LESSONS OF THE VIENNA CONVENTION (1983) ON ARCHIVAL DECOLONIZATION

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**Case One**  
Forgetting Haiti & Algeria from the first to the fifth French Republic: *archival fictions* in the history of our profession

**Case Two**  
*Total archives* in settler Canada: *archival fictions* in the (de)colonization of land

**Case Three**  
The Vienna Convention on the Succession of States in respect of State Property, Archives, Debt (1983)

**Conclusion**  
Future directions: rethinking provenance in archivy
Forgetting Haiti & Algeria from the first to the fifth French Republic: archival fictions in the history of our profession
Musée des Archives Nationales in Paris

Photograph by J.J Ghaddar (Paris, May 2018)
My turn to state an equation: colonization = ‘thingification’. [para] I hear the storm. They talk to me about progress, about ‘achievements,’ diseases cured, improved standards of living. I am talking about societies drained of their essence, cultures trampled underfoot, institutions undermined, lands confiscated, religions smashed, magnificent artistic creations destroyed, extraordinary possibilities wiped out. […] So the real problem, you say, is to return to them. No, I repeat. […] For us, the problem is not to make a utopian and sterile attempt to repeat the past, but to go beyond.

Case Two

Total archives in settler Canada: archival fictions in the (de)colonization of land
Kent Monkman’s *The Scream* (2016) | For exhibition, *Shame and Prejudice: A Story of Resilience* @ Art Museum, University of Toronto for 150th anniversary of Canada
Total archives in Canada

Left: Douglas Brymner (1823 – 1902)

Right: Arthur Doughty (1860-1936)
Milestones in the development of *total archives* & Canadian national archives

1824: Literary and Historical Society of Québec founded in the era of increasing settler self-governance

1867: British North America Act passed; Canadian Confederation begins with ON, QC, NS and NB

1870: Manitoba and the Northwest Territories join Confederation

1871: British Columbia joins Confederation

1872: Brymner appointed Senior Second-Class Clerk at Dept. of Agriculture’s Archives Branch

1873: Prince Edward Island joins Confederation

1898: Yukon joins Confederation

1903: Dominion Archives = Ministry of Agriculture’s Archives Branch + Department of the Secretary of State’s Records Branch

1904: Doughty becomes Canada’s first full-fledged Dominion Archivist & Keeper of Records

1905: Alberta and Saskatchewan join Confederation

1912: *An Act Respecting the Public Archives* transforms Dominion Archives into Public Archives of Canada under supervision of the Prime Minister, elevating Doughty into a deputy minister

1941: The War Museum in Canada established based on Doughty’s earlier work

1949: Newfoundland and Labrador join Confederation

1952: The National Library established based on Doughty’s earlier work

1970s: Canadian archivists coin the term ‘total archives’, linking it to inclusion and pluralism

1985: Canadian Council of Archives founded to lead establishment of Canadian National System

1987: *National Archives of Canada Act, 1987* renames the Public Archives as the National Archives

2004: *Library and Archives of Canada Act* amalgamates National Archives + National Library = LAC
The Spectre in the Archive: Truth, Reconciliation, and Indigenous Archival Memory

J.J. Ghaddar

Abstract

This article places archival science, Indigenous studies, and critical theories on race and colonialism in dialogue so as to explore two court cases related to records and the Truth and Reconciliation Commission in Canada. It questions on what basis the courts would rule that some records were to be produced, others temporarily preserved, and yet others destroyed. Considering recent scholarship calling for a shift from a human rights and diversity rhetoric in the archival conversation, I argue that the discursive shift towards racedness and coloniality affords a new interpretive framework to the archival record.
Total archives for land, law and sovereignty in settler Canada

J. J. Ghaddar

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Introduction: remembering the history of the land

“Too often in contemporary times we are presented with a worldview that renders us incapable of visioning any alternatives to our present situation and relationship with colonial governments and settler states. Indigenist thinkers compel us to return to our own knowledge systems to find answers. For the Nishnaabeg people, [the Dish with One Spoon / Gdoo-naaganinaa] does just that. It gives us an ancient template for realizing separate jurisdictions within a shared territory. [...] It is time to decolonize our relationships with our neighboring nations, and it is time to decolonize our relationship with the Canadian state.”

