

*Storia della Storiografia*, 59-60 (2011): 43-49

## HISTORY AND HUMAN RIGHTS

edited by Antoon De Baets

### INTRODUCTION

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This thematic section of *Storia della Storiografia* contains the papers of the panel on “History and Human Rights” which was held on Monday 23 August 2010 at the Twenty-first International Congress of Historical Sciences in Amsterdam. The idea to organize such a panel arose during discussions at the twentieth edition of the congress, held in Sydney in 2005. In various rounds of consultations, first in Sydney, later in Groningen, the idea of the relationship between history and human rights was given shape in a set of suggestions for panel participants, meant to orient the selection of topics<sup>1</sup>. The point of departure was to explore from a historian’s point of view the work of the United Nations and international courts in the area of human rights. This work was, I felt, only superficially known by historians, although it had the power to influence the latter’s choice of subjects and concepts. As human rights encompass virtually all spheres of life, large parts of the historical production inevitably deal with aspects of human rights or their abuses. The panel, however, intended to focus strictly on human rights ideas, as developed within the United Nations, which were of special importance to historians as professionals. Three types of tensions in particular needed further clarification. First, the international human rights regime created obligations as well as opportunities for our profession. Second, there was a tension between legal and historical-analytical uses of human rights concepts. Third, human rights campaigns traditionally focused on contemporary issues, whereas historians typically viewed human rights in a longer perspective. I then drafted five suggestions to study these tensions empirically.

1. *Ethics*. According to the *Universal Declaration of Human Rights*, the rights to privacy, reputation, equality and freedom of expression and information merit high protection levels. This has important bearings on historians’ ethics: What duties for historians follow from the privacy, reputation and equality of their subjects of study? How can such considerations be balanced against the principle that those engaged in public life should be accountable for their actions? And are there limits to historians’ rights to free expression and information<sup>2</sup>?

<sup>1</sup> I am very grateful to Jens Boel (chief archivist of UNESCO in Paris), Robert Cribb (historian at the Australian National University in Canberra), and Floribert Baudet (historian at the Netherlands Defence Academy in Breda), for their suggestions made in 2005 and 2006.

<sup>2</sup> Key texts include: International Committee of Historical Sciences, *Constitution* (1926, 2005);

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2. *Impunity and reparation.* In the wake of discussions about how societies emerging from periods marked by major conflict and crimes implement justice, two concepts have received wide attention: the impunity of perpetrators of grave human rights violations (genocide, crimes against humanity and war crimes) and the reparation of the harm inflicted on their victims. The discussions center on the duties of states to investigate, prosecute, punish and prevent such major crimes. As a complement to these duties, the United Nations have advocated a so-called “right to the truth” (formerly labeled a “right to know”) for victims and society at large. Further aspects in this field are legal and social forms of forgetting, the value of archives of former repressive regimes, and the function of truth commissions acting as protohistorians<sup>3</sup>.

3. *Historical injustice.* This brings us to another class of concepts – those with larger time dimensions. The question here is whether the 1985 United Nations definition of victim extends beyond “the immediate family or dependants” to include victims of historical injustice of longer ago. For example, are slavery, colonization, apartheid, and the pillage of the world’s cultural heritage crimes against humanity and as such issues for which accountability can be determined<sup>4</sup>?

4. *Dead persons.* In 2002, the International Criminal Court developed a new concept: outrages upon the dignity of dead persons. How should historians deal with this concept<sup>5</sup>?

5. *Retroactive moral judgments.* The United Nations General Assembly and other venues have retroactively given labels to some historical phenomena which may influence moral judgments about them. For example, the Holocaust was called

United Nations, *Universal Declaration of Human Rights* (1948); United Nations, *International Covenant on Civil and Political Rights* (1966), United Nations, *International Covenant on Economic, Social and Cultural Rights* (1966); UNESCO, *Recommendation Concerning the Status of Higher-Education Teaching Personnel* (1997). Complete versions of the human rights instruments mentioned in this introduction are available at <<http://www.concernedhistorians.org>>.

<sup>3</sup> Key texts include: United Nations Commission on Human Rights / United Nations Human Rights Council, *Right to the Truth*, resolutions and decisions from 2005, 2006, 2008, 2009 and 2010; Office of the United Nations High Commissioner for Human Rights, *Study on the Right to the Truth* (2006), and follow-ups of 2007, 2009 and 2010; United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985); United Nations Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity* [formerly: *Joint Principles*] (2005); United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution 60/147* (2006).

