Trusting Records in a Postmodern World[*]

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RÉSUMÉ   La responsabilité de la profession archivistique de protéger des documents d'archives fiables et pouvant servir de témoignages authentiques est fondée sur une vision idéale et philosophique de la vérité, laquelle tire ses racines des idées de John Locke et autres concernant les relations entre probabilité et évidence. Ont émergé de ces idées des séries de déductions et de généralisations à propos de ce qui rend un document d'archive fiable et authentique qui furent intégrées et restent enchèssées fermement dans la théorie et la méthodologie de l'archivistique moderne. La validité de ces déductions et généralisations a été remise en question par les penseurs post-modernes qui ont démontré qu'elles privilégient une conception particulière de relation entre les documents d'archives et le monde à l'exclusion de toute autre. La théorie post-moderne doit servir à rappeler aux archivistes que la fiabilité et l'authenticité sont des constructions historiques et non des vérités éternelles et qu'elles doivent être revues alors que des nouvelles façons de voir la relation entre les documents d'archives et le monde émergent.

ABSTRACT   Underpinning the archival profession's commitment to the protection of records as reliable and authentic evidence of action is a philosophical ideal of truth, whose roots can be traced back to the ideas of John Locke and others concerning the relationship between probability and evidence. Out of these ideas there emerged a set of inferences and generalizations about what makes a record reliable and authentic, which were absorbed into, and remain firmly embedded in, modern archival theory and methodology. The validity of these inferences and generalizations has been challenged by postmodern thinkers who point out that such inferences and generalizations privilege a particular conception of the relationship between records and the world, to the exclusion of alternative ways of looking at that relationship. Postmodern theory serves to remind archivists that reliability and authenticity are historical constructs, not eternal verities, and need to be revisited as new ways of looking at the relationship between records and the world present themselves.

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Postmodern theory belongs to a long tradition of critical reflection and inquiry, which "[seeks], in various ways, to explore the complex, uneven, and unpredictable consequences of modernity."[1] The theoretical discourses of modernity from Descartes onward "champion[ed] reason as the source of progress in knowledge and society, as well as the privileged locus of truth and the foundation of systematic knowledge."[2] The theoretical discourses of post-modernity take a long, hard look at the rationalist assumptions underpinning modernist thought and practice. This article traces the genealogy of the ratio-nalist assumptions underpinning archival notions concerning the truth-value of records as evidence, identifies the specific nature of those assumptions, and suggests how postmodern theory[3] problematizes them.

When archivists express their commitment to the protection of records as reliable and authentic evidence of action they are expressing a commitment to a philosophical ideal of truth. The epistemological foundations of that ideal are rooted in ideas that emerged during the seventeenth century, which reori-ented knowledge in the direction of empirical inquiry to establish matters of fact. That reorientation gave a new place to the observation of facts and phe-nomena and associated them with truth, which was now defined as an accept-able degree of moral certainty.[4]

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1 Barry Smart, "Postmodern Social Theory," in Bryan S. Turner, ed., *The Blackwell Companion to Social Theory* (Oxford, 1996), p. 396.

2 Steven Best and Douglas Kellner, *Postmodern Theory: Critical Interrogations* (New York, 1991), p. 2.

3 In this article, the meanings of *postmodernity*, *postmodernism,* and *postmodern theory* follow the meanings given to those terms by Best and Kellner in their book *Postmodern Theory.* Accordingly, *postmodernity* refers to the historical epoch that allegedly follows modernity. *Postmodernism* is used to "describe movements and artifacts in the cultural field that can be dis-tinguished from modernist movements, texts, and practices." *Postmodern theory* refers to a range of discourses which focus on the critique of modern theory and which argue for a post-modern rupture in theory. In such discourses, Best and Kellner explain: "Modern theory – ranging from the philosophical project of Descartes, through the Enlightenment, to the social theory of Comte, Marx, Weber and others – is criticized for its search for a foundation of knowledge, for its universalizing and totalizing claims, ... and for its allegedly fallacious ratio-nalism. ... More specifically, postmodern theory provides a critique of representation and the modern belief that theory mirrors reality, taking instead 'perspectivist' and 'relativist' positions that theories at best provide partial perspectives on their objects, and that all cognitive represen-tations of the world are historically and linguistically mediated." See Best and Kellner, *Post-modern Theory,* pp. 2–5.

