

Jean Stefancic and Richard Delgado, in *Critical Race Theory: An Introduction* (2012), note that “In some sense, we are all our stock of narratives - the terms, preconceptions, scripts, and understandings that we use to make sense of the world. They constitute who we are, the basis on which we judge new narratives” (p. 34). Each of us brings our full self to our work and our relationships, whether we can identify those facets of our personalities or not. The values that we hold are products of that entire stock, and we have few moments to unpack what it means to believe in them.

Archivists cling strongly to our shared, linear narrative of appraisal, description, and access. It is a common, uniting story of how the materials in our care get to the researchers in our spaces. As such, many of the facets of those processes are accepted and reified through practice rather than critically examined and continuously re-examined, and theory has been concretized as something closer to ideology, or as Solórzano and Yosso (2002) define it, “a set of beliefs that explains or justifies some actual or potential social arrangement” (p. 24). The idealized value of “open access” to information in traditional Western archives, for example, is grounded in a right to property based in a racially and gender biased jurisprudence, and thus legal arguments for “open access” replicate those same privileges and harms. Rather than rely on legal frameworks for decision-making around access and use, I argue that adopting consent-based models of self-determination would shift the paradigm of archival policies and practices around use and access from one based on individual property rights to one based on relationships, autonomy, and prioritization of record creators and subjects. Instead of seeing this process as restricting or censoring, I assert that adoption of these protocols would lead to increased trust, more accessible archival description, and a more pleasurable archival endeavor.

First, I will use Critical Race Theory (CRT) to question Western jurisprudence and deconstruct its assumed neutrality to show it is based on dispossession of property of non-white, non-male, non-citizens. The specific legal context I examine is Intellectual Property (IP), the basis for the archival tenet of open access. Next, I offer three non-legal or extra-legal models of consent, which serve as examples for thinking beyond status quo assumptions of archival practice. The three models I explore and evaluate are indigenous protocols, feminist affirmative consent, and Institutional Review Boards (IRBs). I then use the University of California, Los Angeles Library Special Collections (UCLA LSC) policies as a case study in how these three models might be applied to archival practice and professional norms.

Unequal Under the Law

From its foundations, Western jurisprudence has afforded different rights to white male citizens versus women, people of color, and non-citizens. The Civil

Rights Movement of the 1960s focused on incremental expansion of protections under the law, but scholars in the 1970s were alarmed at the rate at which protections supposedly gained under those reforms were being overturned. These scholars pointed out that because the foundations of Western jurisprudence are unjust, reforms to it will not provide lasting protections. Delgado and Stefancic (2012) define Critical Race Theory (CRT), a collective movement which grew out of Critical Legal Studies, as “activists and scholars interested in studying and transforming the relationship among race, racism, and power” (p. 3). CRT is differentiated from other liberal activist movements as it questions “the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law” (Delgado & Stefancic, 2012, p. 4). Classic liberalism is heavily focused on the search for universals, which “is apt to do injustice to individuals whose experience and situation differ from the norm” (Delgado & Stefancic, 2012, p. 64).

CRT theorists’ arguments lie in a critical examination of the racist roots of property protection within law, which in its origins defined certain people as non-people and afforded property rights accordingly. Law is not incidental to colonialism; in fact, according to Anderson (2015), “Central to the function and instrumentality of colonialism is law, as it is law that established the frameworks and the conditions for colonial conquest, domination, and control” (p. 770). Slaves, defined in the Constitution as property themselves, could not own property. Women are not even mentioned in the Constitution, providing no counter to the common law of coverture, under which a woman was simply not a person, her legal existence and property rights bound up in her husband. Indigenous peoples were not citizens, and not subject to Constitutional protections. In a strictly legal framework, archives will inevitably encounter the same pitfalls of dispossession. As Caswell and Cifor (2016) note, “Even those archives that explicitly articulate a human rights or social justice mission typically frame their work in terms of ensuring a set of individual legal rights” (p. 24), which has produced archives that are responsive to researchers rather than victims. Justifying archival policies through legal rights to property and access will continue to reiterate the privileging of some and the harm done toward others along historical demographic lines.

