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OBSERVATIONS ON THE ETHICS OF COLLECTING ARCHIVES AND MANUSCRIPTS

Thomas Wilsted

Archivists first began codifying their behavior during the 1950s when "The Archivist's Code" was written by Wayne C. Grover for use within the National Archives.¹ Reflecting a government archives perspective, it deals with such issues as service to researchers, access to records, avoiding conflicts of interest, and selecting records which can be widely used by researchers. While this code did not deal with any issues relating to institutions collecting personal papers and manuscripts, it was the only document dealing with ethical issues and was widely accepted by archivists and disseminated by the Society of American Archivists. "The Archivist's Code" remained the standard for the profession for nearly twenty-five years.

¹ National Archives Inservice Training Program, "The Archivist's Code," *The American Archivist* 18 (1955): 307-08.

A written code of ethics that reflected a wider range of institutions and professional issues was first approved by the Society of American Archivists Council in 1980. This code continued to be reviewed and was revised and annotated during the 1980s. The current code of ethics was approved in 1992.² Both the 1980 code and the current code of ethics principally address relationships between three groups: archivists and other archivists, archivists and researchers, and archivists and donors. While the ethics of collecting archives and manuscripts primarily affects the latter group, it also affects the other groups in lesser ways.

The sections of the code of ethics dealing with collecting reflect current archival practices. They also respond to issues connected with the active collecting programs of the 1950s, 1960s, and 1970s. The middle decades of this century saw an explosive growth of new archival programs and the expansion of many of those already in existence. Archivists often operated on the principles that there were too few archival collections and too many institutions, and it was imperative to be the first in the acquisition race. There was a strong belief that material must be preserved before it was lost and that there would always be time later

² Society of American Archivists, "A Code of Ethics for Archivists," and "Commentary on Code of Ethics," *The American Archivist* 43 (1980): 414-18; Idem, "Code of Ethics For Archivists," (Chicago, 1992); and David E. Horn, "The Development of Ethics in Archival Practice," *The American Archivist* 52 (1989): 64-71.

to arrange and describe collections once they were safely housed in the repository. This period witnessed the development of new institutional archives and the establishment of specialized subject collections dealing with labor, women, and minorities.³ Support for such archival programs was more readily available as the budgets for state and federal governments and colleges and universities expanded. As these programs grew, competition for collections also expanded creating the archival excesses that the current and former code of ethics were designed to address.

The 1980s proved a watershed for archivists and reinforced the statements on collecting made in the first code of ethics. It was a time of shrinking budgets combined with the realization that rather than there being too few records, there were too many and that choices would have to be made if the profession was to preserve a full and accurate record of societal activities. This change

³ Richard N. Juliani, "The Use of Archives in the Study of Immigration and Ethnicity," *The American Archivist* 39 (1976): 469-78; Janice Reiff, "Documenting the American Family," *The Midwestern Archivist* 3 (1978): 39-46; Elaine D. Engst, "Establishing a Vietnam War Veterans Archives," *ibid.* 10 (1985): 43-52; David J. Klaassen, "Achieving Balanced Documentation: Social Services from a Consumer Perspective," *ibid.* 11 (1986): 111-24; Gould P. Coleman, "Documenting Agriculture and Rural Life," *ibid.* 12 (1987): 21-8; Shirley J. Burton, "Documentation of The United States at War in the 20th Century: An Archivist's Reflection on Sources, Themes, and Access," *ibid.* 12 (1988): 17-26.

brought about a careful reevaluation of collecting policies. Some institutions carried out reviews of holdings to determine whether they were indeed collecting what they claimed in their institutional policies. Other institutions decided to narrow their collecting focus and concentrate on those areas of greatest strength. Others began looking at the whole range of information created in American society and discovered that in some cases there was an abundance of information available while in other areas data was totally lacking. Out of this discussion came the concept of the documentation strategies.⁴

The change in perception that there were too many rather than too few collections for archives to acquire came at a time when other concepts were being discussed within the archival community. While microfilm had been used for decades and new forms of copying were on the horizon, archivists began discussions on what exactly is a permanent record and when did the original document has to be

⁴ F. Gerald Ham, "Archival Strategies for the Post-Custodial Era," *The American Archivist* 44 (1981): 207-17; Idem, "Archival Choices: Managing the Historical Record in an Age of Abundance," *ibid.* 47 (1984): 11-22; Larry J. Hackman and Joan Warnow-Blewett, "The Documentation Strategy Process: A Model and a Case Study," *ibid.* 50 (1987): 12-47; Philip N. Alexander and Helen W. Samuels, "The Roots of 128: A Hypothetical Documentation Strategy," *ibid.* 50 (1987): 518-31; and Richard N. Cox, "A Documentation Strategy Case Study: Western New York," *ibid.* 52 (1989): 192-201.

preserved.⁵ Some archivists began addressing the issue of whether or not archivists should promise that records always be preserved since there was a possibility that material might not be preserved at some time in the future.⁶ Finally, the issue of deaccessioning became more than a theoretical issue and is now being included in many institutional collecting policies.⁷

Clearly, there have been massive changes in the archival community during the period that the second code of ethics was being created. Like the 1980 code, the current SAA code of ethics attempts to deal with these excesses. While all of the code sections may have some relevance to acquiring archival collections, there are two which specifically address collecting and one more which is tangential to this issue. These are Section III, "Collecting Policies"; Section IV, "Relations with Donors, and

⁵ The National Archives, "Intrinsic Value in Archives," in *A Modern Archives Reader: Basic Readings on Archival Theory and Practice* (Washington, 1984), 91-100.

