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Doing Recent History

*On Privacy, Copyright, Video Games,
Institutional Review Boards, Activist Scholarship,
and History That Talks Back*

EDITED BY
CLAIRE BOND POTTER
AND RENEE C. ROMANO

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GAIL DRAKES

Who Owns Your Archive?

Historians and the Challenge of Intellectual Property Law

I SHOULDN'T HAVE TO VIOLATE federal law to give a paper at a major history conference. The plan was to present my work on how copyright law had been used to prevent and allow use of civil rights movement images, and to what end, as part of a panel at the annual meeting of the American Historical Association. I ended with a mention of the 2001 television commercial for Alcatel Americas (the domestic arm of a French company that builds voice and data networks), in which the special effects team from Industrial Light and Magic—the wizards that brought us *Star Wars*—took footage from the 1963 March on Washington and digitally removed all the participants in the march from the National Mall. Everyone is gone except Martin Luther King, Jr., who is shown at a podium giving the "I Have a Dream" speech to a reflecting pool.¹ This controversial ad—which was made with the permission of the King estate—must be seen to be believed. But how could I get my hands on the commercial? I couldn't find it in any archive, and there was no clear means by which I could request access to it from the company. Furthermore, such a request might very well be refused, given the level of negative publicity the ad had received.

Despite all these challenges, I still managed to find a copy of the commercial—via YouTube. A grainy low-resolution version of the Alcatel advertisement is (as of this writing) available on YouTube, compliments of the AdClub of Boston—who uploaded a copy of it as an example of the quality advertising work coming out of Arnold Worldwide, the agency that created the spot for Alcatel.² Could I show the video via YouTube during the presentation? No. Although the panel members assumed that there would be wireless Internet access available in the conference center, the signal was spotty at best. I could *describe* the ad, as I've done here, but I couldn't help

but feel that my description would never make my point as effectively as would evidence of the authorized erasure of the activists, organizers, and everyday people that made the civil rights movement possible. So in an act that was possibly a violation of U.S. copyright law and probably a violation of YouTube's "Terms of Use," I used a software program that allowed me to download the video from the site, and I screened it at the end of my presentation.³ Several members of the audience gasped audibly as they saw the image of King standing at the front of the empty Mall.

This essay highlights just a few examples of the friction between historical scholarship and intellectual property (IP) law, drawing on my own research on the construction of contemporary African American historical memory. What is the connection between the two? It's a fair question. Of all the clauses in the U.S. Constitution that have been vigorously debated for their significance to the lives of black people in the United States, I recognize that the so-called copyright clause—tucked in the list of congressional powers just after the authority to create post offices and a little before the responsibility to punish piracy on the high seas—is rarely among them.⁴ But it might be time for that to change. I would argue that for African Americans, among whom the ability to find and share information about their collective past has been an ongoing struggle, the fate of the "cultural commons" is an issue worthy of concentrated attention.

What are the connections between IP law and the work of historians more generally? They are more extensive than any of us might think and become even more relevant for scholars of contemporary history. Access to the surviving traces of the past is at the heart of historical research. Threats to that access in the United States have taken many forms, from poorly indexed collections in underfunded archives to government reluctance to grant access to documents related to controversial moments in the nation's history. But the last decades of the twentieth century saw the growth of a somewhat unexpected threat: the utilization of copyright and other IP laws to assert private ownership of historical materials to regulate (or refuse) use of materials. During this time, more and more of the sources that could enrich the work of historians of the recent past have been claimed as "intellectual property" by individuals and media corporations, making the work of quality historical scholarship that much more difficult, as scholars attempt to tie their arguments to the evidence they have actually used or wish to use.

While the significant expansion of copyright law since the mid-1970s is in many regards reason enough for concern, it is only one reflection of

an even more widespread tendency to view information as private property and as a source of potential profit. This commodification of information (often by parties who had no role in creating it) can create significant challenges for historians in general, but the possible threats to the work of those of us studying the late twentieth and early twenty-first centuries are generally unexplored. Historians of the recent past are far more likely to encounter media corporations who charge exorbitant fees to those who wish to use the archive of news footage owned by the corporation. In other instances, those who study recently deceased individuals must deal with family members (and other interested individuals) who can now more easily use copyright and "right of publicity" laws to maintain, protect, or polish the image of a family member posthumously. For those of us whose work focuses on the recent past, issues of privacy, pride, and profit can loom large among the challenges we face in our work.

I admit that the vagaries of IP law were the furthest things from my mind as I began my dissertation on African American history and collective memory. But as I began to conduct my research, I soon realized that my project was as much about understanding my lack of access to sources as it was about the use of sources available to me. For those of us whose work focuses on the history of people of color in the United States (or on any group whose historical traces have not always been preserved and archived), this is a familiar story. But unlike those moments when I had found that the materials I needed no longer existed, I now found myself with a very different challenge. The materials I needed to move forward in my work existed—in some cases they had been carefully archived and catalogued—but were often inaccessible to me due to the cost of accessing the archive, the private ownership of the documentation I wanted to review, or legal concerns about the intellectual property rights of the historical subjects. I soon realized that this inaccessibility and the forces that had caused it were part of the story I wanted to tell. To understand what had influenced the shape of contemporary collective memories of the 1960s, I needed to better understand the evolution of United States copyright law since the 1970s.

Fortunately, as I made this realization, I also came to find out about the wide variety of provocative scholarship on the cultural effects of IP law. In the past decade, scholars such as Siva Vaidhyanathan, Kembrew McLeod, and Lawrence Lessig have documented critical issues in the field and the limits that copyright can put on creative and intellectual production.⁵ In 2010 historian Adrian Johns offered a comprehensive history of intellectual property

debates, which follows the concept of “piracy” from the birth of print culture in the fifteenth century to the reign of the Internet in the twenty-first.⁶ Other work, both within and outside of the historical discipline, has made important contributions to this growing literature. Eva Hemmungs Wirtén’s *Terms of Use: Negotiating the Jungle of the Intellectual Commons* (2008) and *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (2004) put questions regarding copyrights and the cultural commons in both historical and global perspective, while Eduardo Peñalver and Sonia Katyal’s *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership* (2010) helpfully argues for the role of resistance in the forming and reforming of IP law. Martha Woodmansee’s studies of authorship explore the shifting meaning of a concept fundamental to copyright, and Ann Bartow’s work, including her important 2006 essay, “Fair Use and the Fairer Sex: Gender, Feminism and Copyright Law,” provides an important feminist intervention into a field where questions of gender (or race, for that matter) generally go unmentioned.⁷

It is in part thanks to the work of these authors and scholars (as well as those writing in fields as varied as fan fiction, library science, and public health) that the conversation about the cultural significance of IP law has moved beyond discussion of peer-to-peer file-sharing networks and music sampling in rap music into a more complicated interdisciplinary scholarly conversation about the significance of the public domain and the cultural commons. Yet despite the diversity of the literature in the field, I have been struck by how little mention there is of what the transformation in the IP landscape means to historians, or the challenge that the commodification of information poses to the goals of teaching and research more generally.

Although the right of the U.S. Congress to grant copyright protection is mentioned in the Constitution, the notion of copyright has been with us far longer than that, with Western antecedents traced back to the Statute of Anne in 1710.⁸ While the expansion of copyright law that began with the Copyright Act of 1976 and the growing popularity of the notion of intellectual property are at the heart of the challenges many of us who study the recent past will face, the idea that historical artifacts are private property has been an issue faced by historians for centuries. For years, private collectors have been able to purchase and display a wide variety of important documents and items of historical value. Current restrictions to access are not simply tied to the wishes of an individual collector (although the wishes of the individual collector are still very relevant); they are also supported by

the increasingly restrictive set of laws that support regulation of access not only to a physical item but also to its image and the information it might contain. So although the notion of private ownership of historical documents, items, and buildings has long been a point of tension for historians, the contemporary period has seen an increase in both the scope and the variety of legal regulations related to access.

Paradoxically, as my conference presentation illustrates, we don’t always have permission to use everything we can see. The growth of the Internet has meant not only better access to preexisting sources but an explosion in both the number and type of new sources available to a historian of the recent U.S. past. The Internet has profoundly shifted the “one-to-many” media model to something much closer to a “many-to-many” model that provides insights into the hearts and minds of people that are often not represented in traditional archives. Instead of a few published letters to the editor, there are millions of online reader commentaries on the issues of the day. Blogs, videos, social media networks, and message boards provide an overwhelming amount of information (both insightful and inane) and allow for the possibility of international conversations in a manner we might not have imagined even a decade ago.

The expansion of IP law is a reflection of the more fundamental shift that faces scholars whose sources have come into being during the so-called information age—a historical moment in which the information landscape is dominated by international corporations whose primary mission is to generate a profit by regulating access. In this context, not-for-profit attempts to extract information from that system have become increasingly difficult. The reduced access to information relevant to a historian’s work as a result of legislation or corporate policy equals a shrinking of the public domain that can profoundly affect the future of historical scholarship. All of us who require access to evidence and texts—especially nonprint sources created since the 1970s—should consider what the notion of information as private property might mean to our work.

The Changing Face of Copyright Law: How Did We Get Here?

Generally speaking (and perhaps understandably), Supreme Court justices have not busied themselves with writing about historians and the challenges of our craft. It is this fact that made Justice Stephen Breyer’s dissent

in *Eldred v. Ashcroft*—the 2003 case that challenged the constitutionality of the Copyright Term Extension Act—noteworthy:

[This Act] threatens to interfere with efforts to preserve our Nation's historical and cultural heritage and efforts to use that heritage, say, to educate our Nation's children. It is easy to understand how the statute might benefit the private financial interests of corporations or heirs who own existing copyrights. But I cannot find any constitutionally legitimate, copyright-related way in which the statute will benefit the public. Indeed, in respect to existing works, the serious public harm and the virtually nonexistent public benefit could not be more clear.⁹

To put this comment in context, we need to make a trip to the not-at-all-distant past: 1998, to be exact, the seventieth anniversary of Mickey Mouse and the year that also marked the passing of pop star-turned-politician Sonny Bono.

It was in that year that the Walt Disney Company took the lead on coordinating lobbying efforts in Washington—to the tune of \$6.3 million—in support of extending copyright.¹⁰ They found many a sympathetic ear, including that of representative Sonny Bono of Palm Springs, California. As a musician, Bono was personally invested in the extension of copyright terms that covered his own works and had proposed legislation to that end. According to his wife, Mary, his wish was for copyright to last forever.¹¹ Despite the unconstitutional nature of this wish, the folks at Disney certainly found common cause with Bono, as did the Hollywood studios, record labels, and publishing associations that joined the effort. Disney sought to have the copyright to the 1928 animated film *Steamboat Willie* extended for the third time.

Why all the fuss over a seventy-year-old cartoon? This cartoon was among the first to introduce the world to the now iconic Disney character of Mickey Mouse. Mickey was scheduled to enter the public domain in 2003, just prior to other notable characters such as Goofy, Donald Duck, and Pluto.

Disney's efforts were successful. With little fanfare or public note the Sonny Bono Copyright Term Extension Act—named after the now deceased representative—was passed by Congress and signed by President Clinton. The act extended the term of protection by twenty years for works copyrighted after January 1, 1923. Works copyrighted by individuals since 1978 received copyright protections for the life of the author, plus an ad-

ditional seventy instead of fifty years. “Works for hire” (those created by or on behalf of a corporation) were granted copyright for ninety-five years, as were works copyrighted before 1978, regardless of how they were produced.¹² The year 1998 also saw the signing of the Digital Millennium Copyright Act that, among other key provisions, criminalized the production and sale of devices or services that aided in the circumvention of copyright protection measures, as well as the act of circumventing a copyright protection measure.

The implications of the Digital Millennium Copyright Act were far-ranging, prompting a coalition of library associations to express concern about the ways in which the new law prevented the public from accessing lawfully acquired information.¹³ This led Congress to request that the Library of Congress review the act with the goal of determining what classes of works should be exempted from the law. In 2000 this office voiced comments about “potential damage to scholarship” and harm to “American creativity” that were unintended consequences of the new law. The report on the act (the first of such reports to be generated every three years) included a comment from the assistant secretary for communications and information in the Department of Commerce, who asserted that the law needed to be amended to

promote inclusion of all parts of society in the digital economy and prevent a situation in which information crucial to supporting scholarship, research, comment, criticism, news reporting, life-long learning, and other related lawful uses of copyrighted information is available only to those with the ability to pay or the expertise to negotiate advantageous licensing terms.¹⁴

The Copyright Term Extension Act and Digital Millennium Copyright Act played no small part in expanding the relevance of copyright law and informed the decisions of those who sought to assert more aggressively their intellectual property rights at the start of the twenty-first century.

But legislative changes in the late 1990s were only one step in what had been a decades-long expansion of copyright regulations and of the concept of intellectual property more generally. From the Berne Convention (1988), to the Uruguay Round Agreements Act (1996), to the secret negotiations regarding the Anti-Counterfeiting Trade Agreement (2010), the international forces influencing the expansions in IP law are perhaps even more powerful than Mickey Mouse. Meanwhile, verdicts in cases such as *New York Times v. Tasini* (2001) and *Bender v. West Publishing Company* (1999) have affected what sources are available to scholars.¹⁵

In any discussion about scholarly use of copyrighted materials there needs to be a mention of the concept of “fair use.” The fair use provisions within U.S. copyright law allow for the use of protected materials for purposes “such as criticism, comment, news reporting, teaching, scholarship, and research.” There are no clear standards about what exactly constitutes fair use—but the law does set out “four factors to be considered in determining whether or not a particular use is fair: 1) The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes; 2) The nature of the copyrighted work; 3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole [and]; 4) The effect of the use upon the potential market for, or value of, the copyrighted work.”¹⁶ Depending on one’s perspective, these factors seem either usefully or frustratingly vague. Whereas the lack of clarity on what constitutes fair use once allowed for considerable leeway in the utilization of the provision, the more aggressive intellectual property climate of the 2000s has made claiming fair use feel far more perilous. Meanwhile, the freedom that the notion of fair use is meant to convey is very often surrounded by a new crop of restrictions on developing and using tools that allow us to access the materials we might hope to fairly use. The concept of fair use is meaningful only if the public knows what is *available* for use—and much of the sources that are born digital exist behind a corporate pay-per-view wall. Fair use is alive—if not in the most robust health—and should be staunchly defended.¹⁷ Yet for a historian of the recent past, the dependence on fair use that has served other scholars is simply not enough.

The ways in which emerging technologies are shifting some of the basics of sharing information for the casual consumer are already becoming clear, but for scholars the implications of this fundamental clash between for-profit and not-for-profit models of access are only now emerging. If someone buys a paperback or hardcover book, that person is free to loan it, sell it, or give it away. However, if that same consumer purchases an e-book (often for the same price as a printed book) that person is often permitted to read the e-book only on hardware created or approved by the company that sold the book, and they do not have the right to resell or even give the book away. In fact, Barnes and Noble initially distinguished its e-book reader, the Nook, from the competition by making it possible for Nook owners to lend an e-book to a friend, presuming the friend also owns a Nook.¹⁸ What might it mean to scholars that the ability to lend a book you “own” to a friend or

colleague is perceived as an innovation? What about the attempt of an influential publisher in 2011 to create e-books for libraries that self-destruct after the book has been loaned a certain number of times?

Many of the phenomena I have described are focused on generating income from a consumer, whether that person is a scholar or a general reader. But, as I argued at the beginning of this essay, private ownership has affected access to the archive itself. From the series of auctions, thefts, and threatened lawsuits that have hindered the development of a comprehensive scholarly Malcolm X archive, to the sometimes aggressive claims on the intellectual property of Martin Luther King, Jr., by the King family since his death in 1968, this essay focuses on how intellectual property law and the larger notion of private ownership have affected access to historical artifacts associated with two of the most well-known figures in the modern U.S. civil rights movement. The essay concludes with a discussion of how IP laws affect the availability of audiovisual and digital sources, which are often the central “texts” of recent U.S. history, and some of the ways IP law affects our work as teachers and researchers.

Of Archives and Auction Blocks: Malcolm X

The Malcolm X Project, created by Manning Marable at Columbia University in 2001, sought to create an archive of materials related to the life and work of Malcolm X and to transform the famous *Autobiography of Malcolm X* into a multimedia package that would serve as the spine of an innovative civil rights movement/African American history high school curriculum for New York City public schools.¹⁹ My own work on this exciting project made it increasingly clear that although Malcolm X certainly was one of the most beloved and controversial leaders of the civil rights movement, the amount of historical material about his life and work available to scholars was quite limited. There was no central repository for his papers and no location, digital or analog, where one could find transcripts or recordings of all his speeches. There were several Internet sites devoted to Malcolm X, but these sites were rarely the work of anyone with an academic background in history or African American studies. Those of us working on the Malcolm X project that year learned what Manning Marable—who was in the midst of writing the comprehensive, scholarly biography of the leader that would be published soon after the scholar’s tragic death in 2011—already knew: despite the centrality of Malcolm X in both the history

and mythology of the black freedom struggle in the 1960s, historians of the contemporary United States had very few accessible historical archives related to the life and work of the charismatic leader.²⁰

In the midst of our collective efforts to assemble primary source materials about Malcolm X for the multimedia autobiography, news we received in February 2002 could not have been more of a shock. The Butterfields auction house announced the upcoming sale of a massive collection of personal and movement-related materials that had been the property of Malcolm X. Several phone calls and Internet searches later, many of us at the institute left our computer screens and telephones behind and gathered in the hallways to ask each other the questions that were buzzing in our heads. What Malcolm-related materials would be on the auction block? Were the materials authentic? Many of us involved in the project had been in touch with members of the Shabazz family, and there had been no mention of the sale. Was it possible that a sale of this significance could happen without their knowledge? Some of the researchers thought that there had been some mistake or misunderstanding, and that the rumors of the auction were untrue. But soon the facts became undeniable. Dr. Marable was able to obtain a photocopy of the auction catalog from Butterfields, which contained a vast array of historical artifacts related to Malcolm X. And the items were authentic: according to Malcolm's daughter Ilyasah Shabazz, the objects in the catalog matched the description of items that had been last seen in their (now deceased) mother's home.

That meant that this collection represented the largest and most historically significant group of materials on Malcolm X. According to David Garrow, a civil rights historian at Emory University, the size and scope of the collection was "simply mind-boggling." The historian, known for his groundbreaking biography of Martin Luther King, made the significance of the collection clear: "There are so few truly personal Malcolm documents in public archives that this apparent collection swamps the total corpus of all other materials several times over."²¹ Hundreds of pages of handwritten drafts of speeches, personal letters, and photographs were included in the collection, as was the copy of the Koran Malcolm X took on the trip to Mecca that changed his life, as well as journals that detailed his thoughts about his life and his relationship to the Nation of Islam. Two decades of Malcolm X's life was going on sale, grouped in a dozen or so lots, each of which would be sold to the highest bidder. The auction was scheduled for March 20, just one month away, and would be

held simultaneously at the San Francisco offices of Butterfields and on the Internet.

Butterfields was already familiar to some of us in the office. The auction house had found itself embroiled in controversy in 1999 when they attempted to auction the bloodstained, bullet-torn diary/address book that Malcolm X had in his coat pocket when he was assassinated in the Audubon Ballroom on February 21, 1965. The auction house claimed that they were able to acquire the book after the New York State Municipal Archives (where evidence from old cases is stored by the district attorney's office) had purged their older materials.²² After both the Shabazz family and scholars discovered that no such "purge" had occurred and challenged the legitimacy of the sale, Butterfields canceled the auction. It was eventually discovered that the collector who was offering the item had purchased it from a Manhattan Supreme Court clerk who had stolen it in 1991 from a courthouse safe.²³

So although it was possible to question the legitimacy of the sale based on Butterfields's prior conduct, it seemed unlikely that they would attempt another high profile, large-scale sale of Malcolm X artifacts if they were not fairly confident of their right to do so. Butterfields was initially unwilling to name the owner of the collection, stating only that the individual was not a member of the Shabazz family. But such details were hard to keep secret for very long. The collection was now considered the private property of James Calhoun, who was completely unknown to the Shabazz family. How could it be that the auction house had yet again acquired historical materials of such significance? The answer was a convoluted one, wrapped within a sad tale of family drama, bad decisions, and dumb luck, all of which had moved this significant collection further from access by scholars. And while the story of how these materials ended up on the auction block can hardly be viewed as typical, it still poses critically important questions about how the commodification of historical materials can serve as an impediment to historical research.