Open access, a professed core tenet of the archival field (Society of American Archivists, p. 2012), is based in legal rights to material and intellectual property (IP). IP “remains firmly grounded in Eurocentric visions of the world” (Anderson, 2015, p. 775). The origins are in colonialism, chronologically and epistemologically. It was developed within a framework of exploitation - it “did not happen in some kind of political, social, and cultural vacuum” (Anderson, 2015, p. 771) - and reinforces colonial power structures in its application. Therefore, it is false to claim it is neutral historically, politically, and culturally

(Anderson, 2015, p. 771). Property is a constructed aspect of Western epistemology, not something natural or universal; traditional knowledge “was never offered any kind of respect and certainly no legal protection...[IP] actively supported the contexts and nonindigenous individuals that appropriated, stole, and/or made this knowledge into colonial and recognizable forms of (intellectual) property” (Anderson, 2015, p. 773). Rather than a mode of protection, IP is the product of a lineage of dispossession, and in a “conflict society” (Johnson, Drake & Caswell 2017) in which oppression and exploitation are tangibly present and not moored in the past, is operationalized as a tool of continued, justified inequality.

Consent protocols from outside the field can broaden our understanding about who actually benefits from IP-based open access policies: “The idea that restrictions on information are always bad serves a variety of commercial interests while disproportionately affecting people who depend on privacy for their safety or who lack the skills and resources to maintain it” (Hasinoff, 2015, p. 132). That which is assumed to be outside of commercial modes of information production and ownership, or that which is deemed to be outside of normative behavior and thus not deserving of privacy, is functionally considered to be within the public domain (Hasinoff, 2015, p. 137). Because Western jurisprudence is based on notions of individual rights and property, incorporating a mosaic of consent models can help ensure archives are reaching those who are left under-resourced and unprotected by law alone. More importantly, it can make the archival endeavor more inclusive, culturally flexible, and pleasurable.

The Mosaic of Consent

The notions of inclusivity, cultural flexibility, and pleasure through self-determination are part of a relatively young trajectory of community rights activism. The 1960s Black Power, Women’s Rights and Second Wave Feminism, the American Indian Movement, and the Disability Rights Movement demanded a social structure which prioritizes participation, equality, and justice. Feminist affirmative consent and IRBs are not coincidentally products of this era. Activists were disillusioned by the hands-off liberalism of the post-war era and demanded a reinvestment in social programs. This era was radically different than the superficial universality of the liberalism which came before it and the neoliberal era which followed it, marked by a “freedom” which restored class order rather than equality (Samek, 2001, pp. 15-16).

Within the archival field, there are those who are challenged by new scholarship and professional practice calling for archives to be sites of struggle and of social justice, and who feel a sense of unease with what they see as the increasingly political nature of the archival field. However, as Ramirez (2015) points out, the previous assumptions and assertions in the archival field “of

neutrality and objectivity, and a rejection of the ‘political,’ take for granted an archival subject that is...homogenous...[and] supports whiteness and white privilege in the profession” (p. 340). To deconstruct these systems of privilege and actively bring forth the voices of non-homogeneous archival subjects will require not just advocating for small reforms, but for entirely new ways of thinking about and doing our work. There are non-legal and extra-legal options for archivists to proactively and retroactively protect the human creators and subjects of the materials in our care. I will explore and evaluate indigenous protocols, feminist affirmative consent, and IRBs in turn.

