

## ARCHIVISTS AND THE CHALLENGE OF CULTURAL PROPERTY

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These days archivists increasingly read and hear about cultural property. In addition to references in our own literature and in standard conference sessions, the SAA is holding forums about cultural property and the Protocols for Native American Archival Materials. Within the American Library Association a document on libraries' care of cultural property has evolved through at least six drafts and remains under discussion. These documents in turn draw on earlier statements about cultural property, particularly the Australian Library and Information Association's *Aboriginal and Torre Straits Islander Protocols for Libraries, Archives, and Information Services*. The United Nations' 2007 *Declaration on the Rights of Indigenous Peoples* included cultural property among other issues that require international recognition.

Compared to other disciplines, archivists and librarians have joined the discussion of cultural property rather recently. Anthropologists, archaeologists, sociologists, linguists, and even economists and political scientists have been investigating the issues for several decades. These professions use a variety of terms for this concept that do not all mean exactly the same thing. If anything, the term "cultural property" (and the international version "traditional cultural expressions") has broadened to encompass more and more aspects of any group's expressive beliefs, values, customs, and knowledge. When authorities describe cultural property they usually include verbal expressions (folk tales,

riddles, omens), music (folk songs), performances (folk dances, ceremonial plays), and tangible items like carvings, sculpture, pottery, jewelry, textiles, or costumes.

The complexities of cultural property make any list like this misleading. First, one aspect of cultural property is that it is defined by the groups that create it. Therefore, cultural property is what they say it is, not necessarily what any dictionary definition says.

Secondly, attributes of cultural property are as important for understanding it as intrinsic qualities. It is significant that often cultural property has many creators rather than a single author, no known date of creation rather than a specific date of publication, many variations that constantly evolve rather than one static, definitive form, and community-based rather than individual ownership.

Today I'd like to share with you some thoughts about the challenge of cultural property for archivists. I want to begin by telling you about an incident involving cultural property at my own institution—the Wisconsin Historical Society—that I think illustrates the new questions that cultural property poses for archivists. Then I want to examine the Protocols for Native American Archival Materials as a set of guidelines for managing cultural property in archives as well as the debate in the archives field about the Protocols. At the end of my talk I will point to a few things that I think we archivists need to do to address cultural property issues.

Before I begin, I need to explain a choice of wording and one disclaimer. Following the language in international discussions of cultural property, I use the phrase “Western

archives” to mean those institutions that conform to the professional principles and practices first developed in Western Europe and later brought to the United States.

Although I realize that talking about “Western archives” at the Western RoundUp might lead to more than the usual confusion, I cannot come up with a clearer term for the kind of repository that’s most widely established in this country.

I also want to make the disclaimer that I am no expert in cultural property. I am simply interested in the topic and have had some opportunity to begin learning about it and to talk with archivists who know much more than I do about one aspect or another of this very complicated area.

Let me start by telling you about events at the Wisconsin Historical Society that involved cultural property issues. In 1999 we were negotiating the acquisition of an important collection from the heirs of Henry Hamilton Bennett, a 19<sup>th</sup> century photographer who became famous for his landscape views of the Wisconsin River near the town of Kilbourn (today called Wisconsin Dells, partly due to Bennett’s images). The collection included everything from historic buildings to artifacts to a quite important set of manuscripts and vintage photographic prints and negatives. In addition to the river views, the Bennett collection included many images of Native Americans who lived in the same region and who inhabited the area when Europeans and Americans began exploring. The Historical Society had asked the Ho Chunk Indians—descendants of the Native Americans in Bennett’s photos—for financial help in acquiring the collection. Though H.H. Bennett and his family members who continued his commercial photography business after he

died had sold and displayed copies of Ho Chunk photos for decades, we realized that making Bennett's photos of their ancestors and communities accessible in a public archives might violate the Ho Chunk's spiritual practices and cultural norms. In essence (although we would not have stated it this way at the time), we raised the possibility that some of the Bennett photographs involved the Ho Chunk's cultural property.

We decided to discuss our acquisition of the Bennett collection with the Ho Chunk and explore the issues they might see in our purchasing photographs of their people. As the discussion with a group of tribal leaders progressed and as we looked at the images together, we came to an agreement. The tribal leaders would identify images they deemed inappropriate to become publicly accessible at the Wisconsin Historical Society. After the Historical Society acquired the collection, but before we accessioned it, we would donate those images to the Ho Chunk and thus exclude them from the Bennett photographs that we brought into our custody and ultimately made accessible to the public. This arrangement eventually involved relatively few images and helped resolve a cultural property discussion that had some important elements in common with issues that many archivists and the Society of American Archivists are discussing today.

