

2009

## Access to Cultural Property and Heritage: Ethical and Moral Considerations in Archives

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### Recommended Citation

Marisol Ramos. "Access to Cultural Property and Heritage: Ethical and Moral Considerations in Archives." *Revista Arhivelor. Archives Review*, Vol. LXXXVI Iss. 2 (2009): 9 - 16.

# Access to Cultural Property and Heritage: Ethical and Moral Considerations in Archives

Marisol Ramos

*The role of custody and the obligations of the custodian must be examined through the prism of access<sup>1</sup>.*

Jeannette A. Bastian

Keywords: *access; heritage; ethics; Society of American Archivists*

## Introduction

The University of Connecticut (UConn)'s Thomas J. Dodd Research Center Archives and Special Collections, part of the University Libraries, is an example of a repository that houses a wide variety of cultural heritage collections from Africa, the Caribbean, Europe and Latin America. Since I started working at the Dodd Center in 2007, I have been considering the ethical and moral obligations of managing these collections not only for our faculty and students, but also for researchers from all around the world, and more specifically for researchers and other users that have a national and cultural connection with our collections. When I started my job, I found myself unable to balance the needs to serve international users (who would request hundreds of photocopies of materials not found in their country) with the needs of the archives (to protect the materials against actions that could be detrimental to them, e.g. excessive photocopying). The majority of the requests came from Spanish researchers and most of the materials requested were unique titles only found in our institution – there were no copies in their country. Without access to them, these researchers felt their own research and part of their cultural heritage and history was incomplete. The only option at the time (2007) was to suggest to the researchers that they apply for a travel grant to visit the archives and allow digital photography when appropriate.

This state of affairs at the time left me very distressed because as an archivist, I felt unable to follow the tenets of the Society of American Archivists (SAA) Code of Ethics that states the section Access and Use:

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<sup>1</sup> Jeannette A. Bastian, *Taking Custody, Giving Access: A Postcustodial Role for a New Century*, "Archivaria", 53 (2002), 1, p. 76-96. [<http://journals.sfu.ca/archivar/index.php/archivaria/article/viewArticle/12838>] [April 11, 2011].

“[A]rchivists actively promote open and equitable access to the records in their care within the context of their institutions’ missions and their intended user groups. They minimize restrictions and maximize ease of access. They facilitate the continuing accessibility and intelligibility of archival materials in all formats....”<sup>2</sup>

At the time, I felt that even though we offer access “without discrimination and preferential treatment”, we were unable to provide equitable access. On one hand, we were promoting these collections online, but on the other hand, when receiving request to photocopy or scan our materials from international users, most of the time we had to reject their requests. The situation was more poignant because we were unable to provide access to researchers that have a cultural connection with the collections. Although we do offer travel grants to visit the archives, the funding does not cover all expenses, thus only well-to-do or well-funded researchers from overseas would be able to come. The funding is also targeted to academic users, so a researcher who was not a faculty member or graduate student would not be eligible for financial support. What can we do to expand the opportunities to all users to get access to these collections without inflicting an added financial burden to the users? What could I do, using our own institution resources, to help researchers and citizens to get access to their cultural heritage? This piece will try to answer these questions, in addition to discuss issues regarding cultural property, access, the effects of colonialism on the loss of cultural heritage, and the role of ethics in deciding access issues in an archival setting using my experience at the Thomas J. Dodd Research Center as an example.

### **Recent Discussions on Cultural Property and Heritage**

In the recent past, discussions on cultural property in the United States (U.S.) and other developed countries seemed to have been focused on indigenous populations’ cultural property<sup>3</sup> and less so on how to tackle other cultural properties that do not fall into categories such as cultural expressions, traditional or ethnic<sup>4</sup>.

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<sup>2</sup> See the current SAA’s Code of Ethics document at <http://www2.archivists.org/statements/saa-core-values-statement-and-code-of-ethics>.

<sup>3</sup> For example, WIPO (World Intellectual Property Organization), <http://www.wipo.int/tk/en/> and UNESCO Intangible Cultural Heritage, <http://www.unesco.org/culture/ich/index.php?lg=en&pg=home>.

