

# *Censorship of History in France and the Netherlands (1945-2014): A Survey*

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Stable democracies protect the human rights of their citizens. The more democratic the regime, the more evidence-based facts and opinions circulate freely in the public debates about history. Traces of censorship, however, are sometimes recognizable in restrictions put upon historians living in those democracies, especially in two domains. To begin with, the area of public information and secrecy needs regulation. When secrecy rules for current and archival records are excessive, illegal, or both, they lead to censorship. Furthermore, histories commissioned by governments or others are sometimes subtly adapted to avoid unwelcome messages. In these histories, the precarious subjects are mostly tied to the international wars and internal conflicts of the past—frequently (but not always) in combination with imperial or colonial expansion—that in the long run come to be seen as adversely affecting the democratic legitimation of power and the construction of a collective identity, in short, as sources of shame. The present essay is an attempt to survey

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attempts, successful or not, to censor or distort history in two stable democracies, France and the Netherlands. The scope is limited to the post-1945 period.

## France

During the Nazi German occupation of France, many historians were dismissed or imprisoned in German camps because of their Jewish origins, their left-wing opinions or their resistance activities. Georges Lapiere, the director of the National Union of Teachers and a resistance fighter, was one of them. A firm believer in the importance of history textbooks and peace education, he began writing a primary-school history textbook following his imprisonment by the Gestapo in March 1943 and, carrying the manuscript with him day and night, continued the project in the concentration camps of Sachsenhausen, Natzweiler-Struthof and, finally, Dachau, where he died in February 1945. Maurice Halbwachs, the sociologist who wrote the earliest works on the concept of collective memory, and Henri Maspero, a historian of ancient China and Vietnam, died at Buchenwald concentration camp in March 1945; both had been arrested and deported because of the resistance activities of their sons. Much of their work was published posthumously.

After the war, only a few historians were dismissed for their collaboration with the Nazis. One of them was Michel Lh eritier, the secretary general of the International Committee of Historical Sciences from its foundation in 1926 to 1945. He had been appointed as a lecturer at the Sorbonne without the consent of the staff during the war. After a period of unemployment, he became professor at the University of Aix-en-Provence in 1949.

For many decades, World War II would remain a controversial topic, especially at those moments when television documentaries treated the concentration camps (Alain Resnais) or the French collaboration with the deportation of Jews under the Vichy regime (Marcel Oph uls, Michel Mitrani).

World War II was also the subject central to many recorded defamation cases. In no other country were there so many defamation

cases in history-related issues as in France.<sup>1</sup> In the post-1945 period, at least twenty-nine history-related defamation cases were counted,<sup>2</sup> with the documented peak lying between 1963 and 1999. A list of all these defamation cases is given in Appendix 1. Only three examples are presented here by way of illustration. In a case from 1964, the judge ruled in favor of defendant Michèle Cotta, who was a historian. In her book *La Collaboration 1940-1944* (Paris 1964), she had attributed facts of betrayal to one Jean Lousteau; she had also written that Lousteau had been sentenced to death and executed. In reality, Lousteau had been pardoned. He dragged Cotta to court for libel and argued that, as he had been amnestied for his conduct and, in addition, as the French press law prohibited proof of statements about facts older than ten years, his ordeal should not have been mentioned anymore. In November 1965, however, a Paris court cleared Cotta of the libel charge. It said that as the pardon measure had not been published, Cotta could not have been aware of it; in addition, once the error was known, she did everything to rectify the passage about the sentence and the execution. The court emphasized Cotta's honest method of work and found that an amnesty could not result in the erasure of events that really happened. Mention of them in works of history was permissible and necessary. The events could also be revealed in other works, as has since been done by Pascal Ory.

Another case took place between 1998 and 2004. In 1998, a Paris judge ruled that journalist and historian Gérard Chauvy and his publisher Albin Michel were guilty of "defamation by insinuation." In his 1997 book, *Aubrac, Lyon 1943*, Chauvy had reproduced a document called "Klaus Barbie's Testament." In it, the wartime Gestapo chief at Lyons, Barbie, suggested that resistance army fighters Raymond and Lucie Aubrac had betrayed their leader Jean Moulin in June 1943, leading to Moulin's arrest and death after torture. Although Chauvy had written in his conclusion that no archival document proved the alleged betrayal and declared that he had acted in good faith, the judge

<sup>1</sup> An early case involved the writer René de Chateaubriand. In 1807 he compared Napoleon Bonaparte to the Roman Emperor Nero—and he was expelled from Paris. Chateaubriand believed that historians were judges before the tribunal of history charged with the vengeance of peoples.

<sup>2</sup> Excluding mere threats to sue. Some of the defamation cases had privacy overtones.

reasoned that Chauvy, by publishing the document and citing it at least 44 times, had given it excessive weight and that he had not been prudent enough in applying the historical method. The court ordered Chauvy to pay damages, to publish a statement in five daily newspapers and to insert a warning in each copy of the book. The judgment was confirmed on appeal in 1999 and in cassation in 2000. In 2004, the European Court of Human Rights unanimously ruled that the French courts had intervened correctly and not violated Chauvy's freedom of expression.

