

GI Jane: A Comparison of the Legal Framework for Women's Military Service in Israel and the United States

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I. INTRODUCTION

“The soldier is the Army. No army is better than its soldiers. The Soldier is also a citizen. In fact, the highest obligation and privilege of citizenship is that of bearing arms for one's country”
— George S. Patton Jr.²

Conscription is compulsory service in the military.³ In the United States, the Selective Service is responsible for registering those who fit the legislative criteria to be drafted if needs exceed the capacity of voluntary troops.⁴ The power to register and subsequent power to draft is rooted in constitutional power to raise armies, but the range and application of those powers has fluctuated.⁵ Since the founding of Israel, its citizens have been expected to serve when they reached the age of eligibility.⁶

This paper will compare the legal mechanisms accounting for military service in the United States and in Israel, specifically looking at how the role of women in these militaries has evolved.⁷ First, this paper will compare the political environment that undergirded the Selective

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² George Patton, *Valor 24 Feature: An Everlasting Bond*, U.S. Army (March 12, 2014) <http://armylive.dodlive.mil/index.php/2014/03/valor24-pvt-1st-class-demensio-rivera/>.

³ Michael Ray, *Selective Service Acts*. ENCYCLOPÆDIA BRITANNICA ONLINE. Retrieved 29 July, 2016, from <https://www.britannica.com/topic/Selective-Service-Acts>.

⁴ *Registration*, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/Registration-Info/Who-Registration>.

⁵ See *infra* pp 9-11.

⁶ Izraeli, Dafna N.. "Israel Defense Forces." *Jewish Women: A Comprehensive Historical Encyclopedia*. 1 March 2009. Jewish Women's Archive. (Viewed on July 26, 2016), <http://jwa.org/encyclopedia/article/israel-defense-forces>.

⁷ See argument *infra*.

Service Act of 1940 and its amendments with the foundation of Israel Defense Forces and the position of women in the military during that time in United States and Israel.⁸ Next, this paper will compare women's position in the military in the United States with that of women in Israel and will look at landmark cases questioning the rights and responsibilities of service for women in the United States and in Israel.⁹ This paper will argue that socialized gender roles keep the military from utilizing female soldiers to their full effect.¹⁰ Lastly, this paper will discuss the future of women in the military.¹¹

II. BACKGROUND

In the United States, mandatory military service lasted a brief four years during the Civil War, but after contention and violent resistance the practice was suspended with the end of that war in 1865.¹² World War I brought a return of conscription, but the draft mechanism was disabled at the end of the War.¹³ Prior to the United States entering World War II, Congress passed the Selective Training and Service Act.¹⁴ President Roosevelt signed this into law in 1940 making this the first United States peacetime draft.¹⁵ This Act expired in 1947, but President Truman pushed for draft extension and barely more than a year later the Selective Service Training and Service Act was reenacted.¹⁶ The Military Selective Service Act provides for the registration

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See conclusion infra.*

¹² Ray, *supra* note 3.

¹³ *Background of Selective Service, SELECTIVE SERVICE SYSTEM*, <https://www.sss.gov/About/History-And-Records/Background-Of-Selective-Service>.

¹⁴ Ray, *supra* note 3.

¹⁵ *Id.*

¹⁶ *Id.*

criteria in the United States.¹⁷ The induction power lasted until 1973, this power allowed for the United States to draft during the Korean War, the Cold War, and the Vietnam War.¹⁸

A. THE UNITED STATES

The Selective Service and Training Act allowed the drafting of men into the military in 1940, but not women.¹⁹ Women served with the Army Nurse Corp prior to World War II, but there was not another path for them to serve with the military in 1941.²⁰ In 1941, Congresswoman Edith Nourse Rogers introduced a bill for a women's corps of the Army.²¹ This bill faced opposition from Congress and the military, but American sentiment began to change about the need for women to help due to a shortage of manpower, and a compromise was reached a year after the bill was introduced.²² The final bill created a Women's Army Auxiliary Corp (WAAC) which was comprised of female civilians who worked with the Army but were not in the Army.²³ The women were assigned in a rank structure similar to that of Army officers, but were not paid commensurate to their male counterparts in the Army or granted the same

¹⁷ See sources cited *supra* note 13.

¹⁸ See Ray, *supra* note 3; *Background of Selective Service*, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/About/History-And-Records/Background-Of-Selective-Service> (last visited Feb. 10, 2017).

