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Culture Wars Returning? Or Did They Ever Go Away?

In the fall of 2010 culture wars rhetoric seemed like a thing of the past, remembered alongside attacks on the National Endowment for the Arts and Congressional saber-rattling about “offensive” art. What a difference twenty years made: the National Portrait Gallery in Washington was mounting *Hide/Seek*, a show on queer portraiture in art, and Congress was voting to repeal the military’s repressive “don’t ask don’t tell” policy. It almost appeared as if the old cultural battle-axes had been buried.

And then the firestorm hit. As in so many earlier cases, it was ignited by the press, in this case CNSNews.com, fueled by religious groups, in this case the offense-hounds from the Catholic League, and inflamed as a result of political threats to cut the institution’s funding. Smithsonian Secretary W.G. Clough, demonstrating a fatally low melting point, immediately requested that one of the works in *Hide/Seek* be removed – a sacrificial victim, according to Clough, to save the show from further attacks and soften the hearts of Republicans in their next discussion of the Institution’s funding.

Congressional critics may have been temporarily appeased, but their appetite for cultural slaughter was only whetted: the moment a new Congress convened in January a rejuvenated GOP was again threatening to slash funding for the NEA, National Endowment for the Humanities and the Corporation for Public Broadcasting. While the threats have not been carried out, they serve as a clear reminder that public display of “controversial” art is a risky business.

Deepening the sense of *déjà vu*, protests among members of the art world and LGBT activists outraged by the Smithsonian’s censorship replayed the passions inspired by 1990s political attacks on the arts. But what had been going on in the last decade? Have the culture vigilantes

been sleeping only to be jarred awake by the invasion of the venerable Smithsonian by gays and lesbians? That, in spite of appearances, is not the case:

Only a month before the controversy over *Hide/Seek* hit the news-cycle, a print by Enrique Chagoya – accused of being offensive to Catholics – was physically attacked and destroyed in Colorado after city councilmen abandoned the effort to have the work removed when they realized that would violate the First Amendment. Even more recently California government officials removed a painting of a nude from a show of work by local artists,

and an hour-long video installation was switched off during prime viewing hours in a Texas art space because of concerns that teens might be exposed to a few minutes of sexually suggestive images.

Such incidents, sometimes involving nudity, sometimes religion or politics, hide behind the (pregnant) lull that is periodically punctuated by national censorship firestorms. The censors have not gone away: they have just

relocated. Censorship rarely brings artists national fame. More often it confronts them with the mundane reality of petty politics and public officials’ fear of controversy. When an incident gains national exposure everybody becomes a free speech warrior, but few have the patience to deal with everyday censorship. Yet those are the real battles that define our culture.

For more on the *Hide/Seek* controversy, and NCAC’s activities in response, visit http://ncac.org/visual_art. While you’re there, check out all the other art censorship controversies that didn’t make front page news or inspire national protests.



From *Silence Through Economics* by David Wojnarowicz

NCAC PARTICIPATING ORGANIZATIONS

Actors' Equity Association
American Association of School Administrators
American Association of University Professors
American Association of University Women
American Booksellers Foundation for Free Expression
American Civil Liberties Union
American Ethical Union
American Federation of Teachers
American Federation of Television & Radio Artists
American Jewish Committee
American Library Association
American Literary Translators Association
American Orthopsychiatric Association
American Society of Journalists & Authors
Americans United for Separation of Church & State
Association of American Publishers
Authors Guild
Catholics for Choice
Children's Literature Association
College Art Association
The Creative Coalition
Directors Guild of America
The Dramatists Guild of America
Educational Book & Media Association
First Amendment Lawyers Association
International Reading Association
Lambda Legal
Modern Language Association
National Center for Science Education
National Communication Association
National Council for the Social Studies
National Council of the Churches
National Council of Jewish Women
National Council of Teachers of English
National Education Association
National Youth Rights Association
The Newspaper Guild/CWA
PEN American Center
People For the American Way
Planned Parenthood Federation of America
Screen Actors Guild
Sexuality Information & Education Council of the U.S.
Society of Children's Book Writers & Illustrators
Speech Communication Association
Student Press Law Center
Union for Reform Judaism
Union of Democratic Intellectuals
Unitarian Universalist Association
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United Methodist Church, United Methodist Communications
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The First Amendment In The Courts

Funeral Protests

The Rev. Fred Phelps and the Westboro Baptist Church are infamous for their protests at military funerals, bearing signs like “God Hates Fags.” The father of one deceased soldier, Matthew Snyder, sued Phelps for damages for emotional distress. Phelps claimed that his speech was protected by the First Amendment and the Supreme Court agreed.

