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Tuesday, September 18, 2007

WHEN EDUCATION BECOMES INDOCTRINATION

A recent Princeton graduate, Christian C. Sahrner, who just completed a fellowship at *The Wall Street Journal*, wrote a departing op-ed on September 5th, titled "[Sexed Up Sex-Ed](#)", in which he complained about a mandatory freshman orientation presentation at Princeton that dramatizes the nature and degrees of consensual and nonconsensual sex among undergraduates. Sahrner, who is clearly both religious and socially conservative, at least by Ivy League standards, objected primarily to the content of the play, arguing that it depicts all students as sexually active and tacitly endorses the so-called "hook up culture" that, in his view, it ought to discourage.

I come from a very different background and social perspective than Mr. Sahrner, but with regard to his critique of Princeton's program, I actually think that he has understated the outrageousness of these pseudo-educational exercises that are now ubiquitous on our college campuses. Having studied [freshman orientation programs](#) closely in the past, I felt compelled to write a [letter to the editor](#).

Many of these mandatory orientation programs are heavily influenced by postmodernist notions of gender relations and therefore present a view of what constitutes true consent in sexual activity that has little or no resemblance to criminal law. There is far more ideology than law in these programs, which often scare students by perpetrating what John Leo calls the "[1-in-4 myth](#)" that twenty-five percent of women will be sexually assaulted in their lifetimes – a bogus stat that has been repeated so many times on campus that it is now widely considered an unassailable fact. I consider these programs, as I wrote to the *WSJ*, to be "tendentious intrusions into [students'] minds and very beings" that threaten to turn our campuses of higher education into "the modern-day equivalent of a North Korean POW camp."

Janet Smith Dickerson, Vice President for Campus Life at Princeton, my alma mater by the way (Class of 1964), wrote a [letter](#) that appeared right next to mine. Her letter – inadvertently, to be sure – made precisely my point. The purpose of the exercise, wrote Vice President Dickerson, is to emphasize "that approximately 94% of female college sexual assault survivors know the perpetrator to some extent." Instead of Vice President Dickerson asking herself whether all of these cases really involve unwanted sexual assault or represent, rather, an after-the-fact change of attitude on the part of one of the sex partners, she makes the assumption that the cases all involve victims and, in the jargon of the day, "survivors."

The notion that college freshmen do not know the difference between assault and engaging in voluntary sex, and that such students need sensitivity trainers to turn them into civilized human beings, is a symptom of the sickness that pervades offices of campus life in colleges and universities all over the country today. It has spawned a huge "training" industry that has, indeed, turned so many of our campuses into tendentious re-education camps. That a vice-president of Princeton does not see that her programs are the problem and not the solution is a sad comment on the state of our institutions of higher learning.

College administrators like Dickerson should at least be honest and admit that while Princeton's standards and definitions of consent to sexual activity have no counterpart in the criminal law, they represent Princeton's post-modernist requirements with regard to intimate relations, and that a student engages in sex at his or her own risk of running afoul of the campus definitions, or lack thereof, of the moment. This would accomplish, at least, truth in advertising, so to speak. Instead, these administrators disguise their social engineering as education, and that's where civilized and rational people have to draw the line and respond with "surely you jest that this is *education*."

feminism | higher education

9/18/2007 12:38:32 PM by [Harvey Silverglate](#) | Comments [0] | Trackback

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Friday, September 14, 2007

ANTITERRORISM 101

The Boston Globe had a well-reasoned [editorial](#) earlier this week pointing out one crucial difference between Germany's recent detention of suspects in a terrorist bombing plot, and the "war on terror" being conducted by the Bush administration: Germany has followed a law-enforcement paradigm, not a war paradigm, and hence has been more protective of civil liberties.

