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## Avenues of mutual respect: opening communication and understanding between Native Americans and archivists

Cara S. Bertram  
*Western Washington University*

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**Avenues of Mutual Respect:  
Opening Communication and Understanding  
Between Native Americans and Archivists**

By

Cara S. Bertram

Accepted in Partial Completion  
Of the Requirements for the Degree  
Master of Arts

Kathleen L. Kitto, Dean of the Graduate School

ADVISORY COMMITTEE

Chair, Dr. Randall C. Jimerson

Ruth Steele

Dr. Laurie Hochstetler

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Cara S. Bertram  
October 23, 2012

**Avenues of Mutual Respect:  
Opening Communication and Understanding  
Between Native Americans and Archivists**

A Thesis  
Presented to  
The Faculty of  
Western Washington University

In Partial Fulfillment  
Of the Requirements for the Degree  
Master of Arts

By Cara S. Bertram  
October, 2012

## Abstract

The *Protocols for Native American Archival Materials* have called upon archivists to acknowledge and respect Native Americans' needs for privacy and control over their culture. While many archivists have protested against the restriction of Native American archival materials, the morals and ethics within the profession are not far from the needs of Native communities. This thesis will examine imperial archive, archival theory, current copyright laws, writings on archival ethics, and case studies of archives and Native communities. This investigation will demonstrate the practicality and application of the *Protocols for Native American Archival Materials*, and its importance to the archival profession in working with Native American communities by creating an open dialog and mutual understanding.

## Table of Contents

Abstract .....	iv
Introduction .....	1
Chapter 1: The Legacy of Imperial Archives .....	10
Chapter 2: Differences in Knowledge .....	19
Chapter 3: Legal Issues .....	28
Chapter 4: Privacy, Access, and the Ethics Question .....	38
Chapter 5: Application of the <i>Protocols</i> .....	54
Conclusion .....	67
Bibliography .....	75

## Introduction

Instead of regarding archives as institutions that hold the papers of ‘important people,’ archivists have worked to broaden the scope of what they collect and to bring in the voices and stories of people who have been marginalized based on issues such as race, gender, class and sexual orientation. However, the call of diversity often does not address the different cultural needs of safeguarding traditions and knowledge. Making an effort to diversify records within archives and to try to undo old institutions of imperialism is a noble endeavor, but just bringing in records is not enough. If archivists are going to acquire records from different cultures, then there needs to be an understanding and respect for different methods of the management of information.

This is a problem that archivists confront when dealing with Native American materials within their institutions, as a series of issues concerning privacy, access, ethics, and ownership arises. These challenge conventional archival theory and ask archivists to address not only present grievances, but also to address years of unethical treatment of Native American culture and communal rights to privacy. This makes many archivists uneasy about confronting the ethical issues of Native American records within archives. There has also been serious work on the part of archivists to create a balance between Native American and Western knowledge. This has manifested in outreach, collaboration, and the drafting and discussion of the *Protocols for Native American Archival Materials*.

In 2006, a group of Native American and non-Native American archivists, librarians, museum curators, historians and anthropologists gathered to create a set of protocols to develop best professional practices for dealing with Native materials held in non-tribal

organizations.<sup>1</sup> The *Protocols* seek to build relationships between non-tribal archivists and Native Americans by stressing the importance of accessibility of culturally sensitive records, intellectual and cultural property rights, repatriation and sharing of materials, education and training, and a general awareness of Native American archival materials within the profession.<sup>2</sup> The *Protocols* ask for collaboration and consultation between archives and Native communities to ensure the safekeeping and proper treatment of archival materials:

Collecting institutions and Native communities are encouraged to build relationships to ensure the respectful care and use of archival material. Meaningful consultation and concurrence are essential to establishing mutually beneficial practices and trust. Through dialogue and cooperation, institutions and communities can identify mutually beneficial solutions to common problems and develop new models for shared stewardship and reciprocity or for the appropriate transfer of responsibility and ownership for some materials.<sup>3</sup>

Here the *Protocols* encourage open dialogue between the two groups, asking not just for satisfaction on the part of Native Americans, but for “mutually beneficial solutions.” This opens the *Protocols* not as a set of rules for archivists to follow, but as a tool for discussion and to seek out solutions that will satisfy both parties.

The *Protocols* touch upon issues of access, intellectual property rights, context, repatriations, and mutual understanding of Native issues. Because of the sensitive nature of some of the materials, the *Protocols* ask archivists to restrict culturally sensitive records, claiming that this request is within current ethical codes of the profession, stating that: “These ethical codes (i.e., Society of American Archivists, American Library Association, American Association for State and Local History) instruct librarians and archivists to

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<sup>1</sup> Northern Arizona University, “Protocols for Native American Archival Materials,” <http://www2.nau.edu/libnap-p/protocols.htm>, 1-2 (accessed December 5, 2009).

<sup>2</sup> “Protocols for Native American Archival Materials,” 2.

<sup>3</sup> “Protocols for Native American Archival Materials,” 5.

practice neutrality and to strive toward open and equal access for all patrons, in accordance with the law, cultural sensitivities, and institutional policy. Restrictions may be placed on a collection for reasons of group and individual privacy, confidentiality, or security.”<sup>4</sup> The document draws upon the ethics of the archival profession and other related professions to back up its reasoning for restricted use of some materials.

The *Protocols* stress the sovereignty of Native Americans and their tribes to lay claim to the rights of materials and in some instances ask for repatriation. Here, the *Protocols* remind archivists that Native American communities are sovereign governments and should be treated as so, citing other legislation regarding repatriation that does so.<sup>5</sup> They further note that the protection of information can sometimes be a protection of that sovereign government, “Protecting certain kinds of secret information maybe a matter of ‘national security’ for sovereign tribal governments.”<sup>6</sup> This stresses the importance of some information and the potential harm that it can cause if not treated properly. The *Protocols* also ask for the sharing of information, sometimes providing copies of records for the tribes. In some instances Native communities ask for outright repatriation when information was obtained through theft or right of possession cannot be proven.<sup>7</sup> This recognizes Native communities as the owners of information, who have rights to access or ask for records.

The *Protocols* also ask for a change in language in finding aids and how archivists describe Native records, claiming that, “the use of outdated, inaccurate, derogatory, or Eurocentric language impedes access. Descriptive information can be improved with the

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<sup>4</sup> “Protocols for Native American Archival Materials,” 9.

<sup>5</sup> “Protocols for Native American Archival Materials,” 16.

<sup>6</sup> “Protocols for Native American Archival Materials,” 11.

<sup>7</sup> “Protocols for Native American Archival Materials,” 16-17.

addition of culturally appropriate and accurate language—from original titles through finding aids.”<sup>8</sup> In the instances of culturally inappropriate language, the *Protocols* ask that statements be given to ensure an understanding that there are concerns about cultural sensitivity or to give additional information to explain the offensive terms that are used. Because of the changes the *Protocols* have asked of archivists, the guidelines have become controversial and not always met with open arms.

The introduction of the *Protocols for Native American Archival Materials* in 2007 for endorsement by the Society of American Archivists elicited many responses from members and non-members of the SAA. Many of the comments congratulated the authors of the *Protocols* for starting to foster relationships of understanding between archives and tribal communities. As one stated, “The *Protocols* establish a basis of mutual respect from which all can move forward. The *Protocols* thus represent an important starting point in bringing healing to two estranged communities.”<sup>9</sup> The optimistic view of building bridges between communities can also be backed up by the results of Native American Graves Protection and Repatriation Act (NAGPRA), which many institutions were wary about, but was ultimately a positive influence.<sup>10</sup> The Native American Graves Protection and Repatriation Act of 1990 is legislation that protects the rights of Native communities in terms of human remains and sacred objects. Through this law, museums are required to repatriate human remains and sacred objects that belonged to Native communities. While many museums were hesitant about repatriation, NAGPRA has ultimately had a positive effect on museums and the Native

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<sup>8</sup> “Protocols for Native American Archival Materials,” 12.

<sup>9</sup> Frank Boles and others, “Report: Task Force to Review *Protocols for Native American Archival Materials*,” (February 7-10, 2008): 9.

<sup>10</sup> Frank Boles and others, 11.

communities with which they work. This is the type of relationship that the *Protocols* are trying to establish and many concepts from NAGPRA can be used towards archival materials.

But the positive outlook on the relationship between tribal and non-tribal archives was overshadowed by criticism of the *Protocols*. The Society of American Archivists Task Force, in charge of compiling comments for the *Protocols*, listed only five general comments for the endorsement of the *Protocols* and twelve general comments against the endorsement. While the criticism helps to build understanding between the communities and to shape the *Protocols* into a stronger document, it also reflects the hesitation on the part of archivists to change and accommodate other cultural views on information and access.

Many from the SAA were concerned over the violations of their own cultural norms. As Native Americans asked the SAA to make concessions in order to accommodate their cultural practices and to protect the privacy of tribes, members of the SAA also saw the *Protocols* as preferential treatment of a specific group of people. In terms of access, the commentators of the *Protocols* noted that, “Native American approaches to access stand in direct contrast to American law and mores. Specifically, in Native American tradition access to some material is restricted based on gender. Such restrictions would likely be viewed as illegal and unacceptable in American law and practice.”<sup>11</sup> From the point of view of archivists, Native American terms of access not only put restrictions on materials, but restrictions based on gender can be seen as troubling and wrong. However, this disturbance is also viewed by Native communities in the way archivists, archeologists, and anthropologists handle and share sacred objects, remains and information.

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<sup>11</sup> Frank Boles and others, 15.

But the *Protocols* cannot answer every question for archivists. Thus it is important for archivists to communicate with their colleagues to come up with answers to problems that they face. Even before the drafting of the *Protocols*, archivists had developed creative solutions to work with tribal communities in endeavors for mutual respect. These efforts to work with Native American groups do not seek to strip archivists of their power and authority over records, but rather to help cultivate relationships with Native Americans, whose rights over knowledge and culture have often been overlooked and ignored.

In order to work with Native Americans and other cultural groups, archivists have to expand their understanding of how information can be accessed and retained. However, a hesitancy to change often comes from not wanting to favor the needs of one group over another, a desire to perpetuate a concept of neutrality within the archives. The concept of a neutral archivist has always been an illusion and denying influence over the preservation of records and in shaping history is a dangerous path. As archivist Randall Jimerson noted, “Remaining neutral or invisible is impossible for archivists engaged in selection, appraisal, arrangement, description, and reference services.”<sup>12</sup> Everything that an archivist does has a distinct influence and forces records to adhere to a certain cultural standard.

Because of this inherent lack of impartiality, it is essential for archivists to acknowledge the dynamics of power between archivists and Native Americans if any progress is to be made between the two groups. If archivists want to truly diversify the archives, then they have to recognize that Western notions of archives, history, and knowledge have heavily influence and shape how the profession operates. Western

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<sup>12</sup> Randall Jimerson, *Archives Power: Memory, Accountability, and Social Justice*, (Chicago: The Society of American Archivists, 2009), 302.

archivists and historians have not always seen other cultures on an equal footing. Archivist Amy Cooper observed, “We have tended to see Native American culture as a throwback that must be preserved by the dominant culture, rather than as an active culture capable of collecting and telling its own story.”<sup>13</sup> While a policy of complete and open access to all information seems ideal, it is not always conducive to the diversity that archivists are currently striving for. In our efforts to bring other voices into archives and to bring acknowledgement to records that have otherwise been ignored, archivists need to be willing to address the differences in cultures and the need of privacy.

There has always been an inequality of power within archives, but archives and Native American communities have not always had an adversary relationship. Archives have at times helped Native Americans to reclaim their heritage and language that had been forcibly destroyed or lost. The Endangered Language Fund has sponsored linguists and Native peoples to go to archives to help recover lost languages. Here the relationship between Native communities and archives has been a positive one, highlighting the importance of archives in the recovery in lost knowledge.<sup>14</sup> Jeffery Mifflin noted that the Wopanaak and Narragansett languages were preserved within archives in New England, allowing the local Native tribes in the area to reclaim their languages.<sup>15</sup> Native communities have been able to revitalize lost knowledge because of documents preserved within archives and have added their own insights and cultural information into records. In these instances,

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<sup>13</sup> Amy Cooper, “Issues in Native American Archives,” *Collection Management* 27, no. 2 (2002): 46.

<sup>14</sup> The Endangered Language Fund, “The Breath of Life Archival Institute for Indigenous Languages,” <http://www.endangeredlanguagefund.org/BOL.php> (accessed May 10, 2012). In June 2011, the Breath of Life project visited the Smithsonian National Museum of the American Indian, going to the archives to recover lost languages.

<sup>15</sup> Jeffery Mifflin, “‘Closing the Circle’: Native American Writings in Colonial New England, a Documentary Nexus between Acculturation and Cultural Preservation,” *The American Archivist* 72, no. 2 (2009): 346.

archives and Native American communities have developed beneficial relationships and the exchange of ideas and collaboration have provided satisfactory results on both sides.

There does not need to be a line dividing Western and Native American archives. Solutions between different systems of understanding archives can and have been found. Archivists need to confront a legacy of inequality of power within archival institutions. A close examination of Native and Western knowledge, archival ethics, laws, and efforts put forth by numerous archivists and other professionals will show that the principles of Western archivists do not necessarily always conflict with the needs of Native communities and can still comply with their own ethics of the profession. Through familiarizing themselves with Native concepts of knowledge, archivists can apply the ethics of the profession to this group of users, owners, and donators of information. Also, an understanding of current laws on information, laws on Native remains and artifacts, and how other countries work with their Native populations can help archivists in their efforts towards working Native Americans. Not only do archivists need to start open dialogs with Native Americans, but with each other to move forward in changing the practices of the profession.

