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## BIASES IN LAW LIBRARY SUBJECT HEADINGS

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### INTRODUCTION

In 1989, Professors Richard Delgado and Jean Stefancic identified the Library of Congress subject heading system (“LCSH”) as one of the three strands of the “triple helix dilemma,” along with the Index to Legal Periodicals and the West Digest system.<sup>1</sup> The LCSH, unlike the other two systems, is not strictly concerned with just legal materials. It is instead a much broader system intended to categorize the entire gamut of topics available in the collection of the Library of Congress (the “Library”). It has been adopted across many libraries globally, including law libraries, and is perhaps the most widely used subject indexing system in the world.<sup>2</sup> The expansiveness and ubiquity of LCSH is precisely why it is relevant to legal research. “Legal” research is not always limited to legal materials. A lawyer may need to read up on technological innovations to advise a Silicon Valley start-up, on film studies to argue a copyright case, or on sociological statistics to prepare a civil rights suit. The LCSH works as an interdisciplinary research aid in ways that the purely law-based tools may not be able to accomplish.

This Article focuses on the LCSH strand of the “triple helix” and how it continues to contribute to the “dilemma” identified by Delgado and Stefancic.<sup>3</sup> Part I explains what the LCSH is and its role in codifying biases into research. Part II discusses two recent examples of movements to change specific subject headings in the LCSH as case studies in how different sources and perspectives are evaluated in canonizing authorized terms. Finally, Part III examines how long-standing, historical problems of bias in cataloging continue into modern day research tools like search engine algorithms.

### I. WHAT IS THE LCSH?

The LCSH is a cataloging system that is over a hundred years old and is currently in its 42nd edition. A cataloging system identifies key words and

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<sup>1</sup> Richard Delgado & Jean Stefancic, *Why Do We Tell the Same Stories?: Law Reform, Critical Librarianship, and the Triple Helix Dilemma*, 42 STAN. L. REV. 207, 208 (1989).

<sup>2</sup> *Subject and Genre/Form Headings*, LIBR. OF CONG., <https://www.loc.gov/aba/cataloging/subject> [<https://perma.cc/7FP9-YGB8>] (last updated Feb. 6, 2015).

<sup>3</sup> Delgado & Stefancic, *supra* note 1, at 208; *see also* Richard Delgado & Jean Stefancic, *Why Do We Ask the Same Questions? The Triple Helix Dilemma Revisited*, 99 LAW LIBR. J. 307 (2007).

phrases to describe the topics of a book or other items in a library's collection, similar to how social media users may employ hashtags to label content. While it began as a tool to catalog print materials, the LCSH has been adopted for the digital realm as well. Subject headings can be combined and subdivided to indicate complex subjects. For example, in the Library's online catalog, Delgado and Stefancic's book, *Critical Race Theory: The Cutting Edge*,<sup>4</sup> has the subject headings:

Race discrimination--Law and Legislation--United States.

Race discrimination--United States.

Critical legal studies--United States.

Racism in language.

United States--Race relations--Philosophy.<sup>5</sup>

Clicking on a subject heading will provide a list of all materials in the collection carrying that heading. This means that subject headings serve to not only describe a particular item; they also help a researcher find related materials. Unlike social media, the LCSH utilizes a controlled vocabulary, meaning it is a set list of authorized terms with rules on how to use them. This means that a specific term, and thus a specific viewpoint, becomes elevated above synonymous terms and codified for use.

The Library does have extensive guidelines on how to create that list of authorized terms and how to apply them,<sup>6</sup> but even with those guidelines, these decisions are vulnerable to bias; indeed, certain biases are built into the system. The Library is the research arm of the U.S. Congress, so American-centric viewpoints are given higher priority. Additionally, the LCSH operates on literary warrant, meaning it established subject headings based on the existence of published works in a given field.<sup>7</sup> In the legal field, prioritizing government positions and published works means favoring statutes, cases, treatises, and other similar legal materials. All of these materials, on balance, weigh heavily for those who have traditionally had access to the highest levels of the legal profession and political power, and against those who have been disenfranchised from it.

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<sup>4</sup> CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 3d ed. 2013).

<sup>5</sup> *Critical Race Theory: The Cutting Edge*, LIBR. OF CONG. CATALOG, <https://lcn.loc.gov/2012043418> (last visited Apr. 5, 2021).

<sup>6</sup> *About the Subject Headings Manual PDF Files*, LIBR. OF CONG., <https://www.loc.gov/aba/publications/FreeSHM/freesmabout.html> [<https://perma.cc/M3QR-VTA9>] (last updated Oct. 1, 2014).