My reason for relating this story is not to boast about my institution, let alone claim that the Historical Society occupies a leadership position on cultural property issues. In the first place, our financial interest in reaching out to the Ho Chunk about the photos hardly represents the more principled reasons for opening discussions about cultural property. Secondly, the episode with the Bennett photographs was a rare instance of our

successfully reaching an accommodation. Although the Historical Society held talks with Wisconsin Native American tribes in the late 1990s on a broad agreement for working relationships, including stewardship of cultural property, those talks ended inconclusively.

I describe the discussion with the Ho Chunk instead to provide a concrete example of how cultural property issues can require archivists to rethink our work in ways large and small. Although the discussion between the Ho Chunk and the Historical Society and the arrangement it produced neatly avoided many of the most challenging implications of cultural property for Western archives, by looking carefully at this episode we can still see the potential for changes in prevailing archival principles and practices.

When the Historical Society began its discussion with the Ho Chunk, neither we nor they referred to a set of principles or a body of regulations concerning cultural property. As I mentioned, we had a financial interest in talking with the Ho Chunk; we believed that they held an interest in the documentation of their ancestors and their community in the Bennett collection. We both knew about the 1990 federal law covering Native American human remains and three dimensional objects—the Native American Graves Protection and Repatriation Act—but we also knew that it did not apply to archival material. We may have been aware of other cultural property management proposals and agreements from other countries (I do not clearly remember). However, in effect we approached our conversation with no agreed-on guidelines or stated objectives.

If the discussion between the Historical Society and the Ho Chunk took place today, we might use the Protocols for Native American Archival Materials as a guideline for concrete steps or as a set of principles to follow. If we did, how would the discussion itself differ from what happened in 1999? Would the Historical Society and the Ho Chunk come to a different agreement for the management of the H.H. Bennett collection? These hypothetical questions from an alternative scenario cannot lead us to changing the terms on which the discussion with the Ho Chunk concluded, but they can take us to a vantage point on the Protocols as a proposal for cultural property in archives. So I want to give you some background about the Protocols and the debate within the archives community about them before seeing what might have happened with the Bennett collection if the Protocols guided that negotiation.

Since the late 1990s, the archives community has been introduced to proposed guidelines that would clearly have applied to the questions the Historical Society and the Ho Chunk examined in 1999. These are the Protocols for Native American Archival Materials, first drafted in 2006 and submitted for discussion in 2007 to the Society of American Archivists. Modeled in part on other statements of cultural property principles, the Protocols propose guidelines of practice for both Western archives and for Native American communities. Many of you may be quite familiar with the Protocols; I hope you are. But in case you have not seen the document or are only generally aware of what it says, I want to review it quickly.

A group of Native American and Western archivists, librarians, historians, museum curators, and anthropologists meeting at Northern Arizona University in 2006 drafted the Protocols for Native American Archival Materials. Based on the sovereignty of Native American communities and on existing professional codes of ethics for libraries, archives and museums, the Protocols propose new arrangements for the stewardship of documentation by and about Native American nations, tribes and communities. Beyond these arrangements, the document calls for building understanding and respect between archives (“collecting institutions”) and Native American communities. Open dialogue and consultation are in fact the tools that the Protocols advocate for producing the new approaches to archival work. “Through dialogue and cooperation, institutions and communities can identify mutually beneficial solutions to common problems and develop new models for shared stewardship and reciprocity...” 5)

The Protocols propose more specific guidelines of practice for both Western archives and for Native American communities. Addressing ten general aspects of relationships between archives and these communities, the Protocols recommend ways to improve the care of documentation and to strengthen the relationships between the two sides. Unlike the most recent draft of the American Library Association’s cultural property statement, the recommendations in the Protocols address particular aspects of professional and curatorial work. These areas include donor relations, restrictions and access to collections, and descriptive practices. While some of the recommendations in the Protocols present common sense procedures by which Western archives and Native American groups can build understanding and share information, other guidelines more fundamentally challenge current archival management practices in Western institutions.

While it is not easy to summarize these recommendations for a presentation like this, I want to try to provide a short overview. I would group the Protocols' ten areas of recommendations into three categories: one on relationships between Western archives and Native American communities ("Building Relationships", "Reciprocal Training", "Awareness of Native American Communities and Issues"); a second on using Native American approaches to managing cultural property ("Striving for Balance in Content and Perspectives", "Culturally Sensitive Materials", "Native American Research Protocols") and a third on improving Western archives' current practices with cultural property ("Accessibility and Use", "Providing Context", "Native American Intellectual Property Issues", and "Copying and Repatriation of Records"). Each of the areas in the document begins with an explanatory statement and has a series of guidelines for Western archives and for Native American communities. An introduction and a preamble precede these ten sections and ground the Protocols in federal and state recognition of the sovereignty of Native American societies and in library and archives professional ethics. The Protocols remain readily accessible on the web, so you can easily look them up and become familiar with them in detail.