This thesis is organized into five chapters that cover the different aspects of archival theory and history that the *Protocols* touch upon, along with case studies that involve working with Native communities. It analyzes different aspects of archival theory and challenges old understandings of Western archives to bring Native American knowledge and information into the fold. The thesis also look into different ways in which Native American understandings of information fits into and can be reconciled with current Western archival theory and practices. Along with considering archival theory, this thesis also looks into different ways in which non-tribal archivists can engage with Native communities, creative

solutions to satisfy both groups, and goals that the archival profession can work towards to create greater awareness and understanding within the profession.

This thesis investigates the different aspects of archival concerns that the *Protocols* and Native records touch upon and how to resolve differences between archives and Native communities. The intersection of Native and Western knowledge has a long history with colonialism that has set the foundation of the treatment of indigenous populations within archives. By understanding this past, archivists can see the imbalance of power within archival institutions and how they continue today. A look into Native and Western knowledge can also help archivists to see where the two groups diverge and how to handle the introduction of different systems of information within the archives. Copyright and other legal matters within the archives as they relate to usage and access comprise another important element for archivists to understand. There are ways in which copyright laws can protect Native American archival materials and intellectual property from improper usage. This thesis also looks into the ethics and practices of the archival profession. While archivists have protested that the *Protocols* violate the ethics of the professions, the *Protocols* in most ways do not. Restricting materials for the sake of respecting privacy is a practice that archivists often engage in. Finally, this thesis looks into the application of the *Protocols* and other methodologies in working with Native communities. It provides examples of a variety of institutions working with Native communities with varying degrees of success. The variety of institutions will show the different ways the *Protocols* can be applied. Not every situation, institution and tribe will be the same, and this demonstrates the need for communications and flexibility.

## Chapter 1 – The Legacy of Imperial Archives

To understand the issues that arise between archival institutions and Native Americans, it is best to start with some of the differences between the two groups in their organization and dispersal of knowledge. There are several points in which Native Americans and non-native groups diverge in their methods of containing knowledge, from primarily written and paper archives to oral archives passed on from generation to generation. Neither methodology is inherently superior to the other, but they are rather different understandings of how knowledge is preserved and distributed. Still, there is a long history concerning the way indigenous knowledge has been dismissed from the archives through the exclusion of indigenous knowledge within the archives and the control of access to records. These old attitudes of control and access to records are an unfortunate legacy that has carried over into current archival practices through the assertion of Western ideology of archives over all other methods.

Imperial archives have carved out a long history of denying indigenous voices and control in archival materials. This is not a history exclusive to American archives, but it is a demonstration of old imperial structures of power and their influence over archives and the written past. These institutions were the foundation on which modern archives were modeled and have continued the attitude that the archivist, trained in Western ideologies, knows best about how to govern records.

The case studies of the legacies of colonial archives in South Africa, Canada, and the Virgin Islands present the dynamic between social memory, identity, power, and the recorded past as they relate to indigenous populations and Western archives. They demonstrate a

history of delegitimizing indigenous knowledge and a denial of control over their past within the archives that has to some extent continued into the present day. While not all of the case studies address the direct actions of colonial powers, they do deal with the issues of the recorded past left behind from colonization, a reminder of colonial pasts that still linger on the shelves of archives.

The process of selection and appraisal of archival documents assigns a value to records, determining what records have evidential and informational value to be placed in the archives and which ones are left out. These types of decisions are not perfected, as archivist Frank Boles wrote, “The archivist’s role in selection parallels the physician’s role in curing illness. In either case, mistakes, sometimes fatal mistakes, will be made.”<sup>1</sup> Archivist Richard Cox also noted that the process of appraisal is an artifact of the time that it occurred and archivists need to document how they came to their decisions for future archivists and historians to understand the decisions and the historical context in which records were create, selected, and appraised.<sup>2</sup> Cox further suggested that archivists are responsible for the silences of certain societal histories through their selection of records to keep.<sup>3</sup> The decision by archivists to not preserve the histories of certain peoples or to physically remove records can be harmful to a community.

Colonial archives have been guilty of these actions. As archivist Jeannette Bastian argued, “The power of the archive has been identified as both a shaping and controlling force in nineteenth-century imperialism, when deliberate and comprehensive data gathering and

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<sup>1</sup> Frank Boles, *Selecting and Appraising Archives and Manuscripts*, (Chicago: The Society of American Archivists, 2005), 10.

<sup>2</sup> Richard Cox, *No Innocent Deposits: Forming Archives by Rethinking Appraisal*, (Lanham: The Scarecrow Press, Inc, 2004), 245.

<sup>3</sup> Cox, 235.

storage about their vast and far-flung empire was the key to success of British colonialism.”<sup>4</sup> Her analysis of the link between archives and colonialism implied recordkeeping as a deliberate and political act that reinforced power and domination by colonizers, and the exclusion of certain narratives would help to strengthen imperial domination of history. Selection and appraisal have been a product of their time just as the archivists who shaped the archives, reflecting the values of their era and nationalities.

Through the creation of archives and the selection and appraisal of records, archivists have helped to shape social memory, determining whose stories are preserved and how they are presented. Sociologist Benedict Anderson’s concept of imagined communities emphasized the role of documents as essential to forming national identity, linking memory, heritage and identity to physical documents.<sup>5</sup> In the cases of colonized countries, the preservation of records was in the hands of the colonizers, creating an identity through text shaped by colonizers. Despite this point of view created by colonizers, those records have become important to building national identity as former colonized nations have strived to understand their past and hidden truths within archival documents about their ancestors.

While non-literate populations from colonial eras have employed oral traditions to create social memory and preserve their history, physical archives have long held symbolic power. The records of colonial archives can be a supplement to oral traditions to create a social memory within archives that includes the stories of both the colonizers and the colonized. Having power over the archives suggests a control over government and country, as Jacques Derrida wrote, “There is no political power without control of the archive, if not

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<sup>4</sup> Jeannette Allis Bastian, *Owning Memory: How a Caribbean Community Lost Its Archives and Found Its History*, (Westport: Libraries Unlimited, 2003), 36.

<sup>5</sup> Bastian, *Owning Memory*, 36.

memory. Effective democratization can always be measured by this essential criterion: the participation in and access to the archive, its constitution, and its interpretation.”<sup>6</sup> As colonial powers returned sovereignty to native populations or handed it to another government, the possession of colonial records became an important part of establishing a new national identity by understanding the past. Control over archives has not only implied control over the past, but also control over government. Archives as perpetuators of social memory and political power have made understanding colonial archives an important task for archivists and historians.

In the case of South Africa, the oppression by previous colonizers and colonial settlers continued to shape the archives that demonstrated the power of a few over many. Archivist Verne Harris wrote on his experiences in a series of essays from when he worked for the South African State Archives Services in the early 1990s. While South Africa had long since gained its independence from its colonizers, the environment of South Africa reflected a past of oppression of native peoples and the domination from colonization. Harris wrote about the appraisal methods of the South African State Archives, stating that, “Before the blossoming of ‘radical’ historiography and social history, the State Archives Service’s shaping of appraisal into a tool for academic researchers, particularly historians, resulted in the experiences of ‘ordinary people,’ and especially the experiences of the underclasses, being poorly reflected in the records we chose to preserve.”<sup>7</sup> Instead of working on documenting all experiences, archivists concentrated on the needs of researchers and

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<sup>6</sup> Jacques Derrida, *Archives Fever: A Freudian Impression*, 4n, as quoted in Jimerson, *Archives Power: Memory, Accountability, and Social Justice*, 132.

<sup>7</sup> Verne Harris, *Archives and Justice: A South African Perspective*, (Chicago: The Society of American Archivists, 2007), 97.

historians, “With the exception of the Boer resistance to British imperialism, they document poorly the struggles against colonials, segregations and apartheid. Black experience is also poorly documented, and in most cases is seen through white eyes.”<sup>8</sup> This Harris attributed to archivists catering to the needs of researchers and historians, to which the author admitted black South Africans made up only a small percentage of those users.<sup>9</sup> The practices of the archivists directly affected whose histories were being kept and Harris found that often it was not the histories of ordinary people.

The selection of records and the construction of memory were distinct political acts that legitimized the power of the South African apartheid government. Harris wrote about censorship and the protecting of secrets that “apartheid’s memory institutions, for instance, legitimized apartheid rule by their silences and their narratives of power.”<sup>10</sup> Even the appraisal of records became a slippery slope of government power through the destruction of records. Harris noted that in the “late 1980s numerous cases of unauthorized destruction of public records by government offices were documented and many more alleged. They pointed to a systematic endeavor to secure a selective amnesia ... the [archival] service was singularly unsuccessful to oppose this or exposing the culprits.”<sup>11</sup> The inability of archivists to protect records reflected not only the influence of government and old echoes colonial power structures, but also a failure to assert themselves as authorities in the selection and appraisal process. Allowing the destruction of records showed a passive compliance by archivists to reassert the status quo of controlling memory and past.

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<sup>8</sup> Harris, 178.

<sup>9</sup> Harris, 176.

<sup>10</sup> Harris, 43.

<sup>11</sup> Harris, 177.

Adele Perry demonstrated this point with her case study of *Delgamuukw v. British Columbia*, in which the Canadian Supreme Court was trying to settle land claims by a First Nation group in British Columbia. As the trial progressed, the written records within the archives from colonial rule were all from the perspective of the colonizers and were weighted as more credible when compared to the oral traditions performed by First Nation peoples.<sup>12</sup> The oral traditions, which were the form of archival record that the First Nations possessed, were disregarded as merely stories. While oral traditions were later recognized by Canadian law as legitimate records and the records of First Nation oral traditions were introduced into the archives, the case study showed the clear imbalance of power between Western archives and Native groups.

The Virgin Islands also felt the ramifications of imperial archives, but in a different way. After the Danish government sold the Virgin Islands to the United States, Danish archivists ended up taking a large portion of the records preserved in the archives. Another portion of those records were removed and taken to the National Archives in Washington, DC, taking away 250 years worth of records of colonization.<sup>13</sup> Jeannette Bastian argued that the removal of records has taken away the collective memory of the natives of the Virgin Islands. While the records were created by Danish officials and written in Danish and later English, the records created were often about the islands' inhabitants, revealing information about their past through the lens of colonizers. By making the appraisal decision that the

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<sup>12</sup> Adele Perry, "The Colonial Archive on Trial: Possession, Dispossession, and History in *Delgamuukw v. British Columbia*," in *Archive Stories: Facts, Fictions, and the Writing of History*, ed. Antoinette Burton, (Durham: Duke University Press, 2005), 326.

<sup>13</sup> Jeannette Allis Bastian, "A Question of Custody," *The American Archivist* 64 (2001): 96-97.

majority of the records did not detail the “rights and property” of the inhabitants, Danish archivists literally took away the history of the residents of the Virgin Islands.

Even though the people of the Virgin Islands possessed a strong oral tradition, they also longed for the records to continue to understand their own past. Bastian wrote that, “Virgin Islanders nonetheless are fully aware of the loss of their history and perceive historical records as perhaps the only way to finally hear the voices of the colonized—within the archives of the colonizer.”<sup>14</sup> The records held historical significance to the inhabitants of the islands and the decisions to take the records away affected understandings of past and community that were invaluable to the formerly colonized peoples.

The justification of removing the records from the Virgin Islands to Denmark was based on archival principle of provenance, which is “the organization or individual that created, accumulated, and/or maintained and used the records in the conduct of business prior to their transfer to a records center.”<sup>15</sup> The Danish archivists made the appraisal decision that the records belonged to the Danish government and that after the purchase of the Virgins Islands by the United States, subsequent records then belonged to the United States.<sup>16</sup> But Bastian posed questions concerning who the records were about and whose history they represented. Possession of the records would help to shape identity in the Virgin Islands by giving the inhabitants access to their past. The selection and appraisal methods based on provenance did not take into consideration the affects that the removal of the records would have on the native population and the implications of taking away their social memory.

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<sup>14</sup> Bastian, *Owning Memory*, 85.

<sup>15</sup> Bastian, *Owning Memory*, 80-81.

<sup>16</sup> Bastian, *Owning Memory*, 81-82.

While it may not be obvious how the shaping of social memory of the past affects current archival practices, it does have ramifications. The case studies were examples of a history of disconnect between Western and Native knowledge, a denial by archivists to allow indigenous populations access and control in the archives. In both the past and the present, indigenous populations were unable to control information about their communities in a legitimate way. There have always instances of subversion of archives by indigenous communities, however formal power has always been a difficult feat for them to obtain.

By denying Native American groups access and control over materials within non-tribal archives today, archivists continue the legacy of imperial power and may be unknowingly constructing social memory in damaging ways. By holding onto Native American knowledge and allowing access to anyone, archivists are dismantling the way Native American social memory is constructed and have reconstructed it into a Western point of view. Information and social memory that were once highly structured and handed down in a specific way are taken apart and distributed in what Native communities would consider a highly inappropriate way. The case studies of colonial archives and their successors demonstrated the effects that archives can have over native populations and the ramifications of the assumption of truth and impartiality. The records produced by colonial governments are still valuable sources to have as they show the perspective of the colonizers and sometimes capture the histories of people who did not leave behind written records, especially when their oral histories have been lost. But to be able to control those records and access them affords great symbolic power. It helps to create a sense of identity within communities and a sense of control after colonization. Judging past archivists on their decisions and their value systems is a moot argument. Instead present historians and

archivists need to understand why archivists made such decisions and how to fill the silences in the archival records and the structures of power that created the records. Being conscious of these silences and understanding how history has been shaped, archivists can move away from the colonial past.