Indigenous Protocols

Indigenous protocols offer a set of norms and behaviors that can be adopted by archives to protect record creators and subjects by challenging commonly held notions about open access. Open access to materials in the public domain is protected by IP. IP is incompatible with protection of indigenous knowledge because it is colonial in origin and reinforces colonial standards, epistemologies, assumptions, and norms. Colonizers sought to control both indigenous land and knowledge to achieve their governing ambitions through the concepts of *terra nullius* and *gnarita nullius*, “no-man’s” land and knowledge (Anderson, 2015, p. 773). Western concepts of fixity and sole creatorship and ownership are key concepts within IP, yet are incompatible with indigenous ways of knowing. IP as a site of struggle over the way indigenous peoples and their knowledge have been appropriated and marginalized in Western discourse, law, and space (Anderson, 2015, pp. 773-775). The dominant, modern view that IP is ahistorical, apolitical, and acultural is a postcolonial mindset that places it within a neoliberal free market rather than in a colonial past (Anderson, 2015, p. 770), and in no way acknowledges that we operate within a perpetual colonial present due to our inability or unwillingness, as memory workers, to reckon with and repair the past (Johnson et al 2017).

Open access is a common imperative and principle of archives, as evidenced by its centrality in the Society of American Archivists (SAA) Code of Ethics (2016), “aspirational principles” that should be followed to “create trusted archival institutions.” According to the document, aspirational “archivists actively promote open and equitable access to the records in their care within the context of their institutions’ missions and their intended user groups. They minimize restrictions and maximize ease of access” (Society of American Archivists, 2016). The closest the document gets to protection of vulnerable creators and subjects is urging archivists to “promote the respectful use of culturally sensitive materials in their care by encouraging researchers to consult with communities of origin, recognizing that privacy has both legal and cultural dimensions” (Society of American Archivists, 2016). The code diminishes the sovereignty of creator and

subject communities by putting the onus of communication with communities of origin on the researcher rather than urging archivists to proactively do this work.

Native American tribes possess powers of sovereignty, though these powers have been seriously diminished by treaties and laws under colonization, being “domestic dependent nations.” Protocols are increasingly important in tribal communities to bridge this gap. They are based on diplomatic and legal principles, but they lay a framework of expected behaviors and discourse beyond what is legally required. Protocols relate mutually agreed upon procedures and principles for maintaining respectful, equitable relationships (Bureau of Reclamation, 2012). In this way, protocols are grounded in relationships rather than individual rights, which “are said to be alienating. They separate people from each other - ‘stay away, I’ve got my rights’ - rather than encouraging them to form close, respectful communities” (Delgado & Stefancic, 2012, p. 29).

The First Archivists Circle has put forth protocols for evaluating research requests on culturally sensitive indigenous knowledge, including those created by and which portray Native Americans. Culturally-sensitive materials might be any of the following, which highlights the assertion that only a minority of archives would contain none of these items:

human remains, religious or sacred objects, ceremonies of any kind, burials, funerals, archaeological objects (especially if from burials), hospitals, churches, cemeteries, kivas, sacred places, songs, chants, music, religious practice, healing, medicine, personal or family information, oral histories, community histories, “myths,” folklore, sacred sites or areas, religious sites or areas, village sites, territories, use areas, personal or family information, archaeological data, religious materials, ethnobotanical materials and genealogical data (First Archivist Circle, n.d.).

The protocols include guidelines for researchers, donors, and archival professionals. Among other guidelines, for researchers, they encourage communication with relevant communities to address tribal concerns and receive formal endorsement for projects; for donors, they encourage acquiring respect agreements between communities and researchers who donate records depicting them and culturally responsive care and use agreements from potential donors; and for archivists, they emphasize that disseminating specialized knowledge gathered with or without informed consent can be irreversibly harmful to the community, that the legalities around acquiring, preserving, and accessing records has changed through time, and that archivists should seek consultations with tribes to discuss repatriation, community review, access restrictions, and

degradation policies, that is, not “artificially prolonging the life cycle” (First Archivist Circle, n.d.) of records.

