

EFFICACY OR JUSTICE?

Overturning the Ban

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Justice is the great interest of man on earth. Wherever her temple stands, there is a foundation for social security, general happiness, and the improvement and progress of our race.

—Words inscribed on the Department of Justice building, Washington, D.C.



THAT A SERVING OFFICER can not only publish but also win an award for an article calling on the National Command Authority to end the 1993 ban against openly gay persons in the military is a substantial sign of change. Air Force Colonel Om Prakash’s essay “The Efficacy of ‘Don’t Ask, Don’t Tell’” appeared in *Joint Force Quarterly* this last October. The essay had previously won the 2009 Secretary of Defense National Essay Competition. To many this seems like a significant move forward toward social justice. I join those who salute Prakash’s achievement. His article makes a welcome contribution to the public conversation on this important topic, but I don’t think the article puts the case in the best light. By framing the debate over gays in the military in terms of “efficacy,” Prakash adopts the general tone of the national conversation on Don’t Ask, Don’t Tell in recent years. Nathaniel Frank’s 2004 op-ed in the *New York Times* was, perhaps, the first to cast the conversation in terms of lost money by noting the military was kicking out expensive and scarce Arabic linguists because they were gay.¹ Many others took up this line of reasoning. And Prakash is right to remind us that some 12,500 persons have been discharged under the law and that this hemorrhage of talent constitutes a considerable expense in both “personnel and treasure,” which it does.² However, the most compelling reason for overturning the ban is not efficacy, but justice.

Efficacy

Prakash quotes an unnamed general who says, “Experiments within the Army in the solution of social problems are fraught with danger to efficiency, discipline, and morale.”³ This statement rather neatly sums up objections to overturning the ban. Senior leaders have reflexively cried “Wolf” about gays in the military since the idea gained public attention, and it has seemed obvious to most of them that permitting openly gay citizens in the uniformed ranks would so undermine good order and discipline that the military’s ability to defend the Nation would be in doubt. Prakash tells us that the research shows this isn’t so, and he points out that many principal U.S. allies around the world—Canada, the United Kingdom, Australia, Israel and others—already

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permit gays to serve openly in the military, and this has caused scarcely a ripple in military society and military effectiveness.⁴ However, the reflexive resistance of American leaders has held sway.

We have allowed the debate to be framed on military terms alone, and we have trusted unexamined judgments. Had we done this years ago, the United States might well still be defended by an Army of white males sans women or people of color. We must remember guns are just instruments, and in a democracy, they are tools meant to serve ideals. Our cherished documents do not celebrate the “pursuit of life, liberty, and efficacy.” Nor do they cede judgments about constitutional principle to military officers.

Observers often note that democracy is inefficient, so much so that one can sometimes wonder whoever thought that government “of the people, for the people, and by the people” was a good idea in the first place. Then we compare democracy to other forms of government and see that it places great value on an individual citizen’s right to frame his own plan of life, to choose what seems best to him. And this ability to choose, to live in liberty, emerges as the great trumping ideal, and we decide, after all, that democracy is effective. It follows, then, that a military serving a democracy will recognize that efficiency cannot be its ultimate ideal.

The argument that focuses on the efficiency of gays in the military is wrong on two counts. First, as Colonel Prakash notes, the research shows that it is false to claim that gays in the ranks undermine “good order and discipline” and, second, even if that were true, we would lose much liberty in order to save some military effectiveness, a poor trade involving the disenfranchisement of some citizens.

Many have rightly taken offense when seeing what ought to be a discussion about “liberty for all” turned into one about “efficacy.” Prakash does us a great service in pointing out that the arguments against efficacy are themselves flawed. Read his piece; it is worth the time.

Why has the effectiveness argument been foremost in the public discourse? Why did advocates decide not to take on the prejudice beneath the cry of wolf? I suspect it is because this line of reasoning gains traction against prejudice by putting the debate in the less emotional terms of lost money and personnel. However, if we win the argument on this ground, we do so at liberty’s peril, and the victory will be a hollow one.

Liberty

In 1859, John Stuart Mill published a slim volume entitled *On Liberty*. In the introduction, he tells us that the question of “where to place the limit . . . between individual independence and social control” is “the principal question in human affairs.”⁵ Mill adds, “The sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection.”⁶ Mill placed particular respect on individual human beings. An early social reformer, he was one of the first prominent men in English society to advocate for women’s rights. Women, he saw, were human beings, and that was argument enough in his view for fair and equal treatment in courtrooms, parlors, and bedrooms. In seeing that meaningful reform depended on the force of law, he introduced a principle declaring, “The only purpose for which power can rightfully be exercised over any member of a civilized community, against his will, is to prevent harm to others.”⁷ Mill ends a stirring and powerful passage with this: “Over himself, over his own body and mind, the individual is sovereign.”⁸

Mill’s principle should be clear, but some fears are so overwhelming as to be beyond reason’s reach. Americans are used to disapproval of many of their private choices. For instance, we might think

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that our next door neighbors' choice to "max out" multiple credit cards is imprudent or even immoral. Similarly, we may think that our neighbors across the street are too liberal with their teenage children, that they drink more than they should, that our co-workers are too pushy with their evangelism in the workplace, and so on. However, we usually recognize that their private lives are their private business, and that we are better off tending our own affairs while others do the same. Homosexuals, whoever else they may be, are human beings. They are citizens, and what they do in privacy is

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no concern of ours so long as it does not cause us harm. What they do is not so alien as to be outside the range of normal experience. Why, then, all the *Sturm und Drang*, all the storm and stress? We permit and pass over with hardly any comment many controversial habits in diet, religious practice, drug use, games of chance, various forms of aesthetic expression, and sexual congress between men and women. What is it about homosexuality that is so out of bounds for so many high-functioning, educated, and otherwise fair-minded people?