<sup>7</sup> Other forms of warrant include user warrant (how users would categorize these works, similar to free tagging in social media), cultural warrant (how would people from different cultures interpret these works), and academic warrant (how would subject specialists organize these works), among others. *Literary Warrant*, ENCYCLOPEDIA KNOWLEDGE ORG. (Aug. 10, 2017), [https://www.isko.org/cyclo/literary\\_warrant](https://www.isko.org/cyclo/literary_warrant) [<https://perma.cc/2ENL-KK2P>].

This is how LCSH becomes part of the “triple helix.” By drawing on the existing body of legal literature and precedent, including the other two strands of the “triple helix,” the LCSH creates and maintains categories that reflect traditional legal views. Additionally, the LCSH is not just a finding tool that “replicates majoritarian politics and thought,”<sup>8</sup> it is also another form of authority in itself and acts as a framework for users to understand content.

A student unfamiliar with critical theory may be introduced to the concept of “critical legal studies” upon noting its presence in a library catalog record. By clicking the link and seeing the list of other related materials, the student gains a sense of what “critical legal studies” might encompass. For that student, the LCSH is not only a finding tool but also an instructional tool that may shape how the student thinks about those materials and their related concepts. That way of thinking then gets perpetuated and solidified further into the research process as the student internalizes it and replicates it in their own academic work.

This instructional impact is not inherently positive or negative—it can be beneficial when the topic is accurately represented, but it can also be harmful when the representation is biased in a way that reflects an inaccurate, misleading, or outdated viewpoint. It lends greater credence to that position, and, for outdated terms, it implies ongoing relevance even when the rest of the world has moved, or is in the process of moving, past it.

Inaccurate terms in the LCSH also lead to additional risks, such as misinforming the user or making their research more difficult. For example, the LCSH has separate subject headings for “Kings and rulers”<sup>9</sup> and “Queens,”<sup>10</sup> meaning that the “and rulers” part of the “Kings and rulers” subject heading excludes queens, despite the common understanding that queens can also be rulers. Additionally, the “Queens” subject heading includes entries on “women monarchs as well as on wives or women consorts of monarchs,”<sup>11</sup> further blurring the lines between queens regnant, who were rulers, and queens consort, who were not. These choices in categorization build in a patriarchal bias that actually makes finding materials more difficult by excluding the concept of women monarchs from a gender-neutral term (rulers) and combining it with a different concept (wives and consorts of monarchs).

Biased cataloging not only undermines the search process—it could also undermine users’ trust in the library. The presence of obviously outdated, inaccurate, or even offensive terms in a library’s catalog may prompt a user to question the credibility and usability of the library. This could be seen in the movement to change the “Illegal aliens” subject heading.

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<sup>8</sup> See Delgado & Stefancic, *supra* note 1, at 211.

<sup>9</sup> *Kings and Rulers*, LIBR. OF CONG., <http://id.loc.gov/authorities/subjects/sh00006295> [<https://perma.cc/TH7N-8S4N>] (last visited Apr. 5, 2021).

<sup>10</sup> *Queens*, LIBR. OF CONG., <http://id.loc.gov/authorities/subjects/sh85109802> [<https://perma.cc/ppV5-4RMS>] (last visited Apr. 5, 2021).

<sup>11</sup> *Id.*

## II. CHANGING THE SUBJECT

In 2014, Dartmouth College student Melissa Aracely Padilla went to her college library for research help in looking up works about undocumented immigration. There, Jill Baron, a librarian assisting her, introduced her to the library catalog and the usage of subject headings, including the most relevant subject heading on this topic, “Illegal aliens.” For Padilla, who had been an undocumented immigrant herself, her initial reaction upon seeing the term in the library catalog was disgust and confusion, astounded that her university would think of people in that way, which include some of the students that they recruit. Common usage of “illegal aliens” often carries a dehumanizing undertone, particularly as it is sometimes shortened to just “illegals.”<sup>12</sup>

Padilla worked with other Dartmouth students in the student organization, Coalition for Immigration Reform Equality and DREAMers (“CoFIRED”), to demand changes in Dartmouth to improve the lives of undocumented students, among which was the removal of this language from the library catalog.<sup>13</sup> This led to deeper discussions with the Dartmouth librarians who explained that the subject heading came from the larger LCSH system as controlled by the Library and adopted by thousands of libraries worldwide. The students and librarians then worked together to formally submit a proposal to the Library to change the “Illegal aliens” subject heading to “Undocumented immigrants,” along with all the many variations of the subject heading using “aliens,” such as “Alien criminals,” “Aliens in mass media,” and “Children of illegal aliens.” These events are recounted in the documentary *Change the Subject*.<sup>14</sup>

