

Review Article

Common Ground, Different Traditions: An Australian Perspective on Italian Diplomats, Archival Science, and Business Records

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Paola Carucci, *Le Fonti Archivistiche: Ordinamento e Conservazione*, first edition 1983, tenth reprint 1998, Carocci editore, Roma; *Il Documento Contemporaneo, Diplomatica e Criteri di Edizione*, first edition 1987, reprint 1998, Carocci editore, Roma; and with **Marina Messina**, *Manuale di Archivistica per L'impresa*, Carocci editore, Roma, 1998. (English titles are: *Archival Sources: Arrangement and Preservation; The Contemporary Document, Diplomats and Edition Criteria; and An Archival Manual for the Firm*)

Disclaimer: In reference to the legal terminology I have consulted an Italian dictionary of law. However I take personal responsibility for errors of translation and interpretation.

This review article focuses on a number of themes in three Italian books on archives, that are relevant to archival theory and practice, and to current professional debates in Australia in particular. These themes include records as evidence and memory, the legal context of recordkeeping, the importance of business archives, and the relevance of diplomatics and archival science to electronic recordkeeping, with an emphasis on our common ground with Italian traditions while noting differences. The themes selected from the books focus on the continuity of archival theory and practice, in particular the elements that are applicable to our current archival endeavour. This is a refereed article.

Introduction

Most archivists in the English speaking world are familiar with Italian style diplomatics and archival science from the writings of Professor Luciana Duranti.¹ Diplomatics in particular, through Duranti, has been an important influence on both the archival theory and practice in North America, as well as the conceptual basis of major records and archives research projects.² Aside from Duranti's writings, much of the literature on diplomatics and archival science is not available in English. This means that the professional writings archivists cite are almost all in English. However it is important for us to be cognisant of the large amount of professional literature written in languages other than English.

Three books by Paola Carucci, the third book co-authored with Marina Messina, all of which are unavailable in English, provide a window on both the theory and practice of archival science ('archivistica') and diplomatics as applied to twentieth-century paper-based public and business records, with some reference to electronic records. Paola Carucci is the Director General of the Central Archives of Rome, and has taught archival science at the State University of Milan and the Special School for Archivists and Librarians at the University of Rome ('La Sapienza'). Marina Messina is a State Archivist at the Archives Supervision Agency of Milan, and has taught a number of courses in business archives.

The three books taken as a whole present a synthesis of twentieth-century Italian archival theory and practice. They are marked by a high standard of erudition and knowledge of the Italian archival system. The earliest book *Le Fonti Archivistiche: Ordinamento e Conservazione*, spans the nature of a document, its definition in diplomatics, the definition of archives, archive, the regulatory framework, the uses and users of documents, the Italian archival system, arrangement and finding aids, archival training and education, and reproduction and conservation including storage systems, essentially in

relation to paper documents. There is a substantial glossary and also an administrative instruction (1966) on the compilation of inventories. The book is aimed at professional practising archivists or for those preparing to go into practice, in any kind of archive (public or private). As the book is a reprint of the first publication in 1983, the chapters on the administrative and legal controls of archives in Italy are not current. However the system in general centred on the preservation of the archives of the central and peripheral organisations of State, defined as the property of the State, the controls on the archives of provincial capitals and municipalities, the use of archival superintendents to oversee private records designated to be of historical importance, are generally still current and present quite a different system from the Australian one.³

Carucci's interpretative summary of the holdings in the various State archives and in the private sector, which also includes what is *not* there and why, reflects the institutionalisation of archives within the Italian political and legal system.⁴ An explanatory national context with overarching functional information provided in terms of historical changes would seem to be a model to follow in the Australian context.⁵ There are scattered references throughout the books, on archival laws and access periods, but they are not easy to find.

The second book *Il Documento Contemporaneo, Diplomatica e Criteri di Edizione*, reprinted 1998, has three parts. The first part examines the juridical act ('atto giuridico') and its formation, the second part presents a typology of the document and its structure based on diplomatic elements, and the third part provides methods for the description of archival 'groups' for research, display, citation and guides. It is aimed at archivists and researchers. The book has a large section devoted to constitutional and administrative law and its implementation in the execution of 'the act'. The terminology is difficult if one is not au fait with the Italian legal system. It covers the application of diplomatics to nineteenth- and twentieth-century documents, and only briefly extends to electronic records.⁶ However the application of diplomatics to the electronic environment has been undertaken by other research, principally by Luciana Duranti and her colleagues.⁷

The third book, *Manuale di Archivistica per L'impresa*, published in 1998, deals with the records of firms and businesses, but with references to public law which has considerably more relevance to private records than in Australia. The most recent of the three books, it grew out of a course on business archives commenced in 1993 in collaboration with the Centre of the History of Business and Innovation and with an Italian company, Assolombarda. It is written for archivists and for the person responsible for the business archive. It combines practical information with general issues. It takes into account the view of

historians, archivists, and business persons. As a manual, it lacks the theoretical depth of Carucci's predecessor works. However, the terminology is consistent with her other books. Part 1 consists of types of firms, the typology of documents, the archives of firms, and records management ('records management' is one of the few English words that appear in all three books); Part 2 covers current archives, classification systems, appraisal, and legal responsibilities; and Part 3 deals with the historical archive and historical research. The book is well illustrated by diagrams throughout, and appendixes on laws affecting businesses and examples of finding aids.

All three books are written in narrative style. They are well structured with headings and subheadings to follow the train of thought. The avoidance of English terms where there are Italian equivalents or neologisms maintains a purist approach to language. There are however insufficient footnotes for readers who are unaware of the origin of concepts adopted. Despite the emphasis on practice, in all three books there is a strong theoretical structure that binds the practice together, and stands the test of time much better than the practical aspects presented.

