopters such as the UH-60 Blackhawk (Habitzreuther interview, 5 April 1989).

58. It is difficult to see how unrestricted female participation in the military can be reconciled with current laws regarding conscription. In a national crisis it would be hard to argue that women should be exempted from involuntary combat service if they were already serving on a volunteer basis, without granting males the same legal protections.