Case Three

The Vienna Convention on the Succession of States in respect of State Property, Archives, Debt (1983)
Key International Legal Instruments on Archives & Heritage Driven by Third World

- UNESCO Recommendation for the Protection of Movable Cultural Property (1978)
- Vienna Convention on Succession of States in respect of state property, archives & debt (1983)
Vienna Convention (1983): Part III State Archives, Section 1. Introduction

Section 1. Introduction

Article 19 Scope of the present Part
The articles in the present Part apply to the effects of a succession of States in respect of State archives of the predecessor State.

Article 20 State archives
For the purposes of the articles in the present Part, “State archives of the predecessor State” means all documents of whatever date and kind, produced or received by the predecessor State in the exercise of its functions which, at the date of the succession of States, belonged to the predecessor State according to its internal law and were preserved by it directly or under its control as archives for whatever purpose.

Article 21 Effects of the passing of State archives
The passing of State archives of the predecessor State entails the extinction of the rights of that State and the arising of the rights of the successor State to the State archives which pass to the successor State, subject to the provisions of the articles in the present Part.

Article 25 Preservation of the integral character of groups of State archives
Nothing in the present Part shall be considered as prejudging in any respect any question that might arise by reason of the preservation of the integral character of groups of State archives of the predecessor State.
The States Parties to the present Convention,

Considering the profound transformation of the international community brought about by the decolonization process, Considering also that other factors may lead to cases of succession of States in the future,

Convinced, in these circumstances, of the need for the codification and progressive development of the rules relating to succession of States in respect of State property, archives and debts as a means for ensuring greater juridical security in international relations...

Emphasizing the importance of the codification and progressive development of international law which is of interest to the international community as a whole and of special importance for the strengthening of peace and international cooperation,

Believing that questions relating to succession of States in respect of State property, archives and debts are of special importance to all States,

Having in mind the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms...

**Article 28 Newly independent State**

1. When the successor State is a newly independent State:

(a) archives having belonged to the territory to which the succession of States relates and having become State archives of the predecessor State during the period of dependence shall pass to the newly independent State;

(b) the part of State archives of the predecessor State, which for normal administration of the territory to which the succession of States relates should be in that territory, shall pass to the newly independent State;

(c) the part of State archives of the predecessor State, other than the parts mentioned in subparagraphs (a) and (b), that relates exclusively or principally to the territory to which the succession of States relates, shall pass to the newly independent State....

4. The predecessor State shall cooperate with the successor State in efforts to recover any archives which, having belonged to the territory to which the succession of States relates, were dispersed during the period of dependence...

7. Agreements concluded between the predecessor State and the newly independent State in regard to State archives of the predecessor State shall not infringe the right of the peoples of those States to development, to information about their history, and to their cultural heritage.
Three principles, based on provenance, were developed to govern the settlement of disputes:

1) The *retroactive sovereignty* principle, which means that the archives produced by administrations and institutions in charge of managing the business of the territory that has become a newly independent state are devolved to the new state.

2) The *territorial origin* principle, according to which the archives produced by the territory before it became dependent, and then incorporated in the archives of the annexing or supervising state, are bound to the successor state. This principle also requires the restitution of the public and private archives seized by belligerents during hostilities or by the occupying authorities.

3) The *functional pertinence* principle, observed by most of the treaties signed after a change of sovereignty, means that the transfer of power and responsibilities must be accompanied by the transfer of archives that are necessary for administrative continuity to be ensured.

