

# Rethinking Inalienability: Trusting Nongovernmental Archives in Transitional Societies

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## ABSTRACT

Using Cambodia as a case study, this article explores a circumstance under which it is not only defensible, but preferable for nongovernmental archives to claim custody of records documenting state-sponsored human rights abuses. The author posits that trust rather than inalienability is a more useful ethical lens through which to view custody disputes and argues that nongovernmental archives are often more trustworthy stewards of records documenting human rights abuses in societies still undergoing transitional justice. Finally, this paper concludes by both expanding provenance as it applies to records of human rights abuses to include survivors of abuse as key stakeholders and shifting the conceptual relationship between archives and survivors of human rights abuses from one of custodianship to one of stewardship.

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## KEY WORDS

Ethics, Archival Theory and Principles, International Archives

The archival principle of inalienability posits that records generated by state or governmental institutions rightfully belong in the custody of state-operated or governmental archives. Literally meaning, “a prohibition against the transfer or assignment of title,”<sup>1</sup> inalienability has long been used by archivists to justify the existence and continued success of governmental repositories. As Elena S. Danielson wrote, “Official government papers belong in official government archives, and should not be removed or transferred to private ones”—a guideline Danielson stated is “common sense.”<sup>2</sup> The Society of American Archivists’ glossary also vaguely notes that “[A]s regards public records, inalienability prevents such materials from being given, surrendered, or transferred to anybody except those the law allows to possess them.”<sup>3</sup> As Trudy Huskamp Peterson described it, “Public records are deemed inalienable—that is, the sovereignty of a state prevents their removal or abandonment or transfer of ownership contrary to law.”<sup>4</sup> This principle has been invoked in a multitude of disputes regarding archival custody, from restitution of records displaced by war to debates over the proper home for presidential records.<sup>5</sup> It is also seen as intricately linked to fulfilling the archival core mission of holding government agencies accountable for their actions. While Danielson noted both that “there are many worthy exceptions that can be justified,” and that “understanding these exceptions is as important as knowing the basic principles and procedures,”<sup>6</sup> she ultimately asserted, “There is a noticeable trend toward a more consistent view that records created at government expense and for official purposes belong to that agency and should be governed by its retention policies.”<sup>7</sup>

But what happens in societies undergoing transitional justice, particularly those in which the transition to a democracy is not (yet) complete?<sup>8</sup> Should records implicating human rights abusers fall under the jurisdiction of archives still under their control? Does the principle of inalienability provide the most ethical guideline for resolving custody disputes in all cases? The recent history of Cambodia and its current political situation raise these important questions and call the principle of inalienability into question. In Cambodia, the devastating legacy of the Khmer Rouge has made the transition to a functional democracy still incomplete; while some former Khmer Rouge leaders are standing trial, others hold positions at the highest levels of the Cambodian government. Given the backdrop of state failure, political corruption, and competing claims to history, preservation of and access to archival records documenting Khmer Rouge abuses could be threatened if such records were solely entrusted to a governmental repository.

In this contentious political climate, nongovernmental archives have stepped in to ensure that such records are preserved and made accessible. The majority of records documenting the Khmer Rouge regime are in the custody of the Documentation Center of Cambodia (DC-Cam), a nongovernmental archives.

However, legislation signed into law in Cambodia in 2005 challenges nongovernmental claims to custody, instead calling for the return of such state-created records to the National Archives of Cambodia. In this case, the principle of inalienability fails. Instead, a new model recognizing the legitimacy of civil society stewardship based on trust must be developed.

Using Cambodia as a case study, this article explores a circumstance under which it is not only defensible, but preferable for nongovernmental archives to claim custody of records documenting state-sponsored human rights abuses. More specifically, I posit that trust rather than inalienability is a more useful ethical lens through which to view custody disputes, and I argue, in defiance of the principle of inalienability, that nongovernmental archives are often more trustworthy stewards of records documenting human rights abuses in societies still undergoing transitional justice.<sup>9</sup> First, I will provide some background information on the recent history of Cambodia, the political situation from which nongovernmental archives like DC-Cam arose, and the 2005 legislation, which, if enforced, would transfer DC-Cam's collection to a governmental repository. Next, I will address issues of trust, arguing that a survivor-led NGO like DC-Cam is the most trustworthy steward of Khmer Rouge records in the eyes of survivors and victims' family members and most able to ensure the safety of and access to the records. Then, widening the focus from Cambodia to societies undergoing transitional justice in general, I will offer some suggestions for how ethical codes could be changed to reflect trust as a new guiding principle for the custody of archival records. Finally, I will conclude by both expanding the archival notion of provenance as it applies to records of human rights abuses to include survivors as key stakeholders and shifting the conceptual relationship between archives and survivors of human rights abuses from one of custodianship (in which archives maintain custody of records) to one of stewardship (in which archivists steward records on behalf of communities). Using one case study, this paper hopes to challenge a prevailing archival principle and propose a new model that better accommodates the on-the-ground realities of societies in transition.

In this article, I use mixed methods that include interviews with archival staff and users; textual analysis of DC-Cam publications, historical records, and government documents; rhetorical analysis of codes of ethics and legislation; and ethnographic observation based on research in Cambodia. I also employ case study methodology, and in so doing, contribute not only to the body of knowledge surrounding a specific repository in Cambodia, but aim to shape international policy, ethics, and archival practice regarding custody of records documenting human rights abuses in transitional societies across the globe.

## The Contested Custody of Khmer Rouge Records

The Khmer Rouge, a totalitarian Maoist regime, ruled Cambodia from April 1975 to January 1979. In the forty-five months of their rule, approximately 1.7 million people—up to 25 percent of the total population—died from execution, starvation, and disease.<sup>10</sup> In pursuit of a radically new agrarian society, the regime evacuated the capital of Phnom Penh, enslaved millions of Cambodians on farm communes, and outlawed social institutions such as the family, religion, and education. Watches were forbidden, and “memory sickness,” the act of thinking about the past, became a crime, like so many others under the Khmer Rouge, punishable by death.<sup>11</sup> The Khmer Rouge were obsessive recordkeepers, leaving behind detailed documentation of their murderous acts, including thousands of mug shots of perceived enemies, detailed forced confession statements, logbooks of torture and arrests, high-level correspondence, and party directives.

