

Don't Keep "Don't Ask, Don't Tell"

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Stephen Benjamin, a petty officer in the Navy, lamented his short-lived career in the military:

I spent two years giving our troops the critical translation services they desperately needed. I was ready to serve in Iraq. But I never got to. In March, I was ousted from the Navy under the "don't ask, don't tell" policy, which mandates dismissal if a service member is found to be gay. (Benjamin, 2007)

Like thousands of other homosexual American soldiers, Stephen Benjamin was first forced to conceal his sexual orientation and was then dismissed from his position and his career. Benjamin's commanders, on behalf of the U.S. military, took these actions in accordance with the "Don't Ask, Don't Tell" (DADT) policy, which seeks to suppress homosexuality in an effort to maintain cohesion and solidarity within military units. As the American military continues to be strained abroad, the policy is now strained back home amidst disagreements over the justice of the policy.

Those hotly contesting the issue present opposing arguments, both of which have substance but also flaws. The argument in favor of DADT fails to define important criteria, violates the Formal Principle of Comparative Justice, and overlooks facts highly relevant to the policy. While those pushing to disband the law also present a flawed argument, these issues are less severe and are resolvable. Policymakers should therefore heed those who wish to repeal DADT, since their argument is not only more credible but also more grounded.

This essay provides background information on the policy, and then presents arguments on either side of the debate. Each argument is analyzed to reveal weaknesses, and the argument to ban DADT is proven to be stronger. To be clear, this essay discusses neither the moral nor the emotional implications of the policy; rather, it objectively critiques the logic and validity of the arguments made by each side and suggests a course of action based on the critical analysis.

Background

The "Don't Ask, Don't Tell" (DADT) policy was adopted by the U.S. military in 1993 under the Clinton administration. The law was created to allow homosexuals to serve in the military under the condition that they not openly reveal their sexual orientation and that their commanders not inquire about it. (In this essay, the term *homosexual* is used to refer to both

homosexuals and bisexuals.) Such confidentiality about sexual orientation was to be enforced in an effort to maintain troop unity and cohesion.

Since its conception, the law has restricted the liberty of homosexuals and caused psychological trauma due to the discrimination inherent in the policy (From the frontlines, 2010). In addition, it has negatively impacted the military by driving out more than 13,000 gay and lesbian soldiers since the law was adopted. In just 2009, 644 people were discharged under the law (Ending "don't ask don't tell," 2010). The military has spent tens of millions of dollars to recruit and train replacements for these discharged soldiers, at a time when the military's strength is vital to the success of several missions.

The controversy over DADT is timelier than ever. In October 2010 "a federal district court ruled in *Log Cabin Republicans v. United States* that the current policy against gays was unconstitutional" (Adler, 2010). The Obama administration immediately objected, requesting the presiding judge to stay her injunction. The judge, however, rejected the administration's request and the military responded accordingly, instructing its recruiters to abide by the ruling. Though Obama has been promising to disband the law since the early days of his campaign, he "has now repeatedly angered the gay-rights advocates: first by refusing to undo DADT himself, then by vociferously defending the law in court, and now by appealing the [*Log Cabin Republicans*] ruling and asking for it to be stayed" (Adler, 2010). Many argue that Obama could repeal the law on his own without Congress, but that he is simply choosing not to, despite his many promises. Instead, he is redirecting the task to Congress, which is also not making any progress on the issue.

In September, Republican Senators filibustered the defense authorization bill that would have repealed the DADT policy. With the overturn of both houses of Congress in the November midterm elections, it is even less likely that DADT will be struck down any time soon (Adler, 2010). In the meantime, the Pentagon is assessing DADT in an ongoing study that will "make recommendations about practical and legal ramifications of lifting the ban, as well as the effect on morale, fighting readiness, recruitment and other issues" (Flaherty, 2010). Results of the investigation will be made available in December of 2010 and will help determine the future of the policy. At the time of this essay's publication, it remains unclear what the outcomes of the Pentagon study are, how long the *Log Cabin Republicans* ruling will stand, and whether the case will be further appealed. In the meantime, this essay offers an analytical perspective by shedding light on some flaws in the arguments of each side.