The decision in *Snyder v. Phelps* relied heavily on the facts of the case, which have been largely ignored in the press. Westboro informed police authorities about their intended protest and complied with instructions. The 30-minute protest was held out of sight of those attending the funeral. The only protestors were Phelps, his two daughters, and four grandchildren.

The very fact of the protest undoubtedly added to Mr. Snyder's anguish. However, speech can rarely be prohibited solely because it is hurtful. As the Court observed, “Westboro thinks America is morally flawed; many Americans might feel the same about Westboro.” Expression of both views is entitled to protection. We rely on the court of public opinion, not courts of law, to decide who is right.

It's worth recalling that the “freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.” Ironically, Mr. Snyder's lawsuit was a vehicle for reaffirming this core principle of the American system that his son fought and died to protect.

Copyright

Copyright is always a divisive issue and an upcoming Supreme Court case promises not to disappoint. The issue in *Golan v. Holder* is the constitutionality of a law, enacted as part of a global trade agreement, which restores copyright protection for foreign works that have previously been in the public domain in the U.S.

The case involves musicians, educators, performers, publishers, archivists, and distributors of creative material. Some

have gone to great effort and expense to identify, restore, record, manufacture, and distribute works that were in the public domain, including symphonies by Stravinsky, Prokofiev and Shostakovich; books by C.S. Lewis, Virginia Woolf and H.G. Wells; films by Federico Fellini, Alfred Hitchcock and Jean Renoir; and artwork by M.C. Escher and Picasso. The ability to perform, share and build upon these works now requires a licensing fee, which in some cases is prohibitive. The government defends the law on the grounds that other countries do not always afford copyright protection to American works, and that the promise of reciprocity would protect American copyright holders of American works abroad.

The Copyright Clause allows Congress “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” The clause attempts to balance the free speech interests of the creators of intellectual property and its consumers, but there has always been a tension between the economic interests of copyright holders and the interests of the public in an expansive public domain for intellectual property. In *Golan*, the Court has been called up to decide between these competing interests.

Not Again!

We have reported many times on the seemingly endless fight over whether the FCC “decency” regulations violate the First Amendment. Last summer, the Second Circuit Court of Appeals invalidated the regulations on the ground that they are unconstitutionally vague because they fail to give broadcasters a clear definition of what might be deemed “indecent.” Broadcasters and others claimed the regulations create a chilling effect because they have been inconsistently applied. For example, *Saving Private Ryan* was not considered indecent while a segment of *The Blues*, a PBS documentary series created by Martin Scorsese, was slapped with a fine for indecency. On April 21, 2011, the DOJ asked the Supreme Court to overturn the Second Circuit decisions. In this situation, the policies of Democratic and Republican administrations seem virtually indistinguishable.

The Heckler's Veto

Many book censorship incidents start with a single complaint seeking to remove one or more books from a school classroom or library. But what is at stake is more than a few books. Often battles over books represent an effort to imbue the public schools with a particular set of views and values. That's why so many book censorship cases become emotionally loaded crusades.

For example, Dennis and Aimee Taylor, the parents of a Bedford, N.H., high school student, successfully campaigned to have Barbara Ehrenreich's book *Nickel and Dimed: On (Not) Getting by in America* removed from their son's personal finance course because they thought it conveyed an "anti-Christian and anti-capitalist" message. Later the same parents added "sex" to their list of objectionable content and succeeded in removing *Water for Elephants*, which was to be taught in one of 25 elective intersession classes. Encouraged by these victories, Dennis Taylor said that he "intend[s] to fight every similar book that crosses [his] path."