Society of American Archivists’ Glossary of Terms:

**territorial pertinence**
- n. ~ The practice of placing documents with content relevant to a region in a repository within the region. Notes: Territorial pertinence is distinguished from territorial provenance. For example, under territorial pertinence, records relating to a newly formed country would be transferred to the new country; under territorial provenance, the records would remain with the agency that created them.

**pertinence**
- Related Term
- n. ~ A principle of arranging records based on content, without regard for their provenance or original order.

**functional pertinence**
- n. ~ The activity or program (function) to which records relate.
“Archives ... not only document the historical, cultural and economic development of a country and provide a basis for a national identity they are also a basic source of evidence needed to assert the rights of individual citizens. Changes in territorial boundaries and sovereignty have deprived many countries of at least part of their rightful archival heritage. It is important to all nations and to mankind generally that the problem of providing access to archives, and their restitution ... where ... required, should be dealt with urgently.” (UNESCO as quoted in ACARM 2017, 3)
An Evolving ICA

“Since about 1960 there has been a radical change in the relatively modest level of activity characteristic of ICA's earlier period. As the organization matured, as its small, originally Europe-oriented membership grew to encompass most of the world, as it became more fully aware of the archival needs of that world, there occurred gradually a manifold expansion of the range of ICA's substantive activities…”

provenance

*n. (adj., provenancial)  \PRAH-va-\nens\ also  \PROH-va-NAHNSS\*

1. the origin or source of something  (View Citations)
2. information regarding the origins, custody, and ownership of an item or collection  (View Citations)

Notes

Provenance\(^1\) is a fundamental principle of archives, referring to the individual, family, or organization that created or received the items in a collection. The principle of provenance or the respect des fonds dictates that records of different origins (provenance) be kept separate to preserve their context.
ISAD(G): General International Standard Archival Description - Second edition

CBPS - Sub-Committee on Descriptive Standards
1 September 2011

Type: Standards

Languages:
- English
- French
- Spanish
- Welsh
- Czech
- German
- Dutch
- Greek
FUTURE DIRECTIONS: RETHINKING PROVENANCE IN ARCHIVY

Conclusion
“The Convention expresses a *provenance in place* framework, that is, it considers that archives should be kept together based on the place they pertain to and in that place, rather than by creator as per classical archival theory. It is about how we bring archives together, how we arrange them physically and intellectually, and how we describe and make them accessible. At all these points at which archivists exercise control over records, we can center place and records subjects in parallel to the creator, owner or custodian. For ISAD-G, we can begin by...”

“Acknowledging land is important to do in settler societies because these societies otherwise only consider land as property. But more important is to acknowledge the relationships to land that Indigenous peoples as specific peoples have engaged since time immemorial. To acknowledge land at the start is only a start, but a necessary start to any gathering that hopes to be responsible to Indigenous peoples’ meaningful and ongoing relationships to land.”

– Dr. Eve Tuck
4 Key Principles in European Law of Archives Tradition (14th ct. until about 1939/WWII)

1) The predecessor state gives to the successor state the documents necessary for exercising sovereignty and ensuring administrative continuity. The list of archives to be transferred or duplicated is established by agreement between the two parties.

2) The archives displaced during the period the state was dependent are returned when the state becomes independent again.

3) Archives seized and displaced during a war are returned at the end of hostilities to the power against whom the war was being waged.

4) A fourth principle was added during the twentieth century, according to which the provisional occupying military authorities’ archives would remain the property of the occupying power.

Yet with Third World Political Decolonization....

“Though the problem of displaced archives has a long history, it continues to trouble archivists, historians and government officials. What is striking is that there has been no serious multilateral action on the problem for thirty years.”


- Repatriation
- Joint heritage
- Reproduction
  - Microfilming
  - Digitization
- Consultation and negotiation
  - Conciliation
  - Judicial settlement (ICJ)
  - Commission opinion

*The Convention is based on a “plurality of provenance” or “provenance in place” framework that brings records of different creators together based on place, not just creator.*
QUESTIONS
DISCUSSION

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