Today, the majority of these records are housed at DC-Cam, under the careful stewardship of Director Youk Chhang and an all-Cambodian staff. DC-Cam has supplied the majority of documentary evidence currently being used by the Extraordinary Chambers in the Courts of Cambodia, a joint Cambodia-United Nations tribunal that is trying former high-ranking Khmer Rouge officials for crimes against humanity, genocide, and war crimes.<sup>12</sup> Despite a series of high-profile controversies, including corruption allegations, political interference, high turnover of international staff, and budgetary problems, the trial remains a milestone for justice in the country.<sup>13</sup>

DC-Cam has a relatively short but complicated history. In 1994, the U.S. Congress passed the Cambodian Genocide Act, which established the Office of Cambodian Genocide Investigations in the U.S. State Department. The office soon awarded funding to Yale’s Cambodian Genocide Program (CGP) to conduct research, training, and documentation of the Khmer Rouge. In 1995, the Yale project, led by historian Ben Kiernan, established DC-Cam as its field office in Phnom Penh. In 1997, DC-Cam became an independent nonprofit organization under the direction of Youk Chhang, a Cambodian American refugee and survivor of torture under the Khmer Rouge. The organization adopted the mission to both “record and preserve the history of the Khmer Rouge regime for future generations . . . [and] to compile and organize information that can serve as potential evidence in a legal accounting for the crimes of the Khmer Rouge.”<sup>14</sup> Today, DC-Cam houses roughly one million records.

Against this backdrop, in 2005, with Prime Minister Hun Sen’s urging, the National Assembly of the Kingdom of Cambodia passed the new “Law on Archive [*sic*],” which was soon thereafter signed into law by the king.<sup>15</sup> In many ways, the law is a step toward accountability and accessibility, stipulating that public archives should be open for research “forty years thereafter the date of

the document” and that public records cannot be traded overseas. However, some parts of the law raised concern among DC-Cam and other nongovernmental archives in Cambodia that have custody of Khmer Rouge–era records. While the law does not mention DC-Cam or other private repositories by name, its definition of “public archive” pertains to many of the state-created documents at DC-Cam. The law defines “public archive” as “the administrative archives that include archives, inter-archives, and permanent archives,” and then states that “public archives shall not be forfeited, transferred, or traded, and shall not expire.”<sup>16</sup> Most concerning, it stipulates in article 4 that “In case that public archive is under the control of natural persons or legal persons of any legal individuals, the State may claim those documents at any time.”<sup>17</sup> In other words, the state has the right to claim ownership of any “public” records in custody of an individual; the definition of individual could easily be extended to include directors of private nongovernmental organizations. In this way, the state could potentially use this law to claim ownership of Khmer Rouge records at DC-Cam. Furthermore, article 10 states, “Permanent archives, the documents that have undergone assessment and are considered to be historical documents for public interests, shall be kept at the National Archive of Cambodia indefinitely.”<sup>18</sup> Article 17 dictates, “Natural persons or legal persons or legal individuals must give a copy of documents or collections of documents which are of historical value or which are national heritage to the National Archive of Cambodia during the conduct of their activities in the Kingdom of Cambodia.”<sup>19</sup> The law concludes by listing stiff financial penalties and imprisonment for those found to be in violation. However, since it was passed, the law has not been enforced and has had no serious consequences for DC-Cam or other nongovernmental archives in Cambodia.<sup>20</sup> Nevertheless, lingering questions remain about its potential impact.

While not mentioning the principle of inalienability by name, the law is undoubtedly based on this concept. Drawing on the initial definition of inalienability provided by SAA, the Cambodian Law on Archives “prohibit[s] against the transfer or assignment of title” of public records to a private repository. The law’s definitions are inextricably linked to both the archival conception of provenance and nationalist ideas about eternally state-owned cultural property that cannot be “forfeited, transferred, or traded, and shall not expire.”<sup>21</sup> Records created by a public authority (in this case, ironically, the “public authority” is the Khmer Rouge) are deemed inalienably public property and can never be transferred to a private repository (in this case, DC-Cam). In this way, the principle of inalienability, and the Cambodian Law on Archives on which it is based, ignores the specific cultural and political milieu of Cambodia, in which a private nongovernmental organization is currently more equipped than any governmental agency to ensure public access and government accountability.

Now that the Cambodian legislation has been summarized, I will turn to the reasons for this unique milieu, arguing that DC-Cam is the best steward of the Khmer Rouge records in its custody.

### When the Government Fails

DC-Cam arose and continues to thrive in a complex and volatile political landscape. Still struggling for stability after the Khmer Rouge regime and subsequent Vietnamese rule, Cambodia did not have democratic elections until 1993, when the United Nations mounted a peacekeeping operation that mandated them. The country's current constitution was passed that same year. The country is a constitutional monarchy, in which King Norodom Sihamoni serves as head of state while Prime Minister Hun Sen serves as head of government. Prime Minister Hun Sen, himself a former Khmer Rouge member who later defected to Vietnam, was appointed to several high-ranking positions by the Vietnamese-backed government after its 1979 overthrow of the Khmer Rouge, eventually including prime minister. After the 1993 elections, Hun Sen entered a joint power-sharing agreement with Prince Norodom Ranariddh; however, in a 1997 coup, Hun Sen seized sole control of the country and has remained its only prime minister since elections in 1998. Since then, the government has been plagued by corruption allegations, accusations of fiscal mismanagement, and charges of human rights abuses.<sup>22</sup> Prime Minister Hun Sen is widely accused of perpetrating violence against his political opponents, rigging elections, and most recently, attempting to destroy the country's flourishing civil society organizations.<sup>23</sup>

Prime Minister Hun Sen has a complicated and inconsistent relationship to public memory of the Khmer Rouge period. On the one hand, Hun Sen and his political allies wish to portray the "Pol Pot clique" as genocidal maniacs whose gross violations of human rights justified the Vietnamese invasion of Cambodia on humanitarian grounds. Yet, on the other hand, Hun Sen has also resisted many efforts to publicly memorialize victims of the Khmer Rouge, instead urging Cambodians to "dig a hole and bury the past in it."<sup>24</sup> Indeed, some of Hun Sen's former Khmer Rouge colleagues now serving in the current administration may be implicated by records in DC-Cam's custody. Thus while the prime minister has political motivations to preserve some records of the Khmer Rouge period, his administration has promoted a highly selective and tightly controlled version of the past. Given his personal connection to the records, as well as widespread allegations of corruption, neither Hun Sen, nor any agency under his control, would be an appropriate steward of these documents.

DC-Cam has a complicated history with Hun Sen's administration. In DC-Cam's early days, the organization had the support of the Cambodian

government. In 1996, DC-Cam staff negotiated an agreement with the highest levels of the Cambodian government and the ruling party that authorized the organization to go anywhere in Cambodia, including government offices, and seize any item it deemed relevant to its investigation.<sup>25</sup> The agreement had a profound effect on DC-Cam's growing collection, with the addition of records from dozens of government sources.