Across the country in Oregon, parent Lisa Albrecht challenged *A Thousand Splendid Suns* in her daughter's Advanced Placement English class. Albrecht is now running for the school board so as to "continue to fight for conservative family values." Part of her platform is that alternative assignments are an unacceptable form of discrimination and that "alternate courses" should

be offered for "those of us with conservative family values." In Brookline, N. H., a campaign is underway, spearheaded by parents Debbie and Steve Pucci, to rid the high school of books with profanity and sexual content, as well as films dealing with issues like population control and drug trafficking in post-Katrina New Orleans. The list goes on.

These parents are entitled to their beliefs and values. But they're trying to exercise the heckler's veto, by threatening endless challenges and controversy if their views are not reflected in the school curriculum.

What are schools to do in the face of this onslaught? As many courts have recognized, they cannot "cater a curriculum for each student whose parents [have] genuine moral disagreement with the school's choice of subject matter." Leaving aside the practical impossibility of acceding to multiple, often competing demands, the result would be educational mayhem. Any attempt "to eliminate everything that is objectionable...will leave public schools in shreds. Nothing but educational confusion and a discrediting of the public school system can result..." *McCollum v. Board of Educ.* (1948) (Jackson, J. concurring).

One thing is sure: the hecklers will strike again. The best course for school officials facing their demands is also the constitutionally mandated choice: to make decisions that will provide the best possible education for their students. The First Amendment gives schools the power, as well as the obligation, to prevent even the most determined heckler from succeeding in imposing his or her views on others.

— Joan Bertin

THE LONG AND THE SHORT OF IT

- LA MOCA's new director, Jeffrey Deitch, ordered a mural commissioned by the museum whitewashed within hours of its creation because of fear that its anti-war message would offend the museum's neighbors: a Veteran Hospital and a memorial to Japanese-American soldiers.

- A Department Of Education "Dear Colleague" letter on bullying worries First Amendment advocates because of its expansive definition of verbal harassment and the suggestion that schools may be liable for damages if they don't police student expression.

- Marin County officials removed a painting of a nude from the Civic Center because of an employee's complaint that the piece created a "hostile work environment." Reminded of both their First Amendment responsibilities and the fact that this didn't come close to meeting the definition of a hostile work environment, they invited the nude back.

- In April, Andres Serrano's photograph, *Piss Christ*, which was the subject of

congressional attacks in the late 1980s, was vandalized in Avignon, France.

- NCAC co-sponsored a symposium at the Corcoran Gallery and College of Art called *Culture Wars: Then and Now*, to discuss the historical place of the Smithsonian *Hide/Seek* controversy and to suggest future responses to similar incidents. NCAC also organized a panel on the role of religion in both producing and suppressing art for the 2011 College Art Association Conference.

- Facebook receives ever larger numbers of complaints for its removal of artwork, including globally recognized masterpieces, containing nudity. Its policy regarding art remains arbitrary.



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- The student newspaper at La Salle University defied school administrators' instructions to run a story involving a University investigation that had already been covered in the local press "below the fold". *The Collegian* hit the stands with a blank top half, save for tiny print instructing readers to see below.

- In March, NCAC wrapped up another successful film contest for the Youth Free Expression Project. This year's winners were Aaron Dunbar (First Place for "Hare Tactics: When Free Speech Goes Too Far"), Sarah Phan and Lyndi Low (2nd Place, "Malediction"), and Evangline Fachon and Lindsay Tomasetti (3rd Place, "Static"). The theme for the next film contest will be *Censorship Bytes! Speech In Cyberspace*.

- Gov. Paul LePage ordered the removal of the *History Of Maine Labor* mural from the state Dept. of Labor office in late March, saying it portrayed a bias against business interests. Six regular visitors to the building have sued for its reinstatement.

