

# *Information, Knowledge, and Rights: The Preservation of Archives as a Political and Social Issue*

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If one had to summarize the period in which we live, one could easily call it the “rights era.” The last twenty years or so have witnessed the emergence of numerous “rights” issues. In many instances, the political or legal acknowledgement of such rights was merely the final, official codification of earlier, commonly shared beliefs held by a majority of the population. The right to eat, to be protected from undue abuse, and to enjoy health and security, are recognized by almost everyone as being fundamental in our society. Various groups — from women to homosexuals, ethnic associations to the poor — have sought to define and obtain their “rights.” But agreement is often very difficult to attain when the discussion shifts from abstract rights to concrete ways to achieve these rights. The resultant conflicting views not only concern these interpretations of rights, but they also set in opposition rights, both of which are considered to be essential. For example, the right to be informed, to know, to have access to important information, is pitted against the right to privacy, to protect national security, to ensure business competitive efficiency. Such tensions demonstrate the broader truth that information is central to the definition and achievement of rights, as well as the identification of cases where rights have been abused.

These conflicting positions are especially noticeable in sensitive areas where, in many instances, access to the relevant information — in some cases the very existence of this information — becomes a central issue. The best known case in Canada concerns the provision that was added to the *Young Offenders Act* which, even though in an ambiguous manner, required the destruction of the relevant judicial files. This case reveals that the protection of rights is a complex and multi-level phenomenon. If the immediate benefit produced by the systematic and complete destruction of juvenile criminal records is the protection of the privacy of the juveniles involved, in the long run such action might well constitute a severe handicap to the realization of other rights.

In the case of the *Young Offenders Act*, the immediate outcome that was sought was the protection of one’s privacy and future reputation. That children and adolescents who have had contacts with the judicial system should see their future handicapped solely by the disclosure of this fact, goes against commonly shared principles of justice. Yet a conception of children’s welfare, and of their future well-being, that is limited to this unique dimension is extremely limited and indeed short-sighted *vis-à-vis* the rights of these children themselves.

As children, and later as adults, these persons have other rights beyond that of the non-disclosure of their judicial encounters, important as that right undoubtedly is. That their parents are well-informed of the nature of the court's decisions and of the judicial, social, or psycho-medical bases for those decisions, that children, as wards of the court, as well as later as adults, understand what is happening or has happened to them, these also constitute rights that are gaining recognition. Indeed, recourse by the children or adults against the judicial system for possible mistreatment or negligence would equally need access to the court and judicial information now being destroyed in the name of protecting the same individuals. This is certainly not to say that society should not take all possible steps to ensure that the identity of children having early encounters with the law is never disclosed, but at the same time it should do this without destroying information that is essential to the achievement of other rights.

In itself, information is not valuable. Information only has value or power when it is used to generate knowledge. In this sense, protecting information does not produce knowledge of any kind, but rather creates the essential condition for such knowledge production. Logically then, the question of what will be gained by storing information is inappropriate. As such, nothing will be gained. What we should ask is *what knowledge will be forever lost if we destroy particular information* (or the records and other media which contain that information)?

There are many ways to categorize the different aspects of knowledge that can be gained by studying the information contained in or reflected by judicial and similar records. Such information relates to the individual(s) or the group(s) actually being dealt with, as well as to the process they went through. In archival terms, such records contain both obvious informational and important evidential values. Based on these considerations, there are three broad categories of potentially significant political and social knowledge in such records: cultural and group identity; assessment of social efficiency; and assessment of societal discrimination.

### **Cultural and Group Identity Knowledge**

History as an intellectual and political activity has, for a very long time, been mainly preoccupied by "meaningful events" and "important people." Until recently, the lives, thoughts, social contribution, or even political importance of the great majority of people were, for the most part, unwritten and unrecognized.