Legal knowledge

The writings all attest to the need for a solid knowledge of Italian law, from constitutional law to legislative processes, which is seen as essential to the study of both diplomatics and archival science. In addition, administrative history provides a broad knowledge of the context of Italian recordkeeping systems, which has become a much-neglected area in our own teaching and research. Functional analysis and processes cannot be fully understood unless we know which legal jurisdiction has the power and authority over functions or parts thereof, and thus which legislation is relevant to particular activities of organisations. Much of the legal context in the books is specific to Italian law, but its relevance to recordkeeping practice is the recognition of the need for legal knowledge to be applied by those working in other legal jurisdictions.

Document as testimony, evidence and cultural memory

In Paola Carucci's writings the word 'document' is used where we would more or less use the term 'record'. Documents are said to be created for administrative purposes, and linked to the function or the competencies of the offices and organisations that bring them into existence. From the beginning of their existence they have a historical relevance as witnesses of political and social events. They are a source for the study of history, and are any material object held in an archive.⁸ They become cultural facts through

those that use them for all kinds of purposes.⁹ Documents of private organisations and individuals are considered to be equally important as other archives.

Carucci devotes a chapter in *Le Fonti Archivistiche: Ordinamento e Conservazione* to the use of archival sources for research into organisations and the context in which they were produced. Not only public authorities and the notarial archives, but also the arts, trade unions, and virtually any activity that has a trace in archives is included in her survey of Italian archives. Thus 'organisation' is given a very wide meaning to encompass personal as well as public archives.¹⁰

Carucci emphasises in all her books that even when the juridical effects have gone the records are important for historical research, as well as having continuing probative value. Thus Italian archival science is concerned as much with the cultural dimension of records as their legal context.¹¹

For Carucci the document is testimony and witness of events. Duranti has written of the subtle shift from evidence to testimony in the nineteenth century when diplomacy began to be considered an auxiliary science of history.¹² It illuminates Carucci's definition of a document in which testimony, unlike evidence of a legal fact, is inclusive of memory of social events that can serve a number of purposes.

In relation to the debate on records as evidence and as memory,¹³ the Carucci oeuvre clearly does not support a dichotomy between these two concepts. In *Le Fonti Archivistiche: Ordinamento e Conservazione*, the general importance of archives to society is highlighted. In fact the book begins with the users of archives, and how both the general public and specialists understand archives. Together with museums and libraries, archives are considered as part of the cultural patrimony of the nation ('beni culturali').

Without entering the postmodern discourse, it is worth commenting that it is quite a leap to move from evidence and memory to 'truth'.¹⁴ Truth has a moral and ethical dimension. The 'truth' in a record depends on the motives of the record creators, a central issue of ethics and criminal law. Not all legal theory supports a causal connection between evidence and truth.¹⁵ In most legal systems 'legal reasoning' is meant to establish the truth through the rules of evidence, that is, through law applied to objective facts. Judicial evidence is concerned with establishing 'the facts in issue' and whose version of the facts is right. Within this paradigm a trial is a search for truth, or at least which 'truth' is presented in a more plausible manner within the judicial process. The standard of truth applied in law is dependent on how the rules of evidence have evolved in different legal systems. The common law

adversarial system promotes an approach based on reaching the truth presented by opposing parties. In some legal systems torture is adopted to extract the truth. Thus even the notion of legal evidence is culturally determined.¹⁶ Records serve as legal evidence within the rules of a given legal system. Evidence is however not only legal evidence and is used by many disciplines as a reference to empirical data that proves a hypothesis. Records are a representation of reality or what Carucci terms a 'documentary reality' only and therefore cannot have an absolute objective truth.¹⁷ Furthermore the contents of a document may be accurate in so far as they operate on information legitimately obtained, for example, an income statement which is false is used as the basis of further administrative decisions which are in themselves true.¹⁸

Archive and archives

The archive is defined as the totality of documents produced or received, during the execution of the activity, by a public or private organisation, or a family or individual. The documents sent or received by the entity must be classified by function. The documentation within the entity is tied by the 'archival bond' ('vincolo archivistico'), the logical connection or link between documents arising from the same activity, which has similarity to the Australian concept of the relationships between series (previous, subsequent, related and control series).¹⁹ The 'archival bond' is an essential element of a record in modern diplomatics. Maria Guercio, Director of the Research Institute for the Management of Archives and Libraries, University of Urbino, has described the purpose of the 'archival bond' in terms of the document that has meaning only in relationship with other previous or subsequent documents that take part in a business process.²⁰ While there are single documents, they do not stand alone, and it is through the archival bond that the 'recordness' of the document emerges. The archive is both a place as well as the complex of documents. It can also be a network of organisations.

There are three kinds of archive: the current archive, the deposit archive, and the historic archive, but Carucci states that they have *no theoretical significance*, and serve as phases for practical organisational uses only.²¹ An organisation can carry out the three activities associated with these archives itself. The historical value arises at the same time as the record is created. The concurrent value of the document - juridical-administrative and historical-cultural - is constantly raised. This is not any different to the records continuum concept of records as inclusive of, not exclusive to, records of continuing value (archives).

The document in diplomatics: its legal nature

Italian archival theory has its source in the 'legal document'. This was a logical outcome of developments in law on the European continent in the twelfth century. Italian jurists of the medieval period developed a highly sophisticated theory on the nature of the document, which was absorbed into archival science via diplomatics, and accounts for the legal terminology adopted by archival science.²² It is not easy to extrapolate the meaning of terms used in archival science from their historical evolution, and derive general principles that are universally acceptable. However principles in most disciplines develop from a specific cultural context and at some stage are universalised. There is therefore a constant tension between the cultural relativist origins of ideas and the extraction of universal principles required to bind professional interests.

