



Taking Custody, Giving Access: A Postcustodial Role for a New Century

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RÉSUMÉ Cet article considère la relation entre la garde des documents et leur accès en mettant l'accent sur le rôle vital que joue l'accès aux documents historiques dans la construction de la mémoire collective. Il explore le principe de la garde des documents tel qu'il a été développé principalement dans le monde anglo-saxon, son arrière-plan historique ainsi que son évolution au milieu du XX^e siècle en *postcustodialism*. Enfin il suggère que l'accès doit avoir un rôle primordial pour les archivistes ayant la garde des documents dans le siècle qui commence.

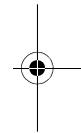
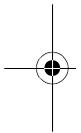
ABSTRACT This article considers the relationship between custody and access focusing on the vital role that access to historical records plays in the construction of community memory. It explores the principle of archival custody as it has developed primarily in the English-speaking world, its historical background, its mid-twentieth-century evolution into postcustodialism, and suggests that access be a primary role for the custodian in the new century.

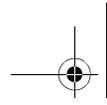
Prologue: A Tale of Access and Memory

On 3 July 1848, the enslaved African population of St. Croix in the Danish West Indies (now the United States Virgin Islands) took fate into their own hands and demanded freedom from their colonial masters. Determination and sheer numbers resulted in the immediate emancipation of the entire Danish colony, marking this event as only the second successful slave revolt in the Caribbean.¹ Although the rebellion seems to have been planned and instigated by a group of conspirators, one man, Moses Gottlieb, popularly known as "General Bourdeaux" or "General Buddhoe" emerged as the leader. According to the story as told in two supposed eye-witness accounts² and subse-

1 Neville Hall, "Slave Society in the Danish West Indies," in Barry Higman, ed., *St. Thomas, St. John and St. Croix*, (Mona, Jamaica, 1992), p. 136.

2 Two eye-witness accounts were published after the Emancipation, one by Stadthauptmand Chamberlain Frederik von Scholten, Governor Peter von Scholten's brother, who describes events as he saw them from Frederiksted, and the other by Chamberlain Irminger, Captain of the ship *Omen*. One was recounted and published several years after the events, the other sug-





quently enshrined within Virgin Islands history texts, Buddhoe rode a white horse, patrolling the mob and keeping order side by side with a Danish officer. As the leading conspirator, he skillfully directed the rebel forces, successfully presenting the demands of the enslaved to the militia.³ In the latter day Virgin Islands, Buddhoe, honored as a folk hero in drama, painting, song, and story is synonymous with resistance and freedom. In 1998, during the year-long celebration of the 150th. Anniversary of Emancipation in the Danish West Indies, a park in Frederiksted, St. Croix, site of the original Emancipation proclamation, was renamed Buddhoe Park and a statue was dedicated to this legendary hero.

During the celebration year, conferences held in the Virgin Islands explored and reexamined the critical events of 1848. A Danish American scholar, detailed the actions on that momentous July day as recorded in over fifteen hundred pages of court depositions taken from ex-slaves in St. Croix immediately following the Emancipation.⁴ These court testimonies, originally delivered orally in English but transcribed by the court clerk into Danish, had been deposited in the Danish National Archives in Copenhagen in 1919, shortly after the Danish West Indies was sold to the United States. Denmark had claimed custody of these records, along with a majority of the records created in the islands by the Danish colonial administration between 1665 and 1917.⁵ The court records revealed a narrative significantly at variance to that which had been handed down both in folklore and in popular history texts during the hundred and fifty years since the event.

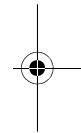
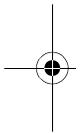
The evidence in the testimony suggested ambiguities surrounding the individual known as Buddhoe, the first beginning with his actual name, Moses

gests a location that does not match the events that are being recounted. For these reasons their accuracy has been questioned. Both accounts were translated into English in the 1870s and published in 1888 by Charles Edwin Taylor, *Leaflets from the Danish West Indies* (1888; reprint, New York, 1970), p. 145. Since these accounts were the only primary sources easily accessible to English-language historians, they became the basic source materials for the event and remain the documents upon which most accounts of the Emancipation have been based, certainly those in Virgin Islands high-school history texts.

3 This composite picture is taken from several Virgin Islands history texts including Florence Lewisohn, *St. Croix Under Seven Flags* (Hollywood, Florida, 1970); Isaac Dookhan, *A History of the Virgin Islands of the United States* (Essex, England, 1974), and J. Antonio Jarvis, *Brief History of the Virgin Islands* (St. Thomas, 1938).

4 Svend E. Holsoe, "The 1848 Emancipation Rebellion on St. Croix," paper presented at the Tenth Annual Conference of Virgin Islands Historians, 18 January 1998. Svend E. Holsoe is Professor Emeritus of Anthropology at the University of Delaware. A former archivist in Liberia, he has written extensively both on Liberia and the Danish West Indies.

5 For detailed discussion and analysis on the removal of the records of the Danish West Indies to Denmark see the author's doctoral dissertation, "Defining Custody: the Impact of Archival custody on the Relationship Between Communities and their Historical Records in the Information Age: A Case Study of the United States Virgin Islands," (Ph.D. Thesis, University of Pittsburgh, 1999).





Gottlieb. No one by that name was discovered in the records, although there were two slaves, Robert Moses and John Gottlieb, both active in the insurrection. Buddhoe may have been a conglomerate of these two persons, or, more likely, may have been John Gottlieb. A previous paper by the same scholar⁶ reconstructed events leading up to the day of the insurrection and questioned Gottlieb/Buddhoe's involvement in the planning end at all, although a number of other slaves were definitely identified as being central to its conception and organization.