4 As Barbara Shapiro describes it, the development, in the seventeenth century, of a standard of "moral certainty" (or "rational belief") was part of an attempt to establish an intermediate level of knowledge, below the level of absolute certainty but above that of mere opinion. Philoso-phers, theologians, and natural scientists "distinguished between 'knowledge' or 'science,' on the one hand and 'probability' on the other. There were three subcategories of knowledge, each possessing a different kind of certainty: physical, derived from immediate sense data; mathe-matical, established by logical demonstration such as the proofs of geometry; and moral, based

Many of the tenets of empiricism were laid out in Locke's *Essay Concerning Human Understanding.* For Locke, determinations of the truth or falsity of propositions concerning most matters in life could not be demonstrated or proven conclusively; instead, they had to be based on judgements of probability. Conformity with one's own experience or the testimony of others' experience provided the grounds for such judgements. For example, in judging the testimony of others, the number, integrity, and skill of the witnesses, the consistency of the testimony's parts, and contrary testimonies were all to be taken into consideration.[5] Assent to any proposition was to be based on the strength of the evidence, that is, on the strength of the connection between the proposition to be proved and the material offered as proof; and there was a new emphasis on the grading of evidence on the scales of reliability and probable truth.

Underlying this new philosophy was an assumption of a "universal cognitive competence."[6] The assumption was that, given a proper presentation of all the relevant evidence about any factual issue, every normal and unbiased person would come to the same conclusion about it. The belief in a universal cognitive competence is a major trope in the modernist narrative, reflecting as it does the rationalist rule of consensus, according to which the truth-value of a statement is deemed acceptable if it is cast in terms of a possible unanimity between rational minds.[7]

The ideas of Locke and others concerning the relationship between probability and evidence exercised a significant influence on the emerging disciplines of law and history because it was assumed that documentary evidence constituted a form of testimony and thus fell under their general theory of evidence and knowledge. Legal and historical scholars came to agree that determinations of fact in history and adjudication were no different from those in

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on testimony and secondhand reports of sense data. This moral certainty was most relevant to law, history, and many kinds of natural science. ... What others called 'moral certainty' was for Locke a species of probability, the very highest level of which commanded universal assent. It rose 'so near to a certainty' that it governs 'our thinking as absolutely as the most evident demonstration.'" The concept of moral certainty also underlies the "proof beyond a reasonable doubt" conviction standard that developed during the eighteenth century in English criminal law. See Barbara Shapiro, *"Beyond Reasonable Doubt" and "Probable Cause": Historical Perspectives on the Anglo-American Law of Evidence* (Berkeley, 1991), pp. 7–8 and passim.

5 John Locke, *An Essay Concerning Human Understanding*, A.D. Woozley, ed. (New York, 1974), book 4, chapter 15, section 4.

6 The concept of universal cognitive competence is discussed in Jonathan Cohen, "Freedom of Proof," in William Twining, ed., *Facts in Law: Association for Legal and Social Philosophy Ninth Annual Conference at Hatfield College, University of Durham, 2nd–4th April 1982* (Wiesbaden, 1983), passim.

7 Jean-François Lyotard, "The Postmodern Condition," in Keith Jenkins, ed., *The Postmodern History Reader* (London and New York, 1997), p. 36.

other investigations. The truth of any proposition could be established by reasoning from the relevant evidence, with reason operating within a framework of inferences, generalizations, and probabilities.

The rules of documentary criticism enunciated in Mabillon's seventeenth-century treatise on diplomatics[8] reflect this new conception of evidence as inference. Diplomatics sought to establish a record's legal and historical truth on the basis of its documentary truth. Moving from the observation of perceptible matters of fact (the elements of the document itself) to assertions about imperceptible matters of fact (the past in which the document was created), diplomatics nurtured the belief that knowledge about a reality to which there was no direct access nevertheless could be attained by examining its documentary traces.

