

THE ACLU AT 100

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This is an excerpt from a longer paper by the same name. It can be found on the Catholic League website.

The ACLU will celebrate its centennial on January 20, 2020. Always contentious, it has become the most influential civil liberties organization in the nation. Its reputation as a non-partisan organization that vigorously defends the free speech rights of all Americans, independent of their ideology or political leanings, is well known. However, it is a reputation that can be seriously challenged. Indeed, as I detailed in *The Politics of the American Civil Liberties Union* (Transaction Press, 1985), it would be more accurate to say that the Union is the legal arm of the liberal-left.

Its reputation as a force for freedom can also be seriously challenged. As I argued in *Twilight of Liberty: The Legacy of the ACLU* (Transaction Press, 1994; new material was published in the 2001 edition), the Union entertains a vision of liberty that is increasingly libertine: its promotion of radical individualism works to undermine the kind of moral consensus that is a bedrock of free societies.

Today the ACLU leadership contends that the organization has been a consistent non-partisan catalyst for freedom since it was founded by ten distinguished Americans. This is factually wrong. There was only one founder of the ACLU: Roger Baldwin. Any organization that lies about its founding is not likely to tell the truth about other matters.

The ACLU was nominally founded to defend free speech rights, but its real interest was the rights of labor. Baldwin pushed the ACLU to the radical fringe of the labor movement, leading Samuel Gompers, head of the American Federation of Labor, to accuse him of aiding and abetting revolutionary movements.

Baldwin was a Communist fellow-traveler.

Baldwin traveled to the “workers’ paradise” and in 1928 released a glowing account of what he saw. The title of his book, *Liberty Under the Soviets*, accurately conveyed his message. In 1934, he wrote an article for *Soviet Russia Today* that made plain his sympathies. He vigorously defended Stalinism.

Then, in 1939, Baldwin experienced the “biggest shock of my life.” That was when he learned of the Nazi-Soviet pact. When I interviewed him in 1978, he told me that the pact meant that “the distinction between Communism and Fascism [was] no longer tenable.” It also meant that he had to seriously reconsider the propriety of having members of the Communist Party on its board of directors; he worked to get one thrown out of the ACLU.

During World War II, President Roosevelt ordered the internment of 110,000 Japanese Americans. Today the ACLU likes to brag how it challenged this initiative. On its website it lists over twelve highlights in its history. One of them reads, “The ACLU stood almost alone in denouncing the federal government’s internment of more than 110,000 Japanese Americans in concentration camps.”

This is pure myth. It is true that the Northern California affiliate opposed the internment, but the national organization did not—it defended the removal of anyone from military zones whose presence may endanger national security.

Though the ACLU took a moderate position on many issues in the 1940s and 1950s, in the 1960s it resorted back to its more radical ways. It was on social and economic issues that it turned decisively left. Egalitarians on the ACLU’s board started lobbying for economic rights, and in 1984 succeeded in developing a policy declaring poverty to be a civil liberties issue.

Does a homeless person have the right to sleep on sidewalks? What if the temperature falls below freezing and the police ask him to seek shelter, and he refuses to move? The ACLU says the homeless have a constitutional right to stay put. When this policy was implemented in the 1980s in New York City, three homeless persons froze to death—as a direct result of the ACLU’s “Project Freeze” policy.

As proof of its influence today, consider that the Chicago police force has been required to adopt the ACLU’s vision of crime control. In a consent decree, whose strictures were written by the ACLU, the cops must prepare mountains of paperwork, slowing down their response to crime. The result? Chicago is one of the most violent cities in the nation.

Making matters worse is the ACLU’s push to legalize *all* drugs. It also wants to legalize street prostitution, pornography, and gambling. Only someone drunk on individual rights would conclude that such activities contribute to the makings of a free society.

The ACLU is known as a strong proponent of women’s rights. What is less well known is that opposition to the Equal Rights Amendment was long considered a pro-women position. For decades, beginning in the 1920s, the ACLU argued that women had enough rights enshrined in the Constitution, and did not need the ERA. The same radical judge on the ACLU’s board who led the fight against the ERA did a quick pivot in 1970: She insisted that women could not be free without it. That is when the ACLU changed its position.

The women’s right that the ACLU treasures above all is abortion.

In the late 1970s, Rep. Henry Hyde authored a bill restricting the federal funding of abortion. The ACLU, determined to cast his effort as an attempt to shove Roman Catholic doctrine down the throats of the public, summoned a lawyer to follow him

into church on Sunday. She entered her spy notes in a 301-page brief, which got nowhere. When asked about this, Hyde said, "I suppose the Nazis did that—observed Jews going into the synagogues in Hitler's Germany—but I had hoped we would have gotten past that kind of fascistic tactic."