Some of these protocols run directly counter to archival standards put forth by SAA. They also counter dominant Western archival concepts, such as Jenkinson’s (1922) definition in *A Manual of Archive Administration* of archival documents as those “having ceased to be in current use” (pp. 8-9). Indigenous protocols put record creators and subjects ahead of concerns about the needs of non-indigenous institutions and researchers. The records they are concerned with are not just pieces of paper, but living materials that are part of webs of knowledge and practice. While these might be incompatible with professional norms, the problem is not that there are competing viewpoints, but that most archives exist within a framework which privileges the dominant, normative, Western viewpoint. Traditional knowledge systems should be seen as “possess[ing] equal integrity and validity” (First Archivist Circle, n.d.). Rather than seeing these systems as competitive, incorporating indigenous protocols will add context to collections and increase access to the very user groups who value indigenous materials most: the communities themselves.

Feminist Affirmative Consent

The idea that archival records, their use, and their stewardship can cause or reduce harm is being addressed outside the indigenous community, as well. Acknowledging the affective and not solely evidentiary nature of archives, feminist theory in archives has lately centered around a feminist ethic of care, in which, as Caswell and Cifor (2016) argue, “archivists are seen as caregivers, bound to records creators, subjects, users, and communities through a web of mutual affective responsibility” (p. 23). This scholarship has been transformative, and has deconstructed the assumed distance between archivists and the materials they care for.

This ethic of care can be seen as part of the lineage of feminist pedagogy. Belenky et al. (1986) discuss feminist pedagogy in this way: “While bankers deposit knowledge in the learner’s head, the midwives draw it out. They assist the students in giving birth to their own ideas, in making their own tacit knowledge explicit and elaborating it” (p. 217). Accardi (2013) likewise notes, “[W]hat makes care feminist is that it sees students as whole human beings, not vessels to be filled with information and knowledge” (p. 44). Though couched in professional terms, the authors clearly set up banking as a metaphor for male sexuality, while what they determine to be the feminist pedagogy metaphor is not female sexuality, but midwifery, the ultimate expression of care. But as Audre Lorde (1984) argues, “Only within a patriarchal structure is maternity the only social power open to women” (p. 111). The image of the midwife as the pinnacle of care, Lorde would say, is still a patriarchal move. I assert, then, that the

opposite of violation is not care, but pleasure. In discussions of feminist ethics in archives, what is missing is a central focus on achieving pleasure through affirmative, enthusiastic consent.

Instead of asserting that care is the answer to respectful relationships between archivists, researchers, and record creators and subjects, I propose the model of feminist, enthusiastic, affirmative consent. With this assertion, I do not argue that archival research is or is analogous to sexual assault, but rather that the frameworks of affirmative consent can help guide feminist policies of archival access. To see affirmative consent as something beginning and ending with sexual acts is to willfully ignore the way that sexual relations affect power relations more broadly in society, and to undervalue the significant structural shift that affirmative consent represents: a model in which women and others who are often silenced, such as people with disabilities and non-binary people, are empowered, autonomous actors (Friedman & Valenti, 2008, p. 14).

For those who fall squarely within normative assumptions about behaviors, desires, and bodies, it might be difficult to see that a societal shift toward enthusiastic, affirmative consent could have ripple effects outside the bedroom. Lola Phoenix (2017), a non-binary, queer, autistic novelist has written eloquently about the ways this paradigm has empowered her. She writes:

As someone on the autistic spectrum, my life is constantly punctuated by moments where my consent is not prioritized and my personal boundaries are considered too obscure. The irony is that *I* am the one described as stubborn and unyielding - all while I organize my entire life around meeting the rigid societal norms created by allistic (non-autistic) people (Phoenix, 2017).

