

Geographically Misplaced Archives and Manuscripts: Problems and arguments associated with their restitution

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Archives and manuscripts become geographically misplaced as a result of war, decolonisation, commercial activity and larceny. This article discusses, for each area, the effects of such misplacements and the attempts that are made for their replevin. Current practices and problems are described and, in conclusion, some parallels between these seemingly disparate areas, are drawn.

The written word has always been a powerful source of societal development in both Eastern and Western civilisations, and the preservation and utilisation of the written record has, as a result, often demonstrated a unique, almost mystical power, for, or over, a particular society. The history of modern record preservation and methodology has its foundations in the days following the French revolution when, for the first time, records which had previously been the province of a select few were suddenly made available to the general public. Realising the value of administrative records in their own country, the French Army, under the command of Napoleon, selected for transfer to Paris those administrative records of conquered lands relevant to the new French administrations of those countries, "The archives no longer followed the flag; the flag followed the archives."¹

Since then, written records have been variously dispersed, largely as a consequence of rapid political, economical, and social progress, of mass migrations from rural areas to cities and of industrialisation. The result has been not only the destruction of cultural heritages but often the disintegration of whole societies. "A nation robbed of its archives and historical manuscripts loses something more precious than paper — the

silent witnesses of their individuality and their independence."² In discussing geographically misplaced archives and manuscripts, it is necessary first to define the terms of reference. Then, by drawing on examples extant in the literature, the causes, effects, and replevin of such misplacements are described, and finally current practices, problems, and situations are examined.

A misplaced document is one which, depending on the degree of precision of description, may be termed missing, stray, or fugitive. A missing document, the term used in Muller, Feith, and Fruin's classical treatise, may indicate a record which has been destroyed or has perished as a result of natural causes. An stray is "the legal term applied to a record or document not in the custody of the original records creator or its legal successor."³ Fugitive material, which occurs in the title of an article by R.G. Adams,⁴ "would expose us to the charge of having illegitimately inferred that certain classes of archives possess an inherent aptitude for running away,"⁵ and therefore cannot be suitably applied.

The term stray is preferred, and it is used principally to refer to a document which, having originally been part of an archival series or an organic link in a natural order binding all the components of that series, has become detached. As such it has lost whatever significance it possessed, having no more individuality "than a limb severed from the body of a living being."⁶ Manuscripts, personal papers, or correspondence may therefore be termed pseudo-strays since they may have similarly become misplaced but often did not form a legitimate part of a living record body. The causes of geographical misplacement are often interconnected, colonisation frequently resulting in commercial activity and vice versa, and larceny resulting from war. Thus the problems each situation produces are often similar, but nonetheless complex.

Misplacement resulting from war

Misplacement resulting from war can be traced back to the conquests of the Roman emperors who returned from their campaigns with treasures from the conquered. The spoliation and destruction of archives, libraries, monuments, and objets d'art were regarded as the natural rights of the invader. It was not until the 18th century and early 19th century that these cultural and artistic items became recognised as valuable treasure. Napoleon, as already mentioned, extended the Roman idea of the 'rape' of the subjugated countries to include archives, and despatched many to Paris from the Low Countries, Spain and Italy.

As the 19th century progressed, the effects of changes of sovereignty became more complex, and clauses began to figure in peace treaties as to ownership and custody of archives. Concurrently, the principles of the fonds and of provenance became important factors in such clauses

concerned with the extradition of records. These stated that the archive repositories of ceded territories were to remain with those territories as a normal consequence of annexation. However, only the records of the *administration* of the cession were to be delivered upon annexation leaving untouched the central records of the cessionary and the historical fonds outside the post-annexation territory.

This became the fate of archives after war, but the dangers for archival holdings during warfare has presented far greater problems. The Hague regulations of the *Rules of Land Warfare of 1907*, Section III, article 56, may be interpreted to include, for protection under "property of municipalities", archival holdings, but only where they are preserved in "institutions dedicated to the sciences".⁷ State or government archives may thus fall outside the ruling of this clause, and evacuation seems to have served as the only reliable means of protecting them from destruction or seizure. The effects of artillery bombing are obvious consequences of warfare as we know it but instances have been frequently recorded of "individual destruction"; "American soldiers in Manila and German soldiers in Briey in Lorraine were certainly not the first to discover that records could serve as fuel,"⁸ nor the Sinn Feiners in Dublin who barricaded windows and gates with them. Similarly, paper for munitions production has, at times, been supplied by repositories, as have bundles of records for road foundations.⁹

Concerned about such threat of imminent destruction to art and archives in war areas during World War II, the US War Department issued directives stating that the billeting of troops in buildings containing archives should be avoided wherever possible. This was not only to protect the archives from being destroyed because of their physical attributes, but also to protect them from the booty-hunting soldiers of war. Similarly, the Germans had found it necessary to establish a system of records protection in countries they were occupying. Such measures, whilst attempting physical protection, did not imply the *use* of the archives was to be protected. German propaganda exploited the unlimited access to captured foreign archives for Germany's own aggrandisement, following a pattern set by many conquering nations before it.