In addition to the historical reasons for the genesis of the 'legal' document, it should be noted that in Italian law the probative value of public records has a much wider ambit than that of the common law in Australia. Documents made by private persons, such as contracts, which the common law would consider in the private sphere, are public documents if authenticated by the notary. Notarised records of a private transaction are not part of the common law tradition. The fact that a document was a notarial document gave it probative value equivalent to a public record, that is, public faith ('publica fides'). Thus a public document was one that emanated from a public authority (including a notary) as opposed to a private citizen.²³

Two of the books devote a substantial part to the document in diplomatics. In *Le Fonti Archivistiche: Ordinamento e Conservazione* and in *Il Documento Contemporaneo, Diplomatica e Criteri di Edizione*, diplomatics is defined as the study of written testimonies of legal facts compiled according to set forms. It provides a method for examining the formal characteristics of documents and the implementation of laws and procedures in society as they are manifested in documents. Diplomatics studies single documents, mainly their formal aspects to understand their juridical significance, both in relation to their creation and their legal effects.²⁴ Carucci recommends the wider study of the institutional context because there is often a deviation between the law and its practice, that is, the legal apparatus and society.²⁵

Carucci explains the need for formal structured elements in a document as part of its legal function as a witness to social relationships. The social relationships which are witnessed by the document provide legal certainty because they are recorded in a particular form that is recognisable to all the participants in the social system in which they live, eg contracts. Public documents (defined above) are tied to legal and administrative norms and

forms. Carucci clearly states that this does not make private records less important, and in fact throughout her work is at pains to include all kinds of records, including family and personal, as requiring archival preservation.

The juridical act as a concept in law and in diplomacy

A juridical system, understood as a system of rules sanctioned by a social group, only attaches juridical significance to the acts and facts that have a legal consequence. The legal status of acts and facts can vary over time and space, or within a legal system, or in different legal systems. Carucci speaks of a plurality of legal rules historically determined.²⁶

The juridical act ('l'atto giuridico') is an act of the will that the law recognises as having specific juridical results.²⁷ To have legal effect the will (the intention of a legal person) has to be communicated to the recipient(s) of the act. Thus there is an immediate legal relationship between two persons. The procedures required to give legal effect to the act depend on the type of act (or acts) and dictate the content and form of the documents. For example, the 'administrative act' is similar to an administrative activity that any entity, public or private, must undertake to achieve its goals.²⁸ Juridical acts are a concept from Italian private law. When a public act is involved it may fall under public or private law.²⁹ Despite the Italian legal context, it is possible to extract some general recordkeeping principles from types of juridical acts, if we analyse them in terms of their function.

In the common law, apart from the narrow definition of an act as a legal instrument (see footnote 27), the 'act', as in the civil law system, is an element of a legal relationship (contractual, professional, or fiduciary) which legally binds *persons* as result of the act, and has a definite legal effect, that is, *an act is a relationship between persons*.³⁰ The record can be conceived as an outcome of a process arising from the legal relationship, and consists of an interrelationship of the act, the persons, and the legal and social effects. The act in diplomacy is always part of a procedure. It may be easier for archivists to focus on the procedure, which involves a series of *activities* or processes to achieve an end, such as the provision of a social service (which is the act). If an act is understood as the trigger to a *procedure* which is built on legal and business requirements that create a relationship between persons, and thus reciprocal rights and duties, it is applicable to recordkeeping in any legal system.

Form and the juridical act

The importance of 'form' as proof of a legal act found its highest development in diplomacy culminating with the work of twelfth-century Italian jurists, as

expressed by C Paoli and quoted by Carucci: 'a document is a written testimony (witness) of a fact of a juridical nature compiled following specific forms, which aims to achieve faith and the force of proof'.³¹ It had three elements: written testimony; the juridical nature of the act in the content of the document; and the form, which gave the document determined requisites (ie faith). For the diplomatist how the document was compiled was as important as the content. These elements according to Carucci are also true for the diplomatics of a contemporary document.

In diplomatics the juridical act must be recognisable to the recipients of the action. The law will often stipulate how this should be done, eg it must be in written form. Carucci more than once distinguishes the *juridical act* ('atto giuridico') that creates, modifies or extinguishes juridical situations from *the document* that transmits the memory of the act and its juridical effects.³² The document and the act do not have to coincide. This is due to the fact that not all juridical acts require a written form to be effective.³³ When the act requires a written form for its existence it is said to be *ad substantiam*, and the document coincides with the act. If the act precedes its documentation and requires a written form as proof that the act took place it is *ad probationem*.³⁴ In Italian law and diplomatics the technical definition of what constitutes a document includes a 'written form'. In the common law in Australia there are similar legal requirements for legal processes that must be 'in writing' to meet probative tests in evidence and procedural law.³⁵

The document in contemporary diplomatics

In contemporary diplomatics as presented by Carucci any written thing is a document. All kinds of testimonies on any media have been adopted in relation to the contemporary document and have required a reassessment of their evidentiary value.³⁶

Essential elements of a paper document in diplomatics

Carucci distinguishes between the material and formal characteristics of documents, as their intrinsic and extrinsic aspects.³⁷ The extrinsic elements refer to the physical make-up of the document, that is, medium, writing, special signs (eg the signature, which Carucci believes could equally be interpreted as an intrinsic element), seals and chancellery annotations. These elements can be interpreted outside of the content of the record. The intrinsic elements depend on the content, or more precisely the formal structure in which the content of the document is represented. The principal sections are the protocol (the invocation which is symbolic or verbal, the heading-author, the inscription-addressee, the salutation etc), the text (the preamble, the narration

of the event preceding the juridical act, the sanction, the corroboration to guarantee the authenticity of the writing) and the final protocol or eschatocol (the signature of the author, the witnesses, the chancellery, the topical and chronological dating which may appear in the upper part of the document) which are further subdivided within. The intrinsic elements can exist in copies but the extrinsic ones only subsist in the original document.