In the years since this agreement with DC-Cam, however, Hun Sen's attitude toward remembering the Khmer Rouge period through both a tribunal and archival collecting has fluctuated considerably. Motivated by political gain, Hun Sen initially publicly supported the creation of the tribunal in the 1990s. As William Shawcross has written:

In 1997 Hun Sen requested an international tribunal to try the Khmer Rouge, but it is now clear that he did so as only part of a strategy for defeating them politically and strengthening his own hand. He was not interested in seeking justice for Cambodians or in trying to figure out, as Cambodians wanted, why the Khmer Rouge had killed so many of its own people.<sup>26</sup>

Hun Sen later "began to throw up obstacles to a tribunal at every opportunity" and then again shifted gears to publicly support international involvement in the tribunal, as long as he controlled several key aspects of the court's set up.<sup>27</sup>

Hun Sen's unstable relationship to the Khmer Rouge past has left DC-Cam in a politically precarious situation. The situation is complex. The organization is at once at odds with the prime minister's hostility to civil society and his opposition to expanding the scope of the tribunal, yet at the same time depends on ongoing cooperation with his cabinet members to accomplish many of its goals. For example, the Ministry of Education, Youth and Sport, under Hun Sen's direction, recently offered DC-Cam the use of land on which to build a permanent educational facility. Given DC-Cam's favorable status among many international governments and funders (whom Hun Sen's government also relies on financially), the prime minister has been cautious about any public critique of the organization. The relationship remains a delicate balancing act between competing and sometimes conflicting interests and political goals.

To further complicate matters, Hun Sen recently demonstrated his government's opposition to many institutions of civil society. He has proposed legislation that would greatly expand the government's ability to monitor, take control over, and shut down nongovernmental organizations, a move that a Cambodian coalition of human rights organizations has called "the most significant threat to the country's civil society in many years."<sup>28</sup> Indeed, Ou Virak, president of the Cambodian Center for Human Rights, was quoted in the *New York Times* as saying, "Should this law pass as it is currently formulated, the survival of each and every N.G.O. in Cambodia will be at the whim of the government."<sup>29</sup> Given its status as a nongovernmental organization, DC-Cam—together with hundreds

of human rights, women's rights, and environmental organizations—could be threatened by this legislation, in addition to the threats posed by the Cambodian archives law. In the face of this legislation, Cambodian human rights organizations asked foreign countries and aid agencies to withhold the more than \$1.1 billion in aid they provide annually to prop up Cambodia's federal government—money that many claim is partially pocketed by government officials.<sup>30</sup> Against this backdrop of political chaos, interference with civil society, and financial mismanagement, government-run agencies in Cambodia are simply not stable enough right now to properly steward records of recent human rights abuses.

Furthermore, government-run archival institutions in Cambodia are so underfunded that they currently lack the capacity to care for an influx of records. While the National Archives of Cambodia is today, by all accounts, a "very professionally run institution," and "not Hun Sen's private library," as historian David Chandler asserted, the resources it receives from the government are scarce.<sup>31</sup> Staff and patrons share only one computer terminal in the archives. Squatters live on the compound and hang laundry out to dry on the archives building.<sup>32</sup> Much has improved since the Khmer Rouge decimated the National Archives' staff, but to this day the National Archives only makes publicly available two collections of Khmer Rouge records: those of the regime's Commerce Ministry, which have also been cataloged and included in DC-Cam's databases, and those of the Vietnamese-sponsored Genocide Tribunal of 1979, access to which is highly restricted; researchers must obtain special permission from the Council of Ministers.<sup>33</sup> In fact, most researchers consult the National Archives for its strong French colonial-era collections and not its restricted Khmer Rouge collection.

While Hun Sen's position toward the National Archives has been one of neglect rather than interference, given Cambodia's recent political history, it is easy to imagine a scenario in which the government could advocate for greater control over the daily affairs of the National Archives.<sup>34</sup> If such a scenario were to come to fruition, and DC-Cam's collection was absorbed into the National Archives under the archives law, Khmer Rouge records could be destroyed by former Khmer Rouge officials who now hold office; at a minimum, access to such records would be embargoed for a few years until the mandatory minimum forty-year period is reached, as outlined in the law.<sup>35</sup> This embargo may mean that investigators for the current tribunal would not have access to these records for at least another two years. While this may not seem like a long time, it is certainly long enough to diminish the possibility of the court expanding its scope, as the international court does not have the financial resources, political support, or patience to wait around for records to be made available by hostile governments. Given the political motivations of many Cambodian office holders, as well as the potential for government-mandated access restrictions,

governmental archives are not positioned to steward these records in the same way DC-Cam is.

### DC-Cam as Steward

In the decades following the Khmer Rouge period, most nongovernmental organizations aimed at meeting the vast and immediate needs of postwar Cambodia, such as removing landmines, stopping child prostitution, providing safe drinking water, counseling victims of trauma, and re-establishing a public education system. In this sea of worthy causes, DC-Cam was the only organization (international or domestic) with the interest and capacity to collect Khmer Rouge materials in the 1990s. Since its founding, DC-Cam remains unparalleled among nongovernmental organizations in its interest in collecting Khmer Rouge records and its ability to attract international resources. Certainly, its initial connection to Yale University and its endorsement by well-established historians like Ben Kiernan added to the project's legitimacy in the eyes of foreign funders, while Director Youk Chhang's personal story of torture under the regime, his unwavering dedication to holding the perpetrators accountable, and his talents for navigating through both the Cambodian political system and the world of international funders lent an unprecedented drive to the organization. As a result, DC-Cam's initial grant from the U.S. State Department was soon matched by funding from a host of foreign governments and foundations.<sup>36</sup>

As DC-Cam's collection grew, it became increasingly clear that former Khmer Rouge officials could target the organization, its collections, and staff for violence. Chhang lists security as one of his biggest challenges in starting DC-Cam. He began to receive daily death threats, some publicly, from Khmer Rouge members.<sup>37</sup> In the face of such threats, only DC-Cam had the resources to persist collecting and safeguarding the records. Working closely with librarians and scholars from Yale and Cornell Universities, DC-Cam quickly undertook exceptional effort to preserve the records in its collection through microfilming and digitization when their security was threatened. Due to these efforts, safety copies of many of the records in DC-Cam's collections are available in the United States, effectively rendering useless any efforts by former members of the regime to destroy the records and any information they contain.

Today, DC-Cam is a dynamic, functional, modern office in the heart of Phnom Penh, across from the city's landmark Independence Monument. Housed in two adjacent buildings, DC-Cam welcomes Cambodians and foreigners to use the resources in its public information room during set business hours.<sup>38</sup> The office teems with life; dozens of young Cambodian staffers mill about working on various projects. Its website is frequently updated with information, and Director Chhang responds promptly to email requests and keeps an international

database of contacts to whom he sends out frequent updates. While there are ongoing fundraising efforts, the organization is financially and administratively stable and sustainable. While it arose to meet a specific purpose, its mission has since expanded and serious steps have been taken to ensure DC-Cam will be around in the long term; the organization recently announced plans to build a permanent educational facility, named the Sleuk Rith Institute after the leaves on which ancient Cambodian manuscripts are inscribed, that will house a museum, archives, policy research center, and degree-granting school.<sup>39</sup> Once this facility is built, any lingering doubts about DC-Cam's ability to endure beyond the tribunal will dissipate. Furthermore, Chhang has mentored dozens of DC-Cam's young Cambodian staff members and promoted them to positions of leadership in the organization, ensuring a seamless succession of leadership.

