



THE GANDER AND THE GOOSE: WOMEN AND SELECTIVE SERVICE REGISTRATION

By Kara Dixon Vuic and Jacqueline Whitt April 20, 2021
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Jacqueline Whitt: Hello and welcome to A Better Peace, the War Room podcast. Thanks so much for joining us today. I'm **Jackie Whitt**, Associate Professor of Strategy at the U.S. Army War College and the Editor-in-Chief for War Room. So one of the questions that has always fascinated me about military history and one of the reasons I became a military historian is one that every society in every place and every time has had to answer. And that is: Who will serve in uniform and on what terms? And there are lots of different answers to this question. In the United States, we've seen an ebb and flow between preferring volunteers, venerating the citizen soldier and requiring conscription or a draft in times of significant person power requirements. For the last 40 years or so, a little more than that, the United States has relied exclusively on volunteers to fill its enlisted and officer ranks, but it also acknowledges that conscription may be necessary in the future, hence the Selective Service Act, which requires male U.S. citizens to register for potential compulsory military service. But now, the fact that the Selective Service Act excludes women from the requirement is receiving increasing scrutiny. To talk about these developments, I'm pleased today to have a veteran of the War Room podcast back in our virtual studio. **Dr. Kara Dixon Vuic** is the Lance Corporal Benjamin W. Schmidt Professor of War, Conflict and Society in 20th Century America at Texas Christian University. She is a leading scholar on women's history and U.S. military history. You can look for her two previous episodes on the War Room podcast with us, one that she recorded with me about her book, "The Girls Next Door," which is about women's work as entertainers with the U.S. military and she did an "On Writing" podcast with Mike Nyberg and her husband, Jason. Kara, it's great to have you back with us at the War Room today.

Dr. Kara Dixon Vuic: Thanks for having me, Jackie. It's great to be back.

JW: Alright, so let's jump right in. You're a historian so I'm going to ask you a historical context question first, which is for most Americans today, I think when we talk about the draft, they associate it most closely with the American War in Vietnam and the end of that war brings the end of the draft and the introduction of the All-Volunteer Force and the Selective Service Act.

Can you talk a little bit about the political and social implications of this shift to the All-Volunteer Force?

KDV: Absolutely. There were a lot of political and social implications, broadly speaking, but a lot that were particular for women and a lot that would have a relationship with the questions we're going to talk about today in terms of who serves and on what terms. As you said, the Vietnam War brought together a lot of critiques of conscription, particularly critiques of the ways that conscription was racially-based and introduced a lot of class inequities with deferments. Opposition to the Vietnam War itself brought a lot of opposition to conscription. There's actually a great book I wanted to mention, Amy Rutenberg's "Rough Draft" talks about a lot of the opposition to conscription not just in the Vietnam War, but also before that. But actually another great book, Beth Bailey argues in "America's Army," it wasn't necessarily the protests against the Vietnam War that sort of forced Nixon to end conscription, it was actually the influence of free market advisers who argued to Nixon that putting the military on the free market would force it to be more fair, that it would be more appealing to people and they knew that if they switched to an all-volunteer force that they would have to depend on women. So the military knew that they were going to need to expand women's military presence if they ended conscription not just in terms of numbers, but also in terms of women roles in the military. And so when the All-Volunteer Force came in 1973, the number of women started to increase. They'd actually planned to double the number of women in the Army, the Navy, and the Air Force. They planned to increase the number of women in the Marine Corps by 40%. They knew that women in many ways made the volunteer force possible in part because they were cheaper to recruit than men, and they brought up the overall test scores of the military, and so thereafter sort of overall for the next few decades, women's percentage increased and today it's about 17% of the active duty force.

JW: I think this brings us to a really important question about the way that the All-Volunteer Force and the Selective Service Act work together and what it has done has drastically increased the number of women in service. It's increased opportunities, all sorts of things, but the Selective Service Act really does distinguish between the service of men or the potential service of men and the potential service of women. When a U.S. citizen turns 18, about half of the population has to do something that the other half doesn't have to do. And noncompliance has consequences, if you are male who doesn't register. Can you talk a little bit about how this requirement, the justification for only making males register came about, and then we'll talk a little bit about the implications of that.