Proposing a change to the Library of Congress may have been a greater endeavor than the students had initially set out to undertake but it was not an entirely unprecedented one. Over the years, the LCSH has evolved to remove many outdated terms and offensive terms in recognition of how language and society has progressed.<sup>15</sup> The Library routinely updates the subject headings, publishing monthly lists of changes.<sup>16</sup> While the Library retains full authority on revising the LCSH, it does take proposals for additions, deletions, and changes

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<sup>12</sup> See Lisa Peet, *Library of Congress Drops Illegal Alien Subject Heading, Provokes Backlash Legislation*, LIBR. J. (June 13, 2016), <https://www.libraryjournal.com/?detailStory=library-of-congress-drops-illegal-alien-subject-heading-provokes-backlash-legislation> [https://perma.cc/5BUF-X8J6].

<sup>13</sup> *Id.*

<sup>14</sup> CHANGE THE SUBJECT (Dartmouth College 2019).

<sup>15</sup> See generally Steven A. Knowlton, *Three Decades Since Prejudices and Antipathies: A Study of Changes in the Library of Congress Subject Headings*, 40 CATALOGING CLASSIFICATION Q., no. 2, 2005, at 123.

<sup>16</sup> See *Library of Congress Subject Headings (LCSH) Approved Lists*, LIBR. OF CONG., <https://www.loc.gov/aba/cataloging/subject/weeklylists> [https://perma.cc/XLE7-Q9P7] (last visited Apr. 5, 2021).

from the public.<sup>17</sup> The Library considers various factors including the existence of published works on the topic (in other words, literary warrant) and availability of authoritative information about the topic.<sup>18</sup> In crafting the proposal for change, the Dartmouth students and librarians compiled sources showing how other authorities such as major newspapers and style guides have recognized the insulting connotations of “illegal aliens” and switched to alternative language such as “undocumented” or “unauthorized immigrants.”<sup>19</sup>

The Dartmouth activists’ proposal was initially met with rejection in December 2014, with the Library stating that “Illegal aliens” was an “inherently legal heading” and citing usages in the U.S. Code and *Black’s Law Dictionary*.<sup>20</sup> Despite this rejection, the movement to change was hardly finished. The rejection garnered additional press coverage and attention from the broader library community. The American Library Association (“ALA”) passed a resolution in January 2016 encouraging the Library to revise the subject heading.<sup>21</sup>

The Library reconsidered the matter, and in March 2016, it announced that the LCSH would discontinue the “Illegal aliens” subject heading to be replaced by “Noncitizens” and “Unauthorized immigration.” In its announcement, the Library recognized that the phrase “illegal aliens” has taken on a “pejorative tone in recent years.”<sup>22</sup> It also explained that it had rejected previous proposals for revision because the suggested replacements were inadequately synonymous

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<sup>17</sup> See *Process for Adding and Revising Library of Congress Subject Headings*, LIBR. OF CONG., <https://www.loc.gov/aba/cataloging/subject/lcsh-process.html> [<https://perma.cc/Q5JK-NKS2>] (last visited Apr. 5, 2021).

<sup>18</sup> Anna M. Ferris, *Birth of a Subject Heading*, 62 LIBR. RES. & TECH. SERVS. 16, 20 (2018).

<sup>19</sup> CHANGE THE SUBJECT, *supra* note 12.

<sup>20</sup> *Summary of Decisions, Editorial Meeting Number 12*, LIBR. OF CONG. (Dec. 15, 2014), <http://www.loc.gov/aba/pcc/saco/cpsod/psd-141215.html> [<https://perma.cc/JU7C-UNVB>]. However, the accuracy of characterizing “illegal aliens” as a legal term in the U.S. Code is only partially accurate as Title 8 of the U.S. Code, Aliens and Nationality, does not explicitly define “illegal aliens” and also uses other terms to describe similar concepts including “unauthorized alien” and “inadmissible alien.” See W. Gardner Selby, *Is ‘Illegal Alien’ a Legal Term in Federal Law?*, POLITIFACT (May 9, 2018), <https://www.politifact.com/factchecks/2018/may/09/steve-mccraw/illegal-alien-legal-term-federal-law> [<https://perma.cc/S3N6-97Q7>].

<sup>21</sup> AM. LIBR. ASS’N, RESOLUTION ON REPLACING THE LIBRARY OF CONGRESS SUBJECT HEADING “ILLEGAL ALIENS” WITH “UNDOCUMENTED IMMIGRANTS” (2016), [http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/council/council\\_documents/2016\\_mw\\_council\\_documents/cd\\_34\\_Resol\\_on\\_LC\\_Headings\\_11216\\_FINAL.pdf](http://www.ala.org/aboutala/sites/ala.org.aboutala/files/content/governance/council/council_documents/2016_mw_council_documents/cd_34_Resol_on_LC_Headings_11216_FINAL.pdf) [<https://perma.cc/2EAL-NJB4>].