Further, she highlights the physical and mental labor she endures because of these constant violations:

Negotiating this every day with myself and the world is tiring. It might be why social situations leave me feeling exhausted, especially with strangers. I can't let my guard down. I have to continue to perform. On a fundamental level, my desire to be myself is not permitted without an undue amount of stress in my life. I have to sacrifice part of myself for the betterment of the whole in everyday situations. And I am scared that this inner part of me that desires the "peace" of adhering to rules and orders will keep me from saying "no," even when I should (Phoenix, 2017).

For someone whose “boundaries and accommodations are regularly ignored or discounted” (Phoenix, 2017), the issue of consent does not start and end with sex, but is part of a larger question of respect for others’ bodies and lives.

In discussing protections around digital records, Amy Adele Hasinoff (2015) asserts:

The power of an explicit consent standard is that it clearly establishes that the default is that it is not acceptable to distribute private information. Requiring explicit consent means that the burden shifts to the person who wants to produce, distribute, or possess private content (p. 142).

With this shift, record creators’ and subjects’ voices are lifted, and there is no assumption that because a record exists and is available, it should be used. Rather, archivists will enter relationships with these people which “transcend space and time” (Caswell & Cifor, 2016, p. 34), and which center their needs rather than institutional imperatives or researchers’ impulses.

Just as age is a common proxy for consent, wherein we often fail to adequately recognize victimization between adults because of the “impl[ication] that adults are rational agents uninfluenced by any structural constraints or forms of power” (Hasinoff, 2015, p. 144), so too is it used as a justification for a document to be considered in the public domain and open to research. There is a forced temporal fixity in archives which sets up a detachment between the materials, the archivist, and the user. A focus on feminist ethics of consent would urge us to not take this for granted. It would place a strong emphasis on affect and emotion, and be part of a larger paradigm of archival appraisal, description, and education which celebrates the complexity of the archival endeavor. Questions of repatriation would be foregrounded in this model, where decisions about returning items would not end in whether they are legally owned or not. Further, questions of whether items belong best in their current archival context or whether they should be transferred to another repository could be raised, allowing the items themselves to determine their placement. Finding aids would be living, dynamic records of the webs of relationships in which a collection exists. The shame, satisfaction, disgust, excitement, and the rest of the range of emotion archivists and researchers feel in an affective archival moment would all be valid and legitimate, and would be contextualized in archival descriptions. Finally, archives could be a site to educate about consent, a way to introduce feminist pedagogy into the information literacy classroom.

Lest we fall into the wet blanket or punitive rhetoric used against the affirmative consent movement by its detractors, it is important to reiterate that the point of enthusiastic consent is to respect boundaries in order to facilitate

pleasurable experiences. Archives will not always say “no.” Rawson (2010) advocates for a queered “historiographic method that is based on the ways that researchers feel archives and desire history, and the ways that archives and history feel and desire right back” (p. 137). The experience described, of fondling sado-masochistic materials at the GLBT Historical Society without gloves, is one of satisfaction, that is, the fulfillment of a desire, on both the part of the researcher and the materials. Enthusiastic consent between the researcher or archivist and the materials can heighten these moments.

Institutional Review Boards

The discourse of desire and affect in archives is a contemporary one. In the dominant Western archival tradition, records have commonly been understood according to Jenkinson’s (1922) definition of them as the neutral byproducts of bureaucratic activity (p. 11). But apology letters, locks of hair, recipe cards, and fanzines are not neutral and not bureaucratic. Rather, they are the byproducts of the most human of activities - loving, mourning, nourishing - and are as human as cells and tissues. I propose considering archival materials as human specimens, which recognizes the bodily labors of creating, protecting, processing, and accessing them. With this shift comes the immense and imminent need to protect the bodies in our trust. To this end, archives could set up ethical review committees analogous to IRBs within their organizations to review practices around archival and curatorial description and proposed scholarly research on collections.