For twentieth-century documents Carucci finds all the basic elements of diplomacy are still relevant. These include the elements of the document important to its juridical character, which exist from the time of creation of the document, and include firstly the author, the addressee, the text, the signature, and the date; secondly registration and authentication; and thirdly the elements of classification, registration of the protocol and archival signs that identify the place of the single document in the archival series.

Diplomatics and electronic documents

In Carucci's books archival science connects the entire working of an institution with its functions rather than focusing on the individual document which is the subject of diplomacy. In electronic systems individual documents often lack a link to a procedural context. Carucci argues for the administrative and procedural context of the document to be captured by electronic systems.³⁸

In diplomacy the document takes part in successive phases of an action. Procedure is a series of acts that fulfils a final action or goal of the administration or organisation. In the public sphere in Italian law there are specified phases which are part of procedural acts, such as an introductory phase, a preparatory phase, and a deliberative phase that ensure the act is effective and not in conflict with an existing law.³⁹ Building on Carucci's definitions, a procedure is part of the context of creation of the record and relevant to its reliability.⁴⁰ Its modern equivalent is 'work processes' that all organisations employ and have always employed, which follow internal and external rules in order to achieve a 'business' outcome, within a regulatory framework.

Form or more precisely in English 'documentary form' in diplomacy and archival science is a complex concept, and involves many elements that may not be immediately apparent in an electronic document. Documentary form in the paper world is 'fixed' and most of the elements of documentary form have been encapsulated in the document itself. In an electronic document, 'form' has a logical structure rather than a physical one. It includes the document's appearance (which includes fonts, styles embedded in code), the data itself (not all of which may be visible and includes metadata about the document's creation), and relationships between the data presented. Much

of the recordkeeping metadata has to be deliberately captured and inextricably linked to the record.⁴¹

If Carucci had extended her ideas to the current environment she would have noted that the elements that make up a paper document are remarkably the same as those required of an electronic record in order to have legal validity. These include the identity of author, recipient, date and time, and evidence of an intention to communicate ('the will'). The majority of the basic elements are of continuing relevance to the reliability and authenticity of electronic records. They have been the basis of the authenticity template for the analysis of electronic records and systems developed by the InterPARES project. Relationships built around author and addressee in particular, have re-appeared in the 'web of trust' authentication technologies.

A key critique of diplomatics is its emphasis on formal elements of the document that has obscured the dynamic nature of the legal relationship represented. In Monash University's research project, *Recordkeeping Metadata Standards for Managing and Accessing Information Resources in Networked Environments over Time for Government, Social and Cultural Purposes*, records are defined as active participants in business processes, which have contextual data essential to their reliability and authenticity.⁴² On the other hand recognisable form provides legal certainty, which the electronic world is searching for. The juridical act inextricably linked with procedure, and the document that represents the procedure, can translate into current computer object-oriented technology, in which a document as an object is a set of software bundles of data and related methods. The process of arriving at a contract, for example, as well as the contract can be captured.

The seventeenth-century diplomatists' work would have been greatly enhanced by modern technology, in terms of the metadata that is being created by new forms of technologies, eg photographic cameras that provide the film type, colour, focus, resolution, date, or images and their format type.⁴³

The document in archival science

Diplomatics was dominant until the beginning of the nineteenth century when the systematic study of historical sources began. It was in that period that the document as a source for historiography was given an absolute veracity. Diplomatics has assisted in understanding the internal structure of the archive. However the document now embraces photographs, film, and records of political groups. Carucci points out that what is defined as a document in archival science is much less restrictive than in law and diplomatics, in which the definition is linked to very formal elements of a document and a very

narrow definition of a legal act. A procedure may include all kinds of documents not just the formal ones. Importantly documents that may not originally be legal documents may be used as proof of some fact in a legal process.⁴⁴

Selection and preservation of archives

Carucci's view of appraisal is both interventionist and at the same time subject to political vagaries that would apply to most countries. It is asserted that archives have always been retained by organisations that were aware of their own importance. The initial reason for the preservation of documents is to confer certainty on relationships between persons in a given society. As witness to activity, documents also confirm the identity of the actors. As organisations may not see the value of their records once the organisation ceases to exist, a third party may need to intervene. However the functions of the organisation are the prime reason for selection of documents. Appraisal is linked to time and space, and choice of what to keep reflects contemporary values. The continuity of the State requires the preservation of its actions. This does not prevent intentional destruction of the archives by the State. What remains reflects a given society's will to preserve particular documents, rather than others.⁴⁵

Arrangement and description of archives

The arrangement of archives is tackled in all three books. *Le Fonti Archivistiche: Ordinamento e Conservazione* introduces the application of the historical method to the fonds, that is, the principle of arrangement on the basis of the process and the institutions that produced the documents, once in archival custody. The principle is still of relevance to fonds as functional classification at the jurisdictional level, and recordkeeping metadata in archival systems and the recordkeeping systems described.⁴⁶ The documents in an archive or fonds result from a function given to a number of authorities.⁴⁷ The arrangement of the fonds is arrived at by a study of the entity, the arrangement of its archive, and the compilation of guides, based on the original order used by the organisation or reconstructed if lost. The fonds outlives the organisations that produce its component sources.