There is, however, one more vital distinction. The German antiterrorist units appear to have uncovered actual explosive materials that belonged to the alleged terrorists. In the typical Homeland Security/FBI operation, undercover FBI informants supply the materials and weapons in an exploitation and manipulation of hapless (usually Islamic) individuals who would otherwise be all-talk and no-action, like [the seven men](#) arrested in Miami on conspiracy charges last year. In other words, Germany is actually busting terrorist cells, while, too often, the FBI is creating the illusion of it, and in the process criminalizing bad thoughts and speech, rather than real crime.

How sad it is that the United States needs now to take lessons from its erstwhile enemy in World War II in how to conduct national security and criminal investigations in a fair and effective manner that protects civil liberties.

terrorism

9/14/2007 8:51:31 AM by [Harvey Silverglate](#) | [Comments \[1\]](#) | [Trackback](#)

Wednesday, September 12, 2007

EVOLVING CAMPUS CULTURE – TEAR DOWN THIS WALL

A trend I refer to as the "corporatization" of the modern American university popped up the other day in a different context than the usual degradation of the academic curriculum or the punishment of free speech and academic freedom. It showed up in the architecture of the recently opened student center at the University of Vermont in Burlington.

As Jenna Russell reported in *The Boston Globe*, Vermont's largest [city finds itself cursed](#) (some among the "gown" might say blessed, but the "town" more accurately says cursed) with a 4-acre, \$61 million complex that university officials have pawned off on the public as "a symbol of growth and revitalization at the smallest public flagship campus in the country." The 186,000 square foot monstrosity houses offices for student clubs, a food court, a bank, a copy shop, a bookstore, a ballroom, and a game room "with pool tables, lounge chairs and a fireplace."

The building has to be seen as more than a mere architectural error, inappropriate for the otherwise sylvan setting of this traditional, even if bustling, New England city. There is a further and perhaps more fundamental question – not raised in the *Globe* report and rarely discussed in reports about the massive building campaigns in progress on campuses all around the country: Why is it that the modern university seeks, more and more, to keep its students glued to the campus rather than to encourage them to venture out into the city or town in which it's located?

One thing is sure: Burlington is going to be seeing far fewer students venturing off the campus to eat at local restaurants and cafes, visiting Ben & Jerry's, transacting business at the local bank, using the services of the local copy shop, seeing what's on the shelves at the local bookstore, or attending a social event outside of the campus ballroom. Stores and shops on the main drags and smaller by-ways in this college town will gradually dwindle, and once-vibrant unique local businesses will be the first to go, in much the same way Harvard Square has lost most of its quirky independent businesses and modestly-priced student-suitable eateries over the last couple of decades. When I arrived in Cambridge to attend law school in 1964, there were three all-night cafeterias in the Square. Now, there are none. I met more interesting people at the Patisserie Française than on the Harvard campus, but that café moved out years ago, as Harvard established more and more on-campus eateries and cafes. Even Harvard's Lamont Library recently opened its own late-night café, lest a student be inconvenienced in having to leave the stacks in order to get some caffeine.

The tendency of colleges – in Burlington, Cambridge, and just about everywhere else – to turn the campus into a company town of sorts, and keep the students penned in rather than out on the town, surely helps preserve the oddly isolated culture that has afflicted American campuses of higher education, where the values and practices of the "real world" grow more and more remote everyday. Only on a campus, after all, could [limiting protests](#) to one gazebo seem like a good idea. Only on a campus could the definition of the term "harassment" be watered down so much that it includes engaging in pure political speech, such as [publishing unflattering facts](#) about a world religion, or [engaging in an anti-affirmative action bake sale](#) that satirically illustrates its point by discounting prices to certain races. Only on a campus could a collection of Palestinian artwork be removed because it advocated only one side of a divisive issue.

Even at Harvard Law School, the apex of the American legal establishment, there is a [speech code](#) – dubbed "Sexual Harassment Guidelines" – that grew out of a 1990's student parody of feminist legal theory. Today students may safely engage in parody or other "offensive" speech in Harvard Square (protected by the venerable First Amendment, after all) that would be punishable if spoken in Harvard Yard or Harvard Law

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School. A student may not, at Harvard, engage in the kind of parody we normal citizens freely watch every night on Comedy Central's "[The Daily Show](#)" and "[The Colbert Report](#)." Our campuses of higher education, once the most free places in our society, are now the second least free (outranked, still, by our maximum security prisons).