¹⁹ *World War II: Women's Army Corps*, WOMEN IN MILITARY SERV. FOR AM. MEMORIAL FOUND., INC., <http://www.womensmemorial.org/history/detail/?s=wwiwwomens-army-corps>.

²⁰ Judith Bellafaire, *The Women's Army Corps: A Commemoration of World War II Service*, CMH PUBLICATION 72-15, <http://www.history.army.mil/brochures/wac/wac.htm> (last updated Feb. 17, 2005).

²¹ *Id.*

²² *World War II: Women's Army Corps*, *supra* note 19.

²³ Bellafaire, *supra* note 20.

financial benefits like, “overseas pay, government life insurance, veterans medical coverage, and death benefits.”²⁴

The women in the WAAC served in a variety of units including the Aircraft Warning Service unit (AWS), the Army Air Forces (AAF), the Army Service Forces, and Army Ground Forces (AGF).²⁵ Women filled approximately 1,000 positions in the WAAC, including a separate, segregated platoon staffed by forty black women. There were approximately 1,000 positions available early in the WAAC, including forty black women segregated into a separate platoon.²⁶

By 1943, tens of thousands of women had volunteered for the WAAC and having proved their merits, a bill was signed into law on July 3, 1943 giving the WAAC a place in the Army.²⁷ Seventy-five percent of the women in the WAAC chose to take their place in the Women’s Army Corps (WAC) that emerged from the WAAC.²⁸ Women in the WAC served stateside and abroad, with a high demand for typists and switchboard operators, in addition to other clerical and secretarial jobs.²⁹ Women worked in noncombatant roles and their voluntary service was touted as freeing a man for combat or from the draft, but there were still women taken as prisoners of war and some who died in military service.³⁰ The women of the WAC received a variety of medals for their service and in 1948 the WAC became a permanent part of the Army.³¹

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *See World War II: Women’s Army Corps supra* note 19; Bellafaire, *supra* note 20.

²⁸ Bellafaire, *supra* note 20.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Since women were able to forge a place for themselves in armed services, there have been challenges to their differential status as far as being drafted and serving.³² The responsibility of women for registering for selective service was questioned in *Rostker v. Goldberg* and the court concluded that Congress did not exceed its constitutional authority by requiring only men to register considering men's service in combat meant they were not similarly situated to women.³³ The actions of female soldiers of the United States in the Middle East sparked reevaluation of the contributions of women in the military and reconsideration of the responsibilities of women for and in service.³⁴

B. ISRAEL

Israel was created in May 1948 after the United Nations voted to divide Palestine on November 29, 1947.³⁵ At the time the question of Palestine was brought before the recently formed United Nations, the United Kingdom administered Palestine under a mandate from the League of Nations from 1922.³⁶ Prior to considering proposals about Palestine, the United Nations Special Committee on Palestine (UNSCOP) made up of 11 member states investigated and deliberated on solutions.³⁷ The UNSCOP received cooperation from Jewish organizations as UNSCOP visited Austrian and German displaced persons camps as well as visited the states of

³² *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981).

³³ *Id.*

³⁴ U.S. Dep't of Defense, *Fact Sheet: Women in Service Review (WISR) Implementation*, available at

http://www.defense.gov/Portals/1/Documents/pubs/Fact_Sheet_WISR_FINAL.pdf (last visited Feb. 10, 2016).

³⁵ *A Few Humble Coins and the Making of Israel*, American Jewish Historical Society, <http://www.jewishvirtuallibrary.org/jsource/US-Israel/coins.html> (last visited July 29, 2016) [hereinafter *Establishment of Israel*].

³⁶ *The United Nations and the Question of Palestine*, U.N. DEP'T. OF PUB. INFO. (published March 2003), <http://www.un.org/Depts/dpi/palestine/ch1.pdf>.