Currently, DC-Cam's programs include a Public Information Room in Phnom Penh, where members of the public can access primary and secondary sources on the Khmer Rouge. A genocide education and teacher training program trains teachers throughout Cambodia in how to address the Khmer Rouge period. A robust publication program includes the publication and free distribution of both the first Cambodian high school history textbook to address the Khmer Rouge period and a monthly Khmer language newsletter called *Searching for the Truth* (which is translated into English on a quarterly basis). A Living Documents project brings Khmer Rouge survivors from rural areas to Phnom Penh to witness the tribunal and go back and inform their neighbors about it. For an extensive oral history project, staff interview both Khmer Rouge victims and perpetrators alike throughout Cambodia. Finally, a forensic program maps mass graves and memorials, and there is ongoing collecting, preserving, micro-filming, digitizing, and cataloging of archival materials. Through this demonstration of organizational capacity, a proven track record of preservation in the face of political threats, and unwavering commitment to public engagement, DC-Cam has earned its status as rightful steward of the Khmer Rouge records.

### Trust in Civil Society

Tying together the important issues of capacity, commitment to preservation, and public engagement is the theme of trust. DC-Cam is the rightful steward of these records because it is more trustworthy than the current Cambodian government in the eyes of many Cambodians, particularly survivors of the regime. Cambodians inherited a legacy of suspicion toward the government from the Khmer Rouge, a legacy that continues in the face of ongoing widespread government corruption. During the Khmer Rouge period, the regime demanded total allegiance to Angkar, or "the Organization" (the Khmer Rouge's mysterious term for the state). Angkar dictated every aspect of life and enlisted

countless spies for the state. Neighbors turned each other in, family members denounced each other during torture-laden interrogations, and children were bribed with handfuls of rice to report any perceived violation to Angkar. Oft-repeated slogans such as, “Repeat everything to the Angkar!” and “Secretly observe the slightest deeds and gestures of everyone around you!” reinforced this mistrust.<sup>40</sup> Given this legacy, coupled with the more recent corruption allegations previously detailed, many Cambodians place more trust in nongovernmental organizations than in government agencies. Indeed, today Cambodians are rebuilding trust in each other through civil society. As Brad Adams, Asia director for Human Rights Watch, told a *New York Times* reporter, “Over the past 20 years, the development of civil society has been one of Cambodia’s few enduring achievements.”<sup>41</sup> Where the government has failed, nongovernmental organizations have flourished.

In many ways, DC-Cam is part of this civil society effort to rebuild trust among Cambodians. In its seventeen years of existence, DC-Cam has continually worked to gain this trust through a proven track record of advocacy on behalf of the victims of the regime and their family members and Chhang’s status as a torture survivor. Through countless speaking engagements and articles published in DC-Cam’s monthly newsletter, *Searching for the Truth*, Chhang has detailed how his family members were murdered, how he himself was tortured, and how he managed to escape as a refugee at age seventeen. As an insider, Chhang rightfully earns the respect and trust of other survivors. Additionally, Chhang measures the success of DC-Cam by its impact on survivors and gears all of its programs toward their needs. “Victims are my judge,” he said.<sup>42</sup> Furthermore, DC-Cam has built trust by linking Cambodians with information about their dead family members through its numerous outreach efforts. Such efforts include the newsletter’s “Family Tracing” column, where family members can write to DC-Cam seeking information about relatives lost during the Khmer Rouge period; DC-Cam staff respond by providing any information available in the archives.<sup>43</sup> Information such as death dates and place and time of execution is crucial for the performance of Buddhist rituals, without which the dead are said to haunt the earth as hungry ghosts.<sup>44</sup> Trust has also been built through the organization of public forums throughout the country where victims can express their opinions about the current tribunal and record their stories for inclusion in the archives.<sup>45</sup> This participatory, interactive nature has built DC-Cam’s credibility among survivors. Furthermore, unlike the current administration, DC-Cam adheres to the highest standards of financial transparency, publishing detailed reports of funding sources and spending on its website.<sup>46</sup>

In DC-Cam’s efforts to preserve and provide access to Khmer Rouge records, survivors of the regime find that the data collected by the watchful

eye of Angkar is now being used in pursuit of accountability. As Chhang said, “Cambodia is a country where we lost trust among our friends, among our neighbors. We don’t trust each other because we are broken. Research heals this [mistrust]. . . . This country has suffered so many lies, so much manipulation; research heals because it is the truth.”<sup>47</sup> By trusting both DC-Cam’s records to provide evidence of the Khmer Rouge’s atrocities and DC-Cam as an organization to properly steward such records, Cambodians are restoring trust in civil society after the total dysfunction and dehumanization of the Khmer Rouge.

Given the lack of trust engendered by the Cambodian government and DC-Cam’s success in building trust among survivors of the Khmer Rouge, a nongovernmental, survivor-led repository is presently a more appropriate home for Khmer Rouge records. As such, in this specific case, the Cambodian archive law is, at best, misguided, and, at worst, a possible attempt by the Hun Sen administration to control damaging historical information and incriminating legal evidence.

### Trust as a Guiding Principle

While the political milieu described remains specific to Cambodia, the Cambodian case also demonstrates some key issues that can be generalized to many archival custody disputes in societies undergoing transitional justice. Through this unique case study, we can detect some fault lines in the principle of inalienability and its applicability to all state-created records across the board. In light of this case study, this paper proposes trust, rather than the all-encompassing nationalist principles on which inalienability is partially based, as the new guiding principle for determining the custody of records of human rights abuses in transitional societies.

This is not to say that inalienability fails in all cases; with the Iraqi Ba’ath Party records, for example, state-created records rightfully belong in the custody of the Iraq National Library and Archives and not the Hoover Institution, where they are currently housed, as I have argued elsewhere.<sup>48</sup> This article does not contradict my previous assessment of the Iraqi situation, but rather concurs that cultural difference and historical context are crucial for solving custody disputes, and that there is not a single one-size-fits-all solution. However, even in the Iraqi case, trust rather than nationalism provides a better guiding principle for solving custody disputes. Indeed, in the Iraqi case, Iraqi survivors of the Hussein regime trust the Iraq National Library and Archives more than they do the Hoover Institution. South Africa also provides an interesting parallel with the Cambodian case in that, in some instances, nongovernmental archives (such as the South African History Archive) were seen as more trusted repositories for sensitive records than the National Archives by victims of the apartheid

regime.<sup>49</sup> Furthermore, DC-Cam has played a key role in outreach efforts to other nongovernmental human rights archives throughout the world through its work with the Affinity Group, a project funded by the International Center for Transitional Justice that has brought together archivists from Cambodia, Burma, the former Yugoslavia, Iraq, and Guatemala to discuss challenges and share best practices.<sup>50</sup> DC-Cam's work with Burmese organizations in Thailand reveals how the nongovernmental archives model can be successfully replicated in other parts of the world in which the transition to democracy is not complete.