<sup>22</sup> LIBR. OF CONG., LIBRARY OF CONGRESS TO CANCEL THE SUBJECT HEADING “ILLEGAL ALIENS” (2016), <https://www.loc.gov/catdir/cpsod/illegal-aliens-decision.pdf> [<https://perma.cc/A7YU-9SD5>]; *Summary of Decisions, Editorial Meeting Number 03*, LIBR. OF CONG. (Mar. 21, 2016), <https://www.loc.gov/aba/pcc/saco/cpsod/psd-160321.html> [<https://perma.cc/HT7Y-JL2R>].

with the existing term and usage, and it had convened a meeting to develop its own replacement terms.<sup>23</sup>

The Library's announcement faced immediate opposition from members of Congress. In April 2016, a Representative introduced a bill to force the Library to retain the existing subject headings.<sup>24</sup> The bill never progressed past committee referral, but it was indicative of congressional attention and disapproval by certain members. In May 2016, four members of Congress signed a letter to the then-acting Librarian of Congress condemning the proposed change as "Orwellian" and urging the Library to maintain the current language.<sup>25</sup>

Expressions of disapproval on this matter extended beyond just individual members of Congress. In a House Report accompanying the legislative branch appropriations bill for fiscal year 2017, which included funding allocations for the Library, the House Committee on Appropriations "instruct[ed] the Library to maintain certain subject headings that reflect terminology used in title 8, United States Code."<sup>26</sup> The minority view section of the Report objected to this instruction and made it clear that this language is aimed at preserving the "Illegal aliens" subject heading.<sup>27</sup>

Subsequently, in 2017, Chairman of the House Committee on Appropriations Rodney Frelinghuysen gave an explanatory statement on the appropriations omnibus bill substituting the previous report language with a direction to the Library to "make publicly available its process of changing or adding subject headings. . . . The process should consider appropriate sources, . . . including current statutory language and other legal reference sources."<sup>28</sup> This language appears more ambiguous and less imposing than the original House Report, but the implication remains evident: the Library should prioritize Congress's viewpoint and statutory language, which in this case, would result in preserving the existing subject heading.

Since then, the Library has not issued any further announcements on this matter. As of now, the "Illegal aliens" subject heading still remains in the LCSH.

This level of congressional attention towards the Library and the LCSH was unprecedented. Historically, Congress did not opine on the Library's decisions to make changes to the LCSH, even when such changes would be inconsistent with contemporary statutory language. For instance, the Library adopted people-first language by using the subject heading "People with mental disabilities" to

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<sup>23</sup> LIBR. OF CONG., *supra* note 20.

<sup>24</sup> Stopping Partisan Policy at the Library of Congress Act, H.R. 4926, 114th Cong. (2016).

<sup>25</sup> Gary Price, *Library of Congress Releases Page for the Public to Comment on Proposed "Illegal Aliens" Subject Heading Cancellation and Replacement*, INFODOCKET (May 20, 2016), <https://www.infodocket.com/2016/05/20/library-of-congress-offering-chance-for-public-to-comment-proposed-ilegal-aliens-subject-heading-cancellation> [https://perma.cc/4NUP-RHGX].

<sup>26</sup> H.R. REP. NO. 114-594, at 17 (2016).

<sup>27</sup> *Id.* at 44.

<sup>28</sup> 163 CONG. REC. H4033 (daily ed. May 3, 2017) (statement of Rep. Frelinghuysen).

replace “Mentally handicapped” in 2001.<sup>29</sup> Statutory language at that time had not yet adopted the people-first approach and still used “mentally handicapped” or the even more pejorative “mentally retarded,”<sup>30</sup> but this change sparked no particular commentary from Congress.

Since 2017, it appears that Congress has remained cognizant of the LCSH and public interest in changing politically charged subject headings. In 2019, the Senate and the House both passed a resolution recognizing the Armenian Genocide with broad support, despite the White House lobbying the Senate to block a vote. Even after the Senate and the House passed their resolutions, the State Department and Trump Administration instead maintained the existing position of calling the events as “one of the worst mass atrocities” while falling short of acknowledging genocide.<sup>31</sup>

In June 2020, the Library rejected a proposal to change the existing subject heading “Armenian massacres, 1915-1923” to the more historically accurate subject heading “Armenian Genocide, 1915-1923” on the basis that “whether to declare the atrocities a genocide is an enormous foreign policy and diplomatic issue and is the purview of the president and the State Department.”<sup>32</sup> After the rejection, members of Congress signed bipartisan letters to the Librarian of Congress urging the Library to update the subject heading in line with their resolutions and emphasizing that the Library is “an institution that exists within the legislative branch” and that “the Library must be guided by principles of scholarship and truth, not by the haphazard application of geopolitical

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<sup>29</sup> Amanda Ros, *The Bias Hiding in Your Library*, CONVERSATION (Mar. 20, 2019, 6:33 AM), <http://theconversation.com/the-bias-hiding-in-your-library-111951> [<https://perma.cc/R7GL-WR34>].