I'm not saying that providing a student on the campus with everything he or she needs is solely, or even largely responsible for the increasingly wide chasm between the campus and "the real world" that is characterized by the typical American urban street. (That's a subject that my co-author and I tried to explore in our 1998 book [The Shadow University: The Betrayal of Liberty on America's Campuses](#)). But I think that this isolation does facilitate the successful indoctrination of students with multicultural and gender-related sensitivity training, speech codes, and other aspects of the tendentious and nauseatingly politically correct modern academy that is at war with liberty, with truly liberal education, and with the greater society. To paraphrase Ronald Reagan's famous speech aimed at then Soviet Prime Minister Mikhail Gorbachev, it's time to tear down this wall, or perhaps this student center. The increasing isolation of gown from town can bode nothing but ill for both society and higher education.

[higher education](#) | [political correctness](#)

9/12/2007 1:57:47 PM by [Harvey Silverglate](#) | [Comments \[0\]](#) | [Trackback](#)

NAKED CAME THE CARPENTER

Court tv called it the "[stupid story](#) of the week:" 51 year old San Francisco carpenter Percy Honniball was arrested and charged with indecent exposure for working in the nude. He'd been caught engaging in naked carpentry at a client's home after a neighbor spotted him nakedly sawing wood in the backyard.

This is indeed an amusingly "stupid story," but only because Honniball was [acquitted](#) last week. California's indecent exposure law requires exposing yourself in the presence of other people "to be offended or annoyed," and Honnibal worked nude simply because "it's more comfortable," he said, not in order to offend or annoy anyone. Had Honniball drawn a less discriminating judge and been convicted, however, he would have been subject to a maximum prison sentence of one year and a lifetime of surveillance and drastically limited liberties: as a convicted indecent exposor, Honniball would have been required to register as a sex offender, in which case this would still have been a stupid story, but hardly an amusing one.

The gross idiocies and injustices of sex offender registration laws have [long been evident](#) and are [regularly exposed](#), with no apparent effect on their popularity. Their broad reach captures gay men engaged in consensual sex, teenagers barely past the age of consent who haplessly violate statutory rape laws by having sex with their slightly younger peers, and people guilty merely of viewing pornography or idly exposing themselves, while threatening no one. In nearly half the states, convicted sex offenders are subject to onerous permanent [residency requirements](#) and travel restrictions that effectively exile them from civil society, with no apparent benefit it to anyone but the usual bunch of demagogic politicians.

Myths about the high recidivism rates of sex offenders and the dangers posed to children by people who have nothing to do with pedophilia, along with general hysteria about sex and nudity, help spread these laws, which promise to become worse. A recently enacted federal statute, the [Adam Walsh Child Protection and Safety Act](#), includes financial penalties for states that decline to pass repressive sex offender registration requirements.

That a carpenter who likes to work naked was nearly subject to such requirements is a lot more chilling than laboring bare-assed in the San Francisco fog. Honniball's acquittal should not be construed as a sign that the system worked: his prosecution for a sex offense signals that the system is insane.

[criminal justice](#) | [indecency](#)

9/12/2007 12:36:13 PM by [Wendy Kaminer](#) | [Comments \[0\]](#) | [Trackback](#)

Friday, August 31, 2007

ARE WE IRAN?

Half naked women are common sights in city streets every summer (and all year round in warmer climes.) We argue about whether this skimpy, sexualized public attire represents the rise or fall of feminism, but there's virtually no dispute about its legality. So when municipalities start criminalizing baggy, underwear exposing jeans, generally associated with young black males, you know legislators are motivated by something other than a concern for decency. Young white women are not arrested for letting their bra straps show (in addition to a fair amount of flesh.) But as the [New York Times](#) recently reported, in some localities, young black males may be arrested for showing their boxers.

