#### For years the president has used his war powers authority to exclude women from ground forces introduced into hostilities.

Urias. 4 ARNULFO URIAS, J.D. Candidate, University of Southern California Law School, 2005;

Southern California Review of Law and Women's Studies Fall, 2004 14 S. Cal. Rev. L. & Women's Stud. 83

NOTE: THE POLITICS OF BIOLOGY: EVOLUTIONARY BIOLOGY AND THE EXCLUSION OF WOMEN FROM COMBAT \*

[\*89] In 1993, Congress passed the 1994 Defense Authorization Act (DAA) and repealed the final remnants of the exclusion policy in the United States Code, which included the prohibition of women from combat vessels. n46 The DAA eliminated the last two surviving prohibitions from CEL: the ban of women on warships and combat aircrafts. n47 In doing so, however, Congress did not impart complete freedom on women to occupy combat positions; instead, it merely removed the explicit prohibition of women in combat, shifting the authority to exclude onto the services themselves. Furthermore, Congress favored keeping the combat restriction on women -- so much so that it included language in the DAA instructing the Secretary of Defense to inform Congress before any service changed its exclusion policy. n48 In the report accompanying the DAA, Congress stated its plans to "exercise close oversight on these or any other planned changes to the assignment policy for women, particularly if these changes could result in women serving in units whose mission requires routine engagement in direct combat on the ground." n49 Nonetheless, in 1993, Secretary of Defense Les Aspin directed the different military services to open up as many service positions (known as Military Occupational Specialties, or MOSs) as possible to women and to research future opportunities for women in the military. n50 However, he explicitly allowed them to continue prohibiting women from "units engaged in direct combat on the ground, assignments where physical requirements are prohibitive and assignments where the costs of appropriate berthing and privacy arrangements are prohibitive." n51 He also permitted the services to "propose additional exceptions, together with the justification for such exceptions, as they deem appropriate." n52 Because the latter two grounds for excluding women, financial cost and additional exceptions, are matters of judgment, their boundaries are so elastic that they may be broken and even revoked. However, the first permissive [\*90] restriction on women, the prohibition of women from front-line combat, remains a relatively bright-line rule. n53

#### Although the DOD formally repealed the combat exclusion, the maintenance of physical requirements means that women will continue to be excluded from those forces introduced into hostilities.

Peralta 13 EYDER PERALTA, NPR January 23, 2013 Panetta Is Lifting Ban On Women In Combat Roles

http://www.npr.org/blogs/thetwo-way/2013/01/23/170093351/panetta-is-lifting-ban-on-women-in-combat-roles

Secretary of Defense Leon Panetta has decided to lift a ban that prohibited women from serving in combat, a congressional source tells NPR's Tom Bowman. The move opens up thousands of front-line positions. Panetta is expected to announce the decision along with the Chairman of the Joint Chiefs of Staff on Thursday. Citing "senior defense officials," the AP adds: "The groundbreaking move recommended by the Joint Chiefs of Staff overturns a 1994 rule banning women from being assigned to smaller ground combat units. Panetta's decision gives the military services until January 2016 to seek special exceptions if they believe any positions must remain closed to women." Back in November, four servicewomen along with the American Civil Liberties Union . U.S. Army nurses rest on sandbags at Cam Ranh Bay in South Vietnam, July 1965. Women, the lawsuit claimed, were already serving in combat roles, but were not receiving recognition for it. The ACLU said the combat exclusion kept women from more than 200,000 positions. Perhaps a prelude, last year, the military opened 14,500 positions to women and lifted a rule that prohibited women from living with combat units. Citing a "senior defense official," the change won't happen immediately. CNN explains: "The Army and Marine Corps, especially, will be examining physical standards and gender-neutral accommodations within combat units. Every 90 days, the service chiefs will have to report back on their progress. The move will be one of the last significant policy decisions made by Panetta, who is expected to leave in mid-February. It is not clear where former Sen. Chuck Hagel, the nominated replacement, stands, but officials say he has been apprised of Panetta's coming announcement. "'It will take awhile to work out the mechanics in some cases. We expect some jobs to open quickly, by the end of this year. Others, like Special Operations Forces and Infantry, may take longer,' a senior defense official explains. Panetta is setting the goal of January 2016 for all assessments to be complete and women integrated as much as possible." This story is breaking. We'll update this post with reaction and more details, so make sure to refresh this page. Update at 5:20 p.m. ET. 'Fantastic News': Carey Lohrenz, a former Navy Lieutenant and one of the first women to fly F-14s on air craft carriers, tells our Newscast unit that this is "fantastic news," but it's really just catching up with the reality on the ground. "We have women in combat roles right now. We are just not able to promote them," she said. "They're on the ground in Iraq; they're on the ground in Afghanistan. This is strictly formalizing and recognizing what their contributions currently are." Sen. Mazie K. Hirono, a Democratic member of the Armed Services Committee from Hawaii, said the move was a "great step toward equality." "I know that the women who currently serve in the military think they should be treated the same as any other servicemember," Hirono said in a statement. "Women serving in combat roles will strengthen our national security, and as a member of the Armed Services Committee, I will work closely with military and administration officials to see this change through." Update at 4:14 p.m. ET. Infantry Troops: As we alluded to earlier, the implementation of this new policy will be complex. an important caveat saying that while this is the "largest expansion yet of women in combat roles," "defense officials said they don't expect the change to result in women being allowed to serve as infantry troops."

#### A new report to congress confirmed that very few women will be able to meet the current standards.

Washington Times, 13 (Few women will qualify for land combat: report. http://www.washingtontimes.com/news/2013/feb/24/report-few-women-will-qualify-for-land-combat-loop/?page=all)

A new report to Congress predicts that relatively few women will be able to perform land combat tasks on the same level as men, and it says the Pentagon’s pledge to maintain “gender-neutral” physical standards has a loophole. Meanwhile, the Marine Corps, viewed as the service most resistant to opening the infantry to women, will test male and female troops together in strength and endurance to determine how women can perform ground warfare, according to an internal memo obtained by The Washington Times. The congressional report and the Marine Corps memo come as pro-defense conservatives are exploring ways to ensure that the Obama administration does not ease rigorous standards as a way to make sure women qualify for direct combat jobs. When Defense Secretary Leon E. Panetta last month removed the policy prohibiting women from serving in direct combat units — infantry, armor and special operations — he vowed not create two standards, citing the 1993 Gender-Neutral Occupational Performance Standards as the guide.