<sup>30</sup> See Rosa’s Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010) (replacing references to “mentally retarded” and “mental retardation” with “individual with intellectual disability” and “intellectual disability” nearly a decade later). To further complicate the matter, while LCSH did not use “mentally retarded” to refer to people in its authorized subject headings, it did maintain a subject heading for “Mental retardation” until 2018. See *Library of Congress Subject Headings Monthly List 06 (June 15, 2018)*, LIBR. OF CONG., <https://classweb.org/approved-subjects/1806.html> [<https://perma.cc/SQ8B-SMVF>] (last visited Apr. 5, 2021).

<sup>31</sup> Lauren Kelly, *Trump Administration Rejects Senate Resolution Recognizing Armenian Genocide*, HILL (Dec. 17, 2019, 9:59 AM), <https://thehill.com/regulation/international/474869-trump-administration-rejects-senate-resolution-recognizing-armenian> [<https://perma.cc/Z9CX-DEUU>].

<sup>32</sup> Letter from Robin L. Dale, Assoc. Libr. for Libr. Servs., Libr. of Cong., to Aram Suren Hamparian, Exec. Dir., Armenian Nat’l Comm. of Am. (June 19, 2020), [http://anca.org/assets/pdf/061920\\_Armenian\\_Genocide\\_LCSH\\_Response.pdf](http://anca.org/assets/pdf/061920_Armenian_Genocide_LCSH_Response.pdf) [<https://perma.cc/9LXK-Y9NH>]; see also *Library of Congress Unwilling to Correct “Armenian Massacres” Subject Heading in Wake of Congressional Passage of Armenian Genocide Resolution*, ARMENIAN WKLY. (June 20, 2020, 6:16 PM), <https://armenianweekly.com/2020/06/20/library-of-congress-unwilling-to-correct-armenian-massacres-subject-heading-in-wake-of-congressional-passage-of-armenian-genocide-resolution> [<https://perma.cc/4RTE-DG7G>].

concerns.”<sup>33</sup> A few months later in October 2020, the Library changed the subject heading to “Armenian Genocide, 1915-1923” and made conforming changes to related subject headings.<sup>34</sup>

In this situation, it seems Congress took a more progressive approach and chastised the Library for maintaining the more conservative position. However, in principle, Congress’s position remains consistent: the Library works for Congress and should prioritize Congress’s perspective.

It is worth noting that the Library makes dozens of the changes to the LCSH every month without attracting political discord and that these two situations are the exceptions, rather than the rule. Nevertheless, the controversies surrounding LCSH on topics of unauthorized immigration and the Armenian Genocide indicate that the Library is in the unenviable position of needing to juggle multiple considerations including: the necessary practicalities of knowledge organization and cataloging; the unpredictable evolution of language and society; the political concerns of the U.S. government; and, with increasing importance, the desires of an ever-changing Congress. While perhaps convoluted and politically fraught, the Library is a public institution and so its decision-making process with respect to the LCSH is relatively transparent. This transparency allows the public to identify where the LCSH becomes vulnerable to bias, such as in its adherence to literary warrant and its obligations to Congress.

### III. LOOKING BACK AND LOOKING FORWARD

While the Library may be in a unique position of being a government institution that must regularly tread a political minefield, concerns about accurately labelling concepts is hardly confined to the LCSH, nor is it even a particularly new question. At its core, the issue is that attempts to fit a chaotic and evolving world into neat categories requires subjective judgment that elevates certain perspectives, which then embeds those biases into that system.

This had been recognized even in the early days of American legal classification. John B. West, who created the West Publishing that would evolve into today’s Westlaw, introduced the American Digest Classification System (“American Digest”) in 1887, which was intended to exhaustively classify all case law by subject to assist in the arduous task of legal research through print

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<sup>33</sup> Press Release, Adam Schiff, Rep., U.S. House of Representatives, Armenian Caucus Co-Chairs Send Letter to Library of Congress Urging Historically Accurate Characterization of Armenian Genocide (July 30, 2020), [https://schiff.house.gov/news/press-releases/armenian-caucus-co-chairs-send-letter-to-library-of-congress\\_urg-ing-historically-accurate-characterization-of-armenian-genocide](https://schiff.house.gov/news/press-releases/armenian-caucus-co-chairs-send-letter-to-library-of-congress_urg-ing-historically-accurate-characterization-of-armenian-genocide) [<https://perma.cc/2Z72-X3XJ>].