Pro-DADT Argument

Those supporting "Don't Ask, Don't Tell" claim that "forced cohabitation" of homosexuals and heterosexuals and the resulting "sexual tension... will hurt discipline and morale" of military units (Werner, 2008). Such a claim implies the primary assumption that living in close proximity

will lead to the arousal of sexual tension, and the further assumption that the hypothetical tension will erode discipline and morale. DADT supporters extrapolate on these assumptions to claim that “abolishing the ‘don’t ask, don’t tell’ threshold of personal behavior would jeopardize the unit cohesion, team identity and interdependence that can be a matter of life and death in combat” (Galbraith, 2010). In other words, defendants of DADT fear for the safety of the unit, due to the homosexuality of some of its members. To avoid such a situation, policy makers have restricted open homosexuality, calling on Mill’s Liberty Limiting/Public Harm to Others Principle. According to this principle, this action restricting the liberty to express sexual orientation is justified if it prevents harm to the public (in this case, the military unit).

By claiming that homosexuality causes harm to military units and that it “would be a huge insult and injustice to many service members,” supporters of DADT justify the distinct treatment of homosexual and heterosexual soldiers (O’Donnell, 2010). However, the Formal Principle of Comparative Justice states that unequal treatment between two subjects is only permitted when there exists a morally relevant difference strong enough to require differential treatment. In this case, supporters of DADT deem sexual orientation to be a factor sufficiently strong to justify the distinction in treatment because of the alleged effects sexual orientation has on the functionality of the military unit and its members.

The last major argument put forth by supporters of DADT is that “if the law were repealed, the number of HIV-positive service members would probably increase” (Werner, 2008). This argument alludes to the fact that homosexual men have higher rates of HIV prevalence than other groups in the U.S. Defendants of DADT claim that lifting the ban would lead to an increase in homosexuals in the military, and therefore, more homosexual activity, with the alleged result that “rates of HIV and AIDS would almost certainly increase.” Such an increase, they argue, “would burden military health facilities and affect troop readiness” (O’Donnell, 2010).

In summary, proponents of DADT seek to justify their support of the policy with three rationales: claiming that homosexuality would weaken the force of military units, relying on this claim to justify differential treatment, and predicting an increase in the spread of HIV.

Anti-DADT Argument

Opponents of “Don’t Ask, Don’t Tell” criticize the way it “singles out a group of Americans for second-class treatment, forcing them to hide who they are and to live in fear of being found out and discharged” (Ending “don’t ask, don’t tell,” 2010). Opponents flatly reject the supporters’ claim that homosexuality has negative implications on team cohesiveness and discipline, citing numerous records of military units with homosexuals that have maintained top performance and cohesion. Stephen Benjamin (2007), the Arabic translator who was ousted after two years of service in the

military, verified this claim: "My supervisors did not want to lose me. Most of my peers knew I was gay, and that didn't bother them. I was always accepted as a member of the team." A similar story came from soldier Eric Alva, who "told his buddies that he was gay, and his admission didn't erode 'unit cohesion'" (Werner, 2008).

These stories serve to refute the claims of DADT supporters that homosexuality weakens military units. In fact, the acceptance of homosexuality in the military was confirmed by "the winner of last year's secretary of defense essay contest... that called Don't Ask, Don't Tell a 'costly failure' and debunked the canard that unit cohesion would be harmed if gay service members were allowed to be open about their sexuality" (Ending "don't ask, don't tell," 2010). Some opponents of the policy even argue that the law itself undermines unit cohesion by forcing soldiers to lie about their identity and forcing commanders to either discharge valuable members or ignore the fact that some of their soldiers are gay (Ending "don't ask, don't tell," 2010).