In addition, reconstructing and integrating the detailed movements of a number of individuals during the day of the rebellion, through a comprehensive mapping of all the various testimonies, cast suspicion on Buddhoe's unexplained and ambiguous role as sudden pacifier and controller of the angry mob. Holsoe, the scholar, faintly suggested the possibility that Buddhoe might have had some sort of alliance with the other side.

The questioning of Buddhoe's very existence and motives reverberated within the Virgin Islands scholarly and cultural community. Reactions ranged from outright disbelief, to anger, disgust and indifferent acceptance. The general consensus among Virgin Islanders however, seemed to be firstly, that since they themselves had little or no access to the court records (or to any other colonial records), and had no real anticipation of future access, they were unable to ascertain the real truth, and secondly, whatever the truth, Buddhoe's significance was as a folk hero, a symbol of emancipation rather than as an actual person. If he was a person of dubious character, then his flaws made him all the more human.⁷ Some of the angrier reactions, however, concluded that the problem lay with the records themselves, the individuals creating the records and those interpreting the records. A guest editorial in a Virgin Islands newspaper by one such critic noted that:

At discussions concerning the 1848 insurrection, I became nauseous listening to some of the "experts" interpreting the insurrection and the rebels. I was disgusted to listen to some non-Africans inform me that Buddhoe did not exist because Danish records did not list Moses Gottlieb as the key leader ... a bad feeling came over me when I heard non-Africans inform me that based on colonial, particularly Danish records, my hero(s) did not exist.⁸

6 Svend E. Holsoe, "The Beginning of the 1848 Emancipation Rebellion on St. Croix," in Svend E. Holsoe and John H. McCollum, eds., *The Danish Presence and Legacy in the Virgin Islands*, (St. Croix, 1993), pp. 75-84.

7 In December 1998, the author taped interviews with a number of historians in the Virgin Islands who were familiar with this presentation. These opinions are a composite of those expressed in response to questions specifically dealing with this issue.

8 Malik Sekou, "An African History of Emancipation," *Virgin Islands Daily News* (29 June 1998), p. 12.

This tale of contested memory illustrates the many layers in the disconnects of colonial and post-colonial history:⁹ between oral tradition and written testimony; between official record-keeping and folk history; between the interests of a colonial society and the perceptions of the colonized; and between the harsh meeting of widely disparate cultures. All these layers and more are of interest and concern to archivists. Of particular concern here are those specifically archival issues that speak to the ways in which the keeping and maintaining of records have an impact on a society. The story of Buddhoe also illustrates a disconnect within archival processes themselves, specifically the custodial disposition of the Danish West Indian records and the chilling effect of that disposition upon access and memory.

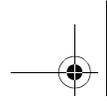
Denmark's right to custody of the records was a legitimate interpretation of the 1916 *Treaty of Transfer* between Denmark and the United States.¹⁰ Denmark's archival concerns following the sale agreement centered on uniting the records of its colonial offices as well as placating Danish citizens who, recognizing that centuries of colonial involvement meant that the records contained significant historical and genealogical information, lobbied heavily for their return. From the Danish perspective, these products of their colonial administration were Danish records that had to be brought home.¹¹

The records that Denmark left behind in the Virgin Islands – primarily those

9 Examples of this mediation abound in postcolonial histories. In *Silencing the Past; Power and the Production of History*, Haitian historian Michel-Rolph Trouillot finds that, "Silences are inherent in the creation of sources, the first moment of historical production. Unequal control over historical production obtains also in the second moment of historical production, the making of archives and documents." (Massachusetts, 1995), pp. 51–52.

10 The third paragraph of Article One of the Convention between Denmark and the United States transferring the Islands states: "In this cession shall also be included any government archives, records, papers or documents which relate to the cession or to the rights and property of the inhabitants of the Islands ceded, and which may now be existing either in the Islands ceded or in Denmark. Such archives and records shall be carefully preserved, and authenticated copies thereof, as may be required shall be at all times given to the United States Government or the Danish Government, as the case may be, or to such properly authorized persons as may apply for them."

11 Insights into the Danish perspective on the Danish West Indian records was primarily provided by Poul Erik Olsen in "Negeroprør, Termitter og Landsarkiver Saxild, Om de Dansk-Vestindiske Lokalarivers Skaebne (Negro Rebellion, Termites and the National Archivist Saxild; On the Fate of the Danish West Indies Local Archives), Pernille Levine, trans., *Arkiv* 10 (1985), pp. 156–75, as well as through interviews that the author had with personnel at the Danish National Archives. Consistent mention of "bringing the archives home," both by Olsen and earlier by Georg Saxild, the Danish archivist who in 1919 gathered and sent the bulk of the DWI records to the Danish National Archives, speaks to clear conviction on the part of Denmark that these records belong to Denmark. See Georg Saxild, "Report on National Archivist Saxild's Journey to the Former Danish West Indian Islands, 1919," Pernille Levine, trans., as well as the author's detailed discussion of the transfer of records in, "A Question of Custody; The Colonial Archives of the United States Virgin Islands," *American Archivist* 64 (Spring/Summer 2001), pp. 96–114.



created after 1900, but a variety of eighteenth-century records as well¹² – were claimed by the National Archives of the United States in 1934 who belatedly acknowledged its own rights under the transfer treaty. These records along with records created after 1917 by the American administration¹³ were sent to Washington, D.C. NARA continued to take custody of Virgin Islands records until the late 1950s.¹⁴ The multiple custody of records at distant locations, in addition to fragmenting the records, created powerful physical barriers for researchers, particularly those from the Virgin Islands. More importantly, as the Buddhoe story illustrates, physical separation from these records prevented the Virgin Islands from developing any real familiarity with the documentation of its own community. Without immediate access to the records of its colonial past, the Virgin Islands community had no way of mediating the written and oral evidence and sifting it through its own sieve of tradition in order to construct meaningful interpretations of its history. The community, forced to rely on second-hand accounts, constructed memories forever vulnerable to inaccessible records and outside interpretation.

