

## Message from the Chairs

**T**his report comes at the end of a most unusual year, and many activities during this pandemic year were put on hold, not only by ILRIG but by many other organizations as well. The ILRIG sees its mission as being located at the center of the educational mission of ASIL, not only through annual meeting panels on recent research topics, resources, and methodologies, but also through electronic publications, its newsletter, and the close intersection of its activities with those of information professionals and their networks. In working closely with academics and senior international law practitioners, both professionally and in this association and ILRIG, awareness of ASIL and of integrated technology skills can be promoted. This works to draw in participation of legally-trained librarians and academic administrators of transnational programs in academia and global law firms as well: ILRIG sees ASIL as a space where we can update and polish our substantive knowledge of new developments in international law to pass on to students and colleagues. But just as important is our opportunity to provide international lawyers with updates on the knowledge base of international law, perhaps beyond specializations and in tandem with publishers and scholarly communications providers

who also participate in ASIL's ongoing educational efforts. Our section of the website posts *The Informer*; we also are undertaking careful review of some of our publication efforts and past offerings.

### **Electronic Resource Guides (ERG), the EISIL database & Research Liaison Program**

With regard to this review, we are working with ASIL publications to discern the best way forward for our Electronic Resource Guides (ERG), the EISIL database, and also how we might best provide refresher presentations outside of the annual meeting. We have had a research liaison program through which ILRIG members provide on-site research assistance before and after the annual meeting to panelists, about which, more below. All of these activities will need to be reassessed as we optimistically envision a return to the in-person annual meeting with the abatement of the current global pandemic of 2020-2021. The ERG guides may be reduced in number and may have to be absent during a time of transition and updating of the fewer guides to be posted, and database discussions were not able to take place at last year's annual meeting owing to the short time and pre-recording of our panel presentation. The online and remote format using

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## NEWS & EVENTS

ILRIG Business Meeting:  
7:00 a.m. Friday  
March 26, 2021.

## INTEREST GROUP OFFICERS CO-CHAIRS:

Heidi Kuehl  
Marylin Raisch

## SECRETARY/TREASURER:

Lucie Olejnikova

## NEWSLETTER EDITOR:

Jootaek ("Juice") Lee

the Zoom platform that has become one of those which is now ubiquitous in business and academic work prevented solid planning from moving forward.

### **The 2020 Program Presented**

Last year ILRIG prerecorded and delivered its guaranteed program “Contemporary Human Rights Research: Researching Human Rights and Artificial Intelligence” which was presented virtually on Friday, June 26, 2020 at 11:30 a.m. The panelist were Dr. Jenny Gesley, legal specialist at the Law Library of Congress for questions of law of German-speaking jurisdictions and the EU; and Jootaek Lee, assistant professor and librarian at Rutgers Law School (Newark).

### **The 2020 Business Meeting:**

A remote meeting of the leadership took place in early March 2021 and will be planned again with the new co-chair, as Heidi Kuehl rotates off and our newly-elected co-chair, Alex Zhang, moves in. Given that ASIL publications staff are also involved we consulted recently in a more tentative way and will convene to map out options for both the publications and the research assistance program. We published *The Informer* Summer/Winter 2019 issue in 2020 and will bring issues up to date now that the pandemic workloads and some job changes open up that possibility for our current executive group. Jootaek Lee continues as its editor, and Lucie Olejnikova as our Secretary/Treasurer.

**A**t this year’s upcoming Business Meeting, scheduled for 7:00 a.m. Friday March 26, 2021, we hope to discuss these matters as well as find-

ing out from the membership if they are interested in continued use of Zoom to coordinate discussions, book review or book club-type activities, etc. at low or little cost to our budget outside the annual meeting, perhaps after screen fatigue has lessened! We would like to do more activities in this regard to comply more fully with optimal activity levels for this IG but will need a way to accommodate restrained institutional budgets while increasing interest and learning opportunities for our members.

Wishing a healthy (!) and productive new year with optimism for the return of some of our normal activities.

Respectively submitted,

Co-chairs:

Marylin Johnson Raisch

Heidi Frostestad Kuehl

## Toward Sources for Researching the History of Human Rights

Marylin J. Raisch\*

Micheline Ishay, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE ERA OF GLOBALIZATION*, 2d. edition. Berkeley: University of California Press, 2008.

Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315 (2004).