One of the Protocols' significant achievements lies in the concrete guidelines it provides within each of the ten areas it covers. As I'll suggest in a moment, the guidelines also provoke questions and objections, but they also help us better grasp what the Protocols would possibly do if they were implemented. The guidelines in the relationships area, for example, include steps Western archives could take to treat different Native American



communities equitably, ways Native Americans could participate in some administrative work of Western archives, and public programming that Western archives and Native American communities could jointly plan and conduct. This area also includes the wise call for patience: “appreciate that in most instances it will take years for institutions and staff to develop essential trust relationships with a community.”

In the Protocols’ recommendations for using Native American approaches to caring for cultural property come the guidelines for applying traditional communities’ stewardship measures where they are most appropriate, directions to restrict access to culturally sensitive items such as images of human remains and sacred objects, recordings of religious practices or maps of sacred sites, and steps for ensuring that Western archives honor agreements between Native American communities and researchers.

The area of the Protocols that concerns improving Western archives practices with cultural property covers some basic functions like access and use, description, management of intellectual property rights, and so forth. Some of the suggestions in this area include making archives’ reading spaces comfortable and welcoming to Native Americans, both groups working together to update antiquated descriptive terms for Native American subjects, consideration of how ownership of material by an entire Native American community (not a single individual) should be treated in terms of copyright, and circumstances in which repatriation of Native American material by Western archives can be necessary.

This is only the briefest overview of the Protocols, but I hope that it helps provide context for the debate on the document within SAA that began a few years ago. When SAA Council received the Protocols from the Native American Archivists Roundtable, it organized a task force to review the document, seek comments on it, and suggest follow-up steps to Council. After discussing the comments received by the task force, Council adopted a motion to hold discussions on the Protocols at SAA's annual meetings in 2009, 2010 and 2011 and to give responsibility for organizing these forums and reporting on them to SAA's Diversity Committee. Participants at the 2008 annual meeting held a lively brown bag lunch session on the Protocols.

One way to assess the Protocols is to look at the reactions to them within the archival community. SAA Council's task force invited comments on the Protocols and compiled all responses in its report. They came from units within SAA as well as from groups and individuals not affiliated with SAA, including quite a number from archaeologists. The SAA unit responses came from sections, roundtables, one committee and one working group. Taken all together, the responses split quite evenly between support for and opposition to endorsement of the Protocols: twelve in favor (or leaning in favor) of endorsement; thirteen opposed (or leaning toward opposition).

Looking more closely at the responses of those both supporting and opposing endorsement, those in favor tended to focus on the Protocols' larger framework of promoting relations between Western archives and Native American communities, of fostering greater understanding of how both sides manage historical collections, of

discussing ways to improve the care of cultural property. The more critical comments concentrated on specific guidelines and proposals that the Protocols offer. Restricting materials that were previously not restricted, repatriating culturally sensitive materials, and managing community-based intellectual property rights were all challenged. The need for clearer definitions of terms and concepts in the Protocols was pointed out by nearly all the responses from SAA units. On the positive side, the units voiced near unanimity on the value of dialogue and discussion about cultural property and Native American archives. They embraced the call for continued examination of the issues.

The hopes and fears expressed in these responses echoed in the discussions within SAA that followed the issuance of the task force report. SAA Council declined to endorse the Protocols and six months and two meetings after initially debating the task force report created the forums series that began in 2009. The first forum took place at SAA's annual meeting in Austin, last year. SAA's Diversity Committee submitted a report on this forum that summarized the discussion among about forty-five participants. Those who spoke raised concerns about mandatory repatriations of Native American archival material and about establishing the mechanisms of communication and agreement on thorny issues. Others spoke about progress on working with Native American communities by some collecting institutions and about the wisdom of taking the initiative to engage in discussions, mutual learning, and relationship building.