Scholars in a range of fields have addressed the importance of trust in the modern world. At the forefront, social theorist Anthony Giddens defined trust as "confidence in the reliability of a person or system, regarding a given set of outcomes or events, where that confidence expresses a faith in the probity or love of another, or in the correctness of abstract principles. . . ." <sup>51</sup> Furthermore, according to Giddens, "Trust is not the same as faith in the reliability of a person or system; it is what derives from that faith. Trust is precisely the link between faith and confidence. . . ." <sup>52</sup> In this way, trust encompasses capability, honesty, consistency, integrity, and accountability, and the confidence and faith that such qualities engender. By positing trust as a guiding principle, I adopt Giddens's definition, positioning trust at the intersection of faith and confidence. It is exactly this type of trust—at the intersection of faith in its ethical stance and confidence in the integrity of and capacity for its actions—which DC-Cam has earned from survivors of the regime and from which originates the basis of its legitimacy as trusted steward of Khmer Rouge records.

Archivists, too, have written about the importance of trust as it applies to archives, particularly in determining the custody of records documenting human rights abuses. In deciding the fate of records of truth commissions, Trudy Huskamp Peterson, former acting archivist of the United States, wrote that the "keys to making these choices [about records custody] are the trust the public has in the integrity of the successor repository and the uses to which the records will be put."<sup>53</sup> She added, "Particularly in governments where reforms are just beginning to take hold, the issue of trust is very difficult to resolve."<sup>54</sup> Acknowledging that the degree of political instability must be considered in decisions on where to deposit such records, she noted that the higher degree of certainty to which the political transition "is perceived as final," the more likely open access to such records will be ensured.<sup>55</sup> While the records of former repressive regimes (such as the Khmer Rouge records addressed in this paper) differ significantly from those created by state-sponsored truth commissions, the issues of access and security are similar: only a trusted repository can ensure that people can use the records in custody and that they will be safeguarded from those intent on destroying them.

However, despite Peterson's acknowledgment of the importance of trust, she ultimately asserted the logic of inalienability, despite the complex nuances of societies still undergoing transition. For example, she cautioned against placing records of truth commissions in private institutions, even if "general political opinion continues to see the government as untrustworthy," because such institutions are costly and ultimately cannot guarantee the records will not be seized by the government anyway. In the end, Peterson assumed that records created by state-sponsored truth commissions naturally belong to the government, which must pay for their upkeep and provide access as determined by law.

Similarly, Antonio Gonzalez Quintana also defaulted to the logic of inalienability when addressing the issue of records created by repressive regimes. In a report prepared for UNESCO on behalf of the International Council of Archives (ICA), he wrote, "Records produced or accumulated by former repressive bodies must be placed under the control of the new democratic authorities at the earliest opportunity."<sup>56</sup> But what if there are no new "democratic authorities" to whom control can be transferred? Quintana continued that while "temporary institutions" may assume archival custody while perpetrators are identified, victims are compensated, and rights are ensured, "the ultimate location of the documents, as part of collective memory, must be the national repository for historical records."<sup>57</sup> But what if perpetrators are not only granted immunity, but retain positions in the current administration? What if victims are never compensated and rights are never ensured? And why is a national repository the ideal resting place of collective memory, as Quintana assumed? As the Cambodian case illustrates, we cannot make Quintana's assumptions about all cases.

While in other work Peterson addressed the link between the rise of nationalism and the creation of national archives, I would like to take this connection a step further by positing that the principle of inalienability is itself based on outdated nationalist notions that no longer provide adequate guidance in our globalized postcolonial world.<sup>58</sup> Indeed, the principle of inalienability reflects a form of what Michael Billig called "banal nationalism," that is, a form of nationalist discourse so ingrained in daily life that it becomes an assumed backdrop or "endemic condition" such that people cease to acknowledge its presence or significance.<sup>59</sup> Following Billig's lead to "draw attention to the powers of an ideology which is so familiar that it hardly seems noticeable," in this paper, I seek to uncover the nationalist assumptions at the root of the principle of inalienability.<sup>60</sup> Inalienability draws on nationalism because it assumes that the rights of the nation-state are inalienable, with the nation's right to own the records it creates surpassing all other rights, including the people's right to hold their governments accountable and even victims' rights to access records about abuses perpetrated against them. By this logic, the nation

trumps the individual, as well as other configurations of community. As we see in this Cambodian case study, these are not merely abstract ideas, but foreseeable realities if the Cambodian archives law is enforced. As such, we must thoroughly consider the consequences of inalienability in the lived realities of people most affected by its assumptions and logic (e.g., victims of human rights abuses) and replace it with principles that more humanely address their needs. Trust, I propose, is one such principle.

However, unlike the principle of inalienability, which is applied writ large, trust will have to be assessed on a case-by-case basis. The determination of what constitutes an untrustworthy state apparatus or a trusted repository in regard to records of human rights abuses will have to be made based on the specific historical, political, and cultural milieu of the society in question; it is simply impossible to make generalized statements outside of societal context.<sup>61</sup> By using trust as a guiding principle in dealing with records of human rights abuses, we gain in justice (particularly ensuring the rights of victims to access records documenting their abuse) what we lose in universalism. That said, the qualities of honesty, moral correctness, integrity, and accountability, as suggested by Giddens, represent significant guideposts for evaluating trust in transitional societies. In each situation, key stakeholders must be defined and their needs addressed, so that the question of ethics and integrity *to whom* can be answered. However, the assessment of such qualities and the identification of important stakeholders provide a methodological framework in which to explore trust rather than a set of strict guidelines that must be followed in every case. Indeed, this framework can be drawn on repeatedly as we re-evaluate the trustworthiness of governments as they move closer to or further away from democratization.

This call to acknowledge specificity and reframe the discussion from inalienability to trust will present a particular challenge to archivists' ethical codes. While the International Council on Archives' *Code of Ethics* does not mention inalienability specifically, it does assert both that "archivists must act in accordance with generally accepted principles and practice" and that "archivists should cooperate in the repatriation of displaced archives."<sup>62</sup> Given that inalienability is currently a generally accepted principle that would deem government-created records in nongovernmental control as "displaced," the ICA *Code of Ethics* does not accommodate a trust-based approach to archival custody. But while this specific code of ethics could be reframed in light of this article's emphasis on trust as a guiding principle, codes of ethics in general fail to accommodate the nuance and specificity required by the particulars of each transitional society. Codes of ethics after all, are made of general principles rather than specific rules; they do not teach professionals how to "resolv[e] competing rights and interests," as Verne Harris argued.<sup>63</sup> Cloaked in universalism, codes of ethics fail