⁶ James M. O'Toole, "On the Idea of Permanence," *The American Archivist* 52 (1989): 10-25.

⁷ Leonard Rapport, "No Grandfather Clause: Reappraising Accessioned Records," *The American Archivist* 44 (1981): 143-50; Karen Benedict, "Invitation to a Bonfire: Reappraisal and Deaccessioning of Records as Collection Management Tools in an Archives—A Reply to Leonard Rapport," *ibid.* 47 (1984): 43-50; and Richard L. Haas, "Collection Reappraisal: The Experience at the University of Cincinnati," *ibid.* 47 (1984): 51-4.

Restrictions"; and Section XI, "Complaints About Other Institutions." These sections were written to bring that competition of collecting within bounds.⁸

Paraphrasing the document, the following is a list of responsibilities which fall on every archivist or archival repository:

1. Each archives should have a collecting policy which guides its acquisition decisions.
2. Archives should not seek collections unless they have adequate resources to arrange, describe, preserve, and make accessible those collections which they acquire.
3. Archivists should discourage unjustified donor restrictions on collections. However, when restrictions have been agreed upon, it is the archivist's responsibility to apply those restrictions fairly and completely.
4. Archivists should create good legal documents covering the transfer of records from the donor to the repository and maintain good record-keeping systems of donor-repository interaction.
5. Archivists should compete fairly in the acquisition of new collections and should not indulge in disparagement as a means of seeking a competitive advantage.

⁸ Society of American Archivists, "Code of Ethics for Archivists," (Chicago, 1992), 2-4.

While the 1992 code is an improvement, it does not address or addresses only marginally issues faced by archivists who were the inheritors of massive collecting programs during the last several decades. Some of these challenges include: How does one deal with a massive backlog? Does the archivist have an ethical responsibility to retain material, even though not responsible for acquiring it? What is one's responsibility to a donor?

Massive backlogs can create endless problems. Both donor and scholars are invariably unhappy when they cannot access the collection because of the lack of a finding aid. Seeking funds to arrange and describe collections from government or private granting agencies is one possibility. Yet, support for such projects is always dependent upon the significance and research value of the collection. If support is not available, the archives can look to the donor for support or can seek to place the collection elsewhere. Both courses of action have an impact on relationships with the donor of the collection. They also have a potential impact on relations with new donors as well as scholars if the repository is unable to maintain its commitments to process collections.

Another legacy of the active collecting programs of the twentieth century is split collections. In such cases, two or more institutions have acquired parts of the same collection at different times. These situations may be brought to the attention of the institution by the donor, a researcher, or by one or the other of the interested archives. What is the archivist's and the archival institution's ethical responsibility in such cases? Although it is possible to argue about which

repository has the greatest right to the collection, what should be paramount in this situation are the interests of the donor and the researcher. How can the parts of the collection be reunited? Can the collection be sent to one institution with the other receiving copies? What solution will satisfy the researcher's needs? What if one institution is willing to work towards a settlement but the other is unwilling? What role should the donor play in negotiating a settlement? If one of the repositories is willing to give up its share of the collection, what impact might that have on future collecting efforts? The question of split collections continues to vex the archival community. Fortunately, archivists have become aware of the problem and are now making a greater effort to avoid this difficult ethical situation. However, except for the ethics code's emphasis on professional cooperation, it provides little guidance on this thorny issue.

The active collecting programs of the past often leave an additional legacy to the current archives director. This is the donor whose papers were solicited many years previously. In some cases, this is the creator of the collection but in others, it is an heir. Such a situation may be a mixed blessing. Does the institution have an obligation to receive the collection if it was requested? Is there any greater responsibility to this donor than to one whose collection was totally unsolicited? If the collection no longer fits into current collecting policies or the institution is unable to provide adequate housing or support, the answer to the question is quite straightforward. However, in other circumstances, this situation can become more complicated.

An equally potential problem is the donor who changes his mind and either wants a collection returned or moved to another institution. This can also result from a donor's heir having a change of heart. Other causes for such requests include solicitation from another institution, a realization that the collection may have had greater financial value than the donor originally thought, or a genuine wish to place the collection elsewhere. Although the ethics code suggests open negotiations with a donor when acquiring a collection, requests for the return of collections may come from heirs or other parties. There is little guidance in the code on appropriate behavior.