IRBs were set up in the 1960s in response to, among others, the progressive revelations of the Nazi medical experiments (1939-1945), the Thalidomide tragedy (1957-1962), and the Tuskegee Syphilis Study (1932-1972). In each of these cases, the men in charge of the studies argued their actions were justified because of intellectual freedom. It is not a surprise that the victims of these studies - children, prisoners, mothers, Black men - did not look like the men holding the clipboards. IRBs were set up to protect the most vulnerable in society from the illogic that access to knowledge by the powerful is more important than the people from whom that knowledge is derived. The purpose of IRBs is to ensure that Free, Prior, and Informed Consent (FPIC) is properly given by research subjects, meaning consent which is given without coercion, intimidation or manipulation; given before the authorization of research; and given with knowledge of all potential benefits and harms in a clear and accessible manner (Food and Agriculture Organization, 2016, pp. 15-16). If FPIC is not part of the research design, it will not be approved by the IRB.

Protecting vulnerable bodies and respecting the wishes of living subjects was not always standard practice. It is no coincidence that IRBs sprang up in the same decades as Women’s Rights, Indigenous Rights, and other movements of

self-determination. Calling archival materials human specimens, even records which were once part of human bodies, like hair, is outside the bounds of the current conception of our profession, yet respect for human body cells would have sounded equally absurd a few years ago. As Cifor (2015) notes in her encounter with a piece of hair in the collection of Victoria Schneider, a transgender activist, the act of finding human materials in archives is both desirably and unsettlingly intimate. Cifor (2015) argues that “archival touches should be unavoidably intimate, provoking difficult and celebratory experiences and feelings reflective of the intimate and sometimes painful history and memory that made us who we are” (p. 647). The materials Schneider left behind are evidence of her bodily experiences, so central to her identity and her activism, and are preserved in a place where her body can survive to be encountered and reimagined. The bodily and the embodied, and the material presence of what is absent, exist in archives. Record subjects and creators live on in archives, and the encounters researchers have with these materials constitutes research on human subjects.

As Cifor’s experience shows, record subjects and creators live in webs of relationships in the communities they originate from, represent, and affect. Setting up ethical review boards would demand that institutions include a voice from the community represented as subjects or creators of materials, correct previously incorrectly described materials, and build an institutional pathway for advocacy for vulnerable populations, such as restricting access to or repatriating culturally sensitive or sacred materials belonging to indigenous peoples. Every IRB must include one or more members with knowledge about and experience working in the community being studied. Understanding that humans are represented within collections in very literal and not simply figurative ways shifts the framework of protection from IP and other patriarchal, capitalist forms of legal rights to rights rooted in social, relational, community-based ethics. This also flips the standard of accountability from a reactive one based on a framework of punishment to one rooted in methodology, personal experience, subject representation, and proactive consent.

IRBs certainly protect institutions from being sued by research subjects. Research was so egregiously harmful and one-sided that these systems were set up to institutionalize ethics. Some of the positive effects ethical review committees have, particularly in building trust and partnerships with vulnerable and underrepresented communities, ultimately still benefit the institutions. While IRBs have done work to reduce harm, the question remains as to whether using a tool born of the system can be liberating to those within and outside of it. But because of their non-legal nature, IRBs are actually in a unique position to assert that ethics are socially constructed, and that consent is a living process. Considering that a non-institutionalized ethic of care might not be particularly

caring toward everyone, perhaps there is a role for an institutional mediator between the law and the people it leaves behind.

Applying the Models of Consent

The three models discussed are three non-legal or extra-legal models of consent which can frame archival discussions on the topic of open access. The University of California, Los Angeles Library Special Collections (UCLA LSC) policies around open access can be used as a case study to see how this tenet is operationalized. They have a self-proclaimed “bold commitment to put collections, resources, and scholarship from around the world at the fingertips of students and scholars,” and do this by, among other strategies, collecting unique materials “that document the histories and cultures of Southern California’s diverse communities, and making them discoverable and deliverable to scholars worldwide” (UCLA Library, 2017). While this reflects what the Western academy, especially a public institution such as UCLA, is supposed to do, this conflicts with indigenous notions of knowledge as a responsibility and a privilege and not a universal right. It also presents knowledge as something tangible, collectible, and deliverable, rather than something living that exists and is powerful because of the webs of social relationships in which it is formed and passed on. This would specifically conflict with practices such as repatriation and closed or restricted access. The wording of this policy assumes that knowledge can be unproblematically accessed universally by scholars and students.