#### Plan: The United States federal government should preclude the president from excluding women from forces introduced into hostilities.

#### The military will rely on physical requirements that presume a masculine military and subordinate women to continue the exclusion of women from combat roles.

Goodell 10 Maia Goodell, partner at Vladeck, Waldman, Elias & Engelhard, she was a Surface Warfare Officer in the U.S. Navy, serving on the USS Abraham Lincoln and USS Port Royal. She is a member of the Committee on Military Affairs and Justice of the New York City Bar. Seattle University Law Review Fall, 2010 34 Seattle Univ. L. R. 17 ARTICLE: Physical-Strength Rationales for De Jure Exclusion of Women from Military Combat Positions

Task definition is the clearest indicator that all of the thinking behind physical-strength arguments assumes that a male military member is normal and a female military member must be accommodated with "special" clothing, equipment, and procedures. This section has aimed to show that standards for job performance can remain high despite task redefinition. The failure to explore this possibility indicates that a normative belief, rather than an inexorable reality, is driving the physical-strength rationale for de jure exclusion of women from the military. IV. THE NORMATIVE BASIS FOR DE JURE EXCLUSION A pattern emerges from these four problems. What appears to be a biological truth is actually better understood as a normative belief that the military's job is in some way peculiarly suited to men. It is not that women's bodies do not measure up against an objective standard, but that the standard is defined so women do not fit it. This Part examines the normative claims exposed as underlying the physical-strength arguments. In pre-Rostker cases, rejecting men's equal protection challenges to the draft, courts made the underlying normative rationale quite clear: "If a nation is to survive, men must provide the first line of defense while women keep the home fires burning." n203 Subsequent cases cite this policy as justification for otherwise unsupported claims about "obvious" innate differences in physical strength, rather than providing factual support for actual differences as a justification for the policy. n204 In contrast, a Montana district court actually examined the physical-strength evidence and rejected the "actual differences" defense. The judge found: "There is simply no basis for concluding that all or even a significant number of women are incapable of serving in the military. This statement is true even assuming they would be placed in combat roles." n205 As a society, we still seem to accept the belief that it is the reality [\*48] of women's bodies that limits their participation in the military. As we have seen, however, that belief is deeply flawed--for example, consider again the simple stereotyping analysis that asks why women would be excluded de jure. The exclusion instead relies on an understanding that the kinds of things the military does are, and should be, appropriately within the male realm. But in incorrectly presupposing that men are, literally, strong, and women are, literally, weak, competence is confused with masculinity, and incompetence is confused with femininity. This presupposition has an important corollary: masculinity becomes a mark of power and status--even in all-male settings. n206 It goes beyond stereotyping, however, because in believing men are stronger, we both train them to be stronger, and we create a military designed around their abilities--in other words, we make the belief real. Epistemologist Sally Haslanger has termed this cognitive mechanism "assumed objectivity." n207 Members of a powerful group ascribe characteristics to a weak group in a way that makes the differences real, and in a vicious cycle, the ascribed characteristics help make the weak group weak. n208 For example, slave owners might ascribe a lack of intelligence to slaves, claim that this characteristic is innate, use this professed belief to justify a lack of education, and in this way make real a difference that keeps the slave owners in power. n209 It works the same way for sex. n210 First, observed regularities--women's lower scores on physical-strength tests--are taken to be a consequence of women's weak nature. Second, women's weak nature is argued to constrain decisions around their inclusion in certain military jobs. Haslanger argues that, while there is not necessarily anything wrong with conforming action to the nature of things, in the context of gender, such constraints reinforce a distorted view of reality. n211 This view leads to the third, critical step of assumed objectivity, contributing "the element of illusion--the masking of social/moral facts as natural facts." n212 The starting position that purports to be neutral in fact presupposes the masculinity of the military. n213 [\*49] This distortion is counterproductive for women and for men. Women lose by being defined as incompetent to serve in combat roles just because they are women. The military is a central institution of national and international power. It has a vital role in the international rule of law. The physical-strength argument reveals an underlying normative distinction between combatant and noncombatant that is gendered and hierarchical. Women must shatter this distinction or risk permanent subordination. If women want to invoke state protection from violence, as we should, the institution that provides that protection cannot legally define women as unequal. If the arguments to exclude women from the military are less than empowering to women, they are less than flattering to men: "Our ultimate marching orders," writes Stephanie Gutmann, "come from the imperative to extend our species, and on some very primitive level we 'understand' that eggs are expensive and sperm--that is men's bodies, which throughout history have been treated like so much matchwood--are cheap." n214 Gutmann's willingness to characterize military men, who are disproportionately rural and black, n215 as disposable and oversexed is particularly surprising given her explicit recognition of the class attitudes that lead political liberals to look down on the military. n216 Men lose by being constrained to the role of oversexed aggressors, on pain of losing their identity as men. n217 As bell hooks puts it: "Men are not exploited or oppressed by sexism, but there are ways in which they suffer as a result of it." n218 The United Nations Secretary General found that "[t]here is . . . significant diversity among men, shaped by local context and cultures." n219 Even among men, diversity of ability is an important aspect of military teams, n220 yet it is threatened when a single set of characteristics conforming to beliefs about masculinity are confused with military ability. [\*50] The question becomes not whether equality should be accommodated at the expense of military readiness, but how much military readiness can be sacrificed to adhere to inaccurate views about women's and men's ability. n221 Analyzing the physical-strength rationale for de jure exclusion of women from combat exposes the distorted lens demanding that men be strong and women be weak. This distorted lens compromises the military mission on many levels. It leads to excluding available personnel who not only would be capable of doing the job, but also might do it better. More profoundly, the mission of the military is to protect and defend our democratic society. This mission is compromised if it is achieved through subordination of a segment of that democratic society. n222 To echo President Obama, it is time to repeal another law and regulation "that denies . . . Americans the right to serve the country they love because of who they are": n223 The prohibition on women serving in combat.

