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A historian's view on the right to be forgotten

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This essay explores the consequences for historians of the 'right to be forgotten', a new concept proposed by the European Commission in 2012. I first explain that the right to be forgotten is a radical variant of the right to privacy and clarify the consequences of the concept for the historical study of public and private figures. I then treat the hard cases of spent and amnestied convictions and of internet archives. I further discuss the applicability of the right to be forgotten to dead persons as part of the problem of posthumous privacy, and finally point to the ambiguity of the impact of the passage of time. While I propose some compromise solutions, I also conclude that a generalized right to be forgotten would lead to the rewriting of history in ways that impoverish our insights not only into anecdotal lives but also into the larger trends of history.

Keywords: amnesty; internet archives; passage of time; posthumous privacy; privacy; private and public figures; right to be forgotten; right to forget; spent convictions

In January 2012, the European Commission circulated the final draft of a *General Data Protection Regulation*, in which a new concept was introduced: the right to be forgotten. It stipulated that natural persons would obtain the right to have publicly available personal data erased and not further disseminated when they were no longer necessary in relation to the purposes for which they were collected (article 17) (European Commission 2012). According to the European Commission, this right would help people better manage data protection risks online by enabling them to delete their data if there were no legitimate grounds for retaining them. The draft *Regulation* also elucidated, however, that such protection had to be reconciled with the right to free expression (article 80).

In the past, European jurisdictions have occasionally mentioned the right to be forgotten, albeit under different labels, such as 'the right to forget' or 'the right to oblivion', but by and large the idea it is thought to express was preferably captured under the concept of privacy.¹ Legal decisions used to balance the right to privacy against the right to be informed, itself a part of the right to free expression. This act of careful balancing between two equal rights was the default position. The present draft *Regulation* tends to replace this balance by granting a central place to privacy while somehow relegating free expression to an exemption status. Of course, as the draft *Regulation* focuses on data protection, countervailing factors such as free expression are naturally grouped in the exemptions section. Still, many have seen in it a game change and, therefore, the right to be

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forgotten sparked a large debate across Europe and beyond. Legal scholar de Terwangne (2012, 118) summarized the quintessence as follows: ‘[T]he question is whether individuals must be responsible *sine die* for their past actions or whether it is desirable for them to have the right to rewrite their past, and consequently that of others.’ Another legal expert, Erdos (2013), wrote that the unabridged execution of the draft *Regulation* ‘would effectively outlaw almost all research in law and in contemporary history as well as a great deal of work in sociology and political science.’ When presenting the draft *Regulation* to the press, Justice Commissioner of the European Union Viviane Reding (Rooney 2012) tried to assuage such critics:

The right to be forgotten is of course not an absolute right. There are cases where there is a . . . justified interest to keep data in a database. The archives of a newspaper are a good example. It is clear that the right to be forgotten cannot amount to a right of the total erasure of history.²

It is therefore important to explore the consequences of the new concept for historians. This is what the present essay intends to do, starting from the concept as understood by the European Commission, but gradually also exploring the impact of the concept in general.

The right to be forgotten and the right to forget

First of all, a basic clarification is needed. The right to be forgotten is often confused with the right to forget, although both have opposite pedigrees. Article 19 of the International Covenant on Civil and Political Rights protects the freedom to hold and express opinions. To the extent that ‘opinions’ include memories of past events, it can be said that every human being has a right to memory. However, the United Nations Human Rights Committee, the most authoritative interpreter of the Covenant, explicitly forbids coercion in the realm of opinions: ‘Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one’s opinion necessarily includes freedom not to express one’s opinion’ (HRC 2011, §10).³ If there is a right to memory, then there is also right to forget and, hence, no duty to remember can be imposed on others. The rights to remember and to forget are integral parts of the right to free expression (De Baets 2009, 147–157).⁴

In contrast to the right to forget, the right to be forgotten – or the ‘right to oblivion’ as it is often called in France, Italy and Belgium – is not inspired by free expression but by privacy. It is, in fact, a radical variant of the right to privacy. Like the duty to remember imposed on others, the right to be forgotten carries an element of coercion: when successfully applied, its net result is that the person exercising it diminishes, if not censors, the right to information of others. If it does, it affects the right to free expression. It is thus important not to confuse the right to forget and the right to be forgotten.