## Chapter 2 – Differences in Knowledge

Beyond the history of imperial control of archives, there are other points in which Native and Western knowledge do not match up, causing issues between institutions. Much of the knowledge of Native communities has been passed down through oral traditions and is compartmentalized, sectioned off from certain members of the community. Western knowledge is often passed on in written forms and is often subjected to open and equal access. While oral traditions have been scrutinized in the past, they are now more accepted by archivists as a form of archival records. While oral traditions have gained more respect, an awareness of these differences will help archivists to understand the importance of respecting indigenous forms of knowledge and how it is distributed. Archivists need to know how important these traditions are to Native Americans and that they are not arbitrarily censoring information. It plays an essential part in Native American life.

The contention between systems of knowledge is an issue that also arises in other countries. Looking into studies from other countries along with American examples will help archivists to broaden their own points of views and understanding of the tensions between colonial and indigenous populations. Examples from South Africa and Australia alongside systems of knowledge from the Hopi show the history and present condition of the tension between indigenous and Western knowledge.

Oral histories have been a main method of passing on and storing information amongst Native Americans. Adele Perry has described oral histories as an oral archive, which has come into contention with Western understandings of archives and has often had its legitimacy questioned. Oral archives and written archives have been a point of contention

as one historian wrote that, “Those who write and preserve their writing in ... ‘records’ have history and those who do not have only the misty netherworld of myth.”<sup>1</sup> Through Western culture, written records have held greater legitimacy and oral traditions have been considered merely stories and folklore, excluding Native voices from archives.

Even bringing oral histories into archives can be problematic. When Native knowledge is brought into paper archives, the structure of the oral tradition is often destroyed as oral traditions become static with recordings and knowledge that should have been secret becomes open to everyone. Sello Hatang, a South African archivist, said that oral traditions are fluid and that every telling of a story is different. Once that tradition is recorded the information becomes static.<sup>2</sup> However, the transfer of oral traditions into written format is not always a negative concept as it has preserved knowledge and languages that would have otherwise been lost. But it does raise issues of who has access to that information as written information can become more easily spread and the control over it can be easily lost.

The transfer of traditional knowledge into records and their placement into Western archives can cause problems as the views of Western and Native Americans over access to information differ. Within many Native American cultures, information is owned by the community and its protection should reflect the interests of the whole as opposed to individuals. The protection of this information often depends on secrecy about cultural practices and rituals, and religious and other sacred knowledge may only be accessed by certain peoples within the tribes. There is a structure and hierarchy to access certain

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<sup>1</sup> Adele Perry, “The Colonial Archive on Trial: Possession, Dispossession, and History in *Delgamuukw v. British Columbia*,” in *Archive Stories: Facts, Fictions, and the Writing of History*, ed. Antoinette Burton, (Durham: Duke University Press, 2005), 334.

<sup>2</sup> Verne Harris, *Archives and Justice: A South African Perspective*, (Chicago: The Society of American Archivists, 2007), 230-231.

information with the lines being drawn at different intersections of the community, including age, sex, and status. These are not meant to be discriminatory divisions, but rather a different understanding of how information should be distributed within that culture. Michael Brown explained the essential nature of keeping certain information controlled and secret to indigenous peoples.

The social fabric of native nations often consists of reciprocal spheres of knowledge, the boundaries of which are zealously protected. Elders preserve information that they share only with those who demonstrate required wisdom. Women and men have understandings unique to their gender, fostering complementarity [sic] that helps to keep spouses together in times of trouble ... The uneven distribution of information thus strengthens social bonds while insuring that powerful knowledge remains in the hands of those who know how to control it. To outsiders, this patchwork approach to knowledge seems artificial, but to cultural insiders it is simply the way things were meant to be.<sup>3</sup>

As Brown wrote, the compartmentalization of knowledge holds important significance to Native culture and social ties. Keeping information secret is not a form of censorship or discrimination, but just a way that the society functions and strengthens the bonds within the community.

When that information is removed from the community, there are real consequences and harm done to the tribe. In the nineteenth and twentieth centuries, anthropologists and ethnographers dedicated their efforts to preserve Native culture as these cultures would disappear due to assimilation.<sup>4</sup> The results of the works and records produced by anthropologists and ethnographers are a double edged sword. As mentioned before, languages and knowledge that were lost are now preserved through records and accessible to

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<sup>3</sup> Michael Brown, "Cultural Records in Question: Information and Its Moral Dilemmas," *Cultural Resource Management* 21, no. 6 (1998): 18.

<sup>4</sup> Michael Brown, *Who Owns Native Culture?* (Cambridge: Harvard University Press, 2003), 26-27.

Native communities to reclaim. It also meant that knowledge was accessible to everyone and it meant a loss of control of that information. One example is the work of Reverend Heinrich Voth, who worked with the Hopi Native Americans and took around 2,000 photographs, mostly of everyday activities, but also of religious activities.<sup>5</sup> His photographs and records became so well circulated and used by other researchers that even if his photo collection was to be restricted, the control over the images and records has already been lost due to their wide circulation in books and articles. This is to the detriment of the Hopi people, as Brown noted that, “Within Hopi society, religious knowledge is rigorously compartmentalized among a range of specialized organizations. Community values discourage curiosity about the details of rituals in which one is not a direct participant.”<sup>6</sup> Pictures and descriptions published by Voth have damaged the cultural order that the Hopi depended on and had real consequences for the Hopi.

The harm done by Voth was reflected in the bitter tone of Hopi member Don Talayesva’s autobiography, *Sun Chief*, when describing Voth’s intrusion on sacred ceremonies, “During the ceremonies this wicked man would force his way into the kiva and write down everything that he saw. He wore shoes with solid heels, and when the Hopi tried to put him out of the kiva he would kick them.”<sup>7</sup> Voth’s presence was not welcomed by the Hopi, nor was his documentation of the rituals being performed. By sharing the details and images of ceremonies outside of the tribe, Voth disrupted the cultural practices of the Hopi and upset the members of the tribe, taking away the community’s rights over their own

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<sup>5</sup> Brown, *Who Owns Native Culture?* 13.

<sup>6</sup> Brown, *Who Owns Native Culture?* 13-14.

<sup>7</sup> Don Talayesva, *Sun Chief*, as cited in Michael Brown, *Who Owns Native Culture?*, 13.

rituals and songs. To Native Americans, the spread of their cultural practices and the loss of control over them is a deep and personal violation.

In contrast, Western archives work in a culture of open access to information and more individualistic rights, such as the right of the donor to share the information he or she has given to an archive. Much of the foundations of Western archival principles are strongly based upon the writings of the Dutch Manual, the first writings of archival theory developed by Dutch archivists S. Muller, J.A. Feith and R. Fruin.<sup>8</sup> Within English speaking countries, the works of T.R. Schellenberg and Sir Hilary Jenkinson have become the foundation of archival theory.<sup>9</sup> These cornerstones of the archival profession have influenced how archivists have understood access to information. Jenkinson's understanding of archives is that archivists are passive gatekeepers of records and information. Schellenberg's theory on access to archival materials dictates that, "Records should be open for use to the maximum extent that is consistent with the public interest. Since the purpose of an archival agency ... is to make records available for use, an archivist normally favors a policy of free access."<sup>10</sup> The concessions to secrecy of information that Schellenberg gives are mostly affiliated with national security or confidential business concerns.<sup>11</sup> The freedom of information has been a strong influence in how Western archivists have dealt with archival records. American culture especially has a strong tradition of equality, thus equal access, which is why the two

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<sup>8</sup> S. Muller, J.A. Feith and R. Fruin, *Manual for the Arrangement and Description of Archives*, (New York: H.W. Wilson Co., 1968).

<sup>9</sup> T.R. Schellenberg, *Modern Archives: Principles and Techniques*, (Chicago: Society of American Archivists, 2003). Sir Hilary Jenkinson, *A Manual of Archive Administration, Including Problems of War Archives and Archive Making* (Oxford: The Clarendon Press, 1922).

<sup>10</sup> Schellenberg, 226.

<sup>11</sup> Schellenberg, 227 and 229.

systems of maintaining knowledge, Native and Western theories, have a hard time melding together.

The concern of restricting access to information rises from a fear of censorship that might be important to the public. However, the restriction of access to Native knowledge does not necessarily equal a form of censorship. Kimberly Christen defined censorship as a political act and argued that restrictions upon Native knowledge were not an abuse of power. It was another difference amongst humans and understanding the world. She states that, “In other words, reminding ourselves that censorship itself is practiced within specific political boundaries might help us understand that not every instance of ‘not seeing’ is an abuse of power, but instead a practical implementation of cultural protocols aimed at maintaining specific types of knowledge in a world characterized by human differences.”<sup>12</sup> Christen places the concept of restrictions upon different types of knowledge as a way of maintaining and respecting different understandings of knowledge, that the Western point of view of managing archives is not the only concept nor is it a superior one. If we take Christen’s definition, then archivists can come to the understanding that restricting Native American archival materials is not a form of censorship and the restriction of culturally sensitive materials becomes more compatible with Western points of views.

While these philosophies on how to manage records and information have been invaluable to the archival profession, they reflect a narrow understanding of knowledge and how to distribute it. As archivists and historians push for archives to become diversified in their holdings, different cultures are being incorporated into a strongly Western influenced

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<sup>12</sup> Kimberly Christen, “Opening Archives: Respectful Repatriation,” *The American Archivist* 74, no. 1 (Spring/Summer 2011): 191.

institution. American archives are not the only institutions that have faced issues of conflicting points of views. Other professions and countries have addressed these concerns about diversity and respect in regard to Native communities. The establishment of the Native American Graves Protection and Repatriation Act has forced museums and archeologists to work with Native Americans about funerary objects and human remains, creating relationships of respect and understanding. Countries like Australia that have similar backgrounds of English colonialism and marginalized Native populations, have established laws and protocols that address issues of cultural sensitivity and respect when it comes to museums, libraries and archives.

The *Aboriginal and Torres Strait Islander Library and Information Resources Protocols* are an Australian set of protocols designed to help libraries, archives and information services to interact with indigenous populations.<sup>13</sup> It addresses issues of collecting aboriginal materials. The Australian Protocols stresses that it does not promote censorship, but rather collaboration. Like the *Protocols for Native American Archival Materials*, the Australian Protocols acknowledge themselves as a guide for professionals to use to navigate indigenous materials: “The Protocols should enable you as an information professional to make sound judgments regarding appropriate responses to any issues, or provide you with some ideas about where to go to for assistance if more expertise is required.”<sup>14</sup> The Australian Protocols were one of the foundations from which the *Protocols*

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<sup>13</sup> Aboriginal and Torres Strait Islander Library, Information and Resource Network, “Aboriginal and Torres Strait Islander Protocols for Libraries, Archives, and Information Services,” <http://aiatsis.gov.au/atsilirn/protocols.php> (accessed July 23, 2012).

<sup>14</sup> The Aboriginal and Torres Strait Islander Library, Information and Resource Network, “Aboriginal and Torres Strait Islander Protocols for Libraries, Archives, and Information Services.”

*for Native American Archival Materials* was based. It asks for similar levels of respect and both Australia and America come from colonial backgrounds.

The introduction of the *Protocols for Native American Archival Materials* asked archivists to address issues of cultural sensitivity and to create relationships with Native communities in regards to records. The *Protocols* do ask a lot of archivists and challenge deep notions of access to information and archives. However, it is long past due that archivists deal with these issues and step away from a past of cultural imperialism and domination of western culture. By examining established archival ethics and policies on restrictions, the *Protocols* do not stray too far from the archival theories laid down by Schellenberg and help to encourage archivists to adapt to changing notions of diversity and respect.

The differences between Western and Native knowledge have prompted different professions to reexamine the way they deal with aspects of culture, artifacts and human remains belonging to indigenous communities. The development of new protocols and ethics in dealing with Native culture has stemmed from years of abuse and mistreatment. While many thought they were preserving Native culture, believing its various tribes and nations would die out, many anthropologists, ethnographers and archeologists have done harm to these communities. The act of recording secret ceremonies and songs, along with the physical disruption of human remains and artifacts, has caused real distress within Native communities. Archivists need to acknowledge that these records can cause hardships for Native American communities and need to reconcile these problems.

As Mark Greene pointed out, other professions have adapted and reconsidered their practices: “Archivists are being asked to join anthropologists, archaeologists, ethnobotanists,

and other professionals in examining their past and current practices in regard to Native populations. The archives profession should enter this conversation with as deep and broad a perspective as possible, benefiting from the theory and practice of other professions.”<sup>15</sup>

Other professions have collaborated with Native communities to reach a common ground between Western and Native knowledge and archivists can benefit from that experience. Despite their differences, Western and Native systems of knowledge are not incompatible. Drawing upon the experiences from other professions and countries will help archivists to shape new policies and to find common ground with Native Americans.

Another aspect that comes up with the differences of knowledge and information systems is the legal element. Laws and legislation have been developed concerning who owns information and intellectual property, but what does that mean for Native knowledge? Copyright and other protections are given to more recent works and to individual authors; however, the concept of a community owning an idea or certain knowledge is not always as clearly defined. It can be challenging to work Native understandings of information into a legal system that heavily favors Western notions of knowledge and ownership. However, other legislation that has been written for the protection of Native American rights can be used to bring Native American information systems on equal footing with Western ones.

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<sup>15</sup> Mark Greene, *Archival Outlook*, April/May 2008, 25.

### Chapter 3 – Legal Issues

When trying to understand who has the rights to Native American materials within the archives, issues such as copyright and intellectual property come up. Copyright laws determine who has control and owns intellectual property and ideas. Other legislation also needs to be taken into consideration when dealing with Native American archival materials. There are ways in which the Native American Graves Protection and Repatriation Act can be applied to archival materials and it has been used by federal institutions, as well as the American Indian Religious Freedom Act. By understanding the complex nature of copyright laws, intellectual property, NAGPRA, and other related legislation, archivists can see how the law can help or hinder efforts to protect Native American materials. Being in compliance with the law can also be a motivator for archivists to work with Native American communities.