Introduction

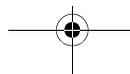
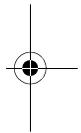
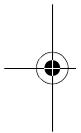
The case of the Virgin Islands suggests that the records created within a community – even those created by a colonial regime – are central to that community's ability to fully understand its past and construct a strong collective memory. It further suggests that the role of custody and the obligations of the custodian must be examined through the prism of access. This article explores the principle of archival custody as it has developed primarily in the English-speaking world through its European foundations.¹⁵ It examines the historical background of custody, its mid-twentieth-century evolution into postcustodialism, and its relationship to access. A corollary to the custody/access proposition is the author's firm belief that custody as an archival concept has evolved

12 For a more detailed account of the records removed to Denmark and the United States, see Bastian, "A Question of Custody." The Danish National Archives currently houses approximately 4,000 linear feet of Danish West Indian Records; NARA has approximately 2,000 linear feet.

13 The United States Virgin Islands, an unincorporated territory of the United States, was administered by the U.S. Department of the Navy from the transfer in 1917 until 1932 when responsibility for the territory was transferred to the U.S. Department of the Interior where it still remains today.

14 These records, including the pre-1917 records created by the Danish colonial government and the post 1917 records created by the American government are located primarily in NARA's RG44.

15 While this discussion focuses primarily on custodial developments in North America, England, and Australia, these developments were strongly influenced by the European thinking of the *Dutch Manual*. The actions taken by Denmark in 1919 as recounted by Danish archivists Olsen and Saxild (see footnote number 12) also seem to fall within the European concept of custody as expressed in the *Dutch Manual*. See the discussion on page 84.





in response to societal needs. While the nineteenth and early twentieth centuries could contemplate custody as an end in itself, the current desire among disparate communities worldwide for identity and self-realization suggests a compelling need for access to historical records. The impoverished archival situations of postcolonial societies, such as the United States Virgin Islands, whose past is often interpreted for them by scholars outside the community, indicates not only that custody decisions made without full consideration of all aspects of the record creating communities may pose burdensome and sometimes insurmountable access obstacles for these communities,¹⁶ but also that the existence of these obstacles jeopardizes and calls into question the validity of the entire custodial role. This article proposes an expanded definition of custody in which access, in addition to control, plays a central role in fulfilling the custodial obligation. This expansion is based on the idea that the creation of collective memory by nations, communities, or groups of people depends upon their ability to access their own cultural heritage including historical records. Providing access therefore becomes an integral component of custody.

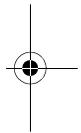
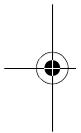
Custody: A Brief History

Prior to the twentieth century, custody played an uneven but important role in the keeping of records. Although the contemporary concept of custody as the legal and physical control of records by an archival institution is a relatively recent phenomenon, studies of archives in ancient times indicate that some notion of controlling public and even private records through physical custody in a central facility, in addition to the desire to retain records as evidence of actions and transactions, has been present since early records creation. Ernst Posner identifies the clay tablet archives of the Assyrians (ca. 2100 BC) as the earliest effort at record-keeping.¹⁷ These records – primarily lists, accounts, land records, and contracts – discovered during archaeological excavations, were generally accumulated in single locations, although, as Posner indicates, the concept of an archival institution which collects the records of many creators is only about 250 years old.

The importance of the control of records to the bureaucratic governance of ancient Egypt and to the lives of the people is well illustrated by Posner's account of a revolt towards the end of the sixth dynasty, revolution around

16 Copying projects such as those initiated by the United States, Canada, and Australia in the nineteenth and twentieth centuries have not been options for "developing" countries where preservation and care of historical records are generally not a well-funded activities.

17 In *Archives in the Ancient World* (Cambridge, 1972), pp. 3–70, Posner identifies the Assyrians as the earliest records-keepers; however, the birth of records themselves has been traced to 3500 BC and the use of "bullae" or clay seals as signifiers for "registering transactions and managing an accumulated wealth," in Henri-Jean Martin, *The History and the Power of Writing* (Chicago, 1994), p. 9.



2200 BC, in which a mob not only destroyed the capitol of Memphis and the monuments of the Pharaohs but also turned on the records office “as the custodians of hated property rights.”¹⁸ The destruction of official records by angry mobs occurs repeatedly throughout history, most famously during the French Revolution,¹⁹ and the frequently menacing grip that records held over the lives of ordinary people is a thread running throughout the history of record-keeping, indicating that the early role of the custodian was often one of power. Control of the records meant control of the subjects of the records.²⁰ Access was limited to the “keepers.” This custodial role is emphasized by Michael Clanchy, who points out in his comprehensive study of writing and literacy in medieval England,²¹ that during the middle ages the royal archives had no permanent home but were moved around with the king’s household and that their safekeeping depended on the reliability of the archivist. He writes that although both the twelfth and thirteenth centuries were great periods of making and keeping documents, medieval governments did not necessarily see the formation of a single archives as an obvious step.²²

Since the Domesday Book survey in the eleventh century and the establishment of the Exchequer in the twelfth, taxation and property rights were the government’s primary motive for making and keeping records.²³ Clanchy credits Archbishop Hubert Walter with implementing the concept of a central government archives in the latter part of the twelfth century; however, this did not mean that all archives were kept in a central depository, but rather that

18 Posner, *Archives in the Ancient World*, pp. 71–85.

19 A comprehensive account of record destruction during the French Revolution can be found in Judith M. Panitch, “Liberty, Equality, Posterity?: Some Archival Lessons from the Case of the French Revolution,” *American Archivist* 59 (Winter 1996), pp. 30–47.