³⁷ *Id.*

Palestine, Lebanon, Syria, Trans-Jordan.³⁸ Palestinian leaders in the Arab Higher Committee sought to address the termination of the Mandate over Palestine separately from that of the issue of Jewish refugees, and thus the Committee declined to deliberate with UNSCOP.³⁹ The British Mandate expired on May 14, 1948 and Israel declared its independence as a Jewish national homeland.⁴⁰

On May 31, 1948, the Israel Defense Forces (IDF) were established and the War of Independence was sparked by the invasion of Israel by armies from Egypt, Jordan, Iraq, Lebanon, and Syria.⁴¹ The IDF, which incorporated Jewish paramilitary organizations which predated the state of Israel, fought the War of Independence using both male and female soldiers.⁴² Women, some of whom had been part of organizations like Haganah, Irgun, and Lehi, and worked towards Jewish independence participated in combat roles.⁴³ In 1948, a Women's Corps was founded.⁴⁴ The role of women in the Israeli military was reexamined after the exigency of the War of Independence.⁴⁵

III. ARGUMENT

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Establishment of Israel*, *supra* note 35.

⁴¹ *Founding of the IDF*, IDF, www.jewishvirtuallibrary.org/the-founding-of-the-israel-defense-forces (last visited February 10, 2017); *The Role of Jewish Defense Organizations in Palestine (1903-1948)*, <http://www.jewishvirtuallibrary.org/the-role-of-jewish-defense-organizations-in-palestine-1903-1948> (last visited February 10, 2017).

⁴² *Women of the Israel Defense Forces: History in Combat Units*, AMERICAN-ISRAELI COOPERATIVE ENTERPRISE http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/femcom.html (Last visited Feb. 10, 2017).

⁴³ *Women of the Israel Defense Forces: "Chen" Women's Corps*, AMERICAN-ISRAELI COOPERATIVE ENTERPRISE http://www.jewishvirtuallibrary.org/jsource/Society_&_Culture/womens_corps.html.

⁴⁴ *Id.*

⁴⁵ *Women of the Israel Defense Forces: History in Combat Units*, *supra* note 42.

The roles of women in the military in the United States and Israel are controlled by socialized gender roles that constrain the place of women rather than prioritizing military efficiency.⁴⁶ In both the United States and in Israel, the roles of women in the military have been expanded but traditional gendered evaluations continue to interfere with neutral assessment of the skills and abilities needed for an efficient and effective military.⁴⁷ Service by women in the United States has been evaluated in terms of the effect on men who serve rather than the contribution to national security.⁴⁸ Israel likewise has evaluated how women's service affects men, but in contrast a recent challenge to gendered policies in Israel was brought by a woman, not a man like a pivotal case in America.⁴⁹ Constraints on the service of women in the military based upon socialized ideas of women's places disadvantage the military in terms of maximum efficiency and serves to reinforce a patriarchal structure.⁵⁰

A. THE ROLE OF WOMEN IN THE UNITED STATES MILITARY

The Women's Army Corps (WAC) continued for 30 years after its establishment in 1948 before it was abolished as a separate corps.⁵¹ In spite of the professional successes that had the War Department receiving increasing requests for these units of women, the WAC faced

⁴⁶ See Izraeli, *supra* note 6; see *infra* notes 58-71 and accompanying text.

⁴⁷ *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981).

⁴⁸ *Id.*

⁴⁹ See cases cited *infra* p. 9 and 14.

⁵⁰ See Judah A. Gross, *New Combat Positions for Women in the IDF, Same old Obstacles: As the Army Makes Strides in Increasing Gender Equality, both Physiological and Cultural Barriers keep Female Officers from the General Staff*, TIMES OF ISRAEL (Mar. 13, 2016)

<http://www.timesofisrael.com/new-combat-positions-for-women-in-the-idf-same-old-obstacles/>;
Nora Bensahel et al., *Battlefields and Boardrooms: Women's Leadership in the Military and the Private Sector*, CTR. FOR A NEW AM. SEC. (January 2015),

http://www.cnas.org/sites/default/files/publications-pdf/CNAS_BattlefieldsVsBoardrooms_BensahelBarnoKidderSaylor.pdf.

⁵¹ Bellafaire, *supra* note 20.

difficulties in recruitment around the same time it evolved from the WAAC due to public image of women shifting from that of ‘ladies’.⁵² Hostility from the male forces led to lower retention of trained women as the WAC emerged.⁵³ Despite hostilities and reluctance from some commanding officers, the WAC contributed to military successes receiving various medals amongst them.⁵⁴ The WAC served in a range of theaters and difficult physical conditions.⁵⁵ Two years after the WAC was demobilized with the other troops, the WAC became a permanent part of the Army despite Congressional conservatives holding up the bill granting this recognition.⁵⁶ Throughout the time of the WAC, it remained a volunteer corps, despite the fact that the draft of men remained in effect until 1973 with only brief lapses.⁵⁷