Perhaps the best way to summarize the response to the Protocols within the archival community, or within SAA at least, would be to say that there is a great deal of interest, a

significant amount of support, but an equally strong degree of concern about the impact on Western archival practice that any set of guidelines like the Protocols could have. Not surprisingly, how individuals react to the Protocols sometimes reflect where they stand in relationship to it. One individual SAA member responding to the task force's call for comments wrote, "I read with interest the Native American Protocols document and find it quite well argued. Am very thankful that I have no such records." Another SAA member employed at one of the largest U.S. repositories with extensive Native American collections expressed at considerable length concerns about how the Protocols' recommendations would challenge many of the fundamental principles of the archival profession. A third archivist, herself partly Native American and working at another highly prestigious university archival collection, wrote, "I do endorse what the guidelines stand for" then went on to cast doubt on implementing them without strong institutional support.

Another way to assess the Protocols is to apply them to an actual case where a Western archives and a Native American group worked on a cultural property issue. Let's return to the discussion between the Wisconsin Historical Society and the Ho Chunk about the H.H. Bennett photographs and use the Protocols as a framework in which to replay the statements and responses of the two sides. I realize that this is unscientific and methodologically suspect, but I want to hypothesize outcomes from the discussion had we worked on the basis of the Protocols.

The first and probably most obvious difference between the actual discussion and the one we can imagine taking place within the Protocols framework appears in the very reason we approached the Ho Chunk. Instead of starting on the basis of a financial relationship regarding the Bennett collection, we would propose to develop a continuing relationship on the basis of mutual respect and trust, for the purpose of improving the care of Ho Chunk cultural property and, by doing so, strengthen the stewardship of one part of Wisconsin's history. We would commit ourselves not to one discussion but to an on-going conversation about matters of concern to both of us. Within this dialogue we might eventually review the Bennett collection, but we would give precedence to the long-term goal of learning from each other so that we could reach deeper understandings.

A second difference using the Protocols would make has to do with the scope of the discussion. Instead of looking just at the Bennett collection, we might have followed the recommendation to consider all the Historical Society's archival material documenting the Ho Chunk. Although we do not have enormous holdings about the Ho Chunk, we certainly do have other collections, including several other significant photograph collections, moving image footage, and the papers of the state archaeologist. The Protocols refer to all of these within its term "culturally affiliated materials" that should be covered in any discussions and agreements.

Finally, if we had been following the Protocols, how might the Historical Society have dealt with the handful of images that the Ho Chunk asked, and we agreed, to exclude from the Bennett collection? This part of the negotiation clearly relates to the section of

the Protocols on culturally sensitive materials, where the guidelines say “consult with...community representatives to identify those materials that are culturally sensitive and develop procedures for access...and use...” as well as “respect a community’s request to restrict access to and use of materials that describe...esoteric, ceremonial or religious knowledge that is significant to the community”. The Historical Society in a sense accomplished both of these. In fact, by turning over some photographs to the Ho Chunk we perhaps achieved what the Protocols call “knowledge repatriation”, in which the decision to return archival materials reflects the recognition of whom the information in a collection is intended to serve.

Using the Protocols could have produced a different outcome, however—one that upheld the Western archives principle of provenance while also meeting Native Americans’ interests. Instead of excluding entirely some images from the Bennett collection that we accessioned into our holdings, we could instead have followed the recommendations to agree on restrictions to access and use and to hold ourselves accountable for implementing the agreement. Criticism of the Protocols sharpens around the measures for limiting access to Native American materials, but in the discussion between the Historical Society and the Ho Chunk, the lack of guidelines like those in the Protocols may actually have made it easier simply to break up a collection, leaving one part in the Ho Chunk community and another in a public archives.

What all this suggests to me is that the Protocols can have real value for Western archives and for Native American groups that need to discuss cultural property issues.

Some of the comments on the Protocols submitted to the SAA Task Force and some remarks at the 2009 annual meeting forum tend to consider the document as a whole and react to all the recommendations as though they constitute an entire program or system of cultural property stewardship. While the recommendations in the Protocols do show a logical consistency, we do not have to accept or reject the entire document. Western archives and Native American communities may find helpful guidance in just one or two of the Protocols' recommendations, whether or not they need the larger framework of relationship building. As my imaginary scenario with the Bennett collection discussion suggests, the Protocols can provide helpful guidelines for particular issues and produce mutually beneficial outcomes for both parties.

Let me conclude with some thoughts about how the archival community can continue to engage the complex challenges of cultural property. The main premise for the Protocols is that serious and sustained discussion between Western archives and Native American communities, conducted with mutual respect and understanding, can lead to improvements in the care of cultural property wherever it is kept and however it is used. If we adopted all of the Protocols recommendations, both Western archives and Native American groups would fundamentally change many current approaches, but the greatest change would be regular, continuing exchanges of information and negotiations over cultural property stewardship.