A last defamation case given here by way of illustration, concerned the colonial war in Algeria rather than World War II. In the second volume of his 1998 memoirs, *Le Trouble et la lumière 1955-1998*, historian Pierre Vidal-Naquet stated twice that the leader of the extreme-right Front National, Jean-Marie Le Pen, had been a torturer during the war in Algeria. Vidal-Naquet had made the allegation already years before—in his 1963 book *Torture: Cancer of Democracy*. In 1999, Le Pen sued Vidal-Naquet for defamation. In September 1999, the judge called the statements defamatory but acquitted Vidal-Naquet because he had acted in good faith and within the context of a legitimate debate. In 1957 and 1962, Le Pen had publicly acknowledged having practiced torture in Algeria in 1957, but later, in 1974, he had denied it. The judge ruled that Le Pen could not feel insulted for actions about which he once had prided himself.

As may be clear from the last defamation case above, not only World War II but also French colonialism was an important controversial topic. In the late 1940s and early 1950s, two historians who worked in the colonies, Maxime Rodinson, a specialist in early Islamic history, and André Raymond, a historian of the Middle East, came under suspicion for their communist sympathies. Rodinson was expelled from Lebanon and Syria by the French government in 1947 because, being a communist, he had collaborated with Lebanese and Syrian communists. He had made speeches on the radio and taught courses of Marxism in Beirut. He subsequently embarked on a prosperous career in France. Circulation of his 1961 biography about Muhammad was restricted in Islamic countries. In 1951 Raymond was appointed as a teacher in Bordeaux rather than Paris as he had requested for his research on the history of Arab cities, because of a negative administrative report about his previous stay in the Maghreb. It appeared that in Tunis, Raymond

had shown his disagreement with French colonial attitudes by giving up his post at the Lycée Carnot and moving to the Collège Sadiqi, a local secondary school, where he had defended communist political opinions and engaged in trade union activities.

The few histories critical of the colonial enterprise were not well received. A book by Charles-André Julien—published in 1952 at a time of anticolonial riots and colonial repression in Tunisia followed by armed resistance and terrorism throughout the Maghreb—would earn its author much hostility.<sup>3</sup> *North Africa on the March: Muslim Nationalism and French Sovereignty* was a work in which Julien denounced the errors, and often the crimes, of French colonial policy. It described the lost opportunities in North Africa and the formation of nationalism in the Maghreb. Its sale was blocked in North Africa by the colonial administration and the book was almost ignored by French professional historians after it had aroused controversy for its anticolonialist stance. Some colons accused Julien of being a traitor.<sup>4</sup>

The decolonization war in Algeria between 1954 and 1962 attracted particular attention. Many French historians participated in a campaign which denounced the use of torture by the French during that war. They included Germaine Tillion, a historian and anthropologist specialized in the study of the Berber and Chaouïa people (and posthumously inducted into the Pantheon), Louis Massignon, a historian of Islam at the Collège de France, Henri-Irénée Marrou and Pierre Vidal-Naquet. The latter was a young lecturer in ancient history at Caen University. When he signed the *Manifesto of the 121*—the “Declaration on the Right of Insubordination in the War in Algeria” of 121 intellectuals in September 1960, issued during their anti-torture campaign—he was suspended. This interrupted his career for a year. Vidal-Naquet did not give up : in 1963, he published a book about the colonial torturers.<sup>5</sup> Although the French colonial past would gradually become a subject of discussion after 1962, a film about colonial torture by Gillo Pontecorvo

<sup>3</sup> Julien’s first book, *History of North Africa: From the Arab Conquest to 1830*, which as early as 1931 supported demands of North African nationalists for colonial reform, earned him the hostility of many French in the Maghreb.

<sup>4</sup> In the 1950s, Julien wrote many articles in favor of the independence of Morocco, Algeria and Tunisia. In 1957, the Moroccan King Mohammed V invited him to establish the faculty of arts at the University of Rabat, of which he became the first dean.

<sup>5</sup> In addition, as a Jew, Vidal-Naquet incessantly refuted the theses of Holocaust deniers.

was banned until the early 1970s. As late as 2009, the European Court of Human Rights held unanimously that France violated the freedom of expression of Olivier Orban and Xavier de Bartillat. Both authors had been convicted in 2002 for publicly defending war crimes in their bestselling book *Special Services: Algeria 1955-1957* (2001) because they had described the views of General Paul Aussaresses, a former member of the Special Services who had defended the use of torture and summary executions carried out during the war in Algeria.

Not only the crimes taking place in Algeria aroused attention in these years, so did one event taking place on French soil itself. On 17 October 1961, a demonstration by Algerians in favor of Algerian independence in Paris ended in a bloodbath: it would remain a tenacious taboo for decades. A film about the bloodbath by Jacques Panijel was banned for ten years. In October 2012, President François Hollande attended a commemoration of the massacre, thereby officially recognizing it.