<sup>34</sup> *Library of Congress Subject Headings Monthly List 10* (October 16, 2020), LIBR. OF CONG., <https://classweb.org/approved-subjects/2010.html> [<https://perma.cc/9S36-ACC8>] (last visited Apr. 5, 2021); *Library of Congress Corrects “Armenian Massacres” Subject Heading to “Armenian Genocide,”* ARMENIAN WKLY. (Oct. 21, 2020, 2:15 PM), <https://armenianweekly.com/2020/10/21/breaking-library-of-congress-corrects-armenian-massacres-subject-heading-to-armenian-genocide> [<https://perma.cc/ND7R-CAGL>].



materials. The American Digest formed the backbone of the West Key Number system, still in use today, which permanently assigned numbers to subject categories that could then be applied to cases.<sup>35</sup> In his later years after leaving his eponymous publishing company, West would critique the American Digest system by noting it was based in “the false theory that cases and propositions dealing with changing conditions may be made to fit a rigid classification instead of permitting the classification to change gradually with the growth of case law.”<sup>36</sup> West further acknowledged the problems stemming from the majoritarian nature of the existing digest system:

Law is at all times an approximation of the ideals of justice then predominant. Each year has its peculiar public problems, and the current law is the solution which each year finds thereto. The next year finds new problems and new solutions of the old ones. A rigid permanent classification scheme is as impossible of attainment as the universal code.

The digester found to a fixed classification soon finds himself sorely pressed to make certain cases “fit the classification.”<sup>37</sup>

West identified a major flaw in legal research classification tools that applies just as well today as it did in 1909. Terms that were considered the best fit for describing a concept in the past do not always maintain the same meaning and appropriateness in the present. The word “aliens” to mean noncitizens predates popular association with little green men of science fiction,<sup>38</sup> and the use of “illegal” to describe people in law and in the LCSH predates an explosion in media usage that can often be imprecise, inaccurate, and dehumanizing.<sup>39</sup> The term “Armenian massacre” was incorporated in the LCSH in recognition of the atrocities prior to the Convention on Genocide but then lingered even as the term became a euphemism to downplay those same events.<sup>40</sup> Because these terms have been so thoroughly adopted into the research system, the laws, academic works, and political rhetoric, changing the terms to reflect modern common understanding and usage becomes an uphill struggle.

It remains to be seen to what extent Congress, or individual members of Congress, will seek to influence the Library in making cataloging decisions in the future. Beyond the Library, other institutions employing the LCSH may

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<sup>35</sup> Taryn Marks, *John West and the Future of Legal Subscription Databases*, 107 LAW LIBR. J. 377, 382 (2015).

<sup>36</sup> John B. West, *Multiplicity of Reports*, 2 LAW LIBR. J. 4, 7 (1909).

<sup>37</sup> *Id.*

<sup>38</sup> Grace Lo, “*Aliens*” vs. *Catalogers: Bias in Library of Congress Subject Heading*, 38 LEGAL REFERENCE SERVS. Q. 170, 188-89 (2019).

<sup>39</sup> *Id.*; Edwin F. Ackerman, *The Rise of the “Illegal Alien,”* CONTEXTS, Summer 2013, at 72, 72-74.

<sup>40</sup> Rep. Titus Leading US House Drive Urging Library of Congress to Use Armenian Genocide Subject Heading, ARMENIAN WKLY. (Sep. 2, 2020, 4:42 PM), <https://armenianweekly.com/2020/09/02/rep-titus-leading-us-house-drive-urging-library-of-congress-to-use-armenian-genocide-subject-heading> [https://perma.cc/KL7W-N8CL].

choose to maintain their LCSH usage exactly in line with the Library, keeping the same subject headings and same rules, in order to provide consistency across institutions and reduce the workload of developing customized headings or rules.