#### Isolated physical requirements are not a good measure of actual ability – emphasizing those measures is biased

Goodell 10 Maia Goodell, partner at Vladeck, Waldman, Elias & Engelhard, she was a Surface Warfare Officer in the U.S. Navy, serving on the USS Abraham Lincoln and USS Port Royal. She is a member of the Committee on Military Affairs and Justice of the New York City Bar. Seattle University Law Review Fall, 2010 34 Seattle Univ. L. R. 17 ARTICLE: Physical-Strength Rationales for De Jure Exclusion of Women from Military Combat Positions

Indeed, real life examples show that, despite the lower scores on isolated tasks, women performed well in the jobs for which those same studies were meant to apply. For example, in actual damage control situations, no one has report-ed any problems with women's performance. The Presidential Commission appointed by President George H.W. Bush found that "200 women performed well in an actual firefighting emergency aboard a Navy ship in 1988." n173 The difference between the theoretical [\*43] expectation that women are unable to perform the job (because some women were unable to perform some tasks) and actual results in a real life emergency can probably be explained by the fact that women possess many unmeasured abilities. For instance, isolated studies do not measure the critical endurance that is required for crews to fight fires for days on end.

Women have a number of advantages that are useful in the military context. n174 It is important to realize that generalizations about these advantages, even when intended to benefit women, run the risk of accepting differences as natural--an acceptance, that, as we have seen, is neither empirically supported nor ultimately empowering to women. Studies can only measure women's bodies as they come to be in conditions of today's imperfectly equal society. n175 With this in mind, we can still note findings suggesting that women today have physical characteristics that warrant just as much study as potentially important to various military tasks. Survey respondents in the Navy study reported that restricted space made twenty of fifty tasks very difficult, n176 suggesting that a smaller stature may actually be an ad-vantage. Mitchell admits that women are less susceptible to altitude sickness and cold. n177 Women have a higher speed-to-body-size ratio in sprint events, suggesting that they pack power more efficiently. n178 Women's greater body fat contributes to streamlining and cold resistance, both of which are advantages in swimming. n179

Endurance is another area in which women may have an advantage. Several studies have found that, in submaximal performance, women's muscles have significantly slower fatigue and faster recovery than men's do. n180 A 1999 study concluded this result is likely due to different muscle [\*44] composition. n181 Women also have higher percentages of intramuscular fat and may burn it more efficiently, possibly contributing to their endurance for submaximal (less than the maximum of which an individual is capable) work. n182 Other military forces have taken advantage of women's greater capacity for endurance. n183 For instance, the Vietnamese military put women's greater endurance to practical use when it assigned women to carry supplies because they had greater stamina and complained less of the drudgery. n184 They earned the description of "water buffalo of the Revolution." n185

Physical ability is substantially more complex than a single unified "strength" trait. If physical abilities are to justify selections for job performance, one cannot pick and choose which abilities to measure by sex, not job, correlation. n186 By failing to justify trait selection that advantages men as job-related, critics reveal that they are defining "strength" around men's abilities. They thus attribute large observed differences on selective measures to a natural "physical strength." However, it is the strategic selection of the measures, not the job requirements, that leads to the dramatic gap

#### Exclusion of women constructs female subordination

Vojdik 5 Valorie K. Vojdik , Associate Professor of Law, West Virginia University College of Law. Alabama Law Review Winter, 2005 57 Ala. L. Rev. 303 ARTICLE: Beyond Stereotyping in Equal Protection Doctrine: Reframing the Exclusion of Women from Combat

By moving beyond stereotyping, the argument against judicial deference to the military's discriminatory policy becomes substantially stronger. As Judge Fletcher observed in Philips v. Perry, judicial deference to a military policy that is based upon hatred of, and prejudice toward, an excluded class of people is unjustified. n404 As Kenneth Karst has argued, the institutional opposition to women in direct ground combat is no different than the military's former policy of excluding African-Americans or homosexuals. n405 [\*348] While each involves a classificatory scheme, each enforces a status hierarchy that preserves the military for white, heterosexual males. n406

The harassment and violence toward military women illustrates the persistent hostility and denigration of female troops. By shifting the focus from gender stereotyping to the institutional practices within the military that construct warriors as male and masculine, the direct ground combat exclusion appears less like a mistake in classification and more like a fundamental means of enforcing the status of military women as second-class citizens. The military's discriminatory policy, like the use of gender-based peremptory challenges in J.E.B. v. Alabama, perpetuates the historical exclusion of women from the military and stigmatizes women as different and inferior, unworthy of the role of warrior. n407

The combat exclusion constructs and preserves a gendered system of labor that reflects and perpetuates male supremacy and female subordination. In this sense, the combat exclusion functions in the same way as the anti-miscegenation laws struck down by the Supreme Court in Loving v. Virginia. In Loving, the Supreme Court relied on its anti-subordination doctrine to strike down Virginia's anti-miscegenation law as violating the right to equal protection. n408 The Court rejected the notion of formal equality advanced by the state defendant that the law prohibited interracial marriages by both blacks and whites and therefore was racially neutral because it treated all persons equally without regard to their race. n409 Prohibitions against interracial marriage, the Court held, were part and parcel of maintaining a system of racial distinction that perpetuated the subordination of blacks under the law. n410 Like the anti-miscegenation statute in Loving, the categorical exclusion of women from direct ground combat demeans and stigmatizes women as different and inferior.

A legal challenge to the combat exclusion, as illustrated above, does not merely vindicate the goals of formal equality. The constitutional wrong is not simply that the military has mistakenly concluded that no woman is capable of engaging in combat (although the exclusion clearly reflects overly broad gender stereotypes), but that the military, through a range of institutional practices, constructs and preserves a gendered caste system. By [\*349] making the military as an institution visible, the hostility toward women as a group becomes plain to see. Rather than accept the military's gender norms, opening the doors to women in combat fundamentally challenges the myth of masculinity inside one of the most powerful institutions that continue to deny women equal citizenship status.

