

Access to Restricted Collections: The Responsibility of Professional Historical Organizations

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Abstract: The author raises seven questions being considered by the Organization of American Historians in order to determine whether or not it should reconsider its position on codes of ethics, especially with respect to access to and use of confidential materials. She then mentions pitfalls to avoid in adopting codes of ethics and discusses recent trends in historical research methodology and materials.

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While many professional associations have formal codes of ethics, the major historical ones do not. Neither the Organization of American Historians (OAH) nor the American Historical Association (AHA) has adopted any ethical guidelines beyond endorsing the 1966 Statement on Professional Ethics approved by the council of the American Association of University Professors (AAUP). The questions of research and access are not specifically addressed in the AAUP statement, however.

In one sense, the passage of codes of ethics can be compared to locking the barn door after the horse has escaped, since most are adopted after serious problems of standards have already developed within a profession. Without adequate enforcement procedures few have had significant preventive impact on the behavior of individual members. Codes of ethics may, therefore, be more symptomatic of the existence of unethical professional practices than they are effective means for correcting them. Indeed, codes like that of the American Bar Association have been described as a "convenient cloak for dubious behavior," and for centuries many jurists and historians have noted: "One does not forbid something which no one wants to do."¹ Presumably lawyers, doctors, psychiatrists, journalists, anthropologists, and even sociologists who establish confidential relationships with clients have engaged in questionable practices that prompted the writing and rewriting of ethical codes for those professions.

As more historians begin to do research similar to that of some social scientists, journalists, or lawyers, they may indeed require codes for legal

reasons. For example, historians might use codes to defend the confidentiality of their sources in court by citing specific sections that deal with violations of privacy. There is little reason to believe, however, that historians will be any more successful in preventing malpractices than other professions, which have already adopted established codes of ethics, unless historians learn from the mistakes of those other professions.

In asking why existing codes have been so ineffective, one must consider the purpose of ethical principles, whether they are codified or simply viewed as guidelines. For example, should a code of ethics "be viewed as a general statement of the moral values of importances to the profession [or] a statement of aspiration, or as a quasi-legal guide for adjudicating complaints and standardizing ethical norms shared by professional colleagues?"² It is unlikely that all matters can be covered equally well by a single code; therefore, professional associations should have their priorities clearly in mind when formulating such codes.

Professional associations should also realistically recognize that most ethical codes or guidelines are the result of compromises. Instead of representing the highest standards, codes may at best represent the lowest common denominator of professional agreement. Unless these stated standards are exceeded by individual members, adoption of codes will contribute little to the improvement of professional conduct. In any case, codes can be no substitute for individual commitment to professional and personal ethical standards, which appear increasingly in short supply. It is con-

¹New York Times, 17 August 1982, p. 12; J.J. Backofen, *Myth, Religion, and Mother Right: Selected Writings of J.J. Backofen*, trans. Ralph Manheim (Princeton: Princeton University Press, 1967), p. xvii.

²Rosemary Chalk, Mark S. Frankel, Sallie B. Chafer, *AAAS Professional Ethics Project: Professional Ethics Activities in Scientific and Engineering Societies* (Washington, D.C.: American Association for the Advancement of Science, 1980), p. 99.

ceivable that professional codes of ethics have been made necessary by an increasing absence of private standards.

Recently, several professional associations closely associated with the historical profession, including the Society of American Archivists (SAA), have passed, or are seriously thinking about drafting, codes of ethics. The list includes legal historians, federal historians, and the Social Science History Association. Hence, the OAH is now reviewing the following questions to determine whether it should reconsider its position on the matter of codes of ethics, particularly with respect to access and the use of confidential materials.

The most obvious questions under review are: (1) Has increasing emphasis on living subjects and a variety of personal and statistical data created a greater need for historical associations to assume responsibility for policing the research and publication practices of their members? The answer is yes to the degree historians enter into client relationships such as those of oral historians and to the degree that machine-readable data can be used in ways that violate privacy.

(2) If there is a greater need for policing, should the emphasis be placed on restricting access or, as former OAH president Allan Bogue has stated, on enforcing "appropriate penalties for the misuse of information derived from personal records?"³ Here the answer is not so obvious because it is difficult to find the right balance between blanket restrictions and professional police methods.

