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A Note on Civil Disobedience and Professional Ethics Codes

W. Bede Mitchell

In her exemplary book The Ethical Archivist, Elena S. Danielson devotes a chapter to professional ethics codes and points out that “[m]any informed observers do not feel that complying with the law has any place in a statement on ethics since laws enforce existing power relationships, which may be unfair.” (p.45) I will argue that including civil disobedience principles in ethics codes may be preferable to rejecting legal compliance as a consideration.

First, a few words about the purposes of codes of ethics. Do we need them? If not, then we do not need to worry about the legal compliance issue. How many of us ever consult the American Library Association’s Code of Ethics, or the code of the Society of American Archivists? Do such professional codes really provide useful guidance in making difficult ethical decisions? While these empirical questions are often raised, they do not address what I regard as the principal value of a professional code of ethics. Even if we grant an argument that it is impossible for a professional code of ethics to be a useful (not to say perfect) guide to selecting the ethical option that is most just and does the least amount of harm in any given situation, I am persuaded that archivists and librarians should promulgate, observe, and honor their professional codes of ethics because the codes are public statements of values that help define us as professionals. The assertion of these values is an important part of proving ourselves worthy of the trust and respect we seek from our peers, patrons, funding agencies, governing and government officials, members of the general public, etc. Adoption of an ethical code is a hallmark of most professions because the very existence of the code is a stipulation of
obligations beyond self-interest. The fact that an ethics code is not a simple and infallible means for choosing between different options does not show that the code has no value. A code of ethics is a public assertion that the profession takes its obligations seriously.

Thinking of a professional code of ethics as a statement of values and obligations, we return to the question of whether within those statements there should be any consideration of legal compliance. Setting aside the occasional circumstances where old laws remain in force primarily because no one remembers they exist or notices they no longer serve a purpose, it seems undeniable that current laws may enforce existing power relationships. Certainly some or many laws may be in place to protect minorities and mitigate oppression, but for the purposes of our discussion we are concerned with the conditions where those without power, or with little power, are unable to put into place and enforce laws that are not favored by those who do have power. But does it follow that oppressive, dictatorial, unjust governments never pass just laws? Obviously not, and for the sake of the well-being of oneself and one’s fellow citizens it would be best, for example, to obey the traffic laws even while engaging in efforts to improve or change an unjust government. Surely, arguing otherwise would make one appear so irresponsible that it would be difficult to recruit more participants in the effort to change the government. If this seems a trivial point, let us recall we are considering the position that considerations of legal compliance have no place in a code of ethics. If we are to take that claim literally, then we are entitled to ask when and why non-compliance with just laws is in the best interests of the society. Arguing that some laws may lead to injustice or reinforcement of unfair power relations simply dodges the issue and ignores the possibility that in some ethical situations, there may be laws in place that provide excellent guidance for taking actions which maximize justice and minimize unfortunate consequences. The most sensible approach is to acknowledge the
possibility that current laws can help or hinder when seeking the best ethical alternatives, and as professionals we will put such considerations under careful scrutiny. I believe we as archivists and librarians have an obligation to assert publicly that we will exercise our judgment as professionals and moral agents, acting as we believe is most just, seeking guidance from existing laws if any are relevant, and acting within the letter of the law unless in our professional judgment we believe a greater good (be it a particular outcome or principle) must take precedence. Including this kind of commitment in a code of ethics demonstrates to the public that members of the profession are seriously concerned with more than self-interest, and they will act responsibly and within the law unless such actions violate the profession’s ethics. I think it is also incumbent on the profession to state criteria for determining when breaking a law might be a legitimate, i.e., ethical obligation. As an example, we can return to the concern that legal compliance sometimes has unjust, repugnant effects on an unempowered constituency.

It is of course not at all unusual for librarians and archivists to be faced with deciding whether an illegal course of action is the most ethical and just thing to do, so it is useful for the relevant professional organization (ALA, SAA, etc.) to acknowledge that possibility and help members be prepared for the consequences. Let us distinguish the kinds of acts of civil disobedience (CD) and what the professional organization might do in each case.