KDV: Right, and I think it's important to say too that not only are women excluded, but they're prohibited from registering. Women have tried to register before, but the military and Selective Service Act, the language of that act actually prohibits women from even attempting to register. And so they're sort of doubly excluded. Not only are you not required but you can't do it even if

you want to. And that goes back to a very long history in the United States of men being expected to serve and women not, which of course is rooted in centuries of different gender roles for men and women. But that's not to say that the United States hasn't debated the possibility of drafting women or hasn't even come close to drafting women at different times. And of course, stay tuned in 3 years, maybe I can come back and be on the podcast to talk about the book that I'm trying to write on that subject, but most directly the requirement today for men but not women to register stems from President Carter's reintroduction of the requirement to register in 1980. That came in the wake of the Soviet invasion of Afghanistan. Carter thought that it would be a useful show of force to bring back registration—to say to the world, we have a ready force, we've got a list we can turn to that if we need to conscript soldiers. And initially he announced that he was going to ask Congress to reinstate selective service and a few weeks later he announced that he was going to ask Congress to revise the law to require women to register. Carter was a bit of an optimist in this regard. He was very much a believer in equal rights and in the Equal Rights Amendment and so when he proposed that women register, he did it in spite of all advice to the contrary. His advisers told him this is not a politically good move for you to make right now. It's not going to work. It's not going to pass, but Carter said, I believe this is the right thing to do and he did it anyway. Now, of course, Congress writes the laws that operate the Selective Service system, and so Congress had to debate this issue: are we going to require women to register or not? And what I think is really interesting is that in the early 1970s when Congress had debated the Equal Rights Amendment, Congress had debated proposals that would have restricted the Equal Rights Amendment from applying to the military. Several opponents to the ERA had proposed amendments that would have excluded the military and would have meant that the military could still exclude women in whatever ways it wanted, but Congress overwhelmingly rejected those proposals. And if you read the Congressional reports and the record of debates about the Equal Rights Amendment, it was very clear in 1972 when they passed the ERA that they intended equal rights to incur equal obligations for women. They knew that if the ERA passed and was ratified by the states which at that time in 1972 it looked like it would be, they knew that women would have to register. Congress was okay with that in 1972, but by 1980 Congress was definitely not okay with that, which is a sign of how swiftly and radically the tide had turned in terms of the ERA, women's rights, all of these related issues. By 1980, the New Right is coalescing largely around social cultural issues, many of which are tied of course, to sort of a backlash against the feminist movement of the sixties. And so you've got groups like Phyllis Schlafly's Eagle Forum, the Coalition against Drafting Women, all mobilizing opposition to registering women. Carter's proposal to register women had lots of bipartisan support. It had support from groups you might not expect, like the American Legion, the Disabled American Veterans supported registering women, but groups like the Eagle Forum, these socially conservative groups quickly began to dominate the conversation and what they feared was that registration of women would erase all gender distinctions. So in congressional hearings in March of 1980, the discussion over registering women, instead of being a discussion about mobilization needs, how women might serve, how women could serve, who would be

needed in the first 100 days, who would be needed in the first 200 days, that might have been the discussion that Congress would have had in a discussion about registration and selective service, but instead what happens is that these groups like the Eagle Forum, the Coalition for Drafting Women all dominate the congressional hearing and it turns into a discussion about women's so-called "nature," their inherent capability for creating life, that women are supposed to create life, not destroy life. There's a lot of very conventional gender roles that get rolled out in these committee hearings. And it's interesting to me even that Representative Marjorie Holt, who was on the House Committee that's debating these issues, is a member of the Coalition Against Drafting Women. So in hindsight, it seems like the hearing is sort of stacked before it even begins, and so the proposal to register women died in Committee. Congress in 1980 refused to require women to register, a short eight years after it had essentially indicated that it was willing to do the opposite. So that's the sort of legislative history of why men and men only are today required to register. It's such an interesting idea that you can have congressional hearings, essentially about one subject that turned into debates about a whole other thing right, and your point that they're not really talking about military readiness, effectiveness, etcetera, all of the language that we might think about as being really salient today, and they really are talking about these much broader social questions and cultural questions about gender roles, the role of the family in society and women and men. It strikes me as both interesting and not at all unusual, that that happens in this space. So has this legislative peculiarity in this cultural moment from 1980, has it ever been challenged before?

KDV: What's interesting is that it was also being challenged at that time. When Congress is having these hearings, they're also sort of conflating issues. They're not just talking about supposedly what women are supposed to do and men are supposed to do and what are we going to do if women have to go defend men? Are we going to self-implode if that happens? At the same time, they're conflating registration and conscription, which I think often actually happens in debates today. Their assumption is that registration would immediately lead to conscription, to actually being conscripted into the military and inducted into the military, and they assumed that anyone who was registered would thus be conscripted and also sent straight into combat. So they conflated conscription and combat in a military that at the time, 80% of roles were non-combatant roles. So they're conflating issues. But the combat issue is ultimately what became the legal rationale for excluding women. So at the same time that all of this is going on in Congress, a case had been moving through the courts that initially began as a protest against registration in and of itself. It was a Vietnam War case. There had been several of them, about a dozen cases in which men had challenged the requirement to register and essentially tacked as many legal rationales as they could come up with. But by about 1980, the only legal argument that stood was sex discrimination and the case was called by then, *Rostker v. Goldberg*. And by the time it reached the Supreme Court, it was essentially a case about sex discrimination and you can read a really great account of this case in Linda Kerber's "No Constitutional Right to Be Ladies," and she talks about how the case was ruled by the Supreme Court in June of 1981, and essentially the

court held that women are excluded from combat in the military thus they can be excluded from registration—again conflating registration and conscription and combat. So the court said women can be excluded from registration because they're excluded from combat, and that's the legal justification that stood since 1981.