<sup>4</sup> Key texts include: United Nations Commission on Human Rights, *Final Report on the Question of the Impunity of Perpetrators of Human Rights Violations (Economic, Social and Cultural Rights)*, prepared by Mr. El Hadji Guissé, Special Rapporteur (1997); UNESCO, *Draft Declaration Concerning the Intentional Destruction of Cultural Heritage* (2003).

<sup>5</sup> Key texts include: International Criminal Court, *Rome Statute of the International Criminal Court* (1998); International Criminal Court (Assembly of States Parties), *Elements of Crimes* (2002); International Committee of the Red Cross, *Geneva Conventions* (1949) and *Additional Protocols* (1977, 2005); UNESCO, *Declaration on the Responsibilities of the Present Generations towards Future Generations* (1997).

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a genocide from 1948, and apartheid a crime against humanity from 1966. Obviously, giving those events such labels changes their moral status and increases the pressure on the historians' efforts at interpretation. What effects upon historical writing, then, do these labels have<sup>6</sup>?

This set of five suggestions was tabled as a proposal to the General Assembly of the International Committee of Historical Sciences, meeting in Beijing in 2007 to determine the program for the 2010 congress in Amsterdam. The proposal was approved. Whoever studies the program of the Amsterdam congress endorsed in Beijing (<http://www.ichs2010.org/programme.asp?all=1>), cannot but be struck by the upsurge of interest in the topics of human rights and the ethics of the historical profession. Among the seventy or so panels approved for the main program, four dealt with the topics of this *Special Issue* or with closely related ones: "History and Ethics", "Ethics, Historical Research and Law", "The Rights of the Dead" and, indeed, "History and Human Rights". Attention to these topics had been in the air for more than a decade, albeit at a slower pace. In 1995 the International Congress of Historical Sciences in Montréal devoted a panel to "Power, Liberty, and the Work of the Historian: The Implications of Political, Economic and Cultural Controls on the Organization of Historical Research and Publication"<sup>7</sup>. This panel was organized by Alexander Tchoubarian. In 1997 the late François Bédarida, then Secretary-General of the International Committee of Historical Sciences, spoke about "a return of ethics"<sup>8</sup>. To my knowledge, he was the first to do so – which is not surprising, given his sustained concern for the responsibilities of historians. In 2000, the International Congress of Historical Sciences organized a main session on "The Uses and Misuses of History", chaired by Georg Iggers<sup>9</sup>. In an address to the Swiss Historical Society in 2004 and on several later occasions, I tried to justify Bédarida's claim of a return of ethics by identifying several long- and short-term trends that contributed to it<sup>10</sup>. In 2008, George Cotkin spoke about "history's moral turn"<sup>11</sup>. A deep concern for the moral and legal characteristics of history, history

<sup>6</sup> Key texts include: United Nations, *Convention on the Prevention and Punishment of the Crime of Genocide* (1948); United Nations, *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity* (1968).

<sup>7</sup> *Eighteenth International Congress of Historical Sciences, 1995 – Proceedings: Reports, Abstracts and Introductions to Round Tables* (Montréal, International Committee of Historical Sciences: 1995), 137-158.

<sup>8</sup> F. Bédarida, "The Historian's Craft, Historicity, and Ethics", *Historians and Social Values*, eds. J. Leerssen and A. Rigney (Amsterdam: Amsterdam University Press, 2000), 69. The collection is based on papers of a 1997 conference in Amsterdam.

<sup>9</sup> *Making Sense of Global History: The Nineteenth International Congress of Historical Sciences, Oslo 2000*, ed. S. Sogner, Commemorative Volume (Oslo: Universitetsforlaget, 2001), 309-409.

<sup>10</sup> A. De Baets, "The Swiss Historical Society's Code of Ethics: A View from Abroad", *Schweizerische Zeitschrift für Geschichte/Revue suisse d'histoire/Rivista storica svizzera*, 55, no. 4 (2005): 451-462; A. De Baets, *Responsible History* (New York and Oxford: Berghahn, 2009), 173-196.

<sup>11</sup> G. Cotkin, "History's Moral Turn", *Journal of the History of Ideas*, 69, no. 2 (April 2008): 293-315, with responses by N. Jumonville, M. O'Brien, J. Livingston, and L. Perry on 317-337. Cotkin writes (313): "The emerging field of human rights history further testifies to the willingness of historians to engage moral issues and movements. How have human rights been constructed? How are

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writing and the historical profession is apparent in all these contributions and scores of others<sup>12</sup>. In several respects, the website of the Network of Concerned Historians (<http://www.concernedhistorians.org>) has supported this scholarship with an infrastructure of sources: through publishing codes of ethics of historians, archivists, and archaeologists from all over the world, through collecting legal decisions involving history or historians from courts in a wide array of countries, and through posting human rights resources of importance to historians and originating from the United Nations and other international organizations.