In 1975 registration for the draft of men in the United States was discontinued, but was revived in 1980 by presidential proclamation.⁵⁸ The revival of registration revived a lawsuit challenging the Military Selective Service Act (MSSA).⁵⁹ The complaint was originally filed in 1971, survived motions to dismiss, and in July 1980 the plaintiff was redefined as a class of males subject to registration.⁶⁰ Prior to recommencement of registration for the draft, the District Court for the Eastern District of Pennsylvania found that the MSSA violated the Due Process clause of the Fifth Amendment utilizing “the ‘important government interest’ test” and issued an injunction against requiring registration.⁶¹ The decision was appealed by the Director of

⁵² Bellafaire, *supra* note 20.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *World War II: Women’s Army Corps supra* note 19.

⁵⁶ Bellafaire, *supra* note 20.

⁵⁷ Ray, *supra* note 3.

⁵⁸ *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981) at 60.

⁵⁹ *Id.* at 61.

⁶⁰ *Id.* at 61-62.

⁶¹ See generally, *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981) at 63.

Selective Service and the Supreme Court accepted the case.⁶² The Supreme Court acted with great deference to Congress, especially in light of the national defense authority and concluded that the MSSA did not exceed Congress's authority.⁶³

The dissent by Justice White recognized that the contribution of women in the military was large enough to make administrative convenience insufficient as justification for gender based discrimination when there was not support for the position that only combat ready men would be needed in case of drafting.⁶⁴ The dissent by Justice Marshall recognized that the success of women in the armed forces undercut the substantiality of the gender biased MSSA relation to the goal of "adequate armed strength...to insure the security of th[e] Nation".⁶⁵ Justice Marshall's dissent continued on to describe how attenuated the exclusion of women from the MSSA was from the purported goal of military efficiency and recognized that this exclusion was actually to serve the goal of precluding women from service in combat.⁶⁶ While Marshall's dissent stated this succinctly, in review of the other opinions, including that of the majority, this proxy goal is what the case turns upon, but it is not examined for its legitimacy.⁶⁷

Marshall's dissent acknowledged that the system had so many legislative restrictions in place to prevent women from serving in combat that this part of the equation was inappropriate in assessing the relationship between registering for Selective Service and ensuring the security of the nation.⁶⁸ Marshall's dissent examined the question of whether holding men and women

⁶² *Id.* at 64.

⁶³ *Id.* at 65, 83.

⁶⁴ *Id.* at 84-85.

⁶⁵ *Id.* at 88-91.

⁶⁶ *Id.* at 91-92.

⁶⁷ See generally, *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981).

⁶⁸ *Id.* at 92-94.

unequally accountable to the Selective Service “substantially furthers the goal” of adequate military strength, asserting that it is the Government’s burden to show that treating women and men the same would substantially impede the goal when evaluating using the *Craig v. Boren* test where administrative convenience is not an acceptable justification for discrimination.⁶⁹ Using the Senate Report for the 1981 Defense Authorization Bill and testimony by the Department of Defense, Marshall’s dissent identified that not registering women runs counter to the goal of military efficiency quoting Assistant Secretary of Defense Pirie’s statement, “It is in the interest of national security that, in an emergency requiring the conscription for military service of the Nation’s youth, the best qualified people for a wide variety of tasks in our Armed Forces be available. The performance of women in our Armed Forces today strongly supports the conclusion that many of the best qualified people for some military jobs in the 18-26 age category will be women.”⁷⁰ The Marshall dissent concluded that in view of the evidence as a whole, and in consideration of the need for novel induction authority coupled with the military constraints on women in combat, the Court in the majority opinion was overly accommodating of the Congressional Act’s discriminatory treatment when they should have affirmed the district court’s ruling.⁷¹ The tension between women’s capabilities and the protocol prohibiting their full and equal participation in military services, especially combat, continued to be called into question and examined even after the Court’s justification of differential expectations in *Rostker*.⁷²

⁶⁹ *Id.* at 94.

⁷⁰ *Id.* at 98 (quoting testimony from hearing of Subcommittee on Military Personnel).

⁷¹ *Id.* at 101-113.

⁷² U.S. Dep’t of Defense, *supra* note 34.