JW: And so now, astute listeners will understand where the conversation heads, which is women are no longer excluded from combat. The combat exclusions have been lifted. Not only is it theoretically possible, but it is possible in that women are serving in combat roles right now, and so if that exclusion has gone, is there any legal justification now for excluding women from the Selective Service requirement?

KDV: I guess the answer to that would be it depends on who you ask. But what I find really interesting as a historian is that the legal rationale has always been “combat,” and if we were videoing this, you could see I'm making air quotes right now, “combat.” Because the problem is that women’s participation in combat has shifted radically even before 2015, when Secretary of Defense Ashton Carter said we're opening everything to women. Even before then, women roles in “combat” shifted radically. From 1981 to 2015, what did combat mean? The answer to that changed wildly. In 1978 the Secretary of Defense said combat was the geographic region and he said very openly, if that's the definition, and we think it is, then women have been in combat for a long time. But did combat then mean your risk level? Did it mean that you had to be engaged in active engagement with the enemy? Was it likelihood of danger? What did combat mean?

JW: And we've seen that change over time. The regulations changed even before 2015, and the reality on the ground or in the air as it were or on ships didn't always match what the regulation said. There were always sort of boundaries and scenes and gaps that were going to be problems.

KDV: Right. And so women have been doing many of the things that they were not permitted to do in 1981 long before we opened all combat roles to women. And I think the Supreme Court, if you could sort of move them forward in time, might be quite surprised in say 1998 that women are doing all of these things they thought women weren't supposed to do. And so I think that sort of complicates the legal rationale for their Rostker decision even before today, when clearly if women are included in combat and in combat roles, then the legal rationale is a bit fluid now.

JW: We have now, a challenge to the Rostker decision and it has brought together... the only way I know how to put it is that it's a strange bedfellow kind of case... it has brought together groups including the National Coalition for Men and the American Civil Liberties Union, not two groups I'm used to saying in the same sentence on the same side of things, so what is the claim that the current legal challenge makes?

KDV: Well, essentially the claim is the same claim that advocates have made since the 1970s, and that is that the exclusion of women from registration violates men's 5th Amendment rights to equal protection. And that is the claim that was made in what became the *Rostker v. Goldberg* case. It was a claim made by dozens of men in the Vietnam era and up through 1980 and 1981. So it's not a new argument and essentially their case argues that with the combat restrictions gone, there's no legal standing to exclude women from registration now. It always strikes me as sort of odd that these two groups have united again, but maybe it shouldn't, because the issue of registering women has often been bipartisan, and it's brought together groups from across the spectrum. The ACLU was involved in arguing in the *Rostker* case that the exclusion of women violated men's rights. They've been doing this for a long time. But what I also sort of want to talk about and I'm not an attorney, I'll just say that as a disclaimer, so perhaps an attorney can explain this better, but the decision for *Rostker* was also being made in an era in which there was a lot of change in how courts handled sex discrimination cases, and this is what Kerber talks about in her book and provides a long sort of background to this. But essentially the case today argues that *Rostker* was incorrectly decided in 1981 in part because it conflated conscription and combat by arguing that if you were conscripted, you would be sent to combat, which was not historically true and was not likely to have happened in 1981. So that was one flaw and that's just related to the United States' military's tooth to tail ratio which has been much...

JW: Much more tail...

KDV: ... much broader than many nations, trailing along a very wide tail back here. But they also argue that the *Rostker* decision was based on essentially the wrong rationale, that the case was decided on whether including women in selective service was necessary. But what they argue is essentially that the government should have had to prove that the exclusion of women was necessary for the purpose of national defense, that including women would have perhaps imposed some administrative burdens on the military. You've got more paperwork, literally paperwork, probably in 1981 to handle, but that that administrative burden isn't enough to essentially discriminate against one group or another. And they argued that the government should have had to show that discrimination against women, and I don't mean that in the sort of way discrimination is usually used, but the exclusion of women as a class from registration, that they should have had to prove that that was necessary. And instead the court based its decision on whether they had to include women to accomplish national defense.