#### The full integration of women in the military prevents sexual assault – it is the only way to solve the cause of the problem

Haring, 13 (Army Col. Ellen Haring is on the staff of the Army War College. To stop sexual assault against women in the US military, add more women. http://www.csmonitor.com/Commentary/Opinion/2013/0624/To-stop-sexual-assault-against-women-in-the-US-military-add-more-women)

Last week, the US military services announced their plans to integrate women in combat specialties. Although it may sound counterintuitive, the full integration of women in the armed forces – in all roles, at all levels, and in far greater numbers – will do more to stop sexual assault against them than any other measure. It will help more, for instance, than creating a new cadre of lawyers (called “special victims counsels”) to assist service members who say they are victims of sexual assault – a program now underway in the Air Force. It will help more than reforming the prosecution of sexual misconduct cases so that victims do not fear reprisal from commanders – an issue the Senate Armed Services Committee has grappled with. Both of these efforts are worthwhile, but they address the effects of the scourge. They do not get to its cause, which is the hyper-masculine, male-dominant culture of the military. To do that, the military must create a far more welcoming atmosphere for women, who make up only 15 percent of the armed services. It must welcome and value them as equal partners, and it must greatly increase their numbers. As Joint Chiefs of Staff Chairman Gen. Martin Dempsey commented in January, when the Defense Department lifted the ban on women in combat, having “separate classes” of male “warriors” and everyone else creates an environment ripe for sexual assault and harassment. The more that the Pentagon “can treat people equally, the more likely they are to treat each other equally.” In May, the Pentagon said that the number of sexual assaults reported by service members increased to 2,949 last year, more than double those reported in 2004 – perhaps reflecting more willingness to report under the Pentagon’s sex-assault prevention and response program, which began in 2005. Many more incidents go unreported. According to a Pentagon survey, last year about 26,000 service members (6.1 percent of females and 1.2 percent of males) said they experienced unwanted sexual contact – which may range from rape to abusive sexual contact. And yet, we are stunned by the leadership’s continued misapprehension of how a “culture change” could happen. Too many generals seem to think the solution starts with the rank and file, when it must start at the top – with them. In a recent Washington Post commentary on the need to reform military culture, Army Maj. Gen. Robert Scales concluded that “so long as the culture of the rank and file rejects the presence of women as their professional partners, nothing will change.” Similarly, it was disturbing last week to see Maj. Gen. Bennet Sacolick, of Special Operations Command, haltingly discuss the integration of women into elite services such as the Navy SEALs and Army Rangers. Full combat integration is now required across the services by 2016, with exceptions having to be approved by the secretary of Defense. Yet Major General Sacolick was not able to commit to any integration in the elite forces. He wants first to survey the rank and file on “social implications,” and “behavioral and cultural” aspects of integration. The only reason to hold back women soldiers – whom Sacolick at one point called “young girls” – is a specific finding that they cannot do the job. Resistance from the rank and file has no place in a decision to keep an occupation or unit closed to women. It is much easier to look for external sources of a problem than to examine ourselves. Today’s military generals helped shape and lead an institution that enables sexually abusive men, that glorifies a culture of male dominance, and that has only allowed women in at the margins and in support roles. Numbering only 200,000, compared to 1.2 million men, women in the armed services face exclusionary practices by the dominant group. Those practices range from name calling, to misogynistic jokes, to more extreme behaviors such as harassment and assault. Token groups move away from this condition when they reach a “critical mass” – 33 percent of the total population, according to experts. Prof. Robin J. Ely, at the Harvard Business School, says that when women reach this level, the organization stops seeing them as women and begins to evaluate them on the basis of their capabilities. She finds that critical mass must also be achieved at the top level for its benefits to be realized – a point that the military’s top brass must understand and act on. Leadership must move swiftly to fully open up the service academies that train officers. While women outnumber men at almost all colleges and universities in the United States – as of 2011, women received 56 percent of all bachelor’s degrees – the number of women with bachelor’s degrees from the four military taxpayer-funded academies is remarkably low – because admission rates are low. Only the Coast Guard Academy breaks the “critical mass” barrier, with women accounting for 36 percent of its admissions last year. Female admissions for the other academies has changed little from the first integrated classes: 24 percent at the Naval Academy, 23 percent at the Air Force Academy, and 16 percent at the Military Academy at West Point. West Point officials have been saying that their classes must mirror the Army’s population, which is comprised of roughly 15 percent women. But this is no way to lead the necessary cultural shift. For guidance on how to make an improvement, West Point need only look at the Army ROTC program, where 21 percent of the cadets in 2011 were women. In high schools, about 45 percent of the JROTC program is female. If the military truly hopes to solve the problem of sexual assault, then the leadership must genuinely and publicly accept women as fully capable and must actively seek to increase the number of qualified women in the services. Women’s full integration in combat and greater recruitment are not problems to be solved, but an opportunity to be celebrated. Only then will the military culture change to one in which all servicemembers are valued team players.

#### Women in Combat challenges gender stereotypes used to keep women subordinate

Vojdoik 5 Valorie K. Vojdik , Associate Professor of Law, West Virginia University College of Law. Alabama Law Review Winter, 2005 57 Ala. L. Rev. 303 ARTICLE: Beyond Stereotyping in Equal Protection Doctrine: Reframing the Exclusion of Women from Combat

Litigation strategies that illuminate the particular practices within social institutions that subordinate women are well-suited to enrich the courts' understanding of discrimination. A legal challenge to the continued exclusion of women from direct ground combat is one example of this strategy. While the combat exclusion can easily be challenged as improper gender stereotyping, it is better framed as an institutional practice that constructs warriors as male and masculine while demeaning women. Challenging the combat exclusion, I argue, shifts judicial attention from stereotyping to concrete practices of subordination.

My argument proceeds in three parts. Part I analyzes the Court's gender equality jurisprudence in Virginia and other recent decisions to examine the extent to which the Court has considered anti-subordination concerns and values within its anti-classification framework.

Part II addresses the question of how to enrich the Court's understanding of gender discrimination beyond stereo-typing. In this section, I draw upon sociological theories of gender that focus on the social practices within institutions that construct and reinforce gender inequality. Several legal scholars have relied upon this literature to enrich the courts' understanding of the mechanism and harm of sexual harassment in the workplace. n16 This scholarship offers a particu-larized account of sexual harassment as a means of devaluing and subordinating women in the workplace, dissolving the dichotomy between anti-classification and anti-subordination concerns.