The research exemption

As Commissioner Reding indicated, the right to be forgotten is not absolute. The draft *Regulation* lists a set of exemptions, among them the processing of data for historical, statistical and scientific research purposes. This so-called ‘research exemption’ is indispensable for scholars because it allows them to collect data for their research. The exemption is limited itself, however: the data to be saved from erasure have to be necessary for such historical, statistical and scientific research and they should be anonymized or pseudonymized to the maximum extent possible.

This research exemption is problematic in two respects. First, it divides research into three branches, as if historical research could not be scientific or embrace statistical research. Second, the overwhelming mass of data is not created for research purposes but still possesses the potential to gain research value later. If the right to be forgotten with its comprehensive and explicitly past-oriented scope is applied, the risk exists that this large class of data is lost for research forever. While this is unfavourable to scholarship in general, historical research in particular is affected because the epochal quality of data often only becomes clear long after their creation. The right to be forgotten substantially raises the threshold for harvesting these data.

Common-law and civil-law approaches

The balancing of the rights to free expression and to privacy/forgetfulness varies from jurisdiction to jurisdiction. Recent research shows that in common-law jurisdictions such as the United States and the United Kingdom, free expression largely prevails. In civil-law jurisdictions, like those on the European continent (France, Germany, Italy, Switzerland), the result is blended, with privacy concerns often tipping the scales.⁵ In this recent research many case studies were presented to illustrate this general trend, but in none of them were historians the defendants. There was, however, at least one such case. In 1979, four historians published a book on right-wing activists and movements in Switzerland. One of these activists was Robert Eibel. He sued the authors for libel because they had written that in 1936 he had founded a movement inspired by National Socialism and in July 1940 proposed a plan that amounted to treason. In a decision of 1984, a court in Zürich maintained that Eibel (who was then 78 years old) could invoke 'a right to forget'. Note that when the court spoke about Eibel's 'right to forget' (German: Recht auf Vergessen, French: droit à l'oubli), it actually meant his 'right to be forgotten'. In 1985, the *Bundesgericht* (Federal Court) eventually reversed the ruling, saying that the authors had the right to publish true but generally forgotten statements about Eibel because the latter was a 'figure of contemporary history'. And a 'right to forget' did not exist for such figures⁶ (*Schweizerisches Bundesgericht 1985*, §17; Frischknecht et al. 1979).

Public versus private figures

As this example shows, the distinction between public and private figures is essential when discussing the historical research exemption from the right to be forgotten. While the distinction is very common in all jurisdictions and is usually expressed in some 'public-figure doctrine', German-speaking jurisdictions often label public figures 'figures of contemporary history' and further subdivide them in absolute and relative public figures – which for historians is most helpful. Absolute public figures are persons 'who because of their status or relevance or public function are famous outside a certain context or irrespective of a certain contemporary event'; for example, monarchs, presidents, politicians exercising official functions and celebrities (Coors 2010, 531–532). Relative public figures are those whose 'fame' is related to a particular event, often a crime or public trial. Private figures are figures unknown to the general public. Absolute public figures have less privacy protection than relative public figures, and the latter less than private ones.⁷ The more prominent persons are, the smaller the protection of their private sphere and the larger the public interest in gathering knowledge about them. Even absolute public figures, though, retain a sphere of intimacy that nobody can intrude upon because privacy is a universal right applicable to everyone.

Until well into the twentieth century, historians adopted a ‘great-men view of history’ and almost exclusively studied absolute public figures. With the rise of social-economic history and the history of everyday life, however, this gradually changed: the experiences of anonymous protagonists and large populations gained more prominence. As a result, and with the notable exception of biographers, most historians are nowadays more interested in aggregate rather than individualized data about private lives. A given conduct of daily life becomes historically significant when it is adopted by large groups of people. For example, if at a certain moment a single person brushes his teeth on a daily basis, this has little significance as a historical fact in itself. If, in contrast, at another moment one million persons do this, this may yield part of the evidence for corroborating theories about changing hygienic attitudes and perhaps about changing collective views of the human body. A generalized right to be forgotten would make the study of everyday life exceedingly difficult, if not impossible, if it would impede the collection of statistical data about past private figures (which the draft *Regulation* does not). And, of course, the many historians interested in writing biographies of private figures – either autonomously undertaken or commissioned – would a fortiori be seriously hampered in their endeavour.