Yes, baggy jeans are condemned for imitating prison wear and glamorizing prison culture, as Times story stresses – but that simply means that they're worn to send a message, (however disturbing or offensive,) which only makes banning them all the more illegal. In a culture preoccupied with fashion "statements," the expressive nature of clothing is difficult to deny. When clothing is condemned precisely because authorities don't like the statement it makes, the offense to the constitution is clear. I hope these laws are challenged. Courts may overlook some restrictions on clothing in public schools, (the Supreme Court has recently cut back on [student rights](#),) but I like to think that even this Court would hesitate to approve clothing restrictions in public streets. In America, as opposed to, say, Iran, we're not supposed to take the job of clothing police so literally.

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8/31/2007 4:56:18 PM by [Wendy Kaminer](#) | [Comments \[1\]](#) | [Trackback](#)

WHAT'S SO BAD ABOUT SOLICITING SEX?

It's long been apparent from Mitt Romney's opportunistic political career that he lacks both courage and conviction (except perhaps for a sincere belief in his own goodness and entitlement to power.) So his swift and spineless denunciations of Larry Craig are no surprise, although as Harvey stresses in his post below, the comparison of Romney to both Lyndon Johnson and Barry Goldwater, who made a principled decision not to engage in gay bashing given a similar opportunity (in a much less tolerant era,) is instructive. (Covering the story in *Slate*, [John Dickerson](#) notes, "Mitt, You're no Barry Goldwater.")

Still, even in the wake of Romney's gratuitous description of Craig as "disgusting," I can't quite bring myself to feel sorry for the embarrassed, soon to be former Senator, given his entirely voluntary participation in a regime that denies gay people the rights and respect he enjoys as at least a faux heterosexual. There's some rough justice in his ensnarement in the web of homophobic laws and customs that he helped weave.

It is, however, hard to ignore the underlying injustice of a legal system that sends police officers into public bathrooms, hoping that some unfortunate gay males will solicit them. Why should it be illegal for adults to seek out sexual partners in public bathrooms, or other spaces? Should we start arresting people in singles bars? Should heterosexuals be forbidden to meet and engage in their own coded sexual come-ons in public parks, beaches, or airline terminals? Should we assign police officers to Amtrak trains in the Northeast corridor to ensure that no strangers begin conversations in Boston that seem likely to lead to sex in New York?

Defenders of the sting that stung Craig may reply that it's public sex, not public pickups, that are legitimate public concerns. Maybe so. Engaging in public sex, you effectively appropriate a public space, by strongly discouraging other people from using it, (although, personally, I'd rather picnic near a couple having sex than a couple with a boom box.) But Craig wasn't arrested for engaging in sex; he was arrested for signifying an interest in engaging in sex. If laws against that were enacted and indiscriminately enforced, than even Mitt Romney would likely have broken them.

[gay rights](#) | [indecency](#) | [privacy](#)

8/31/2007 3:41:40 PM by [Wendy Kaminer](#) | [Comments \[1\]](#) | [Trackback](#)

KICKING A MAN WHILE HE'S DOWN: LBJ VS. ROMNEY, A HISTORICAL PERSPECTIVE

Character is something that's not always easy to define, but making the attempt does bring to mind what the late Supreme Court Justice Potter Stewart famously said about pornography, "[I know it when I see it.](#)"

Well, when you look into the eyes of Mitt Romney, you just know that a weak character resides beneath that smug exterior. I already suspected it after watching his mad dash to the right when his positions did not sit well with the coveted GOP base, and received confirmation this week when I read his response to news that Senator Larry E. Craig (R-Idaho), who served as co-liaison between the Senate and the Romney presidential campaign, had pleaded guilty earlier to a disorderly conduct charge growing out of his arrest by an undercover vice cop in the men's room at the Minneapolis-St. Paul International Airport in June. The Romney people issued a [statement](#) immediately after news broke on August 27th of Craig's June arrest and his early August guilty plea: "Senator Craig has stepped down from his role with the campaign. He did not want to be a distraction, and we accept his decision." So, the formerly good Senator, a reliable cultural conservative to help polish the Mitt's cultural conservative credentials after his more liberal incarnation as Bay State governor, suddenly is relegated, rather unceremoniously, to a distraction.