In May 1999, the same year Malcolm's stolen diary was discovered, more "unauthorized acquisitions" were occurring. Just two years after the tragic death of Betty Shabazz in a fire set by her grandson, Malcolm's youngest daughter, Malikah, removed many boxes of her father's papers and personal belongings from her mother's home and placed the materials in a rented storage bin at the Public Storage facility in Casselberry, Florida, near Orlando, where they remained until 2001. For reasons that are still unclear,

Malikah neglected to keep her payment for the storage unit current, and in September of that year the storage facility—as is their policy—sold the contents of the abandoned unit to recover the six hundred dollars they were owed. James Calhoun, a local junk dealer, initially had no idea that the items in the unit were important. It was only after the auction was completed that he was able to examine the contents more carefully and understand their potential value.²⁴ It was at this point that he contacted Butterfields, seeking bidders on his unexpected treasure.

With a date already set for the auction, and having learned that Butterfields planned to sell the items in twenty-one lots (meaning that the items could end up in the hands of multiple individual private buyers), the parties interested in halting the sale needed to work fast or else risk losing access to these items forever. While the Shabazz daughters issued statements to the press, family lawyer Joseph Fleming filed injunctions to verify the ownership of the materials and to stop the sale. Manning Marable, meanwhile, hastily arranged meetings with other scholars and archivists interested in the collection and, with Columbia's provost, attempted to raise the institutional funds that would allow the university to purchase the collection in case the sale could not be prevented.

In fact, the auction of the collection was prevented: there were questions as to whether the storage facility gave Malikah adequate prior knowledge of the sale, and the items were returned to the Shabazz family.²⁵ Although Columbia University was the home of the Malcolm X Project (which had been endorsed by several of the Shabazz daughters), it was the New York Public Library's Schomburg Center for Research in Black Culture—located on Malcolm X Boulevard in Harlem—that was selected to provide both safekeeping and wide access to the collection.²⁶ According to the terms of the arrangement, the collection is still owned by the family, but is on loan to the library for seventy-five years. Even if this outcome is better than one that would see these historically significant materials in the hands of private collectors and out of the reach of historians of the black freedom struggle, it is hard to ignore that it is only a legal technicality that prevented the dispersal of this important collection from moving forward.

In other words, the rights of the public were secured only by accident and by the effective action of a dedicated scholar backed by a private university and working with the family of the historical figure. This incident exposes an uncomfortable truth: there is no general right of the public to have access to the archives of a public figure who had a dramatic impact on history.

What rights, if any, should historians or the public have to access the type of historical materials and information represented by this collection? How might these rights be best represented or protected? How is the work of historians—especially historians of the recent American past—connected to the idea of the public domain? While these questions were raised by the Butterfields incident, they were not resolved.

Some in the private sector would argue that their private ownership of historical materials should not be a cause for concern among historians. Shortly before the auction, the *New York Times* reported that Catherine Williamson, director of fine books and manuscripts at Butterfields, claimed that concerns about the sale posing a challenge to historians' access to the materials were unfounded. "I deal every day with libraries and private collectors," she said. "I don't see a big gulf between the two. Every major institution in the country was founded on a collection put together by a private collector, and every responsible collector makes their material available to scholars."²⁷ But an earlier sale of historically significant Malcolm X materials in 1992, in which unpublished chapters from the *Autobiography of Malcolm X* were sold to a private collector, makes it obvious that private ownership of such documents has very real consequences for historians.

Keeper of the Word: Malcolm X's Autobiography as Private Property

After Alex Haley's death in 1992, many of his personal papers and belongings were sold at auction to settle claims made against his estate. Haley, most famous for his novel *Roots* (1976), which inspired the award-winning miniseries of the same name, had made his mark in the world of African American history and literature a decade earlier, as the coauthor of the best-selling *Autobiography of Malcolm X* (1965).²⁸ Prior to the Marable biography, the *Autobiography* was the central text on the life of Malcolm X. It has been continually in print since its initial publication, and in 1992 it served as a basis of an Academy Award-winning Spike Lee film that was the catalyst to a nationwide revival of interest in the slain leader of the Nation of Islam. Alex Haley's work as ghostwriter for the book has been a critical issue for those who study Malcolm X. Scholars have delved into the text and archival materials for insights on where the thoughts and insights of Malcolm X end and where the opinion and perspectives of the more conservative Alex Haley begin. The editing of this "autobiography" became even more

controversial when it was discovered that Haley was freely providing information about Malcolm X to the FBI during his work on the book and because Malcolm X's death prior to completion of the manuscript meant that he never approved the final text. Correspondence between Haley and the executive editor at Doubleday makes it obvious that both the publisher and editor had goals for the autobiography that differed greatly from that of the civil rights leader.²⁹

Given the complicated history of one of the most important autobiographies of the late twentieth century, the opportunity to learn more about the process by which the book was completed and the manuscript itself would be of obvious interest to historians. But when the manuscript and other materials related to the autobiography were auctioned, it was a lawyer, not a scholar or archive, who seized the opportunity to buy a piece of history.

Gregory Reed, a Detroit-based lawyer and founder of the Keeper of the Word Foundation, "with a long and controversial relationship to the purchase and use of materials related to African American history," purchased the manuscript of the *Autobiography of Malcolm X* for \$100,000.³⁰ For \$21,500 Reed also purchased the manuscripts and notes related to three chapters that were omitted from the original book.³¹ What did Reed have in mind for the missing chapters? Would he donate them to a university archive or a museum of African American history? Would he make them available for scholars interested in the insights on both Haley and Malcolm X that the chapters surely provided? No. Instead, these materials went directly into Reed's personal safe, far from the prying eyes of the public or civil rights movement scholars, where they would sit, largely undisturbed, for almost twenty years.

In his book *Living Black History* (2006), Manning Marable describes the result of his efforts to access the manuscripts for the autobiography and the missing chapters.³² Upon learning of Reed's purchase of the manuscript and chapters, Marable contacted Reed and after some negotiation, Reed agreed to allow Marable to review them. Marable flew from New York to Detroit and called Reed to let him know that he was on his way to Reed's office. The lawyer instead instructed the historian to meet him at a restaurant. The stated time for the meeting came and went: a half hour later, Reed arrived and announced that he had changed his mind. He was not willing to allow Marable the level of access to the manuscript that had been previously agreed on. Instead, he took selections from the manuscript and told Marable that he could look at the documents in the booth of the restaurant

for fifteen minutes. Marable had little choice but to accept terms that violate conventional historical practice. Despite the significance of the chapters to his work and perhaps to African American history, they were Reed's private property and as such he had the right to grant or deny access to the materials as he chose.

Marable set upon the papers to glean what he could in the time available. As it turns out, the missing chapters focus on a key period of Malcolm's life—the period before his split with Nation of Islam, when he clearly questioned Elijah Muhammad's approaches to black liberation and his own role within it. The chapters promised critically important insights into a period of Malcolm's life that was not covered in detail within the published autobiography. That fact also begged the questions of why the chapters were removed from the original manuscript and whether they were removed before or after Malcolm's death. These questions would have to remain unanswered. After the fifteen minutes were up, Reed came back to the booth, picked up the chapters, placed them back in his briefcase, left the restaurant, and returned the manuscript to his safe.³³ More than a decade later, no historian, archivist, or museum curator has been granted access to the manuscript, as far as we know.³⁴

That a self-storage facility, secret meetings, stolen merchandise, and Internet auctions figure so prominently in the history of the scattered Malcolm X archive is a sad and strange reality. But while Butterfields and Reed acquired their treasures in different ways, the results easily could have been the same: restricted access to the kinds of materials through which historians create their narratives and society reproduces and transforms its collective memories of the black freedom struggle. What are the implications for historical memory if these materials can be controlled by the highest bidder? While the thefts and purchases of the Malcolm X papers might suggest to some that historians would be better served if personal papers and other artifacts remain controlled by the family, the increasingly tight control of the intellectual and physical property of Martin Luther King, Jr., by his family makes it clear that the desire to profit from the past is not restricted to outsiders.

Protecting a Legacy, Protecting Profits: Martin Luther King, Inc.

Months had passed since I had been awarded a travel grant to visit the university archive that held a significant collection of materials directly related

to my dissertation, but I still hadn't received confirmation that I would be able to access the collection. Everyone I was in contact with was very apologetic. The delays had come from an unexpected source: the university's legal counsel had to approve my work in the archive because of concerns about legal action by the estate of Martin Luther King as a result of my research. The King family's history of aggressively protecting the intellectual property rights to everything concerning King meant that the university wanted to ensure they did not make themselves vulnerable to lawsuits by allowing me to view the documents in their possession—documents not by or about Martin Luther King himself, but letters from representatives of the King family, included in the collected papers of the subject of my research. As I waited for word from the university counsel, I couldn't help but reflect on the expansive and chilling effect that the King estate's approach to intellectual property and privacy was having on research on the civil rights movement more generally.

Although the stated goal of the King family has been to protect Martin Luther King's legacy, their increased utilization of intellectual property law in the management of the estate has meant considerable private profits for the family at the expense of access by both historians and the public. Initially, Coretta Scott King sought to consolidate her husband's papers and physical artifacts at the King Center for Nonviolent Social Change in Atlanta, the organization she founded in 1968 after his death. In the years since, the family, and most notably the youngest sibling, Dexter, has expanded their use of intellectual property and right of publicity laws to regulate and profit from the use of King's words, voice, and likeness.

As I waited to use my travel grant, I had time to consider how this delay was an unexpected consequence of the systematic attempts on the part of the King family to consolidate and control materials that had been legally acquired and were open to researchers. A milestone of this decades-long effort came in 1987 when Coretta Scott King filed suit against Boston University, arguing that the estate was the rightful owner of the more than eighty-three thousand pages of King documents held in the university's Special Collections Library. The suit was filed after the university denied Coretta Scott King's repeated requests to remove the documents from their archive so that she could deposit them at the King Center. Although Martin Luther King had presented the documents to the university himself, Mrs. King argued that they had become the property of the estate upon King's death. Mrs. King also claimed that the university was not providing ad-

equate care for the items, citing historians such as King biographer David Garrow, who claimed that the documents were jammed into folders and showing signs of overuse.³⁵

Despite the potential embarrassment the lawsuit would bring, Boston University was not willing to give up the collection, even if that involved a fight with the widow of an assassinated civil rights icon. The lawsuit was ultimately unsuccessful, with the judge finding that the King documents were the property of the university.³⁶ At the heart of Boston University's case was a letter from Martin Luther King, Jr., that, according to the jury, indicated Martin Luther King's intention to offer the papers not just for safekeeping during a tumultuous time in the South but as an outright gift to his alma mater.³⁷ The ruling meant that the Dr. Martin Luther King, Jr., Archive in the Howard Gottlieb Archival Research Center at Boston University would remain one of the largest collections of King materials available to scholars.³⁸

Why the family wanted the return of the papers was not clear, but consolidating the collection may have been only one of their goals. Valued at \$30 million by Sotheby's auction house in New York, the King family agreed to give "a \$10 million gift to the country" by offering to sell the collection in their possession to the Library of Congress for \$20 million, which would be the largest sum ever paid by an institution, especially one that had acquired some of its most important collections through donation.³⁹ In 1999 a tentative agreement to purchase the collection was made with the family, but despite energetic fund-raising efforts, the money was not raised.⁴⁰

Meanwhile, the papers continued to languish at the King Center, subject to restrictive policies regarding access by scholars and less-than-ideal archival conditions. Coretta Scott King died in January 2006, before she could find a new home for the papers, leaving her children to continue the work of "protecting" the King legacy. Despite the family's repeated claim that it wanted the collection to be housed at Morehouse, the Kings did not reduce their asking price to make the purchase more feasible for the cash-strapped historically black college, and instead decided to place the entire collection up for sale at Sotheby's auction house in 2006. Concerned that the purchase of the papers by a private collector would mean that the original materials would be even harder for scholars to access, historical institutions, libraries, and university archives nationwide attempted to find the money needed to preserve the collection's integrity. In Atlanta, this took the form of a massive fund-raising campaign, involving a wide range of

academic and community leaders, politicians, philanthropists, and businesspeople. The group, led by Atlanta mayor Shirley Franklin, raised the money to remove the items from the auction block and donate them to Morehouse.⁴¹

Despite this happy ending, access problems persist. Because the sale granted Morehouse only the right to house the papers, the intellectual property rights are still held by the King estate. As Phillip Madison Jones, the King family lawyer who brokered the deal, explained in a interview on NPR, the real challenge in having the sale move forward was not the price, but having all parties involved understand what was and was not available for sale: "Some of the complexities involved were . . . making certain that the King family felt that they were going to the right place and that the intellectual property was preserved for all time." He praised Mayor Franklin for her ability to understand that this point was nonnegotiable.⁴²

Jones's focus on controlling the intellectual property rights of the King estate represents the family's more general shift toward regulation of access through intellectual property laws rather than physical possession. While the family had spent years seeking the highest bidder on the more tangible remnants of Martin Luther King's life, King's youngest son had begun to shift his attention to the less tangible aspects of the King legacy. Where Martin Luther King had a "dream" for the nation, colleagues and critics of Dexter King have claimed that he has a "vision" for the King estate: a lucrative financial future for the King Center (and for his family), resulting from the expansion and rigorous protection of the King brand, based on the licensing of the King image and use of King quotations.⁴³

Under Dexter King's leadership, the King Center has emphasized the potential for profits over the importance of scholarly work and cultural memory. Soon after becoming chair of the center, Dexter traveled to Graceland to meet with the team that manages the intellectual property of Elvis Presley.⁴⁴ Subsequently, Dexter helped friends and relatives who shared his interest in building the King brand by moving them into powerful positions within the King organization. He invited his college friend, the aforementioned Phillip Madison Jones, to lead Intellectual Properties Management, the company that manages all intellectual property licensing for the King estate. Dexter's cousin, Issac Newton Farris Jr. assumed the position of president and chief operating officer for the King Center. Soon enough, Dexter King and Phillip Jones announced plans for an interactive museum

"attraction" called the "King Dream Center," sponsored by major corporations such as Pepsi and Microsoft.⁴⁵ Although that idea was ridiculed in the press as "I Have a Dreamland," Jones and Dexter King were undaunted.⁴⁶ "In this new media paradigm," said Jones, "the only way to get [King's message] out there is to do a business deal, where people in the publishing community can package it, put millions of dollars in to market it and make money off it. That's how it works now."⁴⁷

The King Center and Intellectual Properties Management have spent more than a decade crafting multimillion-dollar deals that have determined who is allowed to represent the words or likeness of Dr. King. However, exerting near complete control of the uses of the King name, words, and images is a difficult task. A quick search of the Internet yields hundreds of unlicensed uses of Martin Luther King's intellectual property. However, a recent deal with UK music giant EMI might mean changes on this front. In March 2009, Dexter King announced that having "examined the ever-evolving, global, digital landscape," the King Center had entered an agreement with EMI "to monitor and bring under compliance the unauthorized usages of Dr King's words and intellectual property on the Internet and digital media" to "increase the King Estate's ability to preserve, perpetuate, and protect the great legacy of Martin Luther King, Jr."⁴⁸ EMI chairman and chief executive Roger Faxon said in a statement, "Assuring that Dr. King's words are accorded the same protection and same right for compensation as other copyrights works is a profound responsibility, and we are proud of the confidence that the Estate has placed in us to fulfill that responsibility."⁴⁹

There is little doubt that EMI has a great deal of work ahead, as it attempts to prevent unauthorized invocations of Dr. King on the Internet—or that the King estate has high expectations in terms of the aggressive defense of its "right for compensation." Most recently, the estate drew criticism from many when it became known that it was considering lawsuits against street vendors who were selling shirts, buttons, and posters that featured the images of both Dr. King and President Obama.⁵⁰ The estate was also requesting licensing fees from the coalition of citizens who were lobbying and fund-raising for a monument to Dr. King on the National Mall. As of this writing, that group has paid the King Center approximately eight hundred thousand dollars in licensing fees for the use of Dr. King's words and likeness in their fund-raising materials.⁵¹

Uncharted Territory: Teaching and Research in the Shadows of Intellectual Property Law

Although these stories of auctions, courthouse thieves, and powerful families might seem distant from the issues that most historians face, the policies and laws designed to regulate the use of intellectual property potentially affect all historians of the recent past. These cautionary tales may have an increasing impact on all of us who depend on access to documents, images, and sounds to do our work.

Among the circumstances in which history faculty find themselves dealing directly with questions of copyright is the process of assembling readings for their courses. Those who follow the regulations regarding copyright clearances for course packs may find themselves making tough decisions based on the varied royalty costs for each article. Although some faculty are not aware of (or choose to disregard) the rules regarding reprint permissions for book chapters and journal articles, publishers have become more forceful in their requests for campus compliance with copyright regulations.⁵² Cases that involved commercial entities, such as *Princeton University Press v. Michigan Document Services* in 1996, have been an important part of the case law in this area, but more recently faculty and universities have been pulled into the fray. In 2008 Georgia State University was sued by a coalition of university presses claiming that the university provided unlicensed copies of copyrighted material to students through "electronic course packs" and other online services.⁵³

And as we find ourselves looking for articles to include in those course packs, historians are now less likely to roam up and down the library stacks looking for a volume of a journal and much more likely to consult one of the online databases to which their campus library subscribes. Yet how many of us stop to consider the ownership structures that are making digital access to these journals possible? Access to the digitized versions of the primary and secondary sources many historians depend on is increasingly centralized, and although databases such as JSTOR are created and maintained by academic institutions, many more are owned by private companies who specialize in providing information to academic institutions and businesses for a fee. The company that maintains the popular ProQuest databases was acquired by the Cambridge Information Group in 2007, with the goal of further expanding the company's dominance in the academic arena. "Serving over 30,000 institutions worldwide," the group

boasts on its website that "virtually every college and university located in North America has at least one product or service from a CIG company."⁵⁴

While the convenience and popularity of digitized, searchable collections cannot be denied, this consolidation means that the decision by university libraries whether to subscribe to an individual journal that costs hundreds of dollars has been eclipsed by the need to subscribe to electronic databases that cost tens of thousands of dollars, which exacerbates the already significant access gap between scholars affiliated with colleges and universities with larger library budgets and those who are not. These companies also customize databases based on the school's ability to pay. The name of the database remains the same, but the content included varies. This means that a scholar might find that the results of identical searches of a database owned by a for-profit company could be significantly different when the search is undertaken at a regional state university campus versus a better-funded private research university.

The vast databases of companies such as the Cambridge Information Group are impressive and valuable to the historian, but they are generally restricted to print formats. What of the rich sources made possible by the rise of network television in the mid-twentieth century or the dominance of cable television in the twenty-first? The lack of affordable, comprehensive, accessible not-for-profit audiovisual archives poses a problem to historians of the recent past. Thanks to the Cambridge Information Group, my university-sponsored access to the ProQuest databases means that I can review the full text of the *New York Times* coverage of the stock market crash of 1929; however, obtaining video footage of more contemporary events can be much more difficult and expensive.

