

Book Reviews



Archivists, Collectors, Dealers, and Replevin: Case Studies on Private Ownership of Public Documents. ELIZABETH H. DOW. Lanham, MD: Scarecrow Press, 2012. xvi, 128 pp. ISBN 978-0-8108-8377-2.

Elizabeth Dow, a professor in the School of Library and Information Science at Louisiana State University, has written this book for American archivists in response to their need for a clearer understanding of replevin. Replevin is a civil legal procedure in which an archives or other legitimate property owner takes action for the return of estrayed (lost, misplaced, or stolen) property. The book's theme is private ownership of public records and the role of government archivists in the United States in acquiring such documents. The author's purpose is to provide public records archivists with the tools to confront private ownership of public documents and, if necessary, to conduct effective replevin actions. At the same time, Dow attempts to offer some sympathy to private custodians (manuscript collectors and dealers) of such material. Consequently, she provides seventeen case studies relating to replevin, which include the perspectives of archivists and private custodians. These are prefaced by an overview of American archival practice and history relating to the loss and neglect of public documents, and a summary of how private manuscript collectors have come to acquire such records.

The author's early chapters on the development of American archival and recordkeeping practices, and the archival profession, serve as a refresher to those familiar with the topics, whether or not they are interested in replevin. Chapter 1, "American Archival Practice," explores the clear separation between government and other public records on the one hand and private manuscripts on the other. Within this framework, Dow clearly elucidates a useful distinction between publicly generated documents sent to private citizens and kept as private records (e.g., licences, deeds, etc.) and documents received or retained by governments as evidence of government activities. While this dissimilarity may seem obvious to some, it is nevertheless an important distinction when archivists become aware of records in the commu-

nity (at auctions, for example) and must determine if they constitute public records that may be subject to replevin. The analysis provided in this chapter forms part of the foundation for the examples and case studies later in the book.

This generally understood difference between public and private records should also be clear to archivists in other jurisdictions, including those whose institutions are subject to English common law, with the caveat that they may have broader or narrower concepts of what constitutes public bodies (which may or may not include local governments, courts, public universities, etc.) and consequently what defines public records. In Ontario, for example, municipal records are not public records, according to the provincial *Archives and Recordkeeping Act*, whereas they are defined as such in many American statutes (for example, that of Massachusetts).

The author goes on to describe the American division between public archives which are concerned almost exclusively with government records, and historical societies and other organizations that collect private records. This difference exists elsewhere in the world but is largely absent in Canada, with its tradition of total archives. Given the author's intention to focus on public records and government archives, the references to collecting institutions are understandably few, and are only relevant in that these organizations sometimes acquired public records prior to the establishment of government archives.

Also included in Chapter 1 is a discussion of nineteenth- and early-twentieth-century recordkeeping in America, in which the author makes clear that the systematic neglect and occasional loss or theft of such public documents provoked an interest among newly professionalized historians for the development of public archives. A major milestone was achieved in 1899 when the Public Archives Commission of the American Historical Association was established to promote the development of state and federal archives.

Chapter 2, "Theft and Neglect," provides a representative listing of incidences of lack of care in the retention and disposition of public records from the nineteenth and early twentieth centuries. Most of the nineteenth-century examples relate to early federal government records and point to a general lack of regard by officials for their historical significance. The twentieth-century section of the list includes more examples at the state level, which indicates a growth in the collection of public documents by historical societies and manuscript dealers. The subsequent section on "spoils of war" returns to the nineteenth century and relates to documents lost or stolen during the Civil War, in particular the period of Union occupation of the Southern states. Many such documents taken from public offices eventually found their way into private hands. The development of new tools such as online auctions has brought more of these estrayed documents to the attention of dealers, collectors, and archivists. This chapter, as revealing as it is, makes

for a rather abrupt transition from the analytical depth of the previous chapter. As such, it reflects a weakness in the flow, if not the content, of the text. The list might have been more effectively deployed immediately prior to the case studies that appear in Chapter 7, or even as an appendix.

While the author generally writes with laudable economy, the first half of Chapter 3, “The Archival Profession,” which focuses on the development of archival professional education in America, could have been condensed and linked more explicitly to the topic of replevin. Dow eventually makes the point that improved archival education contributed to improved understanding and dissemination of archival principles through organizations such as the Society of American Archivists (SAA) and the Council of State Archivists (CoSA). These organizations in turn contributed to the strengthening of public records legislation and the consequent use of replevin.

Chapter 4, “Collecting,” represents another transition from the previous discussion of public records and archival practice. The author’s intent is to provide some balance to the issue of replevin by explaining the motives behind and benefits of collecting, including those of manuscript collectors. Initially, the chapter reads like a separate paper on collecting practice; however, Dow does return to her theme of public records by pointing out that many such documents were rescued by, or otherwise came into the hands of, collectors and dealers. Nevertheless, the chapter does not fully represent the perspective of collectors and dealers, although the author provides some understanding of it. This attempt at understanding resurfaces in Chapter 6 and in the case studies, which are intended for archivists.

Chapter 5 analyzes the legal procedure of replevin in greater detail. Earlier, in Chapter 3, the author makes the point that the archival profession and public records legislation had not developed sufficient strength to pursue replevin until relatively recently. Consequently, Dow begins Chapter 5 with the well-known mid-1970s case of *State of North Carolina vs. West*, in which it took several appeals to establish the principle that public records (in this case, local county court records) could not be disposed of without appropriate authority. This important decision gave state governments the confidence to write even stronger public records legislation.