An important aspect in the method advocated is that context starts with understanding the 'big picture', that is, the constitutional and jurisdictional aspects, the political issues, not at the document level. Individual documents, registers and classification systems are studied to pick up changes in function. Other issues tackled are the complex changes of function or structures or the absorption of other archives. No set approach to reordering a fonds is advocated. Traditional paper finding aids and elements such as dating, titling,

chronological order, physical condition and example series are likely to be familiar to archivists, and are the dated aspects of the books.⁴⁸

Il Documento Contemporaneo, Diplomatica e Criteri di Edizione covers similar ground on arrangement with an emphasis on the conceptual framework of archival science that adopts both juridical-diplomatic and historical-archival techniques to identify and describe documents correctly and uniformly. The document is part of the fonds ('fondo'). The fonds is defined as all the entities involved in relation to an activity aimed at a particular purpose (eg health). These are at the level of government or high-level functions.⁴⁹ The competence is the sphere of activity given to each subject-person according to procedure. The archive of an entity can inherit part or all of the competencies of another archive. The use of diplomatic analysis assists in identifying functional changes. The ordering of the archive is the fruit of research that moves from the study of the laws that regulate the functioning of the entity, to the subject matter that is the objective of the activity of the organisation, and finally to the structure of the archive (not the entities).

Business records and archival science

Manuale di Archivistica per L'impresa advocates the same principles for a current archive as for a historic one. Archival science is applied to the routines of business, to organisation over technology and to the interactions with security and privacy. The book considers a range of businesses depending on their juridical character, their organisational structure, and their history.⁵⁰ The archives of the firm are presented in terms of their legal-administrative value, as products of and preserved by the firm for legal and fiscal use. Access issues covered include categories of a firm's records that are open to the public subject to privacy laws.⁵¹ Special training is considered necessary for business archivists. It includes a legal-economics and history background, and a need to know private and commercial law, labour law, banking law, and bankruptcy law.⁵²

Business documents

The archival process starts with the legal definitions of a business person, a firm, a business, as well as business registration, juridical competencies, and a definition of a document as any means or thing that represents a fact, that is a testimony of it, that transmits a memory of it. The typical documents found in a firm are introduced. The authors apply document typologies from the public arena to document typologies in a firm.⁵³ The requirements for documentation are linked to specific laws or areas of law relevant to businesses. It is an approach applicable to other jurisdictions.

Probative efficacy of the business document

The probative efficacy of the document is set within the Italian legal system, starting with a public act which, following set requirements of law, is either executed by a notary or a public official which attributes public faith to the contents of the document, including a private one. Unless there is a legal challenge to its validity, a judge is bound to consider true what is stated in the document. There is a *prima facie* presumption of truthfulness. Public registration (for example, a register of a business) also provides the equivalent of public faith. Italian law has recognised a computer representation of a fact since 1998. Since 1997 digital signature legislation has ensured the same efficacy as a handwritten equivalent.⁵⁴

For a business document to have juridical value, the authors introduce the elements required from diplomatics and archival science, that is, the sender, the recipient, the author, the dates, the text, the signature, the registration, and the classification. Data has to have a provenancial context and cannot be modified.⁵⁵

The archives of a firm

The archive is defined as the totality of documents produced or received by an organisation or by a person in the execution of their institutional, statutory or professional activity.⁵⁶ The documentation is always produced for a practical purpose. The documents are the representation of acts necessary for carrying out one's work. To be an archive there has to be an archival bond, a logical and necessary tie, to the activity of the organisation. The archive of the firm consists of what is received and copies of what is produced, which stresses the transactional nature of the process.

The book adopts the definition of current, deposit and historic archive as a conceptual totality as in Carucci's earlier works, except that the methods for organising the current archives are considered in the light of 'records management'.⁵⁷ What is significant in terms of records continuum thinking is that the separation between the current and non-current records is considered unfavourably, and the authors recommend a records manager-archivist responsible for the current, the deposit and the historical archive.⁵⁸

Procedures and business documents

Traditional registry procedures are recommended at the matter-activity level for the firm's records. The description of documents and their control records much of which we now call metadata, in particular the registration of the document and dating, are needed for legal acceptability.⁵⁹ In terms of the

electronic formation of documents the authors speak of the process of their formation, their connection with other documents related to an activity, and the procedures that are put into place to accomplish the task. The management of documents in the paper world depended on registry controls. The integration of documentary and administrative procedures or 'workflow' is considered in this book as equally central to the electronic management of documents.⁶⁰

Right of access to and protection of personal data in the business context

Italy as a member of the European Union has undergone increased administrative transparency. As in Australia the introduction of privacy laws, in particular the right to the destruction of personal data when it is no longer needed, is of concern to Italian archivists. Archival law is exempted from the law on privacy (1996), but it applies to current public and private documents. This encourages businesses to destroy records. The government is required to make announcements on the research use of personal data from time to time that impinges on archival law.⁶¹

Disposal and preservation of business documents

In Italy there are some controls over private records under the Constitution.⁶² However obligations of preservation, integrity, and disposal are limited to those documents considered to be of notable historical interest. Private records of notable interest are appraised either under schedules or via lists sent for approval to the Archival Supervisor in the relevant area.⁶³

In relation to appraisal it is not only the history of the firm, but also more widely of business in general that is considered important. A rational organisation is seen not only in terms of drivers such as legal obligations and readiness for litigation, but also its corporate memory that needs to go beyond legal values. Record retention and its relationship with good classification is covered.⁶⁴

The authors lament the many business archives that have been destroyed. They recommend that businesses be given incentives, such as tax concessions for non-profit retention of records. A range of legal sanctions that assist in protecting the business records include criminal consequences for an employee (physical person) who destroys an archive, obligations under contract to keep records, fiscal and legal needs that indirectly prevent destruction, and specific requirements governed by public law.⁶⁵

Various models for preserving a historic business archive are presented and include the American university business archives system. The German system of regional business archives is the preferred model because many businesses

collapse and their records are dispersed. Some firms deposit records in their municipal archives. Apart from public bodies that are also businesses, other private firms in Italy are not required to have a historic archive.⁶⁶

Conclusion

The theories and practices in Paola Carucci's books on diplomatics, archival science and business records, as developed in Italy, offer a continuity of ideas in current recordkeeping theory and practice. Many of the concepts need far deeper analysis than this review has provided. Rather than concentrate on differences, this review has concentrated on similarities with international thinking. The books are a timely reminder that the record is both legal testimony and a memorial of society from the beginning of its existence, rather than merely a tangible object.⁶⁷

Documents form an integral part of the functioning of all social relationships. The legal context has to be given high priority in understanding the function of documents as witnesses to rights and obligations. The detailed laws will differ from country to country but are part of the methodology of archival science in any context. However the document is also a product of a bigger picture, that is, the administrative, political and social history in which it was formed.