Since 1973 when the draft was suspended for men, there was a decrease in overall enlistment of approximately 738,000 service members, but the number of active-duty women increased by over 120,000.⁷³ The combat restrictions in place for women since 1948 remained in place for nearly 65 years with only some adjustments to non-ground combat.⁷⁴ The 1994 memo restraining women's role in the military (DGDAR) restricted women not only from direct ground combat units, but also from units co-located with ground combat units.⁷⁵ Women could be restrained from positions where the physical demands would exclude most women, those involving Special Operations or long range reconnaissance, and those where berthing and privacy accommodations for women were cost prohibitive.⁷⁶

The service of over 200,000 women in combat in the Middle East since 2003 led the Department of Defense to conduct a review of the laws and policies controlling the positions open to women in the Armed Forces.⁷⁷ The review led to the co-location rule being rescinded and the opening of 14,325 positions in 2012.⁷⁸ In 2013, the rest of the restrictions from DGDAR were rescinded with directions to review all occupational standards for their relevance in order to remove barriers to women serving. In 2015, all combat roles were opened to women,

⁷³ Eileen Patton & Kim Parker, *Women in the Military: Growing Share, Distinctive Profile*, PEW SOCIAL & DEMOGRAPHIC TRENDS, <http://www.pewsocialtrends.org/files/2011/12/women-in-the-military.pdf> (citing numbers up to 2010) (last visited Feb. 10, 2017).

⁷⁴ *Id.*

⁷⁵ U.S. Dep't of Defense, *supra* note 34.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

encompassing about 220,000 military jobs.⁷⁹ The decision announced December 3, 2015 was set to take effect in January 2016 subject to congressional review.⁸⁰

With all combat positions open to women, the question of whether women would be subject to Selective Service registration came up, as the support in *Rostker* for the argument that discriminatory treatment was not longer valid.⁸¹ On April 27, 2016, the House Armed Services Committee approved a provision requiring women to register for possible service in case of draft.⁸² The sponsor of the proposal, Representative Duncan Hunter, did not support drafting women, but called the system of registering only men for the draft when all military jobs were open to women sexist.⁸³ The Senate bill that included the proposal also called for “a full review of the Selective Service System and possible ‘alternatives’ to the current system”.⁸⁴ On June 14, 2016 the Senate approved the military policy bill including the requirement that women register and sparked Congressional debate about women in service involuntarily.⁸⁵ Opponents to the requirement of women registering espoused paternalistic views on women not serving in combat

⁷⁹ Matthew Rosenberg & Dave Philipps, *All Combat Roles Now Open to Women*, *Defense Secretary Says*, N.Y. TIMES (Dec. 3, 2015), <http://www.nytimes.com/2015/12/04/us/politics/combat-military-women-ash-carter.html>.

⁸⁰ *Backgrounder: Women and the Draft*, OFFICE OF PUBLIC AND INTERGOVERNMENTAL AFFAIRS, SELECTIVE SERVICE SYSTEM, <https://www.sss.gov/Registration/Women-And-Draft/Backgrounder-Women-and-the-Draft> (Compiled and Edited December 2015).

⁸¹ See *Backgrounder: Women and the Draft*, supra note 73; *Rostker v. Goldberg*, 453 U.S. 57, 96-97, 101 S. Ct. 2646, 2668 (1981).

⁸² Leo Shane III, *House Panel Votes to Make Women Register for the Draft*, MILITARY TIMES (April 28, 2016, 8:16 AM). <http://www.militarytimes.com/story/military/2016/04/27/ndaa-hasc-women-draft/83624490/>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Jennifer Steinhauer, *Senate Votes to Require Women to Register for the Draft*, N.Y. TIMES (June 14, 2016), http://www.nytimes.com/2016/06/15/us/politics/congress-women-military-draft.html?mwrsm=Email&_r=0.

to support their thoughts despite the support the bill received by the Senate Armed Services Committee, including the women who serve on the Senate Armed Services Committee.⁸⁶

B. THE ROLE OF WOMEN IN THE ISRAEL DEFENSE FORCES

In Israel, there are legal provisions for compulsory and voluntary service.⁸⁷ Both men and women are drafted into military service at eighteen with men making up about two-thirds of those drafted.⁸⁸ Although both women and men served as needed in positions during the War of Independence, combat positions were closed to women in 1951.⁸⁹ In addition to certain positions being closed to women, men and women are conscripted for different lengths of services.⁹⁰ The difference between length of service by the genders was used to support gendered occupational discrimination.⁹¹