Algeria was the main focus of attention, but not the only one. In 1976, the French government tried to prevent the distribution in its ex-colonies of Jean Guillebaud's *Les Confettis de l'empire*, a book about a dozen smaller French overseas possessions in the final years of colonialism. The government asked booksellers in the ex-colonies not to display the book in their windows and some governors and commissioners bought all available copies. The book was eventually not banned, but the censorship attempt generated extra publicity.

Just as torture in colonial Algeria stirred up emotions, mainly in the early 1960s, so did other historical crimes in later decades. In 1991, Georges Boudarel, an expert on the history of Vietnamese communism, was accused of crimes against humanity committed in the early 1950s. Several hundred demonstrators in Paris requested his dismissal. A communist philosophy and history teacher in Saigon in the colonial era, Boudarel defected to the Viet Minh and arrived in North Vietnam in 1952. For over a year, he was a political instructor in a prison camp, responsible for the reeducation of French prisoners whom he allegedly subjected to "moral and psychological torture." Sentenced to death in France for insubordination and desertion, Boudarel stayed in Vietnam as an exile until 1964 and subsequently went to Prague. In 1967, he returned to Paris following the 1966 general amnesty for colonial crimes in France. A few months after the protests in 1991, he was effectively

charged with crimes against humanity but the Court of Appeals rejected the charges because of the 1966 amnesty law. The Court of Cassation confirmed the judgment in 1993.<sup>6</sup>

Another affair, this time involving views of the Armenian genocide, erupted in 1995. A judge ordered Bernard Lewis, a British historian specialized in Middle Eastern history and working at Princeton University, to pay one French franc of damages to two complaining associations. Lewis, the judge ruled, had not been prudent enough when he remarked in a 1993 interview to the newspaper *Le Monde* that the qualification of genocide attributed to the 1915 massacres of Armenians perpetrated by the Ottoman Turks was “the Armenian version of history.” Lewis had also maintained that there was no proof for the existence of an official extermination plan or policy. The ruling was criticized by many historians. Gilles Veinstein’s appointment as professor of Turk and Ottoman history at the Collège de France in 1998 was criticized because he had taken a position similar to Lewis’s in a 1995 article published in the journal *L’Histoire*. France formally recognized the killings of Armenians as a genocide in 2001. A law criminalizing the denial of this genocide was declared unconstitutional and incompatible with the right to free expression in 2012.

The slave trade became the object of a legal case also. In 2005, the Collectif DOM des Antillais-Guyanais-Réunionnais sued historian Olivier Pétré-Grenouilleau because he had allegedly denied in an interview that the slave trade was a crime against humanity—whereas the 2001 Taubira law had given it that status. In reality, Pétré-Grenouilleau had not said that the slave trade was not a crime against humanity; he had rather denied that it was a genocide since the European slave traders’ intent was not to destroy the slaves but to exploit them as cheap labor. Observers thought that the real motive behind the accusation was Pétré-Grenouilleau’s 2004 book *The Black-Slave Trade: An Essay in Global History*, which viewed the slave trade as a phenomenon of

<sup>6</sup> Another row about the crimes of communism was fought in 1997. The editor of *The Black Book of Communism: Crimes, Terror, Repression*, Stéphane Courtois, was forced to drop the original title, *The Book of Communist Crimes*, when two of the six contributing historians threatened to withdraw. They questioned Courtois’s remarks on the centrality of mass crimes in the communist repression, the extent to which communist doctrines explained criminal practice, the reliability of crime statistics and the comparisons between communist and Nazi terror.

thirteen centuries on five continents, of which the European slave trade of 1500-1900 was but one part, albeit an important one. The charges were dropped in 2006. The case provided the incentive for historians who supported Pétre-Grenouilleau to found an association, *Liberté pour l'histoire*. It aimed at abolishing all so-called memory laws: laws that seek to define the collective memory on a controversial historical subject by prescribing how people ought to think about certain historical episodes and by criminalizing the denial of imprescriptible crimes (such as the Armenian genocide, the Holocaust and, indeed, the slave trade).

In the important field of history textbook production, relatively few battles were waged compared to the prewar period.<sup>7</sup> Small textbook rows broke out in 1989 and 2005. At the 1989 bicentennial celebration of the French Revolution, the political right and left openly differed in their interpretation of the revolution and its causes, effects and significance. The Education Ministry even felt obliged to delete questions about the French Revolution from the secondary school examinations that year. In 2005, more than one thousand history teachers and others signed a petition demanding the repeal of a new law requiring school history teachers to stress the “positive aspects” of the French overseas presence. The signatories objected that the law imposed an official version of history, obliterating the suffering caused by the French empire. Algerian President Abdelaziz Bouteflika observed that the law “was a sign of mental blindness bordering on negationism and revisionism.” Prime Minister Dominique de Villepin eventually declared that politicians should not determine the contents of history teaching. In 2006, the controversial law was repealed by presidential decree.