Documentary form is more about the process of document creation and capture than it is about the document's appearance. Capturing and keeping the procedure or work flow of which a document or record is a part is a principle of diplomatics, and has continuing relevance to electronic records. Electronic commerce legislation has focused on recordkeeping metadata even though it is not phrased as such. That is, the legal certainty of electronic transactions depends on capturing data on parties to a transaction, signatures, and other elements of record authenticity, found in diplomatics, archival science and law. The adoption of elements needed for record authenticity as recordkeeping metadata in electronic records is another of the current uses of diplomatics and archival science.

ENDNOTES

1 Luciana Duranti, *Diplomatics: New Uses for an Old Science*, Society of American Archivists and Association of Canadian Archivists in association with The Scarecrow Press, Maryland and London, 1998. This consists of a reprint of the six articles on diplomatics which appeared in *Archivaria*, numbers 29-33, beginning in 1989. This reprint as a monograph includes an introduction.

2 The University of British Columbia (UBC) Project 1994–97, 'The Preservation of the Integrity of Electronic Records'. The researchers, Dr Luciana Duranti and Professor Terry Eastwood, worked in collaboration with the US Department of Defense Records Management Task Force to identify requirements for Records Management Applications (RMA). The resulting 5015.2 standard is now used by the US Defense Information Systems. The InterPARES Project builds on the previous UBC project. It is an international research initiative in which academics, national archival institutions and private industry representatives are collaborating to develop the theoretical and methodological knowledge required for the permanent preservation of authentic records in electronic recordkeeping systems. See www.inter pares.org.

3 *Le Fonti Archivistiche: Ordinamento e Conservazione*, Carocci editore, Roma, first edition 1983, tenth reprint 1998 (hereafter cited as *Le Fonti Archivistiche*). See chapter 6, Administration of the Archives. In Italy private organisations can deposit in the government archives.

4 *Le Fonti Archivistiche*, chapter 7 considers all archival holdings in general in Italy, chapter 8 covers the administration of non-government records, and chapter 9 covers non-government archives and their relationship with their creators.

5 In the Australian context the use of the world wide web provides all the links to Australian holdings but not an interpretative approach. For example, see the *Directory of Archives in Australia* at www.asap.unimelb.edu.au/asa/directory; the Archives of Australia site at www.archivenet.gov.au/home4.html, and the *Register of Australian Archives and Manuscripts* (RAAM) which is a guide to collections of personal papers and non-governmental organisational records held by Australian libraries and archives at www.nla.gov.au/raam/raamabout.html.

6 Paola Carucci has published on electronic document typology in relation to the InterPARES project. See 'L'evoluzione delle tipologie documentarie dalla forma tradizionale a quella elettronica', *Archivi per La Storia*, XII, no. 1–2, January–December 1999, Journal of the Italian Archival Association, special issue dedicated to the InterPARES Project.

7 See footnote 2.

8 *Le Fonti Archivistiche*, p. 25.

9 *Le Fonti Archivistiche*, p. 12.

10 *Le Fonti Archivistiche*, pp. 44–7.

11 Paola Carucci, *Il Documento Contemporaneo, Diplomatica e Criteri di Edizione*, Carocci editore, Roma, 1998 (hereafter cited as *Il Documento Contemporaneo*), p. 66.

12 Luciana Duranti, 'The Archival Bond', *Archives and Museum Informatics*, vol. 11, 1997, p. 214, note 15.

13 See the debate on evidence and memory on the aus-archivists listserv, November–December 2000 and the Cook–Harris papers. Verne Harris, 'Law, Evidence and Electronic Records', International Council on Archives Conference, Seville, September 2000, and Terry Cook, 'Beyond the Screen: The Records Continuum and Archival Cultural Heritage', Australian Society of Archivists Conference, Melbourne, August 2000, both at: www.archivists.org.au/whatsnew.html. Memory is how information is stored and retrieved, and written records are only one way information is stored. It is ironic that the critics of what is labelled the 'records as evidence' view, usually referring to the narrow legal definition of evidence, have forgotten that it was Jeremy Bentham's distrust of written records that urged him to reform the common law by relying mostly on oral testimony. He wanted a

legal system in which everyone would be heard, and all evidence except that which was irrelevant, superfluous, or would delay or be vexatious and expensive was admissible. Cross-examination face to face was given prominence. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, an authoritative edition by JH Burns and HLA Hart, with a new introduction by F Rosen, and an interpretive essay by HLA Hart, Clarendon Press, Oxford, 1996, p. xliii.

14 Harris, p. 5.

15 Law, which archival literature tends to equate with a rule-based view, has had to contend with a number of recent critical theories. As viewed from current legal interpretation, the shift is visible in the less 'formalised' interpretation of statutory and non-statutory law, to understanding the purpose behind the law. See Gerry J Simpson and Hilary Charlesworth, 'Objecting to Objectivity: The Radical Challenge to Legal Liberalism' in *Thinking About Law: Perspectives on the History, Philosophy and Sociology of Law*, edited by Rosemary Hunter, Richard Ingleby and Richard Johnstone, Allen and Unwin, St Leonards NSW, 1995, and Kathy Laster, *Law as Culture*, Federation Press, Sydney NSW, 1997.