Scholars of the recent past draw on a wide variety of sources to do their work, and although those sources may indeed be digitized, not all are accessible. Many of the rich televisual sources that have emerged since the 1970s can be found only behind the pay-per-view walls of the large media corporations that sponsored their creation (or bought the companies that did). The licensing of photographs, news coverage, and film clips has become a multimillion-dollar industry, and the restrictions on these materials for historians is an unintended consequence. Limited access to audiovisual materials is nothing new, but whereas a researcher once had to lament the absence of substantial archives (in the case of much radio and early television broadcasts) or had to negotiate with a local media outlet, historians

now often contend with corporate archives that charge by the second for any use of the footage they own.

In the classroom, a professor who wanted students to see the George Holliday footage of Rodney King's encounter with the police might plan to reserve a copy of a documentary on the Rodney King trial from the university library to screen in class. Unfortunately, an increasing number of historical documentary films are out of circulation due to copyright licensing restrictions, and others will never be made due to the chilling effect that media company conglomeration and expansions in copyright law are having on the genre. A notable example of this problem is the classic documentary series, *Eyes on the Prize: America in the Civil Rights Years* (1987), which was largely out of circulation from 1995 until 2005.⁵⁵ The filmmaker could afford only the most limited licensing agreement on the hundreds of photographs, news footage, and sound recordings used in the film. Once any one of those agreements lapsed, the entire series was out of compliance with copyright law and could not be broadcast on television, released on DVD, or purchased (with the possible exception of VHS copies being sold for a thousand dollars on eBay or Amazon) until massive fund-raising and activist campaigns led to the rerelease of the film in 2006.⁵⁶ Many of the critically acclaimed historical documentaries from the film's production house, Blackside, remain out of circulation for the same reason.

Although access to news footage can be prohibitively expensive, the fact that archives of some television news and entertainment programs even exist, and that others are in development, is a promising development for historians of the recent past. The idea that messages on Twitter are archived by the Library of Congress might seem strange to some, but archived tweets are an affirmation that online sources are important to academic scholarship and that access to them ought not to be privatized.⁵⁷ Most rich material available on the Internet is not archived or indexed. With the exception of valuable sites such as the Internet Archive (with its useful Internet Wayback Machine, which archives a wide variety of web pages from 1996 to the present), the Internet lacks a long-term memory.⁵⁸ The perpetual present tense of the Internet adds yet another level of complexity to the efforts to use it in serious historical research. The current strength of the Internet is in its ability to facilitate the flow of information, but the means by which that information is stored and organized on the web leaves much to be desired by the historian. Sites such as YouTube—much like Pandora, Hulu,

the reformed Napster, or many other popular online music and television sites—allow for streaming of content, but attempts to preserve that flow for scholarly use are often difficult, illegal, or both.

Current copyright restrictions also hamper or constrain innovation in the ways we share our work with others, as well as in the way we teach and learn. In a course I taught on the cultural implications of IP law, the students learned about the history of national and international copyright law, the fundamental concepts of authorship and ownership underlying the notion of intellectual property law, and the limits of the fair use protections in education. With all they had learned, my students came to me with a critical question about their group midterm project: "If the midterm project we create is illegal, is that going to be . . . a problem?" As it turned out, one of the projects in the class did push the limits of fair use. The online element of that project managed to receive some positive attention from national and international blogs (including the *New Yorker*). All the students in the course, and their instructor, were excited, proud . . . and concerned. Choosing not to tempt fate, the students stopped directing traffic to their site.

It could be argued that historians are not only users of copyrighted materials but also holders of copyright as well. But this privilege is granted due to historians' distance from—not investment in—the current IP regime. As Corynne McSherry argues in "Who Owns Academic Work?," this exception from the current regulations regarding IP is critically important to the maintenance of the privileges college faculty currently enjoy.⁵⁹ Historians typically retain authorship and ownership rights to their work due to court rulings based on the idea that much of the academic world exists largely outside the market economy and is *sui generis*—in a class of its own. If faculty lectures and other writings are understood as the property of the institutions at which we work—as is also the case for the writing and research of college and university staff and administrators—the implications for everything from academic freedom to the increased use of casual faculty labor are wide ranging. With ongoing attempts to make humanities education more "efficient" and the increasing focus on distance learning as a way to increase enrollment and profit, full integration into the current IP law regime would make it easier for lectures, syllabi, and other course materials created by university faculty to be used, reused, and repackaged in a variety of formats without the consent of the faculty member. While the role of author/owner is an important one for historians and other scholars,

protection of our authorial identities might be best served by resisting the legal definitions of those terms that are in many ways out of touch with the goals of the scholarly community.

It was through my teaching and research on the recent past in the United States that it became clear to me that an unchecked expansion of intellectual property law is not only bad for scholars but for the public more generally. As the social media revolution seeks to provide constant updates on the shape of the ever-shifting present, it becomes more important than ever that we maintain our collective access to the past. The work of the historian is to explore and celebrate the past and to shape the surviving traces—information that has now been reimagined as intellectual property—into historical narratives. There are few groups with as much at stake, and as much to gain, in the fight to protect the past from the encroachment of intellectual property law as those of us who have committed our professional lives to its study.

The Founding Fathers understood copyright to be a significant enough right to be worthy of mention in the Constitution—and perhaps it is worth returning to the language of that clause. The U.S. Congress has the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”⁶⁰ Like so much of the Constitution, the clause is both succinct and rich with meaning. While subsequent debates and legislation have encouraged many of us to now think of copyright exclusively as a means of providing remuneration for individual authors, the clause makes it clear that the primary goal of copyright in the United States is to “promote the progress of science and useful arts,” and it is to that standard that the current IP legislation is usefully held. While both U.S. and international IP law provide an important service by creating and maintaining protections for individual authors, the goal of benefiting society must remain the central focus.

Notes

1. Paul Farhi, “King’s ‘Dream’ Becomes Commercial: Civil Rights Leader’s Heirs Approved Use of Image by Alcatel,” *Washington Post*, March 28, 2001, <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A2981-2001Mar27¬Found=true>.

2. “Alcatel Commercial Spot,” YouTube video, March 30, 2001, http://www.youtube.com/watch?v=GQ5L_oMzHWY.

3. “Terms of Use: Community Guidelines,” YouTube, accessed February 24, 2010, <http://www.youtube.com/t/terms>.

4. U.S. Const. art. I, § 8, cl. 8.

5. These three scholars alone have made a sizable contribution to the literature on culture and IP law. Kembrew McLeod, *Freedom of Expression: Resistance and Repression in the Age of Intellectual Property* (Minneapolis: University of Minnesota Press, 2007); Siva Vaidyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York: New York University Press, 2003); Siva Vaidyanathan, *The Anarchist in the Library: How the Clash between Freedom and Control Is Hacking the Real World and Crashing the System* (New York: Basic Books, 2005); Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World* (New York: Vintage, 2002); Lawrence Lessig, *Free Culture: The Nature and Future of Creativity* (New York: Penguin, 2005); Lawrence Lessig, *Code: And Other Laws of Cyberspace, Version 2.0* (New York: Basic Books, 2006); Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (New York: Penguin, 2008).

6. Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago: University of Chicago Press, 2010).

7. Eva Hemmungs Wirtén, *Terms of Use: Negotiating the Jungle of the Intellectual Commons* (Toronto: University of Toronto Press, 2008); Eva Hemmungs Wirtén, *No Trespassing: Authorship, Intellectual Property Rights, and the Boundaries of Globalization* (Toronto: University of Toronto Press, 2004); Eduardo Peñalver and Sonia Katyal, *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership* (New Haven, Conn.: Yale University Press, 2010); Martha Woodmansee and Peter Jaszi, eds., *The Construction of Authorship: Textual Appropriation in Law and Literature* (Durham, N.C.: Duke University Press, 1994); and Ann Bartow, “Fair Use and the Fairer Sex: Gender, Feminism and Copyright Law,” *American University Journal of Gender, Social Policy and the Law* 14, no. 3 (2006): 551–584.

8. “Statute of Anne (1710),” in *Primary Sources on Copyright (1450–1900)*, ed. Lionel Bently and Martin Kretschmer, UK Arts and Humanities Council, March 19, 2008, http://www.copyrighthistory.org/cgi-bin/kleioc/0010/exec/showTranscription/?uk_1710/start/yes.

9. *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

10. Chris Sprigman, “The Mouse That Ate the Public Domain: Disney, the Copyright Term Extension Act, and *Eldred v. Ashcroft*,” *FindLaw’s Writ*, Findlaw.com, March 5, 2002, http://writ.findlaw.com/commentary/20020305_sprigman.html.

11. Mary Bono, Sonny Bono’s wife and congressional successor, spoke on the floor of the U.S. House of Representatives in support of the Copyright Term Extension Act: “Actually, Sonny wanted the term of copyright protection to last forever. I am informed by staff that such a change would violate the Constitution. . . . As you know, there is also [then MPAA president] Jack Valenti’s proposal for term to last forever less one day. Perhaps the Committee may look at that next Congress.” 144 *Cong. Rec.* H9952 (1998).

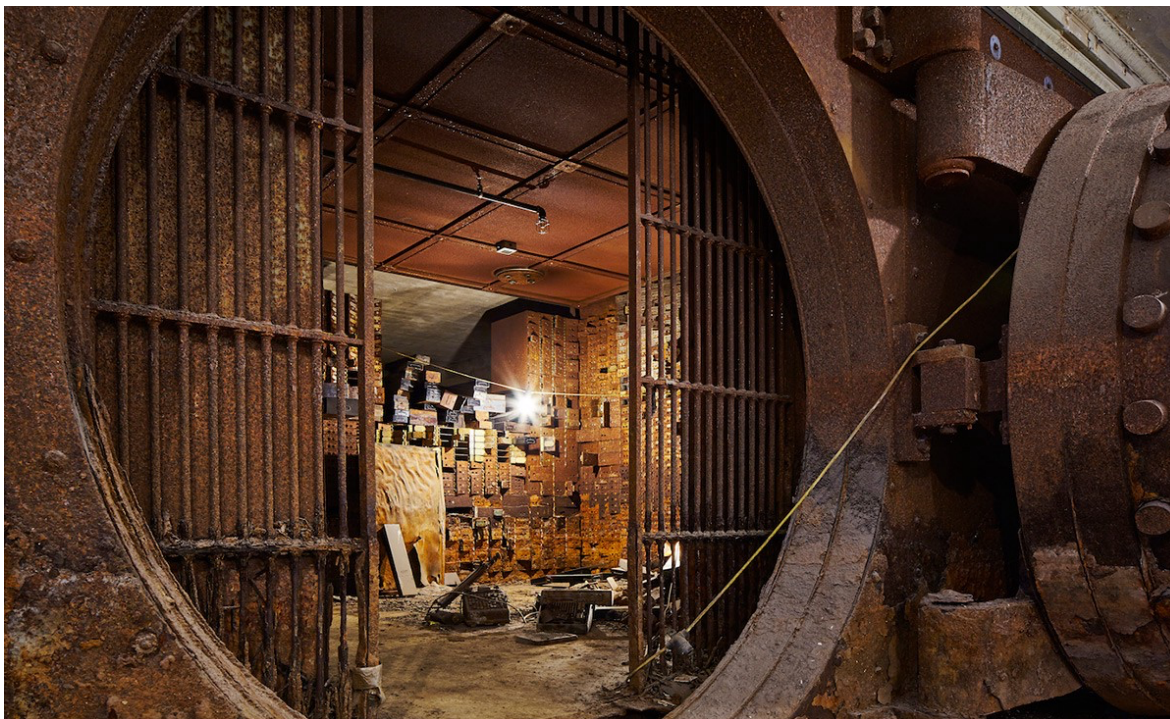
12. Sprigman, “Mouse.”

13. Prue Adler and ARL staff, eds., “Copyright Timeline: A History of Copyright in the United States,” Association of Research Libraries, accessed June 24, 2011, <http://www.arl.org/pp/copyright/copyresources/copytimeline.shtml>.

14. “Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies, Final Rule,” *Federal Register* 65, no. 209 (2000), 64561.

15. *New York Times Co. v. Tasini*, 533 U.S. 483 (2001) and *Bender v. West Publishing Co.*, 158 F.3d 674 (2nd Cir. 1998).
16. "U.S. Copyright Office—Fair Use," United States Copyright Office, November 2009, <http://www.copyright.gov/fls/fl102.html>.
17. The Center for Social Media at the School of Communications at American University is among the leaders in fair use advocacy for scholars, students, and media professionals. *Fair Use: Center for Social Media*, accessed February 24, 2011, <http://www.centerforsocialmedia.org/fair-use>.
18. "Nook Friends, Social Reading, Share eReading—Barnes and Noble," Barnes and Noble, accessed June 30, 2011, <http://www.barnesandnoble.com/u/nookcolor-feature-nookfriends/379002482>.
19. "Project Portfolio, the Autobiography of Malcolm X," Columbia Center for New Media Teaching and Learning, Columbia University, accessed February 24, 2011, http://ccnmtl.columbia.edu/portfolio/culture_and_society/the_autobiography_of.html.
20. Manning Marable, *Malcolm X: A Life of Reinvention* (New York: Viking Adult, 2011).
21. David Garrow, quoted in Emily Eakin, "Malcolm X Family Fights Auction of Papers," *New York Times*, March 7, 2002, <http://www.nytimes.com/2002/03/07/arts/malcolm-x-family-fights-auction-of-papers.html>.
22. Kevin Flynn, "Malcolm X's Diary for Sale, but Ownership Is in Doubt," *New York Times*, May 15, 1999, <http://www.nytimes.com/1999/05/15/nyregion/malcolm-x-s-diary-for-sale-but-ownership-is-in-doubt.html>.
23. "Bullet-Riddled Malcolm X Diary off Block," *New York Beacon*, June 2, 1999, <http://ezproxy.library.nyu.edu:34344/docview/368066497/131E51646CA249CA849/1?accountid=12768>.
24. Emily Eakin, "Auction House Withdraws Items Attributed to Malcolm X," *New York Times*, March 13, 2002, <http://www.nytimes.com/2002/03/13/us/auction-house-withdraws-items-attributed-to-malcolm-x.html>.
25. Eakin, "Auction House."
26. Lynne Duke, "Malcolm X's Papers Come Home: Documents, Effects Will Be Archived at Harlem Library," *Washington Post*, January 8, 2003, <http://pqasb.pqarchiver.com/washingtonpost/access/275089631.html?FMT=ABS&FMTS=ABS:FT&date=Jan+8%2C+2003&author=Lynne+Duke&pub=The+Washington+Post&edition=&startpage=C.01&desc=Malcolm+X%27s+Papers+Come+Home%3B+Documents%2C+Effects+Will+Be+Archived+at+Harlem+Library>.
27. Eakin, "Family Fights."
28. Malcolm X and Alex Haley, *The Autobiography of Malcolm X* (New York: Grove, 1966).
29. Manning Marable, "Rediscovering Malcolm's Life: A Historian's Adventures in Living History," *Souls* 7, no. 1 (2005): 20–35.
30. Linda Jones, "Detroit Lawyer Pays \$100,000 for Haley's Original 'Malcolm X,'" *Detroit News*, October 2, 1992, <http://ezproxy.library.nyu.edu:34344/docview/404809487/131E51C993E32F61A76/1?accountid=12768>.
31. Les Payne, "An Author's Life on Sale," *Newsday*, October 4, 1992, <http://ezproxy.library.nyu.edu:34344/docview/278546039/131E51DC03549Co2DD5/1?accountid=12768>.
32. Manning Marable, *Living Black History: How Reimagining the African-American Past Can Remake America's Racial Future* (New York: Basic Civitas, 2006).
33. Marable, *Living Black History*, 156–157.
34. In the spring of 2010, Reed made a surprising announcement. He was going to read from the missing chapters during a public event at the Schomburg on Malcolm X's birthday. So on May 19, 2010, Reed not only read from the chapters but announced a plan to publish the missing chapters with a foreword by Malcolm's X's daughter, Ilyasah Shabazz. Further details have yet to be released, but historians eagerly anticipate the release of the chapters and the insights they will bring on the life of an icon. "Malcolm X's Daughter to Add to Father's Autobiography," *New York Post*, April 10, 2010, http://www.nypost.com/p/pagesix/restoring_lost_malcolm_5Z5liGHO3m4BMrucBPMG2N.
35. Richard Bernstein, "Dr. King's Widow Sues Boston U. for Return of His Documents," *New York Times*, December 10, 1987, <http://www.nytimes.com/1987/12/10/us/dr-king-s-widow-sues-boston-u-for-return-of-his-documents.html>.
36. Doris Sue Wong, "Jury Rules BU Rightful Owner of King Papers," *Boston Globe*, May 7, 1993, <https://secure.pqarchiver.com/boston/access/2580319.html?FMT=ABS&FMTS=ABS&type=current&date=May+7%2C+1993&author=Wong%2C+Doris+Sue&pub=Boston+Globe&edition=&startpage=1&desc=Jury+rules+BU+rightful+owner+of+King+papers>.
37. *Coretta Scott King v. Trustees of Boston University*, 420 Mass. 52 (1987).
38. In the years since the lawsuit, the collection has brought a considerable amount of positive attention and grant funding to the university. But there are signs the university still feels the need to counter the negative publicity the lawsuit generated: on the homepage of the King archive website, there is a prominently featured audio clip of Martin Luther King at a press conference at BU explaining his decision to donate his papers to the university. "Dr. Martin Luther King Jr. Cataloguing and Electronic Finding Aid Project," Dr. Martin Luther King, Jr. Archive, Howard Gotlieb Archival Research Center, Boston University, accessed February 24, 2011, <http://www.bu.edu/dbin/mlkjr/>.
39. "Library of Congress Offers to Buy M. L. King Papers for \$20 Million," *Los Angeles Times*, October 29, 1999, <http://articles.latimes.com/1999/oct/29/news/mn-27596>.
40. The agreement remained tentative as the \$20 million price tag sent the Library of Congress scrambling for a way to come up with the money. In 2001 the library worked with Congress (specifically Senator Mary Landrieu of Louisiana and Representative James Leach of Iowa) to introduce the "Commemorative Coin Act," which would allow the design and production of up to five hundred thousand silver coins "with the proceeds going to the Library of Congress for the purpose of purchasing and maintaining historical documents and other materials associated with the life and legacy of Dr. King." Dr. Martin Luther King, Jr., Commemorative Coin Act of 2004, 108th Cong., S. 2146. (2004).
41. Ernie Suggs, "The King Papers: King Collection Celebrated, Franklin Hails Unique Archive," *Atlanta Journal-Constitution*, October 10, 2006, http://nl.newsbank.com/nl-search/we/Archives?product=AT&p_theme=at&p_action=search&p_maxdocs=200&s_hidethis=no&s_dispstring=King%20Collection%20Celebrated,%20Franklin%20Hails%20Unique%20Archive&p_field_advanced-0=&p_text_advanced-0=%28King%20Collection%20Celebrated,%20Franklin%20Hails%20Unique%20Archive%29&xcal_numdocs=20&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no.
42. National Public Radio, "Morehouse College to Get MLK Collection," *News and Notes*, June 26, 2006, <http://www.npr.org/templates/story/story.php?storyId=5511141>.
43. Kevin Sack, "King Legacy Takes New Turn under Son's Leadership," *Houston Chronicle*, August 24, 1997, <http://ezproxy.library.nyu.edu:34344/docview/395644027/131E52CE5D16315Co3D/1?accountid=12768>.