<sup>4</sup> Because of the scope of the article I am unable to discuss in detail the major recent discussions regarding this topic, but in brief, the American Library Association created a task force to tackle access to cultural property in libraries. To learn about the Traditional Cultural Expressions Task Force (TCE) visit, <http://wo.ala.org/tce/>. The TCE taskforce submitted a draft document for comment called *Librarianship and Traditional Cultural Expressions: Nurturing Understanding and Respect* in 2009 which was greatly criticized. To see the full document created by the ALA’s TCE task force visit, <http://www.districtdispatch.org/wp-content/uploads/2011/01/TCE-Task-Force-Report-Final-1-9-11.pdf>. See also, the Library Copyright Alliance’s response to the TCE (February 2011), [http://www.librarycopyrightalliance.org/bm~doc/lca\\_tcecomments21march11](http://www.librarycopyrightalliance.org/bm~doc/lca_tcecomments21march11).

Most recently, though, development inside SAA pointed out to a movement among archivists to start considering what are the moral or ethical obligations of archives that housed these collections toward the countries and its citizens who have little or no access to them. In the last five years two new SAA roundtables<sup>5</sup> were established to start addressing these issues: the Latin American and Caribbean Cultural Heritage Archives (LACCHA) and the Human Rights Archives Roundtable (HRART). These roundtables have created a space where members can discuss the best ways to give access to these collections among other archival issues.

In addition, in 2010 the SAA Council established a new working group, the Cultural Property Working Group<sup>6</sup>, to assist the Society in developing guidelines, best practices and new policies. At this time (2011), members of this group are working to create a framework that encompasses cultural sensitivity and empathy. The group hopes to be able to advice the SAA memberships on ways to address this issue and find solutions that can still balance the needs of users with the needs of the archives.

### **Effects of colonialism on the loss of cultural heritage**

At the end of the first decade of the 21<sup>st</sup> century, many post-colonial and neocolonial countries and regions are still dealing or living with the negative effects of colonialism in their cultural, economic and political practices. One of these effects is the loss of cultural heritage archives by expropriation (by former colonial powers), donations and/or purchases. Discussions about the effects of colonialism have been around since the early 1980s in anthropology, sociology and many other social sciences but it is not until the 2000s that Archival and Library Sciences started engaging in earnest in these discussions. Peter Limb argues that one of the most affected regions who have lost cultural heritage archives is Africa, a loss that he refers to as “document drain.” He explains:

“The ‘document drain’ occurs in different ways. Via problems of preservation or access, or by acquisition by rich Western institutions able to afford entire archival or published collections – whilst the

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pdf and SAA response’s letter to Carrie Russell, Director of Program on Public Access to Information regarding the TCE draft document (January 2010) <http://www.archivists.org/news/2010TCE%20letter%20to%20ALA.pdf>.

<sup>5</sup> Roundtables are groups of SAA members that share common interests and concerns, who hold meetings and projects and share concerns and issues to the SAA Council so actions and new policies can be created.

<sup>6</sup> To learn more about this working group, visit [http://saa.archivists.org/4DCGI/committees/SAAWG-CULPROP.html?Action=Show\\_Comm\\_Detail&CommCode=SAA\\*\\*WG-CULPROP&Time=690498197](http://saa.archivists.org/4DCGI/committees/SAAWG-CULPROP.html?Action=Show_Comm_Detail&CommCode=SAA**WG-CULPROP&Time=690498197).

African archives or publishing houses in which they reside or are produced rot and decay.”<sup>7</sup>

This phenomenon is not limited to Africa but it can be found in other regions such as Latin America and the Caribbean. For example, Mexico has lost many personal collections of Mexican writers and bibliophiles due to the mistrust of creators toward the Mexican government or the lure of rich American universities willing to purchase their collections<sup>8</sup>. In the Caribbean, Jeannette A. Bastian described the loss of most of the U.S. Virgin Island (a former Danish colony) archives to Denmark in the early 20<sup>th</sup> century. She explains:

“Denmark’s archival concerns following the sale agreement centered on uniting the records of its colonial offices as well as placating Danish citizens who, recognizing that centuries of colonial involvement meant that the records contained significant historical and genealogical information, lobbied heavily for their return. From the Danish perspective, these products of their colonial administration were Danish records that had to be brought home.”<sup>9</sup>

Little consideration at that time was given to leave this archive to the people of the U.S. Virgin Islands or even to make copies of these documents for their inhabitants as part of their own history and cultural heritage. Although agreements had been signed to facilitate access to these records to the people of U.S. Virgin Islands<sup>10</sup>, the archives are still at the Danish National Archives<sup>11</sup>.