In Part III, I illustrate how this approach could be used to frame a legal challenge to the exclusion of women from direct ground combat and shift the attention of courts from gender stereotyping to the institutional subordination of women in the military. The Department of Defense (DOD) continues to exclude women from direct ground combat, n17 denying women access to 15% of total available positions in the armed forces, regardless of whether or not they are qualified. n18 To justify its categorical exclusion, the [\*306] military relies on gender stereotypes: women lack the physical and emotional strength to fight and kill; their presence will impair male bonding and unit cohesion; their inte-gration will reduce "military effectiveness." n19

Although the direct ground combat exclusion can be easily framed as a case of impermissible stereotyping, a legal challenge should focus on the institutional practices within the military that construct warriors as male and masculine, and simultaneously denigrate women and femininity. n20 The ground combat exclusion is not merely a product of mistaken gender stereotypes; it rests upon the military's desire to define and preserve the identity of the warrior as male and masculine. n21 As General Robert H. Barrow, a former commandant of the Marine Corps, explained: "War is a man's work. . . . When you get right down to it, you have to protect the manliness of war." n22

A legal challenge to the direct ground combat exclusion does not merely vindicate formal equality or anti-classification principles. By looking closely at the practices inside the military as an institution, the exclusion of women from direct ground combat can be seen as a means of subordination rather than a classificatory error. Like the military's now-discredited policy of racial segregation, the exclusion rationalizes the inequality and subordination of women -- not only in the military, but within American society as well. This type of analysis of institutional practices that denigrate and subordinate women can be used to enrich judicial understanding of gender discrimination as not merely an error in classification, but also as part of a system of subordination that reflects hostility toward treating women as equals.

#### Plan key to women promotion in the military

Reed, 99 (Brian J. Gender Integrated Basic Training: A Theoretical Analysis of the Continuing Debate. . Minerva 17.2 (Jun 30, 1999): 18. )

The history of women in the military shows their participation to be both limited and auxiliary. Although many women were recruited in World War II, their service was primarily restricted to traditional female roles and positions behind the lines that freed men for combat (DeFleur 1985). However, immediately before and after male conscription was abolished, a number of important gender barriers within the military were removed. Women entered the Reserve Officer Training Corps on civilian college campuses in 1972; the first female cadets were admitted to the service academies in 1976 (Moskos 1993). In 1978, Congress abolished the separate Women's Auxiliary Corps (WAC), and virtually all assignments except direct combat roles were opened to women. Women were still prohibited from serving in combat arms units (infantry, armor, field artillery) and in warships, bombers, and fighter planes. Combat-linked roles are the primary avenue for advancement in the military. Accordingly, limiting women's participation in these roles restricts their chances to move ahead. In the wake of the Gulf War, the combat exclusion policy came under increased political pressure for reevaluation. Congress lifted the ban on women in combat planes, and women are now eligible to fly all types of combat aircraft, both fixed-and rotary-wing (Moskos 1993). Further policy changes have allowed the assignment of women to maneuver (in particular, infantry and armor) brigade headquarters.

#### The positions women hold in the military affects the perception of their role in broader society – only ending combat exclusion solves

Reed, 99 (Brian J. Gender Integrated Basic Training: A Theoretical Analysis of the Continuing Debate. . Minerva 17.2 (Jun 30, 1999): 18. )

In the military, social definition pertains to the structural ways in women are permitted to serve only in certain jobs and units. As a result, the perception is created that women are part of a special protected subclass who are exempt from direct combat roles and, therefore, are not sharing the same risks as men (Devilbiss 1985). However, as the military opens up more jobs for women in nontraditional roles, the effect of women's social visibility in these jobs and the social impact of their performance (determined by how well they do) become more critical in shaping military ideology. In a previously all-male environment, a woman's social visibility is very high. The introduction of women into the male-dominated "fraternity" of fighter pilots provides a good example. The social impact of gender consciousness is related to the social visibility women experience in this environment (Devilbiss 1985). The presence of women in this setting is seen as abnormal and therefore stands out. Gender becomes important not only because of its high social visibility, but also because it is seen as a challenge or reinforcement to existing beliefs.

Failure to engage gender discrimination ensures a terminally dysfunctional social order. The end result is extinction

Warren and Cady, 96

(Karen Warren and Duane Cady, Professors at Macalester and Hamline, Bringing peace home: feminism, violence, and nature, 1996, p. 12-13)

Operationalized, the evidence of patriarchy as a dysfunctional system is found in the behaviors to which it gives rise, (c) the unmanageability, (d) which results. For example, in the United States, current estimates are that one out of every three or four women will be raped by someone she knows; globally, rape, sexual harassment, spouse-beating, and sado-massochistic pornography are examples of behaviors practiced, sanctioned, or tolerated within patriarchy. In the realm of environmentally destructive behaviors, strip-mining, factory farming, and pollution of the air, water, and soil are instances of behaviors maintained and sanctioned within patriarchy. They, too, rest on the faulty beliefs that it is okay to “rape the earth,” that it is “man’s God-given right” to have dominion (that is domination) over the earth, that nature has only instrumental value that environmental destruction is the acceptable price we pay for “progress.” And the presumption of warism, that war is a natural, righteous, and ordinary way to impose dominion on a people or nation, goes hand in hand with patriarchy and leads to dysfunctional behaviors of nations and ultimately to international unmanageability. Much of the current “unmanageability” of contemporary life in patriarchal societies, (d) is then viewed as a consequence of a patriarchal preoccupation with activities, events, and experiences that reflect historically male-gender-identified beliefs, values, attitudes, and assumptions. Included among these real-life consequences are precisely those concerns with nuclear proliferation, war, and environmental destruction, and violence towards women, which many feminists see as the logical outgrowth of patriarchal thinking. In fact, it is often only through observing these dysfunctional behaviors—the symptoms of dysfunctionality—that one can truly see that and how patriarchy serves to maintain and perpetuate them. When patriarchy is understood as a dysfunctional system, this “unmanageability” can be seen for what it is—as a predictable and thus logical consequence of patriarchy. The theme that global environmental crises, war, and violence generally are predictable and logical consequences of sexism and patriarchal culture is pervasive in ecofeminist literature. Ecofeminist Charlene Spretnak, for instance, argues that “a militarism and warfare are continual features of a patriarchal society because they reflect and instill patriarchal values and fulfill needs of such a system. Acknowledging the context of patriarchal conceptualizations that feed militarism is a first step toward reducing their impact and preserving life on Earth.” Stated in terms of the foregoing model of patriarchy as a dysfunctional social system, the claims by Spretnak and other feminists take on a clearer meaning: Patriarchal conceptual frameworks legitimate impaired thinking (about women, national and regional conflict, the environment) which is manifested in behaviors which, if continued, will make life on earth difficult, if not impossible. It is a stark message, but it is plausible. Its plausibility lies in understanding the conceptual roots of various woman-nature-peace connections in regional, national, and global contexts.