The vagueness of the definition of intellectual property can cause problems when trying to understand where control of cultural heritage lies. In *Navigating Legal Issues in Archives*, Menzi Behrnd-Klodt outlines intellectual property in terms of the protection of ideas, usually concerning patents, trademarks and trade secrets.<sup>1</sup> The Society of American Archivists also defines intellectual property as “A group of intangible rights that protect creative works, including copyright, trademarks, patents, publicity rights, performance rights, rights against unfair competition.”<sup>2</sup> There was no mention of cultural heritage as either an aspect of intellectual property or as a subject of copyright protection. The SAA does

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<sup>1</sup> Menzi Behrnd-Klodt, *Navigating Legal Issues in Archives*, (Chicago: Society of American Archivists, 2008): 266.

<sup>2</sup> Society of American Archivists, “SAA: Glossary for Archival and Records Terminology,” [http://www.archivists.org/glossary/term\\_details.asp?DefinitionKey=820](http://www.archivists.org/glossary/term_details.asp?DefinitionKey=820) (accessed December 8, 2010).

acknowledge the concept of cultural property, though, and provides a definition: “The concept that a society, especially that of indigenous peoples, has the authority to control the use of its traditional heritage.”<sup>3</sup> The note provided with the definition recognizes the rights held by a community and not just by individuals. At the same time though, the validity of cultural property rights are hurt through the acknowledgement that, “Cultural property rights have not been generally established or codified by statute in the United States.”<sup>4</sup> While the SAA acknowledges the concept of cultural property, its definition of intellectual property has more weight.

Taking concepts that are more familiar in terms of corporate or individual rights, the authors of the *Protocols for Native American Archival Materials* shaped their definition of intellectual property to fit the notions of patents, trademarks, and franchise to protect culturally sensitive materials from unauthorized usage. The definition takes the legality of intellectual property and reforms it in a way that fits the needs of Native Americans. The *Protocols*, drafted by a group of tribal and non-tribal archivists, librarians, museum curators, historians, and anthropologists, defined intellectual property as, “Personal property, including Native American cultural heritage, that could be subject to copyright, patents, trademarks, franchise agreement, business goodwill, and *droit de suite*.”<sup>5</sup> By defining intellectual property in such a way, it claimed that heritage was something that could be protected through laws that similarly protect symbols and names of organizations and people.

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<sup>3</sup> Society of American Archivists, “SAA: Glossary for Archival and Records Terminology,” [http://www.archivists.org/glossary/term\\_details.asp?DefinitionKey=821](http://www.archivists.org/glossary/term_details.asp?DefinitionKey=821) (accessed December 8, 2010).

<sup>4</sup> Society of American Archivists, [http://www.archivists.org/glossary/term\\_details.asp?DefinitionKey=821](http://www.archivists.org/glossary/term_details.asp?DefinitionKey=821).

<sup>5</sup> Northern Arizona University, *Protocols for Native American Archival Materials*, <http://www2.nau.edu/libnap-p/protocols.html>, 21 (accessed December 5, 2009).

American copyright laws protect creators' rights to their work, published or unpublished, which applies even with materials that have been donated to archives. While archives might hold the physical documents, the intellectual property can still be held by the creator of the materials if it is not otherwise transferred to the archival institution.<sup>6</sup> Copyrights imply a different sort of restriction on archival materials than being unable to access them completely. Usually users can access the materials but the usage of those materials is limited and controlled by others until the copyright expires.<sup>7</sup> In general, archivists need to be aware of copyright laws to help users comprehend the restrictions on collections. This also prevents any liability on the part of the archives by allowing improper usage of copyrighted materials. Businesses or individuals may copyright ideas and intellectual property to assert ownership over them, which may result in restricting access to certain materials within archives. Menzi Behrnd-Klodt noted that businesses often limit access to their records in order to protect information about the organization and any strategic plans and ideas.<sup>8</sup> Archivists need to be able to recognize when copyrighted materials come into their repository to better serve their donors and users. Physical stewardship of materials does not imply that the archives control the intellectual property.

Despite the concerns about privacy and the exploitation of Native knowledge and culture, it can be hard to determine who has the rights to this intellectual property, especially with American laws on intellectual property. Difficulties arise in protecting indigenous knowledge with the usage of copyrights, as it is hard to establish an individual creator and

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<sup>6</sup> Trudy Huskamp Peterson, "The Gift and the Deed," in *A Modern Archives Reader: Basic Readings on Archival Theory and Practice*, ed. Maygene Daniels and Timothy Walch (Washington, DC: National Archives and Records Administration, 1984), 141-142.

<sup>7</sup> Menzi Behrnd-Klodt, *Navigating Legal Issues in Archives*, (Chicago: Society of American Archivists, 2008), 250.

<sup>8</sup> Behrnd-Koldt, 104.

many traditional knowledge and art go beyond what normal copyright laws cover. Tom Greaves pointed out that, “Current American law places virtually all American Indian culture, including tribal names, in the public domain, available free to anyone who sees a commercial opportunity ... Principally, this is because Indian cultural items (e.g. medicinal knowledge, dances, clothing, folklore, etc.) are traditional, and as such have neither an identifiable author/creator (as required by copyright) nor novelty (as required by patent).”<sup>9</sup> Because of the age of the intellectual property and the inability to pinpoint a specific creator, applying American copyright laws is almost impossible when it comes to Native American knowledge.

Michael Brown also acknowledged the limited protections offered by copyright laws and wrote about how they can affect Native communities. Brown defined copyright as acknowledging “the legitimacy of an author’s desire to be rewarded for inventiveness and intellectual labor.”<sup>10</sup> These systems of copyright while protecting the privacy and rights of people and organizations have also been used to exploit native peoples into losing the rights to their own songs and stories. While piracy has been decreasing as laws better protect native works, there are still concerns of time limits of copyright. This means that certain sacred works can become detached from their communities once the copyright has ended.<sup>11</sup> While copyright laws offer some protection, they do have vulnerabilities when it comes to Native works, as Brown pointed out. Copyrights can end with the death of the creator or stay with a family for a certain amount of time, but in terms of Native works some images and words belong or are deeply connected to Native communities. Once copyright has expired

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<sup>9</sup> Tom Greaves, “Examining Indigenous Rights to Culture,” *Cultural Dynamics* 14, no. 2 (2002): 133.

<sup>10</sup> Michael Brown, *Who Owns Native Culture?* (Cambridge: Harvard University Press, 2003), 55.

<sup>11</sup> Brown, *Who Owns Native Culture?*, 62-63.

that community would lose control over that information and it could lead to sacred materials being exploited by outsiders.

Copyright issues can be further complicated when creators of records and provenance are not understood. Even though there are ethical or legal problems with the way many records regarding Native Americans were created, there is a sense on the part of archivists that they are not responsible. In response to the *Protocols* requesting that archives look into these matters the SAA Task Force wrote:

If such a right exists, commentators note that the *Protocols* require an archives to document not only that the material was obtained by the archives in a legal and ethical manner but also that the person or agency who or which originally collected the data did so in appropriate ways. With the passage of time, such information may be simply unobtainable.<sup>12</sup>

Archivists usually stress the importance of the context of archival materials and their relationship to other materials within the collection and to the creator. However, as the *Protocols* ask for the ethical and legal context the records were created in, the SAA can be seen shying away from the responsibility. Through NAGPRA, archeologists and museum curators have had to address these issues. One archeologist commented on the *Protocols* that, “As Native people asked in the case of NAGPRA why only their ancestors’ remains were desacralized for the sake of science, they have the right to ask a similar question about other forms of expression acquired under similarly inappropriate circumstances.”<sup>13</sup> Here it was emphasized that Native peoples should be able to question why sacred information is being shared at the violation of their cultural rights, especially as much of the information was created through unethical means. By allowing illegally acquired items into archives and

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<sup>12</sup> Frank Boles and others, “Report: Task Force to Review *Protocols for Native American Archival Materials*,” (February 7-10, 2008): 19.

<sup>13</sup> Frank Boles and others, 11.

not evaluating how they came to be and allowing access, archivists are ignoring the circumstances in which the records were created and ignoring the harm done to the communities during the creation of the records. The lack of information about creators and the legality of the records can then make copyright or intellectual property hard to establish.

American copyright laws do not lend themselves well to the protection of Native American archival materials; however, other countries have applied guidelines and laws that have provided protection to indigenous intellectual property. The Australian guidelines for libraries, archives and information services, the *Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols*, determined that communities and other groups of people should be included under copyright protection. These include the interests of the community, clan elders and works that are too old to pinpoint an original creator.<sup>14</sup> These groups were added to the Australian guidelines to protect the cultural practices of aboriginal communities, especially in the cases when sacred materials that are not to be viewed by outsiders are at risk. This helps to create an understanding of how copyright laws can be applied to different concepts of ownership, other than a more westernized view of individualism. If copyright can be proven, it would potentially allow Native communities claim rights and ownership over some archival materials.

Adding the protection of cultural property to intellectual property might seem like a stretch in some instances. The Native American Graves and Repatriation Act offers a similar service to Native Americans, except that it protects physical remains and objects. Through NAGPRA museums that obtain Native American remains and objects of sacred or cultural

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<sup>14</sup> Aboriginal and Torres Strait Islander Library, Information and Resource Network, "Aboriginal and Torres Strait Islander Protocols for Libraries, Archives, and Information Services," <http://aiatsis.gov.au/atsilirn/protocols.php> (accessed July 23, 2012).

importance must send inventories and descriptions to potentially affiliated tribes.<sup>15</sup> The act established Native American rights to physical cultural property and actually fostered open relationships between Native American communities and museums despite the hesitation on the part of museums. While the interpretation of the NAGPRA is mostly focused on physical objects and human remains, Sarah Demb considered it as presenting “archivists with the opportunities to be proactive in addressing potentially sensitive material in their collections.”<sup>16</sup> Demb was mainly referring to photographs of sacred objects or sites that might otherwise fall under the purview of NAGPRA, but the same reasoning can be applied to other forms of records. In her Master’s thesis, Caithlin Frost argued that documents fall under the category of cultural objects and should come under the jurisdiction of NAGPRA.<sup>17</sup> The law does not explicitly extend itself to archives and has mostly applied to human remains and objects, but Frost argued that materials in the archives could be covered by NAGPRA through the definition of cultural patrimony. Thus, according to Frost, NAGPRA can be extended into protecting the intellectual property of Native Americans.<sup>18</sup> NAGPRA defined cultural patrimony as:

An object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization

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<sup>15</sup> Behrnd-Klodt, 196.

<sup>16</sup> Sarah Demb “Sensitive Photographs and Research Access,” in *Photographs: Archival Care and Management*, ed. Mary Lynn Ritzenthaler and Diane Vogt-O’Connor, (Chicago: Society of American Archivists, 2006), 484.

<sup>17</sup> Caithlin Frost, *An Examination of the Distinctive Policies and Procedures of Tribal Archives* (Master’s Thesis, Western Washington University, 2003), 59-60.

<sup>18</sup> Frost, 59.

and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.<sup>19</sup>

Frost, using the definition of an object as a tangible item, determined that documents could be considered objects that have cultural importance. She also noted that documents that record Native cultural knowledge, such as field notes and observations from historians, anthropologists and archeologists, fall under this definition. Such records, Frost argued, can help tribes to further understand their past and are culturally important and are protected by NAGPRA in the way a physical object would.<sup>20</sup> While NAGPRA challenged the power of museums, at the same time it gave Native Americans a great degree of control over their heritage and history, protecting them from further abuse. A greater understanding of NAGPRA could help archivists in understanding how intellectual property can be applied to culture and the importance of protecting cultural practices from potential abuse.

Frost's understanding of NAGRPA has been applied by the National Park Service concerning archival materials. The National Park Service also makes an effort towards respecting the needs of Native American groups. In training for park archivists, eastern regional archivist Liz Banks encourages archivists to work with Native communities if issues of cultural sensitivity are brought up.<sup>21</sup> The National Park Service Museum Handbook also instructs archivists in working with Native Americans. In guiding national park archivists in access and restriction of federal records, the Museum Handbook states that some of the archival holdings of the park might contain culturally sensitive materials, listing them as

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<sup>19</sup> National Park Service, "Native American Graves Protection and Repatriation Act," <http://www.nps.gov/nagpra/mandates/index.htm>, 2 (accessed June 20, 2012).

<sup>20</sup> Frost, 59-60.

<sup>21</sup> Liz Banks, "Access and Use," (National Park Service Archives Practicum, Yellowstone Heritage and Resource Center, May 4, 2012.)

items that might contain information about burial sites, sacred sites, human remains and religious ceremonies.<sup>22</sup> It extends the same authority towards restriction of Native American records that Frost suggested that NAGPRA possesses.