## The Netherlands

In the Netherlands, many historians were censored, dismissed, persecuted or exiled during World War II. Among them was Johan Huizinga, author of *The Waning of the Middle Ages*. In 1942, Huizinga

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<sup>7</sup> In the early twentieth century, a textbook war took place when Catholics opposing state intervention organized petitions against “bad” textbooks, put them on the index and burned them. In 1926-1928, in a quite different setting, the teachers’ union, led by textbook reformer Georges Lapierre, successfully boycotted twenty-six anti-German history textbooks and readers that glorified war. The publishers were forced to withdraw and replace the textbooks.



had resigned from Leiden University in protest against the Nazis. Interned in a camp, he was released for health reasons but had to stay in the east of the country, where he died in early 1945, before the liberation. Around the same time, Jewish history student David Koker died during a transport from Gross-Rosen to Dachau concentration camp. Another victim was the Suriname-born Anton de Kom, the anticolonialist author of *We Slaves of Suriname* (1934); he died in Neuengamme concentration camp in 1945.

After the war, only a few collaborators were purged. In 1946, five members of the Royal Association of Archivists in the Netherlands (names unknown) were dismissed because of their “unpatriotic attitude and collaboration with the enemy during the war years.” A few historians were also purged, such as Jan de Vries, a professor of ancient Germanic languages, religion and history. Accused of having been an “intellectual collaborator” with the Nazis in 1948, he became a secondary school teacher. The case of historian of antiquity David Cohen was more complex. After his dismissal from the University of Amsterdam in 1941, the German authorities selected him as co-chairman of the German-appointed Jewish Council. In 1943, he was transported to Theresienstadt concentration camp but he survived. After the liberation, the Jewish Honorary Council temporarily excluded him from all Jewish functions. In 1947, he was briefly arrested on charges of wartime collaboration with the Germans. The case was dropped “in the general interest” in 1951.

Some historians with left-wing views encountered career problems shortly after the war. In 1947, the minister of education refused to confirm the appointment of Jacques Presser as professor of contemporary history at the Municipal University of Amsterdam because of his progressive views. A Jew who had been censored and dismissed during the war, Presser had written in several left-wing magazines. He was eventually appointed in 1949.<sup>8</sup> Historian Jan Romein, a former member of the Communist Party of Holland (from 1935 Communist Party of the Netherlands) who had protested the Nazi occupation of the country and suffered dismissal and internment for it,

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<sup>8</sup> Presser also protested against McCarthyism in the United States and Dutch policies in Indonesia. In 1965, he published an official history of the persecution of the Dutch Jews during World War II.

was barred from membership in the Royal Dutch Academy of Sciences until his death because of his Marxist approach to history. His attempt in 1948 to launch an international annotated bibliography of the theory and philosophy of history met with charges of crypto-communism in the United States; he was denied a visa to visit that country in 1949.

Censorship attempts were not the privilege of official authorities, as may be attested by two examples. The first concerned a 1986 book, describing a century of socialism and workers' movement in Groningen. The chapter "Socialists and Communists during the Occupation" was originally written by a communist historian (probably Ruud Weijdeveld). Editorial criticism of his draft met with resistance from the Communist Party of the Netherlands. The author withdrew his draft and the chapter was written anew by one of the editors. And in 2011, historian Thomas von der Dunk was to give the annual Willem Arondéus lecture, entitled "The new taboo on the war," organized by the province of North Holland. Under pressure from the right-wing populist Freedom Party (PVV), politicians from the then ruling parties canceled the lecture because it was allegedly "tainted by party politics" as Von der Dunk intended to draw parallels between indulgence of the political elite for populist parties in the 1930s and indulgence for the PVV at the present moment. In a reaction, Von der Dunk declared that the ban confirmed his taboo thesis. The lecture was eventually organized in open air in front of the provincial house and attracted a large audience. It was also published as a pamphlet.

In the 1990s, the archives became a major source of concern. Historians repeatedly warned that the historical interest—as distinguished from the administrative and the civil interest—was not taken fully into account in the archival selection process and that the 1962 and 1995 archive laws allowed inadmissible levels of destruction of records, especially those concerning policy preparation and implementation. In particular, a large public debate ignited in the mid-1990s, when official plans were announced to destroy hundreds of thousands of files on persons and organizations in the archives of the Internal Security Service (BVD). In 1998, a parliamentary working group report stated that the BVD had illegally destroyed more than five hundred file groups between 1959 and 1990. Similar reports were heard about the External Intelligence Service (IDB) and the Military Intelligence Service (MID). Against this

background, BVD staff member Dirk Engelen was commissioned to write a two-volume history of the BVD and granted privileged access to the BVD archives. He could, however, not report on data that would endanger the BVD's functioning. A commission of four historians supervising his research demanded, and was granted, full access to the archives in order to enable scholarly control of Engelen's work. Other historians, however, were denied full access to the BVD archives and had to start a procedure based upon the Freedom of Information Act in order to gain access to selected and often censored documents. As late as 2012, the AIVD (successor of the BVD) was criticized for its systematic lack of declassification activity and its unwillingness, since 1945, to transfer any non-current records to the National Archives. And only in late 2013 was it reported that the archives of military information services documenting the war crimes committed by Dutch troops against Indonesian nationalists in 1945–1949 were either destroyed, removed or heavily censored.