When the outline for the Amsterdam panel was publicized in 2008-2009, the reactions seemed to confirm the new interest in ethics and human rights: more than thirty colleagues from seventeen countries applied to talk at the panel<sup>13</sup>. In the end, the five panelists came from Canada, China, Greece and the Netherlands. Elizabeth Jelin, a sociologist from Argentina and an expert in the field, discussed trends emerging from the five papers at the panel. This collection contains refurbished versions of these papers. The first two focus on the responsibilities of historians, a third looks at their subjects of study, a fourth reviews the emergence of the human rights paradigm, and the last one locates the work of historians about human rights on a continuum with many stakeholders.

Toby Mendel is a veteran human rights campaigner and the executive director of the Centre for Law and Democracy, an international human rights organization based in Halifax, Canada. The center promotes respect for those human rights which serve as the foundation of democracy. It is no exaggeration to say that Mendel works at the edge of freedom of expression issues globally, as one glance at the work of the center (<http://www.law-democracy.org>) demonstrates. His paper, "Reflections on Media Self-Regulation: Lessons for Historians" starts with incisive criticism of the first article of the Constitution of the International Committee of Historical Sciences. He analyzes how the media handle cases where the right to freedom of expression infringes upon the right to equality (free expression then at

they limited by the politics of interventionism? Are universals such as human rights capable of accounting for the diversity of cultural practices in the world? How can we compare and define the genocidal impulses of recent times? These are some of the questions historians of human rights currently address".

<sup>12</sup> For an overview of the literature, see De Baets, *Responsible History*, 241-258, to be supplemented with the titles mentioned in this introduction and with C. Clement, ed., *Ethics and the Practice of History: Studies in Western Australian History*, 26 (2010).

<sup>13</sup> The selection of participants was difficult. The three-hour panel could only accommodate a very limited number of speakers. In addition, ideally it had to be balanced according to gender, age, and region. Furthermore, with the set of suggestions, I was looking for minimal coherence among the topics to be proposed from the broad field of history and human rights. Some of the proposals that were not accepted, centered on specific rights-holders (such as families, women, homosexuals, freemasons, religious groups, infidels, peasants, gypsies, and outcasts), some on countries or groups of countries (such as Argentina, Eastern Europe, Germany, Greece, Japan, the Netherlands, Russia, Scandinavia, Spain, Sweden, Turkey, and the United Kingdom), some on themes (such as education, censorship, state terrorism, accounts of violence and humanitarianism) and some on legal instruments. The selection was further complicated by the fact that two of the five participants first selected had to withdraw at a later stage due to their very busy work schedules.

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risk of becoming hate speech), the right to privacy (free expression then at risk of becoming privacy invasion) and the right to reputation (free expression then at risk of becoming defamation). He asks how the media strike a balance between these rights in their self-regulatory codes of conduct. He then draws some lessons from the media sector for possible self-regulation by historians. Mendel sees important differences between the media sector and the historical profession and suggests that the codes of ethics of historians, when the latter are confronted with abuses, should not aim at providing individual remedies through a complaints system, but rather articulate the values and goals of the profession. Written by a human rights lawyer with an innovative perspective, this is a major contribution for a better understanding of the way in which historians and related professions should conceive their codes of ethics. At the time of writing, associations of historians have adopted codes of ethics in at least eight countries, associations of archaeologists have done so in at least nine countries, and associations of archivists in at least thirteen countries (and in at least 23 languages).

Floribert Baudet is an experienced historian working at the Netherlands Defence Academy in Breda, the Netherlands. With his characteristically keen eye and broad view, he explores the field of military historiography and its many battalions of participating historians. In his essay, "Ranke and Files: History and the Military", he sketches the tensions between the military who usually expect the past to be a huge reservoir of useful examples and professional military historians who want to do unfettered research. However, the professional norms to do unfettered research are challenged by the political, institutional and methodological constraints these historians encounter in their commissioned histories. Baudet identifies two possible tools for these historians to help them surmount these constraints: invoking the right to the truth or adopting a code of ethics. In a subtle discussion of arguments about the applicability of both tools within realistic margins, he eventually rejects the former and accepts the latter.