The great irony involved with the military's rejection of gay and lesbian persons is that it is the special duty of the military to protect liberty. By what logic can an institution expressly dedicated to the protection of liberty carry out wholesale attack on that same liberty as a matter of law? We all recognize the sacrifices that military personnel make, and because they do sacrifice, we rightly afford them honor and privilege in public life. No one should argue that these privileges come with certain conditions, especially the requirement to accept tacit condemnation.

Some people do not like homosexuality, and that is fair enough. One need not alter his aesthetic and social choices in life to recognize the essential humanity of others. Americans have prided themselves on recognizing the universal right to private liberty, and they have been compassionate toward

those they cannot abide socially. If one wishes to deny others their basic rights, then one must "show cause" in terms of "harm done to others."

From Efficacy to Liberty and Justice

That our public discourse in the debate about homosexual service in the military has largely turned on the "inefficiencies" and "the lost combat power" caused by the gay exclusion is disappointing. Lots of op-ed ink has been spilt on the question of how many gay people were kicked out of the service, say, in the last year or in the run-up to the Iraq war. The writers then tell us how much money it costs to train those extremely rare Arabic linguists while going on to tell us that national defense suffers from this shortsightedness. Such observations miss the moral point. They amount to a category mistake by implying that, because we happen to need Arabic-speaking military personnel, we will permit gays to serve in the military. Such logic implies that one can die for his country without expecting any but the minimum public honor.

Some will claim that this puts the case too strongly, but one wonders what level of polite discourse is suitable to the denial of justice. Homosexuals are people and citizens just like straight people. They vote. They have social security numbers. They are not felons. Their only shortcoming is that, in the minds of increasingly fewer people, they are sinners. Even if one believes they are sinners, the harm done would be only to themselves and not to others, not to society, not to the military. When we ask Soldiers who happen to have different sexual practices to surrender their dignity for the privilege of serving, we use them to meet our collective need instead of acknowledging their common humanity. Using them in this fashion, we take the sacred while giving the profane.

As Prakash points out, the "Don't Ask, Don't Tell" law requires homosexual citizens serving the common defense to lead split lives. It denies them the integrity essential to their sense of themselves. The policy itself seems nonsensical to some, as it both permits and denies people to be gay. It says, you can "be" gay, but you cannot "act" gay. You can be what you are, but you cannot act as if you are who you are. It makes no sense. It is, root and branch, bad policy. And it is bad precisely because it caters

to the prejudice that supposes gays in the ranks lead to inefficiency while restricting the liberty of these citizen-soldiers as a matter of public law.

Instead of crunching the numbers and talking about “measures of effectiveness,” we ought to be talking about the meaning of liberty, about forming a more just and perfect society. We have stooped to the “measures of effectiveness” argument because we think it gives us a wedge against conservative politics and the moral lethargy of tradition. The impetus for the rationale may gain some ground, and it will give some cover to moderates in the Congress and elsewhere who are aware that homosexuals are people after all but who don’t have the courage to say this to their constituents. In adopting such a posture, we risk surrendering to mob rule, common prejudice, and the tyranny of the ballot box.

Prejudice is widespread and common, and it does bear on the ballot box, but it is still prejudice. Dr. Martin Luther King, Jr., has already taught us about the tyranny of the majority. Just because there are more white people than black people does not mean that the white people can carry out their unanalyzed prejudices even if they can muster the votes. The prejudice against homosexuals will yield to liberty’s reason and analysis just as the prejudice against skin tone has. The great thing about America is that it does respect both liberty and reason.

The first duty of the law is to preserve liberty, to prevent harm to others. America’s story is the story of a government dedicated to the idea of liberty and justice for all. We have made mistakes. We remain imperfect, but we are moving toward justice. The gay ban will fall, and ultimately, it will fall without regard to efficacy. It will fall because it is wrong for our Nation to practice institutional and legal prejudice against its own people.⁹ **MR**



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NOTES

1. See Nathaniel Frank’s *New York Times* op-ed, “Ready, Willing, Disqualified,” 16 December 2004. Frank, perhaps, began this line of reasoning, and many others have since followed. See also *New York Times* editorial “The Price of Homophobia,” 20 January 2005, and letter to editor *New York Times*, 25 May 2008. A search on the *New York Times* website showed 189 hits on Don’t Ask, Don’t Tell from 2004-2008 under the opinion category alone.
2. Om Prakash. “The Efficacy of Don’t Ask, Don’t Tell,” *Joint Force Quarterly*, 4th quarter 2009, 89-90.
3. *Ibid.*, 88.
4. *Ibid.*, 93.
5. John Stuart Mill, *On Liberty*, originally published in 1859 (New York: Hackett Publishing Company, 1978) 5.
6. *Ibid.*, 9.
7. *Ibid.*
8. *Ibid.*
9. I have met Nathaniel Frank. He is a decent man. He may have put forward the idea of efficacy, but he did not put it forward because he thinks efficacy is more important than liberty. He put it forward out of sheer frustration while watching his country do positive harm to the group of citizens we call gay. Frank knows perfectly well that liberty is precious. I make this note because I do not want to distort his view on principles.