to acknowledge the intricacies of many on-the-ground ethical dilemmas. Harris shed further light on this issue. He wrote, “The guidelines framed in professional codes are far from helpful when applied in practice. They define tension rather than suggesting an appropriate way of resolving it.”<sup>64</sup> Harris went on to suggest that real archival ethical dilemmas are never “clear-cut,” but rather, “in most instances, we will be choosing the lesser of two evils, choosing the most right option that circumstances will allow, or choosing the best of various options with equal claims to being right from different perspectives.”<sup>65</sup> Rather than improving a particular code of ethics, Harris posited instead that “the most we can do is ensure that in taking difficult decisions we have done so in an appropriate way,” a way that Harris suggested can be guided by four key elements: “an illumination of the web of rights as it applies to the interested parties;” “an analysis aimed at weighing competing claims against one another . . . ;” getting feedback on decisions from colleagues; and “paying heed to one’s conscience.”<sup>66</sup> Using Harris to make sense of the dispute over Cambodian records, I have shown how the case for nongovernmental custody of Khmer Rouge records hinges on understanding the rights of all stakeholders, weighing competing claims to ownership, and paying attention to a larger call for justice. Similarly, by positing trust as a new guiding principle for archival custody decisions, this paper represents one attempt to get feedback from colleagues on the ethical position it proposes. As this discourse on trust develops, the four elements proposed by Harris will continue to provide a methodological matrix, if not guidelines per se, to direct messy ethical decisions based in complex realities.

### **Reframing Custody through the Lens of Trust: Survivor Status as Provenance**

In addition to highlighting the importance of trust to the legitimacy of custody claims, the Cambodian example I have explored provides an opportunity for archivists to continue to reconsider the foundational principle of provenance as recent scholarship has suggested. Like nationalism, provenance is another concept on which the principle of inalienability rests. Within the mainstream Western archival tradition, provenance has been defined as, “the origin or source of something,” or “information regarding the origins, custody, and ownership of an item or collection.”<sup>67</sup> The principle of provenance traditionally prescribes both that records made by different creators be kept separate and that their original order be maintained. By this narrow reading of the concept, the provenance of Khmer Rouge records can be traced back solely to the regime that created them; the records are the work of employees of the Khmer Rouge government, fixing their provenance to the settled, finished, and finite

functions of a single bureaucracy that existed in a particular place (Cambodia) and date range (1975–1979).

However, this traditional concept of provenance has been challenged on several fronts within archival studies over the past two decades. This new reconception of provenance views it not merely as an “organizing principle” or a “physical and intellectual construct,” but as a “sociohistorical context,” in the words of Jennifer Douglas.<sup>68</sup> Tom Nesmith, for example, defined provenance as “the social and technical processes of the records’ inscription, transmission, contextualization, and interpretation, which account for its existence, characteristics, and continuing history.”<sup>69</sup> In this new reconceptualization, provenance is an ever-changing, infinitely evolving process of recontextualization, encompassing not only the initial creators of the records, but the subjects of the records themselves; the archivists who acquired, described, and digitized them (among other interventions); and the users who constantly reinterpret them. Similarly, Laura Millar, who is influenced by archaeology’s and museum studies’ much broader approaches to provenance, suggested that archival conceptions of provenance should include creator history or “the story of who created, accumulated, and used the records over time”; records history or “the story of the physical management and movement of the records over time”; and custodial history, “the explanation of the transfer of ownership or custody of the records from the creator or custodian to the archival institution and the subsequent care of those records.”<sup>70</sup> In this estimation, archivists and users are active participants in the provenance of records and are therefore important stakeholders in their custody, mediation, and uses. Furthermore, in this new reconceptualization, provenance is not only about the history of the records, but their future; like the “semantic genealogy” Eric Ketelaar described, this postmodern approach to provenance “opens out into the future” by including all possible potential activations in its scope.<sup>71</sup>

Additionally, the work of recent theorists opens up the principle of provenance to broader community-based configurations. Joel Wurl, for example, speculated that ethnicity, rather than origin in an organization or governmental agency, forms a meaningful basis on which to trace provenance.<sup>72</sup> He challenged archivists to “widen [their] understanding of provenance to encompass entities not conveniently bounded by the walls of a government agency, set of business bylaws, or a household,” and suggested that “human beings operate in collective fashion and develop collective identities that, while perhaps more complex and not so neatly contained as the more distinct organizational or familial entities, are nonetheless corporate and corporeal.”<sup>73</sup> Similarly, Jeannette Bastian urged archivists to expand the scope of provenance to include subjects of records and not just their creators—an arrangement that, in Bastian’s case study, balances custody of colonial records between postcolonial nations and

their former colonial rulers.<sup>74</sup> Bastian also argued that all of these stakeholders become part of a “community of records,” which she defined as “the aggregate of records in all forms generated by multiple layers of actions and interactions between and among the people and institutions within a community.”<sup>75</sup> For Bastian, provenance and community are intertwined, such that “the content, context and structure of record creation [are] inextricably bound together in a vision of provenance and community that seeks, weighs, and accommodates all the voices of a society.”<sup>76</sup> In Bastian’s expansive interpretation, provenance becomes a tool for community inclusion, rather than one of limitation, for hearing the voices of those previously silenced, rather than amplifying the voices of the powerful.

While traditional archival theory clearly would trace the provenance of Khmer Rouge records back to the nation-state that created them, I argue (in the vein of Wurl and Bastian) that survivors of human rights abuses and the families of victims have legitimate claims to the provenance of records documenting their abuse. By redefining provenance to acknowledge the unique political, social, and cultural contexts of transitional societies, we can begin to think of survivor status as provenance in societies undergoing transitional justice. Through this lens, the provenance of records documenting human rights abuses should be traced to the victims of such abuse (and, if the victims themselves are deceased, their family members) and not solely successor states *per se*. By arguing for survivor status as a form of provenance, I hope to shift the prevalent approach of human rights archives from a model that is government based to one that is community based, from a model that is applied writ large across contexts to one that honors and reflects the unique cultural values of the society from which the records in question emerge.

Furthermore, the Cambodian case study I have addressed in this paper provides an opportunity to put into practice a conceptual shift from custodianship to stewardship, as Wurl also advocated. Wurl wrote that, unlike custodianship, which renders records transferrable as legal and physical property, “In a stewardship approach, archival material is viewed less as property and more as a cultural asset, jointly held and invested in by the archive and the community of origin.”<sup>77</sup> In contrast to custodianship, stewardship deems the physical and legal transfer of records as the first step in an ongoing relationship between archival repositories and stakeholders.<sup>78</sup> By shifting from the custodial model to the stewardship model, we can envision how shared stewardship agreements between nongovernmental and governmental archives might be enacted if the government in question eventually does engender trust through further democratization.