20 Classicist Rosalind Thomas (on records in ancient Greece) and archival historian Richard Brown (on fourteenth-century Italy), discuss records destruction, either as a planned amnesty to “wipe the slate clean” or as the result of civil unrest. Thomas’s *Literacy and Orality in Ancient Greece* (Cambridge, 1992) notes that “The amnesty decree of Patrocleides of 405 (Andoc.1.76–9) enfranchised several groups and provided for the obliteration of their names on certain damaging documents. This meant total obliteration of their ‘criminal record’ ... it was meant to preserve a man’s reputation rather than destroy all memory of him,” pp. 137–138. Brown, in “Death of a Renaissance Record-Keeper: The Murder of Tomasso da Tortona in Ferrara, 1385,” *Archivaria* 44 (Fall 1997), pp. 1–43, analyses “at least four categories of records destruction which commonly occurred at this time.” Similarly French historian Henri-Jean Martin, in a lengthy treatise on the history of writing, reminds us that “very early in history, writing served to remind people of the debts and obligations that they contracted with one another,” and, more to the point, that “writing was above all a means to domination and to the establishment of hierarchy, hence it was an expression of the ideology of a limited elite.” Henri-Jean Martin, *The History and Power of Writing*, Lydia G. Cochrane, trans. (Chicago, 1994), pp. 74, 27.

21 M.T. Clanchy, *From Memory to Written Record, England 1066–1307*, 2d ed. (Oxford, 1993).

22 *Ibid.*, p. 70.

23 *Ibid.*, p. 72.

similar records were kept together. As documents accumulated it had become increasingly impractical and unnecessary to cart them around in chests.

In 1320, the idea of housing all the royal archives in one central depository was broached when the Knights Templar, who had been the custodians of the largest collection, were dissolved. Clanchy observes that, “the idea of having a central royal archive in a fixed place under the king’s direct control had at last been realized, but the government let the opportunity slip and many of the records were returned to their former repositories. The records were not again brought under a single custody until the *Public Record Act* of 1838.”²⁴ Clanchy paints a picture of disorganized record-keeping and haphazard control. With no central repository, records such as land charters and similar valuable documents were sometimes handed over to the safe custody of the church, but often they were kept by the owners and, just as often they were stolen.

The keeping of records, in terms of their careful control, did not materially improve in England over the next six hundred years. Arthur Agarde, Deputy Chamberlain of the Exchequer circa 1600 complains of the destruction of records through negligence in his *Compendium of Record*.²⁵ In 1838, the passage of the *Public Record Act* in England mandated the bringing of all public records into the custody of the Master of the Rolls and provided for the appointment of a Chief Record Keeper.²⁶ It was not until 1849, however, that a site for one centralized facility, the present Public Record Office (PRO), was agreed. Although initially only legal records were included under the Act, by 1854 state papers previously housed in a separate facility were added as a branch and the PRO was established as the national repository for all public records. In 1958, under a new *Public Record Act*, the Lord Chancellor replaced the Master of the Rolls as the custodian for public records. A publication celebrating the one hundred and fiftieth anniversary of the PRO, *The Records of the Nation: The Public Record Office 1838–1988, the British Record Society 1888–1988*, makes it clear that, initially, the bringing of records into custody meant only the bringing of them under the control of one institution and ideally under one roof.

²⁴ Ibid., pp. 165–66.

²⁵ “There is a four fold hurt that by negligence may bring wrack to records, that is to say: fire, water, rats and mice, misplacing. Which may be prevented, so far forth as man’s wit may do (because all things are vain and perish daily) by a fourfold diligence and care to be had about them. There followeth yet a last danger worse than some of the former, that is even plain taking of them away.” Quoted by Elizabeth M. Hallam in “Nine Centuries of Keeping the Public Records,” in G.H. Martin and Peter Spofford, eds., *The Records of the Nation: The Public Records Office 1838–1988, The British Record Society 1888–1988* (Woodbridge, 1990), p. 23.

²⁶ G. H. Martin and Peter Spofford, eds., “Opening Address of the Lord Chancellor, the Right Hon. The Lord Mackay of Clashfern,” in *The Records of the Nation: The Public Record Office 1838–1988, The British Record Society, 1888–1988*, p. 2.



Custodial Development in the Twentieth Century

It was against this background that Hillary Jenkinson published *A Manual of Archive Administration* in 1922, the first codification of archival principles in English. The *Manual* was originally published as part of a projected scholarly series on the “Economic and Social History of the World War” to present a plan for the management of war archives following World War I. It is clear from this, as well as from Jenkinson’s other writings, that the decentralized situation of British archives profoundly influenced his determination to provide a rigid and prescriptive consistency to the keeping of records. Writing in 1944 about British archives during the Second World War, Jenkinson observed:

England differs from all the other great archives-owning countries of Europe in that there is no central control of all this mass of archives ... you cannot fail to realize how it must affect the thoughts and activities of anyone in England who takes the view that all the archives of the nation, without exception, are by their nature related parts of a single whole and that their treatment should be conditioned by that consideration.²⁷

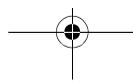
While the nineteenth century had seen the publication of some theoretical archival treatises by French and German archivists,²⁸ it was not until 1898 that a comprehensive manual which both articulated archival principles and gave practical rules on the care of archives was published by the Dutch archivists S. Muller, J.A. Feith, and R. Fruin. Their *Manual for the Arrangement and Description of Archives*, referred to colloquially by archivists as *The Dutch Manual*, was the first of its kind and it had a major influence on international archival development.²⁹ While Muller, Feith, and Fruin were concerned with the establishment of generally accepted rules governing the orderly transfer of records, their manual tended towards a pragmatic and practical approach to custody. They clearly recognized the logistical difficulties of maintaining continuous control over records that had survived for centuries in various stages of neglect within the fluid and unpredictable nation states of nineteenth-century Europe. Equally, Muller’s initial archival assignments which involved bringing order to a chaos of medieval records may have tempered his concerns about custody.³⁰ Section 38 of the *Manual* states “Documents which after hav-

27 Hilary Jenkinson, “British Archives and the War,” *American Archivist* 7 (January 1944), p. 5.

28 Maynard Brichford, “The Origins of Modern European Archival Theory,” *Midwestern Archivist* 7 (1982), pp. 87–99.

29 Terry Cook, “What is Past is Prologue: A History of Archival Ideas Since 1898, and the Future Paradigm Shift,” *Archivaria* 43 (Spring 1997), p. 21.

