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Assignment 2: Archival Trends & Issues  
20 October 2020

## **Cultural Records: Access, Context, and Ownership**

### **Introduction**

Archives are homes to policy, history, information and, inevitably, culture. As the archival profession's reckoning with its passive power and the reality of its non-neutrality has accelerated, so have discussions of what to do with records that bear cultural significance, especially those belonging to colonized, enslaved, or otherwise marginalized cultures. As we carry out these discussions and strive for social justice for the marginalized in archives we must also identify and address the ways in which archival context, access, and ownership impacts our ability to achieve this justice. There are many ethical issues pertaining to archives that are exacerbated by cultural and political records. For these types of records, there may be disconnect between the communities they represent and the institutions that house them. This creates a social responsibility for the archivist to balance the needs of the institution, the community, the users, and the records themselves.

Parsing the interrelation of archival context, access, and ownership to uncover the most socially just path in cases like those the Baath Party Records, the Alabama Confederate Records, Japanese Internment, and *Lanier v. Harvard* led us to evaluate literature/practices concerning the role/influence of archival ethics and the practices around deaccessioning cultural records to more appropriate repositories. To accomplish this, we reviewed literature related to the aforementioned cases as well as more work related to ownership of culturally sensitive Native American materials, ownership in Vatican archives, and the presence (and thus treatment) of the marginalized contrasted against the celebrated within archival materials. Our review reveals that cultural records belonging to marginalized groups requires additional care and sensitivity in developing and maintaining donor relations, as well as critically reconsidering justifications for possession of cultural records within certain repositories and honestly appraising the informational and institutional value of cultural records when they are held apart from the groups/peoples which they represent. The following discussion of cultural records and the ethics of possessing them is divided into three segments, context, access, and ownership.

### **Access & Privacy**

Access is a major issue for archives that house cultural records because of the historical elitism of archives. Although gatekeeping measures explicitly barring specific groups based on social identity are currently uncommon in the United States, security measures, membership restrictions, financial cost, and institutional attitude still pose roadblocks to underrepresented

communities accessing material about them, produced by them, or created for them. Related to these conversations and practices on access are those on privacy. Opposite from socially just public access in archives, certain cultural records require additional privacy considerations. Such cultural records requiring additional attention to privacy may include objects and documents with religious value, materials produced without consent or against the will of the subject, and materials that pose threat for potential harm (Ryan, 2014; The Associated Press, 2020; Whalen, 2019).

The Alabama Department of Archives and History, the largest holder of Confederate material, holds records about slaves that are useful in African-American studies and genealogy. While there are no legal restrictions to accessing material, the environment created by the archive is not welcoming to non-white patrons. The archive presents a pro-Confederate perspective and is not staffed by people of colour (The Associated Press, 2020). Access works beyond policies. Although archives are not neutral, they can work to be more physically accessible to all people.

Historically, access policies were driven by donor requests. The focus on donor rights is even reflected by older versions of the SAA code of ethics (Steele, 2010). Current policies and the code of ethics have shifted towards supporting the rights and privacy of those represented by records (Marsh et al., 2020; SAA Council, 2020). Unfortunately this often withholds access from communities represented by these records. One extreme example of this is from the National Anthropological Archives (NAA). In the papers of William Lessa, the original donor and creator of the materials specifically requested access be withheld from anyone native born to the community his research surveyed. As the policies of the NAA shifted away from overvaluing donor requests in favor of considering communities whose culture is represented, this donor request was viewed as highly unethical (Leopold, 2008; Marsh et al., 2020). In addition to requiring the institution to racially profile researchers requesting access, the policy also withholds access from the community that would most value the information.

While widening access of cultural records is important, it is equally important to ethically protect privacy. Privacy is cultural. An archivist must consider the culture of the institution the records are housed in as well as the culture represented by the records. The Idaho State University Special Collections and Archives case study “Identifying Culturally Sensitive American Indian Material in a Non-tribal Institution” highlights photographs that are not considered sensitive to the non-tribal institution, but are sensitive to the tribes represented by them. These images depict a funeral and the Sun Dance, a sacred ceremony, and are assumed to be taken without consent. The institution consulted a local archivist from the Fort Hall Reservation about these sensitive photographs. It was agreed that access would be restricted to only family members of individuals depicted in the sensitive material (Ryan, 2014).

Archives must strive to be physically accessible to the communities its collections represent. Archivists have an ethical duty to represent the interests and protect the privacy of individuals who are represented by a collection but have had no voice in its creation or

accessibility. There has yet to be consensus on what this ethical duty practically consists of, but it is important to keep a socially just mindset when working with cultural records.

### **Contextualization**

The context in which cultural records exist has also begun to change in many ways. In the case of Idaho State University, mentioned above, bringing in appropriate communities changed the context in which the records could be evaluated (Ryan, 2014). Certainly, giving communities access to their own materials alters the way an institution interacts with their holdings. These changes in context also serve to hold archivists accountable to the communities affected by their holdings, rather than just the institutions holding the materials. The individual archivist simply no longer provides enough context to properly make sense of the life of records. The demand for more voices and more access bring additional partners into the archive.

The field is also growing more diverse. Segregation in archives throughout the University of North Carolina system during the Jim Crow era literally excluded black students and researchers. The context of this history has changed, however, as people of color take on leadership roles in the UNC system (Poole, 2014). In their new roles, these archivists highlight a long history of racially motivated injustice, thereby expanding the context of archival work from a steward of records to an advocate for records of their own exclusion.

Even records themselves can change their function in a new context. Administrative documentation of Japanese Internment, for instance, served to control internment. However, those same documents proved essential in getting the government to acknowledge its human rights abuses (Hastings, 2011). Without any change in the archivist or archive, communities are rediscovering and finding a new use for records that once served a discriminatory purpose. Whoever they are, the archivist finds themselves facing challenges on new ground, sometimes with the same records.

