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Notice

Table of Contents

General Articles

Review Article

BoK Domains Key

P+L Professionalism + Leadership At Every Level
R+A Research + Analysis
IM Information Management
T+T Teaching + Training
M+O Marketing + Outreach
M+B Management + Business Acumen

LAW LIBRARY JOURNAL Vol. 116:4 [2024-14]

Indigenous Copyright Concepts and Indigenous Data Sovereignty: How Libraries and Archives Can Support It*

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U.S. copyright law does not account for Indigenous knowledge. These items, such as stories, dances, songs, and oral teachings are data and works authored by a sovereign community, not just individuals. Indigenous data sovereignty provides that data and cultural knowledge are subject to Tribal protections. Tribes have the right as a sovereign nation to govern the collection, ownership, and application of its own data and cultural knowledge. Assimilating Indigenous knowledge into non-Indigenous works is a copyright issue from an Indigenous perspective. Librarians can identify these Indigenous copyright issues to support local Indigenous Peoples and promote efforts toward achieving Indigenous data sovereignty.

Implications for Practice

1. U.S. copyright law does not account for Indigenous knowledge and ways of accumulating information.
2. In Indigenous spaces, items that may be subject to copyright are more than just "original works of authorship fixed in any tangible medium of expression."
3. By learning about Indigenous sovereignty and Indigenous Data Sovereignty, librarians can better protect these spaces, traditions, cultures, and knowledge, and teach others about them.
4. Librarians can identify these Indigenous copyright issues in a way that supports local Indigenous Peoples and promotes efforts toward achieving Indigenous data sovereignty.

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Introduction

¶1 It is not unusual for academic institutions to begin discussions on the possible intake of Indigenous collections and materials from scholars researching Indigenous People and local Indigenous scholars only to be met with logistical roadblocks. For example, scholars can possess mixed collections of Indigenous materials collected from multiple institutions and multiple creators while seeking credit and compensation for the collection. This sort of transaction presents multiple problems from a copyright standpoint.

¶2 These collections are often a mix of digital and physical items, as well as a combination of the scholar's own work and items that they took in as part of their own scholarship efforts. Oftentimes, the collections have not been assessed and reviewed to determine their contents before the transfer discussion begins. In some of these instances, the scholar wants to be compensated for the entirety of the collection, including for items for which they have no ownership nor right to hold copyright. This scenario presents a problem when provenance is an issue and parts of the scholar's collection belong to others, particularly items obtained from Indigenous Peoples[1] during research. As librarians, we should seek out ways to support local, Indigenous communities on whose historical land the library and institution may sit. We want to ensure publication or distribution of Indigenous materials is done in a manner that supports and respects Indigenous/Tribal culture and laws, while still supporting access and further education. We want to build better relations with Tribal communities because libraries are Indigenous spaces; they are built on their land and should support Indigenous knowledge and ways of knowing.

¶3 But librarians often "hit a wall" when we hear the word *copyright*. The word itself can invoke dismay because it appears often obtuse and confusing as a subject. It can also be a means of restricting access. Often there is not a clear understanding of the role of copyright in Indigenous collections and how Indigenous data sovereignty impacts that discussion. The wall of misunderstanding may appear nearly unscalable, and projects are abandoned because of it. Yet every obstacle can become an opportunity when we choose to look at it in another way. Librarians can look at Indigenous copyright issues in a way that supports local, Indigenous communities and promotes efforts toward achieving total Indigenous data sovereignty.

¶4 To achieve those goals, we need to consider copyright law generally and how it frames the other subject areas of this discussion. Then we must reflect on the concept of Tribal sovereignty and how it impacts our discussion of Indigenous data sovereignty. Next, we need to compare Indigenous copyright models and how that is different from U.S. federal copyright law. What are Tribal governments doing to create an Indigenous copyright model? We look at examples from the Ho-Chunk Nation and the Yurok Tribe, and how these sovereign governments create their own copyright laws. We consider the statutes of the Rosebud Sioux Tribe and the Pascua Yaqui Tribe, and how these sovereigns protect archival materials. We also look at the Navajo Nation and its implementation of an independent review board to monitor and approve scholarly use of

1. Many terms such as Indigenous, Tribal, Native American, American Indian, and Native or Native Peoples are seen and used surrounding all manner of Indigenous scholarship. We understand Indigenous to be a more international or global term while Tribal can be seen as a more U.S.-centric term. That being stated, for purposes of this article, we will use Tribal and Indigenous somewhat interchangeably. For more information, please *see The Impact of Words and Tips for Using Appropriate Terminology: Am I Using the Right Word?*, Nat'l Museum of the Am. Indian, https://americanindian.si.edu/nk360/informational/impact-words-tips [https://perma.cc/6P2U-T6H7].

Tribal Traditional Knowledge and customs. Finally, we must ask ourselves what librarians can do to help Tribal communities with Indigenous data sovereignty.[2]

Analysis

What Is Tribal Sovereignty?

¶5 Before we can compare U.S. copyright and Indigenous copyright systems, we must first discuss Tribal sovereignty generally and how it frames the issues of this discussion. While there is no universal definition of sovereignty, one perspective presented is this: "Sovereignty is the internationally recognized power of a nation to govern itself, and Indian tribes existed as sovereign governments long before Europeans settled here."[3] Additionally, former Seneca Chairman and Indian law attorney Robert Porter notes that a Tribe's sovereignty rests on three things:

1. The degree to which Indigenous people believe in the right to define their own future.
2. The degree to which Indigenous people can carry out those beliefs.
3. The degree to which Tribal sovereign acts are recognized within the Tribe and by the outside world.[4]

This attempt to define it, however, still feels abstract and needs the context of historical interactions between nations to fully reveal its contours.

¶6 To understand Tribal sovereignty, an observer must be aware of how Tribal governments have interacted with other nations over the course of their history.[5] Whether that interaction was with the United States, a State, a different foreign government, or another Tribal nation, each interaction is evidence of the exercise of sovereignty.[6] When European explorers first came to North America, they attempted to claim sovereignty over the land—as if no other people, and no other operating governments, were already exercising sovereignty in the area.[7] But they quickly concluded that they needed the help of Tribes and Tribal governments for survival and military aid and recognized the Tribal right of occupancy.[8] The reality that these Tribal governments existed, operated, and at times outnumbered the Europeans, led to treaty negotiations.[9] The British, the

2. The authors understand that this discussion involves some difficult tradeoffs about what to protect, when to consult, and how libraries, archivists, and universities can avoid continued and systemic exploitation of Tribal communities and their data.

3. Gary Robinson, *Tribal Sovereignty: The Right to Self-Rule,* YouTube, https://www.youtube.com/watch?v=r3pohsdryNc [https://perma.cc/BK4V-ZYMN].

4. Robert B. Porter, *Strengthening Tribal Sovereignty Through Government Reform: What Are the Issues?, in* Robert Odawi Porter, Sovereignty, Colonialism, and the Indigenous Nations 55 (2005).

5. Oneida Indian Nation of New York, *Sovereignty Statement*, *in* Robert Odawi Porter, Sovereignty, Colonialism, and the Indigenous Nations 27 (2005).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

French, the Dutch, and later the Americans all entered treaties with Tribal governments for mutual aid.[10] These treaties, as official governing documents of the recognized nation parties, provided evidence of the inherent sovereignty of Tribes.[11] They remain the law today and remain as evidence of sovereignty.

¶7 Any discussion of Tribal sovereignty and matters associated with Tribal governments must consider the jurisdictional framework of Indian law and its associated topics. To that end, a little jurisdictional background is needed to illuminate the issues.[12] With respect to the U.S. Constitution, the federal government has the authority and jurisdiction to deal directly with the political entity of Tribes under its plenary power, the Indian Commerce Clause, and its treaty authority.[13] The states do not possess this authority nor jurisdiction unless expressly granted by Congress. Moreover, if a state law directly conflicts with federal law where Congress has legislated, the matter is preempted, and federal law takes precedence.[14] Under federal preemption standards, state law is generally not applicable[15] in Indian Country.[16] When states or private entities

10. *Id.*

11. *Id.*

12. Worcester v. Georgia, 31 U.S. 515 (1832); Cherokee Nation v. Georgia, 30 U.S. 1 (1831); Johnson v. M'Intosh, 21 U.S. 543 (1823).

13. Brackeen v. Haaland, 143 S. Ct. 1609 (2023).

14. *Id.*

15. We do note the existence of what is commonly known as PL280 (State jurisdiction over offenses committed by or against Indians in the Indian country, Pub. L. 83-280, 67 Stat. 588 (1953) (codified at 18 U.S.C. 1162)) in certain jurisdiction, but not all. PL 280 mandatory states include: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin, with some exceptions. Ten more states were given the option of enacting PL 280 jurisdiction: Arizona (1967), Florida (1961), Idaho (1963, subject to tribal consent), Iowa (1967), Montana (1963), Nevada (1955), North Dakota (1963, subject to tribal consent), South Dakota (1957-1961), Utah (1971), and Washington (1957-1963). For more information, *see What Is Public Law 280 and Where Does It Apply?* U.S. Dep't of the Interior, Indian Affairs (Aug. 19, 2017), https://www.bia.gov/faqs/what-public-law-280-and-where-does-it-apply [https://perma.cc/W8ZH-X5RX]. It should also be noted here that many states have retroceded or returned jurisdiction since the late 1960s, *see* Native American Rights Fund, *Understanding State-Tribal Jurisdiction* https://narf.org/tribal-state-jurisdiction/ [https://perma.cc/8WQV-9L8T] for more.

16. "Indian Country" is defined in 18 U.S.C. § 1151, and by the Dep't of Justice, Criminal Resource Manual, § 677 (Jan. 23, 2020), https://www.justice.gov/archives/jm/criminal-resource-manual [https://perma.cc/9HFJ-J5J2]; Montana v. U.S., 450 U.S. 544, 545 (1981) ("Although the Tribe may prohibit or regulate hunting or fishing by nonmembers on land belonging to the Tribe or held by the United States in trust for the Tribe, it has no power to regulate non-Indian fishing and hunting on reservation land owned in fee by nonmembers of the Tribe."); U.S. v. Wheeler, 435 U.S. 313, 313–14 (1978) ("When an Indian tribe criminally punishes a tribe member for violating tribal law, the tribe acts as an independent sovereign, and not as an arm of the Federal Government, and since tribal and federal prosecutions are brought by separate sovereigns, they are not 'for the same offence' and the Double Jeopardy Clause thus does not bar one when the other has occurred."); Oliphant v. Suquamish, 435 U.S. 191, 191 (1978) ("Indian tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and hence may not assume such jurisdiction unless specifically authorized to do so by Congress."); but *cf.* Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2489 (2022) ("'The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. . . . States have jurisdiction to prosecute crimes committed in Indian country unless preempted . . . [either] under ordinary principles of federal preemption, or when the exercise of state jurisdiction would unlawfully infringe on tribal self-government. Neither serves to preempt state jurisdiction in this case."); Flandreau Santee Sioux Tribe v. Houdyshell, 50

seek to work directly with Tribes and operate on Tribal lands, they consent to the civil jurisdiction of the Tribe and their applicable laws.[17]

¶8 In his work "A Tribal Chair's Perspective on Inherent Sovereignty," Billy Evans Horse notes that Tribal sovereignty is not a product of the Indian Reorganization Act of 1934 (IRA), and it is not defined, granted, or bestowed by the federal government or any state.[18] It exists apart from them. "Inherent sovereignty means having those rights like language and buffalo medicine, rights that form the very foundation of who we are."[19] The rights of sovereignty and identity come from the Creator, and they cannot be diminished by any outside force or government.[20]

¶9 According to Chairman Billy Evans Horse, no matter what the United States or the states have done to attack and diminish the freedom and power of Tribal governments, Indigenous People have not lost their culture.[21] That culture sets them apart as a People and it makes their sovereignty a uniquely Indigenous one.[22] That Indigenous sovereignty is also unique to each Indigenous community and its government.[23]

¶10 That statement is particularly important because Tribal sovereignty is often attacked by outside forces seeking its diminishment. Noted Indigenous scholar Vine Deloria Jr. observed that these attempts are often rooted in misconceptions of Tribal sovereignty.[24] He notes that Tribal sovereignty does not exist because a specific and popular Tribal government body wields the power and authority. It exists outside one person or one body. It exists because it is exercised, and each exercise of authority strengthens it.[25] That is the nature of sovereignty. In addition to this inherent authority, Tribes in the U.S. that are federally recognized have had the jurisdiction over what happens on their lands, within their reservation boundaries codified.[26] But they also have inherent jurisdiction over their own people, their members, aside from the physical lands.[27]

F.4th 662, 676 (8th Cir. 2022) ("the *Bracker* balancing test does not weigh in favor of preemption under IGRA because the extent of federal regulation over casino construction on tribal land is minimal, the impact of the excise tax on tribal interests is minimal, and the State has a strong interest in raising revenue to provide essential government services to its citizens, including tribal members.").

17. *See* Williams v. Lee, 358 U.S. 217, 218, 220–23 (1959); *see also* Dolgencorp., Inc. v. Mississippi Band of Choctaw Indians, 746 F.3d 167, 173 (5th Cir. 2014).

18. Billy Evans Horse & Luke E. Lassiter, *A Tribal Chair's Perspective on Inherent Sovereignty*, *in* Robert Odawi Porter, Sovereignty, Colonialism, and the Indigenous Nations 30 (2005). (Him, in this context, refers to God or the Creator.)

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. Vine Deloria Jr., *Self-Determination and the Concept of Sovereignty*, *in* Robert Odawi Porter, Sovereignty, Colonialism, and the Indigenous Nations 52 (2005).

25. *Id.*

26. *See* McDonald v. Means, 300 F.3d 1037, 1040–41 (9th Cir. 2002) (citing Strate v. A-1 Contractors, 520 U.S. 438, 454 (1997); Williams v. Lee, 358 U.S. 217, 222 (1959)).

27. Indigenous Data Sovereignty: Toward an Agenda 39 (Tahu Kukutai & John Taylor eds., 2016).

¶11 Indigenous sovereignty will have cultural aspects embedded in the exercises that set them apart from that of Eurocentric governments. "Cultural traditions have proven the most fruitful manner of communicating national and political existence to other nations."[28] The cultural identity wrapped within that sovereignty often consists of exercises of cultural integrity by a distinct community.[29] To explain these exercises of integrity, Deloria states that, "[c]ultural integrity involves a commitment to a central, easily understood purpose that motivates a group of people, enables them to form efficient . . . social institutions, and provides for them a clear identity."[30] In turn, Indigenous sovereignty will then revolve around that community's traditions. Supporting a return to those traditions is part of the theme of self-determination as it supports Tribal sovereignty.[31]

Indigenous Data Sovereignty as an Expression of Tribal Sovereignty

Expressions of Sovereignty Generally

¶12 Under the general framework of sovereignty and Tribal sovereignty, assertions of data sovereignty are rising within the overall worldwide discussion. Generally, "data sovereignty" is "the concept that information which has been converted and stored in binary digital form is subject to the laws of the country in which it is located."[32] "Quite simply, data sovereignty means managing information in a way that is consistent with the laws, practices, and customs of the nation-state in which it is located."[33] It should be noted here, however, that data sovereignty and Indigenous data sovereignty are not interchangeable concepts.[34] Apart from this general definition of data sovereignty, Indigenous Peoples use a broader concept: Indigenous data is defined here as data in a wide variety of formats inclusive of digital data and data as knowledge and information. It encompasses data, information, and knowledge about Indigenous individuals, collectives, entities, lifeways, cultures, lands, and resources.[35] Indigenous Peoples have recognized that data comes in various formats—cave paintings, pottery, totem poles, dances, songs, oral

28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. Stephanie Russo Carroll, Desi Rodriguez-Lonebear, & Andrew Martinez, *Indigenous Data Governance*, 18 Data Sci. J. 1, 3 (2019).
33. C. Matthew Snipp, *What Does Data Sovereignty Imply: What Does It Look Like?*, *in* Indigenous Data Sovereignty: Toward an Agenda 39 (Tahu Kukutai & John Taylor eds., 2016), http://www.jstor.org/stable/j.ctt1q1crgf.10.
34. In a September 1, 2023, in a post on Twitter/X, Lydia Jennings, PhD, wrote: "Data Sovereignty ≠ Indigenous Data Sovereignty. Indigenous Data Sovereignty centers Indigenous Peoples Sovereignty, that doesn't always exist within data sovereign systems. Data sovereignty is often geographically bound and corporately governed, esp. around issues of IP." Hence these two ideas are not the same and cannot be seen as interchangeable. *See* Lydia Jennings, PhD (@1NativeSoilNerd), Twitter (Sept. 1, 2023), https://twitter.com/1NativeSoilNerd/status/1697631657946210351?t=wBSXM2Ig4bLQhlQ4vly4cA&s=09 [https://perma.cc/HH5P-DHQ4].
35. Stephanie Carroll Rainie et al., *Indigenous Data Sovereignty*, *in* The State of Open Data: Histories and Horizons 300 (Tim Davies et al. eds., 2019).

teachings, and specimen samples—which are all ways of generating and preserving knowledge.[36] Indigenous data is not just numbers and facts, and not just digital.[37]

¶13 Currently, vast amounts of data are accessible from anywhere in the world. Those with power, and wealth, i.e., the larger colonial settler states like Australia and the United States, have more control. Indigenous Peoples are typically poorer than the surrounding settler states, which has a huge impact on data sovereignty.[38] Many Indigenous Peoples will forgo having access to data about themselves, or they rely on outsiders to obtain the information. By way of example, take a look at almost any archeological collection in an academic setting, and it will likely contain objects, stories, and items that a local Indigenous community should claim but cannot easily access as their own. If the items are housed in an archive and special collection, the Indigenous community member would need to obtain special access, find time and transportation to access it, and then face protocol limitations when attempting to access items that rightfully belong to their own community. This leaves Indigenous Peoples without control over their own data, and dependent on the colonial settler states[39] and their own purposes.

¶14 In 2007, the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UNDRIP).[40] Under the UNDRIP, it is understood that:

> Indigenous people have the right to maintain, control, protect, and develop their cultural heritage, Traditional Knowledge, and traditional cultural expressions, as well as the manifestations of their sciences, technologies, and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports, and traditional games, and visual and performing arts. They also have a right to maintain, control, protect and develop their intellectual property over such cultural heritage, Traditional Knowledge, and traditional cultural expressions.[41]

One of the core principles is that "control by [I]ndigenous peoples over developments affecting them and their lands, territories, and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their [own] aspirations and needs."[42]

¶15 Indigenous data sovereignty (ID Sov) does not have one accepted definition but generally it is considered, "the right of Indigenous Peoples and Tribes to govern the

36. Dillon Dobson & Adam Fernandez, *IDSov and the Silent Data Revolution: Indigenous Peoples and the Decentralized Building Blocks of Web3*, 8 Frontiers in Rsch. Metrics & Analytics art. 1160566 (2023), https://doi.org/10.3389/frma.2023.1160566.

37. *Data*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/data [https://perma.cc/2TZM-VAZ5].

38. *See* Dobson & Fernandez, *supra* note 36.

39. Dobson & Fernandez, *supra* note 36.

40. *United Nations Declaration on the Rights of Indigenous Peoples*, United Nations (Sept. 13, 2007), https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples [https://perma.cc/P678-MAEE].

41. Dalindyebo Bafana Shabalala, *Intellectual Property, Traditional Knowledge, and Traditional Cultural Expressions in Native American Tribal Codes*, 51 Akron L. Rev. 1125, 1129 (2017) (quoting G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007), http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) [https://perma.cc/9UDW-344Z].

42. *Id.*

collection, ownership, and application of their own data."[43] ID Sov "has been defined as the right of Indigenous Peoples to control the collection, governance, ownership, and application of data about their people, lifeways, land, and resources."[44] ID Sov also refers to the right of Indigenous Peoples to not just control but to govern how data from or about them is collected, accessed, used, stored, and disposed of—thereby repositioning Indigenous authority over Indigenous data away from an extractive, colonial model. "Indigenous Data Sovereignty is a global movement concerned with the right of Indigenous peoples to govern the creation, collection, ownership, and application of their data."[45] It derives from Tribes' inherent right to govern their Peoples, lands, and resources. "'Indigenous Data Sovereignty' refers to the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination, and reuse of Indigenous Data."[46]

¶16 This authority to control and govern lies within Indigenous inherent sovereignty, and as discussed above, jurisdiction impacts this discussion. The understanding presented here is that data in these circumstances includes not only what the Tribe and Tribal members collect, but also includes anything collected or created by a third party using Tribal data and sources.[47] The exercise of control over this data is an exercise and application of inherent Tribal sovereignty.[48]

¶17 Data sovereignty, and specifically Indigenous data sovereignty "[c]an relate to individual, collective, or Nation State rights to control data whether it is within a Nation or across countries. . . . It is associated with privacy, information flows, ownership, inclusiveness, and the representation of different groups into decisions about how data is used or reused."[49]

Indigenous Data Sovereignty in Context of the Exercise of Jurisdiction

¶18 Why is this discussion of ID Sov important in this context? In great part due to the centuries of unethical and extractive research practices that Indigenous Peoples have been subjected to, not just in the U.S., but around the world.[50] When we are talking about copyright, we must consider how data comes into play. Remember, Indigenous data is not

43. Carroll, Rodriguez-Lonebear, & Martinez, *supra* note 32.

44. Alice Meadows, *Revisiting—Indigenous Knowledge and Research Infrastructure: An Interview with Katharina Ruckstuhl*, Scholarly Kitchen 6 (Apr. 19, 2022) https://scholarlykitchen.sspnet.org/2022/04/19/indigenous-knowledge-and-research-infrastructure-an-interview-with-katharina-ruckstuhl/ [https://perma.cc/RU6B-Q9BP].

45. *U.S. Indigenous Data Sovereignty Network*, Univ. of Arizona https://perma.cc/3W4H-C5CR; Rainie et al., *supra* note 35.

46. *Maiam Nayri Wingara Principles*, Maiam nayri Wingara, https://www.maiamnayriwingara.org/mnw-principles [https://perma.cc/K5BM-DVQ4].

47. *Id.*

48. *Id.*

49. Meadows, *supra* note 44.

50. Tennille L. Marley, *Indigenous Data Sovereignty and the Role of Universities*, *in* Indigenous Data Sovereignty and Policy 157 (Maggie Walter et al. eds. 2020), https://nni.arizona.edu/publications/indigenous-data-sovereignty-and-policy [https://perma.cc/3RM5-ZF9Y].

just digital—it's not only numbers and facts. Indigenous Peoples have long recognized that data comes in various formats, including cave paintings, pottery, totem poles, dances, songs, oral teachings, and specimen samples. We are talking about items that collectors and academics may attempt to hold copyright to, when in fact they belong to the authors—the original Indigenous creator, a Tribal entity, community, or person who created the song, the poem, the dictionary, the work of art, or for whom the items have meaning and relationship. Another possibility arises when the Indigenous individuals or collectives who were the keepers of the stories of creation, the stories of how to survive on the land, the family histories passed down over generations, and even the keepers of the communities' laws and legal knowledge, are trying to protect those items from misappropriation and they cannot.

¶19 Cree Scholar Shawn Wilson eloquently explains that to Indigenous Peoples, "an object or thing is not as important as one's relationships to it. This idea could be further expanded to say that reality is relationships or sets of relationships. Thus, there is no one definite reality but rather different sets of relationships that make up an Indigenous ontology"[51] The collector, i.e., the academic trying to donate and claiming provenance over a collection, is not the copyright holder, even under U.S. law. But how Indigenous Peoples manage such items also might not be considered copyrightable material, as it is believed to be owned by the collective, not just the original creator, or the keeper of the intellectual knowledge.[52]

¶20 Any discussion of Tribal sovereignty and matters associated with Tribal governments must consider the jurisdictional framework of Indian law and its associated topics explained above. Whenever a Tribe passes a law, a resolution, a treaty, or any official act of governance, it exercises its jurisdiction, its governmental power, and its sovereignty. Treaties between the federal government and Tribal nations are one example of that exercise of authority, but they are simply the most familiar format of that sovereign exercise.[53] The right to govern the collection and use of a people's data is one principle of that inherent sovereignty—but it is a principle that is not always exercised to its fullest.[54] Peoplehood and identity, namely an Indigenous identity, is what makes Indigenous data sovereignty different from other approaches.[55] "Indigenous Data Sovereignty asserts Indigenous rights to govern Indigenous data's creation, collection, ownership, and application."[56]

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51. Dobson & Fernandez, *supra* note 36.

52. The point to be made here is that U.S copyright and Indigenous conceptual models are not the same framework, and we are coming from completely different approaches. As such, the ownership ideas, the models, the conceptual understandings built into current U.S. copyright law are undone from an Indigenous perspective.

53. Rainie et al., *supra* note 35.

54. *Id.*

55. Meadows, *supra* note 44.

56. *Indigenous Data Governance Communique*, Maiam nayri Wingara Indigenous Data Sovereignty Collective, the Australian Indigenous Governance Inst. & the Lowitja Inst. (2023), https://static1.squarespace.com/static/5b3043afb40b9d20411f3512/t/64f7b64b19d9dd4616bf2c75/1693955660219/Indigenous+Data+Governance+Communique+2023.pdf [https://perma.cc/2AKD-4W3C] *see also*, Indigenous Data Sovereignty and Policy 157 (Maggie Walter et al. eds., 2020).

¶21 When we speak about the Traditional Knowledge, customs, ceremonies, and histories of Indigenous people in America, it should be under the umbrella of political identity and the exercise of sovereignty.[57] When we speak about governance of data and Indigenous data, it should be in the context of that sovereignty wielded by Tribal governments on behalf of its members.[58] The problems arise when this sovereign position is not respected, and it is becoming a matter of increasing urgency as emboldened actors hide behind fair use and public domain to use traditional items without approval.[59] That being said, it is also true that Tribal governments are increasingly exercising their sovereignty and reclaiming their governance over Tribal and Indigenous data.[60] Tribes are working toward full "control of proprietary data" and "equal control in partnership" settings.[61] Tribes are moving away from traditional models of data dependency. They are doing this through more participation and collaboration in data production and data collection—partnerships whereby they can provide controls, ground rules, and exercise ownership and sovereignty over the data.[62]

¶22 The analysis in this area is not complete without delving into another area of concern that complicates the discussion: Copyright issues for Indigenous materials under U.S. copyright law. Because Indigenous data sovereignty has not been fully respected, third parties creating content from Indigenous sources and data over which they hold no ownership rights, adds another wrinkle to any attempt to resolve copyright issues.

Why Copyright Concepts and the Creation of Copyright Is an Act of Sovereignty

¶23 United States' copyright laws are the set of conditions or rules put in place by the United States as a sovereign nation to govern and protect artistic and original works. That a sovereign would make rules to govern this area is expected when we consider the power and authority of a nation. It is an exercise of their sovereignty.

¶24 At times, through treaties and agreements, sovereigns will come to terms and apply certain rules together. The United States, as a sovereign, has entered into treaties with foreign governments to apply an agreed upon set of copyright rules or even sometimes U.S. copyright rules.[63] "As of January 1, 1987, the Berne Convention had been

57. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

58. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

59. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

60. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

61. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

62. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.

63. *See Berne Convention for the Protection of Literary and Artistic Works*, WIPO (World Intellectual Property Organization), https://www.wipo.int/treaties/en/ip/berne/ [https://perma.cc/S2XL-5YMT]; *see also The Buenos Aires Convention* (Aug. 11, 1910), https://ipmall.law.unh.edu/sites/default/files/hosted_resources

ratified by 76 countries, each of which is expected to adhere to the Convention's precepts and respect the copyright laws of all member nations."[64] Changes made to U.S. copyright law in 1976 and 1988 brought "copyright law into line with many of the precepts of the Berne Convention and made adherence possible."[65] Generally, copyright is becoming more global,[66] but as of the publication of this article, the United States has yet to fully engage Tribal governments in such agreements.[67] This discussion of sovereignty is important because the United States and Tribal governments are separate sovereigns in a government-to-government relationship. Tribal governments are sovereign nations but have not been invited to the table with the federal government to address gaps in copyright law. Instead, Tribal governments are left to contend with the current copyright system and its detrimental impacts on their data.[68] Data by itself, as a collection of facts, is not covered under or protected by U.S. copyright law. That lack of protection can lead to misappropriation. Hence, the need for an ID Sov movement.

United States Copyright Law, Generally

¶25 Looking at the issue from an academic perspective, we must consider the United States law an issue that governs copyrighted material. The U.S. Copyright Act is codified at 17 U.S.C. §§ 101-810, but its origin comes straight from the U.S. Constitution, "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."[69]

¶26 The federal statutory law protects writings, recordings, motion pictures, and more. So, what is covered by copyright? According to the statute, copyright covers:

a) Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which

/lipa/copyrights/The%20Buenos%20Aires%20Convention.pdf [https://perma.cc/5BWV-LNZM].

64. Leonard D. Duboff & Sally Holt Caplan, *Creativity and Copyright*, 49 Or. St. B. Bull. 4 (Jan. 1989).

65. *Id.*

66. Frank Petrosino, *The Vast Frontier . . . Copyright Law and the Internet*, 24 Vt. B.J. & L. Dig. 41, 61 (1998).

67. However, the U.S. Patent and Trademark Office is now requesting consultation with Tribes "and requests written comments on issues involving genetic resources (GR), Traditional Knowledge (TK), and traditional cultural expressions (TCEs). These topics are being discussed at the World Intellectual Property Organization (WIPO). Specifically, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (traditional cultural expressions) (WIPO IGC) is undertaking negotiations regarding how best to protect GR, TK, and TCEs of Indigenous Peoples." This was published in the Federal Register on October 24, 2023, but it remains to be seen whether the U.S. will engage in full treaty negotiations around the topics. *See Formal Tribal Consultation on WIPO IGC Negotiations*, 88 Fed. Reg. 73,000 (Oct. 24, 2023), https://www.federalregister.gov/documents/2023/10/24/2023-23386/formal-tribal-consultation-on-wipo-igc-negotiations [https://perma.cc/X44E-LWYQ].

68. *See Copyright Basics*, U.S. Copyright Off. (Sept. 2021), https://www.copyright.gov/circs/circ01.pdf [https://perma.cc/TY9R-6R9B].

69. U.S. Const. art.1, § 8, cl. 8.

they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

1) Literary works;
2) musical works, including any accompanying words;
3) dramatic works, including any accompanying music;
4) pantomimes and choreographic works;
5) pictorial, graphic, and sculptural works;
6) motion pictures and other audiovisual works;
7) sound recordings; and
8) architectural works.

b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.[70]

¶27 In short, original copyright may exist in anything considered an "original work of authorship" under the Act.[71] Copyright holders possess a right to prevent unauthorized copies, reproductions, displays, performances of their work, and derivative works based on their work.[72] One does not have a copyright until the item is set in a "tangible medium of expression" regardless of format or technology.[73] For example, a song might be fixed as a written musical composition, or it can be recorded on a phone, tape, disc, or other medium.[74] Once the item is somehow fixed into a set or recorded format, it can be subject to copyright protection.

¶28 That said, copyright protects what is tangible even if it is digital—but not something amorphous like a thought or a concept that was not developed into a fixed expression. Things that are not "fixed" under the Act cannot be protected under copyright. In other words, concepts and ideas that evolve and continue to change over time are not considered the sort of tangible or intangible item that can be fixed and considered complete in a published format. Ideas, facts, U.S. government works, expired copyrighted works, works entering the public domain, live unrecorded performances, and more cannot receive copyright protection. U.S. copyright law does not deal well with ideas in the realm of cultural property. It wants tangible things or expressions that are fixed in a time and space. Ideas that evolve in a culture over time are not protected. While the

70. *See* 17 U.S.C. § 102; *see also* Jim Jesse, *Rock N'Roll Law, Stop Dragging My Art Around: Music Copyright Law Through Tom Petty*, Minnesota CLE 2 (June 28, 2023), https://www.minncle.org/seminar/2144672301; *see also* 17 U.S.C. §§ 102 (a-b).

71. 17 U.S.C. § 102(a).

72. 17 U.S.C. § 106.

73. 17 U.S.C. § 106.

74. *See* Swatch Group Mgmt. Servs., Ltd. v. Bloomberg, L.P., 808 F.Supp.2d 634 (S.D. N.Y. 2011); *see also* Jesse, *supra* note 72, at 3.

statute does not define public domain, "a work is generally considered to be within the public domain if it is ineligible for copyright protection or its copyright has expired."[75]

¶29 The copyright owner, by virtue of their authority, has the power to disseminate the work, display it, use it, and license it as they see fit.[76] To be more specific, the entity owning the copyright can permit:

- Reproduction of the original work.
- Copies to be made of the original work.
- Performance of the work in public spaces.
- Display of the work to the public.
- Creation of derivatives of the work.
- Licensing of the work for others' use.[77]

¶30 The copyright holder and the original author or owner may not be the same entity. For example, the author of an article may assign the ownership rights to a publisher instead of retaining the right as an individual. This happens frequently in academic publications. Under the statutory copyright law, publication is considered:

> The distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication.[78]

¶31 Under the federal law that most of us know and feel familiar with, copyright authority can occur when someone registers the copyright with the U.S. Copyright Office and takes possession of that authority under U.S. law.[79] That is not to say that filing with the Copyright Office is a requirement. Copyright protection vests automatically.[80] But any claim of copyright infringement cannot commence in court until the copyright is registered with the U.S. Copyright Office.[81] Moreover, copies of the copyrighted work are typically made available to the Library of Congress.[82] "The Library reserves the right to select or reject any published work for its permanent collections

75. *Copyright,* Univ. of Cal., https://copyright.universityofcalifornia.edu/use/public-domain.html [https://perma.cc/WKG9-LFVV].

76. *Id.*

77. 17 U.S.C. § 106; *see also* Microsoft Corp. v. Grey Computer, 910 F.Supp. 1077, 1084 (S.D. M.D. 1995); *see also* Jesse, *supra* note 72, at 8.

78. 17 U.S.C. § 101; *see also* Michael Grecco Productions, Inc. v. Valuewalk, LLC, 345 F.Supp.3d 482, 498–500 (S.D. N.Y. 2018); *see* Jesse, *supra* note 4, at 5.

79. 17 U.S.C. § 408.

80. 17 U.S.C. § 102.

81. 17 U.S.C. § 411. That is specifically for works originating in the United States. The Berne Convention will apply to works outside the United States, and in that case, registration of copyright prior to suit is not required.

82. 17 U.S.C. § 407. It should be noted here, however, that in the recent case of *Valancourt Books, LLC v. Garland*, 82 F.4th 1222 (D.C. Circuit. 2023), (DC Cir., Aug. 29, 2023), the federal courts indicated that an overapplication of § 407, and the imposition of fines for failure to comply, could constitute an unconstitutional taking of property.

based on the research needs of Congress, the nation's scholars, and the nation's libraries."[83] The Library of Congress can then make things available for scholarly use, but not for profit.

¶32 Copyright protections do not last forever. Copyrights typically last for the author's life plus 70 years after their death. When there is more than one author, the 70-year period begins to run upon the death of the last author.[84] You can transfer copyrights, but such transfer must typically be in writing.[85] Any or all the copyright owner's exclusive rights, or any subdivision of those rights, may be transferred in whole or part, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent. Transfer of a right on a non-exclusive basis does not require a written agreement.[86] Anything existing before copyright law, outside of copyright law, or existing after the copyright expired, is now considered public domain without repercussions for its use.

Comparing Copyright to Indigenous Copyright Concepts and Themes

Authorship

¶33 In many respects, U.S. copyright cannot provide an adequate and complete framework for protecting Indigenous Traditional Knowledge and traditional cultural expressions from misappropriation. U.S. copyright law, for example, relies on an easily identifiable author or creator to hold the copyright in a way that is meant to financially benefit them in a capitalist framework. Indigenous Copyright as a concept does not work the same way.[87] Under an Indigenous model, ownership of a traditional knowledge or cultural expression is held collectively amongst the community. This is not the same as creating a work-for-hire for a corporation. What is created in the context of a cultural expression is inspiration from a cultural idea or concept. It is not bidden or ordered for someone to do so and to make in the context of the Tribal government's ownership. Moreover, the community benefit is not typically perceived as a capitalist financial windfall. That is not to say that there are not exceptions outside of Tribal perspectives,[88] but that much of the current U.S. copyright protection is largely per-

83. *See Services of the Copyright Office*, U.S. Copyright Off., https://www.copyright.gov/help/faq/faq-services.html [https://perma.cc/UT9Z-SL3D].