Another case of privileged access, apart from Engelen's, was that of Cees Fasseur, a historian who had written the official biography of Queen Wilhelmina (in office 1890-1948), and was to embark on a biography of Queen Juliana (in office 1948-1980). In 2005, Queen Beatrix (in office 1980-2013) granted him privileged access to the Royal House Archive, despite the fact that the Parliament had adopted a motion stipulating that those royal records which referred to the function of head of state or were otherwise of public interest ought be transferred to the National Archives in The Hague. Among the documents from the Royal House Archive accessible to Fasseur was a 1956 report that had been sealed until 2056. Written by former Prime Minister Louis Beel, it treated the influence of mystic healer Greet Hofmans on Queen Juliana in 1948-1956, which at the time almost led to a constitutional crisis and to the queen's abdication and divorce from her husband. Beel biographer Lambert Giebels had sought access to this report since 1993 but not gained permission to consult it. His appeal to the Council of State (the highest administrative law court, formally chaired by the queen) was rejected in 2006. The council ruled that the archive had a private character and that the queen granted access to it in her private capacity.<sup>9</sup>

<sup>9</sup> In 2009, Giebels, whose biography was published in 2007, was granted access to seventy-three pages of secret Council of Ministers minutes on the "Hofmans affair."

Special archival problems also plagued the authors of the officially commissioned report *Srebrenica: A Safe Haven* (2002)—about the role of the Dutch during the fall of the United Nations enclave Srebrenica in the Bosnian war in July 1995 (during which between seven and eight thousand Bosnian Muslims were detained and killed in a genocide executed by the Bosnian Serb army). The authors noted that some archives documenting the enclave's fall did not exist anymore, including files at the Defense Ministry in The Hague and those at Srebrenica itself, as they were destroyed by the Dutch battalion Dutchbat. In 2002 the defense minister confirmed the destruction in a letter to the Parliament.

The genre of commissioned histories proved to be contentious in other respects than archival access also. The commissioning institutions sometimes exerted pressure on the authors to change the manuscript or, alternatively, attempted themselves to prevent publication of facts or judgments unwelcome to them. Several examples illustrate this. Between 1969 and 1991, Lou de Jong wrote the fourteen-volume official history, *The Kingdom of the Netherlands in World War II*: in this period, he was sued three times for defamation (see below). In two other instances, pressure was exerted on him. The first of these instances came in 1972 when he completed the manuscript of volume four, part of which was about the Dutch Union, a political party founded shortly after the German occupation in 1940 by a triumvirate, which aimed at cooperation between Dutch and German authorities to create a national mass movement. Two triumvirate members, Jan de Quay and Louis Einthoven, tried to prevent the manuscript's publication. The main bone of contention between De Jong and them was the degree to which the Dutch Union had accommodated itself to the Third Reich. De Quay, a former prime minister (in office 1959-1963), approached another former prime minister, Louis Beel (already mentioned; in office 1946-1948 and 1958-1959), who talked with a senior civil servant about the approval procedure for the work. Later, De Quay directly spoke to Prime Minister Barend Biesheuvel and the minister of education and sciences. In a letter to the latter minister, Einthoven wrote that De Jong behaved as a prosecutor and judge at the same time; later he requested De Jong's dismissal. The minister responded that he carried no scientific responsibility for the content of the work and that he would not intervene.

The second instance of improper interference took place in 1979, when part nine of *Kingdom* was to appear. De Jong announced that the husband of Queen Wilhelmina, Prince Henry of Mecklenburg-Schwerin (who died in 1934), had an illegitimate son. Fearing harm to the monarchy's reputation, Prime Minister Dries van Agt tried to dissuade De Jong from publishing the fact. When Van Agt added that he would possibly veto part nine, De Jong threatened to cause a scandal and stop his work. The publication went ahead.

Another affair occurred in late 2000, when the imminent publication of an official history of Dutch decolonization policy in the Caribbean between 1940 and 2000 was postponed. The authors, Gert Oostindie and Inge Klinkers, had signed a form granting prepublication approval to the Interior Ministry, which had commissioned the study. The ministry objected that they had quoted too abundantly from the post-1975 Council of Ministers minutes and other documents from the Prime Minister's Office and the ministry itself. After long deliberations, the authors had to delete certain data—particularly data disclosing the personal policy views of politicians and civil servants—before the volumes could be published in mid-2001. The authors maintained that the deletions had not affected their analyses or conclusions.

Publication problems such as those just described also occurred when lower levels of government or semi-public and private companies commissioned historical works, as was the case with the histories of the Coal Trade Association in Rotterdam and Utrecht (in 1946), the Dutch Railways (1955-1959), ABN Bank (1969-1974), the animal food plant Hendrix (1985), the town of Nieuwegein (1991), the Directorate-General for Public Works and Water Management (2007-2010), or the Dutch Pilots' Corporation (2013).

