



COLUMBIA LAW REVIEW REFUSED TO TAKE DOWN ARTICLE ON PALESTINE, SO ITS BOARD OF DIRECTORS NUKED THE WHOLE WEBSITE

The students who edit the journal sought out the article by a Palestinian scholar who was censored by Harvard Law Review last year.

Natasha Lennard, Prem Thakker

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Alumni of Columbia Law School mount pro-Palestinian protests during graduation in New York, on May 13, 2024. Photo: Fatih Akta/Anadolu via Getty Images

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LAST NOVEMBER, THE Harvard Law Review made the unprecedented decision to kill a fully edited essay prior to publication. The author, human rights lawyer Rabea Eghbariah, was to be the first Palestinian legal scholar published in the prestigious journal.

As The Intercept [reported](#) at the time, Eghbariah’s essay – an argument for establishing “Nakba,” the expulsion, dispossession, and oppression of Palestinians, as a formal legal concept that widens its scope – faced extraordinary editorial scrutiny and eventual censorship.

When the Harvard publication spiked his article, editors from another Ivy League law school reached out to Eghbariah. Students from the Columbia Law Review solicited a new article from the scholar and, upon receiving it, decided to edit it and prepare it for publication.



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Now, eight months into Israel’s onslaught against Gaza, Eghbariah’s work has once again been stifled – this time by the Columbia Law Review’s board of directors, a group of law school professors and prominent alumni that oversee the students running the review.

Eghbariah’s paper for the Columbia Law Review, or CLR, was published on its website in the early hours of Monday morning. The journal’s board of directors responded by pulling the entire website offline. The homepage on Monday morning read “Website under maintenance.”

According to Eghbariah, he worked with editors at the Columbia Law Review for over five months on the 100-plus-page text.

“The attempts to silence legal scholarship on the Nakba by subjecting it to an unusual and discriminatory process are not only reflective of a pervasive and alarming Palestine exception to academic freedom,” Eghbariah told The Intercept, “but are also a testament to a deplorable culture of Nakba denialism.”

Website Takedown

Seven editors who had worked on [the article](#) told The Intercept that, over the weekend, members of the board of directors pressured the law review’s leadership to delay and even rescind publication. Most of the CLR editors spoke to The Intercept on the condition of anonymity, fearing the backlash that others have faced for speaking out for Palestine.

Numerous editors stressed that the editorial input had been extensive, and that the text

was more widely circulated among a greater number of people than is the case prior to the publication for most CLR articles.

After a back-and-forth with the board and fellow editors, the members of CLR responsible for the Eghbariah article said they feared that the draft had been leaked and decided to preempt outside pressure by publishing the issue online in the early morning hours of June 3. After the editors declined a board of directors request to take down the articles, the board pulled the plug on the entire website.

The CLR board of directors told The Intercept in a statement that there were concerns about “deviation from the Review’s usual processes” and said it had taken the website down to give all CLR members the chance to read the article and that the decision was not a final decision on publication.

“We spoke to certain members of the student leadership to ask that they delay publication for a few days so that, at a minimum, the manuscript could be shared with all student editors, to provide them with a chance to read it and respond,” the board said.

“Nevertheless, we learned this morning that the manuscript had been made public. In order to provide time for the Law Review to determine how to proceed, we have temporarily suspended its website.”

“I don’t suspect that they would have asserted this kind of control had the piece been about Tibet, Kashmir, Puerto Rico, or other contested political sites.”

The apparent intervention by the board of directors surprised some Columbia Law School faculty.

“I don’t suspect that they would have asserted this kind of control had the piece been about Tibet, Kashmir, Puerto Rico, or other contested political sites,” Katherine Franke, a professor, told The Intercept.

“When Columbia Law Professor Herbert Weschler published his important article questioning the underlying justification for *Brown v. Board of Education* in 1959 it was regarded by many as blasphemous, but is now regarded as canonical. This is what legal scholarship should do at its best, challenge us to think hard about hard things, even when it is uncomfortable doing so.”

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“Completely Unprecedented”

The [article](#) significantly expands on Eghbariah’s [argument](#) for Nakba as its own legal concept in international law. The scholarship is aimed at creating a legal framework for the Nakba similar to genocide and apartheid, which were concretized as crimes in response to specific atrocities carried out by Nazi Germany and white minority-ruled South Africa, respectively.

“The piece fills a conspicuous gap in legal literature with doctrinal, historical, and moral clarity,” said Margaret Hassel, Columbia Law Review’s previous editor in chief until last February. “I am tremendously proud of the work, care, and thought that Eghbariah and the Review’s editors have poured into the piece.”

“I was just sick to my stomach and disgusted that, once again, this was happening.”

The Columbia Law Review is a separate nonprofit from Columbia University, but the editors are Columbia Law students and its oversight includes law school faculty. The board of directors consists of established faculty

members and eminent alumni of the law school. Among the most well-known of the board members are Columbia Law School Dean Gillian Lester; Columbia law professor Gillian Metzger, who also serves in the Justice Department’s Office of Legal Counsel; and Department of Justice senior counsel Lewis Yelin.

Board interventions in editorial content are, the editors said, extremely rare. (The board of directors did not immediately respond to a request for comment on how often it gets involved in editorial processes.)

All of the law review editors who spoke to The Intercept said that Eghbariah’s text went through an extensive editorial process, with extra caution taken due to concerns over potential backlash.