The twin notions of records as evidence and of evidence as inference were absorbed into the rationalist tradition of legal evidence scholarship that began to take shape in the eighteenth century, and into the positivist tradition of historical scholarship that emerged during the nineteenth century.[9] By the end of the nineteenth century, standards for assessing the reliability and authenticity of records, based on those twin notions, were firmly established in evidence law and in historical criticism. In evidence law, the standards manifested themselves in the business records exception to the hearsay rule, in the rules governing authentication, and in the rule requiring the production of original documents (also known as the best evidence rule). In historical criticism, they were reflected in the analytical techniques of external and internal criticism and in the preference for primary sources over secondary ones. When archival science emerged in the late nineteenth century, these legal and historical standards were absorbed into its theory and methodology. They remain firmly embedded in archival thinking and underpin our current assumptions about what constitutes a reliable and authentic record in general, and in bureaucratic environments in particular.

The concepts of reliability and authenticity as expressed in archival discourse are posited on a direct connection between the word and the world and are rooted, both literally and metaphorically, in observational principles. A reliable record is one that is capable of standing for the facts[10] to which it

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8 Jean Mabillon, *De re diplomatica libri VI* (Paris, 1681).

9 For a detailed discussion of the evolution of legal and historical methods for assessing the trustworthiness of records as evidence, see Heather MacNeil, *Trusting Records: Legal, Historical, and Diplomatic Perspectives* (Dordrecht, 2000), pp. 1–31.

10 The term *fact* is defined here as "a thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time or space or an event mental or physical; that which has taken place. A fact is either a state of things, that is, an existence, or a motion, that is, an event." *Black's Law Dictionary*, 6th ed. (St. Paul, 1990), s.v., "fact."

attests. Reliability thus refers to the truth-value of the record as a statement of facts and it is assessed in relation to the proximity of the observer and recorder to the facts recorded. An authentic record is one that is what it claims to be and that has not been corrupted or otherwise falsified since its creation. Authenticity thus refers to the truth-value of a record as a physical manifestation of the facts it records and is assessed in relation to a record's original instantiation.

The observational principles underlying the concepts of reliability and authenticity are implicit in the metaphor of records as evidence, which, as Nancy Partner points out, is "a metaphor based on visual perception." The Latin word *evidence* means "that which is manifest or in plain sight." In its metaphoric sense, evidence is that which brings the invisible (that is, a past event) back into plain sight. It can be read "as a manifestation or a 'realization' [of that event]."[11] The observational principles on which we ground our belief in records as trustworthy evidence thus reflect a conception of records as witnesses to events, and a corresponding view of the world as one that is capable of being so witnessed.

Because a record is assumed to reflect an event,[12] its reliability depends on the claim of the record-maker to have been present at that event. Its authenticity subsequently depends on the claim of the record-keeper to have preserved intact and uncorrupted the original memory of that event through the faithful preservation and transmission of its physical manifestation over time. For a record to be considered trustworthy, then, it must accurately reflect the event it records and be uncontaminated by the distorting influence of time, bias, interpretation, or unwarranted opinion on the part of the record-maker. In other words, the record-maker must be present to witness and transcribe what Stanley Raffel calls "the world's speech," but she must not contaminate that speech.[13] The belief that it is possible to separate the observer from the event being observed reflects the "Cartesian model of the mind which assumes that the natural operations of the mind do not err unless they are disturbed by ... extraneous factors such as prejudice, passion, or impatience. Under this model the mind is kept reliable by preventing the intrusion of distorting influences."[14]

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11 Nancy Partner, "Making Up Lost Time: Writing on the Writing of History," *Speculum* 61 (January 1986), pp. 105, 94.

12 *Event* is understood here to be an instance of a *fact*. See above, fn. 10. For a fascinating discussion of the relationship between records and events, see Stanley Raffel, *Matters of Fact: A Sociological Inquiry* (London, Boston and Henley, 1979), pp. 48–74.