In the Cambodian case, DC-Cam has taken on the role of archival steward in an ongoing relationship with survivors of the Khmer Rouge and families of

victims. As I have illustrated, for complicated historical, cultural, and political reasons, the Cambodian government (or any agency under its jurisdiction) is simply not qualified to take on this stewardship role for Khmer Rouge records. Again, trust is key here, as it forms the basis of stewardship; repositories must engender the ongoing trust of communities to steward shared archival assets properly. It is precisely this type of trust that DC-Cam has earned among communities of survivors, thereby earning its rightful position as steward of Khmer Rouge records.<sup>79</sup>

## Conclusion

Through the lens of a Cambodian case study, I have examined a recent dispute between the Cambodian government and a nongovernmental archival repository over the custody of Khmer Rouge records. By investigating the specific historical circumstances under which DC-Cam gained both custody of the records and the trust of Cambodians, I call into question the underlying logic of inalienability as well as its broad applicability to transitional societies. Ultimately asserting that trust, rather than nationalism, is a more appropriate guiding principle by which to judge the ethical and legal issues surrounding archival custody disputes, I challenge archivists to reconsider a basic archival principle to better reflect the lived realities of transitional justice. Furthermore, I urge archivists both to reframe provenance by addressing the unique claims of survivors of human rights abuses and to shift the discussion from custodianship to stewardship by characterizing the relationship between archives and communities as one of ongoing trust rather than property transfer. However difficult the proposed principle of trust may be to codify, we owe it to people living in societies that are still undergoing transitional justice to reflect and accommodate their specific needs and rights accurately.

## NOTES

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<sup>1</sup> Richard Pearce-Moses, s.v. "inalienability," *A Glossary of Archival and Records Terminology* (Chicago: Society of American Archivists, 2005), <http://www2.archivists.org/glossary/terms/i/inalienability>.

<sup>2</sup> Elena S. Danielson, *The Ethical Archivist* (Chicago: Society of American Archivists, 2010), 255.

<sup>3</sup> Pearce-Moses, *A Glossary of Archival and Records Terminology*.

<sup>4</sup> Trudy Huskamp Peterson, *Final Acts: A Guide to Preserving the Records of Truth Commissions* (Washington, D.C.: Woodrow Wilson Center Press, 2005), 23.

<sup>5</sup> Danielson, *The Ethical Archivist*, 249–93.

<sup>6</sup> Danielson, *The Ethical Archivist*, 255.

<sup>7</sup> Danielson, *The Ethical Archivist*, 263.

- <sup>8</sup> Transitional justice is an emerging field at the intersection of law, ethics, policy, and history based on the study of how societies adjudicate human rights violations and transition from repressive regimes to democracies. As the editorial board of *The International Journal of Transitional Justice* described, "Over the last two decades, the concept of transitional justice has evolved from a focus on retribution and justice to deal with the legacy of past abuses by the state and nonstate actors, to support for a variety of mechanisms to address crimes against humanity, war crimes, ethnic cleansing, genocide and other mass atrocities," *The International Journal of Transitional Justice* 1, no. 1 (2007): 1–5.
- <sup>9</sup> By trustworthy, I mean that Cambodians trust these nongovernmental organizations more than they trust the government. I am not referring to previous discussions within archival studies about the trustworthiness of records resulting from their authenticity and reliability. For a further discussion of the trustworthiness of records, see Heather MacNeil, *Trusting Records: Legal, Historical, and Diplomatic Perspectives* (Boston: Kluwer, 2000).
- <sup>10</sup> Ben Kiernan, *Genocide and Resistance in Southeast Asia: Documentation, Denial, and Justice in Cambodia and East Timor* (New Brunswick, N.J.: Transaction Publishers, 2008).
- <sup>11</sup> Alexander Hinton, "Genocide and Justice in Cambodia," in *Night of the Khmer Rouge*, (Newark, N.J.: Paul Robeson Gallery, Rutgers University, 2007).
- <sup>12</sup> Another Khmer Rouge member, Duch, was convicted in 2010 of war crimes and crimes against humanity.
- <sup>13</sup> Michelle Caswell, "Khmer Rouge Archives: Accountability, Truth, and Memory in Cambodia," *Archival Science* 10, no. 1 (2010): 25–44.
- <sup>14</sup> Documentation Center of Cambodia, "History and Description of DC-Cam," <http://www.dccam.org/About/History/Histories.htm>.
- <sup>15</sup> Youk Chhang, email message to author, March 7, 2011.
- <sup>16</sup> Kingdom of Cambodia, "Law on Archive," received via email message, Youk Chhang to author, July 10, 2010.
- <sup>17</sup> Kingdom of Cambodia, "Law on Archive."
- <sup>18</sup> Kingdom of Cambodia, "Law on Archive."
- <sup>19</sup> Kingdom of Cambodia, "Law on Archive."
- <sup>20</sup> One can speculate that the current administration would not risk the fallout from international governments and funding agencies if it harmed DC-Cam in any way, given DC-Cam's favored status in the international community.
- <sup>21</sup> Kingdom of Cambodia, "Law on Archive."
- <sup>22</sup> Human Rights Watch, "World Report 2011: Cambodia," <http://www.hrw.org/en/world-report-2011/cambodia>.
- <sup>23</sup> Human Rights Watch, "World Report 2011: Cambodia."
- <sup>24</sup> Colin Long and Keir Reeves, "Dig a Hole and Bury the Past in It?: Reconciliation and the Heritage of Genocide in Cambodia," *Places of Pain and Shame: Dealing with "Difficult" Heritage*, ed. William Logan and Keir Reeves (New York: Routledge, 2009), 74.
- <sup>25</sup> Craig Etcheson, interview with author, May 30, 2011.
- <sup>26</sup> William Shawcross, "Lessons of Cambodia," in *The New Killing Fields: Massacre and the Politics of Intervention*, ed. Nicolaus Mills and Kira Brunners (New York: Basic Books, 2002), 46.
- <sup>27</sup> Shawcross, "Lessons of Cambodia," 47.
- <sup>28</sup> Seth Mydans, "Donors Asked to Withhold Aid Over Proposed Law in Cambodia," *New York Times*, April 7, 2011, [http://www.nytimes.com/2011/04/08/world/asia/08cambodia.html?\\_r=4&ref=world#](http://www.nytimes.com/2011/04/08/world/asia/08cambodia.html?_r=4&ref=world#).
- <sup>29</sup> Mydans, "Donors Asked to Withhold Aid."
- <sup>30</sup> Mydans, "Donors Asked to Withhold Aid."
- <sup>31</sup> David Chandler, interview with the author, March 24, 2011.
- <sup>32</sup> The author directly observed this during a December 2011 visit.
- <sup>33</sup> National Archives of Cambodia, "Introduction to the Collection of the National Archives of Cambodia," <http://www.camnet.com.kh/archives.cambodia/English/naccoll.htm>.
- <sup>34</sup> David Chandler, interview with the author.