(3) Have existing codes of ethics generally "encouraged custodians of information to be generous in granting access for scientific and literary purposes," and would endorsement of similar codes by historical societies "benefit historians in dealings with archives and respondents," as David Flaherty asserted? There is no conclusive evidence to show this is the case. In the post-Watergate era, contemporary history is often written more on the basis of leaks and privileged information by journalists, lawyers, and convicted felons than by historians. Yet, ironically, the historical profession has been the victim of guilt by association in connection with recent abuses of confidential information, and it remains to be seen if the profession can improve its image and create greater confidence among potential sources by adopting codes of ethics.⁴ It has not helped for public figures like former Secretary of State Henry Kissinger to use the legal system to retain personal control over documents that many archivists and historians have maintained are clearly public, not private, documents. Former Secretary of State Alexander Haig recently followed Kissinger's example of restricting access to papers at the Library of Congress. This action was taken by Haig and the State Department without giving the National Archives and Records Service the opportunity to examine the papers.

(4) Has active support by historical associations of such statutes as the Freedom of Information and Privacy Acts inadvertently contributed to greater sanitizing or actual destruction of documents not only by bureaucrats

³Allan G. Bogue, "Data Dilemmas: Quantitative Data and the Social Science History Association," *Social Science History* 3 (October 1979): 213-214.

⁴David H. Flaherty, "Privacy and Confidentiality: The Responsibility of Historians," *Reviews in American History* 8 (September 1980): 426, 428; Karen Winkler, "A Question of 'Historical Malpractice,'" *The Chronicle of Higher Education*, 14 January 1980, p. 3. This problem of guilt by association has unfairly tainted historians who have seldom been involved in leaks of confidential information compared to government officials, journalists, lawyers, and a variety of freelance social science writers.

who produce them but also by archivists and historians inside government who process them in anticipation that they will some day be declassified for research? At a meeting in July 1982 of the Society for History in the Federal Government, Allen Weinstein, professor of history at George Washington University and executive editor of the *Washington Quarterly*, and Alfred Goldberg, chief historian in the office of the Secretary of Defense, both suggested that there is potential conflict of interest or allegiance among federal historians, because of their dual roles as guardians of documents and assistants to researchers.⁵

(5) Can a professional code of ethics be written so that self-policing will not turn into self-censorship or what Connor Cruise O'Brien has called "counter-revolutionary subordination"? Curiously, in the late 1960s, this concern with counter-revolutionary subordination was greater than that over confidentiality of sources among groups like the American Political Science Association.⁶ The reverse is true today.

(6) Are proposed codes of ethics for history and related professions likely to result in more privileged access for a few rather than greater access for all? The current emphasis on protection of sources and lack of enforcement provision leads one to suspect that this might be true.

(7) Can the technical problems of appraisal and preservation in the face of the current document flood and the emergence of paperless records be dealt with adequately in a code of ethics? In other words, is the problem of record-keeping in the last quarter of the twen-

tieth century more mechanical than it is ethical? Is this not the heart of the access problem between those insiders who manage the paper flow and those outsiders who want to interrupt that process for research purposes? The answer to this question is simply not yet clear.

Having raised these questions, I now want to respond to them with a number of general observations. These answers will be based not only on what should or could be the responsibility of professional associations representing humanistic disciplines such as history in establishing and enforcing ethical standards, but also on a recent publication issued by the American Association for the Advancement of Science (AAAS), entitled "Professional Ethics Activities in Scientific and Engineering Societies." The general conclusions and recommendations in this 1980 report should be studied carefully by any learned or professional group thinking about establishing formal codes of ethics or general ethical guidelines⁷ because the groups affiliated with the AAAS have had a much longer history of adopting and attempting to enforce such codes and guidelines than have learned societies representing the humanistic disciplines. Yet it is not evident that the pitfalls already encountered by these scientific and quasi-scientific associations have been seriously considered by historians.