Historian Pieter Drooglever endured both archival and publication difficulties. At the request of Parliament, the Foreign Affairs Ministry had invited him to write a study in 1999 (eventually published in 2005 as *An Act of Free Choice: The Papuas of Western New Guinea and the Limits of Self-Determination*). In the study, Drooglever described how in 1969 Indonesia had manipulated a referendum on self-determination ("the act of free choice") held among the Papua population in the former Dutch New Guinea and how it had managed to transform the referendum results into unanimous support for incorporation of the

region into Indonesia. He also showed that, despite vague concessions from the Dutch regarding self-determination to the Papuas during the period 1963–1969, the Netherlands and the United Nations did not protest against the Indonesian move. In 2003, Drooglever was forbidden entry by the Indonesian government to interview witnesses and to do archival research for his book : the study was seen as fomenting separatism and lending support to Papuan independence claims. When it was eventually published, the Dutch Minister of Foreign Affairs Ben Bot refused to receive the book in public in order not to harm Dutch-Indonesian relations.<sup>10</sup>

Even with regard to non-commissioned histories, the government could exert a certain amount of leverage. In 2002–2004, for example, two ministers personally blocked a grant for a project proposal by oral historian Selma Leydesdorff. She planned to interview the widows of those fallen during the genocide of 1995 in Srebrenica and she mustered the support of the International Commission for Missing Persons and several organizations of Bosnian women. Members of Parliament asked questions about the interference, to which the ministers responded that Leydesdorff's project did not fit into their foreign policy programs and that due to its scholarly character, it had neither the required social relevance nor the capacity to foster reconciliation. In ministry circles, however, other reasons circulated such as the fear that the project would encourage compensation claims by Srebrenica survivors in the wake of a possible lawsuit against the Netherlands.<sup>11</sup> Leydesdorff's project eventually led to the book *Leaving the Void Behind Us : A History of the Women of Srebrenica* (2008).

In the post-1945 period, at least ten defamation cases were reported, a list of which is given in Appendix 2. In the present survey only a few cases are described by way of example. Like in France, they concern World War II and the colony (in this case, the later Indonesia). A first case regarded one W. Van de Langemheen, who was deceased in 1987. In September 1999 ten of his family members sued Madelon de Keizer, historian at the Netherlands Institute for War Documentation, for libel because in the first four editions of her 1998 book *Putten, de razzia en de herinnering*, she had described Van de Langemheen as a traitor.

<sup>10</sup> In 2006, Drooglever was again refused entry in Indonesia.

<sup>11</sup> Such a lawsuit was indeed started (2007) and won (2011) by Srebrenica survivors.

According to many witnesses, Van de Langemheen had made known the whereabouts of an armed opposition group to the police and the Germans in October 1944. From April 1945 to February 1946, Van de Langemheen was interned on suspicion of betrayal until the Public Prosecutor ruled that Van den Langenheem's act was not important enough to be tried, without exonerating him from the charge. This was confirmed in 1949. De Keizer was acquitted. In the following edition of her successful book, though, she characterized Van de Langemheen no longer as a "traitor" but as someone "accused of betrayal."

The second and third examples revolved around the colony. In 1985 volume 11A of the official *Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog* (The Kingdom of the Netherlands in World War II), written by historian Loe de Jong, was published. Dealing with the Dutch East Indies and the later Indonesia, it led to a protracted lawsuit which was finally decided against the petitioners—representatives of part of the community of those who formerly lived in the East Indies, organized as the Committee for Historical Rehabilitation Dutch East Indies—in April 1990. The Committee had accused De Jong of portraying too negatively the role of the colonial administration. It also objected to passages about war crimes committed by Dutch troops against Indonesian nationalists in 1945-1949, and asked the state to commission "a less prejudiced historian" to rewrite the history of colonial relations. In the margin of the court case, a Freedom of Information request to make public the reading reports of the reviewers of De Jong's manuscript was refused.

The 1987 manuscript of volume 12, again about Dutch-Indonesian relations from 1945 to 1949, was the object of another affair. Two military reviewers leaked the manuscript to the press. This evoked strong protests from veterans because it contained a 46-page section entitled "War Crimes." Some demanded non-publication of volume 12, sued De Jong for libel, or published denials of his claims. In 1988 the defamation case, including the demand for non-publication, was dismissed, mainly because De Jong had made his controversial statements in a manuscript, not a published book. In the 1988 publication of volume 12, though, the title of the provocative section was changed from "War Crimes" to "Excesses." In the course of the entire affair, an attempt to kill De Jong was frustrated.

Foreign governments sometimes exerted pressure on historical exhibitions held in the Netherlands: Morocco wanted to have displayed an official map with the Western Sahara shown as part of its territory (in 2004); China attempted to mollify exhibition texts about the Chinese presence in Tibet (2006); and Turkey wanted to change catalog texts about the foundation of Byzantium by the Greeks, the presence of Kurds in Istanbul, homosexuality in Ottoman bathhouses and the ethnic cleansing of the Armenian minority in 1915 (2006). The Moroccan and Turkish attempts were successful.