In the last two decades, the cultural, social, and intellectual relevance of focusing societal attention and scholarly investigation on non-elite groups for the better comprehension of social interactions and general history has become more widely accepted. Many examples, most of them rather well-known, could be mentioned here. The recognition of the place Black Americans have occupied in building the United States has been increasing for some years now. Their central importance in the economic structuring and very maintenance of various types of social and economic activities is now more and more documented. Similarly, the contribution of various groups of immigrants in the economic, social, political, and cultural growth of Canada was not, until recently, a significant part of the perception and study of the history of this country. Such collective ignorance of the past certainly plays a role in the perpetuation of racist or xenophobic behaviours of which we still, sadly enough, see too many signs.

Along the same line of thought, the role traditionally played by children in the domestic and, by extension, the national economy is still for the most part ignored.<sup>1</sup> Children (i.e., persons who are legally minors) have gradually been pushed away from the mainstream of social life. Criticism of the abuses of which they were victims tends to overshadow the fact that, even as youngsters, they had broader responsibilities, the importance of which is rarely recognized. A knowledge and comprehension of the capacity of children to partake in such social and economic responsibilities seems to be lost and, as a consequence, our children remain prisoners of structures which promote their long-term dependency and their incapacity, in some cases, to take eventual control over their own lives.

The same point could be made about the economic, social, political, and cultural contributions of women. The traditional view tended to grant them an important role inside the "private sphere," primarily that of educating children and maintaining the household. But their contribution to the public sphere, aside from a few notable exceptions, has been ignored, thus perpetuating prevalent images about sexual roles, which in turn lead to social inequities.

If this is true of groups, it is also true of broader social conditions in the past. The idealization of earlier societies or historical periods results from an ignorance of the true conditions of the lives of its citizens and of the nature and extent of their interactions with the agencies of the state — the justice system being one of these.

This first type of knowledge — cultural and group identity — has, in a sense, no immediate practical application, but that does not mean that it is socially irrelevant. In such matters, the issues at stake are political and it is on those grounds that one should take a position. Intellectually though, it is impossible to conceive of a situation whereby one can understand what is happening in a given society and why, if one ignores the place and contribution of the various social groups which make up that society. Such understanding comes from studying the information relating to these groups and individuals. Such information, often in the form of case files, has often been ignored or destroyed by administrators and archivists alike.

### **Assessment of Social Efficiency Knowledge**

The second broad category of knowledge that can be derived from the study of such information concerns the description, comprehension, and evaluation of the functioning of the actual system, or of some specific aspect or component of it. This is an issue that is both extremely important and, from a policy perspective, absolutely unavoidable if the managers and operators of public institutions and programmes are to be held accountable.

Official intervention in cases of child delinquency and child protection have been the responsibility of juvenile courts for close to a century. During that period, legislation has been changed, widely varying methods have been implemented, modified and abandoned, various groups of professionals have been involved, and different types of institutions have been created and changed. It is essential that, in the name of adequate and efficient social intervention, knowledge about the "how" and the "why" of these changes is not lost.

As Kitterie pointed out some fifteen years ago,<sup>2</sup> children who are forcibly submitted to the rule of the court in the name of treatment have a right to treatment — and, in my view, to the right kind of treatment. The right to such treatment cannot be met by the mere

provision of *any* form of intervention. These interventions must be continually evaluated, and they must integrate the knowledge derived from previous successes and failures. There has been a tendency, at least in regard to treatment of juvenile delinquents,<sup>3</sup> to follow every latest fashion in the psycho-therapeutic domain.<sup>4</sup> The state's immunity from accountability for its decisions and actions in this regard can be partially explained by the "welfare rationale" rather than the "legal rationale" that has dominated the spirit of juvenile law since its creation at the beginning of the twentieth century.