16 See Peter Bayne, 'Law, Lawyers, Courts and Memory', an unpublished paper presented at the Research School of Pacific and Asian Studies, Australian National University, Seminar Series, 5 June 1997. Truth established by reasoning from the relevant evidence, not with certainty but as a *matter of degree* is part of a theory of epistemology developed in the eighteenth century as rationalist empiricism and probability theory. See Heather MacNeil, *Trusting Records: The Evolution of Legal, Historical, and Diplomatic Methods of Assessing the Trustworthiness of Records, from Antiquity to the Digital Age*, PhD thesis, University of British Columbia, October 1998, p. 32.

17 *Il Documento Contemporaneo*, p. 56.

18 *Le Fonti Archivistiche*, chapter 4, Archives as the Source for Historiography. The argument for not deleting incorrect information is that it may have led to a chain of action that has to be accounted for. Annotating a record is a preferred option, which has not been very successfully put to the privacy lobby by archivists. See also Harris, p. 15. Lies in documents may lead to further lies, but evidence of the lies needs to be kept.

19 *Le Fonti Archivistiche*, chapter 2, Archivio and Archivi, p. 19. The 'archival bond' is also defined in the glossary, p. 230 and in Paola Carucci and Marina Messina, *Manuale di Archivistica per L'impresa* (hereafter cited as *Manuale di Archivistica per L'impresa*), Carocci editore, Roma, 1998, pp. 45-6.

20 Maria Guercio, 'Definitions of Electronic Records, the European Perspective', *Archives and Museums Informatics*, vol. 11, 1997, p. 222; Duranti, 'The Archival Bond', p. 217. Duranti describes the archival bond as 'the expression of the development of the activity in which the document participates'. In the Authenticity Task Force, InterPARES Project, Research Methodology Statement (draft), 7 November 2000, p. 4, the definition of an electronic record includes 'an archival bond with other records within or outside the system'. The archival bond is manifested in classification and registration codes. See www.interpares.org.

21 The three kinds of archive were introduced from 1870, that is, post Italian unification. See *Le Fonti Archivistiche*, p. 22.

22 *Le Fonti Archivistiche*, p. 29.

23 There is not a simple categorisation of what constitutes a public record in common law. Not all records created by a public authority are considered public records, eg a register not prescribed by law may be excluded; if it is a requirement of a statute then it is more likely

to be a public document. There have also been other requirements, eg public accessibility. Many public documents fall under 'judicial notice' and their contents do not have to be proved. See JD Heydon, *Cross on Evidence*, 5th edition, Butterworths, Sydney, 1996, chapter 17, section 2. The Commonwealth of Australia and the State of New South Wales 1995 Evidence Acts do not accord public documents with any special status in being admitted as evidence, which has simplified the complex common law approach.

24 *Il Documento Contemporaneo*, p. 28.

25 *Il Documento Contemporaneo*, p. 31. The wider institutional context is given less emphasis in the Authenticity Task Force, InterPARES Project, 'Template for Analysis' (draft), 7 November 2000. See www.interpares.org.

26 *Il Documento Contemporaneo*, p. 38.

27 *Il Documento Contemporaneo*, part 1, chapter 3, 'L'atto giuridico', p. 40. From a legal definition in *Dizionario Giuridico, Inglese-Italiano*, vol. 2, editore Giuffrè, Milano, 1984, p. 410, entry under 'atto/i', the act or action ('atto') and the document appear synonymous, which does not accord with Carucci's differentiation between the act and the document. 'Atto' is translated as 'act', 'action', 'remedy', 'measure', and also as the document itself, instrument, deed paper, proceedings, record, certificate. Reference is made in the Dictionary to different kinds of acts which include administrative acts for which there is no direct equivalent in the common law, except under 'judicial review of administrative action'; see also public act which is translated as a public document, and again in common law has no direct equivalent, although there are public documents. The notarial act does not have a direct equivalent as the public notary has a specific function in the common law, which is not that of authenticating a deed. Acts in common law are either under seal or not and as contracts are private documents.

The closest common law equivalent to an act is the *instrument* which is a formal document of any kind, such as an agreement, deed, charter, or record, that is drawn up and executed in technical form, but is a private document, see *Azevedo v Secretary, Department of Primary Industries and Energy* (1992) 35 FCR 284 at 299–300. See also various Australian State Instruments Acts. The function of a record or a document, in common law legal discourse, has meant primarily the instrument as a record of a legally significant or legally recognised transaction, eg a will, a contract. Thus it has been less pervasive than in the civil law. It has not had the transformation to other legally significant documents as in diplomatics.

28 The administrative act originates from the development of eighteenth-century administrative law, and is linked to the doctrine of separation of powers. In European law the public entity is superior to the private one. *Il Documento Contemporaneo*, pp. 53–8.

29 *Il Documento Contemporaneo* details different kinds of acts depending on their ends, p. 40.

30 Not all common law lawyers adopt legal relationships as a taxonomy of law. Two proponents are: Albert Kocourek, *Jural Relations*, 2nd edition, The Bobbs-Merrill Company, Indianapolis, 1928 and Simon Fisher (ed.), *The Law of Commercial and Professional Relationships*, FT Law & Tax, South Melbourne, 1996.

31 *Il Documento Contemporaneo*, p. 28, quoting from C Paoli, *Diplomatica*, Sansoni, Firenze, 1942.

32 *Le Fonti Archivistiche*, p. 19 and p. 26; *Il Documento Contemporaneo*, chapter 2, Contemporary Archives in Diplomats, and chapter 5, Form in the Juridical Act and the Document.