More recently, two cases invoking accusations of incitement to hatred drew the attention. In 2008-2009, an unknown person complained that the exhibition “Palestine 1948: Remembering a Past Homeland” at the Royal Tropical Institute in Amsterdam, dealing with the Palestinian view on the 1948 events (called *nakba* or catastrophe), was biased. According to that person, the exhibition was intentionally distorted with the aim of delegitimizing Israel, which amounted to an act of anti-Semitism and incitement to hatred against the Jews. The judge, however, ruled that the exhibition was not objectionable and that it was protected by the right to free expression. He rejected the demand to amend it.

In 2010, the Ministry of Justice threatened to sue the National Library of the Netherlands for incitement to hatred and discrimination if in the framework of a scholarly digitization project of all Dutch-language newspapers from 1618 to 1995 it made available online Dutch-language Nazi publications dating from World War II. Scholars protested against the ministry’s action, arguing that a scholarly edition of these publications, much of which already accessible through other channels, was in the public interest. After a few months, Minister of Justice Ernst Hirsch Ballin declared that the library could proceed with the project because of its scholarly nature.

## Some concluding observations

The goal of this survey is not to systematically compare and evaluate the (lack of) achievements of France and the Netherlands in defense of free expression about the past. There is one phenomenon, however, in which both countries seem to have a somewhat exceptional record: the



use of defamation trials against historians. This is worth some deeper reflection.

In many countries, it happens that historians are charged with defamation by the persons portrayed in their works or by the latter's heirs. In such trials, judges have to balance the opinion of the historians against the reputation of those portrayed. The incidence of such history-related defamation cases is comparatively high in France and the Netherlands. It is even possible that no country in the world has a higher frequency of such cases than France.<sup>12</sup> Of twenty-nine relevant cases which have taken place in France since 1945, nineteen regarded the Second World War and five the Algerian war of independence. Of ten relevant cases in the Netherlands, six concerned the Second World War and three the Indonesian war of independence. In the cases about the Second World War, historians alleged that their protagonists were war criminals, murderers, traitors, spies, liars, profiteers, collaborators, fascists, Nazi sympathizers or falsifiers of history.

In the decolonization cases, other types of statements were at stake: they concerned allegations of torture or other crimes against humanity, or the comparison of crimes with SS practices. The outcome of all these cases was variable but in deciding them, most judges preferred to check whether the historians conducted their research responsibly.

Why did so many history-related defamation cases take place in France and the Netherlands? After all, the Second World War and the colonial past were sensitive issues in other European countries as well – without leading there to comparable numbers of defamation cases. In addition, at first sight the French and the Dutch do not seem to distinguish themselves by a greater historical awareness than their neighbors. And although historians in France (unlike those in the Netherlands) play a larger public role than elsewhere, not all of the historians in the dock were famous. The fact that French law forbids defendants to prove the truth of facts older than ten years is certainly part of the explanation for the higher number of French cases. Given that the higher frequency of defamation cases applies to France but not to Southern Europe, and to the Netherlands, but not to other North-Western European countries, explanations based on prejudices about supposedly more inflammable

<sup>12</sup> For background on defamation cases, see Antoon De Baets, *Responsible History*, New York and Oxford, Berghahn, 2009, chapter 3.

egos in Southern Europe can be disqualified. The high frequencies may direct our attention to something else: is it possible that the expression of emotions – such as sensitivity to insult—is tolerated more in France and the Netherlands than in surrounding countries and that this is eventually translated into a higher litigation frequency?

Reputation is a human right and defamation is a serious violation of that right. Likewise, posthumous reputations are not negligible. Nevertheless, the reality is that defamation cases—and, no less important, *threats* to sue for defamation—are sometimes instruments to silence historians. In those cases, they have a chilling effect on free expression, not only of the historians who are directly targeted, but also on the historical profession in its entirety.

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### Appendix 1 : The French Cases

In the post-1945 period, at least twenty-nine history-related defamation cases were counted. No less than nineteen defamatory allegations were related to World War II. The following is an anonymized list of these statements:

- \* "The acts of a resistance association were omitted in a history of Nantes and Saint-Nazaire during World War II whereas certain abuses at the time of the liberation *were* mentioned." [Case of 1953].
- \* "X, a former deportee, belonged to an international group with fascist tendencies and he was a friend of neo-Nazis." [Case of 1963-1964].
- \* "X was a traitor who collaborated with the Germans in 1940-1944." [Case of 1964-1965].
- \* "X, leader of Free French Forces during World War II (and later President of France), personally ordered attacks against Vichy French garrisons in Dakar and Algeria and he was limitlessly ambitious during the war." [Case of 1966-1967].
- \* "X, an economist, was a theorist of French fascism with pro-Nazi sympathies." [Case of 1983-1984].
- \* "X, a communist, displayed cruel behavior as a leader of deportees in Buchenwald concentration camp." [Case of 1983-1985; the complainants were two organizations of former deportees because X was deceased].
- \* "The testimony of X, founder of a resistance movement, was shown in part only in a documentary and juxtaposed with another testimony." [Case of 1984].
- \* "X, the president of the International Federation of Automobile Sports, was a Nazi collaborator during World War II." [Case of 1984].
- \* "X, a resistance fighter, became an informant after his arrest in March 1943." [Case of 1984-1987].
- \* "X, a journalist, was a fascist." [Case of 1987].
- \* "X, a professor of literature, falsified the history of the Jews during the Nazi period." [Case of 1990].

