

InterPARES Trust Project Report



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What Was the Duty to Document?

Archival theory hinges on the notion that records are trustworthy because they are *incidental* proof of transactions, rather than purposeful documentation of events. Narratives created for posterity are biased as soon as the words leave the pen, by virtue of the fact that a human is creating them with some sort of intent; records, created during the normal course of business, are the best form of objective evidence. "...the expression "create evidence" is an oxymoron, as nothing that is generated for the sole purpose of serving as evidence of something – unless this is required by law, that is by an entity external to the creator itself, as in the case of probative records – is admissible as evidence."¹ This concept is illustrated by an example of a lawyer using a client's credit card history pulled from bank records to prove their whereabouts, versus using the client's own manual home budgeting spreadsheet. One is the automated byproduct of everyday activity; the other is an artificially compiled list of those activities, which could be missing information. When it comes to evidence, the bank records are going to be far more reliable.

The concept of a duty to document—the idea that one is compelled to create a record by law or decree—is not totally absent from history, but it only crops up in bits and pieces, because of the incidental nature of records. In antiquity, civilizations with centralized governments and bureaucratic administrations recognized the importance of records and record keepers,² and even before the establishment of archives it became clear that original sources were an important way to keep order in society. "The creation of meaningful and usable records and the appropriate maintenance of those which are necessary to future action constitute the pillar on which a society rests and evolves."³ There is one brief instance of what could be called a proto-duty-to-document; Duranti references ancient Roman recordkeepers having a "duty imposed by the central government"⁴ to record their actions and preserve their records.

After the Dark Ages and the rise of Charlemagne, states established repositories and enacted laws which governed how records had to be filed, classified, and indexed—but not necessarily how they were to be created. The act of keeping records was starting to take on formalized rules, as scholars realized the usefulness of records as evidence and helped codify certain elements to help prove their case. "By the time of their official recognition as public officials by Charlemagne the notaries already produced documents according to a standardized internal form which is still present in formal records."⁵ The analysis of this standardized form is called *diplomatics*, a school of thought which was conceived in order to assess the authority of very old documents and prove the rights of the church. "The facts to be proven were clear; the facts proving them had to be the records in the name of which the facts existed and which embedded the relationship necessary to consider them evidence. To diplomatists, therefore, a

1 Luciana Duranti, "The Archival Bond", *Archives And Museum Informatics* 11, no. 34 (1997): 215

2 Luciana Duranti, "The Odyssey Of Records Managers: Part I: From The Dawn Of Civilization To The Fall Of The Roman Empire", *ARMA Quarterly* 23, no. 4 (1989): 5.

3 Luciana Duranti, "The Odyssey Of Records Managers: Part II: From The Middle Ages To Modern Times", *ARMA Quarterly* 23, no. 4 (1989): 10.

4 Duranti, "The Odyssey of Records Managers, Part I": 10.

5 Luciana Duranti, "The Odyssey Of Records Managers: Part II": 4.

record is the most conclusive form of evidence of a juridical fact when it puts the fact into existence (a dispositive record) or when it constitutes required proof of the fact (a probative document).”⁶ It is important to note that none of the formal rules of diplomatic analysis specified the creation of records; they simply laid out which elements were required for a document to be provable as authentic. If a record did not contain a proper seal or attestation of witnesses, there was no punishment doled out to the (non)record’s creator.

The French Revolution is considered by some to be the originating point of our modern approach to archives, as it established the idea of archives as sources of national history and of government records as public property. The Revolution also birthed the distinction between active, current records and disused, historical records, the latter of which were placed into repositories for future reference; this is a framework that has continued to this day, with very few exceptions. The concept of “duty to document” was not created during this time, but the foundational ideas—that records were crucial proof of government functions, and that the public had a right to access them in order to keep the government accountable—were cemented during this turbulent time.

As societies became more and more modernized, especially during and after the Industrial Revolution, the rules of records creation continued to develop. Again, Duranti provides an example:

“At the end of the nineteenth century and the beginning of the twentieth, the methods of administering records were fixed in a number of codes of procedure and sometimes specific legislation for the records offices of government administrations. A significant example of the latter is the Italian Royal Decree of 25 January 1900. Its one hundred articles define the authority and responsibility for the receipt and delivery of records, their registration, classification, filing, retrieval and storage; the physical form of individual records and registries (medium, format, ink), of drafts, originals and copies; the periods of currency and semicurrency of specific series, the methodology for weeding files, and even the times of the day in which the dossiers containing a newly arrived document have to be forwarded to the competent offices for handling.”⁷

It should be noted, once again, that this Decree meticulously outlines many aspects of recordkeeping—but it does not dictate how records are to be created.

A formal duty to document is not completely unheard of, but it does fundamentally violate some basic archival theories. Luciana Duranti coined the term “archival bond” to describe the network of relationships between two records in the same *fonds*, or collection:

The archival bond is *originary*, because it comes into existence when a record is created (i.e., when, after being made or received, it is set aside in the fonds of the physical or juridical person who made or received it for action or reference), *necessary*, because it exists for every record (i.e., a document can be considered a record only if it acquires an

6 Duranti, “The Archival Bond”: 214.

7 Duranti, “The Odyssey of Records Managers, Part II”: 9.

archival bond), and *determined*, because it is qualified by the function of the record in the documentary aggregation in which it belongs.”⁸

This is the crucial thing that makes records such a powerful source of truth and evidence. In fact, the word “record” was defined by diplomatists as “the written testimony or evidence of a juridical fact, produced by a natural or juridical person in the course of practical administrative activity, and kept for action or reference by that same person or its legitimate successor(s).”⁹ This definition has continued into the modern day, even as technologies have changed; a record is, at heart, produced as a result of some activity. The activity itself may be mandated by the organization, and recordkeeping might be part of that mandate. As an example, a company may consult with its legal department and decide that not only will it conduct biennial audits of its finances, but will also keep the records of those audits for three years longer than the legal minimum. This is an instance where the auditors have a duty to document their work. As per Duranti