I am not certain that this premise is accurate, but I do think it is promising, sensible, and very much worth pursuing. The Northwest Archivists hold a forum on the Protocols at

this meeting, and the Society of American Archivists' second forum at its annual meeting in August concentrates on selected programs that are using the Protocols, so that participants can evaluate real-world cases. The discussions about the Protocols themselves and about more specific cultural property stewardship programs need to take place at other levels as well.

Some of the responses to the SAA Task Force's call for comments on the Protocols drew comparisons between the document and the Native American Graves Protection and Repatriation Act as a legal and mandatory framework for managing cultural property. Now and for the foreseeable future, however, Native American groups and Western archivists have some freedom to test different ways to adopt and implement the Protocols. We can take advantage of this latitude to experiment and test a variety of approaches. In fact, many museums and archives already use guidelines in the Protocols as a basis for ongoing work with Native Americans. One outstanding example is the Plateau People's Web Portal at Washington State University. This is collaboration between the Plateau Center for Indian Studies and members of the Umatilla, Coeur d'Alene, and Yakama nations in which the Native Americans have selected content for the portal and contributed metadata to describe cultural property and provide context from their perspective. Unless something like NAGPRA becomes the way we are required to care for archival cultural property, we could have a whole range of models like this to draw on.



While the Protocols in my opinion represent a good opportunity for archivists to engage with cultural property issues and make progress on them, there are other areas of concern with cultural property that extend beyond Native Americans archival materials that we must address. At the beginning of my talk I mentioned the international investigation of cultural property that began in the 1950s and that continues under the auspices of the United Nations. I've also mentioned the deep interests of other professions in cultural property, including perhaps our closest allied professions, librarians and museum curators. If archivists want to discuss cultural property with international groups and with allied professionals, if we want to contribute our voice to debates that can in the end affect how we do our work, then we have to study and discuss broader issues. These issues can involve other indigenous groups like Pacific Islanders and native Hispanics in the United States and they can involve the ways other disciplines like archaeology, anthropology, folklore and linguistics handle cultural property.

For these reasons, SAA created a Working Group on Cultural Property. Chaired by Jeanette Bastian of Simmons College who worked with SAA Vice President Helen Tibbo to appoint eight members, this working group has the charge to foster discussion, clarify issues, and investigate a range of alternative approaches to managing, preserving, and providing access to cultural property, given the rights and responsibilities of cultural groups and stakeholders and archivists' interest in providing equal and open access to all. The group's mandate includes bringing its work plan to the SAA Council meeting next month in Chicago.

Finally, we need to link our work on cultural property to our goals to increase diversity in the archival community and in our professional organizations. The most recent systematic census of U.S. archivists found that only seven percent are minorities. While this is a larger representation than the 3% found in a survey twenty-five years before, it speaks simply and forcefully to the priority long held by SAA to build a membership that more closely resembles the population of the U.S. as a whole. Beyond well-known statistics like these are other dimensions of diversity where we must improve; for example, how well the historical record itself reflects all lives and institutions in this country, and the range of appropriate methods we use to carry out our professional work. The archival education program at UCLA continues its work with other Pacific rim educational institutions to explore ways to pluralize the archival paradigm and the way we teach archival theory, concepts and methods. This research draws directly on both Western and non-Western approaches to preserving and using cultural property and proposes that members of non-Western societies need more varied archival approaches from the ones we teach now, in order to care for their archives.

Cultural property issues challenge us as archivists because they have many facets. They require us to think not only about different ways to appraise, to describe, and to provide access to collections, they also require us to think about fundamental archival principles and values, like diversity, equal and open access, and even justice. I suspect that few of us ponder these things as we do our daily work, and that is exactly why a document like the Protocols can be so valuable. It raises these issues and teaches us that there are different ways to look at the stewardship of archives. Reconciling these different ways

can be very difficult, but I'm guessing that this challenge for archivists will remain part of our professional careers for at least a generation. That's why I hope that all archivists become familiar with the Protocols and with other cultural property guidelines and proposals, even if you do not have a single item of cultural property in your own institution.

Let me close by paraphrasing Frank Boles, past president of SAA and chair of the Task Force on the Native American Protocols. In his own lengthy comment on the Protocols Boles pointed out both things he supported and things he objected to. Then he made what I think is a valuable observation: "I believe", he said, "the Protocols are less about the details of archival practice and more about recognition of a wrong in need of righting....ultimately, the archivist's goal is to seek justice....justice [can] lead to ...unanticipated benefit[s]. It leaves us open to the possibility that through discussion among equals a path none of us can see today will be revealed."