#### The plan challenges patriarchy at its most fundamental level.

Skaine,94 (Rosemarie, Activist, Author. Gender Issues of Americans in Combat. 140-141)

Family roles remain at the heart of the controversy over whether women should serve in combat. One military man told me that a woman can serve in combat but she cannot be the primary shooter. Part of the reason some men believe this “primary shooter” mentality is that for whatever reason, religious, macho, or acculturation, the end result is the same. Women are mothers, and therefore, according to Linda Grant De Pauw, the prospect of women at war is faced by some with unease. In an interview, De Pauw was even more blunt in contradicting the conventional wisdom: Women and children are killed in vastly greater numbers as civilians than are soliders in war. But society accepts that because it does not contradict the image of women as victims… The horror of women in body bags in not a horror of a dead woman. It’s a that the woman was a warrior, that she is not a victim. American culture does not want to accept that women can be both warriors and mothers, but conjures for itself an ultimate horror – the murdering mother. To accept women as warriors means a challenge to patriarchy at its most fundamental level. Mady Segal points out that cultures sometimes see the mothering role as being diametrically opposed to the warrior role because giving life in childbirth is the opposite of taking a life in a war. Segal says that the more movement that occurs away from traditional family norms, especially from the nuclear family, the greater the representation of women in the military. “this does not mean,” she says, “the demise of family values.” Structural support such as a parental leaves or community-supported child care can be provided. Women will have more opportunity in the military as society supports diverse family forms. Francine D’Amico agrees that “War has been perceived as men’s domain, a masculine endeavor for which women may serve as victims, spectator or prize. Women are denied agency, made present but silenced.” The antifeminists, however, believe that the woman-warrior image destroys the family and fab- ric of our society and decreases military readiness. They believe the genders are “naturally” diflerent. D’Amico thinks, however, that women’s participation in the Gulf War did not challenge traditional gender roles and constraints. She reminds her readers of the “many unidentified women who were among the ‘collateral damage’ of the precision bombing and Iraqi occupation.”

#### Including more women in combat independently transforms the international system.

Statchowistch, 12 (Saskia, Prof@ University of Bristol,Military gender integration and foreign policy in the United States: A feminist international relations perspective Security Dialogue August 2012 vol. 43 no. 4 305-321.)

This analysis highlights the multiple ways in which military gender issues and foreign policy interact. At the policy level, there is often an explicit link between foreign policy doctrines, military reforms and gender policies. This concerns the inner-military gender order as well as the role of global gender equality as a goal in international politics. Negotiations on gender issues are thus frequently a crucial element in power struggles between military and political elites over the course of foreign policy. At the discursive level, foreign policy concepts and debates utilize gendered terminologies and images, as different groups of political and military actors argue for or against a particular course. Gender-based inclusions and exclusions in military institutions are thus linked to the gendering of foreign policy discourses. Consequently, foreign policy debates are to be read as contributions to gender debates and vice versa. Analysis of the time period between 1990 and 2011 shows that foreign policy concepts that emphasize multilateralism, diplomacy, human rights and peacekeeping were tied to the most comprehensive gender equality and integration measures. Clinton’s first term serves as an example for a time period when recruitment conditions, domestic politics and foreign policy concepts all favoured integration and equality in the services was significantly advanced. His second term, which introduced a more risk-averse isolationism, was characterized by stagnation in military gender matters. Integration was under constant attack by the Republican majority in Congress, military commanders, think-tanks and the media. Discourses on the ‘feminization’ of the armed forces and foreign policy successfully challenged the administration by associating some of its strategies – cooperation, compromise and ‘soft skills’ – with femininity. In the context of this mounting conservative pressure, the administration largely abandoned gender equality in the military as a political goal. In the context of the expansionist, unilateral and threat-based foreign policy of George W. Bush, the far right was able to gain considerable influence in domestic and international gender matters. At the same time, the military implementation of Bush’s global vision depended on women’s military participation and the integrated military represented an important asset in the war narrative of ‘liberating Muslim women’. Foreign policy doctrines emphasized the superiority of US values and the necessity to impose them on other societies, even by preventive military interventions. In the context of this doctrine, gender equality served as a symbol of the USA’s moral superiority and at the same time women’s military participation was dissociated from equality and civil rights issues. Under these conditions, the favourable recruitment environment did not translate into more equality for women in the services and some impediments to women’s status were even introduced. But, despite frequent demands by conservative interest groups, integration was not reversed. Foreign policy imperatives thus ultimately triumphed over the conservative, anti-feminist agenda in domestic politics. The Obama administration has redefined the objectives of US foreign policy. In this context, gender equality was reframed as a security issue in its own right rather than a justification for the use of military force. The empowerment of women became a concrete objective, pursued by concrete foreign and domestic measures. Initiatives since Obama’s inauguration suggest that this emphasis on gender equality in the global context is also paralleled by measures to enhance the rights and status of women and sexual minorities in the armed forces. New approaches in the peacebuilding process have also led to a revaluation of female service members in the war zone. However, trends towards the privatization of military tasks and power gains for the far right within the Republican Party could countervail these trends towards more equality. Foreign policy concepts and practice are inherently gendered, make use of gendered discourses and ideologies, and mirror the gendered assumptions that an administration holds on the international order, the nation’s role within it, sources of conflict, and acceptable and efficient ways to solve them. As such, foreign policy not only reflects but also influences gender relations at home and abroad. By defining what US global power means and how it is to be pursued, it identifies the function of the armed forces and the role that women are supposed to play within them. While personnel shortages account for increased female participation in the military, foreign policy rationales and the relevance of military force within them have made a difference to women’s concrete status and function in the armed forces. While war has generally led to more integration, women’s participation differed according to how a specific intervention was conceptualized and in what foreign policy concepts it was embedded. Women’s status and gender equality in the armed forces are thus not only an outcome of recruitment conditions or domestic power relations, but also linked to a nation’s position in the global order and its interpretations of that position. Military gender relations are closely connected to the gendered notions of national identity constructed in and through foreign policy. Feminist international relations enables this broader understanding of military gender integration as interrelated with both the gendered dynamics of global politics and domestic power relations. It advocates engagement with the connections between gendered discourses, social power relations, and women’s status in national and international institutions. This study contributes to understanding how women’s equality and gender-specific inclusions and exclusions at the state level are interrelated with the gendered structures and discourses of international politics. As the analysis shows, gender-critical inquiry into state institutions helps account for state behaviour in the global arena. Vice versa, examining the gendered dynamics in international politics contributes to the understanding of inner-state gender relations. The study also highlights some of the processes through which both are connected: the inclusion/exclusion of gender issues in/from foreign policy doctrines, the gendering of foreign policy discourses, and the instrumentalization of gender equality as a justification for foreign intervention. Through scrutiny of these different levels of interaction, comparative research on the relationship between national and international gender regimes can be conducted beyond the study period and the US case.