World War II posed unprecedented problems for record protection, since, as the biggest military operation ever, no other war had involved "so many documents in so many locations during so long a period."¹⁰ At its close, the allied armies possessed authority to capture records under the Hague Convention of 1907, and also under the numerous laws and other directives of the Allied Control Commission relating to Nazi military and other documents of the German administration. The captured German records of that time were retained for their own safety because, for more than five years after the war, Germany possessed no effective, fullscale,

central government. They were collected, administered, and used on site and in the United States and in Great Britain for a number of reasons: to assist the military in the prosecution of the ongoing war against the Japanese; to supply information for occupational demands; for war crimes trials; and for military history, particularly to provide accurate information regarding German order of battle. It has been stated that

“well over 95% of the documents were left in Germany...the army established records depositories in Germany for those records that could not remain in German hands or be given back to German authorities at that time, records of Nazi organisations, records taken by the Germans from Jewish, Masonic, labour, and other organizations, and individuals persecuted by the Nazi regime.”¹¹

The restitution of archival records and manuscripts displaced by war had precedents set in the early 19th century with the return of many of the archives seized by Napoleon. First the Papal archives went back to Rome in 1813, then the Belgian archives to Brussels in 1814, and the Spanish archives in 1816.¹² Similarly, after World War II, the allies repatriated, where possible, the records of occupied countries that had been seized by the Germans, Italians, and Japanese, for example, the public and private archives of France, Luxemburg, and the Netherlands. These countries also retained those records which had been created during occupation. Problems arose, however, where no direct heirs existed such as with the records of Jewish organisations in Eastern Europe. In this case the solution was for the archives to go to organisations which were declared to be successors (in New York and Israel). Similarly, the archives removed by German authorities during World War II to Western Germany from repositories in Eastern Germany, where the cities and towns later became part of post-war Poland with substantially no Germans, remained in West Germany.

The return of captured German military records was not initiated until such problems as adequate central repositories had been resolved, and microfilming and declassification by the allies. By March 1968 the allies had returned 25,000 linear feet of captured records.¹³ Obviously, restitution can only be made for those records which have survived, since the invader, when the military situation changes for the worse, usually prepares to evacuate and destroys the records of the occupation. Such was the case in World War I when on October 11, 1918, the German authorities in Belgium started removing or burning their archives¹⁴ and when the Third Reich was collapsing in 1945, deliberate destruction of German Federal archives was carried out by German hands.

Civil wars produce similar problems with records being exploited, misplaced, carried off as booty, and continually in danger of destruction. Internal problems created by war exist when enemy-owned concerns *within* a country are seized, such as insurance companies, banks, shipping

firms, and various industrial producers, importers, and exporters. In the United States, confiscation is possible through the 'enemy alien' legislation but return often prohibited by the War Claims Act of 1948. Such records have been called "a sort of archival platypus"¹⁵ since they link the characteristics of two distinct classes of records, private and public. They originate as private records but, once confiscated, have often been used, exploited and even treated as public records in that they have been destroyed according to public records disposal acts.

Archival documents displaced by war are actually at the mercy of the victor. The problems are simpler if the invader remains in control, since there is little that can be done to enforce even international law in such situations. This is the case with the Russian command of East Germany, for those records that were in the Russian zone of occupied Germany have remained there, and only a portion have been made available to Western researchers.

Effects of decolonisation

The role of a colonising nation has analogies with that of the warring nation: both seek to dominate, to rule, and to lay title to lands and resources. The major differences exist in approach and, even though the motivation of both may be economic and political, the emphases and priorities differ. The approach of the colonising nation is generally a gradual one which seeks to develop and exploit both natural and human resources. The approach of the warring nation is more often very rapid, with the emphasis being on subjugation of the vanquished people and seizure of the resources that are immediately available. In both cases, that is whether through war or peaceful negotiations, where territory changes hands and new national entities emerge, archives will be transferred from one land to another.

