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# Higher Education, Military Affairs, and Ethics: A Historical Overview of a Progressive Civil Rights Movement

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*Keywords:* *military, higher education, civil rights, recruiting, law.*

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# Higher Education, Military Affairs, and Ethics: A Historical Overview of a Progressive Civil Rights Movement

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*Abstract-* Leaders within the higher education community are uniquely suited to promote progressive social changes within the United States of America. This essay examines the efforts of higher education professionals to promote gay rights within American society. Efforts to deny military recruiters access to college campuses and the subsequent litigation were strategies used to promote equality within the military, college campuses, and society. This essay examines the historical steps taken to achieve progressive social change.

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## I. Introduction

Higher education is not immune to the cultural and civil struggles within America. Colleges and universities are often caught in the crossfire or directly on the front lines of social conflict. One of the most contentious issues facing such institutions was whether or not some colleges should allow military recruiters on their campuses. An alliance of academic leaders, known as the Forum for Academic and Institutional Rights (FAIR) favored barring military recruiters from campuses because the military had a policy that discriminated against homosexuals. The Department of Defense challenged the actions of FAIR and the case was eventually decided in the U.S. Supreme Court. This higher education issue is best framed within the context of a broader civil rights movement. Mezey (2009) noted that "most studies of earlier civil rights movements concluded that litigation played a critical role in helping achieve the movement's goals. Following the tradition of these civil rights struggles, the gay rights movement also relied on litigation as an important weapon in its battle for social and legal reform" (p. 235). This essay explores the historical context, legal underpinnings, and modern developments for both sides of the issue.

## II. Historical Context

The U.S. military became linked to higher education with the passage of the Morrill Act of 1862. A provision of the act required land-grant institutions to teach military tactics as a condition of receiving the grant. The early military curriculum eventually evolved into what is presently known as the Reserve Officer Training Corps (ROTC). The ROTC programs are hosted by various service components to include the Army, Navy, Air Force, and Marines. A portion of the training is typically integrated into the curriculum offered by a college or university. For example, students can take courses in leadership, tactics, marksmanship, and other areas to receive college credit toward a degree. Most of the courses are taught by members of the military and most programs are housed within a campus facility. The overall intent behind such programs is to produce an educated class of military leaders who will be capable of maintaining national security. Moreover, the military has traditionally recruited enlisted service personnel from college campuses. Military recruiters have offices on many campuses and engage in full-time recruiting efforts.

The social acceptance of a military presence on college campuses sharply declined during the Vietnam Conflict (Orson, 2011). Campuses were fertile grounds for anti-war protests and the public sentiment toward the military was largely unfavorable. A major cultural tipping point occurred as a consequence of the Kent State massacre. Members of the U.S. military shot and killed 4 unarmed students and wounded a number of others. Students retaliated by burning the Kent State ROTC building and academic professionals throughout the country began to look for ways to eliminate the military's presence on college campuses. A popular legal basis for barring military recruiters emerged during the 1990's. Many higher education institutions established non-discrimination policies for homosexuals. These policies barred prospective employers from recruiting on campuses if the employers discriminated against candidates on the basis of their sexual orientation.

The U.S. military had a longstanding history of discriminating against homosexuals (Lehring, 2003; Mucciaroni, 2008; Shawver, 1995). A government policy was initiated to dishonorably discharge any service member who was gay. This type of discharge prevented service members from receiving veteran's benefits, including the G.I. Bill funding for college (Lehring, 2003). The initial justification for such discharges was based on the classification of homosexuality as a mental illness. However, the mental illness classification was rescinded by the American Psychiatric Association and the

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American Psychological Association during the 1970's but the military continued to enforce the ban (Shawver, 1995). The military established a Don't Ask Don't Tell (DADT) policy in 1993 and it was approved by Congress. The DADT policy prohibited homosexuals from declaring their sexual orientation and it prevented military officials from asking if a service member was gay. The policy effectively barred gays and lesbians from openly serving in the U.S. military. Several academic circles were appalled by the continued oppression. Gary Lehring (2003) best characterized the situation by saying "the military's practices have been so abusive, intrusive, and disrespectful of human rights that they have threatened the principles of the U.S. Constitution, the same Constitution that members of the military have sworn to defend" (p. 119). Members of the academic community decided to take a stand on the civil rights issue and higher education institutions were placed on the forefront of the debate. Members of FAIR positioned themselves against the Department of Defense and drew a line in the sand. The proponents of this civil rights movement barred military recruiting on some campuses on the basis that the military was a discriminatory organization and the select colleges did not want to associate with such discrimination.