Absolute and relative public figures

Even if most professional historians nowadays find the ‘great-men view of history’ obsolete, the historical study of absolute public figures obviously continues to be practised widely because monarchs, presidents and politicians exert a disproportionate influence on society. Other members of this select group fascinate us by their conduct and command lots of media attention. Remarkably, the state of information about such figures is ambiguous. As absolute public figures usually dispose of sufficient staff and means, they are able to actively control the information they put on to the internet themselves, even for some time after their deaths. They are the ones who would most often use the right to be forgotten. However, despite strict defamation laws in many countries, they usually lack control over the heaps of information about them uploaded by third parties. Given the sheer quantity of information about them, the goal to wipe out embarrassing information would be harder to achieve for them than for most others. Moreover, the exercise of the right to be forgotten could backfire: any removal of documents would arouse curiosity and direct attention towards, rather than away from, the content removed: this is the Streisand effect (which I will elaborate further). It is hardly predictable to what exact mix of publicly available information about them all this would lead. Although the availability of digital information quickly publishable on the internet enhances both the disclosure of embarrassing information and tighter informational self-determination strategies, it is my guess that the application of the right to be forgotten would not substantially affect the totality of sources for historians studying absolute public figures.

The situation changes drastically when we move to the group of relative public figures, those who suddenly and temporarily gained fame in the past. Two types of study of relative public figures are common among historians. The first is anecdotal history. This type often sells well and is widely read. Newsworthiness is but one goal of such work, entertainment another. While this genre has every right to exist, it cannot be said – at least, in my view – to contribute substantially to the advancement of historical scholarship. A generalized right to be forgotten would impair this flourishing branch of history – which is a high price to pay, but would not hamper the progress of scholarship.

The effect is different for the second type, the study of the conduct of relative public figures *as an illustration* of larger trends and patterns, for example trends in corruption

or patterns of crime. There is a strong public interest in gaining insight into corruption and crime trends in order to combat them. The newsworthiness and the contribution to the public debate and to scholarship are stronger here. From this overview, it is clear that the hardest cases for historians to solve are those involving relative public figures. Three types of such cases will now be discussed.

Spent convictions

In 1975, Joel Feinberg (1975, 138–139) described the case of reformed sinners – criminals who were convicted and, after their punishment expired, built new lives. He asked whether it was allowed to recall the criminal past of these ‘reformed sinners’ long after the newsworthiness of the case had faded away and whether it harmed their rehabilitation process and even ruined their new lives. He reasoned that the reformed sinner once stood in the spotlight involuntarily and desired to become a private figure again. He made a plea to leave the ‘reformed sinner’ alone:

The truth about a particular person may be of no great value at all except to that person. When the personal interest in reputation outweighs the dilute public interest in truth . . . then it must be protected even at some cost to our general knowledge of the truth. The truth, like any other commodity, is not so valuable that it is a bargain at *any* cost.⁸

It is likely that historians interested in recent cases of reformed sinners could justify treating them on condition that their purpose was to study general social phenomena for which such cases are deemed typical. In most cases, anonymization of the names of reformed sinners would suffice. No conflict with the right to be forgotten would arise: we saw that the draft *Regulation* contains a provision to that effect. Anyway, many case law databases available on the internet are already anonymized.

Amnestied convictions

The problem is compounded when the conviction is not spent but annulled through grace or amnesty. Here we tread upon ground frequently studied by historians. Indeed, measures of grace or amnesty are often part of peace agreements concluded in tense times, the study of which is a priority for historians. In one French legal case from 1964 – mainly about libel but containing one important characteristic related to the right to be forgotten – the judge ruled in favour of the defendant who was a historian. In her book about collaboration during the Second World War, Michèle Cotta attributed facts of betrayal to one Jean Lousteau; she also wrote 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 law prohibited proof of statements about facts older than ten years, his ordeal should not have been mentioned anymore. Such an argument would fit a right to be forgotten claim today.