Romney personally went even further than his campaign's fairly clinical separation from the disgraced senator. In his first reported public comments on the matter, the presidential candidate appeared on CNBC's "Kudlow & Company" program and [thoroughly trashed](#) his erstwhile supporter. Accusing Craig of displaying "not up to the level of respect and dignity" expected of a senator, Romney explained that one cannot simply "just forgive and forget" such conduct. "We've seen disappointment in the White House, we've seen it in the Senate, we've seen it in Congress. And frankly, it's disgusting."

It's not clear whether another of today's presidential wannabes would have handled a similar situation much differently from Romney, although hope does spring eternal that there is place for gumption, compassion, and loyalty in presidential politics. There's at least one prior precedent that comes to mind indicating that not all aspirants for election or re-election to the White House are devoid of the traditional virtues.

In October 1964, just three weeks before the presidential election, Walter Jenkins, a personal friend and high-level adviser to President Lyndon B. Johnson, was arrested for having gay sex in a men's room at a Washington D.C. YMCA. Johnson, who had inherited the White House after the traumatic assassination of President John F. Kennedy, was running for his first full and elected term against Republican challenger Barry Goldwater. [The full story](#) is told by Al Weisel in the December, 1999 issue of *Out* magazine.

When the story of Jenkins' arrest hit the papers, he had a severe nervous breakdown, prompting presidential aide (and later Supreme Court Justice) Abe Fortas to call a physician, who admitted the distraught Jenkins to the psychiatric ward of the George Washington University Hospital, under a 24-hour suicide watch. The public announcement was made by Johnson's press secretary, George Reedy who, Weisel wrote in *Out*, was "weeping as he made the announcement." (This alone separates the Johnson White House from modern times. Can you imagine a presidential press secretary today shedding tears of sympathy for a disgraced White House staffer?)

For me, the shocking aspect of the story was not that a closeted pol got caught leading a double life (what else is new under the sun?). Rather, it was the compassion President Johnson and his wife, Lady Bird Johnson, showed to their disgraced confidante and, it must be added, long-time personal friend of the president and first lady.

Lady Bird Johnson, in a gesture that reveals both her courage and her tolerance, told the press that she would stand by her and her husband's friend Jenkins, as Jesus would have wanted. She reportedly urged the President to make a similar "gesture of support" as well. LBJ considered following her advice, writes Weisel, but eventually decided not to defend Jenkins because "we just can't win it." "The average farmer just can't understand your knowing it and approving it or condoning it," he lamented. However, Johnson did nothing to inflict further pain on Jenkins and took care not to seek points with the electorate by bashing the distraught staffer.

I was a first year law school student in October 1964, and I can remember to this day watching the news reports on television. President Johnson left the White House in order to pay a personal visit to Jenkins at the hospital. A television news reporter stopped Johnson in order to ask whether he had come to the hospital to fire Jenkins. I cannot remember Johnson's precise words nearly 43 years later, but I remember the general tone and tenor of Johnson's response as he spit out his words, with signs of visible contempt toward the reporter: I'm here to visit an ill friend.

Jenkins quietly resigned a few weeks later, and Johnson split his work among colleagues. LBJ later regretted not defending his friend more vociferously. Joseph Califano, who was undersecretary of defense for both John F. Kennedy and Johnson, told Weisel: "I heard Johnson say often that when he left the White House there were two things he was going to do: He was going to start smoking again, and he was going to throw his arms around Walter Jenkins and hug him. And he did it. He started smoking on the plane on the way back, and he met Walter Jenkins at the airport in Texas." Jenkins and Johnson rekindled their friendship as retirees in rural Texas, the same place where they formed a close bond as young legislative aides in the late 1930s.