44. Hollis R. Towns, "'Tasteful' Marketing of MLK: Heirs Agree to License the Words, Image of Martin Luther King Jr.," *Atlanta Journal-Constitution*, February 4, 1996, http://nl.newsbank.com/nl-search/we/Archives?p_product=AT&p_theme=at&p_action=search&p_maxdocs=200&s_hidethis=no&s_dispstring=Tasteful%20marketing%20of%20MLK:%20Heirs%20Agree%20to%20License%20the%20Words,%20Image%20of%20Martin%20Luther%20King%20Jr.&p_field_advanced-o=&p_text_advanced-o=%28Tasteful%20marketing%20of%20MLK:%20Heirs%20Agree%20to%20License%20the%20Words,%20Image%20of%20Martin%20Luther%20King%20Jr.%29&xcal_numdocs=20&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no
45. Ronald Smothers, "Son Envisions a Multimedia Martin Luther King," *New York Times*, October 3, 1994, <http://www.nytimes.com/1994/10/03/us/son-envisions-a-multimedia-martin-luther-king.htm>.
46. Cynthia Tucker, "King Heirs Seek to Turn U.S. Icon into Dollar Sign," *Atlanta Journal-Constitution*, April 1, 2001, http://nl.newsbank.com/nl-search/we/Archives?p_product=AT&p_theme=at&p_action=search&p_maxdocs=200&s_hidethis=no&p_field_label-o=Author&p_text_label-o=Tucker&p_field_label-1=title&p_bool_label-1=AND&s_dispstring=King%20Heirs%20Seek%20to%20Turn%20U.S.%20Icon%20AND%20byline%28Tucker%29%20AND%20date%28all%29&p_field_advanced-o=&p_text_advanced-o=%28King%20Heirs%20Seek%20to%20Turn%20U.S.%20Icon%29&xcal_numdocs=20&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no.
47. Vern E Smith and John Leland, "The Children Who Would Be King," *Newsweek*, April 6, 1998, 48-52, <http://www.washingtonpost.com/wp-srv/national/longterm/mlk/children/children.htm>.
48. Dan Sabbagh, "The Dream Ticket: Dr Martin Luther King and EMI," *Times*, March 18, 2009, http://business.timesonline.co.uk/tol/business/industry_sectors/media/article5927856.ece.
49. "EMI Music Publishing Signs Groundbreaking Deal to Represent the Works of Dr. Martin Luther King, Jr.," *Business Wire*, March 17, 2009, <http://www.bloomberg.com/apps/news?pid=conewsstory&refer=conews&tkr=EMI:LN&sid=aDwyzhI9iVRc>.
50. Robbie Brown, "King Estate Considering Suit over Unlicensed Obama Items," *New York Times*, November 15, 2008, <http://www.nytimes.com/2008/11/15/us/politics/15king.html>.
51. Zack Burgess, "King Family Puts Price on Legacy," *Philadelphia Tribune*, July 19, 2009, <http://michigancitizen.com/king-family-puts-price-on-legacy-p7605-75.htm>.
52. *Princeton University Press v. Michigan Document Services, Inc.*, 99 F.3d 1381 (6th Cir. 1996).
53. *Cambridge University Press et al. v. Becker et al.* (N.D. Ga. 2010).
54. Cambridge Information Group, accessed February 24, 2011, <http://www.cig.com/>.
55. Thom Powers, "'Eyes on the Prize' off the Shelf Due to Copyright Issues," *Boston Globe*, January 16, 2005, http://www.boston.com/news/globe/ideas/articles/2005/01/16/eyes_on_the_prize_off_the_shelf/.
56. DeNeen L. Brown and Hamil R. Harris, "A Struggle for Rights: 'Eyes on the Prize' Mired in Money Battle," *Washington Post*, January 17, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A14801-2005Jan16.html>.
57. Cecilia Kang, "Big, Permanent Retweet by Library of Congress: Scholars Will Comb through Messages to Gain Cultural Insight," *Washington Post*, April 16, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/15/AR2010041505752.html>.
58. "Internet Archive: Digital Library of Free Books, Movies, Music and Wayback Machine," Internet Archive, accessed February 24, 2011, <http://www.archive.org/>.
59. Corynne McSherry, *Who Owns Academic Work? Battling for Control of Intellectual Property* (Cambridge, Mass.: Harvard University Press, 2001).
60. U.S. Const. art. I, § 8, cl. 8.



Vault in the basement of the Stony Island Arts Bank

Confronting Our Failure of Care Around the Legacies of Marginalized People in the Archives



Bergis Jules [Follow](#)

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On Wednesday, November 9th, I was one of the keynote speakers at the National Digital Stewardship Alliance annual meeting. Below is the text of my talk with some minor edits and some of the slides. I'm sharing my full slide deck as a google doc. I'd like to thank Bethany Nowviskie and Helen Tibbo for inviting me to speak at this event. I also want to thank the audience for their kindness and courage on what was a difficult days for many of us.

Good afternoon. I'd like to thank Bethany, Oliver, Helen, and the rest of the NDSA and DLF team for inviting me here. It's truly an honor to address fellow archivists and information professionals on a topic I hope will lead to some good conversation. I also want to thank Bethany for her leadership in inviting Stacie Williams and Jarrett Drake to address this conference as well. Stacie and Jarrett are two people who always push me to do better, and as Black people in this profession we take enormous risks any time we choose to speak some truth about the work we all do. So it was really powerful to see them on stage here this week speaking their truth and being welcomed.

The politics of what we've traditionally preserved means the archive is filled with silences, absences, and distortions, mostly affecting the legacies of the less privileged, including black women, LGBTQ people, immigrants, poor people, and victims of police violence, to name a few. In the name of neutrality, we're erasing people, communities and their humanity from the historical record.

The more selective and specialized space of digital collections, prioritizes professionalism, technical expertise, and standards, over a critical interrogation of the cultural character of our records. So this is certainly an appropriate venue to ask questions about the diversity represented in our historical records. Because for digital collections, who gets represented is closely tied to who writes the software, who builds the tools, who produces the technical standards, and who provides the funding or other resources for that work.

Today I want to have an honest conversation about the silences and erasures in our archives, the implications of those silences and erasures, and how we can start to push back against them, to create a more inclusive community of practitioners working toward a more representative record of our history. In order to do that, we need to talk about a few things,

including the unbearable whiteness of our profession and why that's dangerous for black lives, brown lives, native lives, and trans lives.



Theaster Gates and artists at the Dorchester Projects

Before we get into that though, I'd like to give some background on the

inspiration for the title of my talk. It was inspired by the powerful words of the renowned artist and urban planner, Theaster Gates. Theaster is the Director of the Arts and Public Life Initiative and also a professor in the Department of Visual Arts, both at the University of Chicago. He does a lot of amazing things but some of his most powerful art is around working directly within communities that have been forgotten; where he believes art can transform how people see themselves within those communities and how others see them from the outside.

This includes projects like transforming a boarded up and abandoned home into a community centered library, archive, and arts space on the Southside of Chicago; Or converting an abandoned bank building into a thriving arts center. In many ways Gates' work is about radical inclusion and transformation and I think archivists can learn a lot from that. In an interview earlier this year about his new exhibition, *How to Build a House Museum*, Gates talked about the politics of what gets preserved, how we decide what is worthy of memorialization, and why those things matter. It's a fascinating interview where he also touched on the awesome potential of house museums as a powerful way of remembering how local people or communities have contributed to our shared culture.

One example he touched on were the attempts to preserve the Muddy Waters home in Chicago and converting it into a house museum; and a central site where people can come to learn about arguably America's most influential Blues musician; and how his home, neighborhood, community, and adopted city might have influenced his art. A quote from that Gates interview resonated with me, because in many ways it embodied all the reasons why I do the work that I do. And why I admire the work of archivists like Stacie Williams, Jarrett Drake, Dino Robinson, Makiba Foster, Meredith Evans, Holly Smith, Stephen Booth, and so many others.

While describing his work on building house museums as a way of

challenging the traditional notions of what should be preserved, Theaster asked, “Who feels responsible for the failure of care around the legacies of great black people around the world?” I had an crushing feeling like that question was directed at me and at our profession and what he was saying was that we had not done enough; that we had a responsibility to act. I think it can do our field a lot of good by reflecting long and hard on this question and seeing where it takes us.

“Who feels responsible for the failure of care around the legacies of great black people around the world?”

The evidence is abundant that people other than white men contributed to building this country. Land, labor, wealth, and life stolen from Native Americans and enslaved Africans are but few examples. Slavery and extreme violence against black bodies were the foundation of American capitalism. Without those two evils we would be living in a different America today. If we accept the historical fact that African Americans were at the center of American progress from the very beginning, it begs the question then, why is the historical record filled with so many silences, distortions, and erasures around Black peoples lives?

Is the erasure of marginalized people in all sectors of our society, including the archives, an intentional act and if so, how do we begin to confront that? One way is by acknowledging our willful ignorance around the histories of marginalized people of color and to allow new knowledge to affect how we do our work.

In his book, *The Half Has Never Been Told: Slavery and the Making of American Capitalism*, Ed Baptist places slavery and the extreme violence involved with cotton production, the most valuable commodity in 19th

century America, at the very heart of a new and distinctive American capitalist system. He argues, among other things, that slavery created and supported the economy in the Northern, enriching merchants, and mill owners, while also drastically growing the assets of British bankers. Slave owners pioneered advances in banking and finance, which still exist today.

But most importantly, Baptist argues, what drove the drastic rate of cotton production and our first experience with a type of national economic growth, especially between 1800 and 1860, was an extreme new kind of violence perpetrated against enslaved Africans. The sole purpose of this violence was to drive up the daily output of cotton that one person could produce. He paints a picture of this violence in distressing details and one of the most unsettling examples is when he writes about tracking the increasing size of the slavers whip with the rise in cotton production in the most productive decades of the 19th century.

In the introduction, Baptist describes how he wanted to set up the book so there could be no doubt as to the centrality of forced African labor to the economic foundation of the country. He set up the chapters in a way that presents a powerful image of the entire American experiment sitting on top of a black human body. Chapters are titled, feet, head, right hand, left hand, tongues, breath, seed, blood, backs, and arms. I thought this was an effective way to represent the truth about black labor and how it drove American progress.

Baptist also calls out the lack of care for the history of African Americans and how that plays out in the exclusion practices of our cultural heritage sites, he references the work of Stephen Small and Jennifer Eichstedt in their book, *Representations of Slavery*, when he says and I quote, “Millions of people each year visit plantation homes where guides blather on about furniture and silverware. As sites, such homes hide the real purpose of these places, which was to make African Americans toil under the hot sun

for the profit of the rest of the world. All this is the ‘symbolic annihilation’ of enslaved people.” In a book about the slavery roots of capitalism, he too recognized the implications of erasure in our historical records.

There is a lesson here for archivists about making sure our collections are about confronting truth and being comfortable about acknowledging the complexity of our history. The inspiration for Baptist to lay his book out this was Ralph Ellison. In the book he quotes from a little known essay Ellison published in 1953 called, *Twentieth-Century Fiction and the Black Mask of Humanity*. In it Ellison writes: “On the moral level I propose we view the whole of American life as a drama enacted on the body of a Negro giant who, lying trussed up like Gulliver, forms the stage and the scene upon which and within which the action unfolds.”

“On the moral level I propose we view the whole of American life as a drama enacted on the body of a negro giant who, lying trussed up like Gulliver, forms the stage and the scene upon which and within which the action unfolds.”

Imagining our history this way amplifies the silences and erasures in our historical records and really begs us to question the motives behind them. If we know that African Americans and other historically victimized and marginalized people in the United States were absolutely essential to building this nation, then why do these silences and erasures continue to exist in our special and distinctive collections, our digital collections, our rare books, our web and social media archives, or our university archives?

As amazing as those words were from Ellison, they were only the first part

of an incredibly powerful paragraph, the rest of which I thought spoke directly to archivists and our complicity in the symbolic annihilation of marginalized people. Ellison continues the paragraph, and I quote: “If we examine the beginnings of the colonies, the application of this worldview is not, in its economic connotations at least, too farfetched or too difficult to see. For then the Negro’s body was exploited as amorally as the soil and climate. It was later, when white men drew up a plan for a democratic way of life, the Negro began slowly to exert an influence upon America’s moral consciousness. Gradually he was recognized as the human factor placed outside the democratic master plan, a human ‘natural’ resource who, so that white men could become more human, was elected to undergo a process of **institutionalized dehumanization.**”

Our traditional practices in the archives are dangerously close to this legacy of institutionalized dehumanization. The silences, erasures, and distortions, and the lack of care, around the histories of the most marginalized people in our society are essential characteristics of it. This is especially true when we look at what makes up for cultural heritage at institutions that legitimize history in America, our universities and their archives and libraries, or our federal archives and museums. Are we ready to confront this reality?

I don’t think we spend enough time talking about the reality of violence, whether it’s cultural, psychological, or physical, being a consequence of how we choose to do our work in the archives. The tradition of exclusion in our profession deserves a critical response in order to begin to change it. Our work affects people’s lives more directly than we care to acknowledge.

And when we do choose to talk about it, we tend to gloss over the real danger the work poses to people’s lives through exclusion and erasure, and instead focus on lofty ideals of librarianship and archives. I won’t do that here. Yes, I agree that archives have the potential to change and even save lives, but whose lives are we talking about and are we really invested in this

idea? I offer that we haven't done the truth work necessary to allow us to claim these lofty ideals.

The work we do as archivists, as librarians, as digital preservationists, have real consequences for marginalized people because who is remembered and how they're remembered dictates who gets violence perpetrated against them. Black bodies are either erased from the historical record or distorted in the historical record before we're shot in the street like Rekia Boyd and Trayvon Martin. That's partly what makes it ok to a large segment of the American public.

That erasure from records, cultural spaces, and mass media are partly what allow people to accept absurd justifications for killing us. It's what makes a large majority of the public ok with these extrajudicial executions, because someone was wearing a hoodie, or someone was standing in a crowd, or someone might have stolen a stolen a cigar, or someone was playing their music too loud, or someone was driving to their new job, or someone was selling cigarettes, or cd's, or someone was sitting in a car and reaching for their license, which made a police officer feel his life was threatened.

This is the legacy of symbolic annihilation in the archives that Michelle Caswell has so eloquently and powerfully forced us to think about, and I thank her for that. A legacy that says before actual annihilation, you don't exist, and after actual annihilation, it didn't happen.

Since we're going to have an honest conversation today, I'll admit that I'm not very optimistic about change because so far in my experience in this profession, feel good slogans and professionalism, are easier than deep cultural and social engagement with the communities we've abandoned through our traditional archives practices, at the foundation of which, is a myth of neutrality that mandates an #AllLivesMatter approach to collection building. I'm against that idea.

Neutrality is a threat to the legacies of marginalized people and by extension their lives. In our line of work neutrality is a dangerous idea that prioritizes dominant culture, white male culture. So I want to push back and say that I'm interested in a #BlackLivesMatter care ethic for building our collections in the future, or better yet, a #BlackTransLivesMatter care ethic.

One that says the humanity of Black trans people is connected to my humanity and I can just as easily tell the story of America's past by prioritizing their lives and their legacies in the historical record, over the legacies of white men. I believe this sincerely and see myself as being one of people responsible for the failure of care around the legacies of Black trans people. I am ready to confront that failure in my own work because I haven't done enough.

Violence against trans people is at epidemic levels. In October, the Advocate magazine published the names of twenty-three trans people who have been murdered in the first ten months of 2016, making it the deadliest year on record for trans people. Last year, in 2015, twenty-one trans people were

murdered. In addition to the record number of murders, the overwhelming majority of those killed have been trans people of color. The Advocate also pointed out that the numbers could very well be higher since police misidentify most trans victims. We have to ask ourselves, what do we owe these victims and the trans community, as fellow humans, as archivists, as culture keepers, and as the people who've charged ourselves with deciding who gets remembered and who doesn't? What do we owe communities that are constantly victimized because of erasure and by erasure?

In the short video clip I'll show next, trans activist, writer, and filmmaker, Reina Gossett, recounts an experience learning about and sharing the histories of trans people of color as a strategy to heal from the violence of historical isolation and erasure. In this clip Reina is talking about conducting research about trans activist Marsha P. Johnson. And I think this research was related to a film Gossett wrote, directed and produced about Johnson called *Happy Birthday Marsha!*

These words should resonate with all of us. It was also good to hear Gossett talk about why we need to document the complexities and the silences within marginalized people's histories as well. Because we know the issue of erasure also exists there. This is something we don't do a very good job with in the archives. We lean towards clean narratives of history, which uphold these erasures, especially in our university based collections that are dependent on donor relationships.

So how do we begin to confront our failure of care around the legacies of marginalized people? I think we need to start by taking a hard look at our obsession with professionalism and ask instead, why people, are not at the center of our work. I think back to a conversation I was a part of around the time I was first invited to do this keynote, and one of the things someone in the group said to me was "I don't see you as a digital person, I see you more as a collections person." Now I don't know what the intention of that

comment was but I was at least happy they saw me as a person.

On a more personal level though, I interpreted the comment as an insult. I interpreted it as, I hadn't done enough to be able to stand up here today addressing a meeting of digital preservationists or folks interested in digital collections. I interpreted it as, I wasn't in the room when national standards and best practices for digital preservation were being developed, so who am I to stand on a stage today addressing (a mostly white) audience of digital preservation experts about this. I don't know. Maybe I'm just sensitive and was reading too much into the comment. But that's just how I felt.

Even if we assume that my interpretation of the comment was way off, I think it was a perfect example of how we think about professionalism and why our work, and especially the areas dealing with digital preservation, web or social media archiving, and software development, remain so overwhelmingly white and exclusive. What makes someone a digital collections person versus just a collections person (which I assume is a lower class of person? I don't know.) And why are these distinctions so important to us? Professionalism plays a big role here.

In his 1970 address to the Society of American Archivists annual conference, which was later published as, *Secrecy, Archives, and the Public Interest*, Howard Zinn cautioned against the prioritization of professionalism and neutrality by archivists. He said, and I quote, "The archivist, even more than the historian and the political scientist, tends to be scrupulous about his neutrality, and to see his job as a technical job, free from the nasty world of political interest: a job of collecting, sorting, preserving, making available, the records of the society. But I will stick by what I have said about other scholars; and argue that the archivist, in subtle ways, tends to perpetuate the political and economic status quo simply by going about his ordinary business. His supposed neutrality is, in other words, a fake. If so, the rebellion of the archivist against his normal role is

not, as so many scholars fear, the politicizing of a neutral craft, but the humanizing of an inevitably political craft.”

Zinn goes on to say, “Scholarship in society is inescapably political. Our choice is not between being political or not. Our choice is to follow the politics of the going order, that is, to do our job within the priorities and directions set by the dominant forces of society, or else to promote those human values of peace, equality, and justice, which our present society denies.”





Amazing People!

We should be careful of creating more closed spaces in the profession. It goes against everything we're supposed to be about and we risk alienating people committed to helping this profession move forward. The most empowering professional event I've been a part of this year was the digital blackness conference, which took place at Rutgers University back in April. It was a gathering of a few hundred black scholars, journalists, archivists, librarians, technologists, and activists, among others, who all came together to talk about digital humanities, digital cultural representation, digital preservation, and digital media, all through the lens of Black American and Diaspora culture. The event was about people.

This was my first experience in a space like this. It was a space full of honesty, brilliance, and support. It was welcoming and full of care. Which is not surprising since it was an event planned by black women, including Dr. Brittany Cooper. When was the last time you were in space dominated by black women speaking about digital collections, and why doesn't this happen all the time?

Top highlight

These safe spaces exist partly because the exclusively white spaces where these digital collections conversations traditionally happen are not welcoming and are overwhelmingly rooted in professionalism around standards and technical know how. I'm not saying these things aren't important but there is a lot of room to grow. Inclusive spaces where critical conversations around digital culture take place have deep implications for who gets represented in the digital historical record.

Ok, so this is the part where I close and offer ideas around some things we

can do.