84. 17 U.S.C. § 302; *see also* Shoptalk, Ltd. v. Concorde-New Horizons Corp., 897 F.Supp. 144, 145-47 (S.D. N.Y. Sept. 8, 1995), *aff'd in part, vacated in part*, 168 F.3d 586 (2d Cir. 1999).

85. 17 U.S.C. § 204.

86. 17 U.S.C. § 204(a); *see also* Imperial Residential Design Inc. v. Palms Development Group, Inc., 70 F.3d 96, 97 (11th Cir. 1995).

87. We must note here that there is no single, overarching Indigenous copyright law comparable to the U.S. federal copyright law. That is because each Tribal Nation is imbued with the authority to create their own laws on the subject as an exercise of their individual sovereignty. Each Tribal Nation will create their own rules and touch on different aspects of the concept in their own way. We review some of these laws, and the differences in them, in a later section in this paper. With that all in mind, however, there are shared themes and perspectives that we discuss as an Indigenous Copyright concept. It is this concept, and the shared perceptions or framework, that we use to compare to the U.S. copyright law.

88. Creative Commons licenses would be one example outside of Tribes.

ceived as protecting the profits of an individual or company. The U.S. copyright law under the Constitution creates a limited monopoly that is meant to benefit or incentivize the creator or the owner of the copyright. For Tribes, it is different. For Tribes, works that are not creations of an individual artist for profit are often performed or presented without thinking about a financial benefit beyond the community. The community benefit can be as simple as preserving traditions and customs for future generations and a strengthening of community identity.[89]

Fixation/Duration

¶34 U.S. copyright law protects only those items that it can perceive as being fixed in their nature as an expression. Ideas, as opposed to expressions, cannot be protected under U.S. copyright. Ideas that evolve, or even some expressions that evolve, cannot always be protected under the federal law. In fact, if an expression in the form of an item evolves, then it becomes a new and separate entity. Each iteration, if it can be protected, may have its own copyright. But Traditional Indigenous Knowledge and cultural expressions are not fixed items. They often appear as ideas or expressions that are too fluid and evolving to always find a place within copyright protection. They often evolve with each telling or presentation. Each story, song, or dance may be presented by new storytellers, singers, and dancers. Each person, group, or clan that presents the knowledge will have their own version. And each version is valid. A Wyandotte grandmother of the Deer clan telling the creation myth of her community will tell it her way. A grandfather of the Wolf clan will tell it his way. But these telling's will not be considered separate items owned by those storytellers. They are still the creation story, and as a story of the Wyandotte people, it belongs to the whole community collectively.

¶35 Now it should be stated that U.S. copyright law, once it protects that fixed version of a work, it protects more than the words or the image. It protects the intangible nature of the fixed item as well. For example, let us consider the film *West Side Story* and its production. It is largely based on Shakespeare's *Romeo and Juliet*. But U.S. copyright law does not protect an idea. Star-crossed lovers as an idea is not copyrightable or only attributed to Shakespeare. Thus, a creative person may take those ideas and come up with something that relates in themes or ideas, but it is considered a new and separate work. That new work—like *West Side Story*—may be protected under copyright rules. But if someone attempts to write a story about a rivalry between gangs called the Jets versus the Sharks? That might be too close to *West Side Story* to be considered a new and separate work. That being said, any significant change that alters the idea or the story might create a situation where the film is no longer retelling *West Side Story*, but creates a new storyline and new film that receives its own copyright.

¶36 Indigenous Traditional Knowledge and customs do not fit within this perspective. Cultural expressions are rarely fixed, and ideas can be seen as part of a collective

89. *See* Thomas Streeter, *Broadcast Copyright, and the Bureaucratization of Property*, 10 Cardozo Arts & Ent. L.J. 567, 568 (1992); Omri Alter, *Fairness Towards Authors: Does It Necessarily Mean Caring for the Weak?*, 43 S. Ill. U. L.J.. 615, 619-20 (2019).

community consciousness and identity. Protecting that identity, those expressions, and ideas would be an act of sovereignty. Moreover, any retelling or performance could make small changes that do not give rise to a new creation from the community perspective. The Traditional Knowledge and customs are often old enough to be considered part of the public domain, under the U.S. copyright scheme. Tribal cultural expressions are not defined in ideas of "public domain" versus private because this is largely a colonial concept. Under U.S. copyright law, an owner can often possess that copyright protection for the life of the author plus 70 years. There is not a fixed timeframe in Indigenous copyright as a concept concerning Traditional Knowledge. The Indigenous community will hold the right of that traditional knowledge in perpetuity for as long as the Tribe exists. Moreover, under U.S. copyright law, the copyright holder can release the work publicly for profit and control its access. Under an Indigenous copyright concept, the community controls the right of access and may have cultural protocols for what Traditional Knowledge and customs may be shared at certain times of the year and to specific persons or groups.

Fair Use Exceptions

¶37 Under U.S. copyright law, fair use is an exception to copyright infringement.[90] Teaching, research, and scholarship are examples of fair use of copyrighted works when practiced in certain instances. Fair use permits someone to use the copyrighted material without a license after balancing four primary factors: (1) the purpose and nature of the work; (2) the nature of the work; (3) the quantity and quality of the work used; and (4) the effect on the market for the work.[91] However, a lack of notice about the copyright status of a work is not a defense for inappropriate use of it.[92]

¶38 Indigenous Copyright as a concept is seen as an alternative model beyond federal law whereby tribal communities "can assert cultural property rights in the form of traditional knowledge or traditional cultural expressions as non-legal ways to assert authority over . . . their intellectual property."[93] This is supported by the World Intellectual Property Organization (WIPO) and the Native American Graves Repatriation Act.[94] If we look for

90. 17 U.S.C. § 107.

91. 17 U.S.C. § 107.

92. 17 U.S.C. § 401.

93. Dana Reijerkerk & Kristin Nyitray, *Removing Indigenous Knowledge Boundaries: A Review of Library and Archival Collection Literature Since the Enactment of the Native American Graves Protection and Repatriation Act*, 48 Collection Mgmt. 22, 25 (2023), https://doi.org/10.1080/01462679.2022.2033144. (It should be noted here that the Native American Graves Protection and Repatriation Act of 1990 only protects what is considered human remains, funerary objects, and items of cultural patrimony as they are housed by archives and institutions that accept federal funding. Anything that falls outside that area remains unprotected by that law. Moreover, that law only requires a vague concept of identifying and contacting the correct tribal entity to consult with that entity. It requires no other specific action, no repatriation or return of items not considered human remains or funerary objects. It would not fully protect the sort of items we consider here.)

94. *Id.* (It should also be noted that the U.S. Copyright law as a federal law preempts common law and state laws where they might conflict. That means that when a Tribal attorney drafts legislation for the Tribal Nation, they often look to the federal law to make sure anything they draft will not conflict with

this fair use concept in Indigenous copyright as a concept, then we will see its absence for anyone outside the Tribal community. It is largely a functioning escape clause that makes actions legal for non-Tribal members. There is no escape hatch for non-Tribal members under an Indigenous perspective. It should be noted that what is legal under federal law is not always ethical.

¶39 Fair use is a concept in U.S. copyright law, and it enables a scholar to use limited portions of works for scholarly and educational purposes. Normally, those works would be protected under copyright. But many of the Indigenous items we are considering here are not protected under U.S. copyright, and even if they were, some form of fair use could likely apply and render the use of it to be legal.

¶40 Fair use under Tribal law,[95] if a Tribe even accepts the idea, is not typically applied to nonmembers. For someone outside the community to receive Tribal approval takes systematic collaboration with the Tribal community and constant application of the CARE principles.[96] It takes reaching an understanding that credit for any scholarship, presentation or illumination of Traditional Knowledge or cultural expression belongs to the Tribal community that owns the expression or knowledge.[97] It does not belong to the researcher or one person outside the community.[98] Moreover, it is important for scholars, researchers, and librarians to be mindful of Indigenous data sovereignty and the concept of Indigenous copyright as a concept.[99]

¶41 But this is where scholarly practice tends to focus on what is legal and stop there at its queries. But we must not stop at asking what is legal and making sure that our scholarship is legal. We must also demand of ourselves a higher ethical standard of practice. It is important to avoid U.S. copyright infringement. But our work must not stop at checking one box. To be good information professionals and to reach out and collaborate with Tribal communities, we must acknowledge and embrace the Indigenous copyright concepts and promote the overall Indigenous data sovereignty movement.

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that law. Moreover, the Tribal law will apply to Tribal members wherever they live, to members living on the reservation, and to any third parties that agree to the law within contractual obligations. Hence, seeing these laws applied to scholars through an internal review board process and written agreements providing jurisdictional consent and consent to certain Tribal laws are one method of expanding Tribal reach without conflicting with federal law. In essence, contract law takes over and provides the jurisdiction and choice of law provisions. Without these markers in place, it is likely that a scholar's ethical misuse will be legal. But as we have said before, legal is not enough.)

95. Tribal traditions and customs may permit some form of fair use, but that would be up to each Tribe to decide, each Tribe to determine if it is a law or a custom, to decide if they want it to be part of the written laws of the community, and then to determine if they want it to apply to nonmembers.

96. Akwesasne Research Advisory Committee, *Good Mind Research Protocol*, 2 Akwesasne Notes New Series 94 (1995), https://ethicshub.ca/wp-content/uploads/2020/05/70-Good-Mind-Research-Protocol.pdf [https://perma.cc/7KET-W3PZ].

97. *Id.*

98. *Id.*

99. *Id.*

The Ownership Problem Further Explained for Indigenous Data in Current U.S. Copyright Law

Why U.S. Copyright Law Fails to Provide a Complete and Respectful Solution

¶42 U.S. copyright law, as a subject, is meant to protect the authors of original works from any third party trying to unduly profit from their work. But what does that mean? The statute is meant to protect published works. But that statute does not cover or protect traditional Native music, dances, symbols, and designs.[100] Intangible items, or items that continuously evolve in culture are considered outside the current federal law.[101] Works that evolve, so it is believed, cannot be fixed in a way that can be owned. At least, not according to the federal government.

¶43 Regarding copyright issues, ownership is another key to the discussion. Many of the Indigenous works that might qualify for copyright if "fixed" are not owned by an individual or the original author, but they are owned by the Tribe/Indigenous Peoples as a collective and are a part of their cultural identity. As such, they are often considered under U.S. copyright law to be within the public domain, or subject to some form of fair use, and thus largely unprotected.

¶44 Related to academic libraries, this ownership piece of the puzzle often presents very thorny problems due to the mix of items that might be fair use in some instances and other items that might be in the public domain. It is also likely to be an issue for mixed collections where the scholar creates items of their own provenance and takes in items from outside collections as part of their scholarship and research. Examples of this often come from anthropological collections where a scholar recorded cultural knowledge, stories, songs, or ceremonies, and fails to give credit to the Indigenous creators, be they individuals or the collective. Those items thus have a copyright and ownership issue impacting their use and transmission. Those items that the scholar creates on their own become their own works to which they have sole ownership and authorship, and thus copyright. They can disseminate those works and release them however they see fit. The remainder of items, however, collected from Indigenous places and sources are not items that the scholar owns, and may not have obtained consent for subsequent distribution. Those items would have been loaned or only shown for limited use. The scholar is permitted to use them for the original scholarship and educational

100. Angela R. Riley, *"Straight Stealing": Towards an Indigenous System of Cultural Property Protection*, 80 Wash. L. Rev. 69, 72 (2005). (It should be noted that some artistic expressions can be trademarked but not everything listed here is eligible and trademark law and protection is a separate law with separate analysis that does not fall under this paper's view. For example, the rapper Littlefoot is entitled to own and copyright all the music and performances that he creates as a rapper. That is not what is at issue here. Traditional songs, dances, and stories are not the work of one identifiable artist. They are the tradition of an entire people and part of their identity. That is what is at issue in this paper.)

101. The U.S. copyright notion of ownership (individualistic, time limited, requires fixation) does not mesh well with Indigenous notions of authorship (communal, timeless, no fixation requirement). While this is an important discussion, this article will focus more on best practices for libraries interfacing with Tribes and Tribal systems.

purposes, but they do not have the rights to transfer ownership or allow unrestricted use, as they cannot grant rights they do not possess.

¶45 The experience of Tribes in the area of intellectual property and Traditional Knowledge has often been a negative one due to federal laws enabling the theft of Indigenous knowledge.[102] This has occurred when non-Tribal citizens patent or copyright a work that largely derives from Tribal intellectual or cultural property.[103] Another instance of exploitation occurs where non-Tribal citizens attempt to convey that their work largely derives from a Tribal intellectual or cultural property that they allege exists as part of the public domain.[104] It is a common experience to see this sort of cultural and intellectual property victimization in the realm of art, data, and other information areas as understood in libraries. Current federal laws only protect what is tangible.[105] "Federal legislation does not appear to address the question of non-tangible, and often sacred property . . . that have been traditionally created and controlled in accordance with community customs and laws."[106]

¶46 There are a number of areas not covered under U.S. copyright. Thus, much information is left either purportedly in the public domain or virtually unprotected. For example, when discussing Tribal intellectual property, scholar James Nason provides two categories: (1) where property or objects are community-based (like clan names); and (2) where property or objects are owned, created, and controlled by an individual Tribal member such that objects could be inherited or passed down from that person.[107] Cultural properties are not always protected by U.S. law. Cultural property is defined as "the tangible and intangible effects of an individual or group of people that define their existence, and place them, temporally and geographically, in relation to their belief systems and their familial and political groups, providing meaning to their lives."[108] These items are necessary for the continued sovereignty and identity of Tribes.[109]

¶47 Failure to protect these items leads to exploitation. Songs are one example. If a song is created by the rapper Littlefoot, or the rock group Indigenous, then that song will likely receive copyright protection because it has been recorded and fixed into a

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102. Shabalala, *supra* note 41.

103. *Id.*

104. *Id.*

105. This article does not entertain in-depth discussion on the Indian Arts and Crafts Act of 1990, 18 U.S.C. § 1159 *et seq*., the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq*., and the Trademark Law Treaty Implementation Act of 1998. These statutes are essentially piecemeal legislation dealing only with specific puzzle pieces of the issues and do not provide an overall solution. The Arts and Crafts Act, for example, contemplates some Traditional Knowledge, genetic resources, and traditional cultural expressions, but only in the broadest sense. The Act does not include non-enrolled artists and it fails to address music and other forms of art that are not fully realized or defined in an encompassing manner. Essentially, there is no coverage here for items that are intangible or fluid in their construct.

106. James D. Nason, *Traditional Property and Modern Laws: The Need for Native American Community Intellectual Property Rights Legislation*, 12 Stan. L. & Pol'y Rev. 255, 259 (2001).

107. *Id.*

108. Riley, *surpa* note 102, at 77.

109. *Id.*

known format covered by federal law. But songs that are traditional, like ceremonial songs, receive no such protection because they have existed for thousands of years, and they are considered "intergenerational" with no discernable author.[110]

¶48 Moreover, it is not enough for us to call out what may violate law. This discussion also involves practices that may be legal but are not entirely ethical. To illustrate, if the scholar takes outside materials into their possession from another collection, songs, stories, ceremonies, discussions of traditions, and translations, it cannot be said that they have transferred ownership to themselves. These can be recorded, written, translated, and broadcast in ways that provide educational access to the information. Many academic collections contain this sort of information. In fact, most academic collections containing these sorts of materials required a scholar to sign a consent form or release that indicates they will use the material for a particular scholarship and not seek to claim ownership or profit from it, and that recognition is given to the Indigenous owners, or the Indigenous provenance. An ongoing issue for scholars appears to be tracking and retaining what they have signed, where the paperwork still exists, and what locations they visited for materials. Tracking down each individual agreement can be problematic for the scholar, but that should not be accepted reasoning or practice to the disadvantage of the Indigenous owners.

¶49 In another example, items and materials are owned collectively by the Tribe or Nation in which the item originates. A Tribal flag, coat of arms, or insignia would belong to the community and most likely be protected under the Trademark Law Treaty Implementation Act.[111] Sacred names or clans in some Tribal communities belong to a certain society or generation of that society. Clans, for example, can sometimes have an associated animal and set of concepts that belong collectively to that clan's members. Upon death or dissolution, the name reverts to the Tribe collectively. However, these types of ownership are not recognized or protected under U.S. copyright law.

¶50 Under this Indigenous concept or model, items created within the Tribal community—or made with materials and input from the Tribal community—would continue to belong to the Tribal community regardless of where the items end up. Their origin is with the Tribal Nation and remains indelibly linked to that Nation and its People, i.e., the relationship is as important as the ownership. As such, a poem by an Indigenous artist, or a set of memoirs from an Indigenous community member, would remain property of the community regardless of whether the item is housed in a private collection. Stories, songs, dances, designs, and traditions are all part of Indigenous knowledge as a subject and should belong to the community and remain under its protection.[112] Researchers and collectors of Indigenous data and traditional or cultural knowledge should respect the social, economic, political, cultural, and spiritual

110. *Id.*

111. 15 U.S.C. § 1051 *et seq.* It should be noted here that nothing in this law appears to protect Traditional Knowledge, genetic resources, or traditional cultural expressions. *See* Angela R. Riley & Kristen A. Carpenter, *Owning* Red*: A Theory of Indian (Cultural) Appropriation*, 94 Tex. L. Rev. 859, 1114–17 (2016).

112. *See* Riley & Carpenter, *supra* note 113, at 861–64, 918–19.

epistemologies of Indigenous Peoples by upholding their rights to control and protect their knowledge and intellectual property.[113] That is because this model of thought centers on jurisdiction. The jurisdiction remains with the Tribal Nation.[114]

An International and Indigenous Perspective Versus a Federal and Colonialist One

¶51 As discussed above, many current efforts to protect intangible intellectual property rights have roots in international law as a way of protecting the survival of Indigenous people.[115] The U.N. Commission's declaration in Article 31 highlights Indigenous groups' rights to be free from exploitation and misappropriation.[116] Further, the WIPO has been at the forefront of the movement to protect Traditional Knowledge.[117] They established a committee on these issues to provide a forum for Nations whereby they could discuss real solutions and protections outside of U.S. copyright law.[118]

¶52 Still, U.S. copyright law does a rather poor job of identifying and protecting Traditional Knowledge and traditional cultural expressions. That is because the current federal law does not recognize or wholly encompass cultural and Traditional Knowledge. It does not see it as a fixed idea, but one that instead evolves over time and thus cannot be subject to copyright. To better illuminate the concept, traditional knowledge is understood as: "A living body of knowledge passed on from generation to generation within a community . . . [that] often forms part of a people's cultural and spiritual identity."[119] Traditional cultural expressions can be "music, dance, art, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts, and narratives."[120] These areas can include "know-how, practices, skills, and motivations related to . . . biodiversity, agriculture, or health."[121] None of which is protected or included in U.S. copyright law.

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113. *Guidelines for Ethical Research in Australian Indigenous Studies*, AIATSIS (2012), https://aiatsis.gov.au/sites/default/files/2020-09/gerais.pdf [https://perma.cc/N2LC-AU92]; *see also Code of Ethics*, AIATSIS (2020), https://aiatsis.gov.au/research/ethical-research/code-ethics [https://perma.cc/C3KG-Y93D]; *see also The ISE Code of Ethics (with 2008 additions),* ISE Int'l Soc'y of Ethnobiology (2008), http://ethnobiology.net/code-of-ethics/ [https://perma.cc/CGK6-4B4R]; *see also* Leanne Campbell et al., *Protocol and Best Practice for the Research on and Public Distribution of Information from Projects Involving Indigenous Peoples*, USGS (Oct. 15, 2015), https://www.sciencebase.gov/catalog/item/56ddf1e1e4b015c306fb22fa [https://perma.cc/F347-JVK4].

114. *See* Riley & Carpenter, *supra* note 113, at 919–22.

115. Riley, *supra* note 102, at 82.

116. *Indigenous Data Governance Communique*, *supra* note 57; *see also*, Indigenous Data Sovereignty, *supra* note 57.; *see also.* Riley, *supra* note 102 (citing United Nations Declaration on the Rights of Indigenous Peoples (2007), https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf [https://perma.cc/6G2V-UMV6].

117. Riley, *supra* note 102.

118. *Id.*

119. *Id.* (quoting *Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions*, WIPO, http://www.wipo.int/tk/en/ [https://perma.cc/FT63-SZ9E].

120. Shabalala, *supra* note 41.

121. *Id.* at 1030–31 (quoting *Traditional Knowledge and Intellectual Property*, WIPO (2015), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_tk_1.pdf [https://perma.cc/EUK3-855D].

¶53 These oral and ancient traditions make Traditional Knowledge and cultural expressions hard to capture in the current U.S. copyright model. Because U.S. copyright law does not protect these elements of Indigenous expression, they can become the subject of rampant exploitation.[122] An example of this comes from the popular *Twilight* series of books by Stephanie Meyers.[123] In it, she details the Quileute origin story, without authorization from the Tribe, adds werewolves to it, and then copyrights the entire work.[124] The misappropriation is particularly harmful due to the origin story's importance to the Tribe and its connections to the physical and spiritual world.[125] Using the Tribe's cultural property without approval, and altering it, does not make it one's own work.[126] And to add insult to injury, Meyers used the Quileute's name and story, never contacted the Tribe, nor compensated them for the use of their name or story.[127] In the case of Meyers's novels, we cannot say that she is not entitled to U.S. copyright. That is not the point. What we mean to say, however, is that the alterations to the shapeshifter story within her novel does not make it her own. It is still the tradition of the community, and while she is in no legal danger, she did not receive any approval to use it and alter it. This is not a legal problem, but an ethical one. It is a constant battle for Tribal communities. Moreover, it suggests a diminishment of Tribal identity that lacks respect.[128]

¶54 The problem, however, with a western approach to solutions is that nations like the United States prize the tangible item with an identifiable creator to promote commerce and wealth.[129] In contrast, Tribal communities do not commercialize traditional knowledge for profit. It is often owned and shared collectively.[130] The goal is not profit, but rather to protect against exploitation and diminishment of Tribal identity.[131]

¶55 A lack of understanding of ownership and jurisdiction results in similar examples of misappropriation across artistic and academic formats.[132] The strategies surrounding Tribal responses to these issues have been both proactive and defensive.[133] Tribes are creating pathways that enable a holder of Traditional Knowledge or traditional cultural expressions to obtain intellectual property rights that ensure profits or commercial benefit remains with the community.[134]

¶56 Tribal solutions include both statutory language to fill the gaps in federal law and policy guidance for best ethical practices surrounding Indigenous information. The

122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. Margaret Leidy, *Protecting Creation: The Twilight Series, Creation Stories, and the Conversion of Intangible Cultural Property*, 41 SW. L. REV. 509 (2012).
128. Shabalala, *supra* note 41, at 1132-35.
129. Riley, *supra* note 102.
130. *Id.*
131. *Id.*
132. Riley & Carpenter, *supra* note 113.
133. *Id.*
134. *Id.*

combination of the two is vital to the approach of Tribal sovereignty. Thus, many Indigenous Peoples and Tribes are adopting laws, policies, and rules that govern the use, collection, and commercialization of Indigenous knowledge by the use of research codes, ordinances, and policies. They are also establishing Offices of Cultural Preservation and/or Institutional Review Boards who have the authority to review research on and with their People, consent or not to the research, and control the ultimate collection, use, publication, and even commercialization of their Indigenous knowledge.[135]

An Indigenous Model for Copyright Concepts and Examples Under Tribal Laws

¶57 According to Indian law attorney and scholar Angela Riley, "[T]ribal law is drawn from a tribe's traditional customary laws, tribal belief systems, and other contemporaneous forms of tribal governance, including ordinances and tribal constitutions."[136] Laws passed by the Tribal government reflect the beliefs and values of the People and provide relational context often missing in western law.[137]

¶58 Comparing U.S. copyright law to Indigenous models of ownership becomes a challenging pursuit due to the various avenues of jurisdiction to consider. Under an Indigenous model, Tribal governments[138] would not typically own—in the Eurocentric manner—what they do not create. Typically, ownership would be an individual or community function. An individual Tribal member could retain ownership of personal effects and items of their own creation. That ownership would enable them to display the item, give it away, loan it, and more. Other items would be seen as owned collectively by the community or by part of the Tribe. This is the case for things like clan names and certain stories, songs, traditions, and other intellectual knowledge. It would be up to the community, or that part of the community, to say when things could be displayed or passed on.

¶59 Beyond ownership, we must ask who or what governs Traditional Knowledge or works derived from Traditional Knowledge. In short, we ask who or what sovereign oversees governing the materials with their laws? That is a question beyond mere ownership. It is a question of jurisdiction and sovereignty.

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135. Ibrahim Garba et al., *Indigenous Peoples and Research: Self-Determination in Research Governance*, 8 Frontiers Rsch. Metrics & Analytics art. 1272318 (2023), https://doi.org/10.3389/frma.2023.1272318; *see also* Stephanie Russo Carroll et al., *Using Indigenous Standards to Implement the CARE Principles: Setting Expectations Through Tribal Research Codes*, 13 Frontiers in Genetics art. 823309 (2022); *see also*, Linda Tuhiwai Smith, Decolonizing Methodologies: Research and Indigenous Peoples (2d ed. 2012).

136. Riley, *supra* note 82.

137. *Id.*

138. There are approximately 574 federally recognized Tribes in the United States at the publishing of this article. The list of Tribes is in the federal register. *Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 88 Fed. Reg. 2,112 (Jan. 12, 2023), https://www.federalregister.gov/documents/2023/01/12/2023-00504/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of [https://perma.cc/8JP5-VWTK]. There are also state recognized tribes and unrecognized tribes, but there has been little effort to categorize and count these communities.

¶60 Federal preemption requires us to apply U.S. copyright law. We cannot avoid applying it. That being said, where U.S. law is silent, and Tribal jurisdiction is available, then Tribal Nations can apply their own laws to members and to third parties agreeing in contractual provisions. This attempt to fill the gaps of U.S. law is important for Tribal Nations as an exercise of sovereignty. It goes to the question of who *governs* the materials—not merely who *owns* them. For items created within the Tribal Nation's boundaries, there may be Tribal laws to consider for their governance. If there are Indigenous laws on the issue, then we must seek to apply those rules above any floor set by U.S. copyright law.

¶61 Oftentimes, for items created outside the Tribal Nation's boundaries, those items would be governed by U.S. copyright law. That said, some Tribes define jurisdiction in their statutes or codes to include things that move beyond physical or geographic boundaries, including intellectual property items. While Tribes must follow any applicable federal laws, Tribal codes passed within their legislature or council can govern matters affecting the members and community.[139] If the Tribal Nation has express legislation on the creation of these items by Tribal members, then that law should apply to these items above and beyond U.S. copyright law.

¶62 Procedures for legislation on these issues will vary from Tribe to Tribe.[140] Not all Tribal Nations have their own copyright law provisions, but many have some commission, committee, or office that handles Tribal cultural heritage items and resources. That office, or a Tribal institutional review board, would have authority over documents and created recordings of traditions and customs. Creating law, whether by code, policy, court ruling, or other legislation, is a supreme act of sovereignty.[141] No two codes will be identical, as each Tribe exercises its own cultural identity, legislative process, and sovereign power.[142]

¶63 Riley argued for a tiered system of tribal laws and authorities to fill the gaps left by federal law.[143] She insists that Tribes can pass codes that provide layered protections for intangible items falling under Traditional Knowledge, genetic resources, and traditional cultural expressions.[144] In order for these layers to be robust, however, Riley notes that Tribal governments must start building the foundational framework in order to provide maximum cultural context and relational understanding of cultural properties.[145]

¶64 Some critics might argue that Tribes cannot legislate outside their jurisdictional territory, thereby questioning the efficacy of intellectual property legislation and copyright

139. Riley & Carpenter, *supra* note 113,

140. *See Id*. (citing Robert D. Cooter & Wolfgang Fikentscher, *American Indian Law Codes: Pragmatic Law and Tribal Identity*, 56 Am. J. Comp. L. 29 (2008)). It should be noted here that Tribal legislation can differ even while Tribal Nations may agree and support similar or related concepts that lead to the legislation.

141. *See Id*.

142. *See Id*.

143. Riley, *supra* note 82.

144. *Id.*

145. *Id.*

protections.[146] Riley, however, insists that this is a short-sighted view, because the foundation of these protections would be rooted in Tribal sovereignty that extends beyond geographical borders and impacts Tribal members wherever they may live.[147] The exercise of that sovereignty is never a futile effort. In fact, Riley argues that this exercise of sovereignty is needed to convey that Tribal People govern their Traditional Knowledge wherever it exists and before anyone else does.[148] That exercise of sovereignty strengthens the People and what they seek to protect.[149] "The authority of sovereignty must not be limited by the colonizers' narrow vision of tribal power."[150] She also notes that using Tribal laws as the foundation for this layered approach to protection will influence national and international justice systems and legislation.[151]

¶65 "A codified law provides the benefits of precedent, predictability, and notice to those affected."[152] Riley notes that to make such law, a Tribe must consider its own traditions and customs as the basis for legal content.[153] That will provide the basis for the law's content as well as its purpose and scope.[154] Moreover, these exercises of sovereignty can provide an opportunity for clarity and for others to engage in the legislative process.[155]

¶66 To demonstrate what some Indigenous/Tribal nations have done, we explore several codes and their provisions for copyright protection, cultural preservation, archives acts, and the implementation of Institutional Review Boards.

Tribal Copyright Protections[156]

¶67 The Ho-Chunk Nation in Wisconsin has their own Tribal ordinance dealing with copyright issues and trademark issues related to Ho-Chunk Nation language

146. *Id.*
147. *Id.*
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.* Whether this influence comes through full faith and credit, comity, or other means, this weaving of Tribal legal analysis into national and international systems further strengthens sovereignty.
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. The authors understand that federal preemption doctrine still applies in this context, and thus U.S. copyright law will supersede whenever there is apparent conflict between Tribal law and U.S. law. Most Tribal attorneys drafting legislation will look at federal law and craft legislation to avoid conflicts. Moreover, the Tribal laws will apply on Tribal land and to Tribal members. Typically, the Tribal civil laws will not apply to nonmembers off Tribal land, so a geographic limit appears. Without more, there would be a question of whether personal jurisdiction and subject matter jurisdiction apply to a nonmember in any legal challenge. Those limits, however, will disappear in a contract with a nonmember. If a nonmember agrees to the application of Tribal laws and Tribal jurisdiction in a contract or agreement, then Tribal copyright laws and policies will be applicable. Tribal courts can have personal and subject matter jurisdiction over the drafted contract or agreement. Those contracts can be direct agreements with the Tribal government, or consent forms and agreements with a Tribal Institutional Review Board, or other Tribal agency as an arm of the Nation. Even with these limits to the application of Tribal law, the authors express support for legislation as an act of sovereignty by Tribal Nations.

resources and materials.[157] Under the Ho-Chunk Nation's ordinance, the Language and Culture Committee acts as an institutional review board to approve research and scholarship related to Ho-Chunk Nation cultural materials.[158] Publication and use parameters go through them as a delegated power from the Nation's government. Again, this is not a question of ownership, but of governance over the materials created within a jurisdiction. If it is established that the materials arose from the Tribe's jurisdiction, then the Tribal Nation's government will govern those materials with any applicable laws.

¶68 In considering another sovereign government, we turn our attention to the Yurok Tribe. The Yurok Tribe has one of the most comprehensive sets of laws protecting cultural items and specifically calling out copyright issues.[159] In the Yurok Code, the definitions presented are taken from the U.S. Code.[160] In itself, these definitions do not expand beyond the federal scope. However, they provide the Tribe with an avenue for exercising its sovereignty by enabling Tribal members to obtain copyright through the Tribe. Moreover, the Yurok have an additional section of law that expands on its copyright protections by specifically calling out and protecting Tribal cultural resources and items.[161] The Tribe defines these items in this way:

"Cultural resources" is used in this chapter to include:

1. **Traditional cultural properties**—defined as a place of importance because of an association with cultural practices or beliefs rooted in a living community and are important in maintaining and continuing the cultural identity of the community.
2. **Districts**—defined as a grouping of traditional cultural properties, sites, building structures, or objects that are linked historically, aesthetically, or traditionally by function, theme, physical development, or by plan. The properties within a district are usually contiguous, but noncontiguous districts are possible.
3. **Site**—defined as a location of a significant event or of historical or traditional human occupation or activity, including burials.
4. **Ceremonial site**—defined as a location where a traditional Yurok ceremony is conducted, either collectively or individually.
5. **Building**—defined as a structure constructed principally to shelter any kind of human activity.

157. *See* 7 Ho-Chunk Code § 4 (2016).

158. 7 Ho-Chunk Code § 4 (ch. 8, pt. 27; *see also* 3 Ho-Chunk Code § 3), https://ho-chunknation.com/government/legislative-branch/ho-chunk-nation-laws/ [https://perma.cc/9KSN-KNRF].

159. Yurok Tribal Code §§ 14.05 - 14.20 (Culture), https://yurok.tribal.codes/ [https://perma.cc/VX4Q-XM2J].

160. Yurok Tribal Code § 14.20. (Copyright Protection). https://yurok.tribal.codes/ [https://perma.cc/KSA6-9MRB].

161. Yurok Tribal Code §§ 14.10, 14.15. https://yurok.tribal.codes/ [https://perma.cc/9VRL-S29U].

6. **Structure**—defined as a functional construction that does not primarily shelter human activity.
7. **Object**—defined as a construction with primarily artistic or functional value and can be small and/or simply constructed. While objects can be movable, they are primarily associated with a spatial setting or specific function.
8. **Cultural items**—defined as including associated and unassociated funerary objects and human remains, sacred objects, and objects of cultural patrimony.[162]

That being stated, however, the Tribe still does not protect items that cannot be "fixed" in their nature.

Examples of Cultural Preservation and Tribal Archive Code Provisions

¶69 Instead of making an entire Tribal Copyright Code, the Rosebud Sioux Tribe created a broader Cultural Resources Management Code. This code takes a wider approach as to what items are cultural resources and fall under their jurisdiction by virtue of aboriginal rights and sovereignty to govern what comes from the Tribe.[163] Under the law, all cultural resources of the Tribe fall within the government's jurisdiction, and that jurisdiction is expressed by its territorial boundaries.[164] The ordinance includes cultural patrimony objects, cultural records, cultural research, and cultural resources. The Rosebud Sioux Tribe also defines each of these items in the ordinance as follows:

Cultural Patrimony Objects: "Cultural Patrimony Objects" means any objects artifacts, or materials with ceremonial, cultural historical, sacred, spiritual, or traditional value to the Tribe.
Cultural Records: "Cultural Records" means any Record with archaeological, cultural, historical, or traditional value to the Tribe.
Cultural Research: "Cultural Research" means any research of cultural resources.
Cultural Resources: "Cultural Resources" means cultural plants, cultural records, cultural remains, and cultural sites.[165]

¶70 Under the law of the Rosebud Sioux Tribe, approval for use and dissemination would go through the Tribal Historic Preservation Officer and their Institutional Review Board (IRB) or committee that is delegated with authority from the Tribal government.[166] Cultural records and interaction with the cultural archivist is listed under § 601 of the Code, while cultural research is at § 701. The archivist manages the records

162. Yurok Tribal Code § 14.10.030, https://yurok.tribal.codes/ [https://perma.cc/K3J2-DGRH].
163. 18 Rosebud Sioux Tribe Code § 102 (ch. 26, 2006).
164. 18 Rosebud Sioux Tribe Code § 104 (ch. 26, 2006).
165. 18 Rosebud Sioux Tribe Code ch. 26, sec. 105 (2006). *Code of the Rosebud Sioux Tribe*, https://narf.org/nill/codes/rosebudcode/index.html [https://perma.cc/9XEV-ZZ65].
166. 18 Rosebud Sioux Tribe Code ch. 26, sec. 201.

already created with the Tribe, while the working group under § 701 manages research projects and proposals.[167] Some research is exempt from the ordinance, but a researcher should get that exemption in writing.[168]

¶71 Similar to the Rosebud Sioux Tribe, the Cherokee Nation has its own Archives and Records Act. Again, this is a wider approach to encompass as many cultural items as possible and provide detailed explanation of how they should be managed under the Nation's law. Under this law, the Nation establishes an Archives and Records Commission that works with the Cherokee National Historical Society to properly govern and preserve the Nation's cultural property.[169] The Commission can use special advisory committees of Tribal elders and experts to weigh in on topics of first impression.[170]

¶72 Still other sovereign Tribal Nations approach copyright issues through the lens of having a Commission or Independent Review Board manage the information and access to it. One example comes from the Pascua Yaqui Tribe, as the Tribe created a Language and Culture Commission to handle these more fluid ideas.[171] Among their powers, the Commission has the authority:

- To serve as the primary planning, screening and review body for all issues relating to the Yaqui language, history, culture, and tradition including instruction and related activities that are tribally, privately, federally, and state funded.
- To assist the Pascua Tribal Council in the formulation of laws and policies pertaining to the Yaqui language and other cultural matters and activities except for such activities as those determined by the ceremonial societies. The Yaqui Language and Culture Commission shall submit its recommendations to the Tribal Council for final sanction and approval.
- To work cooperatively with other appropriate tribal committees, divisions, and departments, as well as individuals, to ensure that all cultural and traditional matters including the preservation of ancient and contemporary burial sites, sacred objects, ancestral remains, and traditional and ceremonial customs such as burial practices are protected in negotiations and agreements with any external entity.
- To review all external research and proposed studies as described in section VI and to recommend approval or disapproval to the Tribal Council.[172]

¶73 Review and approval of research moves in concert with provisions of the Pascua Yaqui's regulatory code on research protection.[173] The Pascua Yaqui's code encompasses,

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167. 18 Rosebud Sioux Tribe Code ch. 26, sec. 701.