What are some of these pitfalls? Among other things, few scientific or humanistic professional associations have bothered to distinguish between ethical codes and ethical guidelines. Such terms as principles and rules are used interchangeably and very vaguely. Unlike the Society of American Ar-

⁵*New York Times*, 11 July 1982, p. 24F.

⁶"Ethical Problems of Academic Political Scientists," *P.S.*, *Newsletter of the American Political Science Association*, 1 (Summer 1968).

⁷Codes are often general and self-righteous statements formally adopted by an organization, compared to ethical guidelines which are more specific and intended to influence actions of individual members through persuasion and example.

chivists, few scientific or humanistic associations have established procedural or budget lines for enforcing ethical rules. The practices of most clearly indicate that violations "should be handled in an informal and private manner."⁸ Thus, because of the confidential nature of most cases, professional associations have done little to inform members of violations. Most existing codes are vaguely worded prescriptions that "invite neglect or self-serving behavior."⁹ Therefore, the claim that codes could be used in formal adjudication of grievances, including protection of confidential sources, is questionable at the moment because most codes are too abstract and too imprecise. Moreover, few codes contain concrete suggestions for the scientist or humanist to resolve conflicting interests or obligations. Only the American Anthropological Association has specifically recommended that research be discontinued when conflicts of interests on the part of the researcher cannot be satisfactorily resolved without doing a disservice to either the subject matter or professional integrity.¹⁰

One final pitfall professional historical organizations in particular must confront is a classic kind of conflict of interest. It is symbolically represented in the FOIA and the Privacy Act, both passed by Congress in 1974 in the immediate wake of Watergate. The former symbolizes the "public's right to know about government conduct," and the latter guarantees "the equally important right...to control the flow of personal information."¹¹ It is the balancing of these two conflicting interests that plagues individual historians and historical associations whenever they con-

sider establishing codes of ethics. This conflict is not simply of recent origin because of the passage of the FOIA and the Privacy Act. Rather, it touches the deepest philosophical core of historical research and also reflects some recent changes in the profession of history itself.

From the beginning of written history, historians have emphasized their need for access to sources. This has been true regardless of the dominant school of history. Whether it was history as moral teacher in classical times, von Rankian scientific history of the nineteenth century, history as reflection of human progress so popular in the early twentieth century in America, history as preventer of past mistakes, or history as relative to one's generation, the object of the individual historian has been to write on the basis of the most complete data possible. Through the nineteenth century this quest for information often resulted in access for only a privileged few because research was conducted primarily in private manuscript collections by and about elite groups and individuals. Since privacy and access were so often intertwined, conflict between the two was minimized.

This common elitism among historians and their subject matter began to break down in the twentieth century. While access to information became all the more important, so did the potential for violations of individual privacy. At the same time, it became more and more difficult for historians to justify privileged access because documentation about socioeconomic and political movements, often involving powerless groups, was found increasingly in public records rather than private manuscript

⁸AAAS *Professional Ethics*, p. 99; ASA *Footnotes*, April 1983, p. 9.

⁹AAAS *Professional Ethics*, p. 101-102.

¹⁰*Ibid.*, pp. 74-75, 102.

¹¹"Government Information and the Rights of Citizens," *Michigan Law Review* 73 (May-June 1975): 1336.

collections requiring special permission for access. Thus, access, first to private and then to public sources of information, has been an enduring hallmark of historians over time; but the relationship of access to privacy has become more problematic as the interests and members of the historical profession have become more heterogeneous.

Since 1945, for example, dramatic changes have occurred in the focus and methodologies of historians. At one level these changes have produced an unhealthy fragmentation within the profession, especially in the course of the 1960s and 1970s.¹² More important than this fragmentation has been the general shift among historians from preoccupations with traditional, political, diplomatic, socioeconomic, and military subjects to history of the masses, especially women and minorities, that is, "new social history." These shifting interests have been accompanied by changes in methodology, particularly quantitative techniques. It is not that historians are using or requiring new data for research as much as it is that they are subjecting old data (like census figures, legal documents, medical records, and personnel information) to quantitative analysis.¹³ Hence, there is both a greater need and a greater concern among government agencies and the people at large with the protection of individual privacy. From the point of view of professional historical societies, this "right" to privacy must be balanced by the collective need to understand society and that society's needs.¹⁴ Or put another way, "do users of records have responsibilities that are co-equal with [their] right to know?"¹⁵