In November 1965, however, a Paris court cleared Cotta of the libel charge. It said that as the pardon measure was not published, Cotta could not have known 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, in a reasoning comparable to the one made by the Swiss court, 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 been done since by Pascal Ory (Cotta 1964; Ory 1980).⁹ This early decision defends a right to mention

amnestied convictions: the judge did not support Lousteau's attempt to forget his crime and censor Cotta with the argument that the conviction was annulled. This ruling is in line with recent thinking about the emerging right to the truth (that is, the right to know the truth about past human rights violations). According to the United Nations, this right of families of victims cannot be limited or denied even when the perpetrators are not prosecuted or when they are eligible for an amnesty. Here, also, forgetting is not accepted (UNCHR 2005, principles 4, 23, 34).¹⁰

Internet archives

A third hard case is the internet archive. It is linked to the problem of reformed sinners in that it is often the latter who ask for the removal of archival documents. It also differs from the latter case, though, in that the reformed-sinner problem affects history writing but leaves the underlying sources intact. Here, it is the historians' sources themselves that are in jeopardy. Although explicitly mentioned in the draft *Regulation* (European Commission 2012, preamble §121) and although Commissioner Reding seemed to guarantee the existence of internet archives (in the quote above), information law expert Joris van Hoboken called the right to be forgotten 'a frontal attack on linking, search and archiving' (Van Hoboken 2011). If parts of internet archives of media outlets were removed or made inaccessible, the sources of historical writing would be seriously mutilated.¹¹

In 2009, the European Court of Human Rights formulated a somewhat ambiguous rule for internet archives:

The Court agrees ... as to the substantial contribution made by Internet archives to ... making available news ... Such archives constitute an important source for education and historical research ... The Court therefore considers that, while the primary function of the press in a democracy is to act as a 'public watchdog,' it has a valuable secondary role in ... making available to the public archives ... However, the margin of appreciation afforded to States in striking the balance between the competing rights is likely to be greater where news archives of past events, rather than news reporting of current affairs, are concerned. In particular, the duty of the press to act in accordance with the principles of responsible journalism by ensuring the accuracy of historical, rather than perishable, information published is likely to be more stringent in the absence of any urgency in publishing the material.¹²

According to the Court, internet archives make a substantial contribution but fulfil a secondary role; and given the absence of urgency in publishing the information, the press has a special duty to verify the accuracy of the information contained in them. This rule can be interpreted in a liberal and conservative fashion and the verdicts of domestic courts have indeed been variable.¹³

But there is room for compromise along the following lines. Worldwide, archival integrity is a cardinal principle for the preservation of records. It dictates that generic measures of deletion should be excluded. It does not prevent, however, a case-by-case approach when weighing requests to anonymize names of private and (relative) public figures. Beyond such anonymization on request, another compromise is feasible. When somebody has lodged an appeal against a judicial decision mentioned in stored press articles, the latter could be accompanied by a note saying that the decision is under review (de Terwangne 2012, 113). In the case mentioned above, the European Court of Human Rights found that adding such a note was not a disproportionate interference with the applicant's right to free expression. When the persons affected want to take steps themselves, under certain conditions, a right of reply is better than a right to rectification (the latter being envisaged

under article 16 of the draft *Regulation*): individuals mentioned in internet archives could be given the opportunity to submit a reply challenging the original newspaper article. And both should be produced together whenever the latter is requested.¹⁴ Such a right of reply is close to, yet different from, the right to object (envisaged under article 19 of the draft *Regulation*).

The 2014 judgment of the Court of Justice of the European Union, which endorsed the complaint of Spanish citizen Mario Costeja González that Google search links to some unwelcome information about his past (related to debts he owed in 1998) had to be removed, revealed another aspect of the right to be forgotten: the Streisand effect. The latter effect, coined in 2005 after singer Barbra Streisand, is ‘an online phenomenon in which an attempt to hide or remove information . . . results in the greater spread of the information in question.’ By complaining, Costeja González became famous; his past problems are now known worldwide.¹⁵

Posthumous privacy

Most of the cases discussed above involved subjects of historical study who were still alive and able to protest against being mentioned by historians. But what happens when the subjects are deceased and by definition unable to react to any invasion of their privacy? To apply the notion of privacy to the dead may seem odd in the first place, because the dead, as *former* human beings, do not possess human rights and therefore no right to privacy. Elsewhere I discussed one dimension of posthumous privacy – the restrictions imposed on the public disclosure of facts about them – and particularly whether such privacy is a right of the dead (a claim I reject) or a characteristic of them (a claim I defend) (De Baets 2009, 124–126; De Baets 2013, 213–237, see here for relevant bibliography). In general, and consistent with the distinction previously discussed, common-law jurisdictions apply the maxim *actio personalis moritur cum persona* (personal right of action dies with the person) far stricter than most civil-law jurisdictions.¹⁶