JW: It's a narrow sort of legal, almost a semantic question about how the case is argued and the logic behind it which is different maybe from the substantive moral, ethical, political arguments about whether or not it is right, or whether or not it is a good thing or a bad thing. And so I think this is where so many people get frustrated with legal proceedings. It's very rarely about whether something is right in sort of a righteous, gut feeling sense, and it's very much about how the case was argued, how it was decided. Do we imagine that this will go to the Supreme Court?

KDV: Well, so yesterday (14 Apr 2021), the government had to respond. And again, writing the history of this in the future will be really interesting because we've now changed administrations. The prior administration wanted to defend the exclusion of women. The Trump administration wanted to defend that. The Biden administration now has essentially responded and said that the Supreme Court should not hear the case but instead should let Congress decide. In some ways I think it is sort of a punt on, let's just sort of delay this, let Congress decide. We don't actually want the court to rule on the question, but what they want is to let Congress sort of figure out what to do.

And part of that is related to the National Commission on Military, National and Public Service which was created in 2017. And last March, right before COVID hit, or right as COVID was becoming a big issue, issued its report which called for greater emphasis on military recruitment, more emphasis on public service, Vista, Americorps, those kinds of programs, but also called for the registration of women. It said the time is right to register women. And immediately after that report was issued, a bill was introduced in Congress called the Inspired to Serve Act which would implement all of those things, including the registration of women. That's been in committee for a year and it's actually in about 17 committees I believe it is because of all the committees that touch on the issues. But just yesterday (14 Apr 2021), two senators, two Republicans introduced a bill to abolish the Selective Service system. So you've got competing agendas and issues going on in Congress and essentially the government has said, let them handle it. There's also some legal stuff that the attorneys will have to explain to the War Room listeners here about standing and who can make these claims, but essentially, I think that the administration doesn't want the ruling. So imagine a scenario in which the Supreme Court said, yeah, this is a violation of men's 5th Amendment rights. Then what happens? Then we have no selective service system. We can't have a system that's discriminatory.

JW: So it sounds like part of the problem is that the Supreme Court could rule and if they ruled that it was a violation, like you said, there's no selective service system. They can't make the law something it isn't and so a legislative fix may be required in any case which seems like a challenge in the modern American political... given the state of American political discourse and legislative working togetherness. Do you see any other way forward out of the question or out of the mess?

KDV: I really don't. I cannot imagine in the United States of America in 2021 that we would have an obligation of male citizens that does not also apply to female citizens. I can't imagine that that would be allowed to continue. Now whether selective service continues is another question entirely and again those two issues are sometimes conflated, but if selective service continues, I cannot imagine it being allowed to continue without women. The military has said multiple times, we think women should have to register. They phrase this as a matter of national security. If we're excluding half of our population, we're excluding half of the talent of the

population. The military also sees this as a matter of equity. Women groups see this as a matter of equity. Now we have a men's rights group seeing this as a matter of equity. There are lots of symbolic and practical issues I think in favor of the issue. Now you still have some opposed to that. Folks who oppose registration on any grounds, period, are absolutely opposed to the inclusion of women in a system they already see as inherently problematic. Cultural conservatives are going to come out again in opposition to this. And some argue, even proponents of women in the military, argue that the military needs to deal with sexual harassment and assault first. I think Jackie Speier made that argument. Men also face sexual assault and harassment in the military. So all of these issues get wrapped up, but I can't imagine a system that continues that doesn't include women.

JW: So I think on that point about the 21st century and where we are and where we might imagine the U.S. military going in the future, we'll wrap up our podcast for today. A couple of really important points stand out. One is the importance of distinguishing between registration, conscription and combat, that those are not synonymous, and we ought to be very careful about the claims that we are making about what will be required and what will likely happen. The second is really one about arguments about military effectiveness, military readiness and the way that those intersect with broad cultural and social norms that we hold and often we have norms that are held in tension between gender equality and arguments about equity and then arguments about roles and who should be doing what, and rights and obligations that go along with that. So Kara, I'd like to thank you so much for joining us on the podcast this afternoon.

KDV: This was fun. Thanks, Jackie.

JW: Great. And with that I'm going to wrap up and thank all of our listeners as well for tuning in. Please send us your comments on this program and all of our podcasts and send us suggestions as well for future podcasts. Please subscribe to A Better Peace on your favorite podcast aggregator, and once you've done that subscription, please rate and review it as well so that other people can find A Better Peace. We're always interested in growing this community so that we have more people tuning in for conversations just like this one. And although this conversation is over, we will be back with others and we look forward to returning to the podcast with you. So until next time, from the War Room, I'm Jackie Whitt.