In 1995 the Supreme Court sitting as the High Court of Justice accepted a case by a female Israeli soldier challenging the refusal by the Israel Defense Forces (IDF) to allow her to take aptitude tests for aviation.⁹² Petitioner, Alice Miller, was born and raised in South Africa where she developed an interest in aviation.⁹³ Prior to enlisting in the IDF, Miller had received a pilot's license that, while not valid in Israel, was valid in other countries.⁹⁴ Miller met with the

⁸⁶ *Id.*

⁸⁷ H CJ 4541/94 Miller v. Minister of Defence, IsrLR 1 (Nov. 8, 1995)
<http://versa.cardozo.yu.edu/opinions/miller-v-minister-defence> (Isr.) at 6.

⁸⁸ *See* Izraeli, *supra* note 6.

⁸⁹ *Id.*

⁹⁰ H CJ 4541/94 Miller v. Minister of Defence, IsrLR 1 (Nov. 8, 1995)
<http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Miller%20v.%20Minister%20of%20Defense.pdf> (Isr.).

⁹¹ *See* Izraeli, *supra* note 6.

⁹² H CJ 4541/94 Miller v. Minister of Defence IsrLR 1 (Nov. 8, 1995)
<http://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Miller%20v.%20Minister%20of%20Defense.pdf> (Isr.) at 5.

⁹³ *Id.*

⁹⁴ *Id.*

Commander of the Air Force where it was reiterated that due to a policy classifying aviation as a combat profession to which women would not be assigned, her aptitude would not be assessed.⁹⁵

In the time between filing of the petition and the date of the hearing, petitioner achieved the rank of officer in the IDF, but continued her desire to be evaluated to serve in aviation.⁹⁶

At the time of the challenge there was no legal basis for distinguishing between men and women in jobs but there were guidelines referenced that maintained the distinction.⁹⁷ Miller claimed a violation of the right to equality because women were not even given the chance to be assessed for aptitude even if they met the minimum requirements their male counterparts did to be referred aptitude tests for an aviation course.⁹⁸ The petitioner considered that the inability to integrate some combat units may justify the existence of restrictions, but argued all-encompassing disqualification of women from combat positions without individual consideration of the position and person offended the principle of equality.⁹⁹ Though the respondents relied only on ‘planning considerations’ in replying to the challenge at the hearing, in a deposition Air Force Commander, General Herzl Bodinger acknowledged that, “integrating women into combat professions is... a social, cultural, and ethical question”, about which, “weight was given to public opinion on this matter”.¹⁰⁰

The Court was not convinced that ‘planning considerations’ justified the discrimination where there was no dispute as to the equal capabilities of men and women in piloting.¹⁰¹

⁹⁵ *Id.* at 6.

⁹⁶ *Id.*

⁹⁷ *Id.* at 7.

⁹⁸ *Id.* at 8.

⁹⁹ *Id.* at 9.

¹⁰⁰ *Id.* at 9-10.

¹⁰¹ *Id.* at 13-16.

Respondents purported denial of the paternalistic considerations (such as ensuring women did not face combat or capture) for refusing to integrate aviation courses did not keep the Court from examining these considerations as acknowledged in an affidavit from former Commander of the Aviation School, Col. Ze-ev Raz.¹⁰² The Court gave little weight to the budgetary concerns the respondent put forth when weighed against exercise of a basic right.¹⁰³ The court looked at the arguments underpinning justification by planning considerations as theoretical and insufficient to deny the right of equality, and granted the petition in favor of Miller.¹⁰⁴

Justice Kedmi did not join the majority as he would have been hesitant to intervene and would have given the Air Force Command discretion in how to address security considerations.¹⁰⁵ Justice Kedmi found that the underlying assumption that women should not be put in a position of choosing between service to her country in combat pilot capacity and her familial role was not outdated.¹⁰⁶ Justice Tal agreed with Justice Kedmi cited the budgetary and planning considerations as showing a distinction, not discrimination between men and women soldiers.¹⁰⁷ The distinctions between men and women in the IDF in terms of service obligations and resultant qualifications continued.¹⁰⁸

Although the length for which women serve in the IDF increased in 2002 along with the likelihood of women being called from the reserves, the compulsory term of service for men continues to exceed that of women despite being shortened.¹⁰⁹ The required length of service for

¹⁰² *Id.* at 11, 17.