Such a lack of follow-up would be unacceptable in the case of medical treatment; knowledge about the ill effects of certain types of treatment and drugs, the proper conditions for administering medication, and the appropriate techniques for surgery are submitted to constant re-evaluation. The same approach should be used for state interventions in the lives of children and adults in the name of their actual or future welfare. This is not to say that everything that is being done today will be seen as flawed in the years ahead. The nature and the validity of knowledge, as Foucault has shown, can be appreciated only through an understanding of the societies which produced that same knowledge. From such a perspective, it does not seem relevant to ask whether or not contemporary actions will seem antiquated in a hundred years — they may or may not, depending on the case — but rather if present actions took into account present knowledge. If they did not, then the victims of such actions suffered from negligence in not receiving the best treatment as was their right. Access to the relevant information then becomes mandatory if the negligence on a personal and collective basis is to be redressed.

Such a discussion seems particularly relevant if one considers the actual debates now raging, as well as new policies coming into view, concerning the privatization of parts of the criminal justice system or of various social welfare services. The place that the state occupies in these two areas is, from an historical perspective, extremely recent. This passage from the private administration of "social welfare" intervention to public, state-administered approaches was not some kind of historical accident. On the contrary, it was a response to abuses, inconsistencies, and negligence, and it was seen as the only way to avoid these problems. Studies, debates, and inquiries now preside over this "privatization" movement.<sup>5</sup> The arguments that were formerly brought forward to justify the gradual growth of the state in social welfare and justice activities are, in a large part, identical to those now being used in the debate to narrow the field of state intervention. Researchers and policy-makers should take some time to see how these private operations worked in the past and why they were transformed before making radical changes in this area.

The assessment of social efficiency is obviously directly linked to the nature, extent, and quality of archival collections. If the relevant records are destroyed or an inappropriate sample only has been selected by the archives, then the assessment of social programmes for their efficiency and effectiveness would not be possible. Such assessment is certainly not limited to criminal justice issues, but these should be stressed because of the nature and function of justice agencies. One must never forget the constraining power over individuals that is the unique characteristic of these agencies in our society. The destruction of the relevant records under the *Young Offenders Act* means that neither the institutions exercising such constraint nor the treatment methodologies used on their often unwilling charges are subject to social assessment and thus necessary re-evaluation and change.

### Assessment of Discrimination Knowledge

The third type of knowledge that can be gathered from the study of such interventionist agencies' case files concerns the potential identification of discrimination.<sup>6</sup> The courts or other agencies of the penal system do not resort purposely to discrimination-producing behaviour. But, because of the power attached to these functions as well as the very structure of the penal and judicial system, they are at least as vulnerable as any other agency, whether public or private, to such behaviour.

In many instances, these discriminatory situations are not person-related but group-related. When this is the case, the ill effects are not the product of the actions of a given individual, but rather of the functioning of the entire system. Thus, the identification of such situations cannot be made on an individual basis, but rather through the study of important samples. Indeed, the proof positive in such a case comes from quantitative data, sheer numbers, and comparisons of proportions and percentages with available data for other types of situations.

A good example of such a situation is given by the first quantitative portrait that is coming out of the current study on the Juvenile Court of Winnipeg from 1920 to 1960.<sup>7</sup> The identification of the various types of specialized information contained in each juvenile's case file<sup>8</sup> has permitted researchers to learn that even though girls represented about 10 per cent of the total population of the court's wards, they were submitted, in terms of absolute numbers, to psychiatric evaluation as often as boys were. It is doubtful that women were, as a group, ten times more prone to psychiatric problems than were men. What is much more probable is that girls with behavioural problems were socially less acceptable than were boys, and thus some more drastic explanation (psychiatric disorders) was necessary, an explanation having less to do with the actual health of the girls than with contemporary social and intellectual mores. This quantitative information alone is not for the moment proof that there was discrimination, on a sexual basis, in the use by the Court of psychiatric interventions. But it certainly constitutes an important lead in exploring further the type of treatment the courts reserved to specific groups.