- 33 *Il Documento Contemporaneo*, p. 42. Australian law also specifies when an act must be 'in writing'.
- 34 *Il Documento Contemporaneo*, p. 28. Duranti defines these as substantive and probative records respectively. See her article in *Archivaria*, no. 29, Winter 1989-90, pp. 7-8.
- 35 Written form really means recorded form. Legal definitions, in particular property law, have been caught up with the document as a special kind of physical carrier, usually paper. The shift to 'any record of information' in the Commonwealth of Australia *Evidence Act 1995*, Dictionary Clause 8, Part 2 ensures that any carrier or medium is a document.
- 36 *Il Documento Contemporaneo*, pp. 92-7. Contemporary archival diplomatics has been extended through the University of British Columbia (UBC) Project 1994-97, 'The Preservation of the Integrity of Electronic Records'. See footnote 2.
- 37 In the manuals of medieval diplomatics there is a distinction between extrinsic and intrinsic characteristics. Rather than adopting the distinction between extrinsic and intrinsic elements in relation to contemporary documents, Carucci has isolated those elements such as special signs and chancery notes that have had a special evolution in the last two centuries and which provide the key to the identification of documents, *Il Documento Contemporaneo*, pp. 98-9. InterPARES has opted for the terms extrinsic and intrinsic rather than physical and intellectual form used in the earlier UBC project.
- 38 *Manuale di Archivistica per L'impresa*, pp. 43-4.
- 39 *Il Documento Contemporaneo*, chapter 4, Atti su Procedimento, pp. 47-8.
- 40 Procedural context is defined as 'the business procedure in the course of which the record is created. In some organisations the business procedures are integrated with documentary procedures. Indicators are workflow rules'. From Authenticity Task Force, InterPARES Project, 'Template for Analysis' (draft), 7 November 2000, p. 7, 'procedural context'.
- 41 For recordkeeping metadata schema at a high level see *Recordkeeping Metadata Standards for Managing and Accessing Information Resources in Networked Environments over Time for Government, Social and Cultural Purposes*, Strategic Partnership with Industry - Research & Training (SPIRT) Support Grant, School of Information Management Systems, Monash University, 1998, at www.sims.monash.edu.au/rcrg.
- 42 Sue McKemmish, Glenda Acland, Nigel Ward and Barbara Reed, 'Describing Records in Context in the Continuum: The Australian Recordkeeping Metadata Schema', *Archivaria*, no. 48, Fall 1999, p. 4.
- 43 Jane Hunter, 'Multimedia Metadata Standards and Research', a paper presented at Leading Edge Metadata Workshop, an interactive forum for experienced implementers, presented by the Enterprise Information Research Group, Monash University, Distributed Systems Technology Centre, and the Recordkeeping Institute, 11-12 December 2000, Monash University. The question of the 'persistence' of the metadata is a separate but important issue for archivists.
- 44 *Il Documento Contemporaneo*, p. 31.
- 45 *Le Fonti Archivistiche*, pp. 50-2.
- 46 *Le Fonti Archivistiche*, part 2, chapter 10, Arrangement, p. 131 and chapter 11, Compiling Research Instruments.
- 47 *Le Fonti Archivistiche*, p. 165.
- 48 *Le Fonti Archivistiche*, pp. 134-42; p. 167.

- 49 The use of subject matter such as health rather than the entity that created the records was the basis of arrangement of archives in the eighteenth century. In the nineteenth century all the documents of an entity were brought together. Function, as the basis of bringing the entities together, is seen as a valid alternative to a subject approach, *Le Fonti Archivistiche*, pp. 133–4.
- 50 'Impresa' or 'azienda' have specific legal definitions in Italian as well as ordinary meanings which are close to the English definition of a firm or business.
- 51 *Manuale di Archivistica per L'impresa*, pp. 15–18. The history of business archives in Italy goes back to the fourteenth century. See chapter 7.
- 52 *Manuale di Archivistica per L'impresa*, p. 111.
- 53 *Manuale di Archivistica per L'impresa*, pp. 29–34.
- 54 *Manuale di Archivistica per L'impresa*, pp. 41–2. (See above re common law and public documents.)
- 55 *Manuale di Archivistica per L'impresa*, p. 44.
- 56 *Manuale di Archivistica per L'impresa*, p. 45. See similar definition in *Le Fonti Archivistiche*, p. 19.
- 57 Records management is considered to have existed in Germany and Italy since the eighteenth century and even earlier. *Manuale di Archivistica per L'impresa*, p. 48.
- 58 *Manuale di Archivistica per L'impresa*, pp. 51–2.
- 59 *Manuale di Archivistica per L'impresa*, p. 75.
- 60 *Manuale di Archivistica per L'impresa*, p. 80. The authors use the English term 'workflow' in the book as a synonym for documentary and administrative procedures.
- 61 *Manuale di Archivistica per L'impresa*, pp. 81–2, p. 122.
- 62 The Italian Code DPR 1409/a963 allows for a broad reading of archives and some discretion on private records as applied to businesses. *Manuale di Archivistica per L'impresa*, pp. 98–100.
- 63 *Manuale di Archivistica per L'impresa*, pp. 91–2, p. 88.
- 64 *Manuale di Archivistica per L'impresa*, p. 84.
- 65 *Manuale di Archivistica per L'impresa*, p. 94.
- 66 *Manuale di Archivistica per L'impresa*, p. 116.
- 67 In Australia 'document' or 'record' is defined by property law as a tangible material object. It is often replaced by 'information' as a more appropriate term for a thing that is intangible. See Simon Fisher, 'The Archival Enterprise, Public Archival Institutions and the Impact of Private Law', *Archives and Manuscripts*, vol. 26, no. 2, November 1998, p. 354. The adoption of the terms 'electronic communication' (from information technology) and 'transaction' (from business) in Australian electronic commerce legislation is fortuitously closer to definitions of a record adopted by the archival and records community. It also contributes to the 'realistic' response by archivists to legislation that has recordkeeping implications. See Steve Stuckey and Anne Liddell, 'Electronic Business Transactions and Recordkeeping: Serious Concerns – Realistic Responses', *Archives and Manuscripts*, vol. 28, no. 2, November 2000, pp. 92–109.