1. We can also hold our professional organizations and our home institutions accountable. So I went through the NDSA website in preparation for this talk and to be honest there was a lot about standards and digital infrastructure. I didn't see a lot about caring for the people represented in NDSA institutional member collections, and making sure that members commit to an ethic of care around protecting people in those collections, and committing to collecting more inclusive and representative digital records. An organization that's about advocating for digital preservation can focus on both the technology and the people. This is why I was happy to see this tweet about the DLF Mission and Community statement. It was really incredible to read this and I thank DLF for their leadership here. I hope they continue to do good work and that more organizations model this behavior.

2. Model our work after projects, organizations, or institutions that are already doing people centered work. I invite to dig deeper into these project and make contact with the people involved.

Digital Transgender Archive

Mukurtu

A People's Archive of Police Violence in Cleveland

Inland Empire Memories

The South Asian American Digital Archive

The Shorefront Legacy Center

Diversifying the Digital Historical Record

Documenting the Now

3. We need to confront the unbearable whiteness of our profession. According to 2014/2015 Association of Research Libraries statistics, “14.8% of professional staff in US ARL university libraries (including law and medical libraries) belongs to one of the four non-Caucasian categories for which ARL keeps records. The percentage of minorities in managerial or leadership positions in ARL academic libraries is far lower: 10.7% are directors (12 out of 112), 6.2% are associate directors (20 out of 323), 7% are assistant directors (11 out of 157), and 8.7% (33 out of 379) are the head of a branch library.” Overall, more than 85% of professionals working in ARL libraries are white. And I use ARL library statistics because most of the larger, resource rich, and prominent American university libraries are represented there.

4. And I know this one is controversial but it needs to be said; we need to be honest the unbearable whiteness of the people staffing our cultural heritage funding organizations. While these organizations have undoubtedly funded projects around building more inclusive collections, including some of my projects, I can't help but think about how missions and priorities might be enhanced if we had more diversity among our grant program officers.

5. And finally, we should take an honest assessment of our collections in our home institutions to determine how they silence, erase, and distort the legacies of marginalized people. For example, what can a critical look at our collective accession records tell us about historical production and the state of cultural heritage work in the United States?

These are only a few suggestions but I think addressing them can help us be more honest about the state of our profession. Acknowledging and

accepting our role is a starting point for doing the transformational work that will be necessary.

So in closing, I want to encourage you to take action where you are. And if your home institution is not ready to take action, I urge you to challenge that position. And if that challenge doesn't work, then find a way to support projects and people outside your home institution that are doing this kind of work. And if you need a little encouragement through out all of this you can always reach out to me. I look forward to the opportunity to work with many of you.

Thank you!

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Of Things Said and Unsaid: Power, Archival Silences, and Power in Silence*

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RÉSUMÉ Ce texte examine les dynamiques du silence aux archives. Il soutient que le silence peut se définir, au moins en partie, comme la manifestation des actes posés par ceux qui détiennent le pouvoir afin d'empêcher aux marginaux d'avoir accès aux archives. Il affirme que cet enjeu a un impact significatif sur la capacité des groupes marginalisés de constituer leur propre mémoire et leurs propres histoires sociales. Les archivistes et les chercheurs peuvent lire les archives « contre le grain » et ils peuvent commencer à mettre en valeur ces silences et à donner une voix à ceux qu'on a réprimés. Cette activité peut toutefois s'avérer difficile et contentieuse et on ne peut l'aborder à la légère. Cet article examine ensuite comment le silence peut être une méthode favorisée par les groupes marginalisés qui refusent de verser leurs documents aux archives comme un moyen d'exercer leur propre pouvoir sur ceux qui détiennent le pouvoir.

ABSTRACT This article examines the dynamics of silence in archives. It argues that silences are, in part, the manifestation of the actions of the powerful in denying the marginal access to archives and that this has a significant impact on the ability of the marginal groups to form social memory and history. Archivists and researchers can read archives “against the grain” and begin to highlight these silences and give voice to the silenced. This, however, may be a difficult and contentious activity and one that should not be entered into lightly. The article then examines how silence can be a method used by the marginalized to deny the archives their records as a way to exercise their power over the powerful.

“I’m interested for the most part in what’s not happening, that area between events that could be called the gap. This gap exists in the blank and void regions or settings that we never look at.”

Robert Smithson, “What is a Museum?” (1967)¹

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¹ Robert Smithson, “What is a Museum: A Dialogue between Allan Kaprow and Robert Smithson,” in Jack Flan, ed., *Robert Smithson: The Collected Writings* (Berkeley, 1996), p. 44.

“The technologies of silence/ The rituals, etiquette
 the blurring of terms/ silence not absence
 of words or music or even/ raw sounds
 Silence may be a plan/ rigorously executed
 the blueprint to a life
 It is a presence/ it has a history a form
 Do not confuse it/ with any kind of absence.”

Adrienne Rich, “Cartographies of Silence” (1975)²

Introducing Silences

Archives are filled with voices. Individuals may visit archives in order to hear the stories of their ancestors and predecessors, to learn of the past actions of their governments, and to examine the activities of private organizations. Texts, in the broadest sense of the term, including written, visual, audio-visual, and electronic, are the currency of archives. Archival texts, however, are not fully representative of society. Even in a “total archives” environment, such as exists in Canada, where state-sponsored institutions are responsible for the records created by governments as well as by individuals and organizations, and which are charged with the role of being the keepers of memory and identity for the entire nation,³ it is impossible for archives to reflect all aspects and elements of society.

The notion that archives are neutral places with no vested interests has been undermined by current philosophical and theoretical handlings of the concept of the “Archive”; it is now undeniable that archives are spaces of power.⁴ Archival power is, in part, the power to allow voices to be heard. It consists of highlighting certain narratives and of including certain types of records created by certain groups. The power of the archive is witnessed in the act of inclusion, but this is only one of its components. The power to exclude is a fundamental aspect of the archive. Inevitably, there are distortions, omissions, erasures, and silences in the archive. Not every story is told.

2 Adrienne Rich, “The Cartographies of Silence,” *The Dream of a Common Language: Poems 1974–1977* (New York, 1978), p. 17.

3 Laura Millar, “Discharging our Debt: The Evolution of the Total Archives Concept in English Canada,” *Archivaria* 46 (Fall 1998), p. 117; Terry Cook, “What is Past is Prologue: A History of Archival Ideas Since 1898, and the Future Paradigm Shift,” *Archivaria* 43 (Spring 1997), p. 34.

4 See Michel Foucault, *The Archaeology of Knowledge*, trans. A.M. Sheridan Smith (London, 1974) and Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago, 1996). Informed by the work of these two theorists, Derrida in particular, the concept of the Archive has been subject of examination by scholars in literary criticism and other fields. From the archival perspective, see the two thematic double issues of *Archival Science* (vol. 2, nos. 1–2 and 3–4, [2002]) guest edited by Joan M. Schwartz and Terry Cook on “Archives, Records and Power.”

This article is interested in the “gaps,” “blanks,” “void regions,” or silences in archives.⁵ It examines archival silences, including how they are manifested, the implications of silence for the groups that are excluded, and the impact on societal memory in general. If records are destroyed, manipulated, or excluded, the narratives of the groups cannot be transmitted across time. Their stories will not be heard and they may ultimately disappear from history.

Both power and silence are complex concepts. Just as silence manifests itself in multiple ways, power, too, is not simply a matter of domination. Informed by the work of Michel Foucault and Jacques Derrida, this paper will begin by exploring how the powerful can introduce silences into the archives by denying marginal groups their voice and the opportunity to participate in the archives. Methods for “reading the silences” of the archives shall then be examined. Once a silence is recognized, what can be done about it in order to learn about the marginalized, or even to fill those silences? While it is generally accepted that archival silences are a negative, and that archives should include as many voices as possible, this article ends by considering how certain groups may choose silence, thereby exempting themselves from the archives. Using strategies articulated in feminist theories of rhetoric and literary theory, and informed by the work of feminist psychologists, I shall offer a wider definition of power and examine how invoking silence can be a strategy used by the marginalized *against* the powerful.

Silences haunt every archives. Silence, however, can be contested and the marginalized can be invited in, although it must be recognized that these groups may not accept this invitation. Once archivists are aware of the silences in their archives, they can take measures to try to allow for multiple narratives to fill some of these gaps, to make users aware of the silences, and to attempt to understand and respect the choice of certain groups to keep their silence.

Silence, Power, and the Archive

The powerful in society are typically aligned with the state and its apparatus, such as the military and the police. Powerful groups in society include certain racial, ethnic and religious groups, the wealthy, and the educated. The powerful can be, and are, defined by their gender and sexuality. They are not necessarily a part of the majority in society but rather can exert an influence that outweighs their numbers. These powerful groups create the records that will eventually enter the archives and use their power to define the shape an archives takes.

⁵ In this article I am examining silence using aspects of the European and North American philosophical tradition. Silence also plays an important role in other traditions, including Shinto, Confucianism, Taoism, Hinduism, and Buddhism.

These groups display “power over” the weaker elements in society. Where this power exists, there is an unequal relation between the groups, an “above and below, a difference of potentials.”⁶ Power over is the domination or control of one group over another in a particular context and involves the ability to affect outcomes and influence others, particularly through the control of resources, including information.⁷ The powerful have the ability to make lasting statements that will be heard and attended to. Their words have authority and the power of the law to back them up. Dissenting views, those of the marginal, those statements that challenge or attempt to undermine those in authority, are suppressed by the powerful. They are gagged, threatened, or otherwise forcibly silenced. This type of silencing has been called “simple and perfect,”⁸ where the individual or group is denied the ability to speak, to make a statement, to voice their opinions. Jean-François Lyotard describes this behaviour as that of a terrorist, where “by terror I mean efficiency gained by elimination, or threatening to eliminate, a player from the language game one shares with him. He is silenced or consents, not because he has been refuted, but because his ability to participate has been threatened (there are many ways to prevent someone from playing).”⁹ Those who dissent are denied the ability to operate within the discourse, what Lyotard terms the language games. They are silenced through force, given the ultimatum: either withdraw your statement or you will no longer be able to speak.

In addition to the creation of these “perfect” silences, silencing also occurs when an individual speaks but they have no authority behind them. This results in the speech act not being acknowledged and hence the words are not able to achieve their desired effect or fulfill their purpose.¹⁰ Due to a lack of power, the statements are not heeded, they are not recognized as speech acts or as records and are denied a place in the archives.

Where groups have their own record-keeping traditions that differ from the literary tradition upon which European and North American archives are based, such as the oral traditions employed by Native North American groups,

6 Michel Foucault, “The Confessions of the Flesh,” in Colin Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977*, trans. Colin Gordon, Leo Marshall, John Mepham, and Kate Soper (New York, 1980), p. 201.

7 Janice D. Yoder and Arnold S. Kahn, “Toward a Feminist Understanding of Women and Power,” *Psychology of Women Quarterly*, vol. 16, no. 4 (December 1992), pp. 382–83.

8 Miriam Meyerhoff, “Doing and Saying: Some Words on Women’s Silence,” in Mary Bucholtz, ed., *Language and Woman’s Place: Text and Commentaries*, revised and expanded ed. (Toronto, 2004), p. 209.

9 Jean-François Lyotard, *The Postmodern Condition: A Report on Knowledge*, trans. Geoff Bennington and Brian Massumi (Manchester, 1984), pp. 63–64.

10 Rae Langton, “Speech Acts and Unspeakable Acts,” *Philosophy and Public Affairs*, vol. 22, no. 4 (August 1993), pp. 315–16; Meyerhoff, “Doing and Saying,” pp. 211–12.

the silencing is compounded. The speech acts, that is, the documents that are produced, are not recognized as records by the archives. South African archivist Verne Harris states that there is a dire problem of non-responsiveness in the archives to the marginal or “indigenous” epistemologies.¹¹ The marginal voices that do not conform, that do not adopt the “powerful Western frame of reference”¹² of the dominant group, are ignored. These voices are silenced – if not actively, then through ignorance and chauvinism.

Silence implies voice. It does not equal muteness, that is, it is not a negative phenomenon, simply the absence of sound, speech, text, or other sign.¹³ Silence can be actively entered into or, as occurs where the power is exerted over an individual or group, it is enacted upon that individual or group. In the archives, silences can occur as marginal groups are actively denied entry.

Jacques Derrida sees the archive as a place of violence.¹⁴ The archive, as a reflection of and the source of state power, is extremely selective when deciding what gets in. Only those voices that conform to the ideals of those in power are allowed into the archive; those that do not conform are silenced. Those marginalized by the state are marginalized by the archive. Archival violence is found in the use of documents to enforce and naturalize the state’s power and in the active silencing of the disenfranchized. The records of the marginalized are denied access and entry into the archive as a result of their peripheral position in society.

Archivists are constantly confronted with choices about what to include and what to exclude, allowing for some voices to be heard while others are silenced. Limited resources and/or a lack of understanding ensure that all records are not given equal attention, that some will be denied a place in the archives. This can be the result of passive or unconscious decisions on the part of the archivist, decisions based upon rationalization and reorientation of archival activities due to fiscal constraints and increasing demands.¹⁵ These decisions, combined with the active exclusion of certain dissenting voices and non-conforming records, have a drastic impact on the form of the archives and have great implications for the state of societal memory.

11 Verne Harris, “The Archival Sliver: A Perspective on the Construction of Social Memory in Archives and the Transition from Apartheid to Democracy,” in Carolyn Hamilton, Verne Harris, Michele Pickover, Graeme Reid, Razia Saleh, and Jane Taylor, eds., *Refiguring the Archive* (Cape Town, 2002), p. 150.

12 Verne Harris, “On (Archival) Odyssey(s),” *Archivaria* 51 (Spring 2001), p. 9.

13 Bernard P. Dauenhauer, *Silence: The Phenomenon and Its Ontological Significance* (Bloomington, 1980), pp. 4–5.

14 Derrida, *Archive Fever*, p. 7.

15 Millar, “Discharging our Debt,” pp. 125–31.

Implications of Archival Silences

Archival silences, however they occur, have a potentially disastrous impact on the marginalized groups. Numerous commentators have identified a link between archives and memory. Indeed, the French historian Pierre Nora makes the assertion that “modern memory is, above all, archival.”¹⁶ Memory relies on the continuing existence of the physical traces produced by members of society in their activities. These traces are stored in archives. As M.T. Clanchy states in his discussion of the transition from oral to literate culture in medieval Europe, archivists act like the remembrancers of oral societies, they are entrusted as the “keepers of a society’s collective record of the past.”¹⁷ Societal memory, the collective memory of the group, the nation, and the culture is dependent on the archivist and the archives. When human memory is impaired, it “affect[s] our concept of time and our ability to remember and recollect ideas and thoughts, habits and people, places and things,”¹⁸ and likewise: when the archives is impaired, when there are silences in the archives, collective memory is similarly affected. As Joan Schwartz and Terry Cook write: “Without archives, memory falters, knowledge of accomplishment fades, pride in a shared past dissipates. Archives counter these losses.”¹⁹ Losses are prevented, however, only for the powerful, those record-creating groups with access to the archive. In the archive, as in the political life of Ancient Greece, silence is equated with oblivion; it is the opposite of memory and truth.²⁰ For the marginalized, losses abound, their collective memory is deficient, their great deeds and the stories of their persecution as they tell it, will not survive. As anthropologist Susan Gal states, silence traditionally is deplored as “those who are denied speech cannot make their experience known and thus cannot influence the course of their lives or of history.”²¹

Archival silences result in societal memory being compromised. A universal archive, one that preserves *the* memory of a culture is an impossibility as memory is necessarily an individual thing: there are many memories²² that often are conflicting and contradictory. Even if archivists are willing to allow

16 Pierre Nora, “Between Memory and History: *Les lieux de mémoire*,” trans. Marc Roudebush, *Representations*, no. 26 (Spring 1989), p. 13.

17 M.T. Clanchy, “‘Tenacious Letters’: Archives and Memory in the Middle Ages,” *Archivaria* 11 (Winter 1980–81), p. 116.

18 Barbara L. Craig, “Selected Themes in the Literature on Memory and Their Pertinence to Archives,” *American Archivist*, vol. 65, no. 2 (Fall/Winter 2002), p. 282.

19 Joan M. Schwartz and Terry Cook, “Archives, Records, and Power: The Making of Modern Memory,” *Archival Science*, vol. 2, nos. 1–2 (March 2002), p. 18.

20 Silvia Montiglio, *Silence in the Land of Logos* (Princeton, NJ, 2000), p. 82.

21 Susan Gal, “Between Speech and Silence: The Problematics of Research on Language and Gender,” in Camille Roman, Suzanne Juhasz, and Cristanne Miller, eds., *The Women and Language Debate: A Sourcebook* (New Brunswick, NJ, 1994), p. 407.

22 Nora, “Between Memory and History,” p. 9.

multiple voices into the archives, it will never be complete. There is simply no way of capturing the multitude of stories, although archivists must try.²³

The ramifications of the compromised archive are startling. History, memory, and identity are all affected, as is the ability for the marginal to seek accountability. When the record only reflects the viewpoint of the powerful, there is a great void in the collective memory. Harris describes all archives as preserving a “sliver of a sliver of a sliver” of the documentary universe. What comes to the archives is an extremely small portion of those records that are created, due to the active and passive destruction by records creators, the appraisal by the archivist of what does manage to come to them, and through the physical (and even more alarming, the electronic or virtual) records’ inevitable self-destruction. Harris states that if archives are our “central memory institutions, then we are in deep, amnesiac trouble.”²⁴ While archivists are continually confronted with a lack of space to hold the millions and millions of records, and they lament the impossibility of dealing with colossal backlogs, archives actually preserve very few of the records created. What is held is, for the most part, very consciously selected, along with a smaller portion of material being acquired by chance that was not intentionally preserved but somehow managed to survive.²⁵ The records in the archives tell a very small part of a much larger and infinitely complex story.

In literate cultures, where access to the past is acquired primarily through the written word, when a group is faced with archival silences of themselves, it becomes difficult for the group to tell its own story, to write its own history. Archives are “how we know ourselves as individuals, groups, and societies,”²⁶ so without archives, the possibility of gaining and maintaining knowledge over time is severely compromised. In the face of archival silence, it is very difficult to form a sense of collective identity. When there is no archival memory to anchor oneself to, the sense of a shared past is lacking. Knowledge of the commonalities that link individuals together is missing. This has a very direct impact on the group’s ability to form an identity.

Identity is extremely important for every group, particularly the marginalized who feel the need to assert a strong identity in the face of the power structures that attempt to stamp them out. Identity can be created in a vacuum of

23 For more on this see below; see also Verne Harris, “Seeing (in) Blindness: South Africa, Archives and Passion for Justice,” *Records and Information Management On-line Service* (2001) available at <<http://www.caldeson.com/RIMOS/harris01.html>> (accessed on 10 October 2002).

24 Verne Harris, “Claiming Less, Delivering More: A Critique of Positivist Formulations on Archives in South Africa,” *Archivaria* 44 (Fall 1997), p. 97; see also Harris, “The Archival Sliver,” pp. 135–36.

25 Carolyn Steedman, “The Space of Memory: in an Archive,” *History of the Human Sciences*, vol. 11, no. 4 (November 1998), p. 67.

26 Schwartz and Cook, “Archives, Records, and Power,” p. 2.

recorded memory, it can incorporate the lack, and the pressure of the absence shapes and informs the group's knowledge of itself. For those groups whose records are denied a place in the archives, alternative forms of transmission are adopted to share their story with future generations, such as oral traditions or the use of objects as *aide-mémoire*.²⁷ These forms of communications, however, are susceptible to interruption and the stories and memories upon which group identity is based are much more easily forgotten and distorted than those which are written down and preserved over the long term in an archives.