168. 18 Rosebud Sioux Tribe Code ch. 26, sec. 701.

169. 67 Cherokee Nation Code §§ 1-9, https://cherokee.legistar.com/Legislation.aspx [https://perma.cc/UTB3-SXS6].

170. 67 Cherokee Nation Code § 6.

171. Pascua Yaqui Tribal Code, Part IV, ch. 4-4 § 10-30. (Sept. 2022), https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/6LAJ-H6ZM].

172. 2 Pascua Yaqui Tribal Code § 4-4-30. (Sept. 2022), https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/9RSK-9EUV].

173. 8 Pascua Yaqui Tribal Code §§ 7-1-10 - 7-1-250 (Research Protection). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/GZ3L-WZ4V].

"'Academic Research' . . . research carried out to obtain educational qualifications or as part of their academic career at a university or affiliated institutions."[174] This research can include biogenetics but does not require that component to fall under the Act and demanding Tribal regulation.[175] The Act also defines cultural research and the products of research in such a way as to encompass the academic projects of various authors and scholars within and outside the community.[176] In short, the Pascua Yaqui's Code empowers a Tribal Independent Review Board, or Commission, with certain authority. The Commission, through the Tribal Council, can maintain the items of the community, and they can provide access to those items for anyone seeking to use them for scholarship. The request for access will be reviewed and may be granted if the requesting party is willing to accept the application of Tribal law. Refusal to do so can lead to declining the request for access and no research will be conducted using the items.

¶74 The Pascua Yaqui's Code is written to include items without a fixed expression that may be part of research. As such, this code protects and regulates items on behalf of the Tribe in a way that U.S. law does not. It fills the gaps of what is available under U.S. law without conflicting. An example of what is protected here, and left unprotected in U.S. law, is Traditional Knowledge. Traditional Knowledge is specifically called out as a protected area in a manner that sets the Pascua Yaqui Code apart from others.[177] Proposals for research must go to the Research Review Committee, which includes tribal elders, for their investigation and approval.[178] In considering approval for the research, the Committee takes into account the CARE principles as stated in this work when they use these principles:

- **Principle of Immediate Risks and Benefits to the Tribal Community**. The research should be of immediate benefit to the Tribal community, and the risks associated with the research should be less significant than the benefits to be gained.
- **Principle of Confidentiality**. This principle recognizes that the Tribe and local communities, at their sole discretion, have the right to exclude from publication and/or to have kept confidential any information concerning their culture, traditions, mythologies, or spiritual beliefs. Furthermore, researchers and other potential users shall guarantee such privacy and confidentiality.
- **Respect**. This principle recognizes the necessity for researchers to respect the integrity, morality, and spirituality of the culture, traditions, and relationships of Tribal members with the world, and to avoid the imposition of external conceptions and standards.
- **Communication**. This principle recognizes that communications should be carried out in the local language, using translators as necessary.

174. 8 Pascua Yaqui Tribal Code § 7-1-40 (Definitions). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/GBD5-XXU5].

175. *Id.*

176. *Id.*

177. *Id.*

178. 8 Pascua Yaqui Tribal Code § 7-1-50 (Research Review Committee Established). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/E654-XQB7].

- **Empowerment**. This principle recognizes that empowerment is the sharing of power and is premised on mutual respect. Empowerment means that each affected party feels that their needs are being met through a fair and equitable manner. Empowerment also means that research authorship must be shared between the Tribal community and the researcher.
- **Equity**. This principle recognizes that equity is a sharing of resources. Both the researchers and the Tribe must bring equity to any research contract, agreement, or understanding. Each of the participants in a good research agreement must evaluate such equity in relation to the research. Finance or money is only one form of equity. Community knowledge, networks, personnel, and political or social power are other forms of equity useful to the project. Each of these commodities has value and must be shared between the researchers and the Tribe if a good agreement is to be formulated. The parties must continuously review equity over the duration of a research agreement.
- **Mutual Respect**. This principle recognizes that to develop a good research agreement, the researchers and the Tribe must generate respect for each other. Respect is generated by understanding the social, political, and cultural structures of the other party. The researchers and the Tribes cannot assume that they believe in the same things or share the same goals and expectations. Good communication is required if a proper research agreement is to be generated. Cultural sensitivity training for the researchers and Tribal awareness presentations will help develop a mutual understanding in conducting the research project. Definitions and assumptions must be clarified and questioned by each side and set forth in an agreement. The Tribes and the researchers must listen to each other with open minds.[179]

¶75 These principles require constant communication with the committee and an assessment of how the data collected will be used for the foreseeable future, as well as any risks or foreseeable negative impacts.[180] Further, any research must receive Tribal Council approval at the end of the process.[181] There are additional examples at the Native Americans Rights Fund[182] or National Indian Law Library sites, which can be reviewed if desired.

Tribal Institutional Review Boards

¶76 The Tribal governments such as the Ho-Chunk discussed above, and the Navajo Nation insist on an internal review board for research and scholarly applications

179. 8 Pascua Yaqui Tribal Code § 7-1-60 (Guiding Principles for Research Review Committee). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/6JK9-G5ET].

180. 8 Pascua Yaqui Tribal Code § 7-1-80 (Research Proposal Requirements). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/KM25-FZPZ].

181. 8 Pascua Yaqui Tribal Code. § 7-1-110 (Notice to Applicant). https://www.pascuayaqui-nsn.gov/tribal-code-v1/ [https://perma.cc/LMV8-UXVT].

182. *See* Native American Rights Fund, https://narf.org/ [https://perma.cc/Q85J-JU3V]; *see also* National Indian Law Library, https://narf.org/nill/index.html [https://perma.cc/SMM9-L6BR].

involving human subjects.[183] In the case of the Navajo Nation, for scholars seeking to work with Tribal members, they must put forth an application with an approved checklist that meets the Nation's criteria for research.[184] An explanation of the project, how it benefits the community, and approval at the Navajo Nation Historical Preservation Office (if required), will be a part of the application process to the IRB.[185] Moreover, the research proposal must be approved by Navajo Agency Councils and the Office of Management and Budget.[186] This includes research involving Navajo culture and cultural expressions within the Tribe's interpretation of its laws.[187] In fact, the research considered under this law includes:

> [T]he use of systematic methods (including but not limited to note taking, interviewing, video, and audio taping) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts, or practices, or otherwise adding to knowledge and insight in a particular medical of [sic] psychological discipline.[188]

It would not be a far stretch to apply this across the humanities and social sciences. This is all in keeping with the Navajo Nation's Privacy Act and the Navajo Nation Human Research Act.[189]

How Librarians Can Move Forward in Support of Sovereignty and Indigenous Copyright[190]

¶77 Librarians can advocate for Indigenous models of copyright and protection of cultural and Traditional Knowledge by promoting collaboration, development, and support for Indigenous copyright and cultural preservation statutes and legislation. Librarians can recommend, advocate, and educate academic institutions on working directly with the Tribal Nations to develop, refine, or create copyright and cultural preservation legislation.

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183. *Navajo Nation Human Research Review Board*, Navajo Nation & Ctr. for Native Am. Health (2005), https://nnhrrb.navajo-nsn.gov/resources.html [https://perma.cc/27BC-ZTQR].

184. *Navajo Human Research Review Board, IRB Research Protocol Application*, Navajo Nation Dep't of Health (Mar. 6, 2018), https://nnhrrb.navajo-nsn.gov/pdf/2021/Rvised%203-6-18NNHRRB%20IRB%20application_2_10_2021.pdf [https://perma.cc/VU7A-L5BH].

185. *Id.*

186. *Id.*

187. 13 Navajo Nation Code § 3253 (2002), https://nnhrrb.navajo-nsn.gov/pdf/NavNatHumResCode.pdf [https://perma.cc/D6L6-PNG6].

188. 13 Navajo Nation Code § 3255(c) (2002), https://nnhrrb.navajo-nsn.gov/pdf/NavNatHumResCode.pdf [https://perma.cc/R4X9-6HEG].

189. *See* 2 Navajo Nation Code subchapter 4, §§ 81-91 (1999), https://nnhrrb.navajo-nsn.gov/Files/NNPrivacyAct_opt.pdf [https://perma.cc/2CJX-G4KT]; *see also* 13 Navajo Nation Code §§ 3251-3271 (2002), https://nnhrrb.navajo-nsn.gov/pdf/NavNatHumResCode.pdf [https://perma.cc/XJU5-CMQB].

190. *Recognizing the Third Sovereign: Promoting Awareness of, Respect for and Access to Native American Tribal Law*, USC Law Library (July 14, 2023), https://lawlibguides.usc.edu/c.php?g=1329284&p=9787353 [https://perma.cc/B34B-KWJ5].

Decolonize Copyright Laws and Structures

¶78 One avenue of action is for librarians to join local Indigenous communities in calling for a decolonization of copyright laws and cultural protection structures.[191] Centering on a framework of human rights and Tribal sovereignty, librarians can promote awareness of these concepts with an emphasis on protecting the cultural property rights of local Indigenous communities. From lands to brands, librarians can start to highlight forms of misappropriation that technically do not violate U.S. copyright law and then promote the Tribal Nation's sovereign power to pass laws protecting those items. Librarians are in a unique position to educate non-Tribal members on a core tenet of Indian law—the power and authority of a Tribe to govern itself and its people.[192] Moreover, librarians can educate on the concept of "cultural heritage" and what items of cultural property, both tangible and intangible, that a Tribe may desire to protect within its own laws to avoid misappropriation.[193] The problem only worsens with examples such as unapproved videos crawling across the internet without authorization.[194] Librarians must take notice and act.

Redesigning Knowledge Organization

¶79 Another avenue of action includes redesigning the informational knowledge and research infrastructure of academic libraries and others to support Indigenous communities in their knowledge management.[195] In most library and information science programs, knowledge management is often characterized as "the practice of creating indexes, thesauri and classifications, semantic networks, and ontologies."[196] These practices are part of a greater social construction shaped by geographic location and cultural context.[197] Current Indigenous knowledge is "poorly supported by current research infrastructure."[198] There exists a lack of understanding regarding Indigenous perspectives and how the people often take a holistic approach to the environment and how everything connects to each other.[199] This misunderstanding has often led to academic researchers taking "knowledge, artifacts, plants, or animals . . . and then recirculating them for their own purposes, often economic."[200] Even transposing information into a

191. Angela R. Riley, *The Ascension of Indigenous Cultural Property Law*, 121 Mich. L. Rev. 75, 75–78 (2022).

192. *Id.* (*See also* Williams v. Lee, 358 U.S. 217 (1959).

193. Riley, *supra* note 193.

194. *Id.*

195. Meadows, *supra* note 44.

196. Ann Doyle, Kimberely Lawson & Sarah Dupont, *Indigenization of Knowledge Organization at the Xwi7xwa Library*, 13(2) J. Libr. & Info. Stu. (2015) 107, 114, https://doi.org/10.6182/jlis.2015.13(2).107.

197. *Id.*

198. Meadows, *supra* note 44; *see also* Kevin Brown, *The Role of an Indigenous Nations Library Program and the Advancement of Indigenous Knowledge*, 42 Collection Management 196, 197 (2017), https://doi.org/10.1080/01462679.2017.1367342.

199. Meadows, *supra* note 44.

200. *Id.*

database can lead to stripping the right of an Indigenous government from deciding how they want that knowledge to be used or represented.[201]

¶80 The second step or call to action is to educate administrators across library systems to understand these perspectives and the pitfalls of any misunderstanding. The Indigenous perspective is fundamental to the foundation of any research or information gathering centered on Indigenous communities.[202]

Revisiting Collections and Materials

¶81 Librarians should consider what we possess in our collections and how we manage them. "The terminology and arrangements in use in libraries to organize materials on Aboriginal topics reflected the views and values of newcomers . . . including early anthropologists . . . and not Indigenous perspectives or values."[203] In short, this suggests that most academic collections consist mainly of materials written *about* Indigenous peoples instead of materials written *from* or *by* Indigenous peoples. These materials lack an Indigenous voice, an Indigenous perspective, and they are often cataloged with settler/colonizer descriptive language in the metadata.[204]

¶82 The Brian Deer Classification (BDC) system is one approach using a localized and regional response to these issues by reclassifying Indigenous materials pursuant to a structure agreed-upon with local communities.[205] Current classification models are constructed with an emphasis on individuality, hierarchy, and separations. It lacks visual texture and cross-relational understandings about how creators, contributors, objects, and more are interconnected on many levels. It is a noun-based system lacking in adverbs and adjectives that provide nuance and connections beyond a flat hierarchy. This flattening causes inadvertent erasure of Indigenous groups, misrepresentation of Indigenous peoples, and an othering that frustrates scholarship.[206] Hence, the need for creating localized and regional reclassification systems like BDC. Brian Deer completely created a new schema and system based on the materials he had in his library, the Union of British Columbia Indian Chiefs Resource Center, an action-based collection that did not fully describe all Indigenous peoples across the U.S. and Canada.[207] BDC focused on an Indigenous ordering and description of the world, its contents, and

201. *Id.*

202. *Id.*

203. Doyle, Lawson & Dupont, *supra* note 198.

204. *Id.*; *see also* Sarah Kostelecky et al. *Centering Indigenous Knowledge: Three Southwestern Tribal Collect and University Library Collections*, 42 Collection Mgmt. 180, 180-81 (2017), https://doi.org/10.1080/01462679.2017.1327914.

205. Doyle, Lawson & Dupont, *supra* note 198.

206. One example of misrepresentation comes from the Lenape people. Lenape *is not* synonymous with Delaware Tribal Nation and the nuances and overlaps are missed when their histories and materials are lumped together due to overlap in geography. This problem is compounded by mapping Indigenous Nation borders onto State borders (settler boundaries that inform a Eurocentric thinking).

207. Doyle, Lawson & Dupont, *supra* note 198.

its relations.[208] The subject headings used local Indigenous naming and spelling, with ordering based on geographical categories and Indigenous Nation-based categories.[209]

¶83 Revisiting how we collect materials and how we classify them is important because the process needs to be revised for an Indigenous perspective. "Collecting is both curatorial in nature and is the seminal step in library [knowledge organization], and secondly, that Indigenized Knowledge Organization Systems (KOSs) are fundamental to effective Indigenous information and instruction services."[210] In reviewing collections, we need to take a holistic and interrelational approach to how items and creators overlap or connect.[211] Instead of literary warrant as a policy, consider cultural warrant or Indigenous warrant—decolonize the framework for describing collections and representations in the catalog.[212] Provide local contextual knowledge—often based on oral names and language and Indigenous ways of knowing. Created dictionaries and thesauri, as well as the knowledge of local elders and communities, can provide a framework for the process. Official tribal websites and press, for example, can provide design pathways and linkages that root the naming and schema in Indigenous intercultural education and research.[213]

¶84 Reviewing a collection may provide an opportunity to expand and focus collection development on emerging Indigenous authors who provide a Tribal perspective and voice on subject matters already featured in the collection.[214] Likewise, an expansion can provide an opportunity to collect contextual materials associated with broader topics that feature an Indigenous perspective, such as "residential schools, . . . Aboriginal rights and title, endangered languages, and global Aboriginal activism."[215] It should be noted, however, that "there is not and cannot be a step-by-step guidebook to community partnerships" as a means of reviewing and revising a collection.[216] Each partnership and outreach will differ because it involves a different community.

Policies Under a Good Mind Research Protocol

¶85 Next, libraries should start creating policies that support and acknowledge Indigenous knowledge, Indigenous practices, and Indigenous perspectives.[217] Again, we suggest these policies because it is not enough for actions to be legal—they must be ethical as well. These policies must then be cross-referenced and incorporated into all

208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.*
215. *Id.*
216. Dana Reijerkerk & Kristin Nyitray, *Removing Indigenous Knowledge Boundaries: A Review of Library and Archival Collection Literature Since the Enactment of the Native American Graves Protection and Repatriation Act*, 48 Collection Mgmt. 22, 35 (2023), https://doi.org/10.1080/01462679.2022.2033144.
217. Meadows, *supra* note 44.

aspects of the research process. This is one way in which librarians can promote Indigenous data sovereignty.

¶86 Incorporating the Good Mind Research Protocol[218] of the Akwesasne Task Force on the Environment, for example, into academic research policies would be one method of educating institutions in this area. The Akwesasne Research Advisory Committee was formed in 1994 and came up with the policy in 1995.[219] The goal was to share "respect, equity, and empowerment" in ways that created "good working relationships" between researchers and the communities they visited.[220] The guiding principles were skennen (peace), kariwiio (good mind or equity), and kasastensera (strength or empowerment).[221] Using principles of peace, a researcher should be guided by universal justice and research efforts should focus on unifying efforts and walking a path of righteousness.[222] It is when we uphold the principles of peace and walk a path of righteousness that we are able to develop the research process with equity or with a good mind.[223] "It occurs when the people put their minds and emotions in harmony with the flow of the universe and the intentions of . . . the Great Creator."[224] It requires a researcher to be aware of, and dispose of, prejudice and privilege.[225] Removing these from the process systematically enables a researcher to develop kasastensera or strength in the research process.[226]

¶87 Delving more into the topic of empowerment in the research process, the Good Mind Research Protocol advises that researchers consider empowerment in the following way:

> Empowerment is defined as a sharing of power and the result of a good research agreement developed by both the community and the researcher. Each of the participants feel that their needs are being met and that their credibility is increasing. . . . The application of the research as a useful instrument of the community is balanced with the researcher's need for good science. . . . Authorship must be shared between the community and the researcher.[227]

¶88 Libraries can support researchers in their efforts by supporting a shared authorship model and cataloging metadata that captures all participants in the research and how they shared the credit for its creation. For example, many libraries use Library of Congress metadata models, and we are well aware of its gaps. LCSH has a problem with representation.[228] That means there is a problem on at least three interrelated areas:

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218. Akwesasne Research Advisory Committee, *supra* note 98.
219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. D. Vanessa Kam, *Subject Headings for Aboriginals: The Power of Naming*, 26 Art Documentation 18-22 (2007); *see also* Deborah Lee, *Indigenous Knowledge Organization: A Study of Concepts,*

- Underrepresentation and Erasure
- Misrepresentation due to factual error
- Misrepresentation due to historical classification based on biases and prejudices.[229]

¶89 This leads to "othering" and catalog bias as well as frustration for scholars.[230] An example of this would be that each Indigenous Nation is provided a cutter under a single subclass in the area. That is all. It suggests a misunderstanding or even disrespect for the sovereignty of Indigenous Nations and their activities in the United States. With all of this said, we know that the Library of Congress has worked to make changes to the current structure by implementing a new classification schedule called *Law of the Indigenous Peoples in the Americas*.[231] A better taxonomy was used and advances were made with historical spellings, geography, and traditional homelands. Broader and narrower terms were included. But these changes were made on literary warrant and do not touch the catalog that came before—the changes only deal with new acquisitions moving forward. And some issues remain unaddressed. One issue remaining is the federal status of Tribal communities:

- Some Tribes are Federally recognized, state recognized, unrecognized, and terminated. There is no delineation here.
- For example, there are five Tribal sovereign nations on Long Island in New York:
    - Only one (the Shinnecock Nation) has federal recognition, and
    - current standards can confuse a patron, for example, it can appear that there are three Stockbridge Munsee Tribes and none are named what the Community calls itself in official documents.[232]

¶90 It is up to libraries to address these issues in our own collections, perhaps taking the cataloging process of LCSH further and addressing the catalog in its entirety. Another option would be to overhaul a library's LCSH structure with a more Indigenous Centric Classification system that mimics the Brian Deer Classification system.[233] This would mean that libraries provide local contextual knowledge—often based on oral

Terminology, Structure, and (Mostly) Indigenous Voices, 6 Partnership: The Canadian J. of Libr. & Info. Prac. & Rsch. 1-29 (2011).

229. Kam, *supra note* 230.

230. *Id.*

231. Christine Bone & Brett Lougheed, *Library of Congress Subject Headings Related to Indigenous Peoples: Changing LCSH for Use in a Canadian Archival Context*, 56 Cataloging & Classification Q. 83-95 (2017), https://doi.org/10.1080/01639374.2017.1382641; *see also* Kristen J. Nyitray & Dana Reijerkerk, *Searching for Paumanok: Methodology for a Study of Library of Congress Authorities and Classifications for Indigenous Long Island, New York*, 60 Cataloging & Classification Q. 19-44 (2021), https://doi.org/10.1080/01639374.2021.1989640.

232. Bone & Lougheed, *supra* note 223; *Library of Congress Subject Headings Related to Indigenous Peoples: Changing LCSH for Use in a Canadian Archival Context*, 56 Cataloging & Classification Q. 83-95 (2017), https://doi.org/10.1080/01639374.2017.1382641; see also Nyitray & Reijerkerk, *supra* note 233.

233. *See* Alissa Cherry & Keshav Mukunda, *A Case Study in Indigenous Classification: Revisiting and Reviving the Brian Deer Scheme*, 53 Cataloging & Classification Q. 548-67 (2015), https://doi.org/10.1080/.011639374.2015.1008717.

names and language and Indigenous ways of knowing. Moreover, they could create dictionaries and thesauri that help create a structure and pathway for searching based on Tribal community input and taxonomy.

¶91 On the subject of equity, the protocol defines this generally as a "sharing of resources."[234] But it also notes that researchers must evaluate the "equity in relationship to the research."[235] Researchers must be aware of how money, networks, and political and social power combine to unbalance the power dynamic between a researcher and the community.[236] A good agreement will try to balance the power and review the structure repeatedly to rebalance it as needed.[237]

¶92 A good agreement between a Tribal nation and a researcher will seek collaboration on all possible levels and constantly create trust and cooperation.[238] This is often completed by sharing both power and resources in a way that is mutually beneficial while being culturally sensitive.[239] To appear respectful, researchers must endeavor to learn the tribes' social and political structures while being culturally sensitive to the fact that community perspectives and goals may not be the same as their own.[240]

¶93 Using these principles to achieve a Good Mind, any proposals for research involving the Akwesasne community are reviewed by the Akwesasne Research Advisory Committee.[241] These decisions can inform and strengthen Tribal governance as deeper acts of sovereignty. Yet, there is no reason that academic institutions could not mirror this approach and consider these concepts and the framework in its own policies.

Using the CARE Principles in Libraries Beyond Tribal IRBs

¶94 A third way to help Indigenous communities is through the use of the CARE Principles.[242] The CARE Principles stand for Collective benefit (whereby data ecosystems reflect Indigenous values), Authority to control (Indigenous-led projects and decision-making), Responsibility (to empower and collaborate with Indigenous communities from start to finish), and Ethics (minimizing harm to communities and maximizing their benefits).[243] "From the accessing of raw data . . . to its storage in databases, and then onto its analysis, eventual publication . . . principles like CARE . . . can guide researchers, institutions, owners of infrastructure, and those who disseminate research."[244]

234. Akwesasne Research Advisory Committee, *supra* note 98.
235. *Id.*
236. *Id.*
237. *Id.*
238. *Id.*
239. *Id.*
240. *Id.*
241. *Id.*
242. Meadows, *supra* note 44.
243. *Id.*
244. *Id.*

¶95 We are already seeing discussions of CARE Principles in specific areas like genomic research.[245] Prior to this, genomic research using Tribal resources has been highly extractive and exploitative.[246] An example is the work done at Arizona State University using samples from the Havasupai Tribe.[247] These samples and their data were entered into a large database without Tribal knowledge or approval and subsequently used freely by researchers absent Tribal approval or knowledge. The Havasupai insisted that the materials not only belonged to the Tribe, but they were parts of Tribal members, and the Tribe continued to exercise sovereignty over its members and sued the Arizona Board of Regents for the return of both the DNA and blood samples.[248] Accordingly, Tribes are passing legislation, codes, and policies that require researchers to use these principles in practice.[249]

¶96 It is important, however, that librarians and Tribes support protections and the use of CARE Principles in its broadest applications. When researchers initially collaborate with Tribes, sometimes they use these principles at the outset and sometimes not. But another area of concern is when the initial research ends, and the materials are entered into a large database with fairly open access.[250] This enables researchers to access the materials in the database without Tribal consent and the community collaboration is lost.[251]

¶97 The CARE Principles essentially act as an ethical set of guidelines that guide the initial research process, but also govern later storage and use. The Principles require that the Tribal Nation, and governmental body, remain in the driver's seat throughout the initial process and for any uses thereafter.[252] The collaboration between researcher and community does not end with the initial publication of one report. The respect must continue.

¶98 One example of exercising the CARE Principles is to improve the metadata for Indigenous collections and add relational contexts throughout the process. Labels indicating that Traditional Knowledge is included, clan designations, and cross-relational items showing connections are just some digital rights tools that can show support of these communities and models.[253] Access protocols and enabling what is shared, when, and with whom, can be another avenue of using CARE Principles to promote Indigenous data sovereignty.

¶99 Librarians should also consider promoting an end to "helicopter research" and practices that disregard Indigenous perspectives or diminish their voices by promoting CARE practices in our policies and educating researchers on the policies.[254] "Helicopter

245. Carroll et al., *supra* note 137.
246. *Id.*
247. *Id.*
248. *Havasupai Tribe v. Arizona Bd. of Regents*, 220 Ariz. 214, 204 P.3d 1063 (Ariz. Ct. App. 2009).
249. Carroll et al., *supra* note 137.
250. Carroll, Rodriguez-Lonebear & Martinez, *supra* note 32, at 2.
251. *Id.*
252. *Id.*
253. Meadows, *supra* note 44.
254. Ilona Kater, *Natural and Indigenous Sciences: Reflections on an Attempt to Collaborate*, 22

research" refers to the practice where a researcher makes a brief visit to gather data from a community, shares nothing, provides no opportunity for input, and then publishes the work for their own benefit without credit to the community.[255] To end this practice, we must champion collaboration with Indigenous communities.

¶100 More specifically, librarians can assist researchers in prioritizing "micro-moments of decision-making" where they learn to prioritize the People and the relationship with the community over the research.[256] Researchers need to understand that collaborating with Tribal communities requires us to choose People over data and accept that sometimes the research process needs to take longer in order to be respectful and Indigenous-led.[257]

Creating an Indigenous-Led Project and Using Collaboration

¶101 An Indigenous-led project is one that uses "Indigenous methods and values to ensure research work is ethically correct and culturally appropriate."[258] Knowing when to step up, and when to step aside, is important for research that becomes Indigenous-led and decolonizes the overall perspective.[259] The presentation of the work must also be a collaborative process.

¶102 Collaboration requires humility and empathy in great quantities.[260] It requires being a student willing to absorb wisdom. Indigenous scholars from the community can offer perspective and guide the learning.[261] "Relationships are a fundamental part of research."[262] Yet, few are willing to make friends and create lasting, informal connections. And fewer still acknowledge the power dynamics of working with Indigenous communities and how outside researchers often control the data interpretation and presentation.[263] Oftentimes, face-to-face communication with an open and honest heart will be more productive.[264] When presenting the final product, it is also important to cite community experts, all research assistants, and all contributors.[265] If the work is Indigenous-led, then it may also require extending co-authorship and credit to those contributors that provided significant input.[266] This is not often done and it is time for librarians to educate researchers on the subject.

¶103 Examples of collaboration and responsibility in these areas with Indigenous communities include the Protocols for Native American Archival Materials (PNAAM)

Reg'l Env't Change 109 (2022), https://doi.org/10.1007/s10113-022-01967-3.

255. *Id.*

256. Margaret Kovach, Indigenous Methodologies: Characteristics, Conversations, and Contexts (2009).

257. *Id.*

258. *Id.*

259. *Id.*

260. Kater, *supra* note 256.

261. *Id.*

262. *Id.*

263. *Id.*

264. Kovach, *supra* note 258.

265. *Id.*

266. *Id.*

as designed by First Nation, Aboriginal, and Native American communities to ensure best practices are used surrounding cultural expressions and Traditional Knowledge.[267] PNAAM covers Traditional Knowledge, traditional cultural expressions, and any items falling under those categories that might represent Tribal heritage passed down through generations as developed by the Tribal Nation or community.[268] The first principle espoused under PNAAM is that Tribal Nations have rights over these items of Traditional Knowledge and traditional cultural expression. As such, that right affords Tribal Nations the authority to own and oversee the use of those items in a manner that respects the Tribe's rights.[269] This creates a pathway by which librarians and libraries can learn about, acknowledge, and respect the rights of Tribes over these items. As librarians, we are already familiar with the more general *Library Bill of Rights*.[270] It is not then too far a leap to consider acknowledging Tribal rights over cultural items in respect of their sovereignty.

¶104 We can start by evaluating our collections and our metadata descriptions to provide Indigenous taxonomy and cross-relational descriptions. [271] We can look at what other institutions are doing as far as Tribal consultation for NAGPRA items and extrapolate collaborative techniques from that area.[272] There are many ways to begin the process. Moreover, it is not too far a leap to suggest that library and information science programs begin creating and promoting Indigenous knowledge and Indigenous knowledge management as part of the curriculum and overall design and understanding of knowledge management incorporation with a respect for diversity.[273] Promoting an Indigenous perspective of Indigenous knowledge, and therefore knowledge management of those materials, enables librarians to better understand tribal communities and engage in more effective outreach.[274]

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267. Kay Mathiesen, *A Defense of Native Americans' Rights over Their Traditional Cultural Expressions*, 75 Soc'y of Am. Archivists 456 (2012).

268. *Id.*

269. *Id.*; *see also* Gregory Younging, Elements of Indigenous Style: A Guide for Writing by and About Indigenous Peoples (2018). The writing process must also be a collaboration with the community to ensure that the product is Indigenous led and fulfills the needs of Indigenous voices.

270. Library Bill of Rights, ALA Am. Libr. Ass'n (2019), https://www.ala.org/advocacy/intfreedom/librarybill.

271. Brian Clark & Catherine Smith, *Prioritizing the People: Developing a Method for Evaluating a Collection's Description of Diverse Populations*, 60 Cataloging & Classification Q. 1-21 (2022), https://doi.org/10.1080/01639374.2022.209042.

272. *See* 43 CFR part 10. (The regulations to enforce NAGPRA were recently changed, and the changes became effective on January 12, 2024. *See* 88 Fed. Reg. 86452 (Dec. 13, 2023)).

273. Loriene Roy, *Infusing Knowledge of Indigenous Lifeways into Graduate Collection Management Education*, 42 Collection Mgmt. 351, 351-52 (2017), https://doi.org/10.1080/01462679.2017.1351902. *See also*, University of Arizona LIS 550: Information Environments from Non-dominant Perspectives, which explores the interconnectedness of information forms and environments (libraries, museums, archives, electronic, mass media, etc.) from different theoretical and cultural perspectives. Contrasts each with Native American and Hispanic experiences in information and library settings. LIS 550: Information Environments from Non-Dominant Perspectives, Univ. of Ariz. School of Info. https://ischool.arizona.edu/course/lis-550-information-environments-non-dominant-perspectives [https://perma.cc/SYX4-C3KJ].

274. Roy, *supra* note 276.

¶105 Finally, we must also consider ethical practice on these issues and how librarians and archivists can continue to engage ethically with Tribal data. Ethical practice, generally, is not new for librarians and archivists.[275] We are obligated by ethical codes in use to protect information from theft or destruction, protect privacy, and generally ensure access to information.[276] But these general rules also require us to acknowledge that the diverse communities that we serve will sometimes have different needs and this includes Indigenous communities.[277] "At the center of any successful collaboration is a process for initiating and building relationships based on trust and mutual respect."[278] From an ethical perspective, the partnership and collaboration must be equal on both sides.[279] Possessing archival skills, writing skills, comparing styles and processes, and finally choosing pathways together can enrich the entire process.[280] To make this happen, the researcher and the Tribe create a memorandum of understanding or a mutual agreement to begin the process that will benefit both sides and ensure that issues are solved before the research process gets underway.[281] An agreement can be a written agreement by letter or email, or it can take a format looking more like a contract.[282] Again, it is important to remember and respect the sovereignty of these actions.

¶106 In short, we can take away several general ideas to inform best practices. First, is to be methodical, flexible, and open with constant communication with Tribal communities.[283] The process of requesting and maintaining the approvals needed before research will be time-consuming but worth the effort once research begins. Second, the researcher must be open and willing to see not only bias but all agendas and motivation behind their work.[284] The researcher must be willing to set aside agendas and work toward goals that benefit the community first. Third, a researcher must be constantly communicating in an effort to fully appreciate the Tribal perspective and how to learn from the community in the most respectful and complete way.[285] Fourth, a researcher needs clear guidelines and timelines, hence the need for an Memorandum of Understanding (MOU) that lays out project deliverables and timelines for all parties.[286] This constant communication and collaborative efforts up front require an enormous

275. Elena S. Danielson, The Ethical Archivist 301–37 (2010).

276. *Id.*

277. Mathiesen, *supra* note 269; *see also* Deborah McGregor et al., Indigenous Research: Theories, Practices, and Relationships (2018).

278. Elizabeth Joffrion & Natalia Fernandez, *Collaborations Between Tribal and Non-Tribal Organizations: Suggested Best Practices for Sharing Expertise, Cultural Resources, and Knowledge*, 78 Am. Archivist 192, 193 (2015).

279. *Id.* at 205.

280. *Id.*

281. *Id.* at 207.

282. *Id.*

283. *Id.* at 212.

284. *Id.* at 213.

285. *Id.*

286. *Id.* at 214.

amount of patience and flexibility.[287] Finally, a best practice requires equal support, financially and otherwise, on both sides for the project to start effectively.[288]

¶107 An example of ethical conduct can be seen in the creation of the Plateau Peoples' web portal.[289] At its heart, the Plateau Peoples' web portal is a digitization project that is nearly fully-led by the Tribal communities. The Tribal Nations involved with this portal worked with a project developer and director to collaboratively curate and manage objects on the site.[290] These objects include traditional stories, songs, pottery, photos, maps, beadwork, and other cultural items. Access to items on the site is controlled by a series of protocols approved by the Tribal community. To make this work, a lot of meetings involved non-Tribal members' listening to the elders and Tribal project leaders.[291] An MOU along with several internal Tribal resolutions outlined the project's goals, scope, and directions.[292] These documents were crucial to support the sovereignty of Tribal governments and engage with communities in an ethical fashion. Meetings with Tribal leaders and experts required the designers to fashion metadata in a manner approved by the Tribe. Tribal schemas and relations between fields provided a deeper understanding of how items and people were interconnected. Tribal dictionaries and thesauri can be created from these same efforts. Access protocols can account for seasons, and traditions and customs that limit access to materials. For example, certain stories on the site may not be accessible during the summer because traditional stories of fur-bearing animals might only be available in the winter. The Tribal community designs the access as well as the metadata. Ultimately, each party must be assured that they are working together for the same purposes and no other purpose is hidden in another agenda.