Federal records can be withheld only if they are covered by one of the exemptions in FOIA [Freedom of Information Act]. However, these materials may be withheld from researchers in the following cases if the materials are: Federal records/NPS records, and restriction is authorized by an existing Federal law (such as the American Indian Religious Freedom Act or the Native American Graves Protection and Repatriation Act); donated (and non-Federal), and the donor agreement or deed-of-gift specifies that culturally sensitive documentation should be restricted donated or purchased (and non-Federal), and the park determines that their release would violate the standards of the affected group.<sup>23</sup>

The National Park Service acknowledged the ethical issues surrounding Native American archival materials, especially considering how they apply to federal laws such as NAGPRA and the American Indian Religious Freedom Act. However, these intentions to respect cultural sensitivity are not always upheld by solicitors.<sup>24</sup>

Other professions have had to face the ethical dilemma of holding Native artifacts and the issues of privacy and restrictions that arise with them. James Nason wrote that even if objects were legally acquired, that museums, government agencies and other institutions have been subject to repatriation once tribal affiliation was established.<sup>25</sup> This is an acknowledgement that despite the legal status of these possessions, they rightly belong to their respective tribes. If objects and other artifacts are considered the property of Native tribes, then the knowledge which holds the context and significance for those physical

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<sup>22</sup> National Park Service, "Museum Handbook, D:81," <http://www.nps.gov/museum/publications/handbook.html>, (accessed May 5, 2012).

<sup>23</sup> National Park Service, "Museum Handbook, D:81."

<sup>24</sup> Banks, "Access and Use."

<sup>25</sup> James Nason, "Traditional Property and Modern Laws: The Need for Native American Community Intellectual Property Rights Legislation," *Native American Community Intellectual Property Rights* 12, no. 2 (2001): 256.

objects should also belong to tribes. Both the objects and knowledge hold significance to Native communities in a sacred and cultural nature.

While copyright can help to protect Native records, it has its limits. Older knowledge without definitive authors cannot be protected under American copyright laws. The concept of communal property is also lost in current copyright laws, as the laws favor the rights of individuals instead of entire communities. There are also time limits upon copyright coverage. After so many years, the copyright expires and the knowledge becomes a part of the public domain. This makes using copyright impractical for Native communities that want lasting protection of their works and knowledge unless laws are later adjusted to accommodate Native American needs. However, applying copyright laws to more current works can be a temporary solution for Native communities and individual creators. Legislation such as NAGPRA has the strongest influence over the protection of Native American materials. If we take the National Park Service's Museum Handbook as an example of the practical application of NAGPRA to archival records, then materials with sacred knowledge can be protected. By using copyrights and other related laws properly archivists can protect Native American archival materials. But a thorough understanding of copyright and the law needs to be undertaken to be able to apply them as there are limits to what these laws will protect and how long that protection lasts. These legal issues are necessary for archivists to know in general, to protect the rights of both donors and the archives.

## Chapter 4 – Privacy, Access, and the Ethics Question

The literature on privacy and access in archives has been rather ambiguous on how to clearly protect the privacy of individuals. It is often described as a balancing act between protecting privacy and providing access and the only clear consensus about privacy and access is that they need to be clearly defined within archival policies. There are many different situations where archivists have to shape their policies on privacy and access. These depend on what kind of repository the archivist is a part of and varying interests and policies, such as the needs of donors, the privacy of third parties, laws, public interest, national security, and cultural sensitivity. Before addressing the needs of Native Americans, there needs to be a clearer understanding of how archivists approach issues of privacy.

Despite the legal issues that center around access to information, archivists are familiar with the restriction of access to materials. If an archivist or a donor is concerned with the privacy of individuals, those records might be withheld from the public for a certain amount of time or publication of that information might depend on permission from the donors. Within the body of literature on access and privacy, little is said about Native American materials or culturally sensitive materials in general. Privacy is often addressed on an individual basis or in terms of businesses or formal organizations. This is reflected in the writings of archivists. The concept of community privacy is not strongly addressed, but it is still important to understand how archivists work with the problems of privacy. The struggle with balancing privacy and open access affects how archivists approach the *Protocols for Native American Archival Materials*. The *Protocols* seek to protect culturally sensitive information, which may potentially restrict access to archival materials. This creates a

predicament for archivists, who cannot clearly define how to protect privacy of individuals represented in records. However, while struggling to balance access and privacy, archivists' policies are not drastically different from the ones promoted by the *Protocols*.

Although many archivists may cry out against restricting access to materials related to Native Americans, restriction of access is common within archives. Even if a donor does not request that certain documents be withheld, archivists will restrict access to documents if they may invade the privacy of another person. Literature on ethics and privacy often urges archivists to take a moral highroad and to restrict materials that may be potentially harmful to other people. In a case study in Karen Benedict's *Ethics and the Archival Profession*, an archivist found explicit photographs in a collection from the deceased daughter of a locally prominent family that suggested that she had an extramarital affair. As the man in the photographs cannot be identified and the parents did not know about the affair, the conflict was whether or not to provide access to the photos.<sup>1</sup> In the conclusion, the solution was to "restrict access to [the photographs] for a length of time until it is reasonable to expect that the man pictured is dead, thus maintaining his right to privacy."<sup>2</sup> Here archivists are encouraged to protect the reputation and privacy of the woman through the restriction of materials, even though the man was unidentified.

Within the same book by Karen Benedict, another case study deals with handling maps showing previously unknown Native burial sites. Not once within the solution given to the case study is there any mention of the rights and privacy of Native American groups. Rather, the conclusion recommends: "Once the maps are restored, you will want to have a

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<sup>1</sup> Karen Benedict, *Ethics and the Archival Profession: Introduction and Case Studies* (Chicago: Society of American Archivists, 2003), 62-63.

<sup>2</sup> Benedict, 63.

press conference announcing their existence and value for serious research on the early Native American community.”<sup>3</sup> The suggestion did not focus on the issues of privacy of Native American communities or problems with making sacred sites known. While the book was published before the *Protocols* were developed, it was written after the establishment of Native American Graves Protection and Repatriation Act. Despite this, it did not mention any concern over the sensitive nature of the information that the maps contain. Instead the suggestion focused on scholarly pursuits and publicly announcing the existence of the maps, upholding Western values over Native concerns. This is worrying considering that the book is used as an aid for archivists dealing with ethical issues and it does not direct archivists to consider Native American needs. Instead, it reinforces the status quo of Western archival theory about access and power.

In the literature on privacy issues, the words access, privacy, and restriction are often used without a clear understanding of what archivists mean by these terms. Heather MacNeil engaged with different definitions of privacy before settling on one crafted by Ruth Gavison, stating that privacy can become “the extent to which we are known to others; the extent to which we are subject of others’ attention; and the extent to which others have physical access to us.”<sup>4</sup> MacNeil felt that this was a solid definition due to its coherent nature, covering issues of secrecy, anonymity, and solitude.<sup>5</sup> Taking a more legal perspective on these definitions, Menzi Behrnd-Klodt and Peter Wosh’s book *Privacy and Confidentiality Perspectives: Archivists and Archival Records* defines privacy in terms of protecting

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<sup>3</sup> Benedict, 56.

<sup>4</sup> Heather MacNeil, *Without Consent: The Ethics of Disclosing Personal Information in Public Archives*, (Metuchen, NJ: Society of American Archivists and Scarecrow Press, Inc, 1992), 13-14.

<sup>5</sup> MacNeil, 14.

“persons from unwarranted publicity, public scrutiny of personal affairs, or making private matters public without consent. Privacy rights primarily protect feelings and sensibilities to prevent emotional harm.”<sup>6</sup> These definitions of privacy outline the extent to which information about an individual’s private life is made public. MacNeil observed that American laws tend to favor open access especially with the introduction of the Freedom of Information Act in 1966.<sup>7</sup> In the case of Native American materials, this privacy is not just about individuals, but entire communities which are affected by the release of archival materials into the public sphere.

In her manual, *Providing Reference Services for Archives and Manuscripts*, Mary Jo Pugh broadly defines access as “the means of finding, using, or approaching documents or information.”<sup>8</sup> By considering access in a broad sense, there are many levels such as physical access to the research room and intellectual access of being able to understand finding aids. Pugh provides a more narrow definition of access, “the authority to obtain information from or to perform research in archival records” and the “availability of, or the permission to consult records, archives, or manuscripts.”<sup>9</sup> This second definition is connected more closely with issues of privacy by including authority over records. When the authority that Pugh described is enforced and access to records is denied, that is restriction of records. Pugh describes restrictions as two forms, screening users and screening records. One early method of screening users was allowing access to people who had credentials or were viewed as being able to use the information properly. While this is normally

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<sup>6</sup> Menzi L. Behrnd-Koldt and Peter Wosh, *Privacy and Confidentiality Perspectives: Archivists and Archival Records*, (Chicago: Society of American Archivists, 2005), 9.

<sup>7</sup> MacNeil, 62.

<sup>8</sup> Mary Jo Pugh, *Providing Reference Services for Archives and Manuscripts*, (Chicago: Society of American Archivists, 2005), 149.

<sup>9</sup> Pugh, 149.

discouraged today, there are still some donor stipulations that require permission from the donor before a user can access the records. Screening records is a more approved method of protecting information and providing privacy through restrictions. This can mean that records are withheld from the public for a certain amount of time, or names and identifiable features are removed from records.<sup>10</sup> These are not absolute definitions of privacy, access and restriction, but they help in grasping these concepts. Examining how archivists have defined these terms will give a starting point to how issues of privacy, access and restrictions are dealt within the archival profession.

It is also helpful to understand that as records are transferred from businesses and homes to the archives they emerge from the private sphere to the public sphere. Elena Danielson pointed out this concept of transition, writing that records are “created in offices within a narrow and defined context, and then relocated to the archives for secondary purposes, such as research by unknown persons for unpredictable uses. Information that was recorded in private is exposed to new, judgmental eyes.”<sup>11</sup> Records are often created in an office or at home, intended for a certain audience. When records are transferred to the archives, the audience for those records becomes anyone who wants to access them. As Danielson suggested, the purpose of people accessing those records is unknown and therefore those reasons are unknown to those who donate the materials. These are concepts that some donors have found troubling and because of this they have negotiated donor agreements with receiving archives. This also becomes problematic for people and communities described in those records who have no say in the donation process. In these cases, archivists are called

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<sup>10</sup> Pugh, 160-161.

<sup>11</sup> Elena Danielson, *The Ethical Archivist*, (Chicago: Society of American Archivists, 2010), 183.

upon to be fair and ethical within their professional setting to either defend the privacy rights of individuals or the right to open access by the public.

The application of restrictions and access is reflected in a survey conducted by Caithlin Frost, who sent a questionnaire to both tribal and non-tribal institutions concerning Native American materials within archives. The results showed that for non-tribal institutions, “In association with the questions relating to access restrictions, for respondents employed at public archives, historical societies, and government restrictions, the most dominant answer was that they placed no restrictions on materials relating to Native Americans, and that anyone is allowed to view them.”<sup>12</sup> This is not an unusual response, considering western views of access and restriction. Those that implemented restraints on materials cited issues of “statutory authorization, copyright, and confidentiality issues.”<sup>13</sup> These results pertaining to access policies of non-tribal institutions contrast with the access policies of tribal archives that commonly implement access restrictions. In Frost’s survey, tribal archives cited several different reasons for the restrictions such as requests by the donor: “One respondent went on to explain that sometimes, in the case of oral histories, the donor will place the restriction that access is limited to the family, clan or village of the person interviewed.”<sup>14</sup> Issues of privacy were a key factor for Native Americans in making decisions over access to archival materials.

There is strong encouragement for archivists to create clear policies regarding privacy and to make these policies clear to users. But these are almost as much for archivists’

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<sup>12</sup> Caithlin Frost, *An Examination of the Distinctive Policies and Procedures of Tribal Archives* (Master’s Thesis, Western Washington University, 2003), 41.

<sup>13</sup> Frost, 41.

<sup>14</sup> Frost, 41-42.

protection as for the public. Pugh outlined some basic elements to create an access policy which asks archivists to identify user communities, explicitly state resources and restrictions on materials. Pugh also wrote that archivists are responsible for describing the level of intellectual access and reference services, any fees, physical access and conditions of use, how information may be used, and any conditions in which materials may be used.<sup>15</sup> These elements help to make different levels of access clear to users and help archivists shape procedures for access that are best for their repository. Consistency in standards is also important to maintain fairness for all users. Raymond Geselbracht cited Robert Rosenthal for solid standards for access policies. In light of unequal treatment of donors in regards to restrictions to access, Rosenthal called for setting the standards before materials are accepted. He stated the need for a specific and uniform application for all donors with a termination date for restrictions.<sup>16</sup> This allows archivists to have some control over how restrictions are applied.

The *Protocols* are a good starting point for repositories that deal with Native American materials to provide fair treatment of records. But before creating access policies, archivists need to understand what the best practices for their repositories are and to thoroughly understand current laws in regards to privacy and restriction. Since laws do not always reinforce the right to privacy, maneuvering between privacy and open access can become an ethical gray area.

As laws do not always force archivists to protect the privacy of individuals, ethics are used by Native groups, third parties, and donors to appeal to archivists to uphold the rights of

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<sup>15</sup> Pugh, 163.

<sup>16</sup> Raymond Geselbracht, "The Origins of Restriction on Access to Personal Papers at the Library of Congress and the National Archives," *The American Archivist* 49, no. 2 (Spring, 1986), 151.

privacy. But archival literature has been rather inconclusive in how to incorporate ethics and privacy within the profession in general. Instead of uniform policies, archivists often apply restrictions in a case by case manner. The Society of American Archivists Code of Ethics encourages archivists to protect the privacy of donors and individuals represented in the records. The Code of Ethics also promotes cultural sensitivity, but it does not outline how to practically use these ethics within the profession.<sup>17</sup> Sometimes donor agreements help to shape access restrictions for sensitive information, but there are third parties who are not part of this discussion despite being represented in the records. It is especially during negotiating donor agreements and figuring out restrictions upon collections that archivists are asked to be ethical and to think of these unrepresented individuals. The *Protocols* make this appeal to archivists about cultural information that has been taken from communities and give back control of knowledge that has been misappropriated to Native communities.<sup>18</sup> The *Protocols* outline how to bring together the ethical treatment of Native American materials and to address issues of privacy for culturally sensitive information.