What would Jesus say? One wonders. We know what Lady Bird said, and what Lyndon did to keep from making his friend's pain worse. And we know, too, that Barry Goldwater [rejected advice](#) from his campaign staffers to exploit Jenkins' troubles for the candidate's political advantage in an electoral race where Goldwater was running substantially behind Johnson. And we know what Mitt said. If character is an important test for the presidency, one hopes that Romney gets eliminated from the electoral contest early and decisively, as the voters realize just how short he falls when compared to some of the men and women that have come before him.

8/31/2007 12:22:06 PM by [Harvey Silverglate](#) | [Comments \[0\]](#) | [Trackback](#)

Monday, August 27, 2007

KID NATION

Exhibiting all the scripted smarminess of its genre, "Kid Nation," the new CBS "reality" show has distinguished itself by prompting an investigation into its compliance with child labor and safety laws. CBS recruited 40 children between the ages of 8 and 15 and planted them in an abandoned New Mexico town for an experiment in civilization building. The [You Tube](#) promo for the show promises to show us "40 kids with no parents, no teachers, anywhere" coping with "hot button" issues. Can these "incredible kids" succeed where adults have failed and build a better society, the pitchman asks. Disney meets Deadwood.

The "Kid Nation" story, still unfolding, is being widely reported, and now that CBS is under investigation for exploiting children, it's "trying to have it both ways," the [New York Times](#) observes; the network is "taking pains to assert that 'Kid Nation' was, in fact, crawling with adults: child psychologists, pediatricians and paramedics, all of them closely watching over the children."

Whatever. CBS's shamelessness is unsurprising. I'm more interested in the alacrity with which people sign away their own autonomy (or that of their children) for a shot at celebrity. Civil libertarians should take note of how little some Americans value what might quaintly be characterized as inalienable rights – the right to speak freely about your own experiences and tell your own life story – or contradict someone else's version of it. Consider the terms of the contract signed by the parents of "Kid Nation" contestants,

described in the [New York Times](#):

It "imposes extensive confidentiality requirements on the parents and the children, including that any interviews they grant must be approved by CBS. Those confidentiality conditions extend for three years beyond the end of the show, not the individual 13-episode cycle in which a child participates but the entire series, however many cycles it includes. The producers of 'Kid Nation' have already begun interviewing children to take part in the second installment."

"Violating the confidentiality agreement carries a \$5 million penalty. CBS and the production companies, Good TV Inc. and Magic Molehill Productions, retained the rights to the children's life stories "in perpetuity and throughout the universe." And that right includes the right to portray the children either accurately or with fictionalization "to achieve a humorous or satirical effect."

Parents also "agreed not to hold the producers and CBS responsible if their children died or were injured, if they received inadequate medical care, or if their housing was unsafe and caused injury."

This, in a society obsessed with child abuse: for a lousy \$5000 stipend and the possibility of winning an additional \$20,000, CBS purchased from parents immunity from liability for killing or injuring their children as well as the right to broadcast outright lies about their kids, forever, in this or any other galaxy: "in perpetuity and throughout the universe." Objecting publicly to CBS's portrayal or commercial use of your child will cost you \$5 million dollars. (Do the numbers: The cost of violating the contract is 1000 times the reward for complying with it.)

Apparently, at least one parent complained to New Mexico authorities about abusive conditions on the set anyway, but, remarkably, like a child, he or she remains under CBS's control: According to the Times, "CBS declined to allow a reporter to speak to the parent who complained to New Mexico authorities about the conditions at the production site."

Kid Nation indeed. This is, in part, a story about the infantilization of adults, and its political implications are unsettling. Only a nation of grown-ups can be free.