Peaceful negotiations most commonly have involved, in the past, the demand from either a newly independent nation or from a different colonising power (such as German New Guinea) for those records which were produced in the process of administering that territory. Unfortunately the urgency of many societal pressures created in newly independent nations dominates energy and financial reserves, resulting in little time, energy or money being allocated to the affairs of yesterday. "On the scale of priorities in developing countries, archival concerns do not rank amongst the most urgent."¹⁶ It is in this context that 'knowledge capitalism' is perhaps most pervasive since developing nations are severely limited by available resources. By contrast, many developed nations have relatively vast resources and facilities available to them and thus "like some other forms of foreign investment, the foreign investor keeps getting richer and the ... [developing nation] ... relatively poorer."¹⁷

It is a fact that in many cases the written record of developing nations is primarily a history of the colonial expansion of European powers. The attractions of tropical lands, foremost among them the spice trade and the slave trade, were the causes of much of their recorded history. It is also clear that to have a precise knowledge of what has gone before is one of the primary requirements of administration, and archives can meet this requirement only when they have survived in an unmutilated state. The British have faced for some time a request to return the records of their administration in India which they retained after its independence. These documents were either gathered up and taken away from India or were created by government agencies based in Britain. For India this pursuit is not directed just to the British repositories and agencies but also to the French, the Dutch, and the Portugese, which likewise have much archival material relevant to India.

Concern for the replevin of these estrays has caused heated debate within the Indian government and press, so much so that the problem of these 'migrated archives' was brought to the attention of UNESCO for study and possible solution. The Indian argument does not lay claim to 'lawful emigrants', the documents which, though derived in the course of official functioning, cannot, because of their very nature, form part of their creator's archives, for example documents such as letters, despatches, or other communications which issue from one person or one office to another. The Indian argument, however, sees no justification in a government carrying with it the records created in connection with the domestic administration of a territory which it has relinquished to another government. The latter, as legitimate successor of the former, is considered to have the right to inherit these records, which, if allowed to go with the ceding authority, would lose their archival quality and become estrays. It has been claimed that the place of origin of a document has no bearing on its legitimate custody; that "it belongs only to the series of which it forms a natural part and travels with the creators *or* their legitimate successors."¹⁸ This proposition seems to have been supported elsewhere in the past by clauses in a number of treaties which have demanded that the archives of a ceded territory remain for the successors. The present situation for India is in no way unique to that country, having been the experience of many countries both in the Pacific basin and in Africa.

Here in Australia, this problem has arisen with the independence of Papua New Guinea. In the Editorial of *Archives and Manuscripts*, August 1975, it was noted that "at times we have taken part in a rape of New Guinean resources, including bibliographical resources. In 1972 it seems that officers of the Australian Government were sent to Port Moresby to bring back to Australia anything in the governmental registries of Papua New Guinea which would reflect discredit on the colonizing power."¹⁹ This situation was, however, brought to light, and the records were finally only

photographed. It appears though, that it was not the first time Australia had endeavoured to tamper with these records. Kevin Green has suggested that the files of the Administrator's Office, which was transferred to Australia in 1942 when the civil administration was suspended and which are now held in the National Archives of Papua New Guinea, are far from complete and, to him, they appear to be a residue left after other files were removed for some purpose.²⁰ He cites as examples of this the file on the Uncontrolled Areas Ordinance which is missing, and the lack of files on the subject of native labour. The transfer was originally made in order to safeguard the records, a valid reason in the face of Japanese invasion, but the records which have remained in Australia, combined with those returned to Papua New Guinea, may not represent all the surviving records of the administration. It might be supposed that the colonial power had ulterior motives in evacuating the records in 1942, using their safe-keeping as an excuse.

Again, similar situations occurred with the French withdrawal from Indo-China, when the most important colonial records were shipped to the safety of France. The stated justification does, in this instance, appear to be valid since, where local records fell into the hands of the Viet Minh, many were destroyed including, for example, the land registers seized in the cadastral offices of several Tonkinese provinces.²¹ Likewise, when the Dutch withdrew from Indonesia, they shipped the archives out to protect them. It may be difficult for the government of a newly independent country to see immediate benefit in preserving the records of a colonial past when it has to provide food for millions of hungry people. Moreover, the records are memories of a period of national disgrace and the nation is better served by negating the past. This view, however, needs to be overcome and, in the Archives Program which UNESCO initiated following World War II, it is clear that "no one country can possess more than a part of the total archival heritage of mankind...(and that)...the loss of an important body of records in any country is a loss to all countries."²²

For Australia itself, as a collection of former British colonies, there are records of the Colonial Office to 1901 which relate directly to this country's history, as do parts of series from the Home Office, War Office, Admiralty, Treasury, Board of Trade, Audit Office, and Privy Council. Being components of British series, they are in legitimate custody. In order to provide Australian researchers with these sources of information, the Joint Copying Project was initiated just before World War II and has continued to date. The scope of the project has now been enlarged to cover records outside the Public Records Office. Even within Australia, problems of ownership arise, such as with the records of the Northern Territory when it was part of South Australia. These are not unnaturally in the custody of South Australia, but moves have begun by the Territory to obtain them.