## III. The Fair Argument

The members of FAIR were comprised of various law schools, faculty members, and other supporters. They shared a common goal to establish and reinforce a policy barring recruiters that discriminate against the sexual orientation of a prospective candidate. The bureaucratic elements within the military were seen as discriminatory because the Department of Defense established the Don't Ask Don't Tell policy. FAIR's effort was part of the broader civil rights movement to advance the rights of homosexuals. The members of FAIR argued that the Solomon Amendment, which could eliminate federal funding for denying access to recruiters, was a violation of free speech and free association.

They filed for a preliminary injunction against the enforcement of the Solomon Amendment in an effort to block am imminent loss of federal funding which was a consequence of barring recruiters from campuses. The District Court denied the injunction because recruiting was seen as conduct as opposed to speech. The District Court's decision was based on the case of *United States v. O'Brien* in which a criminal prohibition against burning a draft card was deemed to be constitutional because it was an act of conduct and not an act of speech. Similarly, the District Court maintained that barring military recruiters was a similar type of conduct and it could legally be regulated by the provisions in the Solomon amendment. The case was appealed in the Third Court and the District Court's decision was reversed. The Third Court believed that the act of barring recruiters was an act of expressive conduct which fit the category of free speech. Accordingly, the Solomon Amendment was deemed unconstitutional. The Department of Defense disagreed and appealed to the U.S. Supreme Court.

The notion of freedom of association was an important aspect of FAIR's final argument. A separate U.S. Supreme Court case, *Boy Scouts of America v. Dale*, was cited as a supporting precedent. The U.S. Supreme Court ruled that the Boy Scouts of America could bar homosexuals from serving as troop leaders because the Boy Scouts had a lawful right to associate or not associate with homosexuals. However, the notion of freedom of association became applicable to other groups and other contexts. Universities applied the freedom of association argument to establish their policy to bar military recruiters from campus (Dionne, 2004). FAIR believed they had a lawful right to choose to not associate with the military recruiters. The *Boy Scouts of America v. Dale* case demonstrated that a private organization could not be forced to associate with anyone. Thus, FAIR argued that they should not be forced to associate with military recruiters.

## IV. The Rumsfeld Argument

The Department of Defense (DOD), led by Secretary of Defense Donald Rumsfeld, filed the U.S. Supreme court case against the members of FAIR because they prohibited military recruiters from engaging in activities on several campuses. The DOD sought to overturn the third court's ruling that the Solomon Amendment was unconstitutional. The lawsuit was led by Solicitor General Paul Clement. The DOD believed members of FAIR had violated the Solomon Amendment by denying access to members of the Armed Forces. The Amendment, passed in 2003, gives the Secretary of Defense the authority to deny federal funding to any higher education institution that denies access to military recruiters or denies the establishment of a ROTC program. The DOD argued that the Solomon Amendment was constitutional and it did not violate free speech. Paul Clement's argument mirrored the reasoning cited by the judge who decided the original case for the District Court. Clement reasoned that recruiting was conduct and not speech. Thus, the First Amendment was not violated and the Solomon Amendment was constitutional.

The DOD also argued that recruiters could potentially access campuses without invoking the Solomon Amendment because Article 1, Section 8 of the U.S. Constitution gives Congress broad power to raise armies. Thus, access could be secured by the provisions in the Constitution. Given these facts, the DOD sought to reverse the Third Courts ruling and gain



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access to the higher education institutions that refused to allow military recruiters on their campuses.

## V. The Supreme Court Decision

The case was argued in the U.S. Supreme Court on December 6, 2005 and it was decided on March 6, 2006. Chief Justice John Roberts presided and was joined by Justices Stephen Breyer, Ruth Ginsburg, Clarence Thomas, David Souter, Anthony Kennedy, Antonin Scalia, and John Stevens. Justice Samuel Alito did not participate in the case. The court determined that the Solomon Amendment did not violate free speech or freedom of association. The court reasoned that the Amendment did not prohibit speech and it did not require any type of speech. Recruiting efforts were seen as conduct and not speech.