As a research task, I thought that finding a very recent overview and analysis of the historical roots of human rights law, both the United Nations and the regional systems, would be straightforward. I discovered that it is easy to find chronologies of the post-World War II period, when human rights as such emerged after the human devastation of the genocidal death camps of the Third Reich, the annihilation of the atomic bombs dropped on Hiroshima and Nagasaki, and the traumatization of survivors of P.O.W. camps and forced migrations. What is less easy to discover are sources for the history of human rights other than the *jus cogens* norms, although these are variously identified according to positive or natural law, and discoverable by tracing their sources through judicial decisions, the Vienna Convention on the Law of Treaties art. 53, and from the consent and practice of states.<sup>1</sup>

In the course of this search for a bibliography or origins, I made two discoveries: first, there has been an attempt at the type of survey I was searching for, and second, this is an area of research that cannot adhere to and describe its scope without first delving into the definition of its topic, human rights. While it is always necessary to define one's terms in scholarly writing, the search for the origins of human rights laws moves immediately into consideration of norms, and only then can the sources be identified. This presents a challenge to information professionals who curate collections, because having first to undertake analytical work on distinguishing legal from ethical origins before the sources can be assembled feels like putting the cart before the horse. On the one hand, the legal sources can be categorized easily enough: for international law, these are the sources listed in Article 38 of the Statute of the International Court of Justice, and in fact the categories are familiar to all lawyers, namely, statutes/treaties, international/national judicial decisions construing international law, and the customs and principles of recognized international actors. This brings us right back to where we started with the peremptory norms of the paragraph above. We seem to be in a circle in which the head chases the tail or the tail frightens the retreating head, and we might assign "the legal" or "the normative" to either one.

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\*© Marylin J. Raisch, Co-Chair, International Legal Research Interest Group, ASIL; former Associate Director for Research & Collection Development, Georgetown Law

<sup>1</sup> See generally Ulf Linderfalk, UNDERSTANDING JUS COGENS IN INTERNATIONAL LAW AND INTERNATIONAL LEGAL DISCOURSE 75-80 (2020) and an older but authoritative general summary of sources in Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUSTL. Y.B.INT'L L. 82 (1988-1989).

"[T]he search for the origins of human rights laws moves immediately into consideration of norms, and only then can the sources be identified."

Human rights address human freedom and human suffering, and so we are now on a high plateau with the philosophers rather than on the ground with humanitarian relief, or, more to the modest aim of this book review and bibliographic essay, in the stacks with the librarians.

The survey that I discovered is the focus of this review: Professor Micheline Ishay's *History of Human Rights: From Ancient Times to the Era of Globalization*, second edition, 2008. While now over ten years old, her preface to this edition anticipates many of the new issues surfacing in human rights concerning the impacts of climate change and surveillance technology, for example. This monograph can be treated as a textbook for human rights history, and in that role it serves well to broaden the origin story of human rights.

However, the inclusion of non-western contributions to human rights in personal liberty from slavery to religious humanism, the list of works from Hammurabi's laws to Augustine's *City of God* and on into the literature of the seventeenth century leaves aside any definition of human rights. As a result, the tracing of ideas of human dignity and liberty make for a comprehensive bibliography that satisfies the spirit of what I was looking for in historic themes and sources, but as at least one other reviewer has pointed out, every major work of ethical philosophy and political theory seems to have made some contribution to the history of human rights in her view.<sup>2</sup> This may be true in one sense, but the resulting bibliography reads like a "great books" or core curriculum syllabus of a first rate undergraduate liberal arts program rather than a more closely curated selection of sources. Her chapters cover the ancient world, the Enlightenment, the Industrial Age, the World Wars, and Industrialization, and she presents a sound anticipation of the impacts of globalization given that the second edition was written just before the financial crisis of 2008-2009. After consideration of the ancient world, the text takes a mainly western turn. Everything, including Thomas Hobbes's works on retained liberty even in submission to a sovereign, look like an anticipation of human rights, so the role of property and power is not really distinguished from rights that protect the survival of the human being rather than his (and it would indeed be only his at this point) prosperity and presumed resources for making use of opportunity.

Professor Ishay's book is still unique, and there is value in an appendix that she includes with a timeline citing the major and minor works that she exhaustively collects in the survey of western and more recent global history. This is worth having in its print or electronic versions for stand-alone law schools or libraries of advocacy groups or international organizations where human rights analysis and strategy may be developed. This was not the outcome I anticipated in my search, and many monographs of more recent date exist on the history of human rights in regions of the world and specific sub-topics of human rights.