The Kids Are Online

6 Myths About Youth and Social Media

Online predators! Cyberbullying! Privacy! There are a lot of fears about how young people are growing up online. And, since these are young people we're talking about, those fears often turn into full-blown panics (with help from the occasional, sensational news report). Good decisions are rarely made in a panic, however. To help kids navigate the world of instant communication in which they live, we need to take a step back and examine the facts and our fears.¹

Myth #1: Young People Don't Care About Privacy

There's a common perception that young people are posting their entire lives to Facebook and Twitter. While extreme cases have emerged in the press, most youth are sensitive to the issue of online privacy and have developed nuanced strategies to balance concerns about privacy with the ability to use online communications to strengthen relationships and share information.

So, while adults might simply avoid putting sensitive material online at all, young people feel more inclined to use software, passwords and user settings on social networks like Facebook to limit who can see what. They engineer levels of privacy and grant access to their best friends while excluding prying eyes (e.g. parents and teachers). Studies also show that the more young people are aware of their online privacy options (in addition to the privacy policies of websites like Google, Facebook and Twitter) the more care they exercise when deciding what and how to publish on the Net. That finding provides a nice segue into our next myth...

Myth #2: All Online Youths Are Internet Wizards

Much has been written about the upcoming generation of digital natives: kids and teens who have known the Internet their entire lives. However, the "digital divide" created by socioeconomic circumstances affects

online skills. Youth who depend on library computers where they are not able to install or configure their own software are less likely to be aware of privacy options or the perils of unreliable information sources than peers who access the Internet on their own machines. All young people would benefit from media and computer literacy classes, but not all get them.

Myth #3: Anonymous Chatting Exposes Kids To Adult Predators

While young Net users report they have chatted with people they've never met, most online interactions involve relationships created offline. And most children do not meet someone in person they've only met online.

Fearmongers often cite the statistic, from a 2005 study by the Crimes Against Children Research Center, that 1 in 7 children have received sexual propositions while online. But David Finkelhor, author of that report, notes that many of these propositions don't come from Internet predators at all.

Indeed, danah boyd of Harvard's Berkman Center for Internet and Society says that most sexual solicitations are "the 19-year-old saying to the 17-year old, 'Hey, baby'" and that kids who engage in risky behavior online have often "engaged in a lot more risky behavior offline."

Myth #4: The Internet Creates Anti-Social Youth

Not only are youths using the Net as another way to hang out with their peers, they're often pursuing shared interests and skills through collaborative projects. The wealth of online tutorials and information makes "geeking out" a way to develop expertise in a particular subject while strengthening social skills for collaboration. This kind of self-directed, interest-driven learning will become increasingly important as the "knowledge worker" economy evolves, especially as more school hours are turned over to standardized testing.

Myth #5: Censoring Student Speech Is Necessary and Justifiable to Prevent Cyberbullying

Kids *can* act a lot nastier in anonymous spaces afforded by the Internet than they would ever be in person. And their mockery can be far more painful when it's public and published instead of muttered in the hallway. But anti-bullying laws and campaigns often miss the mark, penalizing protected speech without enhancing safety. In the meantime they do little to teach young people the skills to protect themselves from online harassment.

Myth #6: Filtering and Surveillance Are the Best Ways to Protect Online Youth

Our final myth builds on the lessons learned so far. When the digital youth are portrayed as a careless cybermob it's reasonable for parents and educators to react with monitoring and restricting online access. But as we've seen, young people are discerning about their online lives – to the extent they are aware of their options. Parents hoping to reduce the amount of personal information their children disclose can start by discussing website content, social network policies and reviewing available software and practices for securing data. Empowering informed decisions, not policing kids, is more likely to succeed because it doesn't create resistance and it builds skills young people need now, and when they grow up.

Young people accept the Internet as interwoven with daily life, not just for work or just for play. Many adults need to see the Net through kids' eyes to teach them healthy choices online and off.

¹This article is indebted to John Palfrey's survey of social research on youth Internet use "The Challenge of Developing Effective Public Policy on the Use of Social Media by Youth," *Federal Communications Law Journal*

For more of NCAC's work on free expression in cyberspace, visit <http://ncac.org/internet>