“I was just sick to my stomach and disgusted that, once again, this was happening, seven months later after Harvard had just gone through that debacle,” said Erika Lopez, a CLR editor and its diversity, equity, and inclusion chair.

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Members of CLR’s production team told The Intercept that the board of directors reached out in recent days, pressuring editors to delay the publication of Eghbariah’s piece. According to the students, Metzger and former Assistant to the U.S. Solicitor General Ginger Anders, another alumnus, called Sunday requesting that the piece first be reviewed by the 100-plus members of CLR. The board members told editors they had been made aware that the paper had not gone through appropriate procedures.

The students who spoke with The Intercept said that in their time at CLR, they had never received a request from the board to distribute the text of an article to the entire membership of the review – nor had they heard of the board being aware of an article’s text before publication.

A procedure was in place, said the CLR staffers, and it was followed.

“What we were doing had precedent in processes used in the past,” said Jamie Jenkins, a CLR editor who helped shepherd the piece toward publication. “Distributing the piece to the entirety of law review was completely unprecedented.”

No Palestinians

Lopez initially proposed soliciting a piece on Palestine in the context of human rights law in October.

“I remember searching Columbia Law Review’s website in October, and there’s only one

other mention of the word Palestine in the entire online existence,” said Lopez – in a footnote from 2015. As would have been the case with the Harvard Law Review, Eghbariah is the first Palestinian scholar to publish in the Columbia Law Review.

A large majority of the administrative board – the student editors in charge of the publication process – took part in a vote, and voted unanimously 23-0 to create a committee for pursuing a piece on Israel–Palestine. A smaller, voluntary committee of 11 editors

proceeded to select and then shepherd Eghbariah’s piece. While editors are typically selected and assigned pieces at random, the process in this case allowed for volunteer-based involvement, given the fraught nature of the subject matter. Some 30 members of the review ended up working on the piece throughout its production, editors said.

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“Every single piece that we publish goes through an incredibly, incredibly rigorous publication process. We just have high publication standards,” said Jenkins, who noted the piece was given even more scrutiny because of the fraught subject matter. “So there was some additional work put into it, but in general, it was the same steps of production.”

The editors involved were concerned about leaks, they said, which could have put the editorial process at risk. Drafts of the piece were, for example, only available on a drive shared between the opt-in committee directly working on it, rather than all editors.

Once notified that the issue would be posted online, Metzger and Anders urged the students to not just delay publication, but also to send Eghbariah’s essay – though not the other six slated articles – to the rest of the law review. Editorial leadership initially heeded their demand, choosing to delay publishing of the May issue until June 7, and sending the entire masthead a draft of Eghbariah’s essay.



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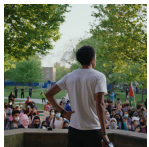
Shortly thereafter, editorial leaders followed up again with the board, notifying the directors there was reason to believe the piece had indeed been leaked beyond CLR

members. Editors told The Intercept that members of the law review had reached out to inform them that they had been speaking with professors and mentors about the article. Several said they had been told to resign as editors. A former member of the board of directors also reached out to a member of the production team requesting that his name be removed from the masthead.

In response to word of these leaks, the editors working on the piece decided to proceed with publication on June 3, at roughly 2:30 a.m.

Following the piece's publication, the directors reached out to the editors again, according to a CLR editor, requesting the entire May edition to be taken down. Editorial leadership refused. Shortly thereafter, the entire CLR website was down – and remains that way as this article went to publication.

[Rashid Khalidi](#), the celebrated Palestinian American [professor of history](#) at Columbia, who is on Eghbariah's dissertation committee for his doctorate from Harvard Law School, said that Eghbariah "provides an entirely original and very intelligent analysis of a bunch of aspects of the legal system in Israel, which I think should be welcomed by any open-minded person in the legal profession."



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Both Eghbariah and numerous editors at the review remain committed to the importance of the legal scholarship in question. The author, who has tried landmark Palestinian civil rights cases before the Israeli Supreme Court, noted that in its current case charging Israel with genocide at the International Court of Justice, South Africa's legal team referred to the Palestinian "[ongoing Nakba](#)" as the context for the current genocide case.

"What we need to do is to acknowledge the Nakba as its own independent framework that intersects and overlaps with genocide and apartheid," Eghbariah told The Intercept, while adding that the Nakba also "stands as a distinct framework that can be understood as its own crime with a distinctive historical analytical foundation structure and purpose."

Correction: June 4, 2024

This story has been updated to reflect that the unanimous vote by members of the administrative board was to form a committee to pursue a piece on Israel–Palestine, not to publish a piece.

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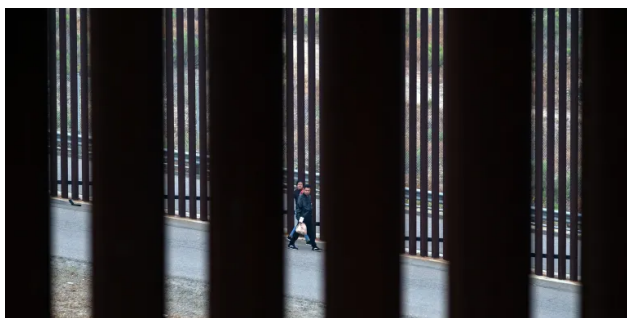
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