13 Raffel, *Matters of Fact*, pp. 23, 29.

14 Marilyn T. MacCrimmon, "Developments in the Law of Evidence: The 1988-89 Term: The Process of Proof: Schematic Constraints," *The Supreme Court Law Review*, 2nd ser., vol. 1 (Toronto: Butterworths, 1990), pp. 346-47.

The observational principles underpinning reliability and authenticity are firmly embedded in bureaucracies, where the making and keeping of records takes place within a framework of generalized and controlled observation. Rational bureaucracy is, of course, the poster child for the modernist project, with its triumphant claim to the definitive improvement of society through knowledge and technology. The most pervasive characteristic of bureaucracy is the existence of a system of control based on rational rules, that is, rules meant to design and regulate the entire organization on the basis of technical knowledge and with the aim of achieving maximum efficiency.

Reliable and authentic records are critical to that control because they are the primary means by which bureaucrats account for their actions. As Jane Parkinson explains:

The principle that underlies the concept of accountability … is linked to the conveying and evaluation of information .... For ongoing bodies, accountability required the development and refinement of procedures for carrying out actions and documenting them, "to ensure that everything was done according to rule and in proper sequence, so that administrators could account … at any time precisely for anything that had been done. Effective institutional accountability has therefore depended on record-making, recordkeeping and access to records, and it has influenced the procedures and timing of their creation, their form, their maintenance, their accessibility and their centralization.[15]

Bureaucracy has developed two main approaches to ensuring the truth-value of records, both of which attempt to compensate for the fact that bureaucrats must rely on records that report events they have not personally witnessed or participated in. In the first approach, bureaucrats assess the reliability of records indirectly by focussing on the reliability of record-makers and record-keepers.[16] Traditionally, the reliability of the makers and keepers of records is ensured through the imposition of procedural controls over record-making and record-keeping and by close personal supervision.

With the introduction of computers and the proliferation of information technologies used in support of making and maintaining records, procedural controls are being supplemented and, to some extent, replaced by technological controls, and close personal supervision is giving way to impersonal surveillance with the use of monitoring devices and audit trails. From a rationalist perspective, the computer would appear to be the ideal observer of record-makers and record-keepers. It is a witness to all the record-making and

15 Jane Parkinson, "Accountability in Archival Theory" (Master of Archival Studies thesis, University of British Columbia, 1993), pp. 25–26.
16 Raffel, *Matters of Fact*, p. 92.

record-keeping events that take place within its domain and its recording of those events is not contaminated by human self-interest.

The second approach bureaucrats adopt to compensate for their non-participation in the events the records report is to conceive of the record itself as the event.[17] In this approach, records are evaluated, not in terms of their effectiveness in mirroring external events, but rather in terms of their completeness in accordance with bureaucratic standards. A record's reliability is then assessed in relation to the presence or absence of any of the elements required by bureaucratic standards to make the record effective. A reliable record will be one that appears to be reliable by anyone looking at it. To be considered complete, a record must ordinarily include a date, which expresses the relationship between its author and the event it records, and a signature, which assigns responsibility for the record and its content. As Jack Goody observes, the signature "is not only a card of identity, … but also an assertion of truth or of consent."[18] In rational terms, then, the truth-value of bureaucratic records, that is, their effectiveness in inducing belief, is measured in relation to the effectiveness of the controls exercised over their creation and maintenance. The more severe the constraints, the more rigorous the control, the greater the degree of the record's truth-value; or so the generalization goes.