In cases of third party privacy, some of the literature has promoted the protection of these individuals. As they are not represented in the process of the donor agreement, or the donor may not know much about them, their rights are not in the forefront of the donor agreement. While legal reasons do not force archivists to act on the part of third parties, many see it as an ethical dilemma that needs to be addressed. Sara Hodson suggested that by enforcing restrictions archives can get into trouble for potentially unequal protection of

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<sup>17</sup> Society of American Archivists, "SAA Core Values Statement and Code of Ethics," <http://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics> (accessed December 1, 2010).

<sup>18</sup> Northern Arizona University, *Protocols for Native American Archival Materials*, <http://www2.nau.edu/libnap-p/protocols.html>, 9 (accessed December 5, 2009).

materials. Hodson suggests that a solution to protect the archives from legal responsibility is to never restrict materials, “thus avoiding any responsibility for identifying and dealing with private or sensitive items.”<sup>19</sup> However, she does note that by doing so, archivists would have to ignore any ethical worries they might have over allowing access. Ignoring the ethical implications that open access may present seems to be a poor solution. Having such blanket policies neglects the complexities of each individual collection and the cultural context they come from.

Hodson also describes an instance when she was unsure whether or not to disclose letters that held sensitive information about the sexuality of individuals. There were no restrictions from the donor, but she states that she could not determine if the letters were private matters or general knowledge. While she was at a moral dilemma, she began leaning towards disclosing the letters as she did not feel she could fairly implement a restriction policy. She emphasized the importance of creating fair policies in terms of privacy and to provide access when possible. However, her conclusion was that the matter had resolved itself at the end as ample time had passed between the death of the owner and the processing of the collection.<sup>20</sup> Such cases probably describe situations other archivists face in their work, but they do little to address how to incorporate ethics and protect third party privacy. Hodson’s struggle with her decision though shows a strong need for clear policies in the balance of ethics and privacy for third parties. For Native Americans, archivists cannot wait for such a solution to appear on its own and they must be proactive in coming up with their own answers.

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<sup>19</sup> Sara Hodson, “In Secret Kept, In Silence Sealed: Privacy in the Papers of Authors and Celebrities,” *The American Archivist* 67, no. 2 (Fall-Winter, 2004): 201.

<sup>20</sup> Hodson, 200-201.

Karen Benedict's case studies in *Ethics and the Archival Profession* address the issues of third party privacy. When collections refer to family members, archivists are encouraged to uphold the rights of the donors. The case studies offer archivists the option to address the concerns of patrons by putting limited restrictions on offending documents, but they do not explicitly demand that archivists do so.<sup>21</sup> One study though offers a solution that strongly advocates the rights of a third party who was represented in a collection without consent. As the photographs of the individual were potentially embarrassing to surviving relatives, restricting the photographs until all parties are dead was suggested by the archivist, showing a sensitivity to third parties.<sup>22</sup> These notions of third party privacy are essential to understanding the *Protocols* as many materials about Native Americans are donated not by Natives themselves, but other individuals such as anthropologists, ethnographers and researchers. In these situations Native peoples become the third party during donor agreements and their rights to community privacy need to be upheld like any other individual. This is why it is important not to neglect third parties and for archivists to make clear decisions about dealing with these situations, rather than waiting for the problem to solve itself.

As mentioned, protecting third parties often involves restricting archival materials from the public. Restrictions often come from negotiating donor agreements, though archivists can impose restrictions if they feel it is necessary. Raymond Geselbracht described the ways in which restriction policies have developed within historical manuscripts institutions and public institutions. Geselbracht argued that the American Historical

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<sup>21</sup> Benedict, 64-67.

<sup>22</sup> Benedict, 62-63.

Association engaged in these issues in 1914.<sup>23</sup> The tradition of historical manuscripts has often been one interwoven with donor agreements. Geselbracht observed that routines of approving researchers, checking notes and protecting the rights of donors were part of the historical manuscripts tradition.<sup>24</sup> While protecting the rights of donors is not necessarily a negative prospect, Geselbracht generally disapproved the inconsistency in which restrictions and donor agreements were implemented. On the other hand, Danielson noted the necessity of working out restrictions with donors, saying that “Well-crafted privacy protections in donor agreements create a buffer that in the end enables more private information to be preserved.”<sup>25</sup> Restrictions have allowed for the preservation of materials that might have otherwise been destroyed. Through privacy, archivists are sometimes able to preserve records that will one day become valuable sources for researchers. While Geselbracht is correct in creating standards for restrictions, he glosses over the importance of the negotiations between archivists and donors to obtain materials. Applying restrictions to collections is not a foreign idea to American archivists and while they should be used carefully, they can similarly be used to protect the rights of Native American groups. A general privacy policy detailing the rights to cultural sensitivity can help to guide archivists in dictating what falls under the purview of restricted materials.

In terms of American government archives, or public archives, the attitude has been that the records are the property of the people. They have an immediate right to see the records. As Geselbracht states: “The records belonged to the people who gave sovereignty to the government. They should be opened to whomever wishes to see them, unless there was

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<sup>23</sup> Geselbracht, 145.

<sup>24</sup> Geselbracht, 152.

<sup>25</sup> Danielson, 195.

some competing, overriding public interest that would not permit it.”<sup>26</sup> MacNeil brings up a Canadian perspective of public archives, one which more heavily favors the privacy of individuals. She notes that within public archives, with the Freedom of Information Act the United States would uphold privacy rights when harm or injury was caused by the disclosure of records and that injury had been weighed against public interest. However, within Canadian public archives, personal information is to be withheld whether or not it may cause injury upon disclosure.<sup>27</sup> Within the United States, the tradition of public archives has been one of open access to records. In the case of some government records, access to the materials may be essential to maintaining a stable democracy, but personal information does not always need to be disclosed. Privacy has been upheld in cases of injury, but the Canadian perspective shows a Western culture engaging in the protection of personal information and privacy. While access to culturally sensitive records may not harm Native Americans in the same way access to social security numbers might, it does cause injury to the community. Taking into account that culturally sensitive records are often not political or a form of censorship, restrictions upon them within government institutions would not cause harm to maintenance of democracy and the rights of the people.

The examples of historical manuscripts repositories and public archives have shown the different ways in which access restrictions have been applied and the problems faced by archivists. Coming to a balance of open access and privacy has been ongoing, and while refined in some ways, there are still no clearly defined answers. In *The Ethical Archivist* Danielson presents four models in which to reconcile access and privacy, her last being

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<sup>26</sup> Geselbracht, 153.

<sup>27</sup> MacNeil, 72-73.

addressing each complaint about collections on a case by case basis.<sup>28</sup> This seems to be a standard solution for many archivists to work through these problems, despite attempts to create cohesive policies to guide archivists. It does not address all dilemmas faced by archivists, but the *Protocols* would help archivists to outline a policy in dealing with the ethical problems of misappropriated information within archives.

Laws have also shaped the way privacy policies have been formed in archives, but the laws are only as good as the archivists who understand and interpret them. According to Danielson, an expert in the field of privacy laws compiled a list of around seven hundred state and federal laws regarding privacy.<sup>29</sup> In 1986 Alice Robbin conducted a survey of fifty state archives about policies and practices involving personal privacy. In her findings she observed that forty-seven percent of respondents were unable to correctly identify any legal provisions restricting access to health and social services records. Robbin noted that, “Knowledge of access provisions for these records did not increase with length of tenure. In fact, archivists who were new to their jobs were more familiar with the laws than those who had held their positions for a longer time.”<sup>30</sup> While this is an old survey, it does relay a disturbing notion of archivists not understanding access provisions required of records. As Danielson mentioned, there are numerous privacy laws and archivists need to be aware of them to be able to serve the public and protect individuals represented in the records.

This means that archivists need to be careful when dealing with Native American materials. Benedict’s case study concerning maps of Native American burial sites is a good

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<sup>28</sup> Danielson, 212-213.

<sup>29</sup> Danielson, 195.

<sup>30</sup> Alice Robbin, “State Archives and Issues of Personal Privacy: Policies and Practices,” *The American Archivist* 49, no. 2 (Spring, 1986): 168.

example of how archival records can contain sensitive information, but it does not explore what the implications of NAGPRA might be in terms of finding human remains and sacred sites. Instead the solution to the case study ignores any sensitivity to Native privacy and encourages archivists to publicize such findings.<sup>31</sup> While NAGPRA does not talk about archival materials, those materials in the case study may have led to or have images of sacred objects. This is a point that Benedict neglects, but archivists need to consider these issues when dealing with Native American materials. The *Protocols* do not carry the same weight as NAGPRA, but they do offer the same guidance in collaboration between archives and Native communities in respecting Native culture. NAGPRA provides a good outline for archivists to utilize for engaging with sacred materials that may need to be repatriated to a tribe or have restricted access.

The *Protocols* appeal to the ethics of the archival profession, but beyond that they do not carry the same weight that NAGPRA does for museums and other collecting institutions. While the lack of legal backing might seem counterproductive to getting non-tribal archivists to work with Native communities, it can actually be its strength. Having the *Protocols* as a guideline of ethics gives a greater spirit of collaboration and cooperation, rather than a legal document that strong arms already overworked archivists into discussions with Native communities. The purpose of the *Protocols* is to open discussions and to create mutual respect between non-tribal archivists and Native communities. However, if NAGPRA is applied as Caithlin Frost suggested, by extending its reach to archival materials there would be a basis of legal authority. In this instance, the *Protocols* can remain an ethics document,

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<sup>31</sup> Benedict, 55-56.

while NAGPRA is grounded in legality. The legality of NAGPRA can give an imperative for archivists to start working on these issues.

Despite the lack of acknowledgement of the *Protocols for Native American Archival Materials* in the literature about privacy within the archives, it does not necessarily mean that the issues presented within the *Protocols* are being neglected. There is still a growing dialog about the *Protocols* and recognition that they are challenging the way archivists approach materials on other cultures and whose culture and systems of knowledge are being privileged. Elena Danielson briefly wrote about the moral dimension Native American cultural property presents, “Whether or not sovereignty has been officially recognized for particular Native American groups, archivists need to appreciate the wider context of their ancient heritage.”<sup>32</sup> She also refers to the *Protocols* as a guide for dealing with such materials. Randall Jimerson, in *Archives Power: Memory, Accountability, and Social Justice*, has also urged archivists to think of the ethical implications of the *Protocols* and has mentioned that American privacy laws already protect personal information and that, “Accepting the *Protocols* would simply recognize the right of Native peoples to control their own records, customs, and cultural practices.”<sup>33</sup> Jimerson encourages archivists to think beyond the western mindset and to think of different systems of knowledge and access. Western culture has long been the basis in which problems of privacy and access have been discussed. As Danielson and Jimerson have written, a greater respect and understanding of cultural differences is needed, and this would help to shape fairer and more comprehensive privacy policies. When approaching ideas of privacy and access, archivists may find that similar policies to protect personal

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<sup>32</sup> Danielson, 257.

<sup>33</sup> Randall Jimerson, *Archives Power: Memory, Accountability, and Social Justice*, (Chicago: Society of American Archivists, 2009), 357.

information and to protect the privacy of individuals can be extended to the concept of community privacy and protecting the rights of Native groups.

Archivists have yet to established strong positions in terms of privacy and access, often relying on engaging with collections and privacy claims on a case to case basis. The current literature suggests that many agree that both access and privacy are necessary and they are even a part of the Society of American Archivists Code of Ethics. But there is no consensus on how to strike a balance between privacy and open access. Individual negotiations with donors and with tribes seem to be the best way to protect the privacy rights of donors, Native communities, and the broader public. Universal open access would ask archivists to ignore basic ethics and may cause greater harm than good, including identity theft, damage of reputation, and emotional and cultural harm. Without some safeguards to protect individual and communal privacy, archives cease to serve the public.

## Chapter 5 – Application of the *Protocols*

The application of the *Protocols for Native American Archival Materials*, the Native American Graves Protection and Repatriation Act, and archival ethics to Native American materials might seem like a difficult task for archivists, but building relationships with Native American communities does not have to be a complicated or difficult process. The creation of a relationship can simply begin with a phone call and extending an invitation for tribal members to view archival collections relating to their tribes. There are great benefits for both archivists and Native tribes as solutions over usage of records can be reached and archivists can gain new insight to their collections.

As tribes, institutions, and individual archivists differ greatly, there is no one way to approach culturally sensitive materials within archives. The *Protocols* are meant as guidelines to aid archivists, not as hard and fast rules. By examining case studies from various institutions, archivists can see different ways to reach solutions. These case studies are just as important as being familiar with the *Protocols* as they show the practical application of the *Protocols*. Archivists can then see where archives have both succeeded and failed in working with Native Americans. A look into the setup of tribal archives can give archivists ideas in how to treat Native American archival materials. Case studies can also provide valuable lessons in funding, access, outreach, and labor concerning culturally sensitive materials and encourage sharing information between archivists.

The concept of closing off information and documents to researchers has caused archivists a bit of anxiety as one archivist expressed in his response to the *Protocols*: “While archives respect ... third party rights of privacy and contractual agreements created at the

time of acquisition, archivists also try to limit the application of such restrictions as much as possible. For example, SAA has also spoken out against the extension of privacy rights beyond the death of individuals, attacked the destruction of important historical documentation, and even championed public access to materials that may have been acquired illegally (such as the ‘Pentagon Papers’) when it is in the best interest of the general public.”<sup>1</sup> Restrictions upon culturally sensitive materials do not necessarily mean the destruction of historically relevant materials or the complete loss of knowledge to researchers. While some documents may be closed off for publication, it does open the door to researchers to interact with tribes. This is demonstrated by Northern Arizona University, which referred researchers to the Hopi tribe and found that, “Researchers usually find that they get a better understanding of the material in terms of cultural and historical context when they contact the HCPO [Hopi Cultural Preservation Office]. This interaction also gives the Hopi an opportunity to talk about reciprocity and to develop projects that can be mutually beneficial for the researcher and the tribal community.”<sup>2</sup> This interaction helped researchers better understand the culture they were studying, along with allowing the Hopi to maintain control over the publication of archival materials pertaining to their culture.