### **Ownership**

Underpinning the sensitivity of accessing and contextualizing cultural records is the sensitive nature of the negotiating legal versus cultural ownership of materials and deciding which conception of ownership should dictate the physical possession of cultural records. The sensitivity of these records is further intensified when considering the cultural use and value of the records in question and the ethics (or lack thereof) associated with their acquisition. This veritable spectrum of ownership issues explains the variety of reactions to owning cultural materials and developing archival approaches that prioritize the human rights of those represented in the archives. This variety also sheds light on the interconnections of archival ethics with the beliefs and attitudes of society at large and underscores the importance of critically evaluating the role of social power and oppression in how archives even collect materials in the first place. Looking at relevant literature and the themes surrounding three cases - the National Archives of Cambodia, the Baath Party Records, and the ongoing *Lanier v. Harvard* lawsuit - reveals that while the circumstances archival ownership of cultural records

differ from case to case, community outreach and establishing trust between institutions and cultural communities are essential to constructing ethical ownership of any records (Caswell, Cifor & Ramirez 2016; Caswell 2013; Ramirez 2015; Dingwall 2004).

The Khmer Rouge regime, though lasting only 45 months and killing 25% of the Cambodian population, “obsessively” generated records on their genocidal creation of an agrarian society, records that ultimately came into the possession of DC-CAM, a Yale-affiliated, all-Cambodian/survivor staffed archival organization, because it was “the only organization (international or domestic) with the interest and capacity to collect Khmer Rouge materials in the 1990s” (Caswell 2013, 121). In 2005, these records were legislated out of DC-CAM and into Cambodia’s governmental National Archives, citing the archival principle of inalienable right to custody given that the Khmer Rouge were a governmental body (Caswell 2013, 114-120). Caswell posits that DC-CAM inspired trust between all (innocent) stakeholders was the ideal *steward* for Khmer Rouge’s governmental records documenting the mass murder and oppression of the Cambodian people (2013, 115). By prioritizing stewardship over custodianship (as accomplished through expanding our understanding of provenance and construction of archival context, etc.) and thus trust over legality, archives can “accommodate the on-the-ground realities of societies in transition” (Caswell 2013, 115).

This case can be immediately contrasted against the controversies associated with the United States’ pillaging of Iraq’s national archives, library, and museum in order to confiscate documents including the Iraqi Baath Party Records (Caswell 2011). Though the American-based Iraq Memory Foundation laid a cultural claim to these national records and artifacts of Iraq, the method by which these records were acquired - as part of a military invasion - demonstrates that the United States government and its collaborators were willing to commit literal war crimes to gain ownership of these records (Caswell 2011, 211-216). No amount of outreach could ever remedy the breach in ethics here but this case does serve as a poignant reminder that the ethics surrounding cultural records often are not just words on a page - when the way in which we acquire records is criminal, our profession ethics and justice must dictate their return.

The criminality and thus legality of possession of the Iraqi Baath Party records opens the door to broader debates of legality and ownership in the realm of cultural records. *Lanier v. Harvard University*, the ongoing lawsuit filed by Tamara Lanier against Harvard with the intention of gaining stewardship of daguerreotype images of two enslaved people, Delia and Renty, that Lanier knows to be her ancestors based on her family’s oral traditions, and for damages for the humiliation then-Harvard faculty member Louis Agassiz subjected Delia and Renty to (Whalen 2019; Lee and Pham 2020; Svrluga and Reinstein 2019; Willoughby 2019; Hartocollis 2019; Prolago 2019). Lanier further reasons that Harvard has taken advantage of these images (particularly of Renty) for financial gain, which gives her claim legitimacy - not only were these enslaved people forced to sit for these daguerreotypes, but the same institution that forced them to do so is still profiting off of this action (Lee and Pham 2020). Harvard’s response that their ownership of the images is truly ethical as their institution has the resources to preserve the images and their reassertion that the images belong to them undeniably because they

are the rightful legal owner according the provenance of the images clearly exemplifies institutional insensitivity to cultural records.

Further, Harvard has already proved to Lanier and the rest of the world that the copies truly valuable to them - digitized, shareable - are already in their possession. This is what facilitated Harvard's ability to profit so massively off of these images in years past (Whalen 2019, Svrluga and Reinstein 2019). The daguerreotypes themselves could be theoretically, reasonably returned to Lanier with minimal to no material impact on the meaning and value of Harvard's archival and museum collections, yet the University balks. This demonstrates that, in the eyes of Harvard's collections and policies regarding deaccessioning, they're more willing to entrench themselves in a position predicated on recognizing legally prescribed racialized bondage as a perfectly ethical way to assert legal rights to archival materials enslaved people. This example is a summary of the issues of ownership and cultural records and the cyclic injustices are legally justified in archives and only further underscores how much work we must do in the archival field to make it one where ownership, possession, and access are based on community trust instead of legal manipulation.

## **Conclusion**

The Society of American Archivists summarizes that archivists have a professional and ethical obligation to "individuals and groups who have had no voice or role in the collections' creation, retention, or public use" and to "promote the respectful use of culturally sensitive materials" in their current Code of Ethics. However, as Steele points out, "the SAA provides little advice on this issue beyond this one-sentence charge" (2010, 105). With this being the case, it is then up to archivists themselves to decipher what constitutes respectful use and treatment of these cultural records. If this all is the case, then we as archival professionals have two choices - adjust policies for access and use in deference to the culture that produced these records and add resources to promote respectful use of cultural records or create and apply best practices for deaccessioning cultural records from institutional collections to more appropriate repositories. The cultures of others depend on it.

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