Microfilming records seems to be the next best and a well supported

alternative, when original documents, misplaced by colonisation, cannot be retrieved, though it is a palliative remedy and no justification for their non-return. It does, however, have the advantage of enabling researchers within a country to have access to records which may otherwise remain beyond their reach.

Misplacement resulting from commercial activity

Documents misplaced geographically as a result of commercial activity are of two kinds: those that are the product or result of commercial activity within a country but do not remain there, such as the records of trusts, stock and export companies, and industrial enterprises; and, secondly, those which, through their own intrinsic value, have produced the very commercial activity that alters their custody. In regard to the first, commercial activity within a country is closely linked to colonisation, since economic concerns have given the impetus for colonies to be established. The companies so formed, having their head offices in the countries of origin, have also preserved the majority of their records there. Thus valuable source materials, containing information of importance not only for the history of the economy, but also for social and cultural issues, can be accessible through archives existing in a 'foreign' country. For instance, extensive records of the British East India company, which had its Eastern headquarters in Calcutta but whose field of enterprise stretched from Egypt and Aden to Hong Kong, are now in the Indian Archives. No doubt these records would be of value to several countries in the region.

More commonly, the records of commercial enterprises are to be found in Europe. This is certainly the case for those that have operated in the Pacific Basin area such as the German records of the New Guinea Company, but for Australia the bulk of business records are to be found in Britain. Some success has been made in obtaining a variety of these records as the result of the establishment, in Canberra, of a repository devoted to the preservation of business archives. This repository has obtained the London records of, for instance, Elder Smith & Co Ltd, (1886—1962), Australian Estates Co, (1899—1970), Australian Agricultural Co, (1824—1973), Australian Mercantile Land and Finance Co Ltd, (1863—1971), and the Peel River Land and Mineral Co, (1853—1960), to name but a few. Britain has also held many of the business records pertinent to economic developments in other countries such as those of the Hudson Bay Company in Canada. These company archives were recently transferred from Beaver House in London, to Winnipeg, resulting in a "phenomenal increase in their use and promoting some otherwise unprecedented hypotheses concerning the North American fur trade."²⁴

The second area of commercial activity is the result of the recognition that historical documents and records are, like capital and the tourist trade, an exploitable resource, but, like land, labour and minerals, a

limited resource. It is also clear that in this sphere of activity, institutions and scholars of the richer nations have the wherewithal to exploit those resources most effectively. Many motives are involved but whatever the case, a market exists and prices are set for so-called prestige items at least.

Demand in the 'archival market' comes from three sectors: first, from the private collector or institution that seeks out and purchases documents as investments, for the sake of investment, for prestige, or for personal gratification; second, from the semi-public realm, constituted by organisations which utilise both private funds and public subsidy; and third, from the public sector which per se consists of government financed and operated institutions. Governments, whilst intervening directly in the market sphere in this third sector, also intervene indirectly within the first two sectors to influence the direction of archival and manuscript activity. They do this essentially through legislation but also through the grants they make available to purchasing bodies. Such a role of government is justifiable "only if there is good reason to think that the private sector is subject to inherent limitations... It is one thing for the state to keep its own records, but quite another for it to become the record keeper of society."²⁵

In general the rationale for government intervention is based on the theory of public good and this applies to archives, not for the sake of their physical form, but for their content and their contribution to knowledge. The promotion of knowledge is, in many respects, a public good in that an original idea may be developed for the benefit of many people. "There is consequently an *a priori* case for support of archival activities as part of a larger public support of knowledge."²⁶ Government intervention can successfully protect such a public good mainly through legislation. In appropriate cases it may: assert ownership; offer exemption from tax to private owners; accept manuscripts and documents for the nation in lieu of estate duty; provide funds to enable public institutions to purchase privately-owned papers that are offered for sale; and, under export licensing regulations, it may seek to prevent the export of documents of national importance. All these options have been utilised by the British government in an attempt to stem the export of privately-owned documents. They are, for this reason, accepted not only as exemptions from estate duty but also from wealth tax and capital gains tax.