What the ACLU did to Hyde was no mistake. When it was founded in 1920, it listed ten objectives, including all the rights detailed in the First Amendment, with one exception: freedom of religion. This was no oversight. Baldwin, and many of his colleagues, were atheists.

Freedom from religion has always played a much bigger role for the ACLU than freedom of religion. The list of religious expressions it objects to is quite long. In the 1980s, it worked to strip the Catholic Church of its tax-exempt status. It continues to this day trying to censor religious speech on public property, including nativity scenes. It is so terrified of religion that it has even objected to a nine-foot underwater statue of Jesus Christ placed three miles off the coast of Key Largo.

If there is one civil liberty that the ACLU is most known for defending, it is freedom of speech. It took only a few years after its founding to prove how insincere it was.

In December 1936, Harold Lord Varney wrote a critical piece about the ACLU in the *American Mercury*, an influential journal of opinion. The article, "The Civil Liberties Union—Liberalism à la Moscow," was a searing indictment of the ACLU's alleged non-partisan position. Most of what Varney said was undeniably true, but some of his comments exaggerated the Union's record. There certainly was nothing libelous about it.

Upon publication, the ACLU threatened a libel suit. This incident has been wholly ignored for decades by those who write about the organization, and by the ACLU itself. It amounts to a cover-up.

Varney seized on Baldwin's praise for the Soviet Union. "Repression in Western democracies are violations of professed constitutional liberties and I condemn them as such. Repressions in Soviet Russia are weapons of struggle in a transition period to Socialism." This, and similar statements like it, are what irked Varney. What followed was a series of hot exchanges between the ACLU and Varney. Then came the libel suit. It was not dropped until a compromise was reached, allowing both sides to save face.

In more recent times, the ACLU has been quick to hail its defense of neo-Nazis as evidence of its non-partisan approach. But everyone knows that these nuts pose no real threat. More seriously, why is the ACLU reluctant to defend the free speech rights of pro-life demonstrators, or conservative speakers on college campuses?

When it comes to other issues, its position on free speech is so far gone that it actually defends the sale and distribution of child pornography. It lost in a unanimous decision in the Supreme Court in 1982.

The author of the First Amendment, James Madison, never envisioned that freedom of speech would come to mean the defense of child pornography. Nor did he think that free speech would include dwarf-tossing, mud wrestling, sleeping in parks, and the right of demonstrators to block traffic on bridges. These are all official policies of the ACLU.

Today the most vocal critic of the ACLU is Alan Dershowitz, the former Harvard Law professor. He argues that he hasn't changed, the ACLU has; he charges that it has become increasingly political. I would say that it has reverted back to its hyper-partisan beginnings.

Ever since Dershowitz left Harvard and moved back to New York, he has been at the forefront of legal controversies involving President Donald Trump. He has mostly defended the president

and has been relentless in calling out the ACLU—he was a former board member—for doing nothing in the face of gross constitutional injustices.

What irks Dershowitz are the numerous government raids on the homes, hotel rooms, and offices of those who have worked for the Trump administration. The authorities seized material protected by lawyer-client privilege. What has the ACLU done about it? Nothing. Why? Politics and money.

No one disagrees that the ACLU harbors a strong animus against Trump. The money aspect is less obvious.

Under ACLU president Anthony Romero today, fund-raising has become more important than ever before. Dershowitz maintains that “after Trump took office, the ACLU has never become so cash rich, yet principle poor.” What matters most is the profile of today’s donors.

“The problem is that most of that money is not coming from civil libertarians who care about free speech, due process, the rights of the accused and defending the unpopular,” Dershowitz notes. “It is coming from radical leftists in Hollywood, Silicon Valley, and other areas not known for a deep commitment to civil liberties.”

The ACLU has always been political, but not until recently has it jumped into the political arena with both feet. In 2018 it officially overthrew nearly 100 years of policy when it announced its foray into electoral politics. It pledged to spend more than twenty-five million dollars trying to affect the November elections.

Ira Glasser, who preceded Romero, was blown away by this decision. He told the *New Yorker* magazine that this was “a transformative change,” one that “has the capacity to destroy the organization as it has always existed.”

The moderates in the ACLU have largely been purged. It was on

the left from the beginning, but at least had its responsible moments. Now it is a totally politicized extremist organization, one that Roger Baldwin (whom I came to like), would not recognize.