Many persons – public figures, but also private figures, especially when they grow older – develop some sort of posthumous privacy and reputation management strategy to influence the ‘verdict of history’ about their lives. Such a strategy includes the deliberate erasure as well as the deliberate production of traces. After their deaths, their heirs may continue this strategy of freezing in time the desired, perhaps idealized, image of the deceased against the countervailing force of embarrassing information that becomes available posthumously.

On the basis of a multitude of data, I estimated elsewhere (De Baets 2013, 226–230) that it is reasonable – though by no means uncontested – to assume that the posthumous privacy of *private persons* lasts for roughly seventy years, or two generations, after their deaths and then fades away. There is nevertheless an essential difference between the *duration* of posthumous privacy and the *duration of the legal protection* of posthumous privacy.¹⁷ The latter period should usually be far shorter than two generations because, beyond a period of mourning at all times to be respected,¹⁸ the balancing between nondisclosure and disclosure of information should be done with a rapidly increasing presumption in favour of disclosure – a much stronger presumption than in the case of living persons. The 70-year limit is therefore an absolute maximum; the types of information falling under the storage term should be reduced to a minimum; early disclosure should be the rule and encouraged wherever possible; and the motives for disclosure, which sometimes carry relative urgency, should be taken into account. Finally, it is important to emphasize that while the posthumous privacy of private figures is counted in years and decades, the posthumous privacy of public figures is counted in days and weeks.¹⁹

The passage of time

Vexing questions arise when we consider the moment of erasure of the personal data. From which moment can the right to be forgotten be invoked? At any given moment? Automatically or on demand only? Only *after* a certain amount of time has elapsed? Only *until* a certain amount of time has elapsed? Can it be invoked after the person died and by whom? And how long after death? If historical research is a legitimate exemption ground, how can it be exercised if the need for it emerges long after the data may have been erased? There are many hard questions, few clear answers.

The notion of the passage of time is ambiguous because it can be used in opposite directions: as an argument to justify removal of recent information (because it can harm privacy) or as an argument to justify removal of distant information (because it has become irrelevant).²⁰ This is a problem that, like a shadow, never leaves the historian. It raises another final and most important question: why should the right to be forgotten be stronger for information of longer ago, as the European Court of Human Rights seemed to assume? The default argument hitherto was the opposite: it is the right to free expression that becomes stronger with the passage of time, not the right to privacy. Does, then, the passage of time tip the scales towards free expression or towards privacy/forgetfulness? The right to be forgotten assumes that the passage of time strengthens privacy claims; I argue here that this assumption is basically wrong for the dead and controversial for most of the living.

Afterword

In this essay, I strongly defended a right to forget. But whereas I see much quality in forgetting acts of others and much necessity in privacy for oneself, as a historian I see neither quality nor necessity in forcing others to forget you, for basically the same reason why I reject forcing others to remember you: it is an act of coercion in the realm of holding and expressing opinions.

Oddly enough, some seem to think that when persons are able to invoke a right to be forgotten, they will also be encouraged to freely express themselves because their opinions are then reversible. In contrast, I think that a generic chilling effect is more likely. The protection of A's privacy bolsters A's free expression, but A's right to be forgotten, as a radical offshoot of A's privacy and regulator of sources about A, chills B's rights to information and expression. A right to be forgotten disproportionately distorts the balance between free expression and privacy in favour of privacy in the already privacy-favourable European context. It will encourage data controllers to err on the safe side. As Van Hoboken wrote, this effect may produce a bias towards uncontroversial information in search engines and related services. This is a fatal bias for any scholar of internet resources (Van Hoboken 2011).

Only in the case of children do I see legitimacy in erasing information previously posted by themselves on the internet. Only for spent convictions do I see legitimacy in minimum anonymization upon request and in a right of reply. A generalized right to be forgotten, however, would lead to the rewriting of history in ways that impoverish our insights not only into anecdotal lives (which is justified in a small class of recent cases) but also into the larger patterns and trends of history. If we remember this, we better forget it.

