

# DENYING THE 'OTHER' HOLOCAUST

*Posted on September 7, 2009 by Keghart*



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By Marilyn Henry, [The Jerusalem Post](#), 30 August 2009

Ten years ago, I was in Armenia for Genocide Memorial Day. Armenians from their galut\* around the world had come to Yerevan to participate with local citizens in the solemn commemoration. I was with a group that came from the US, including Henry Morgenthau III. He was there because the government intended to honor his grandfather, the first Henry, who as the US ambassador to Constantinople in 1915 had raised the alarm about the Armenian genocide.

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The Morgenthaus and I were Jews among the Armenians. After a week together, however, it was hard to remember that the Armenians weren't Jews. We have much in common: lost families, lost homes, lost countries, lost languages, lives as minorities, a diaspora, fears of assimilation, factions in religious practice — and genocide, as well as foes who would deny that the genocide ever happened.

But this also is where Jews and Armenians part. No civilized society will tolerate Holocaust denial. Nearly a century later, however, denial of the Armenian genocide persists, and it pops up in the most unexpected places.

Most recently it was in the federal appeals court in California. In a ruling on August 20, two members of a three-judge appellate panel did not quite deny the Armenian genocide; it was more like "genocide squelching." At issue was one of a handful of California laws that collectively extended the statutes of limitations so that Nazi victims, including slave laborers, as well as victims of the Armenian genocide, would have additional time to file various claims for redress from human rights abuses and other losses.

The Armenians were seeking insurance payments from the period in the waning days of the Ottoman Empire during which they were deported and massacred by the Turks. This was akin to efforts within the Jewish community in the last decade to recover insurance payments for policies written during the Nazi era.

Jewish insurance claims were handled by an international commission chaired by former US secretary of state Lawrence Eagleburger. Armenians fended for themselves. Claims from the Ottoman/World War I era were handled by lawyers who dealt with individual insurance companies. The American insurer New York Life and the French company AXA reached settlements with the

The case in federal court in California pits Armenians against German insurance companies. (Let's put aside for this discussion that German enterprises should be sensitive to any claim related to genocide, or that it was Hitler who blithely predicted that no one would remember the fate of the Armenians.) The German insurers resisted any discussion of claims, including the possibility of humanitarian settlements with payments to charitable institutions, said Brian Kabateck, the Los Angeles attorney representing the Armenians.

The German companies argued that US presidential foreign policy prohibits legislative recognition of an "Armenian genocide." Although more than 40 American states have policies on the Armenian genocide, there is no federal policy recognizing it. Each time in recent years that a congressional resolution appeared likely to affirm that the genocide had occurred, the Bush and Clinton administrations argued against it, saying it would hurt American foreign policy by offending Turkey, a key ally. The Turks have never recognized the genocide; they refer to an Armenian revolt.

In a very broad statement that went far beyond California's laws on claims deadlines, the federal appellate panel concluded that "there is an express federal policy prohibiting legislative recognition of an 'Armenian genocide.'"

"By using the phrase 'Armenian genocide,' California has defied the president's foreign policy preferences," the panel ruled.

It was not swayed by the fact that the federal government has not expressly prohibited states from using the phrase 'Armenian genocide.' And the US government did not participate in this case, so its position on how states treat the genocide is entirely unclear.

Kabateck, the Los Angeles attorney, vowed to appeal to the full appellate court, saying the two judges' ruling was "genocide-squelching." "The court says the words 'Armenian genocide' when said by any state or local government violates the foreign powers of the US government and is unconstitutional," he said. "Taken to its logical extreme, if these two judges are correct, no state or local government in the United States may use those words in any capacity."

The court ignored the US record, including president Ronald Reagan's 1981 proclamation explicitly referring to "the genocide of the Armenians," said Rouben Adalian, director of the Armenian National Institute in Washington. "This decision has so many egregious mistakes it makes one wonder what else was going on. It is frightening to see how even judges could be so misled into dangerous and really shameful territory."

There is now concern that the ruling will be used as Turkish propaganda, and to expand the assault on teaching about the genocide in American public schools.

In June, a federal judge in Boston rejected a lawsuit filed by several students, teachers and the Assembly of Turkish American Associations that challenged Massachusetts' state curriculum. The

education guidelines characterize the World War I-era deaths of Armenians as genocide. Mark Wolf, the chief judge of the US District Court in Massachusetts, said the sensitive questions on the historic tragedy should be debated in the legislature, not the courts.

American Jews don't face these horrific fights over atrocities and whether to teach them. New York, New Jersey, California, Florida and Illinois have laws requiring the teaching of the Holocaust. Ten other states have regulations recommending Holocaust education. Twelve states also have Holocaust commissions or councils that support Holocaust education.

But we surely remember our own battles against Holocaust denial. And as we are aggressive in protecting our history and in protesting contemporary atrocities such as in Darfur, so should we protest the denial of other atrocities of the past.

\* *Galut or Golus (Hebrew: גלות), means literally exile*