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<sup>2</sup> See, e.g., Susan Longfield Karr, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE ERA OF GLOBALIZATION*, 2d. edition (2008), 22 *J. WORLD HISTORY* 582-585 (2011)(book review).

*"Professor Ishay's book is still unique, and there is value in an appendix that she includes with a timeline citing the major and minor works that she exhaustively collects in the survey of western and more recent global history."*



My other discovery in the research quest was equally surprising: there are sound ways to define and test human rights substantively in researching the foundations of it, and that is best embodied in the work of political and social philosopher Amartya Sen. In his 2004 essay "Elements of a Theory of Human Rights" he succinctly provides a guide to the work of definition that will need to precede any attempt to trade Professor Ishay's breadth in exchange for better depth and precision. He fully recognizes that positive law theorists and many international lawyers adhering to the practical side of things do not always believe that there is any such thing as human rights at all, so no point in looking for origins.

*A theory of human rights must address the following questions in particular: (1) What kind of a statement does a declaration of human rights make? (2) What makes human rights important? (3) What duties and obligations do human rights generate? (4) Through what forms of actions can human rights be promoted, and in particular whether legislation must be the principal, or even a necessary, means of implementation of human rights (5) Can economic and social rights (the so-called second generation rights) be reasonably included among human rights? (6) Last but not least, how can proposals of human rights be defended or challenged, and how should their claim to a universal status be assessed, especially in a world with much cultural variation and widely diverse practice ... Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms. The induced obligations primarily involve the duty to give reasonable consideration to the reasons for action and their practical implications, taking into account the relevant parameters of the individual case.<sup>3</sup>*

He wants to meet critics head on. He states that the non-feasibility argument against particularly the economic and social rights would apply equally to first generation rights and a government's rule of law capacity, so this cannot be used to set aside the economic and social rights and it is not logical to use this to say they are not rights. He also speaks of the need to address this as part of looking at the acceptability of certain norms in other cultures, but actually these norms have varied over time *within* many cultures. His footnotes, rather than the grand overview of Professor Ishay's textbook, may serve as the best checklist for a library collection supporting the history of human rights. He sees each right as having a corresponding freedom, such as the prohibition on torture as having the "importance of corresponding freedoms" such as freedom from torture (a Kantian perfect obligation to refrain; an imperfect obligation to prevent). This may be the best way still to maintain a broad enough library collection, including non-western and critical discourse, and at the same time answer human rights skeptics.

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<sup>3</sup> Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHIL. & PUB. AFF. 315, 318-319 (2004).

"He sees each right as having a corresponding freedom, such as the prohibition on torture as having the "importance of corresponding freedoms" such as freedom from torture (a Kantian perfect obligation to refrain; an imperfect obligation to prevent)."

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## International Legal Research Group

The International Legal Research Interest Group (ILRIG) is dedicated primarily to its members' professional development in the areas of foreign, comparative, and international law (FCIL). ILRIG provides a forum for discussion among legal information professionals, legal scholars, and attorneys. ILRIG enhances its members' opportunities to share their knowledge about available FCIL resources, research methods, research techniques, and best practices. ILRIG organizes presentations, publishes a newsletter, and maintains a website that reflects the most recent developments in the legal research profession.

ILRIG members are particularly mindful of the interdisciplinary and multicultural aspects of contemporary foreign, comparative, and international law. Global legal policies and norms cannot exist without strong foundations built on exhaustive research. ILRIG is committed to being a forum for discussing ASIL's unique analytical needs.

ILRIG membership is open to all ASIL members. ILRIG should be of particular interest to:

- Law librarians
- Legal scholars
- Attorneys with FCIL practice issues
- Academic librarians
- Scholars working in political science, international relations, economics, and history
- Research professionals from government agencies, policy institutes, inter-governmental organizations, and non-governmental organizations

## The Informer

The *Informer* is the bi-annual newsletter of the International Legal Research Interest Group (ILRIG). Any views expressed in this newsletter are those of the authors in their private capacities and do not purport to represent the official view of the ASIL or ILRIG.

Submissions are welcomed and will be published at the discretion of the editors. Essays or articles should relate to foreign, comparative, and international law (FCIL) resources, research methods, research techniques, and best practices.

To contribute to future issues of *the Informer*, contact:

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