However, institutions are still able to make their own decisions about how to best adapt the LCSH to their own systems and for their patrons. For Dartmouth College and many other universities and libraries, the movement to revise the “Illegal aliens” subject headings has forced them to consider whether preserving consistency with the Library and the U.S. Code adequately justifies keeping a pejorative phrase as the main authorized subject heading when that phrase has become a cudgel against some of their most vulnerable patrons. Some libraries have already taken various strategies to add alternative subject headings in their local catalog or replace the subject heading with an alternative, including California State Universities,<sup>41</sup> Stanford,<sup>42</sup> UC Berkeley,<sup>43</sup> Yale,<sup>44</sup> and many others.<sup>45</sup> By taking actions to try and alleviate this issue locally, these libraries have not only demonstrated their own commitment to improving their systems for their patrons, but they have also provided precedent and guidance for other libraries seeking to do the same.<sup>46</sup>

These efforts to reform the usage of LCSH, and even the LCSH itself, may seem a bit quaint and antiquated in light of modern information technology such

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<sup>41</sup> *California State University Libraries to Change the Display of the Subject Heading “Illegal Aliens” in Joint Public Catalog*, CSU LIBRS. NETWORK (Dec. 2, 2019), <https://libraries.calstate.edu/csu-libraries-change-subject-heading-illegal-aliens> [<https://perma.cc/J9QX-29E6>].

<sup>42</sup> An example of an added alternative subject heading can be seen in the catalog record for DAN-EL PADILLA PERALTA, UNDOCUMENTED: A DOMINICAN BOY’S ODYSSEY FROM A HOMELESS SHELTER TO THE IVY LEAGUE (2015). See *Undocumented: A Dominican Boy’s Odyssey from a Homeless Shelter to the Ivy League*, STAN. LIBRS., <https://searchworks.stanford.edu/view/11461505> [<https://perma.cc/N3ZM-2SME>] (last visited Apr. 5, 2021).

<sup>43</sup> Tor Haugan, ‘Words Matter’: Why the UC Berkeley Library Is Embracing Another Term for ‘Illegal Aliens,’ BERKELEY LIBR. NEWS (Nov. 17, 2020), <https://news.lib.berkeley.edu/words-matter> [<https://perma.cc/PA5B-58VC>].

<sup>44</sup> E.g., *Illegal Aliens in the Western Hemisphere: Political and Economic Factors*, YALE UNIV. LIBR., <https://search.library.yale.edu/catalog/267678> [<https://perma.cc/Q2VL-2SA6>] (last visited Apr. 5, 2021).

<sup>45</sup> VIOLET FOX, REPORT OF THE SAC WORKING GROUP ON ALTERNATIVES TO LCSH “ILLEGAL ALIENS” (2020), [https://alair.ala.org/bitstream/handle/11213/14582/SAC20-AC\\_report\\_SAC-Working-Group-on-Alternatives-to-LCSH-Illegal-aliens.pdf](https://alair.ala.org/bitstream/handle/11213/14582/SAC20-AC_report_SAC-Working-Group-on-Alternatives-to-LCSH-Illegal-aliens.pdf) [<https://perma.cc/9RTF-RTMY>] (discussing survey of libraries working on alternative subject headings); *Orbis Cascade Alliance Changes to “Illegal Aliens” Library of Congress Subject Headings*, ORBIS CASCADE ALL. (Jan. 15, 2021), <https://www.orbiscascade.org/changes-to-illegal-immigrants-subject-headings> [<https://perma.cc/3FY7-WKKR>].

<sup>46</sup> Demian Katz, *Changing the Subject with Vufind*, FALVEY MEMORIAL LIBR.: BLOG (Jan. 13, 2020), [https://blog.library.villanova.edu/2020/01/13/changing-the-subject-with-vufind/?preview\\_id=64019](https://blog.library.villanova.edu/2020/01/13/changing-the-subject-with-vufind/?preview_id=64019) [<https://perma.cc/DP8H-QBBN>] (documenting process of changing subject heading for benefit of other libraries using similar systems).

as advances in free-text searching and artificial intelligence. Indeed, Delgado and Stefancic's initial article coining the "triple helix dilemma" looked hopefully on computerized searching as a partial solution.<sup>47</sup> The idea was that free-text keyword searches could circumvent the need for cataloging tools or that advanced algorithms could more efficiently process data to avoid human errors in judgment. However, in recent years, it has become evident that new information technology tools are just as vulnerable to bias and inaccuracy as traditional research tools.