30 Both Maynard Brichford and Eric Ketelaar discuss Muller’s initial tasks of arranging disordered, non-current documents as motivating him to devise his own rules of arrangement. Brichford, “The Origins of Modern European Archival Theory,” p. 94; Eric Ketelaar, “Archival Theory and the Dutch Manual,” *Archivaria* 41 (Spring 1996), p. 33.





ing once disappeared from an archival collection are again returned to it by gift or purchase may resume their place in it if it is perfectly clear that they originated in that collection."³¹

The Dutch Manual's prescription for maintaining evidential control takes the form of recommending that custody transfer should take place according to a uniform set of guidelines and suggesting that the archivist recognize "intended custody." It advises the archivist to accept control of all records "because transfers of a document by later custodians cannot take away from its archival character."³² Records were accepted into the Archives "in so far as these documents were intended to remain in the custody of that body or that official."³³

To Jenkinson, however, custody was the "*sine qua non*" for determining whether a document was archival, and indeed, he modestly recognized that the concept of continuous custody was a uniquely British contribution to archival science.³⁴ Rejecting the more flexible viewpoint of *The Dutch Manual*, Jenkinson's *Manual of Archive Administration*, provides a rigid framework for custody that in essence raises it to the level of an archival principle, one that underpins his moral and physical defense of the archival records:

Archive quality is dependent upon the possibility of proving *an unblemished line of responsible custodians....* The question naturally suggests itself, what is the criterion of custody? It would seem that the custody of any given person or official must not cease without his expressly handing over his functions as Archives-keeper to some other responsible person."³⁵

Jenkinson's *Manual* laid out the formal procedures which provided a framework for American T.R. Shellenberg's seminal work, *Modern Archives: Principles and Techniques*, published in 1954 and based on the practices at the National Archives of the United States. While Schellenberg accepted many of Jenkinson's archival principles, he rejected the concept of continuous custody as being both burdensome and unrealistic in a modern records context, pointing out that the complexity of modern records and records production made any attempt at tracing "unbroken custody" futile. He recommended instead that records be accepted as archives by an institution if they met other essen-

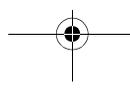
31 S. Muller, J.A. Feith and R. Fruin, *Manual for the Arrangement and Description of Archives*, 2d. ed., Arthur H. Leavitt, trans. (New York, 1968), p. 98.

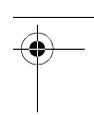
32 Ibid., p. 17.

33 Ibid., p. 13.

34 Jenkinson, *A Manual of Archive Administration Including the Problems of War Archives and Archive Making*, p. xi. See also p. 9, "for it is upon this question of custody that English Archives and Archive practice may make some real contribution to the sum of Archive Science."

35 Ibid., pp. 11, 38.





tial tests on the “reasonable assumption” that they are actually records of the office that offers them.³⁶

While Schellenberg did not see custody as a way of authenticating a document that came into the archives, he did see it as a way of preserving evidential values once the documents were transferred to the archives. To formalize this preservation, he presented the concepts of physical and legal custody, which today remain as the twin pillars governing records transfer in the United States. Custody is currently defined by the National Archives of the United States as “Guardianship, or control, of records, including both physical possession (physical custody) and legal responsibility (legal custody), unless one or the other is specified.”³⁷ The custody obligation is fulfilled when an archival facility formally takes in records from a records-creating agency and thereby assumes both legal and physical custody of the records.

Schellenberg’s book was published only twenty years after the establishment of the National Archives in 1934. His approach to custody undoubtedly resulted from the very slow recognition of the need for a centralized federal archives in the United States. Until 1934, there was no such facility for federal records. During the eighteenth and nineteenth centuries, federal, state, and local records were kept in various locations around the country but often became victims of fire or were moved about from place to place. Persistent lobbying beginning in the 1890s by the American Historical Association, most notably by J. Franklin Jameson, its President,³⁸ eventually resulted in passage of the *Public Buildings Act* of 1926 which provided funding for a National Archives for the purpose of housing federal records. The cornerstone for the building was laid on 20 February 1933.

The new National Archives “was faced with a backlog of nearly two centuries of the nation’s records.”³⁹ Small wonder that with records coming in from all over the country, Schellenberg dispensed with “continuous custody” and insisted that records, once transferred to the archives, be under the complete responsibility of the archivist. He also removed “continuous custody” from discussion by defining custody in terms of public ownership so that, “when public records are transferred from the custody of one agency to that of another, there is no transfer of ownership for the records were and continue to be the property of the state.”⁴⁰

Taking Schellenberg’s sense of the public ownership of records one step fur-

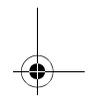
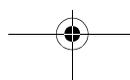
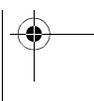
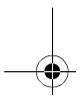
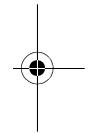
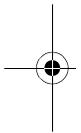
36 T.R. Schellenberg, *Modern Archives: Principles and Techniques* (Chicago, 1956), pp. 14–15.

37 National Archives and Records Administration, *Disposition of Federal Records; A Records Management Handbook* (Washington, DC, 1992), p. D-4.

38 For a detailed account of the establishment of the National Archives see Victor Gondos, Jr., *J. Franklin Jameson and the Birth of the National Archives, 1906–1926* (Philadelphia, 1981).