By rejecting the claim that homosexuality negatively impacts military units, and by providing evidence to support that rejection, opponents of DADT perceive differential treatment of soldiers as unjustified. In order for the policy to override the Formal Principle of Comparative Justice and treat homosexual and heterosexual soldiers differently, sexual orientation would have to be shown to have a severely detrimental effect. But opponents of DADT do not find such an effect; rather, they claim that, because sexual orientation has no impact, it is not a sufficiently relevant moral difference to warrant unequal treatment of homosexuals and heterosexuals. Without this morally relevant difference, there is no reason to override the Formal Principle of Comparative Justice, and equal treatment must be upheld.

Another principal argument advanced by opponents of DADT seeks to appeal to the military itself. The opponents assert that the DADT "policy hurts the military by depriving it of the service of a large number of loyal and talented Americans... The evidence is clear that this law makes the military weaker" (Ending "don't ask, don't tell," 2010). Many people, both within and outside the military, have agreed that expelling more than 11,000 soldiers since the start of the ban in 1993 has done "nothing but deprive the military of talent it needs" (Benjamin, 2007). Not only does the military, already strained from low numbers, suffer from losing its soldiers, but it must also invest millions of dollars to recruit and train replacements for members dismissed due to their sexuality. While proponents of DADT may deem this loss of human resources and finances necessary to ostensibly maintain the cohesion of troops, opponents of DADT see this loss as unnecessary and illogical.

Critical Analysis

To review, supporters of the “Don’t Ask, Don’t Tell” policy claim sexual orientation has a detrimental effect on military cohesion, and therefore sexual orientation is a sufficient reason to treat people differently and override the formal principle of comparative justice. DADT supporters further argue that permitting homosexuals in the military would lead to an increase in HIV infection. On the other side of the debate, adversaries of the policy claim there is no such debilitating impact on military units, and therefore, sexual orientation is not a morally relevant factor capable of justifying differential treatment. They further argue that forbidding openly homosexual soldiers to serve is in fact a hindrance to the military. While both positions carry some validity, each is burdened with weighty flaws. In this section, these flaws will be explored, the weaknesses of the two arguments will be compared, and a policy recommendation will be put forth.

Advocates of DADT claim that allowing open homosexuality would lead to “debilitating political agendas incompatible with military service” and would “jeopardize unit cohesion, team identity and interdependence” (Galbraith, 2010). However, it seems no one making this argument has clearly defined the terms *cohesion*, *identity*, and *interdependence*—an omission that could lead to considerable controversy. A strong definition of *cohesion*, for example, could imply that any differences among soldiers—whether those differences consist of sexual orientation, political ideology, geographic origin, or race—can cause cleavage within the unit. A laxer definition of *cohesion* could imply that simply being grouped together is a sufficient bond for the unit, and that no differences among the soldiers can jeopardize that bond. Thus, the definitions of terms such as *cohesion*, *identity*, and *interdependence* used to justify the policy are highly relevant for understanding the alleged effects of homosexuality in the military. Because the proponents of DADT are the ones seeking to justify the unequal treatment, the burden lies with them to prove the policy’s harm. By neglecting to define the terms constituting the harm, they leave the claim too vague to be credible.

The argument in support of DADT is further weakened because it not only leaves essential terms undefined and therefore useless, it fails to acknowledge data that directly contradict the argument. As discussed earlier, those combating DADT have provided evidence from soldiers that, regardless of which definition of *cohesion* or *interdependence* is used, sexual orientation has *not* had negative implications within most units. They have also shown, citing studies of other nations’ militaries, that lifting the ban would most likely *not* cause unrest and rebellion in the U.S., as many continue to fear (Ending “don’t ask, don’t tell,” 2010). Even though the respected military journal *Joint Force Quarterly* announced that homosexuality has no negative impact on units (Ending “don’t ask, don’t tell,” 2010), those supporting DADT have neglected to acknowledge this statement that contradicts their argument. Their silence suggests a

critical weakness in their argument, since it implies that proponents of the policy have no adequate response to information that appears to prove them wrong.