The desire to establish standards for ensuring the reliability and authenticity of records is a specific manifestation of a more general modernist urge to secure stable foundations for thought and practice. Our current preoccupation with setting standards for the authenticity of electronic records is symptomatic of this urge. Authenticity emphazises a return to the essential, the finding of centres, the fixing of reference points, the certification of truth, and the privileging of the singular and definitive over the multiple and indeterminate. Amy Mullin has described authenticity as "the twentieth-century descendant of the virtue of purity." And like purity, it valorises an ideal of order and stability, and the longing for uncorrupted origins.[19]

In modernist discourse, the truth-value of records as evidence is predicated on the presumed existence of a simple unified framework – a world and its verifiable expression in descriptive language. The methods for assessing a record's truth-value are underpinned specifically by an assumption that a unitary and stable relationship exists between a representation (that is, a record) and its referent (i.e., a pre-existent reality); and an attendant belief in the capacity of language to reflect and give presence to a world of fixed and generalizable knowledge about the nature of a record and the conditions necessary to ensure its trustworthiness.

17 Ibid., p. 102.
18 Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge, 1986), p. 152.
19 Amy Mullin, "Purity and Pollution: Resisting the Rehabilitation of a Virtue," *Journal of the History of Ideas* 57 (1996), pp. 510, 520–23.

Jacques Derrida characterizes this foundationalist commitment to language and truth as "a metaphysics of presence" that is supposed to guarantee us unmediated access to reality.[20] He and other postmodern theorists dispute this metaphysics, maintaining that the referent does not stand outside of representation but, rather, is created through the processes of representation. In other words, a record, or any text for that matter, is not a reflection of a pre-existent reality, but, rather, "a constituent agent in the reconstruction of a conception of the real."[21] Behind the language of the text, there is no stable foundation of truth that corroborates its meaning. Instead, as Gabrielle Spiegel puts it, "there is only more language, more texts, in an infinite regress in which the presence of the real ... is always deferred, never attainable."[22]

The commitment to a metaphysics of presence is written into the binary oppositions that govern rationalist thought: subject vs. object, appearance vs. reality, nature vs. reason, oral vs. written, authentic vs. inauthentic, and so on. These oppositions work to construct a hierarchy of values, which, while attempting to secure truth, "serve also to exclude and devalue allegedly inferior terms or positions."[23] Thus, reality is positively positioned over appearance, reason over nature, written records over oral records, authentic records over inauthentic records, and so on.

Postmodern theorists argue that this binary metaphysics is not only illusory, "a sleight of hand," it is also repressive because it legitimates those ideas and practices that conform to the dominant framework and silences those which cannot be absorbed into it. From their perspective, truth is best characterized, not as a temporally transcendent philosophical ideal, but as an historically constructed mode of domination that is inextricably linked to power. Michel Foucault maintains that

... each society has its régime of truth, its "general politics" of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.[24]

Truth is thus understood as a system of ordered procedures for the production,

20 Jacques Derrida, *Of Grammatology* (Baltimore, 1976), cited in Best and Kellner, *Postmodern Theory*, p. 21.
21 James Chandler, Arnold I. Davidson, and Harry Harootunian, "Introduction," in Chandler, Davidson, and Harootunian, eds., *Questions of Evidence: Proof, Practice, and Persuasion across the Disciplines* (Chicago, 1994), p. 5.
22 Gabrielle Spiegel, "History, Historicism and the Social Logic of the Text in the Middle Ages," in *The Postmodern History Reader*, p. 184.
23 Best and Kellner, *Postmodern Theory*, p. 21.
24 Michel Foucault, "Truth and Power," in Colin Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York, 1980), p. 131.

regulation, and distribution of knowledge; and it is linked in a circular relationship with systems of power which produce and sustain it.[25]

Modern, rational bureaucracy is a perfect embodiment of this knowledge/power dynamic. As Mary Douglas points out, bureaucracies "systematically direct individual memory and channel our perceptions into forms compatible with the relations they authorise."[26] Records are the most visible manifestation of that directing and channelling function and the procedural and technological methods for creating and controlling them the primary means of accomplishing it. For example, the requirement that a record-maker sign that record is read, in rational terms, as an effort to guarantee its truth-value. But the requirement can be read in a different way, as an effort to silence questions about the record's truth-value. The point of the signature, from the bureaucrat's perspective, is to avoid questions about the record-maker's intent. To overcome that problem, the bureaucracy requires the record-maker to, in Raffel's words, "*declare* his intent, in this case his intent to have spoken the truth. The declaration is supposed to solve the problem of intent by making it into something that can be spoken rather than that which any speech leaves unsaid."[27] Technological efforts to adapt the signature to the digital world reinforce this unspoken purpose. A digital signature is distinguished by its "non-repudiation function," and, like the traditional signature, its purpose is to foreclose any further speech concerning the truth-value of the record to which the signature is attached.