It is important to consider the ramifications of publication. Once published, Native communities lose any control of that information. As Tom Greaves noted, “The familiar pattern of doing fieldwork and then publishing articles and books about it has a consequence that previously has not been a concern to anthropology: publishing information on the

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<sup>1</sup> Frank Boles and others, “Report: Task Force to Review *Protocols for Native American Archival Materials*,” (February 7-10, 2008): 57.

<sup>2</sup> Keara Duggan, “Case Study: Northern Arizona University and the Hopi Cultural Preservation Office,” [http://aphdigital.org/projects/keara/?page\\_id=6](http://aphdigital.org/projects/keara/?page_id=6) (accessed July 18, 2012).

customs and beliefs of a cultural group conveys that information into the public domain, after which the society can never regain control over it.”<sup>3</sup> The opening of this kind of information can be harmful to communities, as the Hopi experienced with Voth, whose photos and notes are widely circulated. The tribe cannot regain control over the sacred knowledge that Voth revealed in his work.

Being respectful of sacred Native American information and images does not always mean completely cutting researchers off from the materials. Working with Native communities can mean coming to compromises that satisfy both the institution and the tribe. The Hopi still provide access to the archival materials, but make researchers consult the tribe in terms of usage of those materials, as Duggan wrote, “In fact, the NAU library and archives continue to provide access to ceremonial images on site ... If researchers do request to use sensitive materials, NAU refers them to the community or agency associated with the materials, the HCPO in this case, and allows that agency or community to make decisions concerning usage.”<sup>4</sup> The archives still provide access, but the tribe controls usage of the instead of others who might be less connected and knowledgeable about the materials. This puts researchers in contact with the Native community, allowing researcher and community to build mutual understandings and relationships of respect and trust.

John Fleckner’s manual, *Native American Archives: An Introduction*, provides helpful insight in how to deal with privacy and open access together. Fleckner’s addressed issues of privacy and sacred information, demonstrating themes that were in consideration long before the *Protocols* were drafted. He noted that “An important privacy area unique to

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<sup>3</sup> Tom Greaves, “Examining Indigenous Rights to Culture in North America,” *Cultural Dynamics* 14, no. 2 (2002): 134.

<sup>4</sup> Duggan, “Case Study: Northern Arizona University and the Hopi Cultural Preservation Office.”

Native American communities is the treatment of information and items of a sacred nature.”<sup>5</sup> Fleckner encouraged archivists of tribal institutions to engage with Native American elders and leaders to find out how to work with potentially sensitive documents. He further stated that the cultural sensitivity of tribal archives should be a model for non-tribal institutions. While addressing issues of secret information, Fleckner instructed archivists to work for the benefit of the greater community and to publicize the archives to the public.<sup>6</sup> Despite withholding some documents from certain members of the community, the archives still functions as a center for the greater understanding of the culture.

Fleckner’s instructions for creating Native American archives are reflected in the Hopi’s protocols for usage of archival materials. One of the first statements of the guidelines is: “The Hopi people desire to protect their rights to privacy and to Hopi Intellectual Property.”<sup>7</sup> While there is specific language about the rights of the Hopi people, this is not an unwillingness to share information. Instead it opens up a forum in which researchers and the Preservation Office can discuss the implications of any publications and address the concerns of the community. The Hopi people do not bar researchers from access to records and in return ask for fair usage of their cultural materials. These examples of tribal archives can be a model for other archives of balancing access and restrictions, and opening dialog not only between archivists and Native communities, but also between researchers and Native communities.

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<sup>5</sup> John Fleckner, *Native American Archives: An Introduction*, (Chicago: Society of American Archivists, 1984), 9.

<sup>6</sup> Fleckner, 8-9.

<sup>7</sup> Hopi Cultural Preservation Office, “Protocol for Research, Publication and Recordings: Motion, Visual, Sound, Multimedia and other Mechanical Devices,” <http://www8.nau.edu/hcpo-p/ResProto.pdf> (accessed July 18, 2012).

Despite disagreements on restricting access to Native materials, there are archivists who do understand Native Americans' need for secrecy. When evaluating photographs of Native Americans in archives and the ethical issues in their use and accessibility, Diane Vogt-O'Connor cautioned that, "In most cases, American and European photographers did not obtain 'informed consent' or explicit permission from the documented individuals whose culture, people, places, and events were photographed."<sup>8</sup> Vogt-O'Connor acknowledged that many photographic studies conducted by anthropologists, sociologists, and psychiatrists include private moments that outsiders were not supposed to be a part of, documenting sacred ceremonies, objects, and sites. As a result, Vogt-O'Connor advises archivists to consider the consequences of allowing access to photographs depicting images that do not have informed consent, saying that "repositories should avoid causing cultural damage when possible. Consultations can help repositories avoid such risks."<sup>9</sup> The advice provided here recognized that harm can be caused through unauthorized access of photographs and encourage collaboration between the archivist and Native communities.

Michael Brown described a situation in which an unnamed university received a donation pertaining to a local Native community from an anthropologist and his Native American collaborator. Tribal officials requested that the "collection be closed to the public because it contained esoteric religious information that some members of the tribe did not wish to see circulated."<sup>10</sup> The archivist addressed the concerns of the community and reached out to other professional groups for advice. While there was nothing legally keeping

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<sup>8</sup> Mary Lynn Ritzenthaler and Diane Vogt-O'Connor, *Photographs: Archival Care and Management*, (Chicago: Society of American Archivists, 2006), 329.

<sup>9</sup> Ritzenthaler and Vogt-O'Connor, 329.

<sup>10</sup> Michael Brown, *Who Owns Native Culture?*, (Cambridge: Harvard University Press, 2003), 229.

the archive from sharing the collection with any researcher, the archivist also considered her ethical responsibility to the public she served. Many of the university students and staff were a part of the tribal community affected by the collection, and the archivist did not want to ignore their concerns.<sup>11</sup> However, despite efforts to satisfy both parties, there had been no resolution at the time Brown published the incident and he reflected that, “This relationship is helping to counter misunderstandings about archives and the constraints under which they operate, but neither party to the dispute is likely to be entirely satisfied when negotiations conclude.”<sup>12</sup> His pessimistic predictions of the outcome of the conflict are a reflection on how radically different the tribal and non-tribal communities view and understand access within the archives. However, the fact that archivists are uncomfortable could be a good sign, as it signals that they are moving out of what they are comfortable and familiar with and moving towards compromise and cooperation with Native communities. It means that they are letting go some of their power as a dominant culture of information and making concessions to a less recognized culture through issues of access over materials. This also shows that Native Americans are asserting some influence over archives and materials related to them, working within a system of laws and archival theory, and working outside of it through their own cultural practices.

Washington State University’s *Plateau Peoples’ Web Portal* does not try to eliminate the archival standards of cataloging and organizing knowledge, but it helps to put indigenous knowledge right beside it on equal footing. Kimberly Christen, the developer of the site, had created a similar website for aboriginals in Australia and used the same format for

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<sup>11</sup> Brown, *Who Owns Native Culture?*, 230.

<sup>12</sup> Brown, *Who Owns Native Culture?*, 230.

Washington State University. The website allows peoples from represented tribes to access the contents on the site and to add relevant information or even restrictions if it is needed. “In the Portal project, all of the tribal representatives, as well as the librarians and archivists, agreed that our goal was not to erase the scholarly voice, but instead to add to it in a way that set Native knowledge on equal footing with the scholarly record.”<sup>13</sup> The side by side usage of cataloging information with both archival and Native standards gives researchers a more complete understanding of the records, giving layers of knowledge from both Western archivists and Native communities. The advantage of an online repository is that collaboration can happen instantly, input by both tribes and institutional archivists can happen at once.

The Smithsonian National Museum of the American Indian (NMAI) is another example of strong collaboration between non-tribal institutions and Native communities. The bulk of the museum’s collections are the contribution of George Gustav Heye, who collected Native American objects in the late nineteenth century up until his death in 1957. Not all of the items collected were up to current ethical standards as the provenances of some items are unclear. In collection were funerary items, sacred objects, and human remains, all things that are up for repatriation. Despite the questionable means by which some of the objects were collected, the museum’s mission has changed to reflect a culture of partnership and cooperation with Native Americans: “the NMAI’s mission, with its emphasis on partnership with Native people and their contemporary lives, has spurred different collections-development strategies and programmatic efforts as well as consultations with

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<sup>13</sup> Kimberly Christen, “Opening Archives: Respectful Repatriation,” *The American Archivist* 74, no.1 (Spring/Summer 2011): 198.

community representatives on appropriate standards of care, modes of exhibition and interpretation, and the museum's overall operations."<sup>14</sup> This has been reflected in the management not only of museum objects, but also within the archives, bringing sensitivity to cultural needs to archival collections. Former head archivist of the NMAI Archives Center, Jennifer O'Neal, acknowledged the importance of collaboration, recognition of knowledge keepers within Native American communities, repatriation, and ceremony within archives.<sup>15</sup> NMAI not only provides restrictions to culturally sensitive materials, but also maintains facilities and exhibits that have had heavy input by Native communities, along with room for ceremonies to be performed in both the museum space and the museum and archives storage spaces. The museum and archives have demonstrated a strong relationship with Native communities and have emphasized stewardship over objects and information as opposed to ownership. NMAI provides a good model for collecting institutions for managing Native American materials by providing facilities to maintain materials as opposed to ownership of them. This creates a relationship between Native communities and collecting institutions that allows for input and control for Native communities, while upholding archival and museum standards of preservation for appropriate materials.

Not all archives will be able to afford digital repositories and other methodologies that would ease some of the workload burdens. Archivists have expressed a concern about the workload that implementing the *Protocols* would cause. University of Washington archivist John Bolcer expressed this concern, citing an example from one of the collections at

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<sup>14</sup> National Museum of the American Indian, "History of the Collections," <http://nmai.si.edu/explore/collections/history/> (accessed October 22, 2012).

<sup>15</sup> Jennifer O'Neal, "Serving Indian Country from the Nation's Capitol: Cultural Stewardship and Research at the National Museum of the American Indian Archive Center," (Society of American Archivists Annual Meeting, Washington D.C., August 12, 2010).

his repository: “I can point to the Melville Jacobs collection in my repository that, as one example, by itself contains substantial material from approximately 50 different language groups. Trying to manage such a collection, not to mention a repository with multiple such collections, by consultation with all of the possibly interested tribes would be effectively impossible.”<sup>16</sup> Comments about the *Protocols* repeated this concern about workload: “However, as the tensions between intellectual property and open access are more complex when dealing with backlog and retrospective materials, we believe that many repositories will encounter problems in applying the guideline retrospectively.”<sup>17</sup> These are valid worries by archivists as many archives are often stretched to their limits in terms of resources and time.

To help alleviate the burden of processing and retroactively going over old finding aids and collections, archives should reach out to Native communities. The greatest strength of the *Protocols* is the opening of communication between Native communities and the archives, similar to the benefits of NAGPRA. Collaboration and communication is a two way street that can make Native communities aware of collections and papers that they did not previously know existed and access to histories that may have been unknown to them before. Knowledge of such documents gives Native communities control of their histories in ways that had been kept from them before.

For the archivists, connecting with tribes can mean anything from extra help with processing to specialized knowledge. In a case study about the University of Oregon’s Special Collections, tribal communities were actually able to identify records and photos that

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<sup>16</sup> John Bolcer, “*The Protocols for Native American Archival Materials: Considerations and Concerns from the Perspective of a Non-Tribal Archivist*,” *Easy Access*, January 2009, 3.

<sup>17</sup> Boles and others, 56.

were previously only vaguely described and therefore hard for researchers to find relevant documents through the finding aids. By working with the tribes, the University of Oregon was able to improve the descriptions of negatives and photographs, and thus improved researcher access to records. “The majority had vague descriptions like ‘Indian Man and Woman,’ which were difficult for researchers to access ... After negatives were selected by TCI [Tamastlikt Cultural Institute] and scanned by U of O [University of Oregon], TCI staff would write descriptions about the people and places featured in the photographs to include on the website and with the physical collection.”<sup>18</sup> The Native community was able to provide the university with knowledge that it otherwise would not have had access to. The information added context to the records which made them even more useful to researchers.

In the case of the University of Oregon, the archives were able to get help with processing the collection and are in negotiations over getting the rest of the collection processed. Not all interactions with Native communities will end with extra help, but there is the potential of collaboration with other related cultural centers and tribes. There are also other avenues for extra help that archivists can apply to as Duggan suggested, “Apply for grant money – collaborative, mutually beneficial projects between archival institutions and tribes that help to process, increase access or preserve language make strong grant proposals.”<sup>19</sup> By applying for grants, the financial burden of going over collections for sensitive materials can be alleviated. Duggan further encourages collaboration between archives and tribal communities, listing amongst her suggestions to: “Have tribal people start looking at your collections: write a letter or pick up the phone and say we have materials and

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<sup>18</sup> Keara Duggan, “Case Study: the U of O and the Tamastlikt Cultural Institute,” [http://aphdigital.org/projects/keara/?page\\_id=236](http://aphdigital.org/projects/keara/?page_id=236) (accessed July 18, 2012).