39 H.G. Jones, *Local Government Records: An Introduction to their Management, Preservation and Use* (Nashville, 1979), p. 16.

40 Schellenberg, p. 125.





ther, his contemporary, state archivist Margaret Cross Norton⁴¹ suggested that the custodian becomes the servant of the people. She pointed out that “our officials do not own the records which they create but merely act as custodians of the records on behalf of the people.”⁴² Norton also enlarged upon the relationship between the role of the custodian and the rules of evidence:

It is the rule of evidence that the existence of an official document in the appropriate official custody is sufficient evidence of its genuineness to go to the jury. First, the original document itself may be presented by its legal custodian, who takes oath verbally before the court that this is the document in question. In the case of a public record it is improper for the custodian to remove the record from its legal repository without a subpoena from the court.⁴³

In terms of access, although both Jenkinson and Schellenberg considered provision of public access an important archival function, the custodial responsibility spoke primarily to the protection of the records themselves, and only secondarily to use. When it did so, that use was part of the custodian’s regulating and controlling responsibilities.

Custody vs. Postcustodialism

While the custody principle articulated by Jenkinson remained accepted practice in England and was imported, with modifications, to Canada and Australia, custody as defined by Schellenberg became accepted and unquestioned archival practice in the United States until 1980 when F. Gerald Ham, then State Archivist of Wisconsin, ignited a debate over archival custody that continues unresolved over twenty years later. Ham’s address, “Archival Strategies for the Post-Custodial Era,”⁴⁴ questioned and challenged the accepted concepts of custody as formalized by Jenkinson and revised and redefined by Schellenberg.

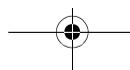
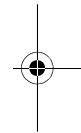
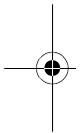
To Jenkinson, the archivist was the passive custodian and “keeper” of records whose principal task was to protect and defend the record; to Schellenberg the archivist remained primarily in the role of “keeper” but became more selective in what was “kept.” Once the selection had been made, how-

41 Margaret Cross Norton was the State Archivist of Illinois during the 1940s. Her remarks on the legal aspects of archives were part of her Presidential Address to the Society of American Archivists, 8 November 1944.

42 Margaret Cross Norton, “Some Legal Aspects of Archives,” *American Archivist* 8 (January, 1945), p. 5.

43 *Ibid.*, p. 10.

44 The address was given at a plenary session of the SAA annual meeting in Cincinnati on 1 October 1980. A slightly revised version was published in *The American Archivist*. F. Gerald Ham, “Archival Strategies for the Post-Custodial Era,” *American Archivist* 44 (Summer 1981), pp. 207–16.





ever, the archivist exercised both physical and legal control of those records. Ham suggested that in an age of increasing record abundance that threatened to overwhelm archival institutions, archivists needed to rethink their custodial role and devise proactive strategies to manage archives and retain legal custody. He coined the term “postcustodial era” to herald a new age in which archivists would not be merely keepers of records, but managers of records within the context of a technological society. Ham pointed out that “although once valuable, our perception of ourselves as custodians has now become a deterrent to the effective management of the national record.”⁴⁵ Speaking at a time when the use of electronic documents was just beginning to develop in government agencies, Ham foresaw the custodial predicament inherent in trying to be a physical “keeper” or “controller” within electronic record-keeping environments. Postcustodialism as envisioned by Ham involved turning around a mindset in which the archivist was the passive receiver of records towards a mentality in which the archivist was a proactive appraiser and manager of records while retaining the legal responsibility necessary to maintain them as evidence.

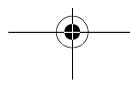
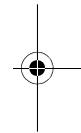
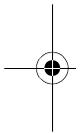
Few archivists in the United States took up Ham’s challenge or pondered the implications of “managing the record.” Those who did, such as David Bearman, Helen Samuels, and Richard Cox, primarily advocated appraisal strategies as ways of approaching the overwhelming magnitude of records creation and the need to document an increasingly complex society. In “Who Controls the Past,” Samuels noted that, “as the integration of institutions has affected modern records so too has the integration of modern information. The body of information that archivists ‘control’ is part of a much larger universe that exists in many forms and is ‘controlled’ by many specialists.”⁴⁶ The banner of postcustodialism, however, was aggressively taken up by Australian and Canadian archivists who were quick to recognize and expand upon its potential. Indeed, discussions of custody and postcustodialism, which had been notably absent in the American professional literature, blossomed in Australian and Canadian journals and it is there that the debate crystallized.

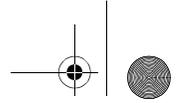
By the 1990s, Canada had established a tradition of tying custody to access. A rethinking of the concept of “total archives,” which favoured a centralized archives system, combined with the Canadian desire to promote and support the cultural identity of its citizens at all levels of community. This fostered the evolution of a decentralized archival system in which the strengthening of provincial archives insured that the records remained close to their point of creation.⁴⁷ In 1980, the Consultive Group on Canadian Archives had issued a

45 Ibid., p. 207.

46 Helen Willa Samuels, “Who Controls the Past,” *American Archivist* 49 (Spring 1986), p. 111.

47 For a comprehensive discussion of the history of “total archives” and the evolution of a decentralized archival system see Laura Millar, “Discharging Our Debt: The Evolution of the Total Archive Concept in English Canada,” *Archivaria* 46 (Fall 1998), pp. 103–46.





comprehensive report on the state of archives in Canada, together with recommendations which included supporting a strong network of provincial repositories in the recognition that “archival materials should remain in the locale or milieu in which they originated.”⁴⁸ This recognition was strengthened by the realization implicit in the creation of many community-based archives in Canada that “many people, communities, and groups do not want their records in the hands of a large centralized government, perhaps transported to archival storage in cities well removed from their point of creation. Since the 1970s there has been a continued decentralization of functions from federal government to province, from province to region, from region to community.”⁴⁹