Bo Zhao is an accomplished Chinese post-doc researcher at the University of Groningen, the Netherlands. With a penchant for legal principles and reasoning, he specializes in the philosophy of law and currently works on a research project involving legal cases on posthumous privacy and reputation. In "Public Figures and Their Posthumous Reputation", he broaches a topic that almost no historians, except those working in the abstract areas of structural history, can avoid: how to describe famous personalities after they died and how to balance the reputation that these public figures had while alive against the freedom of expression of the historians who describe them. In search of a theory, Zhao uses the breath-taking macrohistorical view of reputation developed by Robert C. Post. A historian who became a leading professor of law specialized in First Amendment and academic freedom issues, Post argues that, depending on the type of society in history, reputation was seen as a form of either honor, property or dignity. Zhao then cautiously attempts to apply the Post theory to deceased public figures, concluding that a dignitarian approach to the reputation of deceased persons is the most preferable.

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Hara Kouki is a Greek historian of social movements and a PhD candidate in the law department at Birkbeck College, University of London. In “Human Rights, the Cold War and Social Movements: The Story of an Encounter in the 1970s”, she wonders how we should understand the history of the idea of human rights. In this important debate, there are three basic positions. The first holds that the idea of human rights is the product of philosophical and legal thought in the seventeenth and eighteenth centuries culminating in the human rights declarations of France and the United States in the late eighteenth century. The second position defends the view that notwithstanding this important development during the Enlightenment, the foundational idea of human dignity eclipsed between 1800 and 1945, pushing the human rights idea back in relative obscurity, only to reappear with vigor after the Nazi atrocities of World War II. According to this position, the basis for a new human rights regime was built in the first postwar decade, with the 1948 *Universal Declaration of Human Rights* and the drafts of the two International Covenants based on it as its greatest achievements. The third position, defended by Kouki among others, argues that human rights concerns indeed reemerged in the aftermath of World War II, but only to gain momentum in the 1970s. It was then that, in the context of the Cold War and in a climate of anti-authoritarianism, groups of activists increasingly came to see human rights as the best instrument to campaign for a better world in a supposedly neutral and non-ideological way. In doing so, a hitherto marginal idea became a mainstream one. Through an in-depth analysis of the case of abuse of psychiatry in the Soviet Union, Kouki convincingly shows how the human rights idea gained unexpected legitimacy. It was a complex process with many moral, psychological and geopolitical factors which blended with other social processes in a delicate equilibrium.

The last contribution of the *Special Issue* fits within a context even more recent than the 1970s. A Belgian historian working at the University of Groningen, the Netherlands, and specialized in the censorship of history, I gradually became interested in the broader category of which censorship is part – that is, irresponsible history – and by extension its opposite – that is, responsible history. The particularly fruitful concept of responsible history forced me to take human rights principles into account in a systematic way. One result of this work is presented here as an analysis of the concept of imprescriptibility. Imprescriptibility is the waiving of time-bars on legal actions. In my essay about “Historical Imprescriptibility”, I ask whether the concept of imprescriptibility can be stretched beyond the legal realm to situations of recent and remote historical injustice. After an attempt to find an answer to the vexed question of whether historical crimes can bear modern names, I examine the relationship between time and justice from four different angles: time and fair trial (the perpetrator perspective), time and humanity (the victim perspective), time and social importance (the perspective of society at large), and time and epistemology (the perspective of historians and other scholars). I wrestle with arguments, objections to arguments, and appeals against objections to find solutions. On balance, and after a discussion of anachronism in

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historical writing, I defend the position that historical imprescriptibility is a category in its own right, located in the moral and historical realm, but not in the legal realm.

As the last essay may reveal in an unintended manner, one could perhaps defend a fourth position in the debate about the history of the idea of human rights, emphasizing the period from 1998 rather than the period from 1800, 1945 or 1977. Indeed, since the approval of the statute of the International Criminal Court in 1998, the field of juridical globalization has taken a dazzling flight. The indictments of Augusto Pinochet, Slobodan Milošević, Charles Taylor, Alberto Fujimori, Omar al-Bashir and other former and sitting heads of state and government; the increasing numbers of judgments for genocide, crimes against humanity, and war crimes; the recent much studied opinions of the International Court of Justice; and the establishment of tribunals and truth commissions, all prove that perpetrators of human rights violations no longer enjoy impunity and that their victims no longer die in anonymity. This worldwide development has an unusually strong historical dimension that reveals itself in the way post-conflict societies deal with their traumatic past and in the imprescriptibility of the most serious crimes. The field extending between history and human rights is vast and rich and it is my hope that this *Special Issue* offers a window both spacious and focused enough for the reader to muse and discover.