<sup>19</sup> Duggan, “Case Study: the U of O and the Tamastlikt Cultural Institute.”

would like someone to come visit us. Your collections might be totally unknown to the communities from which they originated – reach out and make them known.”<sup>20</sup> Simple gestures such as this can be the start of fruitful relationships.

Taking the case studies into consideration, open communication with Native American groups is vital to making progress in handling Native knowledge within archives. Just the gesture of cooperation and an invitation for Native communities to look at an archive’s holdings can improve relations between archives and Native communities. Open communication can help to tailor solutions that fit both a specific archive and tribal group, and as the case studies have shown, each institution and tribal group came up with unique solutions to fit their needs. While the *Protocols* give helpful suggestions on how to approach and work with Native communities, it is essential to stress that not every community is the same and that each tribe has its own unique culture and customs.

Creative solutions like Washington State University’s *Plateau Peoples’ Web Portal* are a strong example of collaboration and applying Native and Western knowledge side by side. The format of a digital archives means that both archivists and authorized tribal members can easily access records and add information and restrictions as needed. This format would be most beneficial for institutions that have a large holding of Native records and deal with multiple tribes. However, this may not be a practical solution for all institutions as creating digital archives can be costly and time consuming. In the cases where a digital repository is not possible, then archivists might want to work with Native communities to draft finding aids that provide indigenous knowledge alongside standard archival language.

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<sup>20</sup> Duggan, “Case Study: the U of O and the Tamastlikt Cultural Institute.”

Smaller archives might want to consider Duggan's more informal approach to working with Native Americans. A simple invitation to the archives and a talk with community leaders can give archivists a clear idea of that community's specific needs and can be a less stressful approach for institutions that have limited resources. Archivists can work with representatives from Native communities to appraise their collections and to determine if what they have is culturally sensitive or not. From there, archivists and Native communities can work out how to approach access and usage of the records.

Grants and outreach for additional help are encouraged for all institutions. As Duggan suggested, help can also come from Native communities and the additional knowledge provided by tribes can help to increase access to collections. Asking for volunteers from related Native American tribes not only shows a willingness to work together, but also shows that the archivist respects and values the knowledge that Native Americans can bring to archival collections. Applying for grants can help to ease the financial burden that going through these materials can bring. Every archivist should be familiar with the application process for grants as they are often the backbone of funding for temporary employees and to get projects off the ground. Archivist John Bolcer was right when he mentioned that going through collections for culturally sensitive materials would be labor intensive, but an archivist must be willing to ask for help. This process might take time and effort, but it is better to go at a slow pace than do nothing.

Collaborative projects demonstrated by Washington State University and the University of Oregon show ways in which non-tribal archivists and Native communities can work together and strike a balance between Native and Western knowledge. While archivists do have to surrender some control over records, it does not mean that they lose everything.

Archivists can still uphold certain standards of traditional archival theory by placing Native knowledge alongside Western knowledge in the way Washington State University has done. Archival cataloging standards have not been given up, but instead added to, creating another layer of information for researchers to better understand the records and the culture that they come from. Including Native communities in processing, arrangement, and description is also another sacrifice of control, but it can alleviate the burden of the work from the archivist, and experts from the community can add information to create a greater context to the records. In the case of the University of Oregon, the collection was still processed according to archival standards, but it was enhanced by the additional knowledge provided by the Tamastlikt Cultural Institute. Further discussions with Native communities and non-tribal archivists would help to establish which standards archivists need to hold up while respecting the concerns of tribes.

In these instances of collaboration and building of relations, archives have helped to restore vital pieces of Native culture. The collaboration between archives and Native communities can be a productive one for both parties, Native peoples can regain some control over stolen information and archivists can gain valuable insight into their own holdings. In working with Native communities the publication and circulation of case studies can be a great help to other archivists who are trying to implement the *Protocols* in their institutions. Archivists need to be willing to communicate with one another in order to understand how others are dealing with similar situations and what kinds of experiences they had. Positive accounts can help to encourage other archivists to get in contact with local Native communities and even writings about negative interactions can provide useful lessons.

## Conclusion

Archivist and member of the Task Force for the *Protocols for Native American Archival Materials*, Frank Boles, questioned archivists' views and understandings of privilege and privacy: "Why is it that when one of us owns it he or she can close it, or even burn it, and the archival community merely 'regrets' the action, whereas when Native Americans assert that they might have a similar communal right, some among us reject the claim out of hand? Is it truly that different?"<sup>1</sup> As Boles pointed out, in regard to individual ownership, archivists are more willing to restrict or allow the destruction of records, but when it comes to communal ownership and privacy, archivists are more likely to protest against it. While individual rights are strongly protected by the law, other legislation could be considered in the protection of communal rights and archivists can work out compromises that satisfy both tribes and archives.

The *Protocols for Native American Archival Materials* are close to the standards upheld by archivists and continued work between archives and Native communities will help to mend misunderstandings and foster beneficial relationships. Not only will open communication with tribal communities help, but also communicating with other archivists and other professionals will aid in the process. Implementation of the *Protocols* is not expected to be done overnight, as the Native American Graves Protection and Repatriation Act was not implemented right away and museums and collecting institutions are still in the process of repatriating funerary objects and remains to tribes. If archivists understand the *Protocols* as part of a long term process that shows good faith and respect towards Native

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<sup>1</sup> Frank Boles and others, "Report: Task Force to Review *Protocols for Native American Archival Materials*," (February 7-10, 2008): 138.

communities, the concept of a large workload might be less overwhelming. Like any project within the archives, careful planning and communication are essential to make the task manageable and achievable.

Ignoring the concerns of Native Americans is no longer an option and neither is hiding behind of the illusion of objectivity and old practices. In order to make progress, archivists will have to make concessions that will make them uncomfortable and they will hardly be the first profession to do so. Archivist Mark Greene wrote about the need for the evaluation of archival standards and the need to address the concerns of a diverse society and profession: “What seems clear is that in a diverse society and a diverse profession, frank consideration of even controversial requests is required—not simply as a matter of respect for the framers of the Protocols, but in order to ensure that the cultural majority has the most rigorous analysis possible of its own theories and practices in the increasingly complex 21<sup>st</sup> century.”<sup>2</sup> Greene calls upon open communication and scrutiny of archival standards, as other professions have done. Archivists can actually benefit from the work of other professions, such as the literature and case studies gathered from the results of NAGPRA. With this background, archivists will have a solid foundation on which to make changes.

The purpose of the *Protocols* is not to replace archival standards and knowledge, but to bring Native knowledge and values onto an equal footing. The *Plateau Peoples’ Web Portal* methodology of placing Western and Native knowledge side by side is an excellent example of collaboration and the usage of both Western and Native archival standards. Other institutions have worked with Native communities to achieve compromises that satisfy all parties, coming up with ways to monitor how indigenous knowledge is being used and

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<sup>2</sup> Mark Greene, “Protocols for Native American Archival Materials,” *Archival Outlook* (March/April 2008): 25.

distributed. These institutions have not given up on archival standards and have managed to work cooperatively with Native Americans.

While there are numerous examples of how archivists have worked with Native Americans, it is important to remember that each situation is unique to the institution and to the tribes that it interacts with. The *Protocols* provide a foundation to build relationships with Native communities, but archivists need to be flexible when working with Native Americans. The needs and concerns of each Native community and the archival institution will differ. Archivists, along with Native communities, need to consider what they are able to offer and where their own points of concern are. Archivists need to be honest with what they are able to handle and to seek out help from the communities they are working with. As Keara Duggan's examples have shown, collaboration can potentially mean extra help in processing and describing collections. The sharing of methodologies, case studies, and the *Protocols* will form a basis from which archivists can start to work with Native communities, using a methodology that best suits the archives resources and the needs of the community.

Archivists have made real efforts and progress in working with Native Americans. All the examples of collaboration and the drafting of the *Protocols for Native American Archival Materials* and the discussions it has prompted have demonstrated that archivists are concerned about the legal and ethical issues brought up by these materials. The *Protocols* opened the discussion of Native American archival materials on a larger scale, as Greene suggested, "Although the Protocols form the crux of the conversation, it is possible that they are not the end but the beginning of that discussion."<sup>3</sup> The *Protocols* help to open the dialog between archivists and Native Americans, giving them a mutual starting point in discussions

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<sup>3</sup> Greene, 25.

and understanding of each other. The more archivists understand Native American concerns and issues, the more they will realize that the two systems of distributing information are compatible. The restriction of culturally sensitive materials and allowance of Native knowledge to be placed side by side with Western archival knowledge will not harm the archival profession and its ethics. By protecting the rights of Native American communities, archivists will actually be upholding the ethics of the profession.

While the Society of American Archivists has set up forums and Northwest Archivists have made a five year commitment to speak about the *Protocols*, archivists and Native communities need to plan for an outcome from these discussions. An outcome of these discussions can be a redrafting of the *Protocols* for the SAA to adopt. Continued discussion should always be encouraged, but there should be a goal for these forums. Having an end goal such as a redrafting of the *Protocols* would help to guide discussions and to address some of the concerns that archivists have expressed. This can help bring along endorsement from archivists and archival associations. It would also give Native groups and non-tribal archivists something to focus on and work towards, bringing a greater purpose and reward to the ongoing dialog. By addressing issues of how to handle workloads, clarifying terminology, and more clearly how to strike a balance between Native and Western knowledge the *Protocols* will better guide non-tribal archives and Native communities. A redrafting would also make the archival community feel as though their input was considered and added, and thus continuing to foster the spirit of collaboration.

The *Protocols for Native American Materials* are a good start for the archival profession, but archivists should not wait for them to be endorsed by the Society of American Archivists. Instead, archivists need to be proactive and to reach out to Native communities

now. There are several examples of archives and Native American tribes working together before the *Protocols* were drafted and this kind of work needs to continue. Being well grounded in the history of the treatment of indigenous knowledge, the structure of information distribution, privacy and access policies and laws will make this work easier. While it is a lot to take on, it is the responsibility of archivists to serve and address the concerns of their public, which includes Native Americans. Keeping open communication, publishing studies, and exchanging ideas with other institutions and Native communities will continue these efforts to create an environment within archives that are fair and accepting to Native American cultures.

Publishing beyond just archives journals will also help to bring awareness to these issues. Bringing the discussion to historians, librarians, anthropologists, ethnographers, and other professionals will not only help archivists in including others into the discussion, but help researchers in those professions when they want to use archives. By publishing in multiple journals, there will be a greater chance that non-professional researchers, such as students, will encounter literature on Native American archival materials during their preliminary research. It will introduce people beyond the archival community to these issues, so when they begin research they will understand the restrictions and concerns that might come with certain collections. Further information about restriction or change in access can be explained on a case by case basis through finding aids and statements from the archives.

Additional discussions of Native American concerns can be introduced into archival education programs. The Society of American Archivists has workshops that address Native American archival concerns, which are a good start for professional archivists. However, it

would be more effective to start within the graduate schools. Having the topic woven into existing courses will help to bring awareness of Native American archival issues to students and give them an opportunity to speak about them as they are learning the traditional principles of archival theory. Another step could be to encourage professors and instructors to develop new courses in addressing the needs of various ethnic, religious, cultural, and social groups within archives. This would help students to understand that the standard archival theory that they learn is not applicable to all cultures and methods of knowledge and information. By perpetuating these discussions in the classroom, students might take the topic more seriously and understand that it is not a special request from Native Americans that can be put aside, but something to think about critically.

This acceptance of another system of information and of understanding archives should not be considered a threat to the profession, but another step towards diversifying archives. The word diversity is thrown around within archives, museums, and libraries, but for the professions to embrace that diversity, they need to be willing to accept different methods of handling materials and information. Taking into consideration legal and ethical implications of holding Native American materials, archivists can make the leap from traditional archival theory to incorporating the cultural needs and value systems of Native communities.

The *Protocols* do not ask archivists to surrender all control of records over to Native communities and a mutual understanding between non-tribal archivists and Native tribes can be reached through open dialogs and negotiations. By keeping open communication, both groups can establish their needs and what boundaries to set when it comes to the control of records. Taking lessons from the case studies, Native knowledge can be placed side by side

with Western archival cataloging standards instead of completely replacing them, even providing additional knowledge when non-tribal archivists cannot. Tackling concepts of privacy and access can be resolved through a thorough understanding of archival ethics and how privacy policies have been applied to records. Archives will not be championing censorship, but instead will be respecting the privacy of cultures in the same way they respect the privacy of individuals. In some ways these changes do not drastically change the way archivists have traditionally worked, but instead ask for them to apply their principles in different ways.

These challenges to traditional archival theory presented by Native communities can also be applied to other ethnic, religious, social, and cultural groups. Many of the same arguments made for the rights of Native Americans within archives can also be applied to other cultural, social, and ethnic groups. To some archivists, this might seem like a slippery slope of losing archival standards, but it can be seen more properly as an opportunity to better understand record creators or the cultures to which the records pertain. The same benefits that have come from relationships with Native communities can be developed with other groups. This is not only ethical treatment of other cultural materials, but it puts those materials into the context in which they belong. It opens up communication with other cultures and creates a greater understanding of the materials the institution possesses. It also aids researchers in understanding where the materials they are studying come from and can connect them to the communities that they are researching.

Working towards accepting other cultural influences into the archival profession will never be easy, but the results will be worth it. Harming Native Americans culturally is no longer an option. Imposing Western values upon archives without room for compromise is

an eerie echo of old imperial powers. While currently archivists are willing to accept different cultural materials into archives, archivists possess an almost absolute control over the records. By denying the rights of Native Americans to protect their own cultural heritage, archivists become no better than their past counterparts. Giving up some of that control and allowing for collaboration and compromise will move archivists away from the past and open new doors.

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