Australians, who had initially adopted Jenkinson’s vision of custody as supporting the defense of the record rather than merely possession of the record, began to redefine their archival mission in terms of accountability. They embraced the concept of a records continuum. In this construct, both custody and access are points along a continuum in which, “the goal is accountability, as it should always have been, but at the front end this can take on a fierce political dimension, while at the historical end it relaxes into an attempt to get the story as straight as the archival documents can tell it.”⁵⁰

In the 1990s, the twin imperatives of volume and technology introduced new elements to this emerging thinking about new custodial roles. This thinking coalesced around electronic records; battle lines formed over physical custody versus distributed custody. The proponents of distributed custody, initially led by American David Bearman, supported abandoning physical in favour of intellectual⁵¹ and legal control of archives. Records were to remain in the originating office. The legal responsibility and accountability for them is divided between the originating office and the archives. In the distributed custody model, the archives fulfills its responsibility for legal custody by auditing the records and records-keepers. At the same time, it recognizes the needs of the user.

Cultural changes are rendering the physical locus of information increasingly irrelevant. Not only does the technology support easily transmitting information to the user regardless of where the user is, users are increasingly coming to see such reference services as basic rather than extra. If the archives have intellectual control over the records that are deemed archival, it doesn’t matter where records or users are. Unfortunately, custodial habits have devalued intellectual control.⁵²

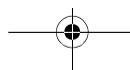
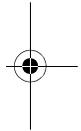
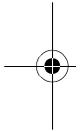
48 Social Sciences and Humanities Research Council of Canada, Consultive Group on Canadian Archives, *Canadian Archives: Report to the Social Sciences and Humanities Research Council of Canada* (Ottawa, 1980), p. 17.

49 Millar, “Discharging our Debt,” p. 131.

50 Frank Upward and Sue McKemmish, “Somewhere Beyond Custody,” *Archives and Manuscripts* 22 (May 1994), p. 137.

51 Intellectual control refers to the control established over the informational content of records.

52 Bearman, p. 19.





Adherents for physical custody, championed by Canadian Luciana Duranti, maintained that the authenticity of the record is destroyed if it is not kept in an archives. Duranti builds a forceful case for continuous custody and the inviolability of archives, introducing the concept of the “archival threshold: – a space where an authorized official takes control of a record before sending it to its permanent resting space.

Acceptance into custody is more than a declaration of authenticity. It is taking responsibility for preserving that authenticity, and it requires taking the appropriate measures for guaranteeing that authenticity will never be questioned, measures that go much beyond physical security ... Because of all this, any document that has passed the archival threshold, for as long as it exists, is truly a permanent monument to its creator’s actions.⁵³

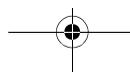
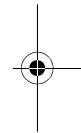
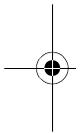
In the United States, the Schellenberg model of physical and legal custody continues to be strongly championed by the National Archives of the United States. Its Center for Electronic Records supports centralized custody to protect and ensure evidential value. In the words of its director, Kenneth Thibodeau, “Archival records have to be preserved in an archival environment: that is, in an environment in which there are adequate controls to guarantee that the records will be preserved and that they will not be altered.”⁵⁴

But while “postcustodialism” in the 1990s became a catchword for the distributed custody of electronic records this did not necessarily address the essence of Ham’s vision. That vision essentially suggested a large theoretical shift in custodial thinking. Terry Cook pointed out that “postcustodial” did not mean “non-custodial.” He defined the postcustodial paradigm as an “overarching conceptual mindset for the archivist applicable whether the records are transferred to the custodial care of an archives or left for some time in a distributed or non-custodial arrangement with their creator.”⁵⁵ Given the opportunities as well as the pitfalls presented by a virtual environment, however, it is not surprising that the polarizing as well as the driving element of the debate is the management of electronic record-keeping systems. While one side adheres to custodial principles which mandate physical and legal control of records in a physical archives no matter what the format, the other side

53 Luciana Duranti, “Archives As a Place,” *Archives and Manuscripts* 24 (November 1996), p. 247.

54 Kenneth Thibodeau, “To Be or Not to Be: Archives for Electronic Records,” *Archival Management of Electronic Records, Archives and Museum Informatics Technical Report no. 13* (Pittsburgh, 1991), p. 12. In the years since this opinion was expressed, NARA has not wavered in its adherence to the application of physical custody to electronic records and continues to defend it. For one such defense, see Linda J. Henry, “Shellenberg in Cyberspace,” *American Archivist* 61 (Fall, 1998), pp. 309–27.

55 Cook, “What is Past is Prologue,” p. 64, note 82.





advocates an evolving approach which transforms the archivist's role from a keeper to a creative manager.

To some extent, however, both sides of this electronic records debate have tended to define custody within the limited context of the archivist's proscribed evidential and legal responsibilities rather than pursuing the Canadian model and expanding the context to include access. Custody only serves an archival purpose in the long term if it accommodates the people and events to whom the records relate as well as the collective memory that the records foster. The current debate often does not come to grips with the implications of custodial control beyond that of the archivist's immediate responsibility to the record, nor does it sufficiently relate custody to the archivist's wider accountability to society. While traditional custodians adhere to a rigid prescription of physical control that rapidly becomes meaningless in a shifting virtual environment, many postcustodialists seem primarily concerned with making their case in opposition to custodialism rather than extending postcustodial thinking to a global context in which control and access to records in any format are the keys to community memory. They seem reluctant to fully recognize that, in the words of Terry Cook, "behind **the record** always lies the need **to record**, to bear evidence, to hold and be held accountable, *to create and maintain memory* (emphasis added)."⁵⁶

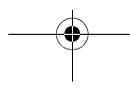
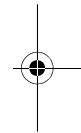
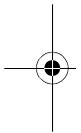
In her 1994 doctoral dissertation, Anne Gilliland-Swetland considered "ensuring the identification and preservation of cultural heritage" as an important archival role related to principles of appraisal.

