



Sacred Heart
UNIVERSITY

Sacred Heart University
DigitalCommons@SHU

Government, Politics & Global Studies
Undergraduate Publications

Government, Politics & Global Studies

2015

Expression Is Camouflaged

Nicole Esposito

Sacred Heart University, nikkiespo13@sbcglobal.net

Follow this and additional works at: http://digitalcommons.sacredheart.edu/gov_stu

 Part of the [Military and Veterans Studies Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Esposito, Nicole, "Expression Is Camouflaged" (2015). *Government, Politics & Global Studies Undergraduate Publications*. 2.
http://digitalcommons.sacredheart.edu/gov_stu/2

This Essay is brought to you for free and open access by the Government, Politics & Global Studies at DigitalCommons@SHU. It has been accepted for inclusion in Government, Politics & Global Studies Undergraduate Publications by an authorized administrator of DigitalCommons@SHU. For more information, please contact ferribyp@sacredheart.edu.

Nicole Esposito

Professor Kapoor

PO-121-I

24 November 2014

Expression Is Camouflaged

The freedom of expression in the American military is an ongoing issue, especially concerning the Don't Ask, Don't Tell policy, tattoo policy, and freedom of speech. In 1993, the Don't Ask, Don't Tell policy affected homosexuals serving in the military by restricting LGBT members from serving our country, resulting in issues that rippled throughout the country. This restriction was repealed in 2010, and controversy concerning the subject is ongoing. Also, there are additional tattoo restrictions aimed only towards military members in 2014. These provisions cause issues as members are being forced to remove their preexisting tattoos. The guidelines are also very vague, which causes confusion as to what is considered inappropriate under the Army Regulation rules. Lastly, servicemen are stripped of their freedom of speech, as outlined in the United Code of Military Justice. These restrictions cause tension between the government and military personnel, as they feel as if their rights have been violated. Hence, the military restrictions of freedom of expression are causing friction between the military and the government.

President Clinton introduced the Don't Ask, Don't Tell policy in 1993, which caused controversy concerning homosexuals in the military. At Fort McNair in 1993, Clinton stated, "An open statement by a service member that he or she is a homosexual will create a rebuttable presumption that he or she intends to engage in prohibited conduct, but the service member will

be given an opportunity to refute that presumption.” This stirred controversy because the homosexuals would have to hide behind their sexuality. Also, their actions that pertain to their sexual orientation were still considered prohibited under this policy. In 2000, George W. Bush brought up this restrictive policy, stating, “I support the current ‘Don’t Ask, Don’t Tell’ policy crafted by General Colin Powell regarding homosexuals in the military. We are blessed and fortunate to have had so many men and women fight so valiantly for our liberties in America” (Associated Press). This contradictory statement shows that the policy was easily misconstrued as Bush took it as one that allowed homosexuals to easily serve. In reality, however, it restricted them from their right to openly express themselves. Therefore, there was tension in public opinion as people thought the policy did not do enough for the LGBT community.

In 2010, the repeal of the Don’t Ask, Don’t Tell policy under President Obama was a huge step forward for the future of the LGBT community. The injunction regarding Don’t Ask, Don’t Tell states,

“Until further notice, commanders will not enforce Don't Ask, Don't Tell and its implementing regulations. It remains the policy of the department of defense not to ask service members or applicants about their sexual orientation, to treat all members with dignity and respect, and to ensure maintenance of good order and discipline. The Marine Corps will process applications for enlistment or appointment without regard to sexual orientation” (Phillips).

The equality that is now in place due to the repeal allows for freedom of expression in the military with regards to sexual orientation. This liberal stance continues to stir public opinion, but today homosexuals in the military are treated fairly in the eyes of the law. However, some problems still arise concerning the repeal. “Changing or upgrading Don’t Ask Don’t Tell

discharge papers is increasingly difficult for those who lost their careers and are over the age limits or not otherwise eligible” according to Wilson Military Law offices. These eligibility issues dealing with discharge papers is one of the several issues that the Don’t Ask Don’t Tell Repeal Act of 2010 touched upon. Hence, even though some concerns are still prevalent, the lack of restriction of LGBT military personnel after the repeal cannot be ignored.