¶108 It is the concern about hidden agendas, fundraising, or fame, that can lead Tribal governments and communities to mistrust outside researchers. Oftentimes a scholar will find themselves in a situation where U.S. copyright law fails to prevent their use of cultural items and the Tribe has no written statute or procedure to protect it. In these instances, a researcher may feel that they can use the materials without crediting anyone in the Tribe, without getting permission from the Tribe, and without any direction on what use would be appropriate. From a U.S. law perspective, the researcher has done nothing wrong. But from an ethical perspective, that researcher has not performed their work in the best way and may have perhaps misappropriated items from a Tribe. Oral traditions, songs, ceremonies, and stories are often considered communal, evolving, and something that cannot be seen as fixed in time such that it has an identifiable author that can be protected under U.S. copyright but may still be protected by Tribal custom. Ethical practice requires that we move beyond what is simply permitted under law. Ethical practice requires that we reach out to Tribal governments as part of

287. *Id.* at 214-15.
288. *Id.* at 21.
289. *Id.* at 208.
290. *Id.*
291. *Id.*
292. *Id.*

our normative practices to receive approvals before we start research. Ethical practice requires that we reach out to Tribal leaders and elders steeped in culture once we receive Tribal government approvals. It should be noted here that MOUs can also be viewed as examples of where and how to craft agreements with Indigenous communities. And librarians are well-suited to educating researchers about these practices.

¶109 Moreover, librarians can create policies to make these practices normative for their research and the research of other scholars. To date, many institutions do not possess a written policy on these best practices for research and outreach to Tribal communities.[293] Many institutions do not use the Protocols for Native American Archival Materials in their policies and their practices with Tribal community outreach.[294] This matters because a Tribally-led project requires constant input from community members, constant approval of process and procedure, and mechanisms for limiting access and use of materials in the project.[295] These projects can also be seen as a wonderful opportunity for interdisciplinary training, whereby Native students learn research and archival practices while non-Tribal project members learn best practices for education and research among Tribal communities.[296]

Conclusion

¶110 In sum, we note that United States copyright law only covers what it considers to be a "fixed" expression by an identifiable author. For a work to be protected under that U.S. copyright law, it cannot be seen as evolving without a fixed medium in a known format. Further, any claim that a copyright has been infringed under U.S. copyright law can be avoided if fair use is proven. The United States passed this law, and participates in international treaties on the subject, as an expression of its sovereignty as a nation. Yet, it does not extend that courtesy to Tribes.

¶111 We also note that sovereignty is understood as the power of a nation to govern itself and any exercise of that power is an exercise of sovereignty. Passing laws on data and copyright issues are simply an act of sovereignty. In the case of U.S. law, however, many aspects of Tribal life, culture and tradition remain unprotected. Tribal Traditional Knowledge and cultural expressions, for example, are unprotected by U.S. copyright law. This gap in protection leads to misappropriation. This gap requires filling by an exercise of Tribal sovereignty and Indigenous data sovereignty. Data sovereignty means managing information in a way that is consistent with the laws, practices, and customs of the nation-state in which it is located. The ID Sov movement insists that Indigenous Peoples have the right to govern and control their own data and Traditional Knowledge and how such is collected, used, and published as part of further research. ID Sov

293. *Id.* at 209; *see also* examples at *ABOR 1-118 and UArizona Consultation Policies*, Univ. of Ariz., Native Am. Advancement Initiatives & Rsch. https://naair.arizona.edu/research-engagement-guidelines [https://perma.cc/K7J8-7BRU].

294. Joffrion & Fernandez, *supra* note 281, at 209.

295. *Id.*

296. *Id.* at 211.

asserts that these circumstances would include third-party collection and collaboration/creation for scholarly uses. This control would be an application of the inherent sovereignty of Tribal Nations. From the Ho-Chunk Nation to the Pascua Yaqui Tribe, a few codes and resolutions exist to govern Traditional Knowledge. There are over 574 Tribal Nations in the United States but only some are creating copyright laws to exert and reclaim control over Tribal or Indigenous data and Traditional Knowledge. But Tribes are moving away from traditional models of data dependency. Tribes can and do pass codes that provide layered protections for intangible items falling under Traditional Knowledge, genetic resources, and traditional cultural expressions that are not presently protected by U.S. law.

¶112 Librarians also have a role to play in the promotion of Indigenous data sovereignty. Librarians can promote awareness of ID Sov, its meaning, its purposes, and goals. Librarians can advocate for Indigenous collaboration and development. We can support and promote opportunities for more Indigenous copyright statutes and legislation. Librarians can also educate administrators across library systems to understand these perspectives and call for the drafting of internal policies and procedures within the academic communities that use the CARE Principles to promote Indigenous data sovereignty. Librarians can call for and lead efforts to increase collaboration and communication with local Tribal communities. We can promote and encourage MOUs[297] with local Tribes on archival storage and metadata practices that support the CARE Principles.[298] Finally, librarians can support acts of sovereignty by local Tribes and recommend where they may act as a sovereign to protect their Indigenous data.

297. For more information on MOUs and how to craft one, we recommend visiting the Department of Justice's Community Oriented Policing Services (COPS) page. *Tribal MOU/MOA Sample Resource Library,* COPS Cmty. Oriented Policing Servs., https://cops.usdoj.gov/tribalpolicing/mou_moa_resource_library (last visited Sept. 14, 2023).

298. One example would be the *Navajo Nation Department of Water Resources (NNDWR) Library Preservation Project,* a collaboration between the Navajo Nation and the University of Arizona. The online article referenced here mentions the MOU between the Tribe and UA. *Tuesdays with Haury*, Agnese Nelms Haury Program, Univ. of Arizona & Ariz. Inst. for Resilient Env'ts & Soc'ies (May 31, 2022), https://mailchi.mp/e39f2137d408/twh_053122.

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The Value of Law and Library Degrees in the Legal Information Profession*

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This article investigates the value of library and law degrees in the legal information sector. For the purposes of this research, three key types of value to both law librarians and their employers are examined: employment requirements, usefulness to workplace responsibilities and tasks, and financial value. The article analyzes the requirement of law and/or library degrees in law library jobs across the United States and concludes that a library degree is universally beneficial across all three areas. Law degrees, meanwhile, are increasingly valuable in the hiring market and provide added knowledge and skills that underpin many common job responsibilities but may be undervalued financially.

Implications for Practice

1. A library degree is a common baseline for hiring legal information professionals and is demonstrably useful in competently completing many common job responsibilities.
2. Individuals holding a library degree have a good chance of securing competitive compensation.
3. Law degrees hold increasing value in the hiring market in most legal information sectors and provide knowledge and skills that underpin many common job responsibilities.
4. Law degrees may lead to higher salaries than can be expected by those who hold only a library degree but do not consistently provide a significant boost in pay within the profession.

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Introduction

Motivation for the Research

¶1 Many of us working in the legal information sector have probably been told, or perhaps told someone else that "you need a law degree to work in a law library." This belief in the need for dual degree legal information professionals is almost universal in the academic sector, which employs a significant number of law librarians across the country and represents a significant percentage of the members of our professional association, the American Association of Law Libraries (AALL). It is worth pausing to consider, however, where this belief comes from and how valid it is.

¶2 At a time when there are significant concerns about dwindling academic library applicants and urgent discussions about how to ensure a steady stream of professionals entering the legal information profession in the future, it seems risky to accept the necessity of a potential barrier to the profession in the form of a standardized requirement for

dual library and law degrees[1] without deliberate examination of the value of each degree. Concerns that individuals will either leave or choose not to enter the legal information profession because of the rigorous educational requirements compared to the comparatively low pay in the field have existed for decades, and yet deliberate study of what each degree contributes to the profession has been lacking. This research sets out to study the value associated with both library and law degrees and to compile data that can be drawn upon to inform vital discussions about future education and employment practices that will ensure a thriving legal information profession.

¶3 The research focuses on three key types of value to both legal information professionals and their employers: employment requirements, usefulness to workplace responsibilities and tasks, and financial value. These value markers were chosen in a deliberate attempt to avoid the realm of intangible value apparent in concepts such as knowledge for the sake of knowledge or value markers based on local practice, such as the idea that academic law librarians need to have a law degree in order to teach or achieve tenure.[2] Employment requirements represent foundational value to law librarians in securing a paying job and to employers who wish to ensure that their employee is equipped with the knowledge and skills represented by a particular degree. Both law librarians and their employers recognize the practical value of degrees that allow librarians to competently undertake common workplace responsibilities and tasks. Finally, salary is a quantifiable marker of financial value to both employers and employees.

Structure of the Research

¶4 In the following sections of this article, an initial literature review establishes an overview of historic and current perceptions of the value of library and law degrees in the legal information profession. The perspective of commentators in the literature review is then compared to data collected and published from 2009 through 2022 in both the *AALL Biennial Salary Survey & Organizational Characteristics* (also known as the *Salary Survey*) and in the *2021 AALL State of the Profession* report. Additional data is provided in a new analysis of the requirement for law and/or library degrees in 217 legal information job descriptions advertised online in the AALL Career Center,

1. For the sake of consistency and simplicity, I will refer to a JD or its equivalent as a law degree, and an MLS or its equivalent as a library degree throughout this article.

2. Individual law schools may set such a requirement, but the American Bar Association (ABA) Standards do not specify degree requirements beyond the position of library director. They require law school faculty to have "a high degree of competence, as demonstrated by academic qualification, experience in teaching or practice, teaching effectiveness, and scholarship." ABA Section of Legal Educ. and Admissions to the Bar, Standards and Rules of Procedure for Approval of Law Schools 401 (2023-2024) https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch4.pdf. The specific academic qualification required is not stated here or elsewhere in chapter 4, and Standards 603 and 604 only recommend that a library director have dual degrees while additional law library personnel should be "sufficient in expertise and number to provide the appropriate library and information resource services to the school." ABA Section of Legal Educ. and Admissions to the Bar, Standards and Rules of Procedure for Approval of Law Schools 604 (2023-2024) https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch6.pdf.

American Library Association (ALA) JobList, and GovernmentJobs.com between May and December 2022. To further supplement these sources, I also conducted a new survey of current legal information professionals to capture perceptions of degree value. This legal information professional survey assessed how relevant professionals believe their degrees are to their job and collected data on degrees held, workplace degree requirements, salary range, and job responsibilities.

¶5 The combination of qualitative and quantitative data collected in these sources provides an overarching view of the current value of library and law degrees in the legal information profession that will be useful to anyone interested in the employment potential generated by holding a library and/or law degree, to those making decisions about degree requirements when hiring for a new legal information position, and to anyone interested in the future of degree requirements in the legal information profession.

Findings of the Research

¶6 Overall, the information collected on the three value indicators selected for this research project make it clear that both degrees carry unique value within the legal information profession. A library degree carries widespread value across the field in these metrics, while a law degree may be undervalued financially.

¶7 The consistently high value of a library degree provides significant implications for hiring practices in the field, while offering a strong predictor of value to future professionals trying to decide which degree(s) to pursue. Similarly, the clearly identified areas of value attached to a law degree can help those considering whether to pursue this degree a realistic expectation of when it may be worthwhile to do so. The recognition of a trend toward financial undervaluing of law degrees, meanwhile, highlights a significant area of potential improvement for those wishing to recruit and retain skilled legal information professionals, and for anyone concerned about a dwindling pool of candidates for many positions and the reality of maintaining a robust pipeline into the profession in the future.

Literature Review

¶8 In 2014, Elizabeth Caulfield provided a detailed, chronological review of the history of debate over educational requirements for law librarians in the U.S.[3] This article will not attempt to replicate the thorough discussion provided in that article but offers a summary of some of the common themes discussed in relation to the value of both law and library degrees in the legal information profession over the years.

Historic Practices and Perceptions

¶9 A high standard for those wishing to enter the academic law library profession was evident early on, with one 1947 article referring to the "well recognized minimum

3. Elizabeth Caulfield, *Is This a Profession? Establishing Educational Criteria for Law Librarians*, 106 Law Libr. J. 287 (2014).

standards necessary for the competent law school librarian"[4] and observing that new professionals "should have as a minimum, degrees from college, library school and law school, and in addition some practical experience either in library or in legal work."[5] This represents an increase from earlier discussions of the appropriate training for law librarians, such as Frederick Hicks's 1926 call for general training in librarianship supplemented by specific law librarianship training offered through library schools and "some actual study of the contents of law books."[6] Despite these calls for increasingly rigorous educational standards for academic law librarians, a 1936 survey of law librarians in all sectors found that only 5 percent of respondents had both library and law degrees,[7] while just 7 percent of respondents in academic law libraries had both degrees.[8]

¶10 The American Library Association (ALA) approved standards making the master's in library science (MLS) the professional credential for the information sector in 1951,[9] which clarified the appropriate credentials for librarians generally and made the MLS a standard within the profession.[10] While the MLS provided a standard credential for librarians, the value of an MLS has been questioned within the legal information sector.[11] Certainly, in 1951, there was a perception that legal education was often more important than a library degree, although some commentators disagreed, pointing out that "the functions of a law librarian are, after all, those of a librarian, not those of a lawyer."[12]

¶11 By 1957, Miles O. Price observed that "both law and library degrees for the librarians of the larger school collections are coming to be the rule."[13] A 1957 survey of librarians at 100 law schools found that a quarter of respondents had both law and library degrees,[14] which is a significant increase from the 1936 survey noted previously. The dual-degree requirement was more prevalent in law schools than in other sectors, however, and a survey of law librarians published in 1971 still found that less than 10

4. Harry Bitner, *The Educational Background of the University's Law Librarian*, 40 Law Libr. J. 49, 50 (1947).

5. *Id.* at 53.

6. Frederick C. Hicks, *The Widening Scope of Law Librarianship*, 19 Law Libr. J. 61, 67 (1926).

7. Bitner, *supra* note 4, at 55.

8. Laurent B. Frantz, *The Education of the Law Librarian*, 44 Law Libr. J. 94, 97 (1951).

9. Boyd Keith Swigger, The MLS Project: An Assessment After Sixty Years 1 (2010).

10. For studies demonstrating the widespread extent of MLS requirements in academic librarian jobs see: Claudene Sproles & David Ratledge, *An Analysis of Entry-Level Librarian Ads Published in American Libraries, 1982-2002*, 5 Elec. J. of Acad. and Special Librarianship (2004), https://southernlibrarianship.icaap.org/content/v05n02/sproles_c01.htm; Teresa Y. Neely & Kathleen B. Garcia, *Entry-Level Jobs in Academic Libraries, in* How to Stay Afloat in the Academic Library Job Pool 23 (Teresa Y. Neely ed., 2011).

11. Eric A. Cooper, *Credentialing Challenges and the MLS – Securing the Law Librarian's Credibility within the Legal Profession*, 9 Trends L. Libr. Mgmt. & Tech. 5, 5 (1998).

12. Frantz, *supra* note 8, at 97.

13. The quotation continues "for the school library of any size, large or small, the LL.B. degree, at least, tends to be required." Miles O. Price, *That Law School Librarian's Educational Qualifications: A Statistical Study*, 10 J. Legal Educ. 222, 223 (1957).

14. *Id.* at 223. In this survey, two-thirds of respondents had a law degree and half had a library degree.

percent of respondents had both a library and law degree.[15] By 1998, the "requirement for law librarian positions, particularly reference and administrative openings, generally include both the MLS and JD."[16] Especially in the academic sector, as time has gone on, "having both graduate degrees has become more common and required for the majority of job openings."[17]

Current Practices and Perceptions

¶12 Even now, the preference for dual-degree candidates in the academic law library sector sometimes overshadows the reality that this is not a requirement across all sectors. It is worth remembering that, in recent decades, "fewer than one-third of law librarians have law degrees"[18] and most non-academic legal information professionals, such as those in firms, hold only an MLS.[19] In fact, some recent commentators report on new efforts to deliberately open hiring to candidates with only a library or only a law degree as a way to ensure a larger and potentially more diverse pool of applicants.[20]

Degrees in the Academic Sector

¶13 The requirement for dual-degrees in academic law libraries is a departure not only from other sectors within the legal information profession, but also from non-law libraries where "no other specialty routinely assumes that the librarian will hold the terminal degree in the discipline for which she provides services."[21] As few as 1 percent of medical librarians hold both medical and library degrees, for example, and just 20 percent of business librarians hold both an MBA and MLS.[22] While the medical and business fields are different from the legal field in many ways, all three represent professions in which requirements for advanced study are the norm and in which subject-specialist information professionals are frequently employed in the academic and professional sectors.

¶14 In fact, academic libraries often employ specialist librarians across a wide range of subject areas, such as medicine, science, engineering, education, art, or business, in separate stand-alone libraries or in liaison positions to the relevant departments. Even in these academic library settings where dual-degrees are most common, a 2016 study

15. Kathleen Price & Nancy Kitchen, *Degree-Oriented Study among Law Librarians*, 64 Law Libr. J. 29, 29 (1971).

16. Cooper, *supra* note 11, at 5.

17. Annalee Hickman Moser, *Have You Ever Considered Becoming a Law Librarian*, Student Law. 4, 5 (Nov.-Dec. 2017).

18. Mary Whisner, *Law Librarian, JD or Not JD*, 100 Law Libr. J. 185, 185 (2008).

19. James M. Donovan, *Order Matters: Typology of Dual-Degreed Law Librarians*, 33 Legal Reference Services Q. 1, 31 (2014). Theodora Belniak, *The Law Librarian of the Twentieth and Twenty-First Centuries: A Figuration in Flux*, 101 Law Libr. J. 427, 447 (2009).

20. Ryan Metheny, Michelle Trovillo & Scott Vanderlin, *Reference Desk: Recruiting the Next Generation in the Profession*, AALL Spectrum, 44, 45 (Mar.-Apr. 2023). Brian Barnes, *Ask A Director: Recruiting the Next Generation of Law Librarians*, AALL Spectrum, 30 (Mar.-Apr. 2023).

21. Donovan, *supra* note 19, at 1.

22. Stephen E. Young, *The Dual Degree: A Requirement in Search of a Justification*, AALL Spectrum, 7, 8 (Dec. 2012).

found that just one-third of advertised librarian positions asked for a second advanced degree even when they required advanced subject knowledge.[23] Meanwhile, in 2009, most respondents to a survey of academic librarians questioned the need for an advanced subject degree.[24]

Rationale for Degree Requirements

¶15 In the legal information sector, stated reasons for requiring both library and law degrees include the ability to interpret library resources for legal professionals and additional benefits for those in the academic sector, such as the ability to understand the problems faculty and students encounter, increased respect from law students, and beneficial expertise for assisting faculty with questions related to their legal scholarship.[25] Several commentators have noted that a basic understanding of legal terminology and concepts is vital in order "to provide competent, let alone exceptional, service to clients"[26] and that a mixture of both library and legal knowledge is necessary for any legal information professional.[27]

¶16 Additional benefits of holding a law degree specifically include "knowledge of legal institutions, legal terminology, and substantive law; ability to read legal materials; knowledge of legal culture; comfort in dealing with law students, lawyers, and law professors; interest in law."[28] A law degree is frequently seen as especially important for reference librarians, but less vital in other roles such as technical services or circulation.[29]

¶17 A library degree, meanwhile, is perceived as vital to roles such as circulation, but some commentators also highlight the value of a library degree in areas such as research and reference. Reference interview skills in particular, are cited as important in allowing librarians to ask pertinent questions to identify the materials that a library user needs.[30]

¶18 Despite the perceived benefits, some commentators dispute claims that holding a law degree provides significant value to legal information professionals, arguing that "no amount of law school would ever be enough to provide sufficient knowledge to

23. Jennifer Ferguson, *Additional Degree Required? Advanced Subject Knowledge and Academic Librarianship*, 16 PORTAL: LIBRARIES & THE ACAD. 721, 731-2 (2016).

24. Debbi A. Smith & Victor T. Oliva, *Becoming a Renaissance Reference Librarian in Academe: Attitudes Toward Generalist and Subject Specific Reference and Related Profession Development*, 38 REFERENCE SERVICES REV. 125, 140 (2010).

25. Bitner, *supra* note 4, at 53. Michael J. Slinger & Rebecca M. Slinger, *The Law Librarian's Role in the Scholarly Enterprise: Historical Development of the Librarian/Research Partnership in American Law Schools*, 39 J.L. & EDUC. 387, 396 (2010). Dan J. Freehling, *The Status of Academic Law Librarians and Faculty Status for Librarians: An Introduction*, 73 LAW LIBR. J. 887, 890 (1980).

26. Vanessa O'Meara & Melanie Adam, *Part 1: So, You Want to be a Law Librarian*, 15 AUSTL. L. LIBR. 45, 50 (2007). For additional discussion see also: Whisner, *supra* note 19, at 187.

27. O'Meara & Adam, *supra* note 26, at 50. Bitner, *supra* note 4, at 56-7.

28. Whisner, *supra* note 18, at 186.

29. Slinger & Slinger, *supra* note 25, at 396-8.

30. Andrew Bennett, *The Law Librarian Without a JD*, HALLMARKS (Aug. 9, 2022) https://hallblog668151976.wordpress.com/2022/08/09/the-law-librarian-without-a-jd/ [https://perma.cc/3YPK-D45J].

tackle the breadth of questions reference librarians receive."[31] Even those who do not advocate for legal information professionals to have law degrees often recognize the value of other forms of formal study in law-related subjects.[32] Alternatives to a formal law degree include courses offered by professional associations, law library specializations in library school, work experience, fellowships, and Master- or Bachelor-level alternatives to a JD.[33] Similarly, some recent commentators have highlighted the importance and relevance of alternatives to a library degree, instead suggesting that degrees focused on technology and data will be more valuable in many roles.[34]

Financial Value of Degrees

¶19 While there is debate over the value of degrees as a requirement for employment, there are also questions surrounding the financial value of degrees, with uncertainty around the connection between degrees and higher employment status or salary for those who hold them. In the academic legal information sector, some commentators note that markers such as faculty status and/or tenure are equally or more important in raising "the stature of librarians so that they would be viewed as equals in the educational process rather than second-class citizens."[35] As one respondent caustically pointed out in response to a survey reported in 1980, even something concrete like faculty status may become "an empty benefit which just adds obligations (e.g., publishing, increased participation in professional activities, etc.) without materially improving the librarian's lot as probably the worst paid of all professions."[36]

¶20 Concerns about low pay appear repeatedly across the profession, with worries that individuals who complete a law degree will "leave the library profession for the more lucrative practice of law."[37] One report in 1945 cited low salaries and the requirement of five years of higher education as the primary recruitment barriers in librarianship generally,[38] while recruitment difficulties following World War II "included competition from other academic programs leading to occupations that paid better, had greater prestige, and did not require as many years of higher education."[39] A 1948 survey found that the majority of academic law librarians were paid less for a year's work than the lowest salaries of law faculty teaching for two semesters, while even the highest paid law librarians earned several thousand dollars less than other law faculty.[40] In 1951,

31. Young, *supra* note 2, at 7.

32. O'Meara & Adam, *supra* note 26, at 48.

33. *Id.* at 47-8. Bitner, *supra* note 4, at 60. Whisner, *supra* note 18, at 186. Caulfied, *supra* note 3, at 322-4. Cas Laskowski, *Response to DEI and De-Credentialization*, Firebrand Lib Blog (Dec. 15, 2022) https://firebrandlib.com/response-to-dei-and-de-credentialization/ [https://perma.cc/G5KC-YDM3].

34. Metheny et al., *supra* note 20, at 45.

35. Freehling, *supra* note 25, at 890.

36. Reynold J. Kosek, *Faculty Status and Tenure for Nondirector, Academic Law Librarians*, 73 Law Libr. J. 892, 900 (1980).

37. Price & Kitchen, *supra* note 15, at 32.

38. Swigger, *supra* note 9, at 11.

39. *Id.* at 14.

40. Law librarians also had less access to additional benefits. Miles O. Price, *The Law School Librarian*, 1 J. Legal Educ. 268, 269 (1948).

Laurent B. Frantz explicitly cited the need for law schools to "allot their librarians the same salary and prestige which goes with full professorship in law"[41] if newly heightened expectations of academic law librarian qualifications were to be maintained. The necessary increase apparently did not materialize, because six years later other authors continued to comment on the need for law schools to offer increased pay and status[42] to keep highly qualified law library candidates in the profession.

¶21 There continues to be a gap in salaries between traditional law faculty and law librarians in the academic sector. A 2022 study of the average salaries of academic law librarians with teaching responsibilities found that "non-director librarians make about 47 percent less than non-dean faculty."[43] This study found gaps in salaries even in comparison to groups of faculty who are generally lower in the law school hierarchy such as legal writing and clinical faculty.[44] The President of the Association of American Law Schools noted in 2020 that non-tenure track faculty, which often includes law librarians, are paid as little as half or a quarter of what tenure-line faculty are paid at some schools "even though the number of hours worked and student contact hours are often the same, if not greater."[45] One study of academic library job advertisements published in 2000 also found evidence of salary compression in the field, and noted that "positions that preferred experience differed only slightly in salary from entry-level positions."[46]

General Library Salaries

¶22 Unfortunately, depression in wages is common for librarians outside the legal information profession as well. Earnings data from 2000 indicated that librarian salaries were "comparable to the earnings of skilled craftspeople and those of professionals whose work does not require master's degrees."[47] The problem of salaries that are too low to properly compensate dual-degreed librarians has also been noted across the entire academic library sector, and is not limited solely to the JD and MLS combination.[48] It is important to remember, of course, that library salaries vary widely across sectors and specializations. One study published in 2004, for example, found that in academic libraries entry-level salaries for systems librarians were consistently higher than for reference or cataloging positions across a 20-year period.[49] Generally, however, low pay is a common

41. Frantz, *supra* note 8, at 98.

42. Price, *supra* note 13, at 224. M. Minnette Massby, *Law School Administration and the Law Librarian*, 10 J. Legal Educ. 215, 218 (1957).

43. Olivia Smith Schlinck, *Academic Law Librarians Are Paid 47% Less Than Their Faculty Counterparts*, RIPS Law Librarian Blog (Feb. 4, 2022) https://ripslawlibrarian.wordpress.com/2022/02/04/academic-law-librarians-are-paid-47-less-than-their-faculty-counterparts/ [https://perma.cc/W6K9-T27L].

44. *Id.*

45. Darby Dickerson, *President's Message: Abolish the Academic Caste System*, AALS News (Fall 2020) https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system/ [https://perma.cc/R7CF-MGJD].

46. Penny M. Beile & Megan M. Adams, *Other Duties as Assigned: Emerging Trends in the Academic Library Job Market*, 61 Coll. & Rsch. Libraries 336 (2000).

47. Swigger, *supra* note 9, at 34.

48. Smith & Oliva, *supra* note 24, at 141.

49. Sproles & Ratledge, *supra* note 10.

aspect of ongoing concern that is seen in the legal information profession just as it is in the wider information profession.[50]

Student Debt Concerns

¶23 Comparatively low wages in the field compound the initial financial disadvantage that legal information professionals face if they take on the standard levels of student debt associated with the years of study involved in completing both a library and law degree. As Scott Vanderlin succinctly put it, "the current cost (read: debt load) of those two degrees together can range anywhere from 'unmanageable' to 'actually crippling.'"[51] Concerns about the negative impact of skyrocketing student loan debt on individuals and the legal information profession are frequently noted, and these concerns are heightened by the reality that these debts disproportionately hamper the diverse and underrepresented individuals the profession would most wish to welcome.[52] Beyond addressing the student debt crisis, one potential solution is to prioritize the critical responsibility "to advocate for salaries that adequately compensate our new hires."[53]

¶24 Some commentators have pointed out that salaries in the legal information field are often higher than in other types of libraries, so it can be a good field for qualified librarians without a JD to choose to enter, but the requirement for both law and library degrees in many positions limits the roles that single-degree librarians can apply for. [54] A shrinking field of applicants has heightened the historic concern that individuals will either leave or choose not to enter the legal information profession because of the rigorous educational requirements and comparatively low pay. While earlier commentary sometimes found a lack of available academic library jobs, particularly at the entry level,[55] others have noted regular openings in the legal information profession.[56] There are now significant concerns about dwindling law library applicants and how to ensure a steady stream of professionals entering the field in the future.[57] This happens at a time when the entire academic library sector reports difficulties hiring, with positions commonly remaining open for up to a year and an increase in failed searches.[58]

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50. Bitner, *supra* note 4, at 52. Bryan Carson, *Librarian: Who's Entitled to the Title? Librarians Need Certification and Licensing*, AALL Spectrum 13 (June 1997). Cooper, *supra* note 11, at 8.

51. Metheny et al., *supra* note 20, at 46.

52. Kristina J. Alayan, *The Promise & Peril of the Public Service Loan Forgiveness Program*, AALL Spectrum, 23 (Mar.-Apr. 2023).

53. *Id.* at 25.

54. Schlinck, *supra* note 43. See comments on this blog post by RP and Barbara Ginzburg.

55. Neely & Garcia, *supra* note 10, at 23, 13, 16, 18, 20, 29.

56. Moser, *supra* note 17, at 6.

57. *See The Pipeline to the Profession (P2P) Special Committee*, https://www.aallnet.org/about-us/who-we-are/committees-juries/p2psc/ [https://perma.cc/7YBE-F8SR].

58. Joshua Doležal, *The Librarians Are Not OK*, Chron. of Higher Educ. (Mar. 23, 2023) www.chronicle.com/article/the-librarians-are-not-ok [https://perma.cc/9GSN-JBTG].

Non-Financial Benefits and Concerns

¶25 In the face of serious financial concerns around low salaries and high student debt loads, alternative advantages to working in the legal information profession can offer hope for motivating new candidates to enter and remain in the profession. Noted benefits of working in the legal information profession include the potential for flexible schedules, 40-hour work weeks, relative job security, good benefits, and intellectual stimulation.[59]

¶26 Some academic law librarians also have access to additional non-financial benefits, such as tenure, which may provide a boost to pay, job security, and academic freedom. Some commentators have questioned the purported value of tenure. The academic sector faces unique drawbacks, such as standard 12-month contracts, while law faculty counterparts are on nine-month contracts.[60] Additionally, academic staff may be excluded from the tenure system[61] or relegated to a separate law library faculty with lower status. They are also required to work standard 35 to 40-hour weeks with regularly scheduled commitments that routinely interrupt the workday.[62] The potential benefit of holding law and library degrees in the academic sector is also complicated by deeply ingrained hierarchies embedded in the law school system that ensure "professors of experiential-based skills courses, such as legal writing professors, academic success and bar prep faculty, clinic professors, and research librarians"[63] possess a lower status in the school. In this context, a law librarian may find holding dual degrees particularly valuable as a marker of legitimacy and credibility in the law school community. A 2008 survey examining when law librarians choose to list their educational degrees found that legal information professionals across sectors are very aware of the beneficial ways their degrees may be perceived by others.[64]

¶27 Even with dual degrees, however, the low status of law librarians in the law school hierarchy means that most academic law librarians face hierarchical microaggressions,[65] which can establish feelings of stress and imposter syndrome. Feelings of impostor syndrome may undercut some of the workplace value of holding a law degree, such as becoming a peer in faculty research processes or increased empathy with students, as individuals may begin avoiding interactions with traditional law school faculty or negatively perceive law students who question the individual's qualifications.[66] Furthermore, the longstanding association of law librarianship with traditional "women's work" means

59. Moser, *supra* note 18, at 5.

60. *Id*. Schlinck, *supra* note 43.

61. Sara L. Ochs, *Imposter Syndrome & The Law School Caste System*, 42 Pace Law Rev. 373, 391 (2022).

62. Jamie J. Baker, *The Intersectionality of Law Librarianship & Gender*, 65 Vill. Law Rev. 1011, 1020-1023 (2020). Carol A. Parker, *The Need for Faculty Status and Uniform Tenure Requirements for Law Librarians*, 103 Law Libr. J. 7, 26 (2011).

63. Ochs, *supra* note 61, at 375.

64. Christine L. Sellers, *Credentials and Credibility – A Survey and Candid Discussion of Whether or Not Law Librarians Should Show off Their Educational Degrees*, AALL Spectrum 26, 29 (Feb. 2008).

65. Baker, *supra* note 62, at 1027.

66. Ochs, *supra* note 61, at 400.

the profession is often viewed solely in a supporting role in the law school hierarchy, valuable primarily for its ability to free up the time of higher value members, such as law professors, administrators, and students.[67]

Impact on Diversity

¶28 The association of librarianship with women's work highlights longstanding tension around the entry of diverse populations into the legal information profession and complicates the question of necessary degrees within the field. The increase in dual degree requirements for academic law librarians between the 1950s and 1970s aligned with a decrease in the number of women in the profession, while a current increase in women in academic law library director positions aligns with a trend to shift those positions away from traditional law faculty tenure status.[68] Both librarianship in general and law librarianship in particular have a disproportionally high percentage of women in the profession and have the accompanying lower status and pay that are associated with women.[69] An additional gender pay gap has impacted the pay law librarians could expect to receive since at least 1957, when it was found that the highest salaries in the profession were awarded to men.[70]

¶29 Concerns about diversity in the profession extend beyond gender, however, and commentators have raised serious concerns about the impact of student loan debt on marginalized communities.[71] The increased negative impact of student loan debt on those in marginalized communities only further heightens the existing burden of high student loan debts that those entering this relatively low-paying profession with dual degrees now face. In fact, the MLS alone is sometimes cited as a barrier to entry into the library profession that could negatively impact diversity,[72] and the requirement for dual library and law degrees only adds to this potential barrier.

Remaining Questions

¶30 Ongoing conversations about how to ensure that a steady stream of diverse individuals will enter and remain in the legal information profession lends new urgency to the century-long debate and discussion about minimum educational requirements for legal information professionals and chronic concerns about undervaluation of the profession. The literature provides conflicting opinions and evidence from debate over the past century, but the cycle described by Elizabeth Caulfield as taking place in academic law libraries is illuminating. She describes a cycle in which increased standards

67. Baker, *supra* note 62, at 1028.

68. *Id.* at 1022-3.

69. *Id.* at 1020-1023. Doležal, *supra* note 43.

70. Massby, *supra* note 42, at 219.

71. Itunu Sofidiya, *Student Loan Relief and the Value of Black Student Life*, Notes Between Us (Nov. 28, 2022) https://notesbetweenus.com/2022/11/28/student-loan-relief-and-the-value-of-black-student-life/ [https://perma.cc/EMW5-5HWN].

72. Ioana G. Hulbert & Curtis Kendrick, *Assessing the Racial Diversity of Librarians*, Ithaka S&R (April 18, 2023) https://sr.ithaka.org/blog/assessing-the-racial-diversity-of-librarians [https://perma.cc/5CWH-77LX].

for law libraries and librarians lead to increased expectations by law librarians for parity with law faculty, which in turn leads to increased expectations by employers that librarians hold law degrees—and so the cycle repeats.[73] The pattern seems clear, but the question is whether the cycle is complete or if there is a gap surrounding the central expectation of parity. Are legal information professionals in any sector equitably compensated for the degree(s) they are required to hold? If not, one must question the implications for the real value of library and law degrees and for the work legal information professionals do with them.

Results of Current Research

Sources of Information

¶31 In addition to the perspective provided in the literature summarized above, several additional sources of information are collected and investigated here to provide current insight on perceptions and practices in the field.

AALL Sources

¶32 AALL regularly collects and publishes data about employment practices across the legal information profession, and several AALL reports were reviewed for relevant data. Specifically, this included reviewing the biennial *AALL Salary Surveys* from 2009 through 2022 and the *AALL State of the Profession* report from 2021 for data related to degree requirements and salary ranges. The *AALL Salary Surveys* were selected to provide a snapshot of salary trends in the field over time, while the *2021 State of the Profession* report adds more current detailed information about degree requirements and salary ranges.[74]

Job Advertisement Study[75]

¶33 To get an accurate picture of hiring and employment trends in the legal information profession, I collected 217 job descriptions from the AALL Career Center, ALA JobList, and GovernmentJobs.com between May and December 2022. This time period was selected to provide a snapshot of the hiring practices in the field during the period the research was conducted and offers a point of comparison to the older trends identified in the literature and AALL surveys and report. A research assistant helped to assess the job advertisements for position titles, type of library, degree requirements, experience requirements, salary, and primary responsibilities noted in the job descriptions to establish:

73. Caulfied, *supra* note 3, at 304.

74. Please note the *2023 AALL State of the Profession* report had not yet been released when this research was completed.

75. The author wishes to thank Yahdiel Ivonne Mora, a graduate of the University of Louisville Brandeis School of Law who provided invaluable support as a research assistant with this study.

1. the number of advertisements that require various combinations of law and library degrees;
2. the distribution of degree requirements across sectors;
3. any correlation between degree requirement and salary range;
4. and any correlation between degree requirements and job duties.