Some situations have been studied thoroughly enough, however, to lead to the identification of discriminatory practices. The remedial programmes of various sorts that have been created in the last two decades were a response to the recognition that there existed socially unacceptable, discrimination-generating processes or structures. It is also true that specific events have created injustices to groups or individuals on the basis of their creed, ethnic origin, or social, economic, or emotional situation. The only way by which these collective wrongs can be compensated is the actual knowledge of what happened. In recent years, the internment of Canadians of Japanese origin during the Second World War, or the experiments conducted on psychiatric patients at the Allan Memorial Hospital in Montreal, without the knowledge of the patients or of their families, are two particularly convincing examples of the necessity to use extreme care before destroying personal case file information. The recurring claims of native people before the courts are similarly based on the successful preservation of relevant information by archivists.

The Charter of Rights creates a legal basis to challenge discrimination, but certainly does not in itself create equality. Future specific cases of discrimination cannot be foreseen — thus it is impossible to establish beforehand what will constitute the essential elements of information needed to identify the cases and present adequate proof to earn redress. The only rule probably is that more care is better than less.

Other areas of discrimination are now recognized and, in such cases, information is equally vital to study and to document the circumstances involved: the question of equal pay equivalent competency, whether it applies to immigrants, to women, or to other discrimination-prone groups, is one of those issues that we know should be studied on a recurrent basis.

The right to privacy is fundamental in our society and every step should be taken to protect it. But it is certainly not the only one: the right to adequate treatment when it is required, the right to be protected from undue judicial intervention, and the right to see collective wrongs redressed are also, individually as well as collectively, fundamental expectations of our society. From such a perspective, the protection of one right should never totally hinder the accomplishment of other basic rights. It is unlikely that Japanese Canadians or Allan Memorial patients now seeking redress would have thanked any administrator or archivist who, in trying to protect these victims' privacy, had destroyed the very records on which their claims for redress for unfair treatment are now based.

If archives have always been the important collective memory of societies, their social and political relevance has certainly not diminished today. Archivists now face, and they should not do so alone, a tremendous task. They must ensure the actual physical preservation of the relevant recorded information, and thus the various types of knowledge that can be derived therefrom, in order to protect these basic rights. If this issue was extremely important in the past when it was focused on quite limited and manageable data, the problem is now made much more complex by the sheer volume of information being generated by state agencies, private institutions, and individual citizens. As a result, destruction is not the only way to lose information: the preservation of every piece of information that is being produced in our society cannot be a practical solution to the real question of access to information. An irretrievable mountain of paper and computer tapes is barely better than the absolute absence of any information through destruction. The result would be the same. As archivists wrestle with this dilemma, however, they must remember in designing selection and sampling criteria to protect as far as possible representative slices and samples of case file information in order to document the basic rights of groups and individuals in society.

### Notes

- \* This paper is based on a session entitled "Choosing Between Research and Rights: The False Dilemma," presented at the Annual Conference of the Association of Canadian Archivists in Winnipeg, June 1986.
- 1 See Joy Parr, *Labouring Children: British Immigrant Apprentices to Canada, 1869-1924* (Montreal, 1980) for an exception.
- 2 N. Kitterie, *The Right To Be Different* (Baltimore, 1971).
- 3 Or even juveniles under the protection of the court for social rather than criminal reasons!
- 4 The tendency to use "pop" psychology has not been limited to the juvenile or judicial arenas. The vulgarization of psychological concepts and approaches has clearly been a trademark of the late 1960s and the 1970s.
- 5 Commonly known in the United States as the "public efficiency movement."
- 6 The position that I am presenting in this paper was brought about by the possible destruction of juvenile court case files. Obviously, I do not believe that the arguments that I am putting forward are valid only in this case.

- 7 This study is being conducted by Professor Len Kaminski of the University of Manitoba and deals with archives from the Juvenile Court of Winnipeg. From what can be gathered from various colleagues, the files on which Kaminski is working are some of the very few in Canada that seem to have survived neglect, accidental destruction, or systematic destruction. As far as I know, the effort of Kaminski and his team to computerize parts of the files for research purposes (a gigantic task) will be a first for Canada.
- 8 For example, social workers' expert advice, medical dossiers, probation reports, or any other type of specialized information not contained in records of juvenile court cases.