- <sup>35</sup> Kingdom of Cambodia, "Law on Archive."
- <sup>36</sup> Today, DC-Cam receives funding from the governments of the United States, Norway, Australia, the United Kingdom, Canada, and the Netherlands, and from private foundations such as the MacArthur Foundation and the Open Society Institute. For a complete list of funders, see <http://www.dccam.org/About/Finance/Finances.htm>.
- <sup>37</sup> Youk Chhang, "Connecting the Broken Pieces after the Cambodian Genocide: Legacy as Memory of a Nation" (speech, UC Berkeley-UCLA Distinguished Visitor from Southeast Asia Series, 2010), <http://www.youtube.com/watch?v=vZuD4Fo-ZOc>. The seriousness of the security threat was also stressed by Youk Chhang, interview with the author, May 17, 2010.
- <sup>38</sup> Access to archival materials is more restricted, again due to security concerns; requests for access are made directly to Chhang. The sign outside the building merely reads "Public Information Room."
- <sup>39</sup> Sleuk Rith Institute, <http://www.cambodiasri.org/>.
- <sup>40</sup> Henri Locard, trans., *Pol Pot's Little Red Book: The Sayings of Angkar* (Chang Mai, Thailand: Silkworm Books, 2004), 114.
- <sup>41</sup> Mydans, "Donors Asked to Withhold Aid."
- <sup>42</sup> Chhang, "Connecting the Broken Pieces after the Cambodian Genocide."
- <sup>43</sup> Caswell, "Khmer Rouge Records."
- <sup>44</sup> Chhang, interview with the author.
- <sup>45</sup> For more information, see Michelle Caswell, "Khmer Rouge Archives: Accountability, Truth, and Memory in Cambodia," 2010, and Documentation Center of Cambodia, "Projects," <http://www.dccam.org/#/theorganization/project>.
- <sup>46</sup> Documentation Center of Cambodia, "Finances/Funding."
- <sup>47</sup> Chhang, "Connecting the Broken Pieces After the Cambodian Genocide."
- <sup>48</sup> For more information on Iraq, see Michelle Caswell, "Thank You Very Much, Now Give Them Back: Cultural Property and the Fight Over the Iraqi Baath Party Records," *The American Archivist* 74, no. 1 (2011): 211–40.
- <sup>49</sup> In some cases, records entrusted to SAHA (and their digital surrogates) were eventually shared with government repositories as the process of democratization unfolded. South African History Archive, <http://www.saha.org.za>.
- <sup>50</sup> <http://www.dccam.org/Projects/Affinity/Affinity.htm>.
- <sup>51</sup> Anthony Giddens, *The Consequences of Modernity* (Stanford, Calif.: Stanford University Press, 1990), 34. Trust, Giddens asserted, is intimately linked to risk in contemporary societies, due to an unprecedented reliance on "disembedding mechanisms" that allow for complicated and distinctly modern relationships across time and space.
- <sup>52</sup> Giddens, *The Consequences of Modernity*, 33.
- <sup>53</sup> Peterson, *Final Acts*, 6.
- <sup>54</sup> Peterson, *Final Acts*, 6.
- <sup>55</sup> Peterson, *Final Acts*, 29.
- <sup>56</sup> Antonio Gonzalez Quintana, "Archives of the Security Services of Former Repressive Regimes: Report Prepared for UNESCO" (Paris: UNESCO, 1997), [http://portal.unesco.org/ci/en/files/4976/10325900610Archives\\_of\\_the\\_Security\\_Services\\_of\\_former\\_Repressive\\_Regimes.rtf/Archives%20of%20the%20Security%20Services%20of%20former%20Repressive%20Regimes.rtf](http://portal.unesco.org/ci/en/files/4976/10325900610Archives_of_the_Security_Services_of_former_Repressive_Regimes.rtf/Archives%20of%20the%20Security%20Services%20of%20former%20Repressive%20Regimes.rtf).
- <sup>57</sup> Quintana, "Archives of the Security Services of Former Repressive Regimes."
- <sup>58</sup> Trudy Huskamp Peterson, "The Nasty Truth about Nationalism and National Archives," *Proceedings of the 5th General Conference of EASTICA*, September 19, 2001. Elsewhere I have suggested that a post-colonial approach to archives acknowledges some rights of the nation-state, but also takes complex transnational political realities into account. See Caswell, "Thank You Very Much," 211–40.
- <sup>59</sup> Michael Billig, *Banal Nationalism* (London: Sage Publications, 1995), 6.
- <sup>60</sup> Billig, *Banal Nationalism*, 12. I would further posit that national archives in general are poised at the intersection between political and cultural nationalism, a distinction made by John Hutchinson in *The Dynamics of Cultural Nationalism* (London: Allen and Unwin, 1987).

- <sup>61</sup> This echoes my assertion that “postcolonial approaches to cultural property will differ significantly based on the culture and history of the contexts in which disputes arise.” See Caswell, “Thank You Very Much,” 238.
- <sup>62</sup> International Council on Archives, *Code of Ethics*, <http://www.ica.org/5555/reference-documents/ica-code-of-ethics.html>.
- <sup>63</sup> Verne Harris, *Archives and Justice: A South African Perspective* (Chicago: Society of American Archivists, 2007), 205.
- <sup>64</sup> Harris, *Archives and Justice*, 209.
- <sup>65</sup> Harris, *Archives and Justice*, 211.
- <sup>66</sup> Harris, *Archives and Justice*, 211.
- <sup>67</sup> Pearce-Moses, s.v. “provenance,” *A Glossary of Archival and Records Terminology*.
- <sup>68</sup> Douglas, “Origins,” 23–43.
- <sup>69</sup> Tom Nesmith, “Still Fuzzy But More Accurate: Some Thoughts on the ‘Ghosts’ of Archival Theory,” *Archivaria* 47 (Spring 1999): 146.
- <sup>70</sup> Laura Millar, “The Death of the Fonds and the Resurrection of Provenance: Archival Context in Space and Time,” *Archivaria* 53 (2002): 1–15.
- <sup>71</sup> Eric Ketelaar, “Tacit Narratives: The Meaning of Archives,” *Archival Science* 1, no. 2 (2001): 138.
- <sup>72</sup> Joel Wurl, “Ethnicity as Provenance: In Search of Values and Principles Documenting the Immigrant Experience,” *Archival Issues* 29, no. 1 (2005).
- <sup>73</sup> Wurl, “Ethnicity as Provenance,” 67.
- <sup>74</sup> Jeannette Bastian, *Owning Memory: How a Caribbean Community Lost Its Archives and Found Its History* (Westport, Conn.: Libraries Unlimited, 2003).
- <sup>75</sup> Bastian, *Owning Memory*, 5.
- <sup>76</sup> Jeannette Bastian, “Reading Colonial Records through an Archival Lens: The Provenance of Place, Space, and Creation,” *Archival Science* 6, nos. 3–4 (2006): 269.
- <sup>77</sup> Wurl, “Ethnicity as Provenance,” 72.
- <sup>78</sup> Wurl, “Ethnicity as Provenance,” 72.
- <sup>79</sup> This is not to suggest that survivors of the Khmer Rouge and family members of victims form a single, cohesive community that operates in fundamental agreement about key issues. By contrast, important issues like the importance and scope of the tribunal, the basis for genocide charges against former officials of the regime, and the need for reparations are all hotly contested among survivors. However, throughout all of these debates, DC-Cam emerges as trusted steward.

## ABOUT THE AUTHOR

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