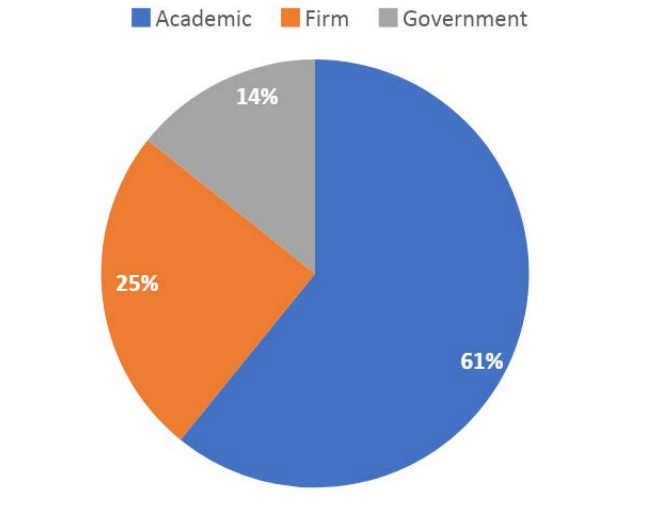

FIGURE 1
Jobs by Library Type

¶34 Over half the jobs assessed were in the academic sector (see Figure 1). Practices and opinions in the academic sector are also well documented in the other sections of this paper since this sector is widely represented in the literature, in responses to the AALL surveys and report, and in the legal information professional survey. Although it is important to note that practices in the academic sector may not always align with practices in other sectors, it is clear from this sampling of job advertisements that the academic sector is likely to hire many of the legal information professionals currently looking for work in the U.S. It is certainly worthwhile to know what is happening in the academic sector as a major employer in the legal information profession.

Legal Information Professional Survey

¶35 From November 2022 through February 2023, I conducted an online survey of current legal information professionals to further clarify the value of library and law degrees in the legal information profession. With approval from the University of Louisville's Institutional Review Board, I developed and distributed the anonymous electronic survey (see Appendix 1) via three AALL listservs and LinkedIn. The survey assessed how relevant currently employed legal information professionals believe their degree(s) is to their job, and collected data on degrees held, workplace degree requirements, salary range, and job responsibilities. I then compiled responses to this survey

in a spreadsheet, and hand-coded answers to the open-ended questions to identify any trends in respondent answers.

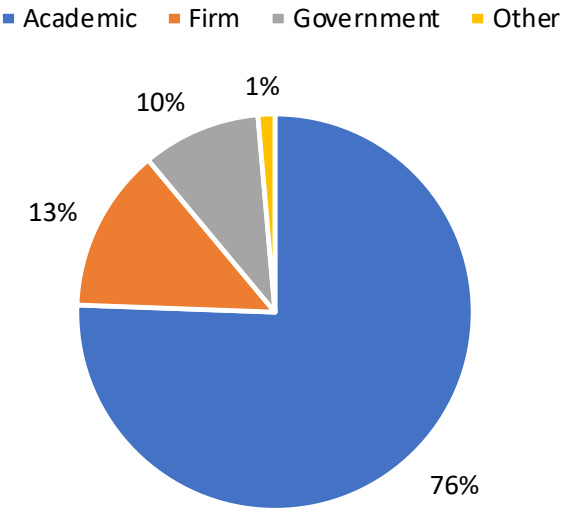

FIGURE 2
Responses by Sector

¶36 The survey collected 216 responses in total, which is equivalent to roughly 6 percent of the current AALL professional membership,[76] with three quarters (76%) of survey respondents employed in the academic sector (see Figure 2). The over-representation of respondents from the academic sector means that once again, conclusions drawn from this survey are most representative of that sector, but differences in results from firm and government sector responses will be noted wherever possible in the following analysis.

Indications of Value

¶37 As previously mentioned, this research focuses on three key types of value to both legal information professionals and their employers: employment requirements, usefulness to workplace responsibilities and tasks, and financial value. All the sources outlined above provide important insight on these three value markers and help clarify where value may be rising or falling in particular sectors, jobs, or other areas within the legal information profession.

Prevalence of Law and/or Library Degrees

¶38 The prevalence of law and library degrees across the legal information profession provides quantifiable information about the value of these degrees in terms of

76. As of Aug. 11, 2023, AALL had 3,472 fully paid members, but only 39 percent of AALL members identify as being in the academic sector. American Ass'n of L. Libraries, Facts & Figures (2023), https://www.aallnet.org/community/membership/by-the-numbers/ [https://perma.cc/USE8-5QCD].

hiring practices and employment requirements. According to the *2021 AALL State of the Profession* report, only in academic law libraries do the majority (72.8%) of legal information professionals report holding a law degree.[77] Slightly less than half of respondents (44.7%) hold a law degree in government law libraries,[78] while only a small minority (18.5%) hold a law degree in firm or corporate law libraries.[79] The percent of legal information professionals who hold a library degree, meanwhile, is more consistent across sectors, with 97.5 percent of law librarians in academic,[80] 89.5 percent in government,[81] and 88.2 percent in firm or corporate[82] law libraries holding a library degree according to the *2021 AALL State of the Profession* report.

¶39 These trends are repeated in the *2021 Salary Survey*, where only in the academic sector do the majority (63.2%) of professionals report holding both law and library degrees.[83] Dual law and library degrees are less common in the government sector, accounting for just over a quarter (27.2%) of professional positions, while those holding only a library degree account for nearly half (49.4%) and those holding only a law degree account for just 10 percent of professional positions.[84] In the firm or corporate sector, a small minority (10.3%) of those in professional positions have dual library and law degrees or a law degree alone (6%), while over half (64.8%) of professionals hold only a library degree.[85]

¶40 The percent of respondents to the *AALL Salary Surveys* who hold both library and law degrees has increased over time since 2009 in all sectors (see Table 1), with a low of 30.1 percent of respondents holding both degrees in 2009 to a high of 40.8 percent a decade later in 2019. When divided by sector, this increase is most pronounced in the academic and government sectors. Professionals who reported holding both degrees increased between 2009 and 2021 from just below half (49.8%) to just over half (63.2%) in the academic sector, and from 18.5 percent to 27.2 percent in the government sector. The percentage of respondents who reported holding only a library degree decreased in both sectors during the same period, moving from 36 percent to 29 percent in academic libraries and from 58.3 percent to 49.4 percent in government libraries. Slight increases in the percent of respondents who reported holding dual degrees in the firm or corporate sector during the same period (from 8.5% to 10.3%) may not be significant enough to represent ongoing trends, but bear watching in the future. In all three sectors the percentage of respondents who held only a law degree is significantly smaller than the percentage who hold only a library degree.

77. American Ass'n of L. Libraries, AALL State of the Profession 2021 9 (2021) [hereinafter *State of the Profession*].

78. *Id.* at 70.

79. *Id.* at 41.

80. *Id.* at 9.

81. *Id.* at 70.

82. *Id.* at 41.

83. American Ass'n of L. Libraries, AALL Biennial Salary Survey & Organizational Characteristics 2021 15 (2021) [hereinafter 2021 *AALL Salary Survey*].

84. *Id.* at 19.

85. *Id.* at 17.

TABLE 1[86]

AALL Salary Surveys

Degrees Held	2009	2011	2013	2015	2017	2019	2021
All Respondents							
MLS & JD	30.1%	33.2%	34.3%	37.3%	39.7%	40.8%	39.3%
MLS (No JD)	49.3%	48.3%	48.1%	47.6%	44.3%	43.2%	44.6%
JD (No MLS)	5.2%	5.9%	4.8%	5.0%	5.0%	5.7%	5.8%
Academic Law Libraries							
MLS & JD	49.8%	55.1%	57.1%	57.8%	60.4%	60.9%	63.2%
MLS (No JD)	36.0%	33.1%	33.3%	33.2%	32.6%	31.4%	29.0%
JD (No MLS)	6.0%	5.8%	4.9%	3.4%	3.5%	4.7%	4.3%
Firm/Corp Law Libraries							
MLS & JD	8.5%	8.4%	7.1%	9.1%	9.3%	10.6%	10.3%
MLS (No JD)	63.6%	65.7%	67.0%	68.6%	65.6%	64.1%	64.8%
JD (No MLS)	3.8%	4.9%	4.1%	5.9%	5.5%	6.4%	6.0%
Government Law Libraries							
MLS & JD	18.5%	24.1%	26.3%	28.3%	30.8%	27.1%	27.2%
MLS (No JD)	58.3%	53.8%	49.5%	50.4%	40.6%	44.6%	49.4%
JD (No MLS)	6.5%	9.0%	6.6%	8.8%	9.4%	8.4%	10.1%

¶41 The AALL surveys and report make it clear that dual library and law degrees have increasing employment value in the academic and government sectors, while a library degree alone is gradually losing employment value in these sectors. A library degree alone, however, is still by far the most common degree requirement in both the government and firm or corporate sectors, and accounts for most single-degree respondents across all sectors.

¶42 Similarly, most advertisements collected in the job advertisement study require a library degree, while the requirement for a law degree is less pronounced (see Figure 3). The high percentage of job advertisements that require a library degree confirm that this degree is a valuable prerequisite to employment for many positions in the legal information profession, although many jobs prefer or require a law degree as well.

86. Incorporates data from: American Ass'n of L. Libraries, the AALL Biennial Salary Survey & Organizational Characteristics 2009 (2009). American Ass'n of L. Libraries, the AALL Biennial Salary Survey & Organizational Characteristics 2011 (2011). American Ass'n of L. Libraries, the AALL Biennial Salary Survey & Organizational Characteristics 2013 (2013). American Ass'n of L. Libraries, AALL Biennial Salary Survey & Organizational Characteristics 2015 (2015). American Ass'n of L. Libraries, AALL Biennial Salary Survey & Organizational Characteristics 2017 (2017). American Ass'n of L. Libraries, AALL Biennial Salary Survey & Organizational Characteristics 2019 (2019). *2021 AALL Salary Survey*, *supra* note 83.

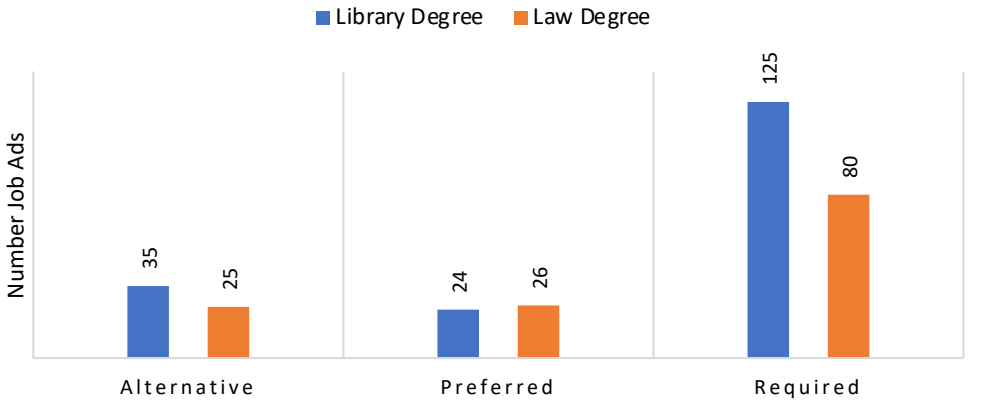

FIGURE 3
Degree Requirements in Job Ads

¶43 Several job advertisements required either a library or law degree (noted as an alternative in Figure 3) or equivalent experience to substitute for the missing degree. It was noticeable, however, that dual law and library degrees were preferred or required in substantially more job advertisements from the academic sector than from firm or government sectors (see Figure 4). Most jobs advertised in the firm or corporate sector, meanwhile, preferred or required only a library degree. The government sector was notable for accepting the widest range of degree qualifications, with job advertisements requesting everything from a high school diploma through upper-level graduate or professional degrees.

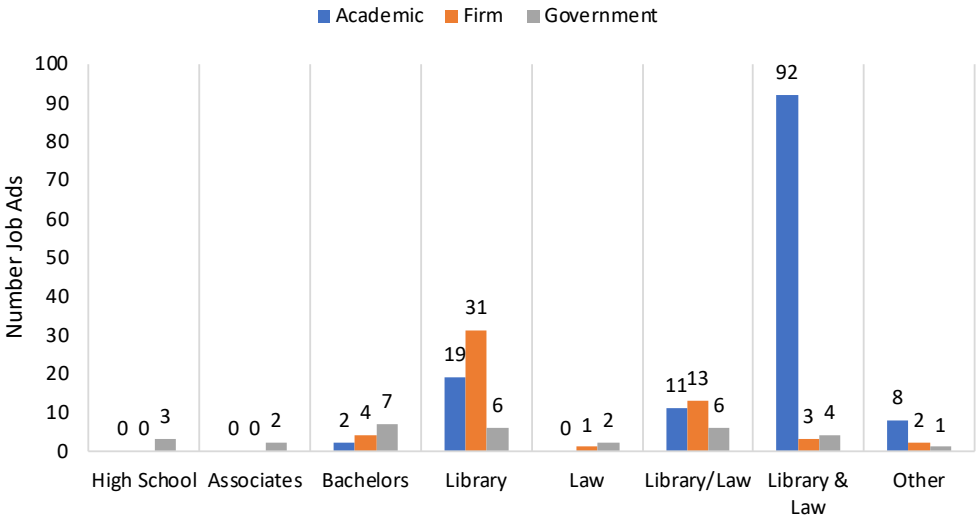

FIGURE 4
Preferred / Required Degree by Sector in Job Ads

¶44 Based on the job advertisements collected in this study, dual library and law degrees are highly valued for employment purposes in the academic sector, while a library degree alone is particularly valuable for hiring purposes in the firm or corporate sector. In the government sector, no single degree or degree combination was uniquely valued for hiring purposes across the selection of job advertisements.

¶45 The legal information professionals survey repeated similar hiring and employment trends seen in the previous sources. Over half (68%) of respondents to the survey reported holding both library and law degrees, while roughly a quarter (24%) held only a library degree and very few (4%) held only a law degree (see Figure 5). This is similar to the pattern seen in previous sources, where it is most common for legal information professionals to hold dual library and law degrees, followed by a library degree alone.

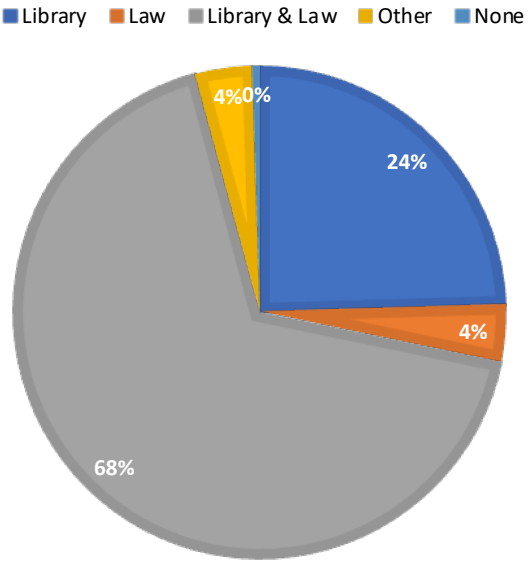

FIGURE 5
Degree Held by Legal Info. Professionals Surveyed

¶46 The vast majority of respondents to the legal information professional survey (91%) stated that a library degree is required for their current position, while just over half (62%) stated that a law degree is required. As seen above, just over half (68%) of the survey respondents hold both library and law degrees, which closely tracks with the percentage employed in a position requiring a law degree. In line with previous sources, the academic sector accounts for most positions where a law degree is required (see Figure 6).

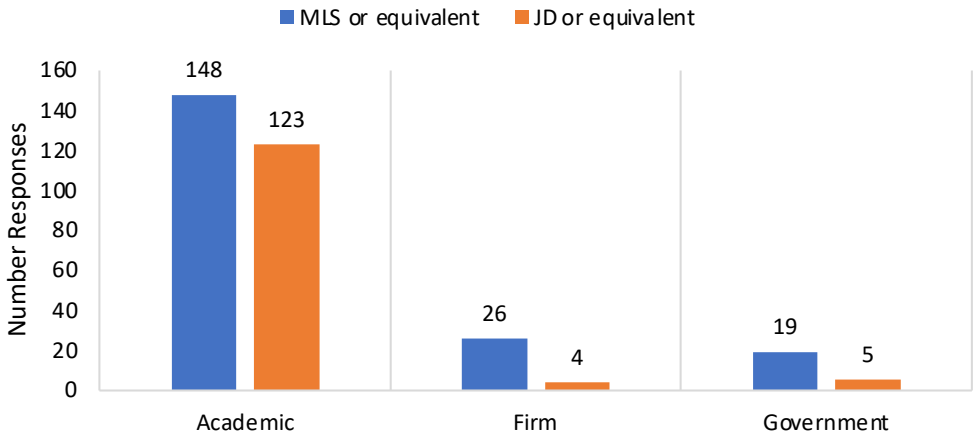

FIGURE 6
Required Degree by Sector in Legal Information Professional Survey

Impact on Skills or Ability

¶47 Hiring and employment requirements are not the only indicator of value, however, and the literature discussed the way law and library degrees develop different skills, knowledge, and abilities which are important for individuals to competently undertake common workplace responsibilities and tasks. For example, law degrees are frequently noted as being valuable to improve legal research skills. The high percentage of professionals who hold a law degree in the academic sector in the *2021 AALL State of the Profession* report makes it possible to examine whether a correspondingly high percentage of professionals in that sector feel confident in their legal research skills. While a large percentage of respondents in the academic sector indicate that they have expertise in legal research, a similar percent of respondents from the corporate or firm sector where only a small portion of respondents hold law degrees also indicate that they have expertise in legal research.[87] Self-reported rates of expertise in legal research are broadly similar in the government sector as well.[88] The universally high percent of legal information professionals who report expertise in legal research regardless of the sector they are employed in, indicates that large numbers of respondents both with and without a law degree feel very confident in their legal research skills.

¶48 While an increasing percentage of dual degree respondents did not correspond with any increase in the percentage of professionals who report expertise in a key skill like legal research in the *2021 AALL State of the Profession* report, it is possible that there is some gradation in perception of the value of particular degrees to legal research skills.

87. 80 percent of respondents in academic law libraries, *State of the Profession*, *supra* note 77, at 103, and 82.3 percent in firm or corporate, *State of the Profession*, *supra* note 77, at 161.

88. 87.7 percent of respondents, *State of the Profession*, *supra* note 77, at 225.

Similarly, skills other than legal research may align more closely with one degree than the other.

¶49 Several questions in the legal information professional survey delve further into this issue, and the overwhelming majority of respondents to the survey agreed that their degree(s) informs their daily work.[89] Respondents with a law degree, either alone or in combination with a library degree, expressed more confidence that their degree informs their daily work than those with only a library degree.[90] Similar trends are apparent in responses to a question asking if the individual would struggle without their degree(s). Most respondents agreed that they would struggle with their daily work without their degree(s),[91] but there was a difference in the strength of this agreement. Sixty-three percent of respondents with only a law degree strongly agreed that they would struggle without their degree, while just 21 percent of those with only a library degree strongly agreed.[92] Similarly, the majority of respondents to the legal information professional survey stated that their degree(s) makes them more successful in their current job,[93] but once again there was stronger agreement among those with a law degree as compared to a library degree. A clear majority of respondents with only a law degree (88%) or with both law and library degrees (77%) strongly agreed that their degree(s) makes them more successful in their job, while just over half (57%) of those with only a library degree strongly agreed. Based on these questions, legal information professionals with a law degree are more strongly aware and confident in the practical value of their degree in successfully and competently completing their daily work than professionals with only a library degree.

¶50 Even though most respondents to the legal information professional survey agreed that there were positive outcomes associated with their degree, there was no agreement among respondents that another degree would improve the quality of their work. When asked how much they agreed or disagreed that another degree would improve the quality of their work, 38 percent of respondents remained neutral, with 28 percent somewhat agreeing, and 18 percent somewhat disagreeing. Responses to this question were generally consistent across the type or number of degrees that individuals held. Responses to other survey questions indicate that those with a law degree were more confident that their degree(s) supports and informs successful work than those with only a library degree, but there was no corresponding perception among those with only a library degree that earning another degree would improve the quality of their work.

89. 69 percent strongly agree and 26 percent somewhat agree.

90. 88 percent of respondents with only a law degree strongly agreed, 76 percent of respondents with both degrees strongly agreed, and 47 percent of those with only a library degree strongly agreed.

91. 36 percent respondents strongly agree and 36 percent somewhat agree.

92. Those with both law and library degrees fell in the middle on this question, with 41 percent of respondents strongly agreeing that they would struggle without their degrees.

93. 72 percent strongly agree and 23 percent agree.

Positions Aligned with Law and/or Library Degrees

¶51 Individual perceptions of how a degree impacts workplace skills and abilities are subjective. Another way to assess which skills a degree most develops is by examining the degree requirements for various library positions. Making a degree a hiring requirement for a position indicates that an employer believes the person filling that position will be better able to successfully undertake the associated work if they have completed the required degree(s). For a degree to be included as a hiring requirement for a position, it can be presumed that the employer believes that the knowledge, skills, and abilities gained in the completion of that degree are a base-level benchmark for the ability to complete the work of the position. This fuses the concepts of a degree's value in allowing an individual to complete workplace responsibilities and tasks with the value of the degree as an employment requirement in the form of a basic hiring threshold.

¶52 The *2021 AALL State of the Profession* report provides significant insight on the competencies and positions that correlate with library and/or law degrees. For example, according to the *2021 AALL State of the Profession* report, only a small minority (12.5%) of those working in technical services or cataloging in the academic sector hold a law degree.[94] This tracks the minimum education requirements noted in the *2021 AALL State of the Profession* report for technical services librarians in academic law libraries, where just 10.9 percent report that a law degree is required and the vast majority (82.6%) cite a library degree as the minimum requirement.[95] *The 2021 AALL Salary Survey* provides similar information, and notes a minimum education requirement for technical services librarians in academic law libraries as an MLS or equivalent[96] with a library degree as the minimum requirement for catalog and serials librarians in academic law libraries.[97] The *2021 AALL Salary Survey* also notes a library degree as the standard qualification for technical services librarians in the government sector,[98] while a library degree is preferred for technical services librarians in the firm or corporate sector.[99] It is clear that library degrees are valuable in terms of hiring practices for technical services and cataloging positions across all legal information sectors. This aligns with the literature reviewed previously, which indicated that a law degree is less relevant than a library degree to technical services work and tasks such as cataloging or classification.

¶53 Librarians in other positions in academic law libraries commonly hold dual library and law degrees, and technical services roles are an outlier in this sector. The *2021 AALL State of the Profession* report demonstrates that dual degrees are commonly held by professionals in a wide range of positions in the academic sector such as public services, reference, or instructional services (86.7%), assistant or associate directors

94. *State of the Profession*, *supra* note 77, at 102.
95. *Id.* at 130.
96. *2021 AALL Salary Survey*, *supra* note 83, at 72.
97. *Id.* at 70-71.
98. *Id.* at 117.
99. *Id.* at 98.

(88.2%), and administration (93.5%),[100] and are nearly universal for academic law library directors (97.8%).[101] Similarly, the *2021 AALL Salary Survey* reports that all these positions are likely to either require or be staffed by individuals with both library and law degrees in the academic sector.

¶54 The nearly universal requirement for directors to hold dual degrees in the academic sector, meanwhile, corresponds with indications in the literature that both degrees are generally considered necessary for directors. In government law libraries, however, the data does not align with this theory. In the government sector, it is most common for directors to be required to only hold a library degree (45.5%), and a minority of government law libraries require only a law degree (15.2%) or both law and library degrees (21.2%).[102] This discrepancy between requirements for directors in academic and government law libraries is an important reminder of the risk of generalizing across the profession based on data from just one sector. These types of generalizations happen frequently in the literature, which often cites dual degree requirements as nearly universal without clarifying that this trend is often restricted to the academic sector.

¶55 The job advertisement study identifies 13 key areas of responsibility based on knowledge and skills referred to throughout the literature and codes the job descriptions for these areas based on the stated responsibilities and duties in each (see Figure 7) in order to further examine the relationship between particular job responsibilities and law or library degrees. The results further confirm the evidence from the literature and AALL surveys and report, indicating that library degrees are highly valuable in technical services and cataloging positions, while dual library and law degrees are more valuable in areas such as instruction and research. In the job advertisements collected, positions responsible for cataloging and technical services were most likely to prefer or require only a library degree. Positions with responsibility for instruction or teaching, research, and/or reference were most likely to prefer or require dual law and library degrees.

It is interesting to note that either the combination of dual law and library degrees, or a library degree alone, were required for every area of responsibility examined. This seems to indicate that a law degree alone may be less valuable in undertaking certain tasks and responsibilities in the legal information profession, and functions primarily as a valuable supplement to a library degree rather than as a replacement for that degree altogether.

100. *State of the Profession*, *supra* note 77, at 102.
101. *Id.* at 131.
102. 2021 *AALL Salary Survey*, *supra* note 83, at 81.

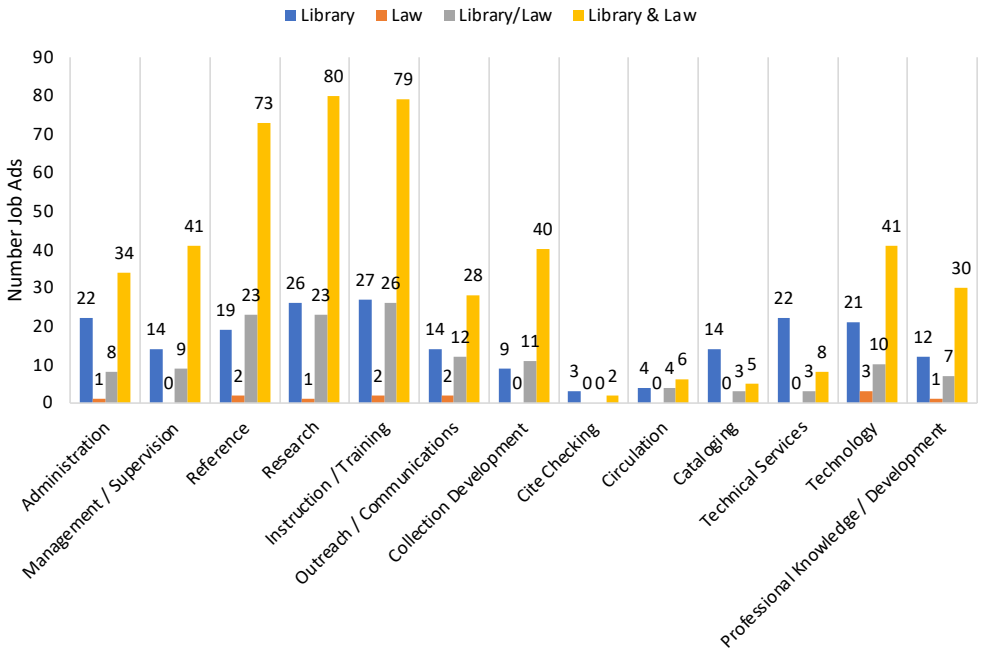

FIGURE 7
Responsibility by Preferred / Required Degree in Job Ads

¶56 The legal information professional survey provides further insight on specific areas of responsibility with which each degree is most associated. Survey respondents were asked to select their current job responsibilities from a list of 10 choices, with the option to note other areas of responsibility as needed. Matching each area of responsibility to the degree requirement that respondents reported for their position reveals connections between degree types and specific responsibilities (see Figure 8).

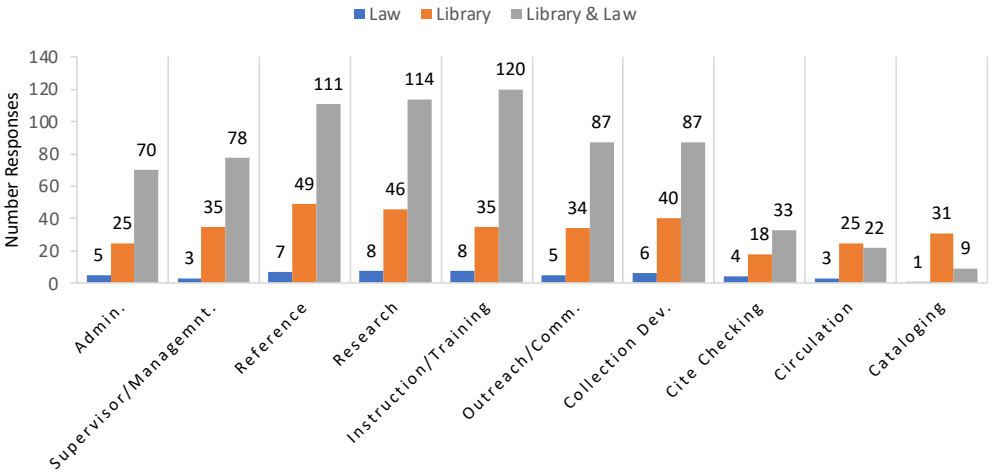

FIGURE 8
Required Degree by Area of Responsibility in Information Professional Survey

¶57 Some connections were expected, such as the trend that those in positions with responsibility for cataloging were likely to only be required to hold a library degree and unlikely to only be required to hold a law degree. Similarly, half of those in positions responsible for circulation were only required to hold a library degree while very few were required to hold a law degree. The majority of those in positions with responsibility for all the other areas surveyed were required to have both library and law degrees. Since most respondents to this survey were employed in the academic sector, the widespread requirement for dual degrees further confirms the trends seen previously that both degrees together are especially valuable for hiring and employment purposes in the academic setting.

¶58 To further scrutinize the connection between specific responsibilities and the degrees required for those performing these tasks, the data in Table 2 is arranged to highlight the areas respondents with a particular degree requirement were responsible for.

TABLE 2

Area of Responsibility in Info. Professional Survey	JD = 8		MLS = 71		JD & MLS = 129	
Administration	5	63%	25	35%	70	54%
Management/Supervisor	3	38%	35	49%	78	60%
Reference	7	88%	49	69%	111	86%
Research	8	100%	46	65%	114	88%
Instruction/Training	8	100%	35	49%	120	93%
Outreach/Communication	5	63%	34	48%	87	67%
Collection Development	6	75%	40	56%	87	67%
Cite Checking	4	50%	18	25%	33	26%
Circulation	3	38%	25	35%	22	17%
Cataloging	1	13%	31	44%	9	7%

¶59 As seen in Table 2, those employed in positions where a law degree is required, either by itself or in combination with a library degree, are likely to be responsible for research, instruction or training, and reference. For example, those in positions that require a law degree (either alone or in combination with a library degree) are roughly twice as likely to have responsibility for instruction or training as those in positions that only require a library degree. Those employed in positions that require only a library degree do not cluster so neatly into specific areas of responsibility, instead spreading across a wide variety of roles. At least a quarter of those in positions that require only a library degree are responsible for each of the 10 areas surveyed. As seen in the job advertisement study, a library degree appears to underpin a wide variety of work, while a law degree aligns with particular areas of specialization.

¶60 Responses to open-ended questions in the information professional survey asking how a library and/or law degree has benefitted respondents in their current job provides additional detail to supplement the broad selection of pre-determined workplace responsibilities. Many comments highlighted the differing areas of expertise that a library or law degree supports, with some interesting nuances that the broad selection of job responsibilities did not immediately reflect. Table 3 summarizes 20 key skills or competencies that respondents frequently noted as a benefit of each degree.

TABLE 3

Skills / Competencies in Legal Info. Professional Survey Comments	Library Degree 182 total comments		Law degree 143 total comments	
	Responses	%	Responses	%
Analytical Skills / Critical Thinking	2	1%	10	7%
Assess / Evaluate Resources	9	5%	1	1%
Collection Development / Management	20	11%	4	3%
Credibility / Authority / Respect	2	1%	30	21%
Employment Benefit (Reason Hired, Tenure, Faculty Status, etc.)	9	5%	7	5%
Employment requirement	22	12%	10	7%
Information organization	26	14%	3	2%
Instruction / Training	9	5%	52	36%
Language / Terminology	9	5%	15	11%
Management (Administration, Supervision, Personnel, Budget, Leadership, etc.)	28	15%	3	2%
Patron Support / Service	18	10%	15	11%
Professionalism (Professional Values, Ethics, Culture, Standards, etc.)	16	9%	2	1%
Reference	40	22%	25	18%
Research (Resources, Searching, etc.)	42	23%	65	46%
Subject Matter Knowledge	1	1%	35	25%
Technical Services (Cataloging, Classification, Controlled vocabulary, Taxonomy, Metadata, MARC, LC, etc.)	51	28%	1	1%
Technology (IT, Computer Services, Website, Social Media, Algorithms, Software, Hardware, Coding, Intranet, etc.)	13	7%	2	1%
Understand / Relate to Patrons	0	0%	24	17%
Understand Information Seeking Behavior / Needs / Flow	9	5%	6	4%
Understand Institution	15	8%	9	6%

¶61 Various aspects of technical services, including cataloging and classification, was the single most frequently noted competency described as a benefit of a library degree and was mentioned by 28 percent of respondents. It is a significant jump from the single person who mentioned a law degree benefitting this skill set and aligns with trends noted previously, which indicate that a law degree has limited value in cataloging and other technical services positions. Research and reference were also both frequently mentioned in the comments as being a benefit of holding a library degree. Just over 20 percent of respondents mention each, with frequent mention of reference interview skills as a concrete benefit of having a library degree.

¶62 Almost half (46%) of the comments noted research competency as a benefit of holding a law degree, meanwhile, just 18 percent of comments mention reference. The comments also frequently mention instruction or teaching skills as a benefit of holding a law degree. These are all areas of responsibility that frequently align with positions that require a law degree, and the literature often cites these as areas where a law degree provides valuable knowledge.

¶63 As expected, several comments noted the benefit of holding a library degree in securing a job compared to those that mention it in relation to a law degree. Because a requirement for dual degrees is not universal in the profession, there are more roles overall that require a library degree than positions that require a law degree at the point of entry. Interestingly, an equal percentage of comments note the benefit of a library degree and a law degree to employment beyond the basic requirement of securing the position. Commentators cited benefits ranging from the degree being the reason they were hired over others, to the conferral of specific benefits such as tenure or faculty status.

¶64 Status in the eyes of others was frequently noted as a benefit of holding a law degree, with 21 percent of commenters saying that having a law degree increased their credibility, authority, and/or respect in the eyes of those they work with. In contrast, just over 1 percent of respondents noted a similar benefit attached to holding a library degree. The literature reviewed earlier covered concerns about establishing credibility, authority, and respect, particularly in academic law libraries, and this trend continues to appear in these survey results. Survey respondents often commented on the importance of a law degree in gaining respect from fellow faculty and others with legal training and in establishing credibility with law students. In fact, being able to understand and relate to patrons, including students and faculty, was a commonly noted benefit of holding a law degree and is another benefit frequently cited in the literature. Survey respondents did not always explicitly equate increased understanding of patrons to an increase in patron support or service; however, only about 10 percent of survey respondents mentioned a direct benefit to patron support or service in their comments. It is quite possible that some respondents who noted the benefit a law degree provides in undertaking research, relating to patrons, or teaching also perceive an implied benefit to patron service through improvement in these specific areas.

¶65 Other notable differences in the benefits each degree provides include the boost a law degree provides to subject matter knowledge and the benefit holding a library degree provides in the areas of management, information organization, and collection development. A law degree is largely the study of subject matter, so it is not surprising to see this noted as a benefit of a law degree (25%) more frequently than as a benefit of a library degree (1%). Similarly, a library degree is expected to include skills related to organization of information and collection development, while a law degree is not. It is somewhat more surprising to see management noted as a benefit of a library degree (15%) significantly more often than as a benefit of a law degree (2%), since the AALL surveys and report make it clear that both degrees are commonly required for library directors and almost universally required for library directors in the academic sector. It is possible that a library degree may provide value in certain job responsibilities for

library directors such as management (which was interpreted widely in this survey to include administration, supervision, personnel, budgeting, and leadership skills), while a law degree may be valuable in other areas of responsibility for a director such as subject matter knowledge or credibility in the law school community.