- \* “X, the mistress of a former prime minister, was a Nazi spy.” [Case of 1991-1994; complainants were the heirs of both protagonists, who were deceased].
- \* “X, a former resistance leader, was a Soviet spy.” [Case of 1993-1995].
- \* “X, a writer, committed suicide as a pilot in World War II.” [Case of 1994; the complainants were the heirs of X].
- \* “Christian anti-Semitic ideas prepared the ground in which the idea and implementation of Auschwitz took seed.” [Case of 1994-2006; the complainant was the General Alliance against Racism and for Respect for the French and Christian Identity].
- \* “X, a former deputy prefect, supervised the deportation of one thousand Jews from two internment camps in 1942–1943.” [Case of 1997–2004].
- \* “X and Y, two resistance fighters, betrayed a resistance leader in 1943, an act leading to the latter’s death.” [Case of 1997–2004].
- \* “X, a resistance fighter, was responsible for the arrests of other resistance fighters at a secret meeting in 1943.” [Case of 1999; the complainant was the daughter of X, who was deceased].
- \* “X, the founder of a Japanese foundation was a figure of Japanese fascism and a war criminal.” [Case of 2009–2010; the complainant was the foundation].

Five statements were related to the Algerian war of independence of 1954-1962:

- \* “X, an action committee, wrongly asserted that a French civilian was tortured to death in Algeria and therefore deceived the public.” [Case of 1960–1970].
- \* “X, a former minister of colonies and governor general of Algeria, was a cofounder in 1962 of the National Council of Resistance, a clandestine group defending a French Algeria.” [Case of 1967].
- \* “X, a former Paris police chief, ordered the police to organize a razzia against Algerians in Paris, leading to a massacre with at least two hundred deaths on 17 October 1961.” [Case of 1998–1999].
- \* “X, an extreme right politician, was a torturer during the war in Algeria in 1954–1962.” [Case of 1998-1999].
- \* “X and Y, two eyewitnesses, did not tell the truth in their testimonies of the Algerian war in 1957.” [Case of 2001].



The five remaining defamatory statements were:

- \* “X, a physicist, was not mentioned as the inventor of the principle of wireless telegraphy in a history of wireless telegraphy.” [Case of 1939–1951; the complainant was the son of X, who was deceased].
- \* “X, a former inmate of concentration camps, was a ‘Trotskyist falsifier’ because he inferred the existence of prisoner camps in the USSR from unreliable eyewitness testimonies.” [Case of 1950–1951].
- \* “X, an admirer of a famous nineteenth-century actress, raped her.” [Case of 1968–1970; the complainant was the son of X, who was deceased].
- \* “X, a French communist working as a political instructor for the North Vietnamese, committed crimes against humanity against French prisoners in French Vietnam.” [Case of 1992–1996].

#### **Appendix 2: The Dutch Cases**

In the post-1945 period, at least ten defamation cases were reported. Six of the defamatory allegations were related to World War II. They were the following (in anonymized form):

- \* “X, a wartime member of the National-Socialist Movement NSB, was a liar.” [Case of 1971–1973].
- \* “X, a member of the resistance during the war, liquidated a German Jew in hiding in 1943 and invoked dubious security motives for this act.” [Case of 1990–1998].
- \* “Dutch military and German units alike committed war crimes on an incidental basis during the German invasion of the Netherlands in May 1940.” [Case of 1994–2005; the complainants were veterans and relatives of deceased veterans].
- \* “X, a biologist, charged his students a high price for teaching them during clandestine laboratory sessions in World War II.” [Case of 1993; the complainant was the son of X who was deceased].
- \* “X was a traitor because he gave away the whereabouts of an armed opposition group to the police and the German occupier in 1944.” [Case of 1998–1999; the complainants were relatives of X who was deceased].
- \* “A website named the names of all the Dutch Jews who perished in World War II.” [Case of 2003].

Three defamation cases concerned the relations between the Netherlands and Indonesia between the independence of the latter in 1945 and the recognition of that fact by the former in 1949:

- \* “The official war history *The Kingdom of the Netherlands in World War II* portrayed too negatively the role of the colonial administration in the Dutch East-Indies.” [Case of 1985–1990; the complainants were representatives of part of the community of those who formerly lived in the Dutch East Indies].
- \* “The leaked manuscript of a volume of the official war history *The Kingdom of the Netherlands in World War II* contained passages about war crimes committed by Dutch troops against Indonesian nationalists in 1945–1949.” [Case of 1987–1988; the complainants were veterans].
- \* “X, a writer, said that the behavior of the Dutch military in Indonesia in 1945–1949 was sometimes comparable to the behavior of SS soldiers during World War II.” [Case of 1992–1995; the complainants were veterans].

The remaining case revolved around the monarchy:

- \* “X, a former general secretary at the court, almost split the royal marriage by suggesting that the queen’s husband had possibly been involved in coup plans against the Indonesian President Sukarno in 1950.” [Case of 2009–2010; the complainants were relatives of X who was deceased].