These examples are just a snapshot of the types of cultural heritage collections found in the United States that until recently were not easily available to the citizens, descendants and scholars from the countries of origin of these collections. This situation is not a unique problem to the United States but it is shared with other former European colonial metropolises. The fact that most of these collections in the custody of archival institutions in the US and Europe were legally

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<sup>7</sup> Peter Limb, *Ethical Issues in Southern African Archives and Libraries*, “Innovation: Appropriate Librarianship and Information Work in Southern Africa” 24 (2002), 1, p. 51-57 (52). [<http://www.innovation.ukzn.ac.za/Innovation/InnovationPdfs/No24Limb.pdf>] [April 11, 2011].

<sup>8</sup> See Yanet Aguilar Sosa, *La bibliofilia mexicana puede dejar su tragedia*, “El Universal”, February 8, 2011 [<http://www.eluniversal.com.mx/cultura/64749.html>] (in Spanish). Aguilar details the loss of cultural heritage in Mexico since the expulsion of the Jesuits order in 1767 to the present and what is the Mexican government doing to stop losing more of their heritage, <http://www.eluniversal.com.mx/cultura/64749.html> (in Spanish).

<sup>9</sup> J. A. Bastian, *op. cit.*, p. 79.

<sup>10</sup> 1999 Joint Agreement between Denmark and U.S. Virgin Island (J. A. Bastian, *op. cit.*, p. 92, note 61).

<sup>11</sup> Visit Danish National Library website on the Virgin Island for more info at [http://www.sa.dk/content/us/learning\\_and\\_research/the\\_danish\\_west\\_indies](http://www.sa.dk/content/us/learning_and_research/the_danish_west_indies) [March 30, 2011]. In addition, other historical records about the U.S. Virgin Islands are housed at National Archives and Record Administration (NARA) in Washington, DC. See, <http://www.archives.gov/research/guided-records/groups/055.html> to access information on these *fonds*.

obtained, does not take away the fact that by acquiring them, they have taken away the cultural heritage from the people where these collections were created or collected. As archivists, what kind of moral and/or ethical considerations should we bear in mind when dealing with such cultural heritage collections?

### **Ethical and Moral<sup>12</sup> Considerations on Access to Cultural Heritage Collections**

In the last four years that I have worked at the University of Connecticut I have developed what I feel is a philosophical stance regarding cultural heritage collections housed in United States institutions based on current archival standards and the SAA Code of Ethics. As a cultural memory institution that holds materials that originated outside the United States that are so unique that the countries of origin do not have copies, it behooves us to find ways to make such material more accessible – it should be a moral obligation that we should strive for when possible.

What do I mean by ethical and moral considerations? When I think of ethics, I think back to the SAA's Code of Ethics regarding access. To strive to provide equitable access regardless if users are from the parent institutions or an outsider, and when that is not possible, to find solutions that eventually will make collections more accessible<sup>13</sup>. When I think of moral considerations I am referring to decisions based on my own personal philosophical code that I have developed as a Latinoamericanist scholar and an individual belonging to a minority group<sup>14</sup>, who can empathize with other researchers and users when they encounter that their cultural heritage is outside their country and it is hard or almost impossible to reach it. I believe being able to empathize with your users, especially with outside users who have a more emotional and cultural connection with the collection in our custody, is very important since their research and/or interest in the collection may go beyond an academic point of view and more toward feelings of national pride, family pride (genealogy) or accountability and social justice (human rights).

Archivists follow their own particular moral code and ethics, but most of us do share common moral and ethics regarding our professional obligations and our responsibilities towards the collections under our custody and the creators, donors and users that want access to it. Two examples at my institution showcase best how working with an ethical and moral framework has helped me to facilitate outside users to access their cultural heritage.

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<sup>12</sup> I am not using the term 'moral' in the religious sense but more in the social sense of a system of rules that define how we behave when dealing with different social situations.