#### Statutory action is key to shift the military culture and allow individuals to collect damages

Stoddard 97Thomas B. Stoddard, attorney and adjunct professor at the New York University School of Law

New York University Law Review November, 1997 72 N.Y.U.L. Rev. 967 ESSAY: BLEEDING HEART: REFLECTIONS ON USING THE LAW TO MAKE SOCIAL CHANGE

D. Enforcing Change

The fourth prerequisite for legal change that accomplishes "culture-shifting" as well as "rule-shifting" is overall and continuous enforcement of the new rule by the government. Rules that are not enforced, particularly if they are dramatic or controversial, will simply be disregarded by all or part of the public.

I use the word "enforcement" in its broadest possible sense. "Enforcement" to me is not simply the imposition of penalties, civil or criminal. It is also the systematic notification - or lack of notification - of the new rule, and the provision of civil remedies to aggrieved individuals. Effective enforcement of a new law ought to incorporate mechanisms to promote public awareness and adherence as well as provide appropriate punishment; "culture-shifting" may be impossible without multiple systems of enforcement.

Consider again the New York City Clean Indoor Air Act of 1988. The drafters of the Act recognized that their ordinance would never accomplish its purpose without the dissemination throughout New York City of the news of the new law, and some opportunity for ordinary New Yorkers to understand its precise provisions. The ordinance therefore incorporated a range of methods of enforcement, some punitive and some merely instructive or informative; it provided for penalties and for a special "administrative tribunal" to consider alleged violations, but it did much more, in recognition of the reality that penalties by themselves do not assure compliance. The ordinance required each employer with more than fifteen workers to adopt and "make known" a written smoking policy implementing the new ordinance, a policy that was then to be posted in a prominent place and distributed within three weeks to all employees. It directed the "prominent" and "conspicuous" posting of "no smoking" signs in public places where smoking was now prohibited. And it instructed the city's department of health to engage in a "continuing program" of public education on the new law and, more broadly, on the dangers of smoking generally, and also to report back to the City Council within twelve months on the effectiveness of the new law.

These nontraditional methods of enforcement made more likely the "culture-shifting" impact of the New York City Clean Indoor Air Act. The Act became more than a set of new rules, obeyed on most occasions by well mannered citizens but ignored at other times by the ignorant or recalcitrant. The Act not only established a new standard **[\*987]** of conduct for New Yorkers, it also put in place mechanisms to make the change genuine as well as universal.

"Culture-shifting" cannot come about without enforcement - enforcement that is multifaceted, realistic, and continuous. Enforcement does not ensure "culture-shifting," of course, but it greatly enhances the likelihood.

#### **The plan is not an embrace of status quo American militarism – we can criticize military policy without endorsing militarism. Also, the military is inevitable – it’s a question of how we engage it that matters**

Decew, 95 (Judith Wagner DeCew is Professor of Philosophy and Department Chair at Clark University, where she is also former Associate Dean of the College. The Combat Exclusion and the Role of Women in the Military. Special Issue: Feminist Ethics and Social Policy, Part 1 Volume 10, Issue 1, pages 56–73, February 1995)

Feminists may believe that a right to serve in combat in the military exists but that it should take low priority for feminist thinkers, given the many rights denied women around the world. Or, more strongly, they may reject any female participation in U.S. interventionist and military endeavors, particularly under male orders. They may believe an equal right to carry out U.S. military orders, which they find both morally outrageous and internationally illegal, is a right they would prefer not to have. By arguing against the combat exclusion, however, I am not thereby endorsing current military activities. I believe we can and must discuss the egalitarian concerns raised by the exclusion independently of assessments of general military policies, procedures, and objectives. There are, furthermore, two considerations that make the inequality of the combat exclusion relevant for a wide range of feminists. First, we can idealize the military in such a way that we see it as the kind of institution that will be needed even in a largely peaceful and demilitarized world, to deal with the kinds of peacekeeping efforts that will continue to be necessary in a world without the military institutions and activities with which we are currently familiar. Second, we must realize how nonideal this world is and can be expected to remain. It is arguable that military establishments and military efforts are necessary and even justifiable, when, for example, they are used to prevent atrocities and violations of human rights such as those we have seen in such places as Bosnia and to provide aid in crises like that in Rwanda.5 If this is correct, there is good reason for feminists to be concerned about the combat exclusion, the importance of women gaining equal treatment in the military, and their ability to be promoted to positions where they can transform military practices. Although my argument provides just one liberal feminist approach, it is, I believe, a compelling one.

#### We must engage the political process. It’s vital to the success of any feminist struggle and any alternative is totalitarian.

Dietz, 87 Mary, Professor of Political Science at Northwestern University , Context is All: Feminism and Theories of Citizenship, Daedalus, Vol. 116, No. 4, Learning about Women: Gender, Politics, and Power, Fall, 1987

