

## UNCOVERING A CLASSIC | By David Weber '71, '74 (Hon.); P'92

As I was reading Kenji Yoshino's extraordinary *Covering: The Hidden Assault on Our Civil Rights* (Random House, 2006), I found myself thinking again and again of two very different figures from earlier periods: Henry David Thoreau and John Phillips. Thoreau valued the sturdy, principled citizen, "a man with a bone in his back that you can't pass your hand through." Committed to the preservation and protection of the deepest levels of the individual personality, Yoshino is such a man. In founding the Academy, John Phillips hoped to create a school that fostered both knowledge and goodness in its students, so that they might be of "service to mankind." Yoshino, who graduated from Exeter in 1987 and is now a professor at Yale Law School, has performed such service in his teaching; by writing *Covering* he has enlarged that service considerably.

The book has a specific legal agenda, but is driven by a larger aspiration: it integrates legal history and argument with Yoshino's personal story and his vision of a less repressive national community. "Covering," a term proposed by the sociologist Erving Goffman, refers here mostly to gestures of language and personal style aimed at minimizing the impact (especially in the workplace or in the public sphere) of potentially troublesome aspects of identity like race, gender and sexual orientation. Sometimes these gestures may serve the interests of both employer and employee, and sometimes they are willingly embraced by the employee for the sake of a more complete assimilation. But sometimes the demand to cover is insidious, even sinister.

Yoshino does not assume that the "covering demand" is always wrong. He cites a case in which a Muslim woman sued the State of Florida for its insistence that all persons posing for driver's license photos have uncovered faces. While acknowledging the woman's sincerity, the judge found the state to be reasonable "in having individuals be fully visible on their primary form of state identification," a decision Yoshino supports because of its compelling rationale.

But when covering gestures stem from arbitrary rationales or from prejudice, they may amount to violations of the employee's civil rights. Yoshino cites one famous and emblematic case in which a lawyer employed by the State of Georgia was fired when her supervisor learned that she had been married to another woman in a private religious ceremony (conducted by a Reconstructionist rabbi). In other cases African-American employees have been required to "act white"; gay employees have been pressed not to "flaunt"; female employees have been treated dis-

missively for being "too feminine"—or "too masculine," when they have adopted historically masculine norms of competitive aggression. When such employees have sought legal redress for wrongful dismissal, Yoshino observes, the courts have generally been quick to support the employer. Because the cost for the employee or citizen may be a forfeit of dignity

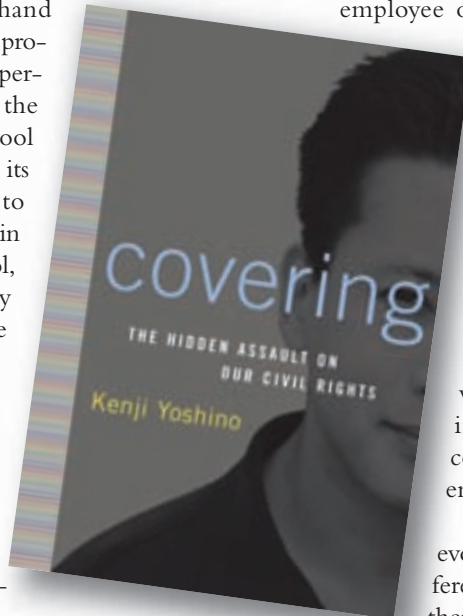
through the forced denial of an important aspect of self, Yoshino is determined to level that ground.

"Covering" may represent a certain kind of progress, if it is compared with its more absolute predecessors: "conversion," the attempt to eliminate a stigmatized trait like homosexuality, or "passing," the adoption of an appearance and manners that make the trait unrecognizable. But both Yoshino's convincing analysis and his eloquent, moving stories show that the demand to cover is not trivial and that its irrational enforcement deserves legal repudiation.

Thus one strand of the book traces the evolution of Yoshino's thinking about different grounds for asking courts to enlarge their protection of employees' right to be themselves. Looking at a country whose identity groups seem to be multiplying, with some threat to our sense of national unity, and thinking about the issues as he has experienced them as an Asian-American and a gay man, Yoshino arrives at a far-reaching conclusion: that claims based on a group's aspiration for equality will be less promising than claims based on an expanded definition of liberty, a definition that would cover everyone. One stunning example of this distinction is the Supreme Court's 2004 decision in *Tennessee v.*

*Lane*, a case in which a courthouse was not wheelchair accessible and a plaintiff had been forced to crawl up the steps to the building in order to respond to the charges against him. The Supreme Court's decision was "that all persons—disabled or otherwise—have a 'right of access to the courts,' which had been denied in this case." Yoshino predicts that the Supreme Court will now generally be "much more sympathetic to 'liberty' claims about freedoms we all hold than to 'equality' claims asserted by a subset of the population."