Whether as an archival user or practitioner, the moment of discovery is one of the most potent experiences in the field. And yet, this accepted configuration - of transmitting knowledge through discovery rather than deliberate passing down between generations, of celebrating being the first to see something or to see something not meant for another’s eyes, of having everything accessioned be something discoverable - should not be taken for granted, as this is not how knowledge is transmitted in every culture. Rather than adhering to institutional norms based on Western jurisprudence, UCLA LSC could adopt indigenous protocols to assess collections which contain culturally sensitive materials and research on them, and thus protect indigenous and non-indigenous record subjects and creators.

Following the First Archivist Circle recommendations, instead of viewing materials as objects to “discover” and “deliver,” recognizing the continuity of living knowledge traditions, UCLA LSC could center creator communities’ conceptions of knowledge formation and transmission in their policies. In the archival community, there has been little work analogous to the museum field’s grappling with their holdings of items subject to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and so this broader work of examining policies through the lens and methodology of indigenous protocols has

largely not been done, but some archives are proactively doing this work. Across campus from UCLA LSC, a university museum's records of almost three decades of NAGPRA document generations of exploitation by the cultural heritage community and their efforts to make amends. As records of a public institution, most of the papers, such as correspondence between administrators, are legally open to any researcher. But, in processing, those records which contain the living knowledge of tribal communities will be restricted to people with an affiliation to the creator communities. While this is a collection in the processing stage, UCLA LSC could reexamine existing collections using this model. By definition, much of what archives hold, of course, is historical. It is not always possible to obtain the consent of a record's creator or subject. However, by incorporating archival theories such as Joel Wurl's "ethnicity as provenance," which recognizes that records can be created by and belong to a community rather than only an individual, and by recognizing the continuity of living knowledge within indigenous communities and our historical role as archivists in breaking that continuity or weakly documenting these ruptures, we can expand our standards of who can give consent and who should be incorporated in archival appraisal and access decisions, and can craft policies such as case-by-case research reviews and culturally responsible donor respect agreements which acknowledge the benefits and irreversibly harmful effects that research can have on living communities. Finally, while UCLA LSC has appraisal and deaccession policies, there is little indication they are prepared to have serious discussions around repatriating archival materials, a conversation which so far has been limited to a vast minority of practitioners in the field, most notably Kim Christen and Jim Enote, but which could radically build respect between the institution and vulnerable communities.

The top priority of UCLA LSC is to "Optimize the research experience by making our holdings easier to discover and use and by providing access to special collections materials when, where, and how users want it, to the greatest extent possible" (UCLA Library Special Collections, 2015). In this configuration, the desires of the users are put ahead of the needs of the record subjects and creators. This user-centric framework employs a forceful, violating discourse that assumes a "silence means yes" consent structure rather than enthusiastic, affirmative, "yes means yes" consent. By expanding the concept of violation or harm beyond just physical, sexual misconduct, there are several ways this vision of affirmative consent could be applied to archives.

Senate Bill No. 967 (2014), which applies to all universities in California and was enacted in 2014, requires:

An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement

to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent (California Legislative Information, 2014).