Financial Value of Degrees

¶66 The third marker of value can be easily examined independently from the other two value markers already considered in the form of salary as a concrete marker of the financial value attached to law and/or library degrees. According to the *2021 AALL Salary Survey*, average salaries vary within each role based on the degree(s) held. For example, average salaries were higher for public services librarians with dual degrees (at an average salary of $77,845) compared to public services librarians with only a library degree (at an average salary of $60,796).[103] At least in the public services sphere, it appears that dual degrees carry additional financial value. Obviously, there are other factors than just the degree an individual holds that impact an individual's salary. An example of other factors impacting individual salaries likely explains why reference/research positions and instructional/reference/research positions reported in the academic sector in the *2021 AALL Salary Survey* are overwhelmingly filled by librarians with dual library and law degrees,[104] but those with only a library degree report a higher average salary than those with both degrees.[105] One potential explanation for the trend toward higher salaries for those with only one degree may be an increase in pay for additional years of experience that could offset an otherwise required second degree.

¶67 While drawing conclusions about the impact of a degree on salary is difficult at the individual level, examining overall salary trends across the spectrum of library types and positions allows generalized correlations between degrees and salaries to appear. The *2021 AALL Salary Survey* provides insight into the financial value of degrees in salaries reported across 47 job titles in professional and non-professional categories. To clarify the trends for salaries based on degrees, Table 4 combines positions based solely on the *2021 AALL Salary Survey's* stated qualifications for each role.

103. *2021 AALL Salary Survey*, *supra* note 83, at 79.
104. *Id.* at 76-8.
105. *Id.* at 76-8.

TABLE 4[106]

Sector	Titles in *2021 AALL Salary Survey*	AALL listed Qualifications	Individuals	Mean Salary
Acad.	Dir./Chief/FCIL/Instruct./Ref./ Rsch. Lib.; Assoc./Assist. Dean	MLS & JD	244	$76,091 - $162,568
Acad.	Gov. Docs./Legis./Ref./Rsch. Lib.; Assoc./Dep. Dir.	MLS, JD pref.	246	$66,995 - $106,290
Acad.	Elec. Servs./Sys./Technology Lib.	MLS, JD/comput. degree pref.	42	$76,900
Acad.	Coll. Dev./Mgmt./Pub. Servs./ Supervisory Lib.; Assist. Dir./ Dep't. Head	MLS, JD may be pref.	160	$69,321 - $87,770
Acad.	Acquisitions/Coll. Dev./ILL/Res. Sharing/Catalog/Metadata/ Serials/Continuing Res./Tech. Servs./Circ./Access Servs. Lib.	MLS	123	$58,399 - $80,854
Acad.	Comput. Technician	BA/BS/Assoc./ Tech. Degree	20	$60,604
Acad.	Admin./Mgmt./Lib. Assist./ Parapro./Clerk	BA/BS/Assoc. Degree	491	$43,398 - $49,107
Firm	Director; Chief; Head; Supervisory/ Solo/Rsch./Tech./Elec. Servs. Lib.; L. Lib./Info. Res. Manager; Info./ Rsch. Specialist/Analyst; Chief Lib. Officer; Manager of Lib. Serv.	MLS, JD may be req./pref.	198	$103,141 - $144,460
Firm	Ref./Rsch. Lib./Analyst	MLS/JD	335	$91,431
Firm	Chief Knowledge Officer; Director of KM	MLS/JD may be req./pref.	6	$212,083
Firm	Bus. & Competitive Intelligence; Elec./Tech. Servs./Catalog/ Acquisitions Analyst/Lib.	MLS pref.	101	$76,843 - $80,852
Firm	Senior Lib. Assist.; Lib. Coordinator; Parapro.; Technician; Clerk	BA/BS	127	$55,466 - $67,443
Gov.	Assoc./Dep./Assist. Dir./Chief; State/Cir./Cnty. L./Supervisory/ Branch/Satellite/Solo/Instruct./ Ref./Rsch./Pub. Servs. Lib.	MLS, JD may be held	202	$71,393 - $107,255
Gov.	Elec./Tech. Servs./Acquisitions/ Coll. Dev./Catalog/Outreach Lib.	MLS	50	$60,590 - $83,224
Gov.	Comput. Technician	BS in comput.	9	$75,635
Gov.	Admin./Lib. Assist./Technician/ Parapro./Clerk	BA/BS/Assoc. Degree	151	$38,446 - $55,055

106. All data in this table comes from *2021 AALL Salary Survey*, *supra* note 83.

¶68 Grouping positions within each sector by required qualification reveals interesting trends. In the academic sector, mean salary ranges increase steadily as qualification requirements increase, indicating that both library and law degrees carry consistent financial value. Significant outliers appear in the government and firm or corporate sectors, with roles such as Chief Knowledge Officer and Computer Technician disrupting the correlation between degree requirement and mean salary. In these cases, the number of individuals included in the report is so small that the data may represent anomalies rather than widespread trends.

¶69 Table 5 removes the sector partitions and condenses the same salary data further to reflect only stated qualifications, revealing different trends. The grouping of positions in academic and government sectors that require a library degree have a lower mean salary range than positions in firms where a library degree is preferred. Similarly, the grouping in the academic sector that requires a library degree with an additional law degree or computer degree preferred, has a lower mean salary than the grouping in the firm or corporate sector that requires only a library or law degree. Examining the salary data without sector divisions makes it clear that the value assigned to library and law degrees is not consistent across the legal information profession.

TABLE 5[107]

Sector	AALL listed Qualifications in *2021 Salary Survey*	Individuals	Mean Salary
Acad.	MLS & JD	244	$76,091 - $162,568
Acad.	MLS, JD pref.	246	$66,995 - $106,290
Acad./ Firm/ Gov.	MLS, JD may be req./pref./held	560	$69,321 - $144,460
Acad.	MLS, JD/comput. degree pref.	42	$76,900
Firm	MLS/JD	335	$91,431
Acad./Gov.	MLS	173	$58,399 - $83,224
Firm	MLS pref.	101	$76,843 - $80,852
Firm	MLS/JD may be req./pref.	6	$212,083
Gov.	BS in comput.	9	$75,635
Firm	BA/BS	127	$55,466 - $67,443
Acad.	BA/BS/Assoc./Tech. Degree	20	$60,604
Acad./Gov.	BA/BS/Assoc. Degree	642	$38,446 - $55,055

¶70 The strongest correlation between degrees required and salary, based on the *2021 AALL Salary Survey*, occurs in the academic sector, which aligns with previous evidence that dual degrees are highly valued and standardized within the academic sector. In government and firm or corporate sectors, where dual degrees were less valuable according to the other metrics assessed previously, there is correspondingly less consistent financial value associated with dual degrees in terms of average or mean salaries.

107. All data in this table comes from *2021 AALL Salary Survey*, *supra* note 83.

Despite the consistency of salary correlation with degree requirements in the academic sector, salaries in this sector are sometimes lower than salaries for positions with the same degree requirements in other sectors in the legal information profession.

Disappointingly, the majority (70%) of advertisements collected in the job advertisement study did not include salary information. The minority of advertisements that provide annual starting salary ranges offer interesting data about the financial value of each degree (see Figure 9), since an advertised starting salary removes some of the unknowns that influence an individual employee's salary such as length of service or experience.

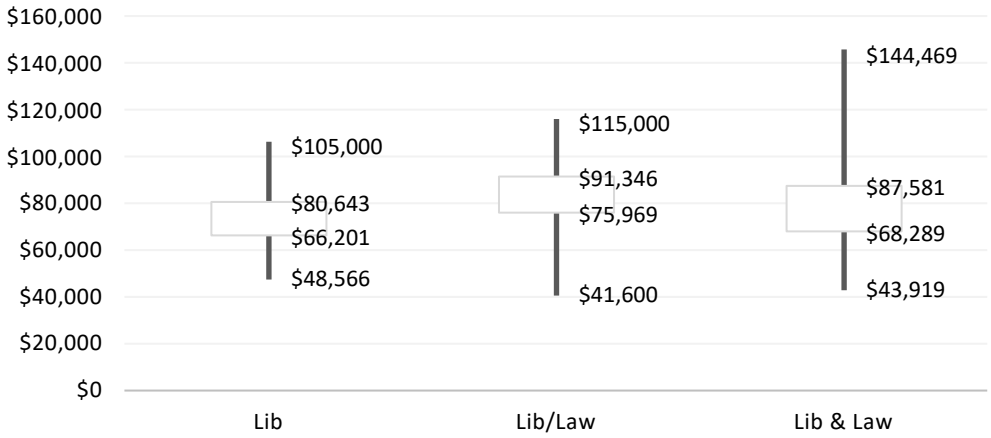

FIGURE 9
Salary Range by Preferred / Required Degrees in Job Ads

¶71 The highest starting salaries noted for jobs that prefer or require both library and law degrees was almost $40,000 more than the highest salaries quoted for jobs that prefer or require only a library degree. This difference disappears at the lower end of the starting salary range, however, and in the mean salary ranges. While some positions that require dual degrees are clearly associated with a higher salary range than either degree alone, there is no consistency about the fiscal value tied to each degree, especially at lower, introductory levels of pay. Regardless of whether a position is advertised as preferring or requiring only a library degree, law degree, or both, the average starting salary range is generally similar, and the financial value that may be attached to holding dual degrees is most evident only at the higher end of the pay spectrum.

¶72 The legal information professional survey collected additional data about salaries, where just over half of the respondents (55%) reported salaries between $70,000 and $110,000. The only respondents who reported salaries above $170,000 in this survey also reported being in the academic sector and held dual library and law (or other upper level) degrees. When salary is matched to the degree required for the position held, it becomes clear that among the respondents to this survey, those in positions that

require both a library and law degree for employment receive the highest salaries (see Figure 10).

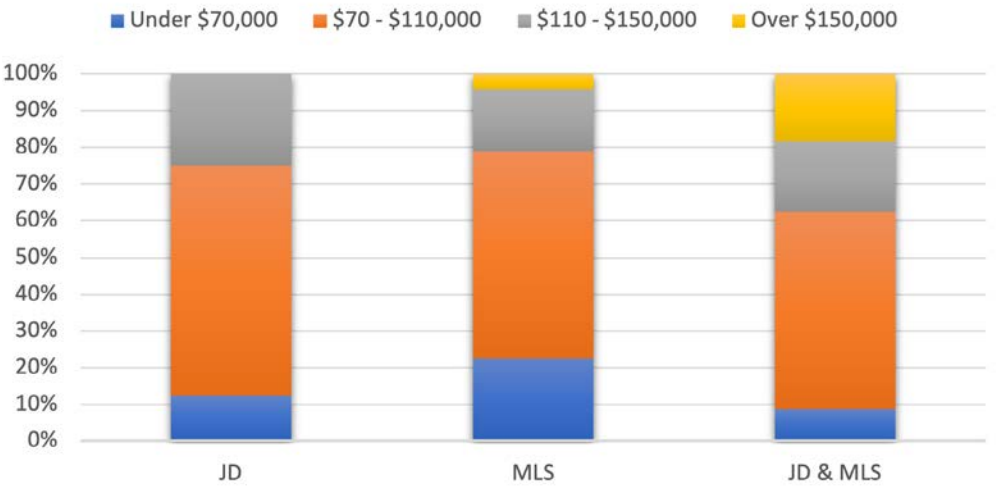

FIGURE 10
Salary by Required Degrees in Legal Information Professional Survey

¶73 Positions that require only a library degree trend toward lower salary bands, and a higher percentage of those in positions that require only a library degree report a salary of less than $70,000, compared to those in positions that require only a law degree or that require dual degrees. The pay differential is once again less marked in the lower-middle of the salary range, where 63 percent of those in positions requiring only a law degree, 56 percent of those in positions requiring only a library degree, and 54 percent of those in positions requiring both degrees fall into the $70,000 to $110,000 salary range. A nearly equal percent of respondents in positions that require only a library degree or dual library and law degrees earn salaries in the $110,000 to $150,000 range (17% and 19% respectively), while those in positions that require both degrees are the most likely group to earn over $150,000.

¶74 Breaking down salaries into smaller bands by the degree required, as in Figure 11, clarifies the way salaries for positions requiring dual degrees trend higher overall than salaries for positions requiring only one degree with respondents noting salaries from the $50,000 to $70,000 range all the way through over $190,000. Respondents holding only a library degree report salaries under $30,000 all the way through the $150,000 to $170,000 range.

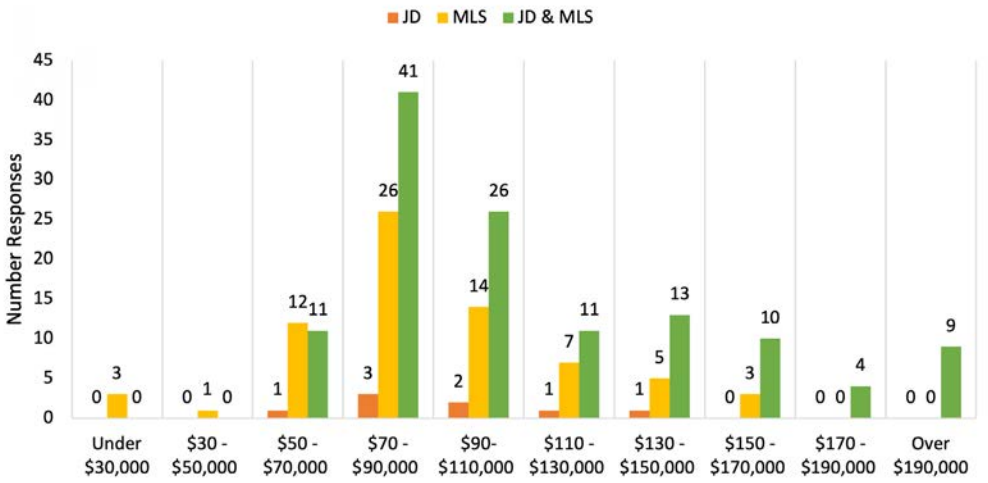

FIGURE 11
Salary by Required Degree in Legal Information Professional Survey

¶75 Figure 11 also makes it evident that despite the high and low salary outliers, the majority of positions cluster in the middle of the salary range. The range of salaries reported by those in positions requiring dual degrees reach higher values overall, but also include a higher percentage of salaries at the lower end of the dual-degree salary range in comparison to salaries for respondents in positions that require only one degree. As a result, most respondents to this survey earn salaries in the same $70,000 to $110,000 range, regardless of what degree(s) is required for their position. This $70,000 to $110,000 range is nearly the exact middle of the entire range of salaries reported in positions requiring only library degrees but is very close to the bottom of the overall salary range reported in positions requiring dual degrees.

¶76 The data from the legal information professional survey makes it clear that fiscal value is awarded to dual library and law degrees, with the highest salaries attached exclusively to positions that require dual degrees. It is also obvious that most legal information professionals in positions requiring dual library and law degrees are paid comparable salaries as professionals in positions requiring only one of the two degrees. This finding echoes the trend seen previously, which indicates that salary does not correlate consistently with degrees held across the entire legal information profession and is most consistent only in the academic sector where salaries on average are lower than corresponding positions in the government and firm or corporate sectors.

¶77 The discrepancy between salaries paid and degrees required for the bulk of positions in the legal information sector is troubling in the context of the clear value of dual library and law degrees in hiring and employment practices, as well as the value to degree holders in being able to confidently undertake their daily work. Given the widely recognized value of dual degrees, it is surprising that financial compensation for positions that require both degrees does not reflect this value with consistently higher

salaries. This evidence clarifies the concerns frequently noted in the literature that legal information professionals who hold dual degrees are not appropriately compensated, and that the legal information profession may struggle to continue to employ dual-degree individuals.

Financial Value of Degrees in Other Professions

¶78 The ability to continue to attract and retain dual-degree individuals in the legal information profession merits a brief comparison of average salaries with other professions that require the same degree for entry. Looking beyond the legal information sector to compare the salaries noted above with average salaries in other professions that require only one of the same degrees provides context for concerns that legal information professionals will leave the field for more lucrative careers in other fields for which they are already qualified.

¶79 General positions in the library and information profession can be used as a point of comparison for an alternative professional sphere that commonly requires only a library degree. The average salary for librarians of all types reported by the U.S. Bureau of Labor Statistics in 2021 was $64,180, with the median salary being only marginally lower at $61,190.[108] These salaries are at the lower end of the average salaries found in law libraries, but generally align with the salary ranges seen for legal information professionals with only a library degree. These salaries are at the lower end of the salary ranges seen for dual degree legal information professionals, which indicates that legal information professionals with dual degrees may realistically expect to earn a higher salary than an information professional outside the legal sector, but do not mark an immediate financial incentive for investment in dual degrees for new professionals who can expect to start their career at the lower end of the overall salary spectrum.

¶80 Similarly, the legal profession provides a point of comparison with traditional lawyers representing an alternative sphere of employment that generally requires only a law degree. Salaries for lawyers outstrip all but the highest paid legal information positions. The average salary reported by the U.S. Bureau of Labor Statistics for lawyers in 2021 was $148,030, with a median salary of $127,990.[109] This is significantly higher than most salary averages reported for dual-degree legal information professionals, although there are a few upper-level positions that encompass this range. Dual degree professionals have already invested in the same degree that secures a much higher paying position in the wider legal sector but will almost universally be required to accept a lower salary to enter the legal information profession instead.

¶81 While legal information professionals likely perform generally similar work to their librarian counterparts in other sectors, lawyers obviously undertake radically different work than legal information professionals. Comparing salaries between lawyers and legal information professionals cannot bring the many differences between these

108. U.S. Bureau of Labor Stats., Occupational Employment & Wage Statistics, 25-4022 Librarians and Media Collections Specialists (May 2021) www.bls.gov/oes/current/oes254022.htm#(2).

109. U.S. Bureau of Labor Stats, Occupational Employment & Wage Statistics, 23-1011 Lawyers (May 2021) https://www.bls.gov/oes/current/oes231011.htm [https://perma.cc/Q2MD-4LDC].

fields into alignment, but the financial value a degree carries in other fields is an important factor to consider when assessing the overall financial value attached to law and library degrees across the employment spectrum.

¶82 An alternative point of financial comparison that avoids the inherent inequality in job responsibilities between legal information professionals and lawyers is to assess salary as a return on investment for the cost of the degree(s) required. While the out-of-pocket cost of completing a degree varies widely based on factors such as the school attended, any scholarships, and the cumulative debt involved in paying off student loans, the average cost of resident tuition at public law schools in 2023 was $30,554 according to the Law School Admission Council.[110] For a standard three-year degree, this would come to a total of $91,662, and increases from there for non-resident students and those attending private schools. Many students would receive significant scholarships or grants to cover some or all these costs, but there would also be additional costs of living during the three years of study when students are presumably unable to work full-time jobs to cover basic expenses such as rent, groceries, or study materials. The ABA conducted a survey in 2021 of new lawyers that found the average total student debt after completing a law degree on top of an undergraduate degree was $120,000.[111]

¶83 With average salaries in the $127,990 to $148,030 range for lawyers, this high cost of education and correspondingly high student debt load is understandable. The highest salaries in the legal information profession also reach levels that provide a reasonable return on investment for the additional cost and student loan debt associated with a law degree. The bulk of legal information professionals who receive a salary in the $70,000 to $110,000 range, however, may find the financial investment of a law degree more questionable. To reach the increasingly common requirement of holding both a library and a law degree, requires an individual to invest the same amount of money as the average librarian who holds only a library degree plus an average additional law school tuition of $91,662 for the law degree. Without the guarantee of an early significant pay differential for legal information professionals who are paying down student loans for dual degrees compared to those who are not, it may be difficult for individuals who already hold a library degree to justify the significant financial investment in a law degree. It may be similarly difficult for those who already hold a law degree to commit financially to the cost of a library degree to enter a profession with average salaries that are lower than those in the wider legal field for which they are already qualified. Future investigations into the financial return on investment for law and library degrees within the legal information profession will undoubtedly add much to this conversation.

¶84 In the meantime, the data on legal information professional salaries compiled above makes it clear that a library degree is generally valued at a similar average market

110. LawHub, Cost of attendance: Law school tuition in the United States, 1985 – 2023 (2024), https://www.lawschooltransparency.com/trends/tuition [https://perma.cc/TW2B-BHSA].

111. American Bar Association, ABA Profile of the Legal Profession 51 (2022) https://www.americanbar.org/content/dam/aba/administrative/news/2022/07/profile-report-2022.pdf.

rate within the legal information profession as it is in other library and information fields, while a law degree is undervalued financially in the legal information profession compared to the average market rate in the wider legal field and the cost invested in securing the degree. Discussions of the general devaluation of library and information professional work provide context for why salaries in the legal information profession can closely track salaries in the wider library and information profession but fail to keep up with the prestigious legal profession. There are severe discrepancies in average salaries available to professionals in the legal information field compared to the wider legal profession, and the common requirement of an expensive law degree in the legal information profession without the high professional salaries that can motivate those entering competing professions requiring the same degree to take the financial risk of securing large student loans, highlights the practical barriers to ensuring a steady and diverse pipeline of future professionals into the legal information profession.

Conclusion

¶85 There continues to be conflicting perceptions of the value of library and law degrees in the legal information sector, although certain trends are obvious. A library degree is universally valuable across the three metrics of employment requirements, usefulness to workplace responsibilities and tasks, and financial value that were examined in this research. A library degree provides the most common baseline for hiring legal information professionals and is useful in competently completing many common job responsibilities. Individuals holding a library degree have a good chance of securing competitive compensation compared to others both within the legal information profession and across other professions with the same degree requirement.

¶86 Meanwhile, law degrees are increasingly valuable in the hiring market in most legal information sectors and provide valuable knowledge and skills that underpin many common job responsibilities. Law degrees are undervalued financially since they do not consistently provide a significant boost in pay within the profession and only inconsistently lead to higher salaries than can be expected by those who hold only a library degree. Law degrees rarely command salaries in the legal information profession that are comparable to the salaries available in other legal sectors where different types of work requiring the same degree are more highly compensated, and do not reliably ensure a salary that immediately offsets the high cost of study associated with a law degree.

¶87 A range of potential solutions or practices could be implemented to help address the gap between the high value of law degrees in terms of employment requirements and usefulness to workplace responsibilities and tasks in comparison to the relatively low financial value of the degree in terms of salary within the field and return on investment for the cost of the degree. For example, employers may wish to consider alternatives to the traditional JD degree, such as Masters level law degrees that allow future law librarians to complete their studies in less time and for a lower cost, non-traditional alternatives such as formalized training offered by professional associations

such as AALL, or rigorous workplace traineeships that support applicants in learning on the job. Similarly, programs that offer students the opportunity to complete a library and law degree simultaneously, or the willingness of employers to hire a single-degree librarian and contribute to the cost of the individual's second degree could help to reduce the debt load for new law librarians.

¶88 Some employers may be able to offer higher salaries to better offset the financial investment dual-degree librarians have made in their education, but for many employers alternative benefits may be needed to draw in and retain law librarians. Some employers may be able to offer flexible working schedules, healthy work-life balance, support for personal and professional development, support for pursuing additional education, increased job security, eligibility for student loan relief, and other benefits that may make a relatively low salary acceptable for some candidates.

¶89 In some instances, employers may wish to reassess the need for dual degrees before advertising a vacant position. The results of this study found that library degrees are widely valuable and likely to underpin the work of most positions within the legal information sector, but if a law degree is a valuable add-on to a library degree, then that degree will inevitably bring more value to some positions than to others. If some libraries have drifted toward requiring dual degrees for all positions to keep them consistent within the library, a review of the unique tasks undertaken within each role may find that both degrees are not necessary in all positions.

¶90 Anyone wishing to recruit new professionals into the field or develop a stable pipeline into the profession will need to have a concrete and realistic understanding of the benefits and drawbacks for new professionals entering the field. If salaries are generally low in the field in comparison to the initial investment for individuals, then alternative supports and benefits must be clearly articulated and demonstrated. To establish a robust and diverse pipeline into the profession, there must be multiple paths into the field that allow future law librarians to navigate around the barriers presented by the increasing dual degree requirement. Understanding the concrete value of law and library degrees within the profession is only the first step in allowing us to assess how we advise students, how we determine hiring practices, and how we talk to others about the degrees that underpin our work.

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China's First American-Style Law School Library and Its Librarian*

Li Chen**

This article delves into Charles S. Y. Yu's experience and thoughts as a student and law librarian, shedding light on how these formative experiences shaped his path to becoming a renowned librarian and helming the only Anglo-American law, Chinese law, and comparative law library in China. By doing so, this article unveils the untold stories of an American-style law library and its librarian in China.

Implications for Practice

1. The American Association of Law Libraries (AALL) and *Law Library Journal* influenced Chinese law librarianship.
2. The first U.S.-style law school library in China received significant support from several American sources.
3. Charles S. Y. Yu trained in the United States and made numerous contributions to early Chinese law librarianship.

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Introduction

¶1 The American Association of Law Libraries (AALL) began publishing its quarterly *Law Library Journal* (*LLJ*) in 1908. In 1941, *LLJ* published a contribution entitled "China's Law Library—Soochow University Law School Library"[1] by Charles Y. S. Yu, also known as Charles You Sin Yu, the librarian of the Comparative Law School of China (CLSC). In this rare contribution, China's foremost law librarian explained that there was no law library association in China, but the Chinese libraries had a professional association, "The Library Association of China." Since Chinese law schools were basically modeled on Japanese law schools, "[n]aturally, the law libraries must closely follow the same policy. Thus, all the books contained in the law libraries are largely concerned with Chinese and Japanese laws. . . . There are few Anglo-American law books."[2] Yu aimed to introduce American and European readers to the CLSC Law Library, the first of its kind, which boasted many Anglo-American and European law collections. Yu was a significant figure in the history of library science in China. He was the first-known Chinese person to introduce AALL and its flagship journal to Chinese readers through an article published in 1936.[3] Moreover, Yu was the first to advocate for establishing a similar outfit in China, which was modeled on AALL. To encourage fellow librarians to contemplate this prospect earnestly, he translated AALL's Mission and Bylaws into Chinese to enhance understanding of the organization's workings.

¶2 What made the only American-style law library in Shanghai stand out, justifying its introduction to American law librarians through AALL's journal? And who was Charles Y. S. Yu? While there was no prior research about the CLSC Law Library, Zheng Jinhuai, a historian of modern Chinese librarians, attempted to answer the second question by delving into Yu's personal and professional history. Due to limited materials, Zheng provided only a partial portrait of Yu. His scholarship failed to fully trace Yu's significant contributions to developing the library's collections and establishing its reputation as the best and arguably only Anglo-American, Chinese, and comparative law library in China in the first part of the twentieth century. Furthermore, Zheng failed to locate information about Yu's whereabouts after he completed his studies at the Columbia University School of Library Service in 1949.[4]

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1. Charles Y. S. Yu, *China's Law Library—Soochow University Law School Library*, 34 Law Libr. J. 65 (1941).

2. *Id.*

3. Charles Y. S. Yu, 美国法学图书馆及其馆员之现状 (*Current Status of American Law Libraries and Their Librarians*), 1《学觚》(Bulletin of the Nat'l Cent. Libr.) 1 (1936), in Chinese.

4. Jinhuai Zheng, 喻友信早期图书馆生涯考察 (*A Survey of Charles Y. S. Yu's Early Life and*

¶3 Drawing on several previously unused archival materials, this article delves into Yu's experience and thoughts as a student and law librarian, shedding light on how these formative experiences shaped his path toward becoming a renowned librarian of the only Anglo-American, Chinese, and comparative law library in China. In doing so, this article unveils the untold stories of a unique law library and its librarian in China.

¶4 This article consists of three main parts. Part 1 briefly traces the establishment and development of CLSC and its law library. Part 2 offers a biographical sketch of Yu and traces his main contributions to the CLSC law library and the development of modern library science in China. Part 3 provides an account of his librarianship education at Columbia University. The article concludes by revealing what happened to Yu after he graduated from Columbia in 1949.

A Short History of CLSC and Its Law Library

China's Modern Legal Education

¶5 Peiyang University, founded in 1895 and known as Tientsin University in the West, was the pioneering institution in China to provide modern legal education. It was China's inaugural modern university. In the year of its founding, Peiyang University launched China's first full-fledged bachelor of laws program and graduated its first small class at the end of 1899.[5] In 1904, the Imperial University of Peking established its law curriculum, and Chaoyang College launched its law program in 1912.[6] According to one estimate, in 1915–1916, 49 law colleges were scattered throughout the various provinces of China, with 24 of them being under government control.[7] These law schools did not appear to have built law libraries in its true sense in these years. The one law school that stood out was CLSC. In 1915, Charles W. Rankin (1872–1960), a Tennessee-born American lawyer turned missionary in China, proposed and launched the Soochow University Law School in Shanghai (1915–1952), also known as the Comparative Law School in China. The law school had an outsize influence despite its relatively brief existence. The alumni of this law school include many distinguished jurists, lawyers, national and international court judges, and diplomats. Further, it predated Asia's other common law schools by several decades.[8] Moreover, it was the second law school in China that taught common law to its students based on Anglo-American pedagogy.

¶6 The impetus for Rankin's decision to launch a law school in China was the unique political and social circumstances prevailing in the country at the time. In the 1910s, China was experiencing a metamorphic transition from an imperial dynasty to the youngest republic in the world. Against this backdrop, Rankin believed that modern

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Academic Achievements in Library Science), 1 J. Acad. Libbrs. 100 (2012), in Chinese.

5. Li Chen, *The Founding of Peiyang University Department of Law: Oxford Style Legal Education in China (1895–1899)*, 9 Tsinghua China L. Rev. 227 (2017).

6. Hugh Chan, *Modern Legal Education in China*, 9 China L. Rev. 142 (1936).

7. W. W. Blume, *Legal Education in China*, 1 China L. Rev. 305 (1923).

8. Law Department of Rangoon University was set up in 1920, Law Department of the University of Malaya was established in 1956, and Law Department of the University of Hong Kong was founded in 1969.

laws, good law schools, and a steady supply of trained lawyers were key to China's resurgence and future success. His perception of the roles of law and lawyers in enabling America's success as a young and respected republic greatly influenced him. As a self-professed admirer of the American political system and its institutions, he believed that the legal profession was critical to the founding of the American Republic and its government: "It was Thomas Jefferson, a lawyer, who wrote the Declaration of Independence. . . . And it was John Marshall, a lawyer—of the great jurists of the world, one of the greatest—who placed the American system of courts between the people and their constitution."[9] Rankin avowed that America was a great country because it was "a remarkable example of a government of law,"[10] where lawyers turned politicians pervaded the legislative and executive branches—"a most striking feature of the administration of her governmental system."[11]

¶7 In addition, Rankin believed the prevailing practice of sending promising Chinese students abroad for legal training suffered from several key defects. First, Western-trained Chinese legal practitioners were often out of touch with their own country and its laws on returning from their studies.[12] Second, and more important, this mode of educating Chinese law students was inherently limited because only a relative small number of students could be sent abroad. As a result, Rankin believed that such a system produced an inadequate supply of well-trained lawyers in China.[13]

¶8 Given these shortcomings, Rankin believed that an American-style law school was necessary for the modernization and democratization of China. As he observed, "The time is therefore at hand for the young men of China to be busy equipping themselves for places in the future judicial system of China. All these men cannot be educated in foreign schools. They ought not be educated there. They ought to be educated in their own land, made acquainted with their laws, and kept in touch with conditions in their country."[14] Rankin's Anglo-American-centric vision of lawyers as essential for the functioning of society stood in stark contrast with the traditional Chinese view of the bar: "It is well-known that the legal profession has been regarded with suspicion, and not seldom the name lawmonger or pettifogger has been applied to its members."[15]

¶9 Rankin advocated for a unique program at this law school: comparative law. Apart from teaching U.S. law, it aspired to teach students "a comparative knowledge of the leading rules of law of the different Western nations and of China."[16] This action may be perceived as an attempt to impose Western values, systems, and structures on the Chinese culture, often without sufficient consideration for its unique historical, social, and cultural contexts. Additionally, such efforts may be intertwined with broader

9. Charles W. Rankin, *Law, Constitution and Lawyers*, Peking Gazette, August 17, 1915, at 6.

10. *Id.*

11. *Id.*

12. *Contributions of the Bureau of Comparative Law*, 2 A.B.A. J. 165, 286 (1916).

13. *Id.* "In very recent years a few lawyers have been educated abroad. And among these few are some of the most brainy men in China. But a few lawyers are not sufficient. Many are required."

14. Rankin, *supra* note 9.

15. Yu Chuan Chang, *The Chinese Judiciary*, 3 Chinese Soc. & Pol. Sci. Rev. 1, 17 (1918).

16. *Contributions of the Bureau of Comparative Law*, *supra* note 12, at 285.

imperialist agendas, aiming to reshape the legal and educational landscape to serve the interests of the foreign powers in China.

¶10 Rankin believed an American-style law school would be a powerful panacea to these shortcomings. The goal of this law school was to train a generation of competent lawyers, lawmakers, and judges—professionals who were sorely lacking in China at that time.[17] Rankin believed that the graduates of this school would become a powerful force for modernization in China, drafting the constitution, bringing laws to people, and safeguarding citizen's rights against the government's unjustified intrusion:

> There should be lawyers to assist in writing the constitution as delegates of the people. These and other lawyers should then take the constitution back to the people, explain it to them, and get their approval of the work done. It may be the people will want to add to this, as they added the Bill of Rights to the United States Constitution. The constitution being a valueless piece of paper without a fearless and learned judiciary to construe and guard it, lawyers in large numbers are required for this essential arm of the government.[18]

Why Shanghai?

¶11 The decision to situate the law school in Shanghai, away from Soochow University's main campus in Suzhou, was driven by practical considerations. Shanghai's central location and easy access from all parts of China made it ideal for drawing students from various places.[19] It was also the only city in China with a good supply of law teachers and resources; due to the presence of unequal treaties between China and foreign powers in the early twentieth century, certain foreign nationals were exempt from the Chinese legal system. Notably, as the foremost treaty port, Shanghai accommodated numerous foreign concessions subject to their own countries' laws rather than Chinese law. Consequently, this circumstance fostered a community of foreign lawyers practicing before diverse non-Chinese courts in Shanghai.[20] These lawyers became a unique source of law teachers. The CLSC founder took the view, above all, that "[a]t this place are regularly held both American and English courts, in addition to the Mixed and Consular courts. These are all valuable as concrete exhibitions to students of the law in operation. The existence of the courts necessarily implies the presence of lawyers, and good bars of both English and American lawyers are found there."[21] Moreover, thanks to the availability of the old Anglo-Chinese College's premises in Shanghai, no additional financial outlay was needed to get Rankin's law program up and running, making the project financially viable from the outset.[22]

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17. *Id.* at 285–87.

18. *Id.* at 287.

19. Rankin, *supra* note 9.

20. T. F. Lo, *Extraterritoriality in China*, 1 Hong Kong U. L.J. 251 (1926); Charles Loring, *American Extraterritoriality in China*, 10 Minn. L. Rev. 407 (1926).

21. Rankin, *supra* note 9.

22. The premises were previously used by No. 2 Middle School of Soochow University in Shanghai, and Rankin was able to harness the existing classrooms, dormitories, and boarding facilities to launch his law school practically at no additional cost to the university.

Launching a Modern Law Library

¶12 In the first four years of the school's operation, there was no library or legal materials room to speak of.[23] The first mention of the library and its collections was in the 1920–1921 catalog. With a shoestring budget to run the nascent law school and a small enrollment of students, Rankin had no money to purchase books for the library. However, ever the resourceful and energetic educator, he reached out to all possible contacts to solicit donations of books to build up his library collections. The first contribution came from the Lawyers Cooperative Publishing Company in Rochester, New York. Rankin obtained the support of Allan Anderson Bryan (1872–1942), the publishing house's representative responsible for the Shanghai branch, to pitch the law school to its head office. The company agreed to donate more than 25 volumes of *Ruling Case Law*.[24] In the meantime, Rankin counted on fellow lawyers from his home city of Chattanooga, Tennessee, to support his law school. Rankin's friend, Mrs. Warren L. Rohr (1862–1932), was most instrumental in securing books for the library.

¶13 Rohr was an active member of the Centenary Methodist Church, had a great passion for doing mission work, and served as president of both the Centenary Missionary Society and the city mission organization of the Southern Methodist Church.[25] She solicited books from the local law library and bar association, as well as lawyers. Her work was a spectacular success; the donations totaled 220 books, with 141 from the Chattanooga Law Library and Bar Association.[26] Moreover, Rohr spoke to an old friend from Lynchburg, Virginia, Miss Cornelia Walton Brown (1846–1924), about the pressing needs of the library in Shanghai. As a major gift to the CLSC library, Brown selected 900 books from the library of her late father, Edward Smith Brown (1818–1908), who had been a prominent local attorney.[27] Among the books were several sets of American and English reports. Finally, Rohr and others from America contributed 105 books for general reading.[28] Apart from these significant contributions, CLSC faculty and students in Shanghai, like Rev. Thomas A. Hearn, John Wu,[29] and Crawford M. Bishop, also gave books as gifts to the library.[30] Boone University in Wuchang, also founded by American missionaries, sent several shipments of books—always unsolicited—that were most valuable and useful to the school.[31] In the next few years, through

23. Based on historical law school catalog. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1919–1920 (1919).

24. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1920–1921, at 11 (1920).