In trying to give a clear account of the book's legal dimension, which is substantial, I have reluctantly de-emphasized its still more radical aims. These aims are philosophical, literary and cultural, and, like the legal arguments, they are served by storytelling of a high order. In an act of remarkable generosity, and with unflinching tact and grace, Yoshino describes his long denial



*By incorporating memoir into an argument about civil rights law, Kenji Yoshino '87, a professor at Yale Law School, shows how the demand to "cover"—to mask aspects of one's identity—is not trivial and that its irrational enforcement deserves legal repudiation.*

## ‘COVERING’: AN EXCERPT

I had always been able to leap for him. From the days when he would open his arms to me in the swimming pool to the days when he told me I could go to Exeter, or Harvard, or Oxford, I had trusted him, and leapt. If he could come to America at eighteen and become a professor, then I could do anything in my own country, the language that was my own. But where was I now? I could not sit still to read a paragraph, I could barely force myself to eat. I sat before him stripped of my carapace of accomplishment, the turtle unturtled.

“I’m sorry, Papa,” I finally said. “I can’t do anything. I’ve failed. I have nothing.” Then I paused. Could I say it? I could not. Something dull spoke instead: “I am nothing.”

I felt him before I heard him. It was not his usual brisk embrace, but as if, in the warm parentheses of his arms, he had made me part of him.

He said: “You are my son.”

And I began to sob. Perhaps this is the worst any closet does to us—it prevents us from hearing the words “I love you.” These were the words my parents said to me, and I trusted the love, but not the “you.” The real me was hidden, so the “you” they loved was some other, better son. But when my father claimed me—*This thing of darkness I acknowledge mine*—I began to suspect that no matter what I was, he would be next to me, the silent economist stroking my hair. My sobs dislodged something inside me, and I began to understand that love is a narrative permission, that stories can be told within its bounds. But that night, the only sound I made was animal. And still he held me. . . .

“I know I have worried you,” I said, eyes down. “I’m sorry, and I want to explain. It has to do with Brian.” The words came more haltingly after that name. “When I was with him, I felt some things for the first time. I realized the person that I will love—the person to whom I am tied—will not be a woman.”

The silence arced and fell, and arced and fell, like a soundless telephone.

My father said slowly, quietly, “Are you saying that you are a gay?”

His grammar had at last been stressed beyond its usual perfection. But I was not about to quibble with the construction of words I did not have the courage to utter.

“Yes,” I said.

I looked up. My mother’s face as she looked at my father is one I will never be able to truly describe or forget. I can only say her eyes looked for translation, solace, meaning that he could not, for once in his life, provide. I thought: I, so confident of words, have now met the limits of language. I will find no words that will catch that gaze in their net.

“But if this is so,” my mother said in Japanese, “we will never be able to go back to Japan.” I realized then what I had feared about coming out to my parents. That someone—myself, my mother, my father—would die. Would curl up, turn face to the wall, and expire. When my mother spoke those words, I knew she was telling me of a death—a metaphorical death, a social death, but a death. That was the albatross I killed—her cross-shaped innocence, her idea of home.

She saw me flinch. She switched to English. “What you are doing,” she said, “is very courageous.” It was if one language could not contain her two voices.

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*From Covering by Kenji Yoshino. Copyright 2006 by Kenji Yoshino. Reprinted by arrangement with the Random House Publishing Group.*

of being gay, his emergence from self-rejection through the insight and support of friends, his first gay intimate relationship, his evolving conversations with his parents. These personal narratives embody the book’s deepest values, values that transcend (though they may require) specific judicial outcomes.

How can a book that considers a “liberty paradigm” versus an “equality paradigm” for the next generation of civil rights cases make room for the story of the author’s depression during his time at Oxford as a Rhodes Scholar, for a scene in which he awakens in the night beside his boyfriend, for his parents’ initial horror at the idea that such a book was coming into existence? Such moments not only make the book more irresistibly readable for readers without law degrees, they also convey much of Yoshino’s thinking about moments when a decision about covering is necessary but when law is less significant than more private elements of life. This incorporation of memoir into an argument about civil rights law—memoir that has public relevance without losing its own uniqueness—is one of the book’s most remarkable achievements.

A gifted and moving writer, Yoshino tells these personal stories in a way that demonstrates the universality of his theme. Even readers whose experiences have been shaped by lifelong “majority” status along every conceivable dimension will see how much “covering” they have been asked to do, how much they have done—and how often they continue to cover attitudes, even values, that may be liabilities in a particular professional or social context. The price of the covering demand may typically be lower in such a case than in one where the culture’s weight presses down on a stigmatized minority, but Yoshino shows how high these stakes may still be.

Please understand, then, that even if you are not black, red, yellow, brown, female, Muslim, Jewish or gay, this book is about you and about your community. It will be a great thing for the United States if tens or hundreds of thousands of people read it, for as Yoshino observes, the “real solution lies in all of us as citizens, rather than the tiny subset of us who are lawyers. People who are not lawyers should have reason-forcing conversations outside the law . . . in workplaces and restaurants, schools and playgrounds, chat rooms and living rooms, public squares and bars. They should occur informally and intimately, where tolerance is made and unmade.” This book holds the promise of deepened self-understanding and freedom for the individual reader and, with any luck, a more reflective and accepting community. ●

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