<sup>13</sup> For the purpose of this article, the term 'access' is used broadly to encompass different ways to connect collections with users, e.g. physical access to the archives, different reproduction options when users cannot visit the archives, bibliographic records to find collections and improve discoverability, and digitization projects to give access to collections online.

<sup>14</sup> I am a Puerto Rican, one of the recognized minority groups in the United States.

## The Spanish Periodicals and Newspapers Collection

In the early 1970s, the UConn's Special Collection department purchased a collection of Spanish periodicals and newspapers<sup>15</sup> dating from the 18<sup>th</sup> to early 20<sup>th</sup> centuries, with the bulk of the collection dating from the 19<sup>th</sup> century. The collection is unique for various reasons: first, it was collected by the famous bibliophile, Juan Perez de Guzman y Boza, the Duque de T' Serclaes<sup>16</sup>. Second, because the newspapers collection was acquired as a lot, it maintained its integrity<sup>17</sup>. Third, because some of the titles are so unique that there are no copies left in Spain. Finally, some of the titles still contain fold-outs of music scores, sewing and knitting patterns and many color prints, ephemeral supplements which usually did not survive since they were meant to be removed and used by the subscribers. Because of the uniqueness of the collection, many requests for photocopying from Spanish scholars were made but very few were able to be fulfilled because we did not have the staff or the right equipment to photocopy the amount of materials (sometimes over 100 pages). In addition, the act of photocopying so many copies would have been detrimental for the material (too fragile and brittle). It felt ironic and a little cruel to promote these collections to be used by a broad audience through the World Wide Web but then be forced by circumstances to provide limited or no access at all.

## The Puerto Rican Civil Courts Documents Collection (PRCCD)

The PRCCD collection was purchased back in 2000 from a reputable antiquarian with whom the university had done business with for many years. The collection contains approx. 5000 holographic documents dated between 1840s to the 1890s, many of which are from the Arecibo district civil courts in Puerto Rico, covering the full range of cases that might have been brought to civil courts. The condition of the collection is fair with some major preservation issues, mainly brittleness, foxing and ink bleeding and ink erosion<sup>18</sup>. The collection is barely used

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<sup>15</sup> The Spanish Periodicals and Newspapers collection is housed at the Thomas J. Dodd Research Center. To see a listing of all the holdings visit <http://doddcenter.uconn.edu/asc/collections/spanper.htm>.

<sup>16</sup> He was the twin brother of Manuel Pérez de Guzmán y Boza, Marqués de Jerez de los Caballeros, another famous bibliophile, reputed to have the best library of Spanish books in the world. When Archer Huntington, the founder of the Hispanic Society of New York, bought the collection in 1904, it is said that Ramón Menéndez Pidal, a well-known Spanish writer, lamented the loss of the collection, saying: "una pérdida peor que la de Cuba [it was a loss worse than {losing} Cuba]", Margot Molina, *La biblioteca del marqués de Jerez era la mejor*, "El País", November 11, 2008 [[http://www.elpais.com/articulo/andalucia/biblioteca/marques/Jerez/era/mejor/elpepuespand/20081111elpand\\_10/Tes](http://www.elpais.com/articulo/andalucia/biblioteca/marques/Jerez/era/mejor/elpepuespand/20081111elpand_10/Tes)].

<sup>17</sup> The rest of the Duke's vast collection of books, art pieces, incunables have been sold by the heirs through the years, breaking down the original collection and today no one knows for sure where everything is located.

<sup>18</sup> Oak gall ink, a very ferrous and corrosive ink when exposed to light and heat, was used to write all these documents. Little holes appear in the documents where ink pooled.

and we do not allow photocopying of it. In 2008, we received a request from one of the archivists at the General Archives of Puerto Rico to photocopy the whole PRCCD collection and if possible to return the collection to the General Archives of Puerto Rico. Her rationale was based on the fact the Puerto Rican legislature in 1955 promulgated Law #5 where stated that documents created during the Spanish colonial period needed to be transferred to the newly created *Archivo General de Puerto Rico*. The law, though, does not address issues such as records leaving this U.S. territory before 1955 and what mechanism to use to recover them. Because of this situation, the Puerto Rican archivist could not and did not demand the return of the material, but asked if copies could be sent back to Puerto Rico. At the time of the request, we wanted to return the collection but were unable to return the material for lack of documentation – the Puerto Rican government did not provide any documentation to legally prove ownership – and we could not photocopy the material either because its condition is so fragile that photocopying will actually damage the collection. So, what to do?