Requests to remove a collection raise legal as well as ethical issues. If the institution has used a well-written deed of gift, its legal rights should be protected. Even if it does not have this documentation and it has other evidence of donative intent such as a letter from the donor, a thank-you letter from the institution, or evidence that a tax deduction was taken, the institution is generally protected.

When an institution has no legal support, it is likely to return the collection or at least try to negotiate an agreement for the collection to remain under its control. However, what is the ethical position of an institution that has a perfectly legal title to a collection, yet the donor or his heirs is seeking the collection's return or movement to another institution? Some institutions are unwilling to go to court if a legal document is challenged. There is often an attempt at negotiations, particularly if the material has substantial monetary or research value. Certainly an institution has an ethical obligation to fight to retain a

collection if the donor's purpose in asking for its return is a breakup of the collection through sale, or making the collection inaccessible to researchers.

One institution that did stand on its legal rights was Boston University when the family of Dr. Martin Luther King, Jr., challenged the donation of King's papers to the university prior to his death. In this case, the court sided with the archives since it had documents supporting donative intent, and the collection remains at Boston University.⁹ This is an exception, however, since few institutions allow cases to come to court. Institutions generally resolve these issues through negotiation, even though it means the voluntary return of material to the donor or the transfer of the collection to another institution.

Reappraisal—the need to review collections in light of current collecting policies and research demands and to make decisions about what should remain in the collection—is also a resulting factor from recent collecting excesses. Such decisions, of course, are not limited to only those institutions with extensive collections. The need for reappraisal is sometimes found in recently established archives which take material an older archives might reject and in archives which do not have strong collecting policies and whose acquisitions often reflect the whims of a particular staff member. When there are only one or two collections, leaving the material in the stacks and ignoring

⁹ "Coretta King Testifies in Bid to Get Papers," *The Washington Post*, 27 April 1993, A5; "Boston University Wins Dispute over King Papers," *ibid.*, 7 May 1993, A2.

the problem completely may be a viable ethical stance. Where there is extensive material or where the collection is of limited or little value, the archivist must take action and this may lead to deaccessioning.

Deaccessioning usually results in the transfer of the collection to another institution, in its return to the donor, in the sale of the collection, or in its destruction. A decision to pursue deaccessioning actively in a manuscript repository raises a number of issues regarding ethical relationships with donors. If a collection has a deed of gift, is there still a responsibility to contact the donor prior to making a decision? Should the wishes of the donor be taken into account if the institution is considering the sale of a collection? Can one proceed with deaccessioning if there is no clear deed of gift?

Decisions to deaccession require careful thought and the development of standard procedures. Although most archives have a collecting policy, many archives have yet to include a deaccessioning statement. This failure is shortsighted and will undoubtedly cause difficulty when such action is required. A deaccessioning policy should define under what circumstances a collection should be deaccessioned, who should recommend such action, and who is responsible for making the final decision. In cases where the item is to be sold, the policy should indicate how funds from the sale are to be used.¹⁰ Since

¹⁰ Robert R. Archibald, "The Ethics of Collections," *History News* 48, 3 (May 1993): 22; Evan Roth, "Deaccession Debate," *ibid.* 69, 2 (March 1990): 42.

deaccessioning is fraught with legal, ethical, and practical issues, and oftentimes, political consequences, it is important that the institutional administration and any governing boards be involved in the development of such policies and be fully supportive of such actions. Archivists who are recommending or making such choices must be able to depend upon the support of their administrations if they are to do their jobs in a responsible manner.

In summary, with the recently revised SAA code, there are ethical issues which still fall outside its precepts. Some of these might be considered to fall under the code's admonition that archivists "reconcile any conflicts by adherence to archival standards and ethics."¹¹ However, if the profession is to deal with current issues and past legacy, it needs continually to address ethical concerns. Options may include code revision on a regular basis or a more active SAA committee on ethics that archivists can consult when dealing with difficult ethical concerns. Whatever the choice, archivists should continue to raise and discuss issues which affect their programs and share their experiences with the profession.

Just as the collecting activities of predecessors can create current ethical concerns, so too can archivists who ignore this issue. It is important that archivists realize the potential harm that ethical problems can create, many of which can be alleviated by using appropriate policies and procedures. These include a well-defined collecting policy,

¹¹ Society of American Archivists, "Code of Ethics for Archivists" (Chicago, 1992), 1.

a deaccessioning policy, and a personnel policy which defines individual staff member's ethical obligations. A policy or procedural manual should begin with or include the "Code of Ethics for Archivists" as well as include specific ethical situations which affect a particular institution. Such administrative documents set a standard for determining relationships between the archives and other institutions, researchers, or donors. If staff behave according to a set ethical standard, most problems can be successfully solved. In the long run, reputable behavior will enhance the image of the archives.

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