Part of the problem is that new tools still incorporate old systems. The Google Books database is certainly not a traditional library catalog, but subject headings from the LCSH nevertheless show up in its records.<sup>48</sup> LCSH terms may not even appear on Amazon websites, but the page source for some of its books will incorporate LCSH terms as metadata keywords, perpetuating their relevance even when not obviously visible to a user.<sup>49</sup>

So long as prejudices are incorporated in the content that people produce and make available online, search engine algorithms are still vulnerable to underlying biased data. Search engines make relevancy decisions and refine search results based on the universe of materials in their collection. To some extent, search engines face a similar problem as old-school cataloging did with literary warrant: because the underlying materials are biased, then so too will the search tool and the results. As noted by Grand Valley State University Web Services Librarian, Matthew Reidsma, "We should not be surprised that our algorithms, created by us and trained on the very inputs and outputs that shape our own biases and prejudices, spit out hate and bias."<sup>50</sup>

This is not just a matter of "garbage in, garbage out," where biased data yields biased results even when processed by an "objective" system. Presuming neutrality and objectivity of the system itself ignores biases inherent in the creation of the system. UCLA Associate Professor of Information Studies, Safiya Noble, noted in her book *Algorithms of Oppression* that "[r]endering web content (pages) findable via search engines is an expressly social, economic, and human project."<sup>51</sup> Noble identified how both modern Internet searching and the LCSH encounter the same problems of inadequately considering the impact of social context and human decision-making in building those systems:

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<sup>47</sup> See Delgado & Stefancic, *supra* note 1, at 220-25.

<sup>48</sup> Compare *Critical Race Theory: The Cutting Edge*, *supra* note 5, with *Critical Race Theory: The Cutting Edge*, GOOGLE BOOKS, [https://www.google.com/books/edition/\\_/RQKmMQEACAAJ?hl=en&sa=X&ved=2ahUKEwiQhZugtOvuAhVcFTQIHZ1GDtQQre8FMBN6BAgSEAY](https://www.google.com/books/edition/_/RQKmMQEACAAJ?hl=en&sa=X&ved=2ahUKEwiQhZugtOvuAhVcFTQIHZ1GDtQQre8FMBN6BAgSEAY) [<https://perma.cc/P6GW-WWLY>] (last visited Apr. 5, 2021) (showing same subject headings as the Library's own online catalog, listed among others under "Subject").

<sup>49</sup> Lo, *supra* note 38, at 192.

<sup>50</sup> MATTHEW REIDSMA, MASKED BY TRUST: BIAS IN LIBRARY DISCOVERY 148 (2019).

<sup>51</sup> SAFIYA UMOJA NOBLE, ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM 37 (2018).

In the case of search engines, not unlike cataloging systems, the social context and histories of exploitation or objectification are not taken into explicit consideration—rather, they are disavowed. What can be retrieved by information seekers is mediated by the technological system—be it a catalog or an index of web pages—by the system design that otherizes. In the case of the web, old cataloging and bibliometric practices are brought into the modern systems design.<sup>52</sup>

In some ways, reliance on modern search algorithms may be more problematic than on traditional, purely human-based catalog systems in that they intentionally obscure how much human decision-making goes into the process. Google’s interface is famously simplistic—just a search bar on an uncluttered page, designed to convey a sense of trustworthiness and neutrality.<sup>53</sup> Users often assume that search results are objective and purely machine-based without being fully cognizant of how the search algorithms incorporate many layers of human judgment, including prioritization of advertising and content moderation.<sup>54</sup> Even if unintentional, these layers may nevertheless result in biased choices. For example, Facebook does not permit ads that promote medical and healthcare products, a seemingly “objective” goal, and uses automated algorithms to identify and reject such ads.<sup>55</sup> The problem is that the algorithms are often bad at interpreting context and have built-in ableist assumptions, resulting in rejecting ads of a model in a wheelchair even though the product advertised is clothing designed for wheelchair users rather than the wheelchair itself. The classification choices underlying the algorithms are not obvious or transparent, leaving small businesses in nonmainstream fields like adaptive fashion to constantly guess at what ads will be permitted.<sup>56</sup>

Returning to the case study of the “Illegal aliens” subject heading, undergraduate students wanting to understand the presence of the biased terms in their library catalog had the ability to trace the origin of the term, identify the decision makers, raise awareness of the problem, and propose a change. Even if the Library has not yet revised the subject heading in the official LCSH, the movement has resulted in fixes within individual libraries and library consortia, building greater momentum for systemic change. Replicating the same process for change is exponentially more burdensome when facing black box algorithms. The next wave of critical legal research requires a recognition that modern research tools still incorporate the same problems of bias that created the original “triple helix,” and additionally, require greater vigilance and awareness to push back against the false assumption of machine-based neutrality.

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<sup>52</sup> *Id.* at 144.

<sup>53</sup> REIDSMA, *supra* note 47, at 37.

<sup>54</sup> NOBLE, *supra* note 48, at 37-58.

<sup>55</sup> Vanessa Friedman, *Why Is Facebook Rejecting These Fashion Ads?*, N.Y. TIMES (Feb. 11, 2021), <https://www.nytimes.com/2021/02/11/style/disabled-fashion-facebook-discrimination.html>.

<sup>56</sup> *Id.*