The British legislation controlling the export of archives and manuscripts has, since March 1979, applied to documents over 50 years old and requires the vendor to obtain a licence for the export of any such items being sold. Privately-owned manorial documents alone lie outside these rules and, through the Law of Property Act 1922, they may not be removed or exported from Britain without the consent of the Master of the Rolls. Where the export of documents cannot be prevented, the export licensing regulations enable the government to demand photographic copies as substitutes, these to be made at the exporter's expense. Grants are

also made available to assist in the acquisition of archival documents by public institutions. Such incentives and controls are not always successful and the international market continues to prosper. For instance, "in 1968 the Bertrand Russell papers were sold to McMaster University, Canada, for a reputed £250,000"²⁷; "the sale to America...of documents relating to Guy Fawkes; and the [sale of] important Tennyson manuscripts, part of which are in Cambridge and part in Toronto."²⁸ The legislation aims to prevent such fragmentation of both individual record groups and the nation's records. Where this is impossible, recording their destination and obtaining copies of them is the best alternative available. Such legislation is not unique to Great Britain but, since that country has such a wealth of the materials available for the market, it provides one of the best examples of these regulations in action.

The last means by which government intervention can act to replevy misplaced documents, is in asserting ownership. This appears to be the least successful mode of action, evident from the number of reported bids for ownership that have failed to have been proven true. Theoretically, the principle, 'nullus tempus occurri regi', (time runneth not against the king) should allow a government to attempt to recover a piece of property, such as archives, regardless of how long it has been in the hands of a private citizen. In practice, this dictum has not been upheld, as in the case of USA vs Sender, where the American government sought title to Spanish documents pertaining to New Mexico, but lost because the jurors felt it had no claim to documents after decades had passed.²⁹ Here in Australia, a similar situation arose when Tasmania attempted, in October 1963 (Eldershaw vs MacGinnis), to retrieve some records held in the Port Arthur Museum relating to the colonial Convict and Police administration. The case was taken to court but, when the defence counsel objected that any pre-1855 records could not be shown to be public records of the State of Tasmania, the case was dismissed.

Effects of criminal activity

A direct consequence of any high demand market situation based on products of intrinsic value such as diamonds and gold, and similarly archives and manuscripts, is illicit trading, blackmarketing and theft. Thus larceny involving archival documents has, as the open market situation has expanded, been aggravated and accelerated in proportion to the upward trend of that market. Phillip Mason reported in 1975 that "theft from archives has now reached alarming proportions. During the past decade several hundred archives and libraries have been victimized."³¹ Since item-by-item identification is precluded by the size of contemporary archival collections, difficulties exist in determining if items are missing, but even when they are known to be, it has often been the case that archivists have been *most* reluctant to report them.

Motives for theft are varied — ranging from singular personal possession, kleptomania, mental disorder (hostility or psychopathic aversions), to researchers 'borrowing' items, "the desire to purge written record of specific data"³², or for monetary gain, whether it be in stamps, autographs or entire documents. It has been suggested that perhaps one of the biggest archival security problems is that of convincing archivists and their staff that there is in fact a problem. Preventative measures that can be taken include strict rules of access to certain storage areas by staff, thorough identification of users (at least to include a photograph), inspection and restriction of both apparel and carry-bags, listing of stolen goods, microfilming important documents to provide identification, two-way mirrors, strict supervision in the reading rooms, closed circuit television, marking material, and adequate locks.

The Society of American Archivists (SAA) has, in order to facilitate the recovery of stolen items and to publicise theft, established a Register of Stolen or Missing Archival Material. The list is revised annually, drawing on reports from the United States and Canada, and is sent to hundreds of dealers and archives across North America. The SAA also provides a security consultant service which advises archival institutions in the areas of security systems and internal archival procedures. Further, relating to these services, it issues a bi-monthly *Archival Security Newsletter*, which includes both accounts of recent thefts and prosecutions, and up-to-date technical data on security measures and systems. Finally, the SAA has sponsored a manual, *Archives and Manuscripts: Security*³³ (Chicago 1977), which is a practical guide for all professional archivists and manuscript librarians.

Collection and repository protection, then, relies on planning a security programme, on implementing deterrents to theft (through security equipment and procedures), the identification of missing items, the insurance of valuable materials, and the legislation necessary not only to help protect the records and the staff, but also to aid in the detention and prosecution of those guilty.

This article has covered precedents, practices, and problems concerning misplaced documents, and throughout recurrent themes have emerged. Firstly, the causes of the misplacement of documents tend to be due to economic, political and/or social change; secondly, common factors in the prevention of further misplacement are seen in legislation, greater awareness, and greater care; and thirdly, there are common factors concerning their return, again through legislation, and through international co-operation at both national and personal levels.

FOOTNOTES

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