25. *Mrs Warren Rohr*, Nashville Banner, May 28, 1932, at 9.

26. Compar. L. Sch. of China, *supra* note 24, at 12. However, in the Announcement of 1922–1923, the total became 215 volumes. *See* Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1922–1923, at 10 (1922).

27. *Id.*

28. *Id.*

29. *Id.* at 13. "John Wu gave the school a full set of books for use in class during the regular three years courses. These books were for the use of students who needed financial help in pursuing their studies."

30. *Id.* at 12.

31. *Id.* at 11.

the prior efforts of Rohr, the largest donation came from John Singleton Diggs (1852–1927), a lawyer based in Lynchburg, who gave 96 books to the library.[32]

¶14 When Rankin stepped down due to disagreements with the university administrator, William Wirt Blume (1893–1982) from Fort Worth, Texas, took the mantle of the deanship at the law school in 1921.[33] He followed in the footsteps of his predecessor in using his connections with his hometown legal community to solicit book donations for the library. His efforts paid off. Lawyers from Fort Worth generously pitched in. Walter Erskine Williams (1860–1938), a local lawyer who had traveled to Shanghai and lectured at CLSC, gave 22 books, and other donors also made contributions.[34] By this time, the law school pioneer alumni also chipped in.[35] In fact, by 1924, the initial cohorts of alumni had completed their legal education, both at home and abroad. Some had subsequently joined the law school faculty, significantly contributing to the expansion of Chinese faculty members. Among these alumni-turned-faculty were Chen Ding-Sai (LLB 1920), John CH Wu (LLB 1920), Ho Shih Chen, Ho Shih Mai (LLB 1921), and Tsiang Pao-Li (LLB 1922), all of whom had obtained JD degrees from the University of Michigan following their initial legal education at CLSC.[36] They launched successful legal practices and teaching careers in Shanghai. Finally, in 1924, the American Law Book Company in Brooklyn, New York, donated 31 volumes of *Corpus Juris* and 23 volumes of *Encyclopedia*.[37]

¶15 The law school also used its limited funds to acquire books, leading to a steady growth of the library's collections. In 1923, the library held around 2,600 volumes in English and 700 in Chinese.[38] By 1924, this collection had expanded to approximately 3,000 volumes in English and 1,000 in Chinese.[39] The library's holdings continued to grow: in 1926, it contained about 3,500 volumes in English and 1,200 in Chinese;[40] in

32. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1922–1923, at 10 (1922) [hereinafter Annual Announcement 1922–1923].

33. *Id.* at 1.

34. *See Williams, Walter Erskine (1860–1938)*, Handbook of Texas, Tex. State Hist. Ass'n, https://www.tshaonline.org/handbook/entries/williams-walter-erskine (Oct. 2, 2020). Sidney Lionel Samuels (1877–1958) gave four books; *Sidney Samuels Taken in Death*, Austin Am., Nov. 30, 1958, at 4. James Chesley Smith (1862–1942), a former county judge and lawyer, gave eight; *James C. Smith, Attorney, Dies*, Fort Worth Star-Telegram, Jan. 9, 1942, at 9. William Franklin Young (1877–1956), a local lawyer, gave 31 books; Annual Announcement 1922–1923, *supra* note 32, at 10. All these donors appeared to be active members of the local Methodist Church.

35. Annual Announcement 1922–1923, *supra* note 32, at 10. Tsiang Pao-Li gave books on modern Chinese law, Herbert CT Lee gave two books, and Shih Kung gifted a large number of Chinese law pamphlets and magazines.

36. Wei Wang, Zhongguo Jin Dai Liu Yang Fa Xue Bo Shi Kao [Overseas Educated Doctors of Law of Modern China] (1905–1950) 39–44 (2d ed. 2019).

37. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1924–1925 9 (1924) [hereinafter Annual Announcement 1924–1925].

38. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1923–1924, at 9 (1923) [hereinafter Annual Announcement 1923–1924].

39. Annual Announcement 1924–1925, *supra* note 37.

40. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1926–1927, at 9 (1926).

1927, the numbers were around 4,000 volumes in English and 2,000 in Chinese.[41] By 1929, the collection had reached about 6,000 volumes.[42] The following year, in 1930, the library's holdings had increased significantly to approximately 10,000 volumes of law texts, treaties, cases, and journals in Chinese, English, and several European languages.[43]

¶16 Since 1923, the bookcases had been arranged so that the students had direct access to them, thereby becoming familiar with the method of using books in a law office.[44] The law school did not have a librarian until 1928, when P. H. Cheng, also known as Zheng Baohua, joined as a librarian. His role was purely administrative and did not appear to involve substantive professional librarianship. He graduated from Fudan University School of Commerce and taught at Fudan Experimental High School.[45] On taking up his duty, Zheng began a process of systematically arranging the books to enhance the user's experience. He organized all the law books in the library into 12 sections: (1) Chinese Laws, (2) Chinese Legal History, (3) Legal History of the World, (4) Jurisprudence and Legal Philosophy, (5) Public International Laws and Private International Laws, (6) Comparative Constitutions, (7) Criminal Laws and Criminology, (8) Anglo-American Laws, (9) Modern Continental Laws, (10) Roman Law, (11) Legal Periodicals, and (12) Dictionaries, Reviews, and Journals of Social Sciences.[46]

¶17 The arrival of Yu, a professionally trained librarian, in June 1931 would usher in a new era in the growth and development of this fast-growing law library.[47]

Biographical Sketch of Charles S. Y. Yu and His Contributions to CLSC Library

Educational Background

¶18 Charles Y. S. Yu was born on September 7, 1906, in Wuhu, Anhui, and died on April 11, 1993, in Shanghai, at the age of 86.[48] He was born into a family of Christian converts for three generations.[49] In Wuhu, he completed his primary school at St. James

41. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1927–1928, at 9 (1927).

42. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1929–1930, at 8 (1929).

43. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1930–1931, at 8 (1930).

44. Annual Announcement 1923–1924, *supra* note 38.

45. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1931–1932, at 4 (1931).

46. *Id.* at 9.

47. Daniel S. Ao's Letter of Certification for Charles S. Y. Yu (Sept. 18, 1946) (on file with the author).

48. Colum. Univ. Sch. Libr. Serv., Charles S. Y. Yu's Application for Admission, dated Sept. 17, 1948; 1 Jun Ma, 史园三忆: 上卷 (Three Reminiscences of the Historical Garden) (2021), at 62–63, in Chinese.

49. Charles S. Y. Yu's Application for a Scholarship (1948) (on file with the author).

Primary School, 1915–1921, and secondary education at St. James High School, 1921–1927.[50]

¶19 Yu was educated up to the high school level in schools founded by the American Mission Board. His high school's course of study primarily prepared students for undergraduate courses at American missionary universities in China.[51] His father was an elementary schoolteacher with limited means;[52] this would explain why Yu did not proceed to enroll in elite American missionary schools in Shanghai but instead matriculated at Chih Tse College, a private school in Shanghai, in 1927 and left in 1930 without earning any degree.[53] Possibly due to financial constraints, he discontinued his college education and pursued a one-year librarianship course at Boone Library School in Wuchang.[54]

¶20 American missionary educator Mary Elizabeth Wood established Boone Library School.[55] Wood was an American librarian who hailed from Batavia, New York, and gained prominence as a missionary educator in China, particularly in the field of library science. In Chinese, the literal translation of the word for library is "a place for hiding books." Wood spearheaded a pioneering effort to redefine its significance by introducing the modern library system in China. This initiative liberated a wealth of ancient wisdom previously hidden within "treasured and secluded writings," making it accessible to the world.[56] Wood played a pivotal role in the development of library science in China. She established the Boone College Library in 1910 and later founded the library school in 1920. Afterward, the concept of library training gained traction, leading Chinese young men and women to step forward and prepare for a career in this field.[57] Specifically, Wood taught Chinese students how to operate modern libraries. Before the introduction of her library science course, there was no concept of a scientific library index in China. Moreover, there was a general lack of knowledge in the country regarding how to compile or manage such an index.[58] Over the initial decade, the school successfully trained and graduated 60 librarians. These individuals were not only intellectually sharp but were also influenced by Wood's ethos of useful and selfless service. They eventually became the driving force behind the establishment of new colleges and public libraries across China.[59] A select number of excellent graduates joined

50. Colum. Univ. Sch. Libr. Serv., *supra* note 48.

51. *Id.* In that period, these high schools generally did not offer foreign languages except English. Thus, Yu only got to study his second foreign language German at Boone, Latin at law school, and Japanese on his own.

52. *Id.*

53. *Id.*

54. *Id.*

55. Minghui Peng, The Establishment and Development of the Boone Library School (2015), in Chinese.

56. *Mary E. Wood Dead; Librarian in China*, N.Y. Times, May 2, 1931, at 14.

57. Christian A. Nappo, Pioneers in Librarianship: Sixty Notable Leaders Who Shaped the Field (2022). *See* Chapter 4 on Alfred Kaiming Chiu, who was trained by Wood. Chiu became a world-renown librarian in the United States.

58. *American Woman Who Built Libraries in China*, China Wkly. Rev., May 9, 1931, at 331.

59. Arthur M. Sherman, *Mary E. Wood Founded Boone Library*, 96 Spirit of Missions 392 (1931).

the faculty to train the next generation of librarians. In a decade, Wood had built up a large collection of library science books to aid the training of her students.[60]

¶21 Yu enrolled in the one-year course crafted to train assistant librarians to staff a growing number of libraries in China.[61] In June 1930, the school petitioned China's Ministry of Education for permission to offer the course in addition to the regularly approved undergraduate program in library science.[62] On receiving the green light, the first class began training in September of the same year. Yu took courses on library records and methods, library administration, and practical library work, including book selection and review, cataloging, classification, and reference work.[63]

¶22 After completing the one-year coursework, Yu satisfactorily completed supervised practical work as a trainee librarian at the Boone Library for a short period to satisfy the program requirement. For the written work requirement, Yu translated the introduction and first chapter on college libraries from the book *Guide to the Use of Libraries* by Margaret Hutchins and others for publication in the second volume of *Boone Library Science Quarterly*.[64] Further, his classmates worked collaboratively under the supervision of their professors to produce a combined book and index.[65]

Association with the CLSC Library

¶23 After completing the program in June 1931, Yu immediately joined the Soochow University Law School Library in Shanghai as its librarian.[66] At CLSC, the librarian worked under the dean. Moreover, there was a law library committee consisting of principal, dean, faculty, and outside representatives to consider matters relating to the library's operation.[67] When Yu took over the administration of the library, he gradually recruited assistants to manage the departments of books and magazines acquisition, cataloging, binding, circulation, access, and magazines.[68] At that time, the library's main funding came from a $5 per-term library fee from each student and $1,000 dollars or so of book acquisition budget every term, as well as $800 for sundry library expenses.[69] The dean was in charge of the book selection; Yu was tasked with the rest.[70]

¶24 At the time, the library did not have a purpose-built premise. There were two spacious rooms to serve as the book stacks, and the cataloging department was housed in the same place. It had one reading room able to accommodate 20 readers at a time.[71]

60. *Id.*
61. Peng, *supra* note 55, at 139.
62. *Id.* at 139–40.
63. *Id.*
64. Charles S. Y. Yu, 图使用法的指导 (*Guide to the Use of Libraries*), 2 Boone Libr. Sci. Q. 391 (1930), in Chinese.
65. Peng, *supra* note 55, at 140.
66. Peng, *supra* note 55.
67. Charles S. Y. Yu, 东吴大学法律学院图书馆概况 (*A Profile on Soochow University Law School Library*), 4 Boone Libr. Sci. Q. 288 (1932), in Chinese.
68. *Id.* at 288–89.
69. *Id.* at 289.
70. *Id.* at 290.
71. *Id.* at 289–90.

Since most students did not live on campus and checked out books for use, the reading room was big enough for regular users. Except for reference works, rare, and valuable books, all other books were available on a two-week-long loan.[72]

¶25 In 1934, at the urging of prominent Chinese lawyers, primarily alumni of the school, CLSC launched a fundraising campaign to raise $30,000 in Chinese currency to fund the construction of a law library building and book acquisitions.[73] The appeal garnered initial support from political and legal heavyweights such as Sun Fo, president of China's legislature; Wang Ching-Wei, China's premier; H. H. Kung, China's vice premier; and Wu-Tie-Chen, Shanghai mayor.[74] Of the said proceeds, $10,000 would go toward constructing the law library building, and the remaining $20,000 would go to a library endowment, which would be used to enlarge the library holdings incrementally.[75] This ambitious scheme to build a first-class law library in Asia was foiled by the Second Sino-Japanese War (1937–1945).

Classification of Law Books at the Library

¶26 At the beginning of his tenure as a librarian, Yu expressed frustration with the classification systems commonly used in Europe and the United States. These systems were suitable for general libraries but not tailored for Chinese law libraries. Yu was a forward thinker, recognizing the need for specialized systems even though there were not many law libraries in China at that time. These methods lacked the precision needed to categorize diverse law books and materials. For example, the Dewey decimal system proved to be ill suited to the needs of a Chinese law library. The application of the Dewey decimal system would result in excessive dispersion of materials, as many of the books were law related.[76] While a catalog could offer some assistance, it might lead to frustration among library users trying to locate books on the shelves.[77] Similarly, Yu contended that the Library of Congress classification method had not yet been fully formulated and published.[78] To establish the optimal book organization and classification for his library, Yu went to great lengths, engaging in correspondence with American law librarians to grasp their classification practices.[79]

¶27 Fortunately, he received valuable insights from these exchanges. The law library at the University of Washington shared how it had adapted Dewey's method to the library's specific conditions.[80] The University of Illinois Law School Library communicated that it had devised its own classification system around four overarching

72. *Id.* at 289

73. *Local News Brevities*, China Press, Nov. 2, 1934, at 7.

74. *Local News Brevities*, China Press, Jan. 27, 1934, at 16.

75. Charles Y. S. Yu, 私立东吴大学法学院图书馆近年来馆藏实况 (*A Factsheet on Soochow University Law School Library Collections for the Recent Years*), 11 Bull. Chinese Libr. Ass'n 6 (1936).

76. *Id.*

77. *Id.*

78. *Id.*

79. Yu, *supra* note 67, at 291–92.

80. *Id.* at 291.

categories.[81] The University of Michigan Law School Library had created a 24-category system, arranging books sequentially by author's name, country of publication, or book title.[82] Similarly, the Law Library of Congress employed the legal jurisdiction under consideration as the basis for the classification and organizing of books by that country's legal system. However, this approach was still in the experimental phase.[83] Yu concluded that a standardized classification method was absent, prompting him to modify the Dewey decimal system to suit the library's needs. He proposed the following classification: (0) law, (1) Chinese Law, (2) Legal History, (3) Jurisprudence, (4) International Law, (5) Constitutional Law and History, (6) Roman Law, (7) Anglo-American Law, (8) Modern Continental Laws, and (9) Laws of Other Countries.[84]

¶28 When it came to cataloging, Yu explained that due to the well-established nature of the prevailing method, his library decided to fully adopt the imported system.[85] This applied not only to foreign books but also to Chinese ones, adhering to the same rules. However, because of the unique attributes of Chinese and Japanese characters, he encountered challenges in creating a dictionary catalog. Previous attempts by Chinese librarians to address this issue had yielded limited success, and no single dominant approach existed at that time. Recognizing the lack of a clear solution, Yu employed his judgment to devise a system tailored to his library's needs. This new method received positive feedback from library users, as it facilitated efficient book searches.[86]

¶29 Additionally, Yu took the initiative to establish guidelines for library use by students and faculty, demonstrating his proactive involvement in improving the library's operations.[87] Remaining true to his mentor Mary E. Wood's teachings from Boone Library School, Yu ardently supported the implementation of an open stacks policy. This approach aimed to enhance users' accessibility to library books. Yu went so far as to write an article detailing the pros and cons of adopting this policy. He asserted that Chinese libraries should embrace this liberal practice to fully harness the potential of libraries and provide maximum value to users.[88]

¶30 At the beginning of the 1930s, the law school development reached the stage of shifting its focus to chiefly teach Chinese law, together with a unique program on Anglo-American law and comparative law.[89] The faculty had expanded to offer courses on Anglo-American, German, French, Swiss, and Japanese laws.[90] The teaching team aimed to equip students with elementary knowledge to draw on foreign laws to conduct

81. *Id.*

82. *Id.* at 292

83. *Id.*

84. Compar. L. Sch. of China, L. Dep't of Soochow Univ., Annual Announcement 1934–1935 33 (1934) [hereinafter Annual Announcement 1934–1935].

85. Yu, *supra* note 67, at 295.

86. *Id.* at 296.

87. Annual Announcement 1934–1935, *supra* note 84, at 30–32.

88. Charles S. Y. Yu, 图书馆中一个实际的问题 (*A Practical Problem in the Library*), 2 Guangzhou Univ. Libr. Q. 166 (1937).

89. Yu, *supra* note 75, at 6–7.

90. *Id.*

comparative studies with reference to Chinese law.[91] As a librarian, Yu understood the importance of staying abreast of the latest developments across various jurisdictions. Consequently, the acquisition of recent publications was a critical endeavor. By 1936, the library had amassed an assortment of legal materials from 31 jurisdictions.[92] Yu placed significant emphasis on law journals as vital sources of legal information.[93] In the end, the library gathered 81 journal titles in five languages: English, German, French, Chinese, and Japanese. Most of these journals resulted from exchange programs with U.S. law schools.[94] The library had acquired all recent law publications for Chinese law collections and spared no effort in acquiring ancient law books dating back to the Tang, Yuan, Song, Ming, and Qing dynasties. During this period, the library's holdings in this latter category were sufficient to fulfill the research needs of its readers.[95]

¶31 The library's progress was impressive. By 1935, the library had more than 10,000 volumes in Chinese, Japanese, English, French, German, Russian, and other languages in Western collections.[96] The most valuable were the copies of *Corpus Juris, United States Code Annotated, Ruling Case Law, American & English Encyclopedia of Law, and Cyclopedia of Law and Procedure*. By this point, the library had also amassed more than 1,300 volumes of law reports from the United States and the United Kingdom alone. Chinese collections included ancient law texts.[97] By 1937, after trial and error, Yu had significantly improved his classification method to suit the needs of a Chinese law library.[98]

¶32 Furthermore, he took the initiative to draft and publish a comprehensive catalog.[99] This catalog was meticulously organized to enhance readers' convenience in promptly locating books. This can be seen as another improvement over the previous version.[100] Under the new scheme, the library books were divided into two divisions: Western Languages and the Chinese and Japanese Language. Each division was subdivided into two departments: the Law Department and the General Department.[101]

¶33 The Japanese invasion of Shanghai profoundly affected the city's universities, significantly disrupting their operations. As the conflict escalated, universities faced closures, evacuations, and direct interference from Japanese authorities. Many academic institutions were forced to suspend classes or relocate to safer areas to escape the violence and chaos of the invasion. Moreover, the invasion disrupted the flow of students, faculty, and resources, further impacting the universities' ability to function

91. *Id.*
92. *Id.* at 7.
93. *Id.* at 8–10.
94. *Id.* at 7.
95. *Id.* at 6.
96. *Id.*
97. Yu, *supra* note 67, at 291.
98. Charles S. Y. Yu, *Foreword* to Soochow University Law School (The Comparative Law School of China), Library Catalogue (1937).
99. *Id.*
100. *Id.*
101. *Id.*

effectively. Despite the substantial disruptions caused by the war, by 1941, the library had managed to collect "30,000 volumes of law texts, treatises, cases, and journals in Chinese, English, and other European languages."[102] Under Yu's administration, every book in the library was listed in a catalog. The catalog was maintained using cards sorted alphabetically, creating a dictionary catalog. There were three methods to search for a book in this catalog: (1) by author, (2) by title, and (3) by subject. The number in the top left corner of a card was the call number used to locate the book.[103] Besides the Chinese law books and periodicals, nearly two-thirds of the book collections consisted of foreign books, encompassing the legal systems of over 30 countries.[104] The library held over 50 foreign law periodicals, chiefly leading U.S. law school journals.[105]

Promoting Library Science in China

¶34 Yu was a prolific writer and translator. In the 1930s, while performing his full-time job, Yu found time to write, translate, and publish several works to disseminate library science knowledge to a broad audience. His prolific output included a Chinese translation of the *Guide to the Use of Libraries: A Manual for College and University Students* by Margaret Hutchins, Alice Sarah Johnson, and Margaret Stuart Williams. The Boone Library School took enormous interest in this translation and included it in the school series.[106] In 1936, he published a series of notable translations selected from Part 3: Criticisms of Historic Library Classifications from *The Organization of Knowledge in Libraries* by Henry Evelyn Bliss. Precisely, he translated Chapter 10, "The Decimal Classification";[107] Chapter 11, "Cutter's 'Expansive' Classification";[108] and Chapter 12, "The Library of Congress Classification."[109] The next year, he compiled and published "Index to Legal Periodicals (in Chinese)."[110]

¶35 In addition to these works relating to general library work, he published articles of particular importance to law students and law libraries. For example, in 1936, he

102. Yu, *supra* note 1.

103. *Id.*

104. *Id.* Yu offered a long list: "Jewish law, Babylonian law, Assyrian law, Sasanian law, Roman law, Scottish law, Irish law, German law, Hungarian law, French law, Italian law, Spanish law, Portuguese law, Russian law, Norwegian law, Belgian law, Dutch law, Swiss law; Greek law, Bulgarian law, Japanese law, Mohammedan law, Hindu law, Ceylonese law, Palestinian law, Burmese law, Siamese law, Egyptian law, Yoruba and Akan law, Mexican law, Brazilian law, Argentine law, Chilean law, Peruvian law."

105. Yu's list revealed a significant number of leading U.S. law school reviews and other journals in English, French, and German.

106. Margaret Hutchins et al., 图书馆使用法的指导 (Guide to the Use of Libraries) (Charles S. Y. Yu trans., 1934), in Chinese.

107. Charles S. Y. Yu (trans.), 评杜威分类法 (*The Decimal Classification*), 5 Xuefen 1 (1935).

108. Charles S. Y. Yu (trans.), 评克特氏展开分类法 (*Cutter's "Expansive" Classification*), 5 Xuefen 1 (1935).

109. Charles S. Y. Yu (trans.), 评美国国会图书馆分类法 (*The Library of Congress Classification*), 6 Xuefen 1 (1936).

110. He compiled and published the Index by the Judicial Administration of the National Government, Nanking. These compilations appeared in several issues of the journal, for example, Charles S. Y. Yu, 法学论文索引 (*Index to Legal Periodicals*), 1 Xiandai Sifa 173 (1936), in Chinese.

compiled and published "A Guide to the Study of Chinese Legal Literature" in English.[111] He developed a bibliography of Chinese legal literature in English and French, "primarily for the use of those whose reading knowledge is limited to English and French."[112]

¶36 Remarkably, Yu paid significant attention to the law library development in the United States by following *Law Library Journal* and other publications. In 1936, he compiled numerous sources of information from the journal to help disseminate knowledge about law libraries, required education for law librarianship, and AALL.[113] As to the education for emerging law librarians, Yu took great interest in the discussions on the *Report of the Committee on Education for Law Librarianship*, which took place in Denver in 1935.[114] He also read several related articles to learn about the topic. In particular, Yu found John Boynton Kaiser's discussions on "Library School Training for Law Library Employees," published in *Law Library Journal* in 1912, as an advantageous starting point for learning the practice of librarianship.[115] He made it a point to introduce Kaiser's suggested library school courses in law library work to a Chinese audience.

¶37 Yu also went to great lengths to provide Chinese audiences with potential avenues for continuing professional development. For example, he introduced the gist of Frederick C. Hicks's 1926 article "The Widening Scope of Law Librarianship" to Chinese librarians and legal materials room assistants, stressing the importance of a strong "foundation of general education, legal education, and general library training and experience" to law librarians.[116] He would later follow Hicks's prescription to obtain a legal education. Yu also introduced Chinese readers to Hicks's list of suggested courses for librarians: legal bibliography, legal biography, law library administration, and practical work in the law library.[117] In addition, Yu brought Arthur S. Beardsley's 1936 article on "Education for Law Librarianship" to the attention of Chinese readers.[118] Drawing on past proposals, Beardsley suggested a curriculum for law library training along the following lines: law library administration, law library method, legal bibliography, and the use of law books, reference, and practice work in a law library.[119] Yu emphasized the importance of providing a foundational framework for specialized training in law librarianship, guiding the development of programs focused on essential areas such as administration, methodology, bibliography, and practical skills.

111. Charles S. Y. Yu, *A Guide to the Study of Chinese Legal Literature*, 9 China L. Rev. 291 (1936).

112. *Id.*

113. Yu, *supra* note 3, at 10–11.

114. *American Association of Law Libraries Proceedings—Thirtieth Annual Meeting*, 28 Law Libr. J. 291 (1935).

115. John Boynton Kaiser, *Library School Training for Law Library Employees*, 5 Law Libr. J. 52 (1912).

116. Frederick C. Hicks, *The Widening Scope of Law Librarianship*, 19 Law Libr. J. 61 (1926).

117. Yu, *supra* note 3, at 6.

118. A. S. Beardsley, *Education for Law Librarianship*, 30 Bull. Am. Libr. Ass'n 168 (1936).

119. *Id.* at 177.

Introducing the AALL to Chinese Readers

¶38 Significantly, Yu was the first to introduce AALL to Chinese readers. He outlined the association's history, purpose, organization, personnel, and publications—*Law Library Journal* and *Index to Foreign Legal Periodicals*.[120] He urged a small number of fellow law librarians who managed their law departments' legal materials rooms to emulate some features of the association. To help readers better understand the organization of the association, Yu translated AALL's Mission and Bylaws for his fellow librarians.[121] In his view, AALL was a helpful reference point in further developing the then-nascent profession of law librarianship in China. However, he conceded that given the limited number of law libraries in China, launching a national association of law libraries was not practical. However, Yu urged his fellow librarians to consider establishing a special committee on law libraries under the Chinese Library Association composed of current law librarians and workers. He argued that the lack of law libraries would affect the administration of justice; thus, the development and growth of law libraries in China would meaningfully aid the progress of the law.[122]

Pursuing Legal Education

¶39 Yu was convinced by Hicks's philosophy about the importance for qualified law librarians to obtain a strong "foundation of general education, legal education, and general library training and experience."[123] In September 1938, intending to enhance his competence and effectiveness as a law librarian, he began taking part-time legal education courses at the CLSC. However, the horrible turmoil caused by the ongoing war and the relocation of his law school during the most intense phase of the conflict threw his academic progress into disarray. Despite these interruptions, he finished the bachelor of laws degree program in June 1946, achieving commendable results.[124]

¶40 Yu diligently pursued the curriculum set by China's Ministry of Education for the primary law degree, supplemented by Anglo-American law and comparative law courses. He acquired a sound understanding of Chinese law, legal research, and reasoning through several courses, including constitutional law, administrative law, law courts organization, law of press, civil procedure, criminal procedure, and law of evidence.[125] As for the diverse range of Anglo-American law and comparative law courses offered by the law school, Yu completed courses on common law pleading, American constitutional law, contracts, equity, real property, criminal law, and torts, as well as courses on public international law, Roman law, and others.[126] He took American law courses under professors chiefly trained in China and the United States. During his studies, he

120. Yu, *supra* note 3, at 10–11.
121. *Id.* at 11–12.
122. *Id.* at 13–14
123. Hicks, *supra* note 116.
124. Shanghai Mun. Archives, Charles S.Y. Yu's Transcript of Record (1938–46), Soochow Univ. L. Sch. (on file with the author).
125. *Id.*
126. *Id.*

fostered great fondness for American jurist Roscoe Pound and was fascinated by his books on social justice and legal philosophy.[127]

¶41 Yu's former professors held him in high regard as a student and librarian. Cha Liang Chien (1905–1994), formerly head of Soochow University's law department, remarked that "he is a promising young man and is a conscientious and diligent worker."[128] The U.S.-educated library expert Samuel T. Y. Seng (1883–1976), director of the Boone Library School, a former protégé of Wood,[129] shared information from Yu's former supervisor Dean Robert C. W. Sheng of CLSC: "His long and faithful service has already won Dean C. W. Sheng's confidence and admiration and that of his other professors and students. Dr. Sheng has told me so in person."[130] Furthermore, Seng added that Yu had used his spare time to write "Chinese articles on library subjects" and translate English books on library science into Chinese.[131] Milton J. Helmick (1885–1954), a former judge of the U.S. Court for China in Shanghai, also commented: "I think that Mr. Yu is excellent material for a scholarship [to further his studies in America]."[132]

Yu's Librarianship Education at Columbia University

Seeking Further Education in America

¶42 As early as late 1946, Yu had harbored an intention to seek further education at Columbia Law School in America.[133] While studying at the law school, he hoped to work part time at the law library or the oriental library.[134] In 1947, Yu saw an opportunity to further his plan. Charles B. Shaw, librarian of Swarthmore College, visited China to acquire books and select promising librarians for further education in the United States on behalf of the American Library Association (ALA). When Yu got wind of this opportunity, he mobilized colleagues and acquaintances to throw their weight behind his application for the library science scholarship. Unfortunately, Yu's application was unsuccessful.[135]

¶43 However, his big break came shortly afterward. Having devoted 16 years of service as CLSC's librarian, enduring some of those years in extraordinarily challenging wartime circumstances, Yu received acknowledgment for his commitment to an American missionary university. This recognition culminated in his nomination for a

127. Colum. Univ. Sch. Libr. Serv., *supra* note 50.

128. Cha Liang Chien, Judge, Shanghai Dist. Ct. (Aug. 15, 1947) (on file with the author).

129. Cheryl Boettcher, *Samuel T. Y. Seng and the Boone Library School*, 24 Libs. & Culture 269 (1989).

130. Letter from Samuel T. Y. Seng to Charles Shaw (Oct. 6, 1947) (on file with the author).

131. *Id.*

132. Letter from Milton J. Helmick to Charles B. Shaw (Oct. 14, 1947) (on file with the author).

133. Letter from N. Deming Hoyte to Daniel S. Ao concerning Charles S. Y. Yu's plan to study at Columbia Law School (Nov. 14, 1946) (on file with the author).

134. Letter from Charles S. Y. Yu to N. Deming Hoyte, Off. of Univ. Admissions (Jan. 6, 1947) (on file with the author). Yu had hoped to get a Crusade scholarship from the mission board to finance his studies. The field committee in Shanghai had endorsed his application.

135. *Id.*

scholarship from the United Board for Christian Education in China to pursue further education in the United States.[136] Throughout his tenure, Yu's peers had formed a strong admiration for his personal qualities, skills, and diligent work ethic. The dean of the law school, Daniel S. Ao (1902–1970), wrote, "Mr. Yu is the Librarian of Soochow University Law School for quite a number of years and has distinguished himself for the conscientious discharge of his duties."[137] In a nutshell, various reports from persons acquainted with Yu's experience in China "pointed to his conscientious attitude and diligence. Mr. Yu has been active in library work in China for a considerable number of years and is held in high regard by fellow librarians there."[138] In the end, Yu won the coveted scholarship to study in the United States.

¶44 As mentioned, Yu initially had wanted to obtain a graduate degree in law,[139] but given his lack of an undergraduate degree in arts or science, the only law-related program that Columbia University was prepared to consider him for admission into was the master's degree in public law and government at the Faculty of Political Science.[140] In addition, Yu's application materials gave the admissions officer the impression that he appeared to "have a greater interest in Library than in Law."[141] Yu eventually decided to seek professional training in library science. The university accepted him, though his "[scholastic] record has not been particularly outstanding, but in view of his scholarship and his employment, it is felt that he might be a worthwhile student here."[142]

¶45 Yu arrived in San Francisco on September 9, 1948, and began his full-fledged librarianship education at Columbia's School of Library Service soon after.[143]

Studying Library Science at Columbia

¶46 To earn a master's of science degree in library service, Yu had to complete a combination of compulsory and elective courses. The major portion of the curriculum was mandatory, and the minor portion consisted of electives in specialized aspects of library service.[144] Yu took the following prescribed courses: Books and Libraries in the

136. *Id.*

137. Off. of Univ. Admissions, Colum. Univ., Referee form from Daniel S. Ao (Dec. 30, 1946) (on file with the author).

138. Colum. Univ. Sch. Libr. Serv., Summary Information on Charles S. Y. Yu (1949) (on file with the author) [hereinafter Summary Information].

139. Letter from Charles S. Y. Yu to N. Deming Hoyte, *supra* note 134.

140. *Id.*

141. Foreign Student Evaluation Form by Matthew F. Norton (July 22, 1948).The admissions team had questions about the adequacy of academic preparation. "It is my belief that he should be required to do a minimum of one year of preparatory study before being admitted to the Master of Arts program and that he is no case qualified for admission to the graduate Law School."

142. *Id.* Yu had initially planned to undertake library science studies at the University of Denver or the University of Washington and had been accepted by both. Letter from Charles Y. S. Yu to Charles H. Corbett (July 30, 1948) (on file with the author).

143. Letter from Charles Y. S. Yu and others to Charles H. Corbett (Sept. 12, 1948) (on file with the author).

144. Colum. Univ., Announcement of the School of Library Service 1948–1949, at 15 (1948).

Growth of Civilization with Ray L. Trautman;[145] Publishing, Design, and Production of Books with Hellmut Lehmann-Haupt;[146] Library Programs and Plans with Ray L. Trautman;[147] Foundations of Reading and Communication with Miriam D. Tompkins;[148] Introduction to Bibliography with Margaret Hutchins;[149] and Reader Services with Margaret Hutchins.[150] He had selected two courses from a group of three prescribed courses, revealing his specific interests: Humanities Literature with Allen T. Hazen;[151] and Social Science Literature with Winifred B. Linderman.[152] For his electives, Yu took Legal Literature with Miles O. Price;[153] Theory of Library Administration with Lowell A. Martin;[154] and School Libraries with Helen Sattley.[155] He also elected to take an outside educational course from Teacher's College, Columbia University, on Human Relations and the College Program with Albert S. Thompson.[156]

¶47 While at Columbia, Yu worked on a project report based on field observation of an approved library. It was no surprise that Yu took an enormous interest in the operation of the Columbia Law School Library and decided to carry out the project there. After its completion, two faculty members, Maurice F. Tauber and Ray L. Trautman, assessed the quality and adequacy of the submitted report.[157] After examining the written project report, Tauber's evaluation recorded that the project "[e]ndeavor[ed] to grasp the essence of law library service (although clumsily done)[.] Use[d] interview and observation effectively to gain insight into library problems;

145. *Id.* at 16. The goal of the course was to comprehend how libraries had evolved as institutions and the theoretical foundation that underpinned modern librarianship.

146. *Id.* The course involved learning the fundamental steps and methods of publishing and creating books to establish criteria for making decisions about collecting, preparing, and preserving materials.

147. Colum. Univ., Announcement of the School of Library Service 1949–1950, at 18 (1949). This course involved a study of what libraries do now and what they could do in the future.

148. Colum. Univ., *supra* note 144, at 16. The course examined the impact of mass communication on society and psychology through different media channels. It explored how these effects relate to library collections and services.

149. *Id.*

150. *Id.* at 18. The course examined ways to connect readers and materials through information and guidance services. It focused on the techniques used rather than the actual materials involved. The teaching team consisted of Margaret Hutchins, Mariam Tompkins, and W. Linderman

151. *Id.*

152. *Id.* at 16. This course involved a comprehensive study and assessment of library resources in the specified field.

153. *Id.* at 19. The course examined and assessed law library materials, focusing on bibliographical and information sources. It also looked at challenges faced by law libraries in providing specialized services.

154. *Id.* at 18. The course examined how administrative principles are employed in running libraries, particularly regarding the library's structure and management.

155. *Id.* at 19. This course involved analyzing school libraries of diverse types, along with varying models of control and administration. It focused on the historical background, goals, programs, staffing, equipment, and financial aspects of these libraries.