Throughout history, tattoos have been a frowned upon art form within the United States military. As a whole, uniformity is key as one fights for our country. This, however restricts the soldier’s freedom of expression as a human being. In the AR-670-1 Section 3-3, some of the restrictions are as states: “Soldiers may have no more than four visible tattoos below the elbow (to the wrist bone) or below the knee. The tattoos in these areas must be smaller than the size of the wearer’s hand with fingers extended and joined with the thumb touching the base of the index finger. The total count of all tattoos in these areas may not exceed a total of four” (10). Others include those of the head, ears, neck, and wrist areas (10). The majority of these strict conditions have been recently added in 2014, highlighting that the more the government is involved with the issue, the stricter the provisions. They are seen as unclear and unjust as a hand-size measurement can vary so widely. This causes public outrage as some servicemen and servicewomen are forced to remove their personal tattoos to enlist. This removal of the tattoos is required if the tattoos are not up to the military standards as the proper size or in the proper spot. The document also prohibits “extremist, sexist, indecent, and racist tattoos” (10). These vague descriptions are wide open to interpretation of what is considered a “racist or sexist” tattoo, for example. This confusion causes more discomfort as the law is based so heavily on opinion. The restrictions have only become tighter with government input, which creates more of a restraint on a military member’s freedom of expression as a citizen of the United States.

Protected under the First Amendment, freedom of speech is a right granted to all American citizens. However, military restrictions override the Constitution by setting speech regulations strictly for military personnel. Under the Uniform Code of Military Justice, Article 88 states, “Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.” Also, Article 89 asserts that “any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.” These articles explicitly ban a soldier’s freedom of speech, which has caused issues both in the past and in recent years. Many people feel that their First Amendment right is being violated, which was the dilemma of the 1974 court case of *Parker v. Levy*. Levy, an army physician, was convicted of “violating Article 90(2) by disobeying the hospital commandant's order to establish a training program for the aid men, and of violating Articles 133 and 134 by making public statements urging black enlisted men to refuse to obey orders to go to Vietnam, and referring to Special Forces personnel as ‘liars and thieves,’ ‘killers of peasants,’ and ‘murderers of women and children!’” (*Journal of Criminal Law and Criminology*). Levy argued that he had the right of free speech, but the case concluded that limitations on military servicemen’s freedom of speech is valid and constitutional, so those individuals must act accordingly.

In today’s society, the same is true, as the Secretary of Defense sets guidelines for military behavior. In the Department of Defense Instruction, Section 917 (Article 117) prohibits “provoking speeches or gestures,” while Section 938 (Article 138) prohibits “complaints of

wrongs” (McGinn). The provisions for these guidelines were last updated in February of 2012. This shows that the input of the Department of Defense only tightens the restrictions of a military personnel’s freedom of speech. Soldiers are viewed as military members before they are perceived as citizens in the eyes of the law. This causes agitation throughout the American public and those in the military, as the Constitution is being re-constructed only for military personnel. Thus, freedom of speech in the military is limited by the government, facilitating unequal treatment amongst the American people.

I am in agreement with the repeal of the Don’t Ask, Don’t Tell policy as all people should be seen as equal under the eyes of the military. Hence, it is beneficial for the LGBT community to be represented. President Barack Obama supports this viewpoint on the subject, and at the 2009 Human Rights Campaign Dinner he stated, “We are moving ahead on Don't Ask, Don't Tell. We should not be punishing patriotic Americans who have stepped forward to serve this country. We should be celebrating their willingness to show such courage and selflessness on behalf of their fellow citizens, especially when we're fighting two wars.” These remarks by President Obama point to more liberal views continuing in the future that pertain to homosexuals in military forces. Although they are now freely members of the military, I feel as if the LGBT community is still discriminated against by fellow servicemen and servicewomen. These are deep-rooted issues and I do not think this will end soon. In the future, however, these attitudes will continue to transform into a more accepting society. Thus, I believe that the repeal of the Don’t Ask, Don’t Tell policy was done for the good of the country, as everyone has equal representation and treatment in the military.