Conflict of Interest Disclosure

No potential conflict of interest was reported by the author.

Notes

1. Strictly speaking, the right to be forgotten is a semantic impossibility: forgetting is a spontaneous act; it cannot be willed, claimed or imposed.
2. See also European Commission. (2014).
3. HRC (United Nations Human Rights Committee) (2011).
4. This implies that a duty to remember forcefully imposed on other persons would amount to a violation of their freedom of opinion. See De Baets (2009).
5. For a comparison between the United States and Switzerland, see Werro (2009); for the United Kingdom, see O'Callaghan (2013).
6. See also article 17, stipulating that figures of contemporary history have reduced privacy protection and no right to be forgotten, in Schweizerische Gesellschaft für Geschichte. 2004. *Grundsätze zur Freiheit der wissenschaftlichen historischen Forschung*. <http://www.hist-pro.ch/publikationen>.
7. The ECtHR (European Court of Human Rights) adopted a cautious approach towards the absolute public figure versus relative public figure distinction. See the 1994 *Von Hannover versus Germany* case (application no. 59320/00, §73). See also Coors (2010, 537).
8. See also *Melvin v. Reid* (1931), as summarized in Prosser (1960, emphasis in the original). For a plea similar to Feinberg's, see Schauer (1982, emphasis in the original).
9. About the case, see Kiejman (1984); Le Crom (1998); Bredin (1984); Jeanneney (1998). In a comparable case, merely recalling a conviction for manslaughter was no problem: see European Commission of Human Rights (1998).
10. UNCHR (United Nations Commission on Human Rights) (2005)
11. The 2014 ruling of the Court of Justice of the European Union in the case *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* indirectly limited the accessibility of internet archives (by recognizing the right of a person to ask search engines such as Google to remove results for queries that include the person's name): see Court of Justice of the European Union (Grand Chamber), *Case C 131/12*. May 13, 2014. <http://www.concernedhistorians.org/le/343.pdf>. In various places, however, the Court made clear that the public interest in accessing information about persons with roles in the public life is strong (§§81, 97, 99, 100). See also Google's implementation of the ruling as described in its text 2014. 'Search Removal Request under Data Protection Law in Europe'. https://support.google.com/legal/contact/lr_eudpa?product=websearch&hl=en.
12. ECtHR (European Court of Human Rights). 2009. *Times Newspapers versus United Kingdom* (applications 3002/03 and 23676/03). <http://www.concernedhistorians.org/le/176.pdf>. §45. This was a defamation case (a person had complained that the continued publication on the *Times* website of two articles accusing him of money laundering was defamatory, a view supported by the courts) and not a privacy invasion or right to be forgotten case, but it was similar in substantial respects.
13. For liberal interpretations, see Tribunal de première instance de Bruxelles. 2012. *X versus Multi-média*. <http://www.concernedhistorians.org/le/288.pdf>; Rechtbank Groningen. 2012. *X versus Stichting Universiteitsblad Groningen*. <http://www.concernedhistorians.org/le/267.pdf>. For a conservative interpretation, see Tribunal de première instance de Neufchâteau, "Audience publique du 25 janvier 2013" (rôle général 12/258).
14. Inspired by Commission on Human Rights, *Updated Set*, principles 9(b), 17(b).
15. For the Streisand effect, see Cacciottolo (2012); Parkinson (2014).
16. Werro (2009, 290, n22) argues that unlike German law, Swiss law opposes the notion of personality rights after death, but for a Swiss case involving the privacy of a deceased figure of contemporary history, see Schweizerisches Bundesgericht. 2001. *Willi Wottreng versus Präsident des Obergerichts des Kantons Zürich*. <http://www.concernedhistorians.org/le/68.pdf>. §5bb.
17. For example, the embargo on sensitive archives about deceased persons or the ability to sue in defamation on behalf of deceased persons.
18. The duration of the period of mourning for private persons is commonly estimated as one to two years after death. Nevertheless, it fluctuates considerably according to the type of death, the age of the deceased, the mourner's relationship to the deceased, and cultural tradition.
19. See, especially, European Court of Human Rights. 2004. *Éditions Plon versus France* (application no. 58148/00). <http://www.concernedhistorians.org/le/38.pdf>. §§47 and 53.
20. As mentioned in §92 of the ruling of the Court of Justice.

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