Despite the new social and moral responsibilities inherent in applying quantitative techniques, this new methodology by and large reflects historians' traditional interest in aggregate data and their desire to prove the rule rather than the exception. There is some evidence that as historians, particularly those who study contemporary history, begin to act more like journalists and lawyers—who are usually interested not in the best evidence but simply in any evidence to prove the exception rather than the rule—historical associations will concern themselves more and more not only with the responsibility for policing the research and publication practices of their members but also with protecting the confidentiality of historical sources. These policing and auto-censorship concerns of historical associations may not necessarily be entirely compatible with the traditional concern of protecting open access to aggregate information. Such potential conflict is already reflected in recent disagreements among historians over the use and enforcement of the FOIA and the Privacy Act.

This philosophical dilemma is seldom discussed by those who advocate the establishment of codes of ethics because in recent years these proponents usually have been less concerned with general access to information than with establishing legal ways for protecting the confidentiality of sources. As might be expected, most of the existing codes explicitly or implicitly contain clauses in which privileged access and severe donor restrictions under certain circumstances are condoned. Since case law governing promises of confidentiality is very

¹²Joan Hoff-Wilson, "Is the Historical Profession an 'Endangered Species?'" *Public Historian* 2 (Winter 1980): 17-18.

¹³Gerald N. Grob, "Archivists and Historians: Problems of Appraisal," paper delivered at the 46th annual meeting of the Society of American Archivists, 20 October 1982, Boston, Massachusetts, *passim*; Bogue, "Data Dilemmas," *passim*.

¹⁴Bogue, "Data Dilemmas," p. 212.

¹⁵Grob, "Archivists and Historians," p. 18.

limited, it is unclear how liable the researcher is who violates the privacy of an individual.

Minimum ethical guidelines for research and publication in lieu of clear-cut case law or statutory precedents could be established through the adoption of very specific codes. If the major historical and related professional societies move in the direction of establishing codes of ethics, they should serve legal rather than moral purposes. This would be more practical than issuing guidelines or codes that are essentially only aspirational. If we expect codes of ethics to be of value in the courts, they cannot be vaguely worded. The difficulty, of course, in being specific is that both the major historical associations (OAH and AHA) represent many kinds of historians; and a code that might satisfy federal historians, for example, might not meet the needs of those writing contemporary history, especially diplomatic history. A case in point is the suggestion, in the September 1982 *Newsletter* of the Society for History in the Federal Governments that oral history donor restrictions be pro-

tected from FOIA challenges by amending the Federal Records Act. Rather than adding a new FOIA exemption, this approach would accomplish the same thing through statutory means. No position was taken on this proposal at recent meetings of the Joint Committee of Historians and Archivists, the Research Division of the AHA, and the OAH Executive Board, however, because of the controversial and murky legal nature of the proposal.

In the future we may see the adoption of very specific ethical codes and guidelines, or, as in the case of oral historians, the recommendation of very specific statutory changes by smaller historical associations because the large associations will be unable to agree on anything but vaguely worded prescriptions or statements of aspirations. Whatever transpires, I sincerely hope that historical associations make use of history in developing ethical standards for themselves. Otherwise we will simply make the same mistakes that other professional and learned societies have made. This would be an ultimate irony, but it remains a distinct possibility, since historians do not always follow their own advice about learning from history.

The Fellows' Posner Prize

For the past several years, the Society has had but one award for writing, the Waldo Gifford Leland Prize, given for the outstanding separate publication of the preceding year. Article-length contributions to archival scholarship, however outstanding, received no special recognition or incentive. Consequently, the Fellows of the Society have offered, and the Council has accepted, the establishment of a new award: The Fellows' Posner Prize. Honoring one of the most outstanding archival scholars and teachers of the 20th century — Ernst Posner — it will reward the best article published in the preceding year's volume of the *American Archivist*. The winning article will be selected by a subcommittee of SAA's Awards Committee. The cash prize will be awarded at the annual meeting.