Military personnel should not be restricted on the type, number, or size of their tattoos despite the idea of uniformity. Tattoos are a personalized piece of artwork that helps the

serviceperson be highlighted as an individual. Stripping these people of their right to express themselves is unjust and violates their rights. Also, the guidelines set by the AR-670-1 concerning tattoos are ludicrous. Other than measuring a tattoo based on hand-size, another standard for tattoos is that “a single tattoo is defined as one or multiple tattoos spaced apart that can still be covered by a circle with a diameter of five inches. Tattoos spaced apart that cannot be covered by a circle with a diameter of five inches are considered separate tattoos.” These provisions are so precise that it is almost as if the military personnel cannot have any without getting some removed. The inaccurate and unrealistic provisions violate the soldiers’ freedom of expression as it is their body, and the military cannot force a human being into being something that he or she is not. However, with the provisions being so recent (in 2014), I believe there will continue to be tighter restrictions on tattoos concerning military personnel as they are growing in popularity. Therefore, the tattoo dilemma will gain more attention in the future as more people will get tattoos. Then they will become frustrated with the harsh restrictions set upon them through military standards.

In my opinion, military personnel should not be subject to restrictions on their right to speak freely. They should not be treated unfairly as they are American citizens who deserve the same rights as other non-military members. Being in the military should not strip them of their right to free speech nor give them special treatment. In essence, soldiers are American citizens who are voluntarily working for a salary. Therefore, they should not be treated differently under the law, as they are citizens first and soldiers second. This topic has garnered a lot of attention over time as these restrictions violate a person’s basic rights. “As to be expected in a society where the military and the civilian are not separated in watertight compartments, civilian disputes over free speech have had echoes in the military” (Vagts). Without clear-cut divisions, public opinion

becomes a leading role in these issues concerning the military. In the future, I believe that restrictions will still be in place because the Department of Defense is against my personal beliefs regarding freedom of speech in the military. However, I do believe that more people will try to change these restrictions so they are not as harsh. This is because the idea of controlling only military speech is unjust and creates inequality within American society.

Consequently, freedom of expression in the military has been restricted, especially when focusing on the Don't Ask, Don't Tell policy, tattoo policy, and freedom of speech. The issue with the Don't Ask, Don't Tell policy is ongoing as problems with its repeal in 2010 make some actions more difficult. The repeal, though, has brought a newfound equality to the military as LGBT people can be open about their sexual orientation. With regard to the tattoo policy in the military, the harsh restrictions seem to worsen as time goes on. These laws restrain personal freedom and control the military personnel in an unjust way. Lastly, the issues concerning freedom of speech in the military have restricted a soldier's basic human right under the First Amendment. This military provision to the Constitution creates a sense of unequal treatment under the eyes of the law. Therefore, military members should not be restricted from anything less or more than their non-member counterparts, because when it comes down to it, each one of them is an American citizen above all else.

Bibliography

Bush, George W. "Gays in Military OK; "Don't Ask, Don't Tell" OK." Associated Press. 6 Sept. 2006. Speech. 25 Oct. 2014

Clinton, William J. "President Clinton "Don't Ask, Don't Tell 19 July 1993" 25 Oct. 2014. Speech.

McGinn, Gail H. "Department of Defense INSTRUCTION." Rep. 2 Feb. 2012. Print. 25 Oct. 2014

"Military Justice: Parker v. Levy, 417 U.S. 733 (1974)." *Journal of Criminal Law and Criminology* 157.4 (1975): 505-13. *Northwestern Law*. Web. 25 Oct. 2014.

Obama, Barack H. "Remarks by the President at Human Rights Campaign Dinner". 11 Oct. 2009. Speech. 25 Oct. 2014

"Post "Don't Ask, Don't Tell" Legal Issues." *Wilson Military Law*. 1 Jan. 2013. Web. 25 Oct. 2014.

Phillips, Virginia. "INJUNCTION REGARDING DON'T ASK DON'T TELL: INTERIM POLICY." (2011): 1. Print.

"UCMJ." *Uniform Code of Military Justice: Articles 88 and 89*. 1 Jan. 2014. Print. 25 Oct. 2014.

Vagts, Detlev. "Free Speech in the Armed Forces." *Columbia Law Review* 57.2 (1957): 187-218. *JSTOR*. Web. 25 Oct. 2014.

"Wear and Appearance of Army Uniforms and Insignia." Army Regulation 670-1 3-3 (2014): 10-12. Print.