In all the flurry of developing processes to manage electronic records, particularly in reaction to prominent legal cases, this role seems to have become somewhat submerged. Identifying and preserving cultural heritage, however, if it is to be a goal of institutional appraisal, is certainly more difficult to program into an automated appraisal system than archival needs based on records management principles.⁵⁷

The burgeoning electronic records environment and its consequent implications for the permanence and stability of records increases the need to expand our understanding of the relationships between records and communities if all aspects of records preservation and the memory in the records are to be insured. Although the questions inherent in electronic records management may compel us to think about custody and access in different ways, they only

56 Terry Cook, "Electronic Records, Paper Minds: The Revolution in Information Management and Archives in the Post-Custodial and Post-Modernist Era," *Archives and Manuscripts* 22 (November 1994), p. 302.

57 Anne J. Gilliland-Swetland, "Development of an Expert Assistant for Archival Appraisal of Electronic Communications: An Exploratory Study," (Ph.D. Thesis, University of Michigan, 1995), p. 150.





add a sense of urgency to the debate. The very nature of electronic records creation forces archivists to rethink their processes and suggests the need to make access decisions, in addition to other disposition decisions, at the point of creation.

Some of the most convincing arguments connecting custody and access are made by Margaret Hedstrom, who sees the movement away from centralized custody as a challenge and an opportunity for archivists. She pointed out that, "In considering whether or not archivists should continue to assume a custodial role for records, it is important to bear in mind that the custodial functions required to retain electronic records are quite different from those required to retain paper records."⁵⁸ She encouraged archivists to redefine their roles and, echoing Bearman, to become involved in the process of regulating organizational documentation. Hedstrom did not propose completely abandoning custody, but rather suggested that archivists must focus on access and the needs of users and adapt their methods to meet those needs.

The issue is not whether to have archives or even whether to have one large archives or many small archives. Rather, archivists need to determine how to best meet the needs of users whether the users are the parent organization or researchers from the outside. When the needs of users are best met by transferring electronic records to the custody of an archives and preserving them under archival control, archives should assume physical custody of electronic records. When the needs of users are best met by leaving the records in the creating organization, they should be left there.⁵⁹

Summary

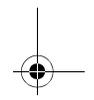
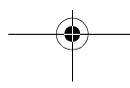
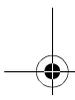
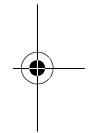
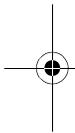
The evolution of custodial theory in concert with developments in technology appear to offer partial solutions to access both through distributed custody and through electronic sharing of information. Today the access problems of the United States Virgin Islands are not so much about the physical location of the records as they are about recognizing the custodial obligation to resolve access issues.⁶⁰ Through a 1999 Bilateral Agreement between Denmark and the Virgin Islands, there are hopeful signs that all the custodians in this case recognize these obligations and are actively working to address them.⁶¹

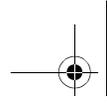
58 Margaret Hedstrom, "Archives as Repositories: A Commentary," *Archival Management of Electronic Records, Archives and Museum Informatics Technical Report no. 13* (Pittsburgh, 1992), p. 27.

59 *Ibid.*, p. 28.

60 Location of the records is only one facet of access. Providing access embraces a wide range of archival activities that include preservation, arrangement, and creation of finding aids and resolving language issues and legal restrictions.

61 On 27 October 1999, Denmark and the Virgin Islands signed a joint agreement to work together towards providing access to the Danish West Indian records under their control. The National Archives of the United States is also a party to this agreement.





This brief history of custody suggests that the control of records has been a basic consideration for societies since ancient times and that it continues to evolve. Whether the control is physical, legal, or intellectual it is a fundamental attribute of an archive and therefore must be considered in any archival construct. Rather than being fixed and immutable, custody is a developing principle that reacts to the record-keeping practices of its time. The custody practices formulated by both Jenkinson and Schellenberg, for example, responded to specific records problems that they encountered. In the early twenty-first century, as the Virgin Islands case attests, access to archival memory and historical identity have become the imperatives that were recognized by the 10th International Congress on Archives in 1984 when it passed a resolution affirming that, “each country should hold, within its territory, all records and archives relating to its national heritage....”⁶² While postcustodialism is only the most recent step in the evolving development of custody theory, it offers strategies for providing that access.

A further step in the evolution of postcustodial theory would expand the recognition of access as a primary responsibility of the custodian, whether in a distributed or centralized records environment. In a shrinking world in which heritage and identity have emerged as compelling social issues, access would be integral to accountability. Any custodial system would include the assurance of continuing access for those communities or peoples whose history it represents. That access is already part of this discussion is clearly demonstrated by Australian archival educator Frank Upward: “in cultural history and heritage models, the relevance of the new post-custodial approaches is certain enough and can be expressed with reference to the role of archival documents as sources of knowledge about past actions, and transmitters of culture across space and through time. In this context archivists’ best efforts are directed at seeing that the story is as well told and as accessible as possible.”⁶³

As the Virgin Islands example demonstrates, cohesive and reliable construction of collective memory by nations, communities, or groups of people depends upon their ability to access their own historical records in addition to the artifacts, traditions, folk histories, and other memorializations of their pasts. Access therefore is integral to the custody of those records and must be part of any debate about their care and control. Similarly, any implementation of custodial paradigms in designing records structures for electronic systems must also consider access. While on one level the custodial debate may seem to be a disagreement among archivists about records placement and control, on another level it has profound implications for the potential use of archives in nurturing community and nation.

62 *Proceedings of the 10th International Congress on Archives* (Munich, 1986), p. 325.

63 Upward and McKemish, p. 140.