¹⁰³ *Id.* at 19.

¹⁰⁴ *Id.* at 21-23.

¹⁰⁵ *Id.* at 24.

¹⁰⁶ *Id.* at 24.

¹⁰⁷ *Id.* at 36.

¹⁰⁸ *See* Izraeli, *supra* note 6.

¹⁰⁹ *See* Izraeli, *supra* note 6; Gross, *supra* note 50.

men has decreased, but unlike their female counterparts who are assigned to infantry units only by request, men can be drafted to fill combat positions.¹¹⁰ Although women have the choice of entering combat units, the choice requires an extension in the length of service and regardless of ability they face cultural obstacles.¹¹¹

C. LACK OF WOMEN'S EQUALITY IN THE MILITARY DOES NOT JUST MIRROR SOCIETAL INEQUALITY, IT PERPETUATES INEQUALITY AND INEFFICIENCY

Women in the military serve in traditionally female roles, like nursing and administration, at a disproportionate rate.¹¹² The fact that positions are open to women does not equate to women serving in those positions and without systematic application of gender neutral standards for recruitment to service women continue to be underrepresented in roles that are gender nonconforming.¹¹³ The lack of women in combat positions directly affects the ability of women in the Israeli army to advance to the highest levels, like General Staff.¹¹⁴ Likewise in the United States few women have attained the rank of Admiral, or become a four star General.¹¹⁵ Women may enter as officers or attain the lower ranking officer status at a rate competitive to that of their male counterparts, but its not reflected at the highest levels of military rank.¹¹⁶

¹¹⁰ Gross, *supra* note 50.

¹¹¹ *Id.*

¹¹² See Judith Sudilovsky, *Despite some Progress, Most Combat Roles are Closed to Women in the IDF*, JERUSALEM POST (Aug. 13, 2015), <http://www.jpost.com/Not-Just-News/Despite-some-progress-most-combat-roles-are-closed-to-women-in-the-IDF-412063#.V5VvHT1HXJc.email>; Patton & Parker, *supra* note 73.

¹¹³ See Patton & Parker, *supra* note 73; *Israeli Women Blaze Trail in Military*, DENVER POST (April 12, 2013), <http://www.denverpost.com/2013/04/02/israeli-women-blaze-trail-in-military/>

¹¹⁴ Gross, *supra* note 50.

¹¹⁵ Nora Bensahel et al., *Battlefields and Boardrooms: Women's Leadership in the Military and the Private Sector*, CTR. FOR A NEW AM. SEC. (January 2015), http://www.cnas.org/sites/default/files/publications-pdf/CNAS_BattlefieldsVsBoardrooms_BensahelBarnoKidderSaylor.pdf.

¹¹⁶ See Gross, *supra* note 50; Nora Bensahel et al., *supra* note 115.

IV. CONCLUSION

The military is viewed as a melting pot.¹¹⁷ This has not kept the military from reflecting social inequality in policies of recruitment, induction, and placement.¹¹⁸ Greater acceptance of women in the military has advanced only after legal challenges, or high level participation during military exigency, with conservatives pushing back despite the evidence that women contribute positively to the military.¹¹⁹ When national security is at risk, whether in the United States, or Israel, there has been a call for women to serve, and they have done so with distinction changing the perception of their capabilities.

The positioning of women in the military has been reactive rather than proactive. To have the best military efficiency, aptitude should be assessed independent of gender. Rather than having a default that the same masculine characteristics necessary for jobs a century ago remain necessary for jobs today, the military should conduct an assessment of modern needs and proceed accordingly. In re-evaluating the Selective Service, there is an opportunity to consider whether the system is outdated in consideration of the likelihood of use and the legislation that would need to be created to implement it. The United States has served as an example of military service assessment in Israel and vice versa and though the countries have different military needs both would benefit from maximizing the positive contributions of all their citizens, not just the male ones.

¹¹⁷ *Around the Globe, Women Already Serve in Combat Units*, NPR (January 25, 2013, 11:23 AM). http://www.npr.org/2013/01/24/170184589/around-the-globe-women-already-serve-in-combat-units?utm_source=npr_newsletter&utm_medium=email&utm_content=20160630&utm_campaign=npr_email_a_friend&utm_term=storyshare.

¹¹⁸ *See* Argument, *supra*.

¹¹⁹ *Id.*