In order to transcend the limits of time, space, and the fragile nature of human memory, societies depend on archives. Archives are created to transcend the limitations of the oral. This is what Kenneth Foote states is the value of archives.²⁸ If archives are not created and kept, stories can, are, and will be forgotten. And with no archives there is little chance that the marginalized groups can seek redress for the wrongdoings inflicted on them. This is what Lyotard calls the "*differend*," where plaintiffs are divested of the means to argue their case, to seek accountability, and thus are further victimized.²⁹ As Sue McKemmish states, "the point is made that inadequate record-keeping regimes limit the ability of society's watchdogs and corporate compliance managers to enforce accountability ..."³⁰ This inadequacy of record-keeping systems applies to having no records created in the first place, to records that are not completed fully and accurately created, and to the introduction of silences into the archives after the records are created. Nevertheless, despite the best efforts of the powerful to keep the voices of the marginalized out of the archives, traces can still be found. The state's archives can be interrogated and the imbalance of power can begin to be corrected.

Finding Voices in Silence

Even where the state maintains strict control over the archives, where there is not even lip-service paid to notions of democracy, there is still hope to hear the voices of the oppressed. Archival silencing is not complete. The naming of the silence subverts it, draws attention to it. As Karmen MacKendrick states "if we so much as say *silence*, we have already destroyed it."³¹ Derrida states

27 Clanchy, "'Tenacious Letters,'" p. 115.

28 Kenneth E. Foote, "To Remember and Forget: Archives, Memory and Culture," *American Archivist*, vol. 53, no. 3 (Summer 1990), p. 379.

29 Jean-François Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van Den Abbeele (Manchester, 1988), p. 13.

30 Sue McKemmish, "The Smoking Gun: Record-keeping and Accountability," *Records Continuum Research Group Publications* (1999); available at <<http://www.sims.monash.edu.au/research/rcrg/publications/recordscontinuum/smoking.html>> (accessed on 25 March 2003), p. 21.

31 Karmen MacKendrick, *Immemorial Silence* (Albany, 2001), p. 5.

that within memory is forgetting. He writes that "... the archive – the good one – produces memory, but produces forgetting at the same time ... [T]he trace is at the same time the memory, the archive, and the erasure, the repression, the forgetting of what is supposed to be kept safe."³²

Within remembering is forgetting and in forgetting is remembering. The dichotomy is broken down, the binary subverted. This is not an either/or position. The same can be said of silence. Speech and silence are dependent and defined through the other. There is no speech without silence, otherwise there would just be unmodulated cacophony; likewise there would be no silence without speech, just a universal meaningless, emptiness. As Susan Sontag wrote, "'Silence' never ceases to imply its opposite and to depend on its presence: just as there can't be 'up' without 'down' or 'left' without 'right,' so one must acknowledge a surrounding environment of sound or language in order to recognize silence."³³ According to Foucault the *lack*, the *unsaid*, determines and defines the very existence of what is said, of the enunciative field.³⁴ In the archive there is what might be called an absent-presence. What is present in the archives is defined by what is not. And the archival silences are delimited by the archival voices.

Traces of the silenced or silent will inevitably be present in the archives. The problem lies in identifying them. The pertinent question that arises is how can one "*prove* the absence of an archive?"³⁵ Where does one begin to look? How do we begin to look for absences? It is only in the awareness of silence that we can begin to remedy it. It must be acknowledged that a group is not present in the archives. St. Augustine of Hippo states "... we do not entirely forget what we remember that we have forgotten. If we had completely forgotten it, we should not even be able to look for what was lost."³⁶ If no traces are left, if we do not even remember that the group has been forgotten and silenced, if the group has been obliterated from archival and societal memory (the latter being dependent on the former over time), where is this recognition of silence going to come from? And who is going to identify such silences? There are no easy answers to these questions.

For the groups that are recognized as being absent, there are ways of finding their traces in the archives. One strategy that has proven quite successful is using the feminist literary tactic of "listening to silences."³⁷ In this strategy,

32 Jacques Derrida, "Archive Fever in South Africa," p. 54. See Harris, "Seeing (in) Blindness," on the remembering/forgetting binary.

33 Susan Sontag, "The Aesthetics of Silence," *Styles of Radical Will* (New York, 1969), p. 11.

34 Foucault, *Archaeology of Knowledge*, p. 110.

35 Derrida, *Archive Fever*, p. 64.

36 St. Augustine, *Confessions*, trans. R.S. Pine-Coffin (Toronto, 1961), X (19), p. 226. A slightly different translation is quoted in MacKendrick, *Immemorial Silence*, p. 109.

37 See, for example, the essays in Elaine Hedges and Shelley Fisher Fishkin, eds., *Listening to Silences: New Essays in Feminist Criticism* (New York, 1994).

that can be applied to any marginalized group, texts are examined for their omissions, lacunae are interrogated, and the representations of women's silence are explored. It is inevitable that the marginal infects the centre, that its presence is felt critiquing the structures of power.³⁸ As a result of this infection, or infiltration, the voices of the marginal may be heard. This method of textual examination, of listening, can be aligned with what Schwartz and Cook describe as reading archives "against the grain."³⁹ Foucault defines it as archaeology that can be used to illuminate the "discontinuities, ruptures, gaps" of the discourse.⁴⁰ However one identifies it, all these strategies look for what is not there in the records that are in the archives. They use the records created by the powerful to subvert that privileged position.

One fruitful location for finding the voices of the marginalized is in what Terry Cook calls the citizen–state interactions.⁴¹ Cook sees this interaction to be the most important aspect of society to document, and one of the categories of "sharp" interaction is marginalization, where the state imposes its will and its force onto the populace. These interactions are found in, but are not limited to, prisons, hospitals, mental institutions, residential schools, ghettos, and concentration camps. Indeed, often the only extant historical information on persecuted minorities, the lower classes, the poor, and the humble is found in the records created by the state and their apparatus in the active marginalization and suppression of these groups and individuals.⁴² As Chris Hurley accurately points out, "historically, tyrants have more regard for good record-keeping than democrats. Totalitarians are notoriously good recordkeepers."⁴³ It is rather ironic that it is through the records created in the acts of repression that the voices of the oppressed remain. This is what literary theorist David Greetham calls the "poetics of exclusion," whereby the repression does more to save the archive, the knowledge of the marginalized, than would have ever been possible otherwise. He writes: "the poetics of exclusion works, like the mind of God, in mysterious ways, ways in which it is impossible to establish either permanent principles of exclusion or methods of ensuring what we deem to be excluded will remain so." Greetham continues by stating that acts of active suppression "may seem to contribute to the formulation of such a poetics, except for the irony that the more overt (and the more successful) the

38 Krista Ratcliffe, *Anglo-American Feminist Challenges to the Rhetorical Traditions: Virginia Woolf, Mary Daly, and Adrienne Rich* (Carbondale, IL, 1996), p. 120.

39 Schwartz and Cook, "Archives, Records, and Power," p. 14.

40 Foucault, *Archaeology of Knowledge*, p. 169.

41 Terry Cook, "Mind over Matter: Towards a New Theory of Archival Appraisal," in Barbara L. Craig, ed., *The Archival Imagination: Essays in Honour of Hugh A. Taylor* (Ottawa, 1992), p. 50.

42 Lawrence Stone, *The Past and Present Revisited* (New York, 1987), p. 58.

43 Chris Hurley, "The Evolving Role of Government Archives in Democratic Societies," *Association of Canadian Archivists Bulletin*, vol. 27, no. 2 (November 2002), p. 6.

cultural exclusion the more the prurient and intrinsic value of the excluded may become."⁴⁴ Silence is never absolute. The act of repression is what may provide the key to enlightenment and knowledge, not only of the act of marginalization, but of the very existence of the marginalized themselves.

When a silence is discovered, there is the automatic desire to fill it with records. MacKendrick states that silence evokes a terror in us all. She writes that the "fear that silence evokes, the ancient fear, is the fear of time and the absence of time, time which is never more than the coming of absence, time which is not gathered into memory, but fragmented in the return."⁴⁵ In order to alleviate this fear of time and the void, archivists attempt to find the means to fill the gaps. Helen Samuels argues that in forming a documentation strategy it may be necessary to intervene in the records creation process to ensure that quality records are being created and that, if necessary, archivists should create records themselves.⁴⁶ Luciana Duranti suggests that as archivists have the mission, as "social memory keepers," they are "responsible for facilitating public memory making." Through this process of seeking out what is not in the archives, Duranti goes as far as to suggest that this will ensure the integrity and impartiality of the archives.⁴⁷ Barbara Craig argues that it is of importance for social memory that the archivist be an active documenter, inscribing into memory the activities and ideas of groups and individuals. Archivists, Craig asserts, are "responsible for acknowledging those with no documentary voice."⁴⁸

Verne Harris, too, states that it is important to fill the gaps in the archival memory, in the interests of justice. It is vital to "invite every 'other' in."⁴⁹ By bringing oppositional voices in, the conception of the archive can be ques-

44 David Greetham, "'Who's In, Who's Out': The Cultural Poetics of Archival Exclusion," *Studies in the Literary Imagination*, vol. 32, no. 1 (Spring 1999), p. 19.

45 MacKendrick, *Immemorial Silence*, p. 19. Gudrun M. Grabher and Ulrike Jessner, "Introduction," in Gudrun M. Grabher and Ulrike Jessner, eds., *Semantics of Silences in Linguistics and Literature* (Heidelberg, 1996), posit that silence is felt to be unbearable as it "conjures up a premonition of the ultimate silence, which is death" (XI).

46 See Helen Willa Samuels, "Who Controls the Past?," *American Archivist*, vol. 49, no. 2 (Spring 1986), p. 122, and "Improving Our Disposition: Documentation Strategy," *Archivaria* 33 (Winter 1991-92), pp. 136-37.

47 Luciana Duranti, "The Concept of Appraisal and Archival Theory," *American Archivist*, vol. 57, no. 2 (Spring 1994), p. 341. Rather than ensuring the impartiality of the archive through the facilitation of public memory, I would argue that while this allows for more subjective viewpoints in the archive, it does not make it more objective. There is no such thing as an impartial archive.

48 Craig, "Selected Themes in the Literature on Memory," p. 288.

49 Verne Harris, "Getting the outsiders in," *The Witness (The Natal Witness Group)*, 4 November 2002, available at <<http://www.witness.co.za/showcontent.asp?id=10772&action=full>> (accessed 15 November 2003), p. 5.

tioned and problematized. Harris writes that “bringing the hidden, the marginalized, the exile, the ‘other’ archive, into the mainstream,” allows “that archive to trouble conceptualizations of the ‘mainstream’.”⁵⁰ However, inviting the marginal in is a very different thing than inserting ourselves into the records creating practices or creating the records ourselves. As Derrida states, “what is no longer archived in the same way is no longer lived in the same way,”⁵¹ meaning that through the alteration of the record-keeping process the act which leads to the record’s creation itself is changed. When captured by an archivist, through an oral history project for example, the stories, histories, and records may no longer have the function or meaning intended by the original record creator. While the aid of an archivist in recording the stories of groups that lack a voice of their own may be welcomed by the group, there is a danger that in undergoing transcription, the record may not, in fact, be representative of the marginal group. The newly created records may be biased or distorted through the processes of creation, which may be alien to the group that the archivist is attempting to assist. As a result of misinterpretation, misunderstanding, or due to the subjectivity of the archivist, the archivist may actually be working to the detriment of the marginal group. And in the cases where the archivists themselves create the record, we must question, as Pierre Nora does with regard to oral histories, whose will is it being served: the interviewer or the interviewed, the silenced speaker or the archivist?⁵² Furthermore, in cases where only pieces of evidence remain, where the statement is partial, and archivists endeavour to fill the gaps, we must ask if the fragment is not the preferred method of transmission.⁵³ While archivists may have the best intentions in attempting to fill in the gaps they may be doing these groups a great disservice.

Harris warns that archivists must not further marginalize the marginalized, we must resist the urge to speak for others, we must not romanticize them, and we must attempt to avoid reinforcing the marginalization by naming it.⁵⁴ Indeed, Derrida warns of the dangers of citing examples of marginalization as it may further obscure other, anonymous, victimized groups, adding to their marginalization.⁵⁵ It must be kept in mind that by seeking out the records by or about certain groups does not mean that there are not other marginal groups that equally deserve a chance to be represented in the archives. Furthermore, we must recognize that not everyone wishes to be heard and that the assumption that marginal groups would desire to be included in state archives can be construed as arro-

50 Harris, “The Archival Sliver,” p. 143.

51 Derrida, *Archive Fever*, p. 18.

52 Nora, “Between Memory and History,” p. 15.

53 Greetham, “‘Who’s In, Who’s Out,’” p. 18.

54 Harris, “Seeing (in) Blindness,” pp. 42–45.

55 Jacques Derrida, “On Cosmopolitanism,” in Derrida, *On Cosmopolitanism and Forgiveness*, trans. Mark Dooley and Michael Hughes (New York, 2001), p. 5.

gance on the part of the archivist.⁵⁶ While we must extend the invitation to include all groups, we must recognize that the invitation may not be accepted. It is essential that archivists not undermine the right of groups to remain silent.

Invoking Silence

Groups may choose to act outside the archive, to subvert it, and not to concede to having power exerted over them or their records. Women, one of the groups who have been traditionally and consistently marginalized, have in recent history reacted against the patriarchy and the patriarchal nature of the logocentric archive, the “patriarchive.”⁵⁷ This view of the archive identifies them as institutions that have traditionally favoured textual documents of government, industry, the Church, and other male-controlled enterprises to the denigration of all other records. After being excluded from active life, from texts, and from the archive for so long, feminist rhetoricians have asserted the power of silence in denying the archive women’s voices. The traditional view of silence as oppression and exclusion is reversed. Patricia Lawrence states that “women’s silence ... may be read as a strategy of resistance and choice – a ritual of truth.”⁵⁸ Silences are asserted as a statement of power by the marginalized. As Adrienne Rich states in the poem “Cartographies of Silence,” silence must not be equated with absence: it is a forceful strategy of resistance. The use of silence as power is not unique to women, but their strategies are perhaps the best articulated.

This power is not “power over” where power is exerted by one group over another. Rather, this type of power may be seen as being “power with,” “power as capacity,” or “power to,” that as opposed to focussing on controlling others, deals with personal empowerment and control over the individual’s thoughts, feelings, and behaviours. It seeks not to diminish the power of others in order to increase the power of the individual, but rather it may be democratic and co-operative, seeking to increase the power of others at the same time as asserting and increasing their own power.⁵⁹ This is the power to

56 Harris, “Getting the outsiders in,” p. 10.

57 Sonia Combe, as quoted in Derrida, *Archive Fever*, p. 4. note 1. On the “logos-centric” archives, see Joan M. Schwartz, “Coming to Terms with Photographs: Descriptive Standards, Linguistic ‘Othering’, and the Margins of Archivy,” *Archivaria* 54 (Fall 2002), pp. 142–71, esp. pp. 167–68.

58 Patricia Lawrence, “Women’s Silences as a Ritual of Truth: A Study of Literary Expressions in Austen, Brontë, and Woolf,” in Hedges and Fishkin, eds., *Listening to Silences*, p. 156.

59 Yoder and Kahn, “Toward a Feminist Understanding of Women and Power,” p. 384; Maureen A. Mahoney, “The Problem of Silence in Feminist Psychology,” in Sue J.M. Freeman, Susan C. Bourque, and Christine M. Shelton, eds., *Women and Power: Leadership Redefined* (Boston, 2001), pp. 68–69; Robyn Fivush, “Voice and Silence: A Feminist Model of Autobiographical Memory,” in Joan M. Lucariello, Judith A. Hudson, Robyn Fivush, and Patricia J. Bauer, eds., *The Development of the Mediated Mind: Sociocultural Context and Cognitive Development* (Mahwah, NJ, 2004), p. 83.

speak or to be silent, to have control over one's own person and possessions, to co-operate or to resist. Resistance need not be recognized by the powerful for it to be an assertion of power by the marginal. They do not need to meet any subjective criteria of effectiveness or to disrupt the activities of the oppressors. Acts of resistance should not be discounted if they do not conform to traditional, male forms of heroic resistance.⁶⁰ Indeed, without even being recognized as such by "the other actor or institution," feminist political theorist Davina Cooper asks if "resistance simply depend[s] on the subjective interpretation of the resistor, that is, their perception that conflicting interests exist and that their behavior impedes the wishes of the opposing forces?"⁶¹ The silences need not be identified to be an act of resistance. It is not necessary that they are noticed in order to be considered an assertive act of power.

According to feminist rhetorical theory, there is a difference between natural and unnatural silences: natural silences are those entered into by choice, often to allow for reflection and personal growth. Unnatural silences occur when the individual or group is silenced, through the use of power, both overt and covert.⁶² Those silenced by power "are not people with nothing to say but are people without a public voice and space in which to say it."⁶³ Unnatural silences must be combated by the archivist, but natural silences, those where the marginalized can assert their own power, must be respected. The natural silence of the marginal, however, is a different thing than a deliberate silence inserted into the documents by the powerful in order to mask wrongdoing. The silences created to avoid culpability, so that it is impossible to hold the powerful accountable for their actions – like those unnatural silences of the marginal – must be combated by the archivist. The decision of which silences to investigate and which to leave alone will most likely not be arrived at easily. The identification of a marginalized individual's or group's silence as being entered into freely or as the result of silencing by force, may be difficult to establish. It is up to the archivist to make such a decision, one that can only be arrived at through a process of investigation and discussion, necessarily guided by a respect for the wishes of the group and a sense of justice that opposes continued oppression.⁶⁴

60 Davina Cooper, *Power in Struggle: Feminism, Sexuality and the State* (Buckingham, 1995), pp. 126–30; Robin Patric Clair, *Organizing Silence: A World of Possibilities* (Albany, 1998), pp. 147–52.

61 Cooper, *Power in Struggle*, p. 127.

62 Elaine Hedges and Shelley Fisher Fishkin, "Introduction," in Hedges and Fishkin, eds., *Listening to Silences* (New York, 1994), p. 3.

63 Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton, NJ, 1981), p. 15.

64 Verne Harris has repeatedly sent out an archival "call for justice." See Harris, "Seeing (in) Blindness," and Verne Harris, "The Archive is Politics," in Marion Beyea, Reuben Ware, and Cheryl Avery, eds., *The Power and Passion of Archives: A Festschrift in Honour of Kent Haworth* (Ottawa, 2005), esp. pp. 122–25.

Silence is not necessarily a mark of victimization. It can, in fact, be a form of self-assertion; it can be an active resistance.⁶⁵ William Shakespeare recognized how a woman's silence could be a powerful thing. In *King Lear*, Cordelia's silence leads to the undoing of Lear. Helga Ramsey-Kurz describes Cordelia's silent power:

Cordelia's unyielding refusal to express her feelings for Lear in words, which so confounded the royal father, does not submit to the standard interpretation of silence in literature as a metaphor for disempowerment. Her reticence renders Cordelia an opponent of Lear far more powerful and, structurally, far less dispensable or "paraphrasable" than Goneril and Regan, who may disarm the king with their speeches and thus conduce to his destruction but receive the (seemingly) just punishment for their perfidy in the end. It is Cordelia's silence that deprives Lear of his sanity and ultimately causes his death.⁶⁶

Silence is rhetorical device that is extremely effective. When speech is demanded by an authority figure, silence is the ultimate assertion of one's freedom. It is very far from the traditional interpretation of submissiveness. Rather, silence can serve a variety of functions, it can "make the other person worry, wait, wonder, work harder. Silence can be used to make the other person worry about filling the gap, making peace, starting up the conversation or the negotiations again."⁶⁷

Silence is extremely important as part of the politics of women's lives. The key to understanding the power of silence, as it is used by the African-Caribbean Canadian poet M. Nourbese Philip, is to recognize that "silence marks lack of neither language nor identity. Rather, it is a form of communication that those who rely on the hegemonic word of private authority cannot hear ..."⁶⁸ Philip, along with other minority writers, is aware that she exists outside the dominant discourse, and as such she is invisible and inaudible, even when she adopts the forms and patterns of the (white, male) power structures. The marginalized do not conform to the enunciative formations and are therefore free to speak as they wish, but with the recognition that they will have little impact on the power structures and on the discourse. Philip writes:

65 Cristianne Miller, "M. Nourbese Philip and the Poetics/Politics of Silence," in Grabher and Jessner, eds., *Semantics of Silences*, p. 157.