In the following chapter, “Perspectives,” the author goes on to outline relevant legal principles that favour the government archivist or the collector. In the case of the former, the concept of *extra commercium* asserts that public records cannot be bought and sold. The notion of eminent domain provides that governments can seize certain property if it is in the public interest to do so. On the other hand, there are concepts that favour the collector, including the right of accession (when the private custodian of a document enhances its value, through conservation treatments, for example) and laches (when a public records agency suspects public documents are in private hands but does not assert its right in a sufficiently timely fashion to claim the records). The author

expands on these principles and explicitly lays out the differing perspectives of archivists, collectors, and dealers on the question of ownership.

The actual case studies appear in Chapter 7 and are clearly intended to be used in workshops and classes to generate discussion. After offering a “warm up” exercise in the identification of different types of public documents based on the distinction outlined earlier in the book, Dow details seventeen case studies accompanied by questions (and suggested discussion points) regarding provenance, custody, and public relations. She identifies imaginary state archives with varying degrees of flexibility toward private ownership of public records (aptly named Hardline, Midline, and Softline). Also named are three state archivists, all of whom have the same generally cautious personality and prefer to avoid litigation unless absolutely necessary. On the other side of the issue, the author creates two manuscript dealers and a collector, whose levels of co-operation vary (Trusty Dealer, Indifferent Dealer, and Ardent Collector). The aim of the case studies is to provide American government archivists with generic scenarios that include different types of records and personalities. None of the studies go into detail regarding specific legislation in any of the fifty states, although most are clearly identifiable as American (to name two, “Revolutionary War Generals’ Records” and “Governors’ Papers”). Consequently, with a bit of imagination, public records archivists in non-American jurisdictions might still be able to make use of most of the scenarios, especially given that they include such records as penitentiary ledgers and court documents, which could be found anywhere. Furthermore, the differing personalities of the archivist and collector are sufficiently generic to be recognizable everywhere.

Replevin is an English common law concept that also applies outside the United States. Indeed, the 2004 ICA draft “Principles for Archives and Record Legislation” (found on the ICA website) do suggest the inclusion of references to estrayed records. Existing legislation, such as New Zealand’s recent *Public Records Act*, gives that country’s chief archivist powers to acquire estrayed records. In Canada, however, public archives legislation has generally been weak in its references to replevin and public records.

Although it is not meant to be an exhaustive guide to the legal or territorial aspects of replevin, this book still makes a significant contribution to the American archival community by serving as a sort of “textbook” on the topic. The case studies are well thought out and are good examples of the issues identified earlier in the text. As mentioned, the studies are sufficiently general to be useful to non-American archivists. Nevertheless, the book has a few notable weaknesses: some of the early chapters seem like separate papers that were brought together quickly (e.g., the list of examples of neglect and the chapter on collecting). The chapters on American archival practice and professional development are quite comprehensive, whereas the sections on neglect and collecting seem slight and perhaps do not merit their own chapter. At

times, a mix of citation styles is employed; this, along with occasional grammar and spelling errors, is evidence of rushed writing and/or sloppy copy-editing. Overall, the work makes a substantial and balanced contribution to the literature on American archival practice, public recordkeeping, collecting, and replevin. Canadian and other archivists outside the United States (especially in English common law jurisdictions) could learn much from the discussion of principles underlying public records legislation and the relevant case law, as well as from the case studies, which are useful to anyone familiar with public records in archives.

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Libraries and Archives: A Comparative Study. TOMAS LIDMAN. Oxford: Chandos Publishing, 2012. xvi, 123 pp. ISBN 978-1-84334-642-5.

As a volume in the Chandos Information Professional Series, this book is “aimed at the busy information professional” and was “specially commissioned to provide the reader with an authoritative view of current thinking” (p. ii). Praise has been widely meted out to other books in this series: *Scholarly Communication for Librarians* by Heather Morrison (2009), *Special Libraries as Knowledge Management Centres* by Eva Semertzaki (2011), and *Google This! Putting Google and Other Social Media Sites to Work for Your Library* by Terry Ballard (2012) are but a few examples. I wish I could be equally positive in this review; however, I cannot. The 114 pages of discussion by Lidman, a former national librarian (1995–2003) and national archivist (2003–2010) of Sweden, will leave his target audiences (“politicians and bureaucrats with very little knowledge about the topic,” “students in library and information studies,” and “the ordinary reader” [p. xiv]) none the wiser about the similarities and differences between libraries and archives than if they had read only the six-page introduction and each chapter abstract.

Lidman states in the introduction that “There has been a very clear international tendency during the last decade to think of libraries and archives as almost equivalent institutions. They both collect papers, manuscripts and information in different analogue and digital formats. Some politicians would like to see much closer co-operation, some even a merge, which is the case in, for example, Canada, Egypt and India, and just recently the Netherlands” (p. 2). The purpose of his book is to provide an introduction to libraries and archives as distinct institutions with “very different duties and commissions” but which “must work together side by side in matters of mutual importance and interest” (p. 2). To accomplish his goal, Lidman takes readers through a