The uncertainty over terms and the lack of response to challenging information are significant because they undermine the entire argument. If cohesion does *not* require the same sexual orientation of all soldiers, or if homosexuality is proven *not* to compromise the strength of the group, there is no reason to treat homosexuals differently. If sexual orientation truly has no impact on the military unit, then it is not a morally relevant factor, and the Formal Principle of Comparative Justice cannot be evaded. If those supporting DADT cannot adequately explain what they mean by disintegration of cohesion, or how they believe sexual orientation harms the military's strength, they have no justification for differential treatment of soldiers based on sexual orientation.

The argument in favor of the DADT policy is further flawed, in that it makes unwarranted assumptions regarding the potential spread of HIV. The first implied assumption is that lifting the ban would attract more homosexuals to the military, an idea that is highly controversial, since many claim the number of homosexuals would not change drastically, only the openness of those homosexuals. The second implicit assumption is that open homosexuals would engage in more sexual activity than closeted ones. Again, this assumption is controversial, because simply being open about one's sexual orientation does not guarantee more promiscuity. Yet another problem with this argument regarding the threat of HIV is that it neglects to acknowledge well-known information. For example, while it is common knowledge that homosexual men have a higher HIV prevalence rate than most groups in the United States, lesbian women have a definitively lower rate than other groups, a fact that is conveniently omitted by those arguing this point. Thus, even if increased sexual activity among homosexual men would increase HIV rates, increased sexual activity among homosexual women would not have the same effect. While some may rightly counter that there are fewer women in the military than men, the discrepancy of HIV rates between gays and lesbians is significant and should have been accounted for.

While the argument supporting DADT is flawed in several respects, the opposing argument is also somewhat weak. Though many denounce the policy for inhibiting the freedom of Americans to serve in the military, they never explicitly clarify why that freedom is an interest that should be protected. That is, they neglect to establish the groundwork for why the liberty to serve in the military is morally significant to the extent that it should be upheld for all Americans. The fact that a freedom is legally protected by a country's laws does not automatically make that freedom worthy of being upheld in all situations. After all, there are instances under which the limitation of an entire population's liberty is deemed acceptable. For example, free speech is often restricted at schools to ensure a friendly atmosphere and to avoid giving offense. Similarly, travel

to certain countries is restricted to protect travelers from being harmed in dangerous political situations. Why, then, is it unreasonable to override the liberty to serve in the military?

Opponents of DADT could strengthen their argument by explicitly answering this question. They fail to provide a rather simple justification: the difference is the way in which the restrictions are distributed. In the case of college campuses, all students' speech is restricted, and in the case of travel, all citizens are prohibited from entering dangerous areas. In these scenarios, a restriction of liberty is distributed evenly among the population involved; there is no discrimination in whose liberty is impinged. Unlike these restrictive policies, DADT distributes the restriction unevenly upon a certain group; it targets a specific group, homosexuals, out of a greater population, soldiers. Such uneven restriction of liberty would be justified if either the entire population—heterosexual, transsexual, and homosexual soldiers—were restricted from serving, or if a material criterion of need, merit, or effort could justify the imbalance of justice. Since not all soldiers' rights are being restricted, and since homosexual soldiers have not proven less capable or willing to serve in the military, there is no legitimate reason to unevenly distribute the restriction of serving in the military. Making such an argument would strengthen the case against DADT by clarifying why the discriminatory restriction of homosexuals in the military is not comparable to non-discriminatory restrictions of liberty elsewhere.

Conclusion

Like most controversial issues, the debate over the U.S. military's "Don't Ask, Don't Tell" policy has some credible arguments on each side. However, the side in favor of the policy has irresolvable flaws: if proponents cannot explicitly define the harm they accuse homosexuals of causing in the military, and if they refuse to acknowledge evidence of the lack of such harm, then they do not have a morally relevant basis to justify overriding the Formal Principle of Comparative Justice.

Those opposing the policy also have flaws in their arguments, but these deficiencies can be resolved by further clarifying why the liberty to serve may not be overridden for a group in the same way that other liberties are occasionally denied to an entire population. Opponents of DADT present a firm argument that is more logically sound. Because the opponents' argument is more credible, the U.S. government should heed it and repeal "Don't Ask, Don't Tell" immediately.

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