66 Helga Ramsey-Kurz, "Telling Silences: Aspects of Female (In)Articulateness in Some Contemporary British Women's Novels," in Grabher and Jessner, eds., *Semantics of Silences*, p. 161.

67 Cheryl Glenn, *Rhetoric Retold: Regendering the Tradition from Antiquity Through the Renaissance* (Carbondale, IL, 1997), p. 177; see also Ratcliffe, *Anglo-American Feminist Challenges to the Rhetorical Traditions*, p. 122.

68 Miller, "M. Nourbese Philip and the Poetics/Politics of Silence," p. 151.

the text – the silence at the heart of. My text – I writing my own silence...and if you cannot ensure that your words will be taken in the way you want them to be – if you sure those you talking to not listening, or not going to understand your words, or not interested in what you are saying, and wanting to silences you, then holding on to your silence is more than a state of nonsubmission. It is resisting.⁶⁹

In the face of those who wish to ignore, dismiss and silence, to be silent is to be political. Silence becomes an absent-presence, that renders the opposition confused and unclear on what to do. As women, along with other marginalized groups, have been disenfranchised, enslaved, imprisoned, or otherwise rendered powerless, they resort to different strategies to fight back. Silence is a particularly useful one that is at once subtle and infuriating to opponents.

Silence also forces active participation by the readers/listeners. The audience cannot be passive in the face of an active silence: they must investigate, interrogate, and attempt to understand the contexts that gave rise to the silences.⁷⁰ If, as Derrida states, the consignment to the archive allows or even necessitates forgetting, then the resistance of the marginal to enter the archive is fully understandable. By remaining outside the archive, the narratives must remain alive.⁷¹ There is a vitality that comes with their silence: to be consigned to the archive means they can/will be forgotten. It is only through continual transmission within the group that their stories, and hence their identity, will remain vital. When the narratives are no longer of any use to the group, or when the group is no longer able to pass on their stories, they die. While this may be a loss to future generations and society at large, it may be the desired outcome for the group who does not fear being forgotten. The active assertion of silence has implications, as described above, on the memory and identity of the group, but these must be respected. Archivists must do their best to welcome as many voices as possible into the archives, to move beyond only exerting power over others and to share power with groups.

Subverting, Contesting, and Accepting Silence

Archivists in mainstream institutions can play a role in aiding those groups whose records are excluded (both willingly and through force) from their institutions. Heeding Harris' call to justice, archivists must be willing to accept their roles as political players and acknowledge that they cannot be impartial custodians. They must confront and challenge the oppression that is evidenced in the records if they are not to become complicit with the contin-

69 M. Nourbese Philip, "Dis Place The Space Between," in Lynn Keller and Chistanne Miller, eds., *Feminist Measures: Soundings in Poetry and Theory* (Ann Arbor, 1994), p. 307.

70 Miller, "M. Nourbese Philip and the Poetics/Politics of Silence," p. 158.

71 Derrida, "Archive Fever in South Africa," p. 42.

ued marginalization.⁷² Through their unique knowledge of the records in their collections, archivists have the opportunity to make injustices known, to read the archives against the grain, flagging silences and identifying the presence of the marginalized within the records of the state and its apparatus.

Through the creation of finding aids and other publications, as well as both physical and virtual exhibitions, archivists can make the records relating to marginal groups visible to a wider public. Existing projects may serve as examples to other groups who may wish to undertake similar investigations into the records relating to their group. Archivists can invite members of community groups into the planning and administrative processes, allowing them a voice in decisions regarding access, use, and display of records relating to that group, and to participate in the contextualization of the documents through the use of “liberatory descriptive standards.”⁷³ Archivists can draw attention to archival silences, and begin to address those silences where individuals and groups have had power exerted over them.

Through outreach programs, minority and marginalized communities can be made aware of archival institutions that would welcome their records. By engaging in dialogues with community groups, those not currently represented in the archives could be alerted to what these institutions can offer, which may include space in the archives for the records of the group, the organization of oral history projects, or advice and assistance in establishing their own archives. Documentation strategies initiated by archivists can establish what groups are or were active in a particular community or geographic area, and can begin to ensure that these groups are represented in the archives.

There are options other than silence and the inevitable relegation to oblivion for those denied entry by the powerful into mainstream archives. For those whose records are refused or who, in maintaining their own silence, refuse the archives their records, there remains the possibility for groups to work outside the mainstream and to establish their own archives or other memory institutions. The assertion of power through the creation of archival silences at the state level in no way means that groups cannot work within their own communities, locally, nationally and internationally, to preserve and share their own stories.

Groups that do not see themselves adequately represented in mainstream archives, unable or unwilling to preserve the documentary memory of marginalized or minority groups, have successfully established their own archives. This allows for the survival of their records along with the ability to tell their story from their own perspective while maintaining control over their own

72 Harris, “The Archive is Politics,” pp. 122–23.

73 Wendy M. Duff and Verne Harris, “Stories and Names: Archival Description as Narrating Records and Constructing Meanings,” *Archival Science*, vol. 2, nos. 3–4 (September 2002), pp. 279, 284–85.

documentary heritage. The Canadian Women's Movement Archives (CWMA) and the Canadian Lesbian and Gay Archives (CLGA) are two Canadian examples of institutions founded in order to combat silences in the state archives through declaring the community's control over their own records. Pat Leslie, the founder of the CWMA, stated in an 1985 interview that it was "clear to me that public archives, with few exceptions, have not been noted for their preservation of materials from groups working for social change ..." and that the goal of the CWMA is to put "women back into history, the way we see ourselves, an through our own eyes."⁷⁴ The CLGA's (then known as the Canadian Gay Archives), amended Statement of Purpose (1982) began by stating:

A conspiracy of silence has robbed gay men and lesbians of their history. A sense of continuity which derives from the knowledge of a heritage is essential for the building of self-confidence in a community. It is a necessary tool in the struggle for social change.

The Canadian Gay Archives was established to aid in the recovery and preservation of our history ...⁷⁵

There is an awareness within both these groups of the importance of maintaining an archives. They were failed by the state archives and, therefore, set about to establish and maintain their own institutions, their own stories, for their communities and for future generations. These groups, however, do not have to work alone.

Independent archives, working outside the state, do not need to work in a vacuum. They can draw on the expertise and advice of the wider archival community, particularly through connections made in the various national and regional archival associations. Also, state funding, through Canadian Council of Archives grants for example, may be available to these groups and accepted without jeopardizing a group's independent status. The marginal archives can become a part of the larger Canadian Archival System, and take advantage of the monetary and informational resources available through such a system while maintaining control over its own records.⁷⁶

74 Quoted in CWMA/ACMF Collective and WIC Board of Directors, "The Canadian Women's Movement Archives/Les Archives canadiennes du mouvement des femmes," in Margaret Fulford, ed., *The Canadian Women's Movement, 1960-1990: A Guide to Archival Resources* (Toronto, 1992), p. 21.

75 James A. Fraser and Harold A. Averill, *Organizing an Archives: The Canadian Gay Archives Experience* (Toronto, 1983), p. 60, Appendix A. See the CLGA Web site for the current mandate, last revised in 1998, CLGA, "Our Mandate," *Canadian Lesbian and Gay Archives – Keeping our stories and histories alive* available at <<http://www.clga.ca/About/mandate.htm>> (accessed on 19 August 2005).

76 On the development of the Canadian Archival System, see Millar, "Discharging our Debt," esp. pp. 122–25.

As spaces of power, the archive is riddled with silences. Archives, and in particular national ones, are sources of inequity and exclusion, by the very act of defining their scope, be it the nation, the province or state, or the subject area.⁷⁷ Defining the archive limits and silences. The parent organization defines the collecting mandate and implies or explicitly states who and what is excluded. This must be accepted by archivists, but worked against at the same time. Archivists have the ability to highlight the contestation of social memory, disclose the absences,⁷⁸ make it known who is excluded, and do our best to offer them a place, if they would have it. By examining the gaps, those “blank void regions” that are never looked at, archivists can begin to address past injustices and fill the archives with a polyphony of voices. Archivists must recognize that not everyone wishes to be represented by their institutions. While we must extend the invitation to work with and include all groups, we must recognize that there are groups who choose to work outside the archive. It is essential that archivists not undermine the right of groups to keep their own silence.

77 Greetham, “‘Who’s In, Who’s Out,’” p. 14.

78 Harris, “Claiming Less, Delivering More,” p. 139.

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WHO'S THE EXPERT?

An Essay on Evidence and Authority

As I began research for this book, I was teaching college students and raising young kids of my own: the nerd researcher, not the organizer working in the community or activist in the street. I listened carefully, took notes, and tried to grow by understanding the different approaches young people took to changing the world.

My physical location dictated how I documented youth activism, dramatically impacted whom I could be in consistent reciprocal relationship with, and affected how those relationships informed my work. In 2003, teaching history at Virginia State, a historically Black university, I quickly became involved in a community-based project that reimagined a badly injured public school system. It was the undergraduate and high school students in this program who led—they were young, of course, many from modest to low-wealth backgrounds. Their fierce dedication meant that once they started their first after-school program for public school students, they would not let go. Their creativity and determination humbled me.

I watched them design an innovative math literacy program within the local public school system that improved the Algebra I passing rate of ninth-graders from 11 percent in year one to 76 percent in year five. The experience forced me to rethink much of what I had learned in elite educational settings. Who makes change happen? Clearly, change came not only from the top and was rarely initiated by elected or appointed leaders. And yet it was easy to see why many thought so. No one was recording the efforts of these VSU students; no newspapers gave them credit for their stunning work.

One had to document their achievements to set the record straight. When I shared my plans, the students told me I was crazy—a fool. Who would care about what they were doing?, they asked. Who, after all, they reminded me,

recorded the Jena Six march on campus? What journalists told the story of how VSU students brought Hurricane Katrina survivors to campus and made a place for them, promoting their well-being and healing? And plus, what did it really mean in the larger scheme of US freedom and democracy?

Their responses reflected a larger reality: almost none of them had seen examples of people their age or background changing their communities, much less bringing the US closer to its democratic promise. On rare occasions, their textbooks included a brief mention or photograph of the 1960 Greensboro sit-in or the 1968 high school walkouts in Los Angeles. Otherwise, young people were absent from K–12 history texts. Young people’s political work was also largely missing in the media and in Hollywood movies.

This book on contemporary youth activism emerged as a response: I wanted to share with students a larger tradition, denied to them, that demonstrated the ways young people impacted history.

To avoid taxing activists already interviewed several or even ten or twenty times, I drew on others’ interviews with activists. Yet particularly for the Ella Baker Center and undocumented activist chapters, I interviewed people who were a part of these movements. I reached out through mutual acquaintances or emailed them directly. I explained that my work with college students led me to realize that K–12 textbooks had few to no examples of young people changing the world. I’d scoured fourth-, eighth-, and eleventh-grade US history textbooks and found no one under twenty-five but the Greensboro Four, which seemed a form of educational malpractice. I asked if I could interview them about their work.

After building these sources into a rough draft, I experimented, imperfectly, with different ways to make sure activist cohorts had the opportunity to “talk back” to the written record assembled here, before publication. Those I quote had the right to clarify, disagree, and make sure I was representing their words fairly, of course, and such a process also increased the chances of me learning nuance and insight about internal movement dynamics that are only available to participants. Critically, this makes clear that the activists are *creating knowledge*, not simply sharing experience.¹

It is no great insight to observe that work with people on the margins of power and wealth is not straightforward. Yet it does have clear consequences on who and what “counts” as part of the evidential record. Some people have been taught that both their lives and their stories are of no value. Thus, the concept of documenting and recording their stories seems irrelevant, much like a waste of time and energy. Many young people said, “Why are you asking me for my story? It’s not that important.” This included a nineteen-year-old

who gave me one of the most insightful and powerful interviews to shape this work. In addition, for many on the margins, the formality and requirements of the academic and institutional world seem burdensome and unnecessary, and the balance of power in the negotiations is unequal, often grossly so.

This results in a conflict between two worlds. University-based researchers don't always find people willing to tell their stories. Activists often "move so fast the dross burns off," as one put it, making it difficult to track them down for permissions or further decision-making. Activists may be impatient about archival processes or not have the time to catalog and put their materials in context. Sometimes, activists see reviewing academics' work as just more unpaid labor or not worth the time it would take to correct. Above all, activists are often justifiably suspicious of the extractive processes used by scholars or institutions that want their papers, interviews, and ephemera—and then use them for purposes not helpful to movements. Many scholars of social movements do not feel accountable to activists and their communities but instead hew to the norms of their discipline, or their university's tenure and promotion committee, or simply their own sense of determining what happened.² As a result, activists' experiences with scholars are not just mixed but often quite dismal.

This reality leads globally to a gross imbalance: there are many more cubic feet of papers in the world's archives that preserve the records of centrist and conservative politics than the tiny number of archives that document freedom movements. This limits collective historical knowledge of small-*d* democratic social processes. Subsequent generations of activists often feel they have to reinvent the wheel in their own time because they don't have access to prior freedom movement traditions or innovations.

There are also many studies of social movements written by scholars who put forward inaccurate facts or less-than-useful interpretive frameworks because they did not or could not get feedback from activists. I learned just how much I'd gotten wrong after I published *Many Minds, One Heart*, on SNCC, in 2007. Prior to publication, I spent a decade of research in a dozen archives, traveling widely to gather oral histories, pouring over microfilm of newspapers, tracking down every written source I could before publication. After publication, SNCC activists sent mail and email telling me where the book was inaccurate. Or they'd show up at book readings and let me know, "This part isn't what I said."

I was determined to do better the next time. One important step toward sharing power was to open my work more widely before publication to push-back and feedback by those who made the history. In 2017, I used the notation

software available at Genius,³ put an early version of each chapter of this book up on the web, and asked those quoted to review and annotate. Many of my university colleagues looked at me like I was little more than ridiculous. *What are you going to do if different activists have different memories of the same event? What if you don't agree with some of the edits they suggest? How will you maintain your professionalism—aren't you allowing the subjects to have too much influence over your interpretation?* The skepticism from scholars pushed me to define my approach more clearly: I shared that given my first book experience, feedback from activists before publication was likely to lead to a much more insightful and accurate book, and if there were contradictions in the record either between activists or between an activist and the documentary record, I would include those discrepancies in the text itself.

These colleagues raised other legitimate questions. They reminded me that the whole enterprise of history is an impossible task—there are eternally other interpretations, always partial or missing evidence. Did I really want to add additional variables to the already-challenging work of the historian? Others wondered how scholars and activists could work in truly collaborative ways, without scholars simply becoming cheerleaders “trying to find the win” for David against Goliath, or scolds who disrespect movement attempts without knowing movement terrain themselves.

Another way scholars voiced this range of issues was to express concern for the work's rigor. The audience may demand the victory of a specific “David” be chronicled, they reflected, but that was not the real role of scholars. Through many conversations with activists who were also searching for more exacting and informed critiques of movements, activists often asked, “How do we develop a thorough role for critique coming from an informed, transparent, and bighearted place?” Inside their own organizations, activists by the mid-2010s found one another increasingly demanding that rigor in order to become more effective. How might scholars put their tools to good use in this struggle for clarity? Given the arrogant manner in which many scholars had traditionally offered feedback to movements, activists asked to explore what roles there might be for scholars to offer hard critiques that come from a place of informed respect.

With all these threads of conversation in mind, I had high hopes that the response rate from activists in 2017 would be greater than it was in 2003 when I printed out and mailed chapters to forty SNCC activists prior to finishing that book, along with self-addressed stamped envelopes to return the chapters to me within two months. For the SNCC book, many didn't respond at all. Some wrote back, “Not interested in correcting the record,” but twelve gave

me some feedback, either written on the rough draft itself or verbally. I hoped online feedback might be easier. Yet I'm not sure it was: I put up the material for this book in September 2017 and again in March 2018 for feedback. I gave a smaller window for response, as some SNCC people told me, "Two months was too long, I kept putting it off and forgot about it."

The response rate this time was about the same as the SNCC book. There were many reasons. I'm paid a living wage to do this kind of research, but the activists aren't. Frankly, the work of sifting through my writing would have taken time some didn't have or want to take. Some felt that if they were going to spend time writing or editing, it should be focused on writing their own account on their own terms rather than on correcting mine. Some didn't feel comfortable with the length or formality of the language I used. The sign-up process for Genius in order to annotate can be a barrier; one has to feel comfortable with the idea of annotating and must spend time on it that might be better used for other work. Some got back to me months after I'd sent the request to review, asking, "Am I still able to send feedback?"

At this point, I'm determined to find more accountable and effective ways to collect accurate information about freedom movements. During the second half of the decade I was working on this book, I participated in a parallel project with SNCC activists to build the SNCC Digital Gateway (snccdigital.org). We activists, archivists, and academics learned and grew on all sides about how to build history together. We experimented with how to merge and meld the very different priorities of activists with those of archivists and scholars. It became obvious that it's not enough to share my material with activists *after* writing a rough draft. We worked from the beginning of the project to build a joint framework of understanding and a mutually respectful and accountable process for decision-making on budget and direction at all levels of the project.

Establishing collaborative practices between movement scholars and activists is not primarily about being kind and respectful; instead, these are important collaborations because they create more accurate information, and the analysis those collaborations generate is more effective for supporting democratic initiatives today.⁴ Yet for *On the Freedom Side*, started in 2006 and built over time, I didn't know enough yet to engage that kind of process from the beginning.

Exploring the largely unarticulated terrain of how to build accurate accounts of freedom movement organizing illuminates several central realities. First, current university and foundation funding systems often fail to address the fact that PhDs are not the only intellectuals creating knowledge in the

country. Activists are not simply acting; they are engaged in an iterative process of thinking, doing, and then rethinking. Activists are an essential political and intellectual force. Since our society values knowledge production, it benefits us if we figure out how civic activists can document their knowledge sustainably, on their own terms, over time.⁵ Second, to see how people moved their visionary hopes for society into reality, one needs a trustworthy guide. The documentary form of oral history is essential, but surely not sufficient. A now infamous example from oral history's canon teaches us that in the 1930s, freedwoman Susan Hamlin shared wholly different stories about her past enslaved experience when approached first by a white female researcher and subsequently by a Black male researcher:

She shared this with a white interviewer: "I don't know about slavery but I know all the slavery I know about, and the people was good to me. Mr. Fuller was a good man and his wife's people been grand people, all good to their slaves. Seem like Mr. Fuller just git his slaves so he could be good to them."

Yet she shared this with an African American interviewer: "When any slave was whipped all the other slaves was made to watch. I see women hung from the ceiling of buildings and whipped with only something tied 'round her lower part of the body, until when they was taken down, there wasn't breath in the body. I had some terribly bad experiences."⁶

Those working to train journalists and scholars would produce better knowledge-creators today if they explicitly acknowledged and worked to lessen these known, ongoing hazards. Third, as Robert Coles noted, "a machine can both record what is going on and shape it." Fourth, when scholars pull back the curtain further, showing readers how we frame, edit, and omit evidence (and also examining our own standpoint), everyone has a stronger plot of ground to stand on when they judge the insights and limits of the resulting book.⁷

To this end, self-study while researching youth activism seemed a vital intellectual task. I built from the Confucian axiom "Real knowledge is to know the extent of one's own ignorance." While it may be true that "all good historical practice is reflective," historians hardly agree on the wide range of methods we use to hold ourselves to this idea.⁸ If I was asking of my many sources "Who made this document and for what reason?," I needed to track and examine how *I* was learning, changing, and thinking as I documented these youth groups.