The Supreme Court struck down the freedom of association argument. The precedent set by the case of *Boy Scouts of America v. Dale* was not applicable to FAIR's case. The Boy Scout's case determined that the Scouts had a right to bar a gay man from being a scout leader because they did not wish to associate with or be represented by a homosexual. FAIR did not have the right to bar recruiters under the precedent set by *Boy Scouts of America v. Dale* because no one in the university was forced to associate with the recruiters and the recruiters did not represent the university in the same way the gay man would have represented the scouts. Additionally, military recruiters would not hold a position of authority within the university and no ethical conflict existed in the eyes of the Supreme Court. A violation of free speech was not found and the Solomon Amendment was upheld. It was determined that the DOD did have the right to deny federal funding to the FAIR institutions that denied access to military recruiters.

The DOD clearly had a stronger legal case. This is apparent by the Supreme Court's unanimous decision. However, the strongest of legal cases can be challenged by the moral framework brokered by the court of public opinion. Some law schools felt so strongly about the issue that they continued to bar military recruiters after the Supreme Court case was decided and they willingly bared the consequence of not receiving federal funds (e.g. Vermont Law School and the William Mitchell College of Law).

## VI. Conclusions

FAIR lost the Supreme Court case but the larger issue has recently been addressed by the White House, Congress, and the Department of Defense. FAIR represented a broader progressive civil rights movement to advance the rights of homosexuals. The central moral issue focused on the military's rejection of openly gay and lesbian service members. The Supreme Court case was a cultural battle fought with litigation and the higher academic community were a driving force behind this movement. For example, Elena Kagan served as the Dean of the Harvard University Law School when the *Rumsfeld v. FAIR* lawsuit suit was heard in court. She was a key player in the FAIR organization and she was subsequently appointed as a Supreme Court Justice by President Barack Obama. This move was not surprising considering Obama's campaign promise to repeal the Don't Ask Don't Tell (DADT) policy. The repeal of DADT has been part of the Democratic Party's agenda for many years. In fact, Bill Clinton pledged to fight for a repeal when he was a presidential candidate but he never made good on his promise (Mucciaroni, 2008). President Obama (2011) made progress when he announced that the DADT policy will officially end during his term as President. He noted that "service members will no longer be forced to hide who they are in order to serve our country" and "our military will no longer be deprived of the talents and skills of patriotic Americans just because they happen to be gay or lesbian" (Obama, 2011, p.1). He delivered on his promise by signing the Don't Ask, Don't Tell Repeal Act of 2010 into law on December 22, 2010. Several elite institutions have responded favorably to the repeal. For example, Yale University restored a ROTC program on campus and other institutions have taken action to become military friendly. The issue has, in essence, made a 180 degree turn and the academy is beginning to reestablish a good relationship with the military. The Department of Defense, under the leadership of Ash Carter, took an additional step to promote the inclusion of transgendered individuals within the military by barring discrimination of transgendered service members. This is estimated to affect "between 1,320 and 6,630 transgender troops" and this knocks down "one of the last barriers to service based on gender identity or sexual orientation" (Brook, 2016, p. 1). This civil rights struggle demonstrates that higher education professionals can find themselves within the crosshairs or at the crossroads of litigation and progressive social reform. Given this situation, leaders within the higher education community have a social responsibility to champion efforts to promote diversity and inclusion.

## References Références Referencias

1. Brook, T. V. (2016, June 30). *Pentagon lifts ban on transgender troops*. Retrieved August 23, 2016, fromhttp://www.usatoday.com/story/news/politics/2016/06/30/pentagon-lifts-ban-transgender-troops/86551686/
2. Dionne, E. J. (2004, December 03). *Let the military on campus*. Retrieved August 23, 2016, from http://www.washingtonpost.com/wp-dyn/articles/A30182-2004Dec2.html



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3. Lehring, G. L. (2003). *Officially gay: the political construction of sexuality by the U.S. military*. Philadelphia: Temple University Press
4. Mezey, S. G. (2009). *Gay families and the courts*. New York: Rowman & Littlefield Publishers, Inc.
5. Mucciaroni, G. (2008*). Same sex, different politics*. Chicago: The University of Chicago Press.
6. Obama, B. H. (2011, July 22). *Statement by the President on certification of repeal of don't ask don't tell*. Retrieved August 23, 2016, from http://www.whitehouse.gov/the-press-office/2011/07/22/statement-president-certification-repeal-dont-ask-dont-tell\
7. Orson, D. (2011, January 26). *Reinstating ROTC programs may not be so simple*. Retrieved August 23, 2016, from http://www. npr.org/2011/01/26/133249636/Reinstating-ROTC-Programs-May-Not-Be-So-Simple
8. Shawver, L. (1995). *And the flag was still there: Straight people, gay people, and sexuality in the U.S. military*. New York: The Haworth Press.



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