Similarly, the procedural controls imposed over record-making and record-keeping – classification, registration, the imposition of access privileges, the maintenance of audit trails, the use of continuous monitoring and perpetual assessment – are read, in rational terms, as means of increasing the circumstantial probability of a record's trustworthiness. But they may also be read as techniques that reinforce and extend bureaucratic structures of power through the relentless and pervasive use of surveillance. The perceived advantage of a technology-oriented approach to ensuring record trustworthiness is that the control exerted over record-making and record-keeping is automatic and invisible to the users of the system. On the other hand, the very invisibility of technological control mechanisms is precisely what makes them even more insidious than traditional mechanisms of bureaucratic control.

In exposing the slippage between the programmatic promise and practical consequences of rationalist thinking, postmodern theory resists modernist belief and its authoritarian imperatives. In so doing, it offers a necessary corrective to the tyranny of one way of seeing. Against modern theory's advocacy of universality, certainty, necessity, singularity, and likeness, postmodern the-

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25 Ibid., p. 133.

26 Mary Douglas, *How Institutions Think* (Syracuse, 1986), p. 92.

27 Raffel, *Matters of Fact*, p. 112.

ory posits the virtues of locality, ambivalence, contingency, multiplicity, and difference.

For archivists, postmodern theory reminds us of what we should already know, that the methods for assessing the truth-value of records as evidence are rooted in a particular way of looking at the world and in a particular conception of records as a kind of testimony about that world. The criteria they establish for determining what counts as true are themselves the product of historical, cultural, and political choices and do not exhaust all the possible ways of looking at the world or at the relationship between records and the world.

The reminder is important because we need more ways of making sense of the world, not fewer, and, therefore, any discourse that claims to provide all the answers is a reductive and dangerous one. Of course, reductionism is not the exclusive frailty of modern theory. Some commentators argue that postmodern theory, which is premised on a rejection of grand narratives, has become, to some extent, its own grand narrative – given that there is a definite postmodern line to most contemporary philosophical and cultural debates – and is therefore vulnerable to attack in its turn.[28]

Carlo Ginzburg, for example, notes that, while modernist discourse treats every form of textual representation as an open window to an extra-textual reality, postmodern discourse regards it "as a [brick] wall, which, by definition, precludes any access to reality."[29] The latter position is as unsustainable as the former. As Nancy Partner observes:

No one really believes we are sealed in a linguistic house of mirrors, even if we are. ... The problem posed by the distinct possibility that we cannot know anything outside language folds up in a moment since no one who passes for sane is willing to accept any of the consequences of such a position, and everyone eventually resorts to some version of "We have to assume ..." from which follow Other Minds, an External World, ... and soon after Descriptive Language or something that passes for it ....[30]

Moreover, the fact that we cannot establish certain propositions as verifiably true does not mean that we have no means of establishing their contingent, provisional truth – of determining that they meet conditions which justify our regarding them as true within a given set of circumstances, and thus capable of serving as a basis for further thought and action.[31]

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28 Stuart Sim, "Postmodernism and Philosophy," *Routledge Critical Dictionary of Postmodern Thought*, p. 14.