An act of civil disobedience might be public and political, intended to influence the powers that be to change the legal circumstances that are contributing to the ethical dilemma. Suppose a public librarian allows a gay/lesbian club to hold a meeting in a library auditorium, even though the town has passed an ordinance banning such a use of public facilities. By actively publicizing the fact that the meeting will take place, the librarian hopes that members of the local community will rally in support and pressure the town council to rescind or revise the ordinance.
This is a brave act by the librarian, since failure to comply with the law is likely to lead to the librarian losing her job.

Alternatively, the librarian might allow the meeting to take place without bringing it to anyone else’s attention, believing that her professional ethical code and the ends of justice trump the ordinance, but she has no desire that her act motivate others. This is called moral CD. Moral CD may be done publicly or privately. A case of public moral CD would entail the librarian letting it be known that the illegal meeting will take place in her library, but making no effort to rally support. She may have no expectation or interest in influencing anyone’s beliefs. But she would be engaging in private moral CD if she attempts to conceal that the group will be meeting in the library. She might be convinced there is little likelihood that there would be sufficient public pressure to cause the town council to change or withdraw the ordinance, so she decides to intentionally deceive with respect to the club using library facilities in order that she can make the facilities available to the club again in the future.

It is important to understand that civil disobedience may also be an option to be carefully considered by librarians and archivists when the object of the CD is not a governmental agency. While we might tend to think of civil disobedience as obtaining solely in cases of legal compliance, this is not the case. Civil disobedience may also be exercised toward the policies of private organizations. Not all of the Jim Crow-era restaurants that only served whites enjoyed the backing of local or state ordinances allowing such discrimination. Instead, the restaurants enforced their own whites-only policies, which led to lunch counter sit-ins, acts of political civil disobedience aimed at forcing the restaurants to change their policies. Librarians and archivists working for private institutions may therefore be engaging in civil disobedience when they fail to comply with an organization’s policy. For example, a private archive’s collection, preservation
and retention policies may reinforce existing unfair power relationships by (deliberately or otherwise) excluding documentation of groups and/or viewpoints that run counter to the official narrative of the owning organization. Are the aims of social justice best served by the organization’s archivist not following the collection policy and acquiring documentation of the organization’s opposition? For example, what if the archive focuses on the history of the American West and portrays an incomplete and unflattering portrait of Native Americans?

By defining the different kinds of civil disobedience according to whether they are public or private, political or moral, and aimed at law or an organization’s policies, we can identify the kinds of guidance and support it would be desirable for a profession to offer when a member decides on an act of CD. In the case of a public, political act, the professional organization’s leadership might provide varying levels of practical advice, access to legal advice, assistance in rallying support, etc. If the act is moral and private, it would probably be more appropriate if the professional organization’s leadership gave behind-the-scenes advice and support. Is the object of protest a law or a corporate policy? In either case, it is quite possible the act could lead to loss of employment, but the kinds of advice and support (legal, moral, and practical) will vary according to the severity of the illegal act, whether the individual openly and respectfully challenged the corporate policy, and so on.

Of course, whether the professional organization would offer any level of support would depend on its legal status, the range of resources at its disposal, and whether the CD act is based on careful, responsible consideration of the relevant factors and options. Even if the professional organization’s leadership does not agree with the decision, they may feel obliged to offer some level of support to a beleaguered member if the individual has honestly and thoroughly examined the laws, professional standards, and other relevant factors in making the decision. One can, for
instance, easily imagine the American Library Association offering moral support to a library
director whose decision on Internet filtering seems at variance with ALA’s recommended policy.

Is the ethics code itself the best place for a professional organization to indicate how
much and what kinds of support might be given to members faced with performing an act of civil
disobedience? Perhaps, perhaps not, but if the organization is promoting values which can
potentially bring members into conflict with legal restrictions or employer policies, it seems
reasonable that the organization should help mitigate the deleterious effects of the CD as much
as possible, and be upfront with organization members of the kinds of support that will be
offered under specified conditions.

In summary, professions should openly profess their values and responsibilities to the
world through an ethical code. Putting the best interests of society ahead of self-interest means it
is almost inevitable that some members of the profession will be forced to consider not
complying with a law or policy, when complying would violate the profession’s code of ethics
and lead to an arguably greater injustice than the non-compliance. When such difficult choices
must be made, professionals should know what the professional organization will do to support a
member who expects to suffer on behalf of his/her best professional judgment.

Reference

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