156. Colum. Univ., Announcement of Teachers College 1949–1950: Winter and Spring Sessions 68 (1949). The course explored how personality traits impact administrative and teaching challenges, particularly in achieving successful group collaboration.

157. Colum. Univ. Sch. of Libr. Serv., Reader's Report (1949).

use[d] statistics at certain points, as well as an organization chart. Show[ed] an understanding of some of the technical problems peculiar to law libraries."[158] However, he was not satisfied with Yu's command of the English language, noting that "[Yu's] [s]tyle is poor, revealing language difficulty."[159] However, the second reader, Trautman, spoke highly of the report without reservation: "Keen observation and well thought out conclusions. Comparisons with other institutions excellent."[160]

¶48 Unfortunately, Yu's lackluster English proficiency, particularly in spoken English, hindered him from fully capitalizing on the advantages of the graduate program. Miriam D. Tompkins, who taught him Foundations of Reading and Communication, best summed up Yu's overall performance: "[a]n able and interesting person but handicapped by his inadequate command of English."[161] Linderman, his Social Science Literature instructor, regretted that Yu's spoken English made it difficult for him to make contributions to in-class discussions, but Linderman was satisfied with Yu's written work and work ethic: "[h]is written work, however, was carefully, faithfully, and adequately done. The interest and zeal of these Chinese students is very real and very welcome."[162]

¶49 Yu worked exceptionally hard, yet his limitations hindered his contributions to class discussions. Lowell A. Martin, his Theory of Library Administration professor, reported that "[t]ries hard, talks as little as possible, written work shows he gets something."[163] Allen T. Hazen, his Humanities Literature professor, wrote, "Hard worker, careful."[164] But his chief limitations were: "[h]andicapped in the course by lack of background in Western civilization."[165] Yu's previous exposure to American library literature at home made him stand out in a related course. Helen Sattley, his School Libraries professor, commented on Yu's work: "Thoroughness, earnestness, industriousness, and an excellent grasp of American school library conditions."[166]

¶50 Among his professors, Yu had impressed Trautman, who evaluated his project report and taught him two courses: Library Programs and Plans and Books and Libraries in the Growth of Civilization. He reported that Yu had an "[a]mazing ability

158. *Id.*

159. *Id.*

160. *Id.*

161. Sch. of Libr. Serv., Faculty Ratings on Students by Miriam D. Tompkins (Feb. 1949) (on file with the author).

162. Sch. of Libr. Serv., Faculty Ratings on Students by W. Linderman (Jan. 21, 1949) (on file with the author).

163. Sch. of Libr. Serv., Faculty Ratings on Students by Lowell A. Martin (n.d.) (on file with the author).

164. Sch. of Libr. Serv., Faculty Ratings on Students by Allen T. Hazen (May 19, 1949) (on file with the author).

165. *Id.*

166. Sch. of Libr. Serv., Faculty Ratings on Students by Helen Sattley (Aug. 16, 1949) (on file with the author).

to synthesize knowledge" and had a "[k]een grasp of social problems," however, his "Americanization [was] slow"[167] and his personality was "shy [and a] bit retiring."[168]

¶51 Due to his professional interest, Yu specifically selected a specialized course on legal literature with Miles O. Price, a law librarian. Price reported that Yu's strong points were legal and law library training, but his language difficulty made it tough for him to perform well.[169] As a result, Yu "[d]id many poor work [sic], because of lack of time. What he did was fair to good, but he omitted too many answers to problems."[170]

¶52 In a summary report prepared for Yu's future employers, the library school offered the following overall evaluation based on sundry reports filed by his professors:

> The members of the faculty of the School of Library Service who had direct contact with Mr. Yu felt that he was an able and interested student, though somewhat handicapped by a lack of facility in the English language. His awareness of social problems and his grasp of American library conditions were stressed in faculty reports. The quality of Mr. Yu's written work tended to counterbalance the impression of shyness which he left with some members of the faculty.[171]

¶53 In the end, Yu earned one A, three Bs, and eight Cs,[172] a very credible performance for a newly arrived international student. When he began his first semester, he was 42 years old with many years of work experience, much older than the average student. Traditional Chinese cultural norms would also incline him to select his words carefully and speak less to project a demeanor befitting a senior person. Indeed, he was quite an introvert but a hard worker, as reported by his American colleague W. B. Nance, president emeritus and Western adviser, Soochow University: "very quiet person, but very much on his job, and a very useful member" of the school.[173]

Enduring the Plight of Political Campaigns on Return to China

¶54 Yu received his master's of science in library service from Columbia University on October 12, 1949,[174] and returned to Shanghai in November to rejoin the CLSC as its librarian.[175] On his return, Yu found China vastly transformed; the Communist forces had emerged victorious in the civil war against the Nationalist forces. On October 1, 1949, the People's Republic of China was officially established. The new government

167. Sch. of Libr. Serv., Faculty Ratings on Students by Ray L. Trautman (May 29, 1949) (on file with the author).

168. Sch. of Libr. Serv., Faculty Ratings on Students by Ray L. Trautman (Jan. 25, 1949) (on file with the author).

169. Sch. of Libr. Serv., Faculty Ratings on Students by Miles O. Price (Aug. 9, 1949) (on file with the author).

170. *Id.*

171. Summary Information, *supra* note 138.

172. Charles S. Y. Yu's Columbia University Academic Transcript (n.d.) (on file with the author) [hereinafter Academic Transcript].

173. Off. of Univ. Admissions, Colum. Univ., Referee Form from W. B. Nance (June 3, 1947) (on file with the author).

174. Academic Transcript, *supra* note 172.

175. Jun Ma, *supra* note 48, at 62.

implemented sweeping changes to the nation's universities, including closing all institutions with religious affiliations.[176]

¶55 Due to its association with the American Methodist mission, CLSC ended abruptly after 37 years of grooming Chinese men and women to become specialists in Chinese, Anglo-American, and comparative law.[177] Because of this change, Yu wound up at Shanghai Financial College as its librarian from 1952 to 1958; then, he was reassigned to the Shanghai Academy of Social Sciences as its librarian.[178] A year later, he was a researcher at the Institute of History of the Academy for three years before retiring at age 65 in January 1971.[179]

¶56 Yu's talent and experiences in librarianship were squandered on his return, falling victim to a series of political campaigns initiated by the government following the establishment of new China in 1949. These campaigns wreaked havoc on the operations of universities and research institutes, as Western-educated intellectuals were socially marginalized, criticized, and subjected to punishment. During the tumultuous 10-year period of the Cultural Revolution (1966–1976), Yu's prior long-running affiliation with Christian schools and universities and his experience of overseas studies cast shadows over his career and life. These perceived stigmas made him a susceptible target for zealous Red Guards. He endured injustices, indignities, and mistreatment during this chaotic period.[180] At that time, Chinese intellectuals often faced forced confessions, public criticism, denunciations, physical abuse, and social isolation.[181] Regrettably, due to these circumstances, Yu was deprived of opportunities to apply his newly acquired knowledge in librarianship to enhance the functioning of law libraries and the education of law librarians in China. Thus, his name fell into obscurity, causing many historians of Chinese library science to lose track of him after 1949. Yu quietly lived out his life in Shanghai until his death in 1993.

Conclusion

¶57 Charles S. Y. Yu was born during the twilight of China's last imperial dynasty. He received his librarian training at China's renowned Boone Library School, established by American missionary librarian and educator Mary E. Wood. His appointment as the librarian of the CLSC in 1931 marked the dawn of the law librarian profession in China. Despite the challenges of civil war and the Japanese invasion, he tirelessly advocated for law library science. He played a key role in establishing a well-equipped and nationally

176. *See* China's Christian Colleges Cross-Cultural Connections, 1900–1950 (Daniel H. Bays & Ellen Widmer eds., 2009).

177. *See* Alison W. Conner, *Training China's Early Modern Lawyers: Soochow University Law School*, 8 J. Chinese L. 1 (1994); Alison E. W. Conner, *Soochow Law School and the Shanghai Bar*, 23 Hong Kong L.J. 395 (1993).

178. Jun Ma, *supra* note 48, at 62.

179. *Id.*

180. *Id.*

181. *See generally* Frank Dikotter, The Cultural Revolution: A People's History, 1962–1976 (2016).

acclaimed law library. With a fervent desire to further his education, Yu eagerly awaited an opportunity to study in the United States. In 1948, when the chance arose, he seized it and pursued graduate studies at Columbia University's School of Library Service. However, on his return to China in late 1949, during a tumultuous period, Yu's aspirations to contribute to library science education and practice in China were thwarted. Despite acquiring new knowledge and methods of library administration, the prevailing circumstances hindered his ability to make any contributions to the field.

¶58 By uncovering the life and work of this historic, pathbreaking Chinese law librarian, this article hopes to contribute to improving our understanding of historical Sino-American exchange in the library field and the humanization of the history of Chinese law librarians. It further aims to inspire further research into the lived experiences of the pioneer generation of U.S.-educated Chinese law librarians.

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Keeping Up with New Legal Titles*

Compiled by Chava Spivak-Birndorf** and Matt Timko***

Contents

* If you would like to review books for "Keeping Up with New Legal Titles" please email book review editors Chava Spivak-Birndorf (cys28@drexel.edu) and Matt Timko (mtimko@niu.edu).

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Coates, Jessica, Victoria Owen, and Susan Reilly, eds. *Navigating Copyright for Libraries: Purpose and Scope*. Berlin/Boston: De Gruyter, 2022. 547p. $114.99.

Review by Shania Kee[*]

¶1 *Navigating Copyright for Libraries: Purpose and Scope* is an open and accessible primer for interested law librarians, law students, professors, or practitioners on the fundamentals of copyright law historically, internationally, and technologically. This book is divided into four parts, with 20 chapters written by different authors who provide insight into how copyright impacts libraries and, by extension, librarians in a variety of ways and in various countries. The editors of this book conclude that copyright law seeks to balance the interests of creators as rightsholders with public access (i.e., user's rights), in which the library plays an important role.

¶2 The editors should have struck a balance between catering to readers who will read the entire book and those who may only focus on a single chapter. Although they aimed for each chapter to stand alone, this led to the repetition of the same background information across all 20 chapters. Despite the cumbersome redundancies, this book focuses on subjects and countries not usually discussed in American scholarship, which include innovative approaches to artificial intelligence (AI) and the importance of respecting Indigenous peoples' rights to their Traditional Knowledge.

¶3 The editors assert that librarians must actively track copyright developments domestically and internationally. By staying informed, librarians can advocate for copyright reform through national legislation, treaties, and trade agreements because access to information is a fundamental human right (p.320). The book's incorporation of various case studies illustrates real-world situations that librarians face when advocating for copyright reforms. For instance, in Chapter 14, a librarian from South Africa shares her experience tracking copyright reform. The legislative impasse in South Africa delays access to information in libraries, denying the people a basic human right (p.343).

¶4 The emerging technological development in different countries creates an unstable environment for libraries, which impacts a patron's access to information, especially if algorithms are unable to differentiate between lawful use and infringement (p.431). The author of Chapter 16 emphasizes that librarians must educate their communities through workshops and online courses or chatbots about AI, Machine Learning (ML), e-lending, open access, information filtering facial recognition, and text and data mining (TDM) (p.401).

¶5 Some countries, such as Mexico, India, China, and European Union (EU) member states, have developed laws that take a proactive approach to information filtering (preventing unauthorized content) on websites, potentially leading to censorship and infringement issues (p.406). Japan, unlike the EU, takes a liberal approach to TDM and allows its use without regard for distinguishing between commercial purpose or a type of user to promote AI and freedom of use (p.516). The recommendation in Chapter 17 that humans should moderate or quality-check these emerging technologies (p.431)

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counters the notion that these technologies will render libraries or librarians obsolete, emphasizing the need for education about these technologies, as they are still new and few countries have begun to pass relevant laws.

¶6 The Canadian author of Chapter 3 contends that librarians must recognize the multiplicity of rights and conflicting laws within copyright, especially concerning Indigenous peoples and Traditional Knowledge (p.62). Chapter 6 is worth reading because it addresses the two extremes of the public domain; on one hand, it supports the public good (i.e., the library) if there are no term expansions to impede access (p.137), but on the other, it threatens the rights that Indigenous peoples have over their Traditional Knowledge by sanctioning unfettered access (p.149). Chapter 18 illustrates how Australian libraries are developing approaches using Mukurtu (a content management system that allows Indigenous communities to customize user access to their data) (p.454) to support ethical practices and the rights of Indigenous peoples (p.450). I would have liked if these chapters discussed Indigenous Data Sovereignty[1] movements within the different countries, especially since some authors mention Indigenous Data Governance[2] tools such as Mukurtu and Local Context's Traditional Knowledge labels (p.455).

¶7 In addition to the broad and deep coverage of copyright, another strength of this book is that each chapter has reading aids such as an abstract, keywords, clear headings, and hyperlinks to various cases, legislation, and other external sources that make the chapters easy to navigate. Furthermore, this book was published as an open access resource and is free to download on the De Gruyter Saur website. In addition to the cost savings, the reading aids are more useful in their digital form.

¶8 Ultimately, I recommend this book to academic and law firm libraries, particularly those with a collection or practice in comparative law and intellectual property. The book covers topics and countries not addressed in any copyright law treatise I have read. Although the text is intended for a general library audience, the comparative analyses of copyright law in different countries will be useful to a law student, professor, or practitioner.

1. Indigenous Data Sovereignty is "the right of [Indigenous] [N]ations to govern the collection, ownership, and application of its own data." Maggie Walter & Stephanie Russo Carroll, *Indigenous Data Sovereignty, Governance and the Link to Indigenous Policy*, in Indigenous Data Sovereignty and Policy 1, 3 (2021).

2. Indigenous Data Governance is the "act of harnessing tribal cultures, values, principles, and mechanism . . . and applying them to the management and control of an [I]ndigenous nation's data ecosystem." Stephanie Carroll Rainie et al., *Policy Brief: Indigenous Data Sovereignty in the United States*, Native Nations Institute, (2017) at 2, https://nnigovernance.arizona.edu/sites/nnigovernance.arizona.edu/files/resources/Policy%2520Brief%2520Indigenous%2520Data%2520Sovereignty%2520in%2520the%2520United%2520States.pdf [https://perma.cc/RMS2-FNAN].

Gaon, Aviv H. *The Future of Copyright in the Age of Artificial Intelligence*. Northampton, Massachusetts: Edward Elgar Publishing, 2021. 288p. $148.

Reviewed by Yao Lu[*]

¶9 The separation between human and machine has become less clear in various domains. With the application of artificial intelligence (AI) in the media industry, AI Generated Content (AIGC) and copyrights have attracted attention from scholars around the world. Aviv H. Gaon's book *The Future of Copyright in the Age of Artificial Intelligence* presents a detailed picture of the future of copyright in the AI era.

¶10 The first part of the book consists of three chapters. In Chapter 1, the author starts with the impact of AI on people's lives and introduces historical moments in the development of AI technology. The author asserts that AI will reach a level of intelligence comparable to humans within 30 years (p.11). This assertion suggests the author believes that AI can break through the "singularity" and become truly intelligent in the future, which is different from the scholars who treat AI as just a tool. The author goes on to analyze the current state of AI research and introduces the legislative status of AI in various countries. At the end of this chapter, the author surveys the current legal challenges posed by AI technology, including "policymaking, human safety and the use of force, and employment" (p.27).

¶11 In Chapter 2, the author addresses the issue of AI's legal personhood from a philosophical perspective, refuting the three main objections to AI's personhood: "only humans should be given personhood rights," the "critical component," and "AI is property" (p.37). It is appropriate and necessary for the author to refute these views. They either deny the possibility of AI acquiring the status of legal subject from an anthropocentric perspective, or they reject the notion of AI surpassing through the "singularity" and acquiring the status equivalent to or greater than that of humans. This confirms the author's assertion in the first chapter (p.11).

¶12 The author defines the core concept of the book in Chapter 3, where he provides a new term for the legal concept of AI, "non-human" (p.58), to help specialists and non-specialists alike develop a proper understanding of AI. The author's approach is accurate: artificial intelligence is a grand concept that encompasses many elements. Judging from relevant studies in China, some legal scholars often neglect to define the terms when discussing issues related to AI, or they select conceptual scopes that do not fit with their studies, leading to inconsistencies in their logic and causing confusion among readers.

¶13 In the second part of the book, "AI-IP Theory," the author develops a series of theoretical discussions. In Chapter 4, the author compiles four theories of intellectual property and critically discusses current trends in intellectual property. To better realize the dynamic interaction between intellectual property theory, law, and computer software, the author further explains the intellectual property protection of computer programs and its evolutionary history in Chapter 5, where he outlines the legal mechanisms of intellectual property protection in various countries in the relevant fields, depicting

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the potential impact of the latest developments in the field of AI and robotics on intellectual property.

¶14 Finally, the author explores the possibility of incorporating AI into intellectual property law in Chapters 6 and 7. This path of the author's discussion is reasonable: how to correctly apply the law to solve the friction between AI and IP within the framework of the law is no longer merely a conceptual discussion, but a realistic proposition that urgently needs to be solved. Theories that address the identification of AI's contribution, and "non-human authorship" (p.141) will help to promote the solution of this proposition.

¶15 In the final part of the book, the author vividly connects the ideas in Part 1 and Part 2 of the book. The author discusses the "no authorship" scenario and the possibility of AI owning IP itself in Chapter 8, but while these scenarios are simpler in terms of rights structure than the joint authorship scenario and have lower transaction costs (p.186), these ownership models have their own limitations and are not optimal for the AI era. Meanwhile, the author introduces and discusses the potential of authors-in-law and AI moral rights in the distribution of intellectual property rights over AIGC.

¶16 In Chapter 9, the author discusses the data and privacy barriers in the development and utilization of AI. Based on the previous discussion, the author emphasizes in Chapter 10 that the criterion of "originality" (p.223) should be taken seriously and the fact that machines can express creativity (p.235) should be accepted. Finally, in Chapter 11, the author supports the idea that AI can be an author and provides further thoughts and conclusions on the different paths AI authors might take. We should take a more inclusive approach to thinking about the boundaries of copyright in the age of AI, based on distinguishing between the level of development of AI and overcoming the view that authors can only be human.

¶17 Aviv H. Gaon portrays a vivid picture of copyright law in the age of AI with a rich literature review, providing a new and comprehensive perspective for the study of AI and copyright. He emphasizes the characteristics of different stages of development of AI and highlights the failure of moral generalities in the field of AI. The book is written in a very matter-of-fact way, the information cited is very detailed, and the theories of law, philosophy, and economics are comprehensively utilized to reflect on the possibilities of copyright law in the era of AI. Readers interested in the field of AI will undoubtedly be keenly interested in this book.

Mathuews, Katy, and Ryan Spellman. *Creating a Staff-Led Strategic Plan: A Practical Guide for Libraries.* New York: Bloomsbury, 2023. 232p. $74.95.

Reviewed by Chaitanya Furlong[*]

¶18 If you have ever speculated about the distinctions between value, vision, and mission statements, or the difference between goals and initiatives, Katy Mathuews and co-author Ryan Spellman have the answers for you in their book, *Creating a Staff-Led*

* © Chaitanya Furlong, 2024. Dual degree MLIS/MLS candidate, University of Arizona College of Information and College of Law, Tucson, Arizona, https://orcid.org/0009-0007-6865-5889.

Strategic Plan: A Practical Guide for Libraries. At Ohio University Libraries, where Mathuews serves as the senior director of administration, and Spellman as a library support specialist, the authors developed this comprehensive guide emphasizing how all staff members, not just leadership, are an integral part in the development of a library's customized strategic plan through collaboration and total staff involvement.

¶19 This book aids planning by delivering insightful and detailed instructions. In the beginning, the authors set the tone with an overview of the planning process. The book's creators point out that the success of a strategic plan is largely based on staff buy-in and a plan's functionality. They break up strategic planning into three parts: pre-plan, plan creation, and plan implementation. The authors convey how to harness talent, work on a team, conduct research, and make tailored blueprints for libraries by asking thorough questions about organizational culture, needs, and goals.

¶20 The authors' recommendations include incorporating relevant platforms of the digital age, such as social media, email, virtual meetings, websites, and marketing tools to gather feedback from library staff and stakeholders. While their advice is grounded in the technology of the twenty-first century, it does not exclude print mediums. The authors discuss how printing documents and plans may help stakeholders who are less comfortable with electronic media feel included in the strategic planning process. The authors advise that strategic plans cover the following three to five years, but they also recognize that libraries continually evolve, and frequent updates might be essential.

¶21 Readers will benefit from the book's step-by-step guide to aid any library with months to prepare and a previous strategic plan to use as its foundation. Moreover, the authors give tips on how to deal with stressful exchanges, listen to colleagues, and provide and receive feedback. For instance, in Part 1, anonymous feedback is recommended to increase staff participation and inclusivity.

¶22 One of the finest elements of this book is its utility. It directs the reader to important questions, providing key issues to ponder, while recognizing there is no one-size-fits-all approach to solutions. Instead, the audience can reflect on these subjects and decide the best tactic for their specific libraries. The authors include recommended additional readings, such as an article about strategic planning from the Yale Law Library.[3] The book also contains some practical template correspondence, worksheets, and forms to support plan development.

¶23 Other strengths are the discussion of the important role of committees, subcommittees, and taskforces to complete overall aims, provide staff support, and bolster diversity, equity, inclusion, and accessibility in the strategic plan. The authors allow for flexibility; strategic planning teams can choose general or more definite initiatives. But the book does not stop here. In Part 3, it explains what to do after the plan is shaped, such as how to implement and assess initiatives and measure the plan's effectiveness.

¶24 If readers cannot imagine the final product, they can review the appendices with six strategic plans from public and academic libraries around the world. Mathuews

3. Ryan Harrington, *Updating a Strategic Plan: The Goldman Law Library Experience*, 24 Trends L Libr. Mgmt. & Tech. T 19 (2014).

and Spellman showcase their skills by including their strategic plan from Ohio University, created by a large strategic planning team in 2020. While the authors offer many insights, such as managing expectations about the lengthy and challenging process of strategic planning, they also explain that completing an entire strategic plan can take six to 12 months to emphasize that they are not rushing the process.

¶25 One of the downsides to this helpful book is its length and the attention span required by someone who may already be spearheading a strategic plan. Readers may become impatient because, while the example strategic plans range between one and 13 pages in length, the guide to creating them is roughly 150 pages long. Further, the recommendations may only benefit team members if they are focused and patient enough to follow extensive instructions.

¶26 Nonetheless, Mathuews and Spellman highlight the nuances that should be explored at every part of the process. This slow unpacking is both prodigious and exhaustive. Readers, leaders, and stakeholders alike will be informed and impressed by the quality of the well-thought-out strategic plan developed from its pages.

¶27 There is no doubt that the authors capitalized on their own experiences with strategic planning, but if readers are looking for a truncated manual, this book is not it. Conversely, if the audience is short on time, they can jump to Part 2 and learn the basics of brainstorming and creating a strategic plan. Unfortunately, if they do skip ahead, they will learn less about the staff-led planning approach, which is a key aspect of this book.

¶28 Nevertheless, if your institution is not time-constrained and can follow this entire guide, your strategic plan and organizational goals are more likely to be achieved. While the authors wrote more of a universal guide rather than one focusing on academic law librarianship, it is still a recommended addition to a law library's professional development collection due to its widespread applicability.

Schlak, Tim, Sheila Corral, and Paul Bracke. *The Social Future of Academic Libraries: New Perspectives on Communities, Networks, and Engagement*. London: Facet Publishing, 2022. 360p. $85.99.

Reviewed by Kristin M. Wolek[*]

¶29 It is more important than ever for academic librarians to consider where they fit into the uncertain future. Universities are changing, so university libraries must adapt. This book illustrates concepts that are key to preparing for the future of libraries, such as what social capital is and how librarians can use it, as well as network theory and how this pertains to libraries. It is not only a book of library science ideas but also a practical guide, as the later chapters describe how these theories have been or could be applied in practice. While *The Social Future of Academic Libraries* does not specifically discuss law libraries, this book offers a perspective on the future of academic libraries that is valuable for all academic librarians, including law librarians.

* © Kristin M. Wolek, 2024. Law Library Fellow, Daniel F. Cracchiolo Law Library, University of Arizona, Tucson, Arizona, https://orcid.org/0009-0001-9894-7061.

¶30 The book begins with a discussion of the sociological theories that play into the future of academic libraries. The key concepts are explained in a way that would be easy for the intended readers to understand but may not be accessible to someone without foundational library science knowledge. The chapters in this half of the book are written by its three primary authors and editors: Tim Schlak, Sheila Corral, and Paul J. Bracke. Each of them is a library leader, having served as library directors and in other management roles (p.xv). These authors argue that librarians cannot keep altering traditional practices to keep up with the modern age. Instead, librarians must accept that they will have to create entirely new practices and be willing to alter their library's overall mission. The chapter "Networks, Higher Education, and the Social Future of Libraries" offers insight into this process, addressing universities' shift in goals from general education to career readiness. Additionally, libraries must find new ways of promoting positive growth of their universities as the goals of those institutions change. As libraries are increasingly pushed to prove their value, it is important that librarians consider the often-intangible assets that they may have to offer their universities.

¶31 Many of the assets discussed in *The Social Future of Academic Libraries* have to do with people and the relationships they form with each other. Academic libraries have the potential to facilitate collaboration and connections within their university's students and faculty. Libraries may serve as a place to engage with students to help them adjust to the university, which, the authors note, particularly benefits first-generation and international students (p.245). The book illustrates that libraries can bridge gaps between departments, allowing for interdisciplinary collaboration between students and among professors.

¶32 Building these types of relationships is also valuable to law libraries and their law schools; while law schools and law libraries are traditionally isolated from the rest of the university, law librarians may find benefits from expanding their community to include people from every corner of the campus. Importantly, the book also notes that universities benefit from having access to library knowledge. While knowledge is typically thought to be limited to research materials and general assistance, librarians themselves also provide invaluable subject expertise, making themselves vital to their schools.

¶33 The second half of the book shifts to applying the discussed theories to everyday practice. While the first half of the book explains the importance of its ideas, the second half properly demonstrates them. A diverse array of examples is discussed, some of which present issues that may be quite familiar to law librarians. For example, "Beyond Individual Relationships: Programmatic Approaches to Outreach and Engagement at UC Santa Barbara Library," discusses the place of outreach in academic libraries, and how outreach pertains to reaching historically disadvantaged students (p.243). It discusses the place of an outreach director and why the author ultimately felt it was best for outreach responsibilities to be shared among all the librarians. There are other chapters that have examples that are less on-point for law libraries, yet they still contain useful lessons. The chapter on makerspaces leading to collaboration could easily inspire a law librarian to consider programming that is welcoming to all their

students and even their faculty (p.229). This chapter serves as a guide for how to create social capital, which is only one of several intangible assets the authors believe libraries can offer their universities.

¶34 Although there will be some sections of *The Social Future of Academic Libraries* that will perhaps not be applicable to law libraries, much of the book is relevant and illustrates key concepts to all academic libraries. Therefore, I recommend this book for any academic law library collection, especially for law librarians who are or may someday find themselves in leadership roles.

Wiggins, Chris, and Matthew L. Jones. *How Data Happened: A History from the Age of Reason to the Age of Algorithms*. New York: W.W. Norton & Company, 2023. 384p. $30.

Review by Jennifer E. Chapman[*]

¶35 The word "data" may conjure images of modern-day computers, complex technologies, or Excel spreadsheets. But the data-driven world we live in today did not just suddenly appear. There is a long history of data creation and curation that has brought us to the current paradigm and may forecast where we are headed. Chris Wiggins and Matthew L. Jones trace some of this history in their book *How Data Happened: A History from the Age of Reason to the Age of Algorithms*. Wiggins is an associate professor of applied mathematics at Columbia University, where he develops machine learning methods to aid in understanding biology and health. Jones is a historian of science and professor at Princeton University where he studies the impacts of mathematical thinking on the study of nature and politics. They combine their specialties into an engaging book that gives historical context to our data-dominated society.

¶36 Just as knowing legal history helps us contextualize present-day legal issues, understanding the history of data helps us better understand present-day uses—and misuses—of data in our daily lives. The history of data is not simply a history of mathematical and technological developments, it is also a history of power. The authors frame their examination of data within the context of "corporate power, state power, and people power" (p.xi). Framing the discussion in this way provides much needed context that helps the reader see that data and the ways corporations, governments, and individuals have historically used it is not neutral.

¶37 The authors effectively weave the theme of power throughout the book. They provide examples of how data can be used for good (like helping break the German's unbreakable cyphers in World War II (p.103)) and for bad (like misusing data and statistics to justify racist policies (p.27)). The interrelations among government and business powers are highlighted throughout, such as the transformation by IBM of computational statistical machine learning used by the National Security Agency (NSA) to decipher classified information into systems to track consumer data (p.168). The powerful economic motivations to compile, store, and use more and more data

* © Jennifer E. Chapman, 2024. Research and Faculty Services Librarian, Thurgood Marshall Law Library, University of Maryland Francis King Carey School of Law, Baltimore, Maryland, https://orcid.org/0000-0001-7941-3067.

progresses throughout the book until present day where power is being consolidated into a few corporations that have the money and computing power to compile and store the data needed by academics, governments, and businesses (p.282).

¶38 Condensing a full-scale history of data into about 300 pages is impossible, therefore, the authors begin their analysis in the late eighteenth century. They mark this as a pivotal time when European nations and the United States began widely using quantitative measures to understand what resources they had at their disposal—resources such as land, precious metals, and people. Initially data collection was merely descriptive, but the development of new mathematical tools meant data could be examined, interpreted, and transformed to prescribe policy and predict future outcomes. The transformation of data from descriptive to prescriptive and predictive is a significant point in the history of data and informs the remainder of the book.

¶39 Each chapter introduces a scientific or technical development that impacted the accumulation and use of data; the governments, businesses, and individuals that funded or instigated these developments; and how these developments rearranged power among corporations, states, and individuals. For example, Chapter 5 examines the development of hypothesis testing and mathematical statistics, which was largely motivated by the Guinness Brewery's goal of creating an industrial science of brewing and maximizing profits, but expanded beyond beer to uses that sought to augment human freedom, predict human behavior, and aid decision-making through statistical knowledge.

¶40 Though the authors do not center their analysis on the law, legal issues are integrated throughout the book, specifically relating to privacy. They discuss various government attempts to protect individual privacy, especially during the twentieth century, and in doing so, demonstrate that the same struggles governments are currently facing regarding modern-day technologies, like generative artificial intelligence, are not new. The societal implications of the evolving uses of data also have implications in many areas of the law. For example, the early misuses of physical characteristic data to predict if a person would become a criminal and the ways this data was interpreted to reinforce existing racist notions is still felt in today's criminal justice system.

¶41 One limitation of the book is the narrow focus on predominantly European and American history and conceptions of data. The authors recognize that their experiences as "two tenured White male academics" impacts their analysis (p.xiv) and do not claim theirs is the only viewpoint necessary to understand the societal implications of data. Throughout the book they highlight the important work of scholars from diverse backgrounds and cite to diverse voices extensively in the endnotes. These references make the endnotes a significant resource and contribute to the overall strength of the book.

¶42 *How Data Happened* is an excellent addition to a law school or other academic library. It adds an important historical piece to the existing literature on modern technologies and data. Notably, Wiggins and Jones expand upon the work of other scholars who have critically examined technology, such as Helen Nissenbaum, Safiya Noble, Frank Pasquale, and Ruha Benjamin, and add a necessary historical perspective.

Foucault, Michel. *Nietzsche: Cours, Conferences et Travaux.* Edited by Bernard E. Harcourt, Paris: Seuil/Gallimard, 2024 (in French). 424p. €28.

Reviewed by Dana Neacsu[*]

¶43 Today, the defining event of our Western civilization is generative artificial intelligence (GenAI). Philosophically, it might be grounded in Walter Benjamin's *The Metaphysics of Youth* where Benjamin's return to an age of eternal youth, which, due to its lack of memory,[4] aligns with the ethos of GenAI. Memory seems enough for those who remember the subject matter, the color, or the sound of what they seek in GenAI chats. It becomes adequate as we grow accustomed to summaries of "unread" texts, such as those by Benjamin.[5] Unlike the AI era of Google searches, which provided an unlimited sea of stimuli, GenAI's refracted taxonomy and organization based on the imaginary, when the texts are unavailable, brings to mind Nietzsche's joyful wisdom through Foucault's knowledge organization. Due to Bernard E. Harcourt's magisterial work on Foucault and Nietzsche, their work joins Benjamin's. Harcourt's edition of Michel Foucault's *Nietzsche: Cours, Conferences et Travaux* is the intellectual scaffolding one can only hope for that is rarely provided in these tumultuous times.

¶44 Harcourt's book introduces us to the work of young Michel Foucault, as he takes on the *defit de* (challenge of) Nietzsche. Foucault's philosophy appears intimately connected to *savoir*, science, or wisdom (akin to *Joyful Wisdom*[5]) in the translation of Foucault's reading of Nietzsche's *Die fröhliche Wissenschaft*. From this perspective, GenAI might appear to be the technological challenge that a young Foucault would have referenced as the Western civilization's moment to accept its own ephemerally wrapped-up *joyful savoir*.

¶45 Harcourt's essential book of praxis and philosophy earns my wholehearted praise. This superb double undertaking of the work of Foucault, and through him, that of Nietzsche, is proposed here as a guide to understanding the current AI moment, and it could not have been rendered in a more concise yet lusciously executed manner than Harcourt's monumental work. The title would indicate that the book (currently only available in French) is divided into three parts. However, there is a fourth part that makes this oeuvre foundational to our civilizational present: "Situation, par Bernard E. Harcourt."

¶46 "Situation" should be devoured twice to understand when and why Harcourt is making this analysis: first, before one reads Foucault's original texts, then again once one has this greater understanding. "Situation" is also an entrance to Harcourt's magic:

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4. Walter Benjamin, Walter Benjamin: Selected Writings, Volume 1, 1913-1926, 6-17 (1996). The present as eternally having been, is Eiland's and Jennings's preferred translation for die ewig gewesene Gegenwart, *see* Howard Eiland and Michael W. Jennings, Walter Benjamin. A Critical Life 43-44 (2014).

5. Friedrich Wilhelm Nietzsche, The Joyful Wisdom ("La Gaya Scienza") (Paul V. Cohn, Thomas Common & Maude Dominica Petre trans.) (Oscar Levy ed.) (1910).).

Foucault comes alive as a philosopher of Nietzsche's caliber, whom Harcourt further pushes upward to the frontispiece of Western philosophy. This is not an easy task if one remembers Nietzche's tarnished reputation. How did Harcourt manage this dual feat? With Foucauldian aplomb, having spent an immoderate number of hours reading original documents in the French National Library, and then extracting their truth. Perhaps Foucault showed us all how knowledge is produced in *Les Mots et les choses*.[6]

¶47 In "Situation," Harcourt explains the unexplainable. In the end, Foucault appeared to have abandoned Marxian studies to avoid the perception of Marxist-Leninist obedience required by the French left in the 1950s. In the Parisian philosophical milieu of the 1950s-1960s, Foucault's intellectual growth, like Walter Benjamin's, had its own truth to follow. Embracing his elite education and privileged background, Foucault created the most fecund cultural philosophical inquiry and political commentary of our times. To paraphrase Foucault, what is the role of philosophy if not that of a reflection on today's world and its politics?

¶48 Illuminated by the context of Foucault's encounter with Nietzsche's philosophy, the reader has the freedom to choose between the notes of lectures given on Nietzsche (*les cours*), the conference presentations (*les conférences*), and his works in progress (*les travaux*). In the alternative, one can just follow the table of contents, located at the end of the volume, and use it as an index to discover that both the second and third notes of lectures (*lessons,* subdivisions of *cours*) are on Nietzsche's *Joyful Wisdom*, while *La connaisance et le désir* (knowledge and desire) are topics discussed both under the umbrella of notes of lectures (*les cours*) and conference proceedings.

¶49 For anyone interested in Foucauldian thought from the 1950s through the early 1970s, Harcourt's tome is essential. A profoundly readable philosophical commentary. A feat GenAI cannot attempt as it boxes words behind decontextualized labels.

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6. Michel Foucault, Les Mots et les choses (1966), translated into English and published as The Order of Things: An Archaeology of the Human Sciences (translator, Alan Sheridan) (1970).

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