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8/27/2007 4:12:46 PM by [Wendy Kaminer](#) | [Comments \[0\]](#) | [Trackback](#)

Thursday, August 23, 2007

THE ADL CAVES

Boston's small but feisty Armenian lobby scored its biggest "victory" yet earlier this week, when it finally cornered Anti-Defamation League President Abe Foxman into describing the slaughter of Armenians during and after World War One as "tantamount to genocide" (see [press release](#)). I put "victory" in quotation marks because, in my view, neither side emerges from this controversy looking like a real winner.

I've written in the past about the strong-armed, censorship-prone tactics used by Watertown's Armenians to advance their cause, and on the importance of leaving questions of history to scholars, not interest groups. You can check out my op/eds on this topic, both in [Massachusetts Lawyers Weekly](#) and [The Boston Globe](#).

I'm equally dismayed at the ADL's poor handling of this fiasco. I wrote earlier that the ADL finds itself in a hole largely of its own digging (see "[Genocide and its Partisans: What the ADL Did Wrong](#)"). And if you think that the ADL's flip-flop on the G-word is going to make this flap disappear, think again. The ADL's poorly conceived and essentially dishonest explanation of its reversal has opened the door for yet more attacks.

Of course, the ADL won't admit that it caved to the Armenian lobby. So in a textbook PR move, the organization tries to claim that reversing its stance was its own idea all along ("We have always described the painful events of 1915-1918 perpetrated by the Ottoman Empire against the Armenians as massacres and atrocities").

Rather than succumb to any notion that their Armenian counterparts were right, Foxman and company write that "on reflection, we have come to share the view of Henry Morgenthau, Sr. that the events [constitute] genocide." It's no accident that ADL cited Morgenthau, a Jew, instead of any of the large number of contemporary historians who have criticized the ADL's stance. This is clearly a cynical attempt by the ADL to remind us all that the man credited with blowing the whistle on the so-called genocide was *Jewish*. If I were Armenian, I would be a bit peeved by these lame attempts at spin. (As a Jew, I'm a bit embarrassed by it all, even though I keep telling myself that it's not my doing.) And, don't expect the Turks to be happy with this Morgenthau reference either. As one of my colleagues pointed out, this will only pour salt in the wounds of the already defensive Turks, seeing as Morgenthau, in those same very same dispatches, frequently used colorful racist language to describe "those unspeakable Turks." Chalk this up as one more example of how dishonesty brings nothing but trouble.

I'm also curious to see how the ADL plans to maintain its tenuous new position that there was a genocide, but that the issue should not be voted on by the Congress nor litigated in the courts. The ADL's legal staff must realize that it doesn't work that way. A nation can't acknowledge the genocide but then try to avoid all the baggage that comes with it. And judging from press accounts so far, it's clear that the Armenians won't relent and meet halfway on this issue. The mudslinging has just begun, I fear.

And no one, it seems, is fighting for the proposition that historians, rather than politicians and interest groups, should pronounce on historical truths. Decisions on when the term "genocide" applies should be made on the basis of documentation, reliable evidence, and clear legal standards and definitions. This does not imply that what happened to the Armenians at the hands of the Ottoman Turks was, or was not, a genuine genocide in terms

of modern-day definitions. It's simply a plea for keeping government and pressure groups out of the business of pronouncing truth and labeling opposing points of view as the equivalent of blasphemy.

While you're reading up on this brouhaha, check out [Jeff Jacoby's column](#) from yesterday's *Boston Globe*, in which he writes that "the Armenian genocide is an incontestable fact of history. Shame on anyone who refuses to say so." This is exactly the sort of rhetoric that sends chills down my spine. If Jacoby wants to push his view that there was a genocide, more power to him. What irks me is the attack on those who disagree with him, who are now becoming known as "genocide deniers," a category of "haters." Not only is this viewpoint poisonous to the notion of open and unfettered discourse, but it is also plainly inaccurate, since it ignores the work of credible scholars who have formed more nuanced responses to the Armenian question. How can a civilized discussion of such an important historical event, resulting in so many deaths, be conducted if one side is always demonized in this fashion?