The imperatives here are around sexual consent, but the bill can offer us a model for applying affirmative consent to archival practice. First, it asks archivists to look carefully at issues of voluntary agreement in archival collection policies, and not just legal ownership. Affirmative consent on a most basic level requires asking questions, but it does not by any means require a public reckoning; practitioners should be encouraged to seek answers rather than be passive actors in interactive and iterative processes while still being respectful and confidential. Second, it places relationships at the center of practices, and requires all actors be equally enthusiastic, included, and respectful in the archival endeavor. The “when, where, and how” language prioritizes an individual, the researcher, rather than recognizing anyone else involved in the very human interactions that take place within an archive: between a researcher and materials’ subjects and creators, between researchers and staff, between archivists, and so on. This model also recognizes the bodily and emotional labor of archivists, which is often overlooked or taken for granted. Third, it forefronts that consent is not irrevocable, but rather a living process and flexible state which can and should be reviewed at each point of contact, rather than assumed based on past notions. Because an appraisal, description, or access decision was made by a previous archivist does not mean that these decisions can never be revisited in the context of changing social norms. And, it allows for affect to be included in archival description; when experience is valued as much as historical research, documentation of encounters with materials will be legitimate descriptive flourishes that can be added into participatory, mutable finding aids as materials are used. Finally, this framework requires constant challenging of assumptions, but it promises enjoyment as a result. Rather than think of consent as a punitive or limiting measure, feminist consent places pleasure at its center. With sexual consent education programs increasing at universities around the country, the information literacy classroom can be a relevant and safe site for this conversation to take place by, for example, discussing archives in terms of consent or using example materials in demonstrations which explore the topic. Encouraging education around consent

within archives can deepen the pleasure of the archival endeavor for those represented in the archives, researchers, and archivists.

Before submitting anything to an IRB review, medical and social science researchers at UCLA can take the first step of understanding minimizing risk in research design and self-assessing risk-benefit. Risk here is defined as “The probability of harm or injury (physical, psychological, social, or economic) occurring as a result of participation in a research study” (Office of Research Administration, n.d.). The Office of the Human Research Protection Program site is meant to guide researchers through the initial step of conducting a risk-benefit assessment before the proposed study goes through the IRB by outlining the types of risks - physical, psychological, social and economic, privacy, and breach of confidentiality - they need to consider in their research design and how to measure the probability of a subject incurring that risk. Currently, archival research conducted on records in publicly-accessible archives is exempt from IRBs; there is no need to review “Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available...” (Office of Research Administration, n.d.). Exempting archival records assumes that the collection of those materials was not violating and harmful in the first place, or that consent in the act of collection also means consent for use, both of which violate notions of affirmative consent. The conception of archival materials as static and fixed also conflicts with indigenous understandings of the social nature of knowledge and records. It reinforces the Western, normative conception of a human subject’s rights deriving from their right to property and privacy as an individual, which does not encompass the potential of community harm as a result of research. A clear example of this is illustrated by the official definition of Social and Economic Harms as those resulting “in embarrassment within one’s business or social group, loss of employment, or criminal prosecution” (Office of Research Administration, n.d.), without saying anything about how the social group itself could be harmed. IRBs offer a conceptual model that archives could use to evaluate collection and research practices because they, perhaps ironically, are perfect examples of how ethics are socially constructed. They force us to reckon with the fact that ethical decisions are always contextual.

Conclusion

The application of the consent models to UCLA’s archival policies highlights that this is not an and/or question, but rather, as I assert, a process of adopting a mosaic of frameworks. Each of the three models - indigenous protocols, feminist affirmative consent, and IRBs - is not wholly applicable to the archival endeavor, and would not be comprehensive as a standalone policy. Rather, understanding that ethics are relational and contextual, I would argue for

putting the concept of consent at the fore of our practices of collection, access, and education, however that is realized. Though this would require changes in our work, it should not be seen as limiting or restricting, but rather as a way to build trusting communities of practice where more voices are heard. In asking how these recommendations could be achieved within vast institutions, the three consent models reckon with the reality that policies were made by those who came before us, but are supported and enacted by archivists both passively and actively. By centering consent and encouraging continuous engagement with communities, archivists are empowered to build deep, trusting relationships and add to our narrative stock.

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