My basic point is a straightforward one: for a vision of citizenship, feminists should turn to the virtues, relations, and practices that are expressly political and, more exactly, participatory and democratic. What this requires, among other things, is a willingness to perceive politics in a way neither liberals nor maternalists do: as a human activity that is not necessarily or historically reducible to repre sentative government or "the arrogant, male, public realm." By accepting such judgments, the feminist stands in danger of missing a valuable alternative conception of politics that is historically concrete and very much a part of women's lives. That conception is perhaps best called the democratic one, and it takes politics to be the collective and participatory engagement of citizens in the determination of the affairs of their community. The community may be the neighbor hood, the city, the state, the region, or the nation itself. What counts is that all matters relating to the community are undertaken as "the people's affair."34 From a slightly different angle, we might understand democracy as the form of politics that brings people together as citizens. Indeed, the power of democracy rests in its capacity to transform the individual as teacher, trader, corporate executive, child, sibling, worker, artist, friend, or mother into a special sort of political being, a citizen among other citizens. Thus, democracy offers us an identity that neither liberalism, with its propensity to view the citizen as an individual bearer of rights, nor maternalism, with its attentiveness to mothering, provides. Democracy gives us a conception of ourselves as "speakers of words and doers of deeds" mutually participating in the public realm. To put this another way, the democratic vision does not legitimize the pursuit of every separate, individual interest or the transformation of private into public virtues. Insofar as it derives its meaning from the collective and public engagement of peers, it sees citizens neither as wary strangers (as the liberal marketplace would have it) nor as "loving intimates" (as the maternalist family imagines). To return to my earlier point, democratic citizenship is a practice unlike any other; it has a distinctive set of relations, virtues, and principles all its own. Its relation is that of civic peers; its guiding virtue is mutual respect; its primary principle is the "positive liberty" of democracy and self-government, not simply the "negative liberty" of noninterference. To assume, then, that the relations that accompany the capitalist marketplace or the virtues that emerge from the intimate experience of mothering are the models for the practice of citizenship is to misperceive the distinctive characteristics of demo cratic political life and to misconstrue its special relations, virtues, and principles. The maternalists would have us believe that this democratic political condition would, in fact, flow from the "insertion" of women's virtues as mothers into the public world. There is no reason to think that mothering necessarily induces commitment to demo cratic practices. Nor are there good grounds for arguing that a principle like "care for vulnerable human life" (as noble as that principle is) by definition encompasses a defense of participatory citizenship. An enlightened despotism, a welfare-state, a single-party bureaucracy, and a democratic republic may all respect mothers, protect children's lives, and show compassion for the vulnerable. The political issue for feminists must not be just whether children are protected (or any other desirable end achieved) but how and by whom those ends are determined. My point is this: as long as feminists focus only on questions of social and economic concern? questions about children, family, schools, work, wages, pornogra phy, abortion, abuse? they will not articulate a truly political vision, nor will they address the problem of citizenship. Only when they stress that the pursuit of those social and economic concerns must be undertaken through active engagement as citizens in the public world and when they declare the activity of citizenship itself a value will feminists be able to claim a truly liberatory politics as their own. I hope it is clear that what I am arguing for is the democratization of the polity, not interest-group or single-issue politics-as-usual. A feminist commitment to democratic citizenship should not be con fused with either the liberal politics of pressure groups and representative government or the idea that after victory or defeat on an issue, the game is over and we can "go home." As one democratic theorist writes: The radical democrat does not agree... that after solving [a] problem it will be safe to abandon the democratic struggle and disband the organiza tions\_The radical democrat does not believe that any institutional or social arrangement can give an automatic and permanent solution to the main question of political virtue, or can repeal what may be the only scientific law political science has ever produced: power corrupts.35 The key idea here is that citizenship must be conceived of as a continuous activity and a good in itself, not as a momentary engagement (or a socialist revolution) with an eye to a final goal or a societal arrangement. This does not mean, of course, that democratic citizens do not pursue specific social and economic ends. Politics is about such things, after all, and the debates and discussions of civic peers will necessarily center on issues of social, political, and eco nomic concern to the community. But at the same time the demo cratic vision is, and feminist citizenship must be, more than this. Perhaps it is best to say that this is a vision fixed not on an end but rather inspired by a principle?freedom?and by a political activity? positive liberty. That activity is a demanding process that never ends, for it means engaging in public debate and sharing responsibility for self-government. What I am pressing for, in both theory and practice,

#### Political action is key to feminist actualization – discourse and epistemology are insufficient

Linda Zerilli, professor of political science @ University of Chicago, 2008, Judith Butler’s Precarious Politics, ed. Terrell Carver and Samuel A. Chambers, p.43-44.

Castoriadis’s account of radical imagination and Wittgenstein’s critique of rule-following are valuable resources for developing a freedom-centred feminism that would take leave of the false security of epistemology and venture out into the world of action, where we simply cannot know what we do, at least not in the ways required by a means-end conception of politics. Such feminism would be based on the faculty of presentation (imagination) and the creation of figures of the newly thinkable rather than the faculty of concepts (understanding) and the ability to subsume particulars under rules. Most important, such feminism would emerge as a historically situated and collective exercise of freedom, an exercise through which we change the conditions under which things are given to us; alter, that is, the relationship of the necessary and the contingent.

This alteration neither involves nor requires attaining an external standpoint from which everything might seem non-necessary, contingent. Rather, it rests on the factical character of human freedom, the capacity to wrest something new from an objective state of affairs without being compelled to do so by a norm or rule. Changes in the meaning of gender, in other words, emerge not through the skeptical insight that gender as such is contingent and can therefore be changed (for example, we have the theory, now we can act), but through the projection of word like women into a new context, where it is taken up by others in ways we can neither predict nor control. It is this act, and not any intrinsic stability (realism) or instability (deconstruction) in language itself, which has the potential power to change every political, worldly constellation.

As important as it is to dismantle the political pretensions of epistemology that have a way of creeping back into our thinking after the linguistic turn, then, a freedom-centered feminism needs more than that. It needs also to affirm the transformative character of human practice in the absence of any external guarantees. To yield the armour of epistemology to the uncertainties of action, Arendt might say, is to find oneself face to face with the abyss of freedom. There is no objectively correct way of acting politically – say, speaking in the name of women any more than there is of following a rule. There are no ‘rules laid out to infinity,’ no ‘line in space’ and no theory that could trace it, which, if only we would follow them, lead from the oppression of the past to the liberation of the present and into the freedom of the future. Terms of political discourse like women are not fixed by something that transcends their use in actual contexts, as the gender realist would have it, but neither are they intrinsically uncertain by virtue of the ever-present possibility of failure that supposedly inheres in language as the very condition of language itself, as Butler suggests. Rather, they are created as meaningful (or not) in and through political action – that is, what we hold, we say*.* This insight suggests a less speculative and skeptical approach to feminist politics and a rather different way of thinking about claims to women as an irreducible element in such a politics. A freedom-centred feminism, after all, is concerned not with knowing (that there are women) as such, but with doing – with world-building, beginning anew.