29 Carlo Ginzburg, "Checking the Evidence: The Judge and the Historian," in *Questions of Evidence*, p. 294.

30 Partner, "Making Up Lost Time," pp. 95–96.

31 Tony Bennett, "Outside Literature; Texts in History," *The Postmodern History Reader*, p. 221.

32 Wendy M. Rogovin, AThe Politics of Facts: The Illusion of Certainty," *Hastings Law Journal*

As a society, we want our leaders and the people who act in our name to be accountable for their actions, and records play a role in rendering that account. So it is in our interest to establish standards for reliable and authentic records, and archivists have a role to play in achieving that objective. At the same time, we should acknowledge that the methods for assessing reliability and authenticity, and the generalizations on which they are built, are not essential or transcendent verities but human constructs that have been shaped within a particular historical and cultural context; and that the meaning and value of records extends far beyond their status as reliable and authentic evidence of action as we currently define those terms. The narrative archivists have constructed around the concepts of reliability and authenticity is only one among many narratives. And it should be viewed as an open-ended rather than a closed narrative: one that needs continually to be revisited and rewritten as new ways of looking at the world present themselves.

If we need to adhere to some conception of truth in order to anchor the integrity of archival practice and to help us make sense of the world, then perhaps we might consider returning to the archaic definition of truth which associated it with "good faith" and "truce," and which referred merely to "an agreed upon stopping point in a certain kind of inquiry."[32] This meaning is consistent with the pragmatic notion of truth as "what is good in the way of belief." From a pragmatic perspective, the question we need to ask ourselves is not whether we have gotten a certain thing right, but, rather, what would it be like to believe it? What would we be committing ourselves to by believing it? As Richard Rorty explains, pragmatism

is the doctrine that there are no constraints on inquiry save conversational ones – no wholesale constraints derived from the nature of the objects, or of the mind, or of language, but only those retail constraints provided by the remarks of our fellow-inquirers.... The pragmatist tells us that it is useless to hope that objects will constrain us to believe the truth about them, if only they are approached with an unclouded mental eye, or a rigorous method, or a perspicuous language. ... The only sense in which we are constrained to truth is that ... we can make no sense of the notion that the view which can survive all objections might be false. But objections – [those] conversational constraints – cannot be anticipated. There is no method for knowing *when* one has reached the truth, or when one is closer to it than before.[33]

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32 Wendy M. Rogovin, "The Politics of Facts: The Illusion of Certainty," *Hastings Law Journal* 46 (August 1995), p. 1728, n. 14.

33 Richard Rorty, "Pragmatism, Relativism, and Irrationalism," in *Consequences of Pragmatism* (Minneapolis, 1982), p. 165. Rorty's formulation of the doctrine of pragmatism takes us some distance from Locke's formulation of the doctrine of probability and the standard of moral certainty (see above, fn. 4). The distance is evident when we compare Rorty's statement with this statement of Locke's concerning truth and probability: "[T]he first and *highest degree of*

Accepting a pragmatic notion of truth means accepting the contingency of starting points and the indeterminacy of end points. It may not offer much in the way of metaphysical comfort,[34] but there is something to be said for an approach to truth that acknowledges alternative perspectives, embraces persistent debate, and tolerates imperfect solutions.

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probability is, when the general consent of all men, in all ages, as far as it can be known, concurs with a man's constant and never-failing experience in like cases, to confirm the truth of any particular matter of fact attested by fair witnesses; ... These *probabilities* rise so near to *certainty*, that they govern our thoughts as absolutely, and influence all our actions as fully as the most evident demonstration; and in what concerns us we make little or no difference between them and certain knowledge. See *An Essay Concerning Human Understanding*, book 4, chapter 16, section 6.

34 The term "metaphysical comfort" is attributed to Nietzsche, who considered the need for such comfort to be the driving force behind the philosophical pursuit of transcendent truths. In Nietzsche's view, of course, the pursuit is futile. As Richard Schacht explains, for Nietzsche, "there is no 'truth' in the sense of correspondence of anything we might think or say to 'being,' and indeed no 'true world of being' to which it may even be imagined to fail to correspond; no 'knowledge' conceived in terms of any such truth and reality; and, further, no knowledge at all – even of ourselves and the world of which we are a part – that is absolute, non-perspectival, and certain." Though he rejected all religious and metaphysical interpretations of the world as illusory, Nietzsche nevertheless recognized that illusion is as necessary to humans as truth. See Robert Audi, ed., *The Cambridge Dictionary of Philosophy* (Cambridge, 1995), s.v., "Nietzsche, Friedrich Wilhelm."