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8/23/2007 9:30:59 AM by [Harvey Silverglate](#) | [Comments \[2\]](#) | [Trackback](#)

Tuesday, August 21, 2007

GENOCIDE AND ITS PARTISANS: WHAT THE ADL DID WRONG

I don't see how the Anti-Defamation League, either the national organization or its New England regional branch, can dig itself out of the Armenian Genocide hole, into which it [falls further](#) each day, unless it devises a more principled position on a question that is central to this entire controversy: "Who writes history?"

The beleaguered national organization's leader, Abe Foxman, never recovered from one crucial early misstep: adopting the position that he "[doesn't know](#)" if the events that transpired during the fall of the Ottoman Empire constitute a genocide. That was a completely untenable position for Foxman to hold, given that the ADL [continues to label](#) the ongoing conflict in the Sudan a genocide, when in truth it has no way of knowing if that conflict can be labeled as such either.

It's fine that the ADL wants to speak out on issues that aren't directly related to the Jewish people. But, when it made that decision to branch out, it should have known better than to bandy about the G-word when describing Darfur while simultaneously taking an agnostic position on the unavoidable Armenian question. What the ADL should have said that is that, ultimately, historical questions must be interpreted and decided by scholars and by official bodies tasked with making legal determinations (courts and U.N. agencies that deal with war crimes). This has been my long-held view, and it is the basis for *Griswold v. Driscoll*, a 1st amendment test case I filed in Massachusetts state court in 2004 (read more [here](#) and [here](#)).

Unfortunately, the ADL would have a hard time adopting such a commonsense position at this point. Much damage has been done to its credibility, and the decision to fire Andrew Tarsy, the regional director who broke with the company line and voiced his personal opinion that there was an Armenian Genocide, hasn't helped much either. Nor, in fact, is the regional ADL's position – that there was in fact an Armenian Genocide committed by the Ottoman Turks, and that anyone on the other side is a genocide denier – any more tenable, since it is obvious that the regional office contradicted the national office not on the basis of a close study of the historical evidence, but on the basis of a sense that it would be amoral to deny the Armenians their genocide.

Even Harvard Law professor Alan Dershowitz, paladin of free speech and intellectual inquiry, opined in a co-authored (with Rachel Kaprielian) [op-ed](#) in *The Boston Globe* that "the matter is not subject to interpretation" – this, despite the fact that well-reputed scholars such as Princeton's [Bernard Lewis](#) and Louisville's [Justin McCarthy](#) disagree, and prominent University of Massachusetts-Amherst historian [Guenter Lewy](#) has argued forcefully that the available historical documentation is currently too spotty to justify too rigidly-held a conclusion. If truly the Armenian Genocide is not a fit subject for discussion, argument, scholarship, and disagreement, what is? Must all historical decisions and interpretations be made on the basis of what is the politically correct and seemingly moral position of the day, or are free minds at liberty to inquire and discuss, rather than merely to parrot acceptable positions?

It also doesn't help that, in recent years, the ADL has indulged in the huge mistake of insisting on certain litmus tests and dubbing certain views "hate speech," where anyone announcing a politically incorrect view on certain hot-button social and political issues becomes a "hater." Where the words one uses, or chooses not to use, become litmus tests for determining one's essential decency and fitness to join the family of man, then we know that substance has given way to style, free inquiry to tyranny. Further, the ADL has insisted that it's not enough to concede what the historical evidence clearly shows – that the Nazis went out systematically exterminating Jews, gypsies, homosexuals, and other discreet populations – but one must go further and concede that the Holocaust is unique in history etc., or else be dubbed a "Holocaust denier." I have long thought that ADL would eventually drive itself into a corner and suffer the slings and arrows of its own manufacture. This seems to be playing out in front of our eyes on the "Armenian Genocide" issue.

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