In the wake of the last three decades' worth of pathbreaking work in critical race theory, feminist and queer theory, Indigenous and postcolonial studies,

and critical ethnography, it's clear that "who tells the story" is central to the process of knowledge creation. We experience our humanity in specific bodies defined by time, place, race, class, gender, sexuality, physical body, age, and political and social cultures. These form a unique social location for our experience. Our awareness of that unique social location allows us to become more responsible for our perspectives and for what we can and cannot see.⁹ As civil rights scholar Nishani Frazier recently commented, many times we try, like the Wizard of Oz, to stand behind the curtain of "scholarly detachment" to cover or hide exercises of identity and power not at all "detached."¹⁰ Theoretical physicist Lisa Randall also observed that science has frequently been misshapen by the fact that "most people mistake their own perspective, shaped by their subjective and limited perception, for the absolute reality of the external world." For her, questioning one's assumptions has been crucial to advancing "research on dark matter" as well as "the only thing that has ever advanced human empathy. Recognizing the limitations of our senses and the subjectivity of our experiences," she noted, "is the only route to transcending them."¹¹

Both Frazier and Randall called me to grow awareness of my own limits as well as the limits of my sources. I'm a middle-aged US academic who benefits from white privilege. I've lived large parts of that time as a heterosexual mother nourished and socialized into university life largely by diverse Black colleagues at a historically Black college and simultaneously anchored by SNCC activists whose experiences taught them to be skeptical of academic communities. SNCC people dramatically shaped my early thinking and approach to documenting activism by giving me an alternative to the university-based epistemologies (more on this below).

My scholarship was further sculpted by a decade of undergraduate students at Virginia State University, where Black cultural and epistemological diversity flourished. These young people—especially Anki Jones, Jewel Princess Johnson, Nikki Wilson, Reese Chenault, Afua (Asibey) Ahwireng, Jessica Hennegler, John Wiley, Chantel Williams, Kacey Morgan, Jeffrey Herring, and David Young—challenged, experimented with, and creatively enhanced my research on social movements. It was not enough for them that these movements happened; they wanted to understand *why* people got involved and how they came up with tactical and strategic innovations. When I couldn't answer the questions, I brought activists to campus to talk with them in small groups and learned much more than I previously knew from my archive-dives and interviews. I was deeply influenced as a young scholar by activist friends in the anti-WTO movement who challenged me to "find out if you don't know";

by Darlene Clark Hine's call for historians to "all [be] doing each other's history" as a way to "register meaningful progress in the war against racism, sexism and class oppression"; and by Eduardo Bonilla-Silva, Tufuku Zuberi, and Charles Mills calling for an end to "white methodologies" and "epistemologies of ignorance."¹²

Time and resources, however, were hard to come by when I began the book in 2006. I had a heavy teaching load; my university couldn't fund much travel and research; my income could not sustain the work. I laid out the foundation of four chapters. And then I started working at Duke in 2013. The institution was historically white, a private university with abundant resources for research. One challenge was that I was no longer around many of the very people whose powerful contributions and efforts I wanted to document. A second challenge was moving from a university on the margins to one at the center of academic power. How could I take the horizontal values that informed the freedom movement into this starkly hierarchical space? It was a shift symptomatic of the larger society—vast inequalities in opportunities, a glaring disconnect for students between what educational resources they deserve and what society gives them, and cultural chasms separating different communities.

VSU students and my mentors in SNCC had also taught me that scholars of all backgrounds, races, and genders have a profoundly checkered record of accountability to the communities they study. That record is almost uniformly exploitative, despite intent.¹³ Few scholars of the freedom movement had found ways to change this. And people growing up white find many prior generations stumbling into the countless traps of well-meaning white scholars telling stories about people of color. To avoid some of those, I tried to walk in the paths laid out by movement scholars like W. E. B. DuBois, John Hope Franklin, Vincent and Rosemarie Harding, Howard Zinn, Alice and Staughton Lynd, Roxanne Dunbar-Ortiz, Cathy Cohen, and Barbara Ransby, putting underrepresented voices at the center, making oneself transparent and accountable to those communities, and ensuring those sources are available to the public.¹⁴

Self-study involved two primary things: exploring how my experiences limited my perspectives and working to transform the unjust realities I encountered.¹⁵ I tried to lay bare the power dynamics of documentary and scholarly production. Could I make power more reciprocal in interviews? How? What about in the process I used for getting feedback from people on the chapters? I reflected on my systems for tracking social media conversations and cross-referencing those with traditional archival research. Self-study also meant reflecting on which scholars I was in conversation with, which scholars I

was reading and citing, how I made sense of which evidence “counted,” and whether some evidence counted more than others and why.¹⁶

Centering women of color in the text and drawing on much scholarship pioneered by women of color, I’m mindful at the same time of the ways white women like me, both historically and presently, do not consistently center and/or do not give credit to colleagues of color, particularly women of color.¹⁷ It’s been important to eat humble pie along the way. Scholars often use their credentials, title, or position as a shield to deflect challenges to their approach, demeanor, lack of transparency, or lack of accountability. I’ve lowered and then tried to put down altogether that shield to learn, grow, and do better.

Being vulnerable to activist pushback is challenging. I had learned the protocols for quantitative history, archival work, and oral history release forms, but I didn’t learn how to make myself open to activist pushback in graduate school, nor did I observe senior scholars engaging activists in this way. Obtaining feedback from activists before publication is logistically hard to set up, and intellectually and emotionally, it can unsettle. Despite scholars’ oft-cited desire to create new knowledge, in PhD programs, few teach younger scholars the resilience and frameworks necessary to cope with this intellectual and emotional unsettling that can result. I’ve learned this unevenly, over a long period of time. These reflections all shape the ways I write, cite, and structure this work. As a process, it remains a work in progress about which I’d be grateful for dialogue, feedback, and critique.

For humanities researchers studying the recent past and present, the US research university system rewards extraction of information from “subjects” for archives and production of monographs by PhD-trained scholars. Sometimes this results in brilliant work. Yet it promotes a “power-over” mindset: individual *over* community, giving the scholar control *over* the stories of the still-alive history makers. In the 1990s, within a PhD program, I learned to work with archives, primary and secondary sources, and quantitative and qualitative data. At the same time, the 1960s activists offered me an ongoing *relationship* within which I could learn through experience. They possessed significantly different intellectual models from the PhD program of how to transmit the lessons of the nation’s organizing traditions. SNCC people have consistently provided an anchor for the values I aspire to embody as a freedom movement scholar.¹⁸ From my earliest interviews with Judy Richardson and Casey Hayden in 1995 through working with Dave Dennis and Bob Moses on the Petersburg Algebra Project (2004–9) and now more recent work since 2013 with Judy Richardson, Courtland Cox, Jennifer Lawson, Charlie Cobb, Ivanhoe Donaldson (rest in power), Geri Augusto, and Bruce Hartford on the

SNCC Digital Gateway—these relationships proved essential and life-giving. Learning within this double tradition often leaves me with more accurate and complex layers of information to share with the wider scholarly and activist communities.¹⁹ It has also given me a sense of responsibility to center youth activists' ways of knowing, working, and learning. SNCC workers have taught me that I need to be accountable to the knowledge they have shared over three decades in two ways: first, by making room for youth activist perspectives within mainstream educational institutions and publications, and second, by spending a significant portion of my time supporting youth activists as they document their own history.

Though I am trained as a historian, this short book encompasses more documentary tools than historical ones. My colleagues at Duke's Center for Documentary Studies have been intensely and routinely generous, sharing with me vital insights on how stories or documents get made, how they form people's ideas about themselves—and how to honor the impulse to critically evaluate one's own part in crafting the story. The idea of getting close and telling stories from the “inside out,” privileging the voices of those engaged in youth activism, means that I have to figure out as a documentarian my relationship to the people whom I'm interviewing or documenting. A more traditional documentarian isn't necessarily going to give creative control or editorial control to anybody else, particularly the subject(s) of the story. Yet in watching my younger colleagues, especially filmmakers Kenneth Campbell, Ambria McNeill, Amber Delgado, Rahi Hasan, and Wilson Land, I've seen how much one can learn by including activists in the process of documentation itself.²⁰ These filmmakers have the capacity to welcome everyone to the table, empowering each perspective. Documentary is a mode synthesizing the creative and critical. It opens and encompasses all sorts of ways of knowing communities. While I've been surprised by a certain level of routine condescension among university-based scholars toward documentary as a field, using its self-reflexive tools alongside those of a historian has proved vital to the accuracy of this work.

During this project's evolution, digital documentation technologies have transformed rapidly. These sources on nontraditional historical actors are complex and deeply instructive. The availability of technologies that make recording and correspondence accessible in the social media era means that citizens can now build their own public archives and platforms. Still, digital storage can fail, people stop maintaining sites or archives, and access to community archives remains uneven. In these chapters, I have drawn on three

forms of primary sources. First, I used memos, minutes, and other printed material (chapters on SNCC, SONG). Second, I drew on the oral histories and interviews I and others have done. For the last four chapters, I relied heavily on social media, documentary media, and web-based sources to document organizers' activity. Is a blog equivalent to a published first-person account? What about a tweet, or a post on Tumblr, Facebook, or Instagram? Should a blog post carry the same evidential weight as an oral history or a letter in an archive? In an era where "the content of websites can be easily modified, tweets are frequently deleted, the number of social media comments and likes can be artificially boosted through click farms, and dubious sources spreading misinformation can be disguised as reliable news organizations," how can we discern what is legitimate?²¹ How does the legitimacy historians assign to each piece of evidence relate to the field of power in which all of these testimonies are deployed?

In addressing these kinds of questions, I'm particularly grateful for Bergis Jules and the innovative group Documenting the Now, which works to establish ethical practices for those using and archiving social media content.²² Nishani Frazier, Christy Hyman, and Hilary Greene's work on Black digital humanities calls each project to "summarize restrictions of use, determine impact on living persons, and establish ethical rules that give living persons power to include or exclude materials pertaining to them and yet balance this with other questions like access, activist usage, and asserting black epistemological narratives." They ask historians to pose "one fundamental question when considering a project. Will this do harm to individuals or the black community in such a way that open access becomes dangerous, damaging, or hurtful?" Combined with Wolfgang Ernst's call for us to rethink the way that memory works in conjunction with our phones, tablets, and personal computers—the micro-archives surrounding us—it is clear from work like Frazier, Hyman, and Greene's that historians of the twenty-first century will need to expand our practice to think more critically about preserving, citing, and corroborating social media, oral history, and documentary evidence.²³

The territory of "shared authority" that oral historians have done so much to explore in the last two decades seems only partly mapped.²⁴ Doing oral history with activists and drawing on activist autobiographies is not enough.²⁵ If scholars hope to lay out the interior dynamics of freedom movements as well as the ways those movements shape the larger political culture, we have to invent new knowledge-creation pathways. What our social science and humanities-based disciplines are doing right now is important but not sufficient.

My experience points in one clear direction: if scholars work with activists and archivists to create new institutional and individual pathways for activists themselves to engage in the formal knowledge-creation, knowledge-preservation, and knowledge-dissemination processes, we will have more accurate information about freedom movements and more sophisticated analytical frameworks to understand them. Both will improve the ability of everyday people to hold their governments accountable.



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An Introduction to Traditional Knowledge Labels and Licenses

Posted on [September 7, 2017](#) by [J. Kirby](#)

NOTE: While we are discussing matters relating to the law, this post is not meant as legal advice.

Overview

Fans of [Mukurtu CMS](#), a digital archeology platform, as well as intellectual property nerds may already be familiar with Traditional Knowledge labels and licenses, but for everyone else here's a quick introduction. Traditional Knowledge labels and licenses, were specifically created for researchers and artists working with or thinking of digitizing materials created by indigenous groups. Although created more educational, rather than legal value, these labels aim to allow indigenous groups to take back some control over their cultural heritage and to educate users about how to incorporate these digital heritage items in a more just and culturally sensitive way. The content that TK licenses and labels cover extends beyond digitized visual arts and design to recorded and written and oral histories and stories. TK licenses and labels are also a standard to consider when working with any cultural heritage created by marginalized communities. They also provide an interesting way to recognize ownership and the proper use of work that is in the public domain. These labels and licenses are administered by [Local Contexts](#), an organization directed by Jane Anderson, a professor at New York University and Kim Christen, a professor at Washington State University. Local Contexts is dedicated to helping Native Americans and other indigenous groups gain recognition for, and control over, the way their intellectual property is used. This organization has received funding from sources including the National Endowment for Humanities, and the World Intellectual Property Organization.

Traditional knowledge, or TK, labels and licenses are a way to incorporate protocols for cultural practices into your humanities data management and presentation strategies. This is especially relevant because indigenous cultural heritage items are traditionally viewed by Western intellectual property laws as part of the public domain. And, of course, there is a long and troubling history of dehumanizing treatment of Native Americans by American institutions, as well as a lack of formal recognition of their cultural practices, which is only starting to be addressed. Things have been slowly improving; for example, the Native American Graves and Repatriation Act of 1990 was a law specifically created to address institutions, such as museums, which owned and displayed people's relative's remains and related funerary art without their permission or the permission of their surviving relatives ([McManamon, 2000](#)). The World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has begun to address and open up conversations about these issues in hopes of coming up with a more consistent legal framework for countries to work with; though, confusingly, most of what Traditional Knowledge labels and licenses apply to are considered "Traditional Cultural Expressions" by WIPO (["Frequently Asked Questions," n.d.](#)).

To see these labels and licenses in action, take a look at how how these are used is the [Mira Canning Stock Route Project Archive](#) from Australia (["Mira Canning Stock Route Project Archive," n.d.](#)).

The main difference between TK labels and licenses is that TK labels are an educational tool for suggested use with indigenous materials, whether or not they are legally owned by an indigenous community, while TK licenses are similar to Creative Commons licenses — though less recognized — and serve as a customizable supplement to traditional copyright law for materials owned by indigenous communities (["Does labeling change anything legally?," n.d.](#)).

The default types of TK licenses are: TK Education, TK Commercial, TK Attribution, TK Noncommercial.



TK Attribution (TK A)



TK Education (TK E)



TK Commercial (TK C)



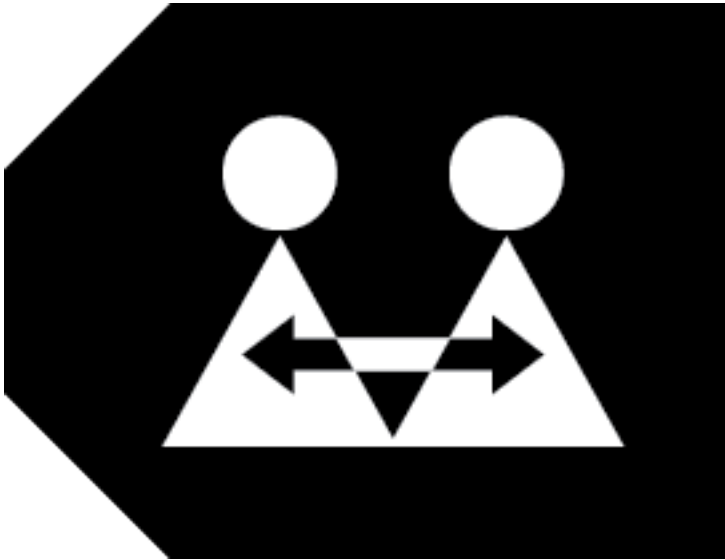
TK Non-Commercial (TK NC)

TK Licenses so far (["TK Licenses," n.d.](#))

Each license and label, as well as a detailed description can be found on the [Local Contexts site](#) and information about each label is available in English, French, and Spanish.

The types of TK labels are: TK Family, TK Seasonal, TK Outreach, TK Verified, TK Attribution, TK Community Use Only, TK Secret/Sacred, TK Women General, TK Women Restricted, TK Men General, TK Men Restricted, TK Noncommercial, TK Commercial, TK Community Voice, TK Culturally Sensitive (["Traditional Knowledge \(TK\) Labels," n.d.](#)).

Example:



A TK Women Restricted Label.

“This material has specific gender restrictions on access. It is regarded as important secret and/or ceremonial material that has community-based laws in relation to who can access it. Given its nature it is only to be accessed and used by authorized [and initiated] women in the community. If you are an external third party user and you have accessed this material, you are requested to not download, copy, remix or otherwise circulate this material to others. This material is not freely available within the community and it therefore should not be considered freely available outside the community. This label asks you to think about whether you should be using this material and to respect different cultural values and expectations about circulation and use.” ([“TK Women Restricted \(TK WR\),”](#) n.d.)

Wait, so is this a case where a publicly-funded institution is allowed to restrict content from certain users by gender and other protected categories?

The short answer is that this is not what these labels and licenses are used for. Local Contexts, Mukurtu, and many of the projects and universities associated with the Traditional Knowledge labels and licensing movement are publicly funded. From what I’ve seen, the restrictions are optional, especially for those outside the community ([“Does labeling change anything legally?”](#) n.d.). It’s more a way to point out when something is meant only for members of a certain gender, or to be viewed during a time of year, than to actually restrict something only to members of a certain gender. In other words, the gender-based labels for example are meant for the type of self-censorship of viewing materials that is often found in archival spaces. That being said, some universities have what is called a Memorandum of Understanding between a university and an indigenous community, which involve universities agreeing to respect the Native American culture. The extent to which this goes for digitized cultural heritage held in university archives, for example, is unclear, though most Memorandum of Understanding are not legally binding ([“What is a Memorandum of Understanding or Memorandum of Agreement?”](#) n.d.) . Overall, this raises lots of interesting questions about balancing conflicting views of intellectual property and access and public domain.

Works Cited:

Does labeling change anything legally? (n.d.). Retrieved August 3, 2017, from <http://www.localcontexts.org/project/does-labeling-change-anything-legally/>
Frequently Asked Questions. (n.d.). Retrieved August 3, 2017, from <http://www.wipo.int/tk/en/resources/faqs.html>

McManamon, F. P. (2000). NPS Archeology Program: The Native American Graves Protection and Repatriation Act (NAGPRA). In L. Ellis (Ed.), *Archaeological Method and Theory: An Encyclopedia*. New York and London: Garland Publishing Co. Retrieved from <https://www.nps.gov/archeology/tools/laws/nagpra.htm>

Mira Canning Stock Route Project Archive. (n.d.). Retrieved August 3, 2017, from <http://mira.canningstockrouteproject.com/>
TK Licenses. (n.d.). Retrieved August 3, 2017, from <http://www.localcontexts.org/tk-licenses/>
TK Women Restricted (TK WR). (n.d.). Retrieved August 3, 2017, from <http://www.localcontexts.org/tk/wr/1.0>
What is a Memorandum of Understanding or Memorandum of Agreement? (n.d.). Retrieved August 3, 2017, from <http://www.localcontexts.org/project/what-is-a-memorandum-of-understandingagreement/>
Further Reading:

Christen, K., Merrill, A., & Wynne, M. (2017). A Community of Relations: Mukurtu Hubs and Spokes. *D-Lib Magazine*, 23(5/6). <https://doi.org/10.1045/may2017-christen>
Educational Resources. (n.d.). Retrieved August 3, 2017, from <http://www.localcontexts.org/educational-resources/>
Lord, P. (n.d.). Unrepatriatable: Native American Intellectual Property and Museum Digital Publication. Retrieved from http://www.academia.edu/7770593/Unrepatriatable_Native_American_Intellectual_Property_and_Museum_Digital_Publication
Project Description. (n.d.). Retrieved August 3, 2017, from <http://www.sfu.ca/ipinch/about/project-description/>
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