### **Giving Access to Cultural Heritage Collections**

These two cases echo some of the issues discussed by Limb and Bastian in their respective articles: “document drain” through purchases of private collections and loss of historical documents vital to national and colonial history. Both cases required special consideration: balancing the needs of researchers to get access to unique materials, with the needs of the archives to protect the material from damage. But, it was clear to me that my duty as a custodian of these materials was to find ways to make it available to these users. When you are the only repository that owns these types of collections, it is our moral and ethical obligation to find ways to unite users with the collections created in their own countries of origin, in addition to other users from around the world.

Therefore, with the support of my supervisors and colleagues I was able to identify funding opportunities to digitize parts of the Spanish Periodicals and Newspaper collection. The Digital Projects Team at the UConn Libraries, awards grants to digitize collections to promote access as part of the Libraries’ strategic goals, and I successfully applied for funding.<sup>19</sup> This project was a complete success. We were able to digitize 20 titles<sup>20</sup> and to create a webpage with background information on the collection with a listing of all digitized titles. National and

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<sup>19</sup> To learn more about the University of Connecticut Libraries’ Strategic Plan 2009-2014, visit <http://www.lib.uconn.edu/about/publications/stratplan2014.pdf> See, Goal # 3, pg. 10, regarding the library role regarding digitization: “... The Libraries’ path is clear: enhance the research process through direct support via our liaisons and collections and take on new roles of digital preservation, organization, and access.” Also, see Strategy B, pg. 10, #2: “Identify, digitize, and organize subject and artifact collections valuable for research and make them accessible to our researchers and to the scholarly community at large.”

<sup>20</sup> Visit the *Spanish Periodicals and Newspapers: Women's Magazine Digital Collection* at <http://doddcenter.uconn.edu/asc/collections/spanwomen.htm>.



international researches, especially from Spain, have been accessing the titles since the website went live in 2009 through the Internet Archives site (with over 500 downloads per title) and the University Libraries Digital Portal<sup>21</sup>. Since the launching of the digital collection, three Spanish researchers have come to our archives to use the collection after discovering our holdings online.

The success of this first digital project leads me to pursue, two years later (2011), a new digital project where the Puerto Rican Civil Court Documents collection will be digitized and eventually be offered freely online. A pilot was done to digitize one folder of these documents<sup>22</sup> which helped us to determine if the project was feasible, that the resulting digital product was legible and to establish a workflow that allowed us to estimate the cost, time and resources needed to complete the project. In July 2012 we were awarded a digitization grant from LAMP (formerly known as the Latin American Microform Project), an initiative of the Center for Research Libraries. Currently we are digitizing the collection and hope to be done with the project by May 2012<sup>23</sup>.

## Conclusions

As custodians of unique cultural heritage materials, it is our responsibility not only to preserve these materials but to give access to them as fairly and equitable as possible, especially unique materials housed outside their countries of origin. As the two cases presented in this piece demonstrated, today we are in a better position than ever to connect cultural heritage collections with users and researchers that have a direct relationship with the materials through digitization initiatives. As Bastian explains, “[...] the current desire among disparate communities worldwide for identity and self-realization suggests a compelling need for access to historical records.”<sup>24</sup> Pursuing these types of projects has the added benefit to address historical injustice done in the name of colonialism and give back a part of these peoples cultural history.

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<sup>21</sup> The Internet Archives, <http://www.archive.org/> is a non-profit organization with the mission to offer “permanent access for researchers, historians, scholars, people with disabilities, and the general public to historical collections that exist in digital format.” The University of Connecticut, University Library Digital Portal, <http://digitalcollections.uconn.edu/>, run by the Digital Collections Coordinating Team, is the gateway to access UConn digital collections and provide advice and leadership for future digital projects.

<sup>22</sup> To see the documents already digitized in this collection visit: <http://tinyurl.com/628ndxd>.

<sup>23</sup> To learn more about the Puerto Rican Civil Court Cases digital project visit <http://today.uconn.edu/blog/2011/07/shedding-light-on-life-in-19th-century-puerto-rico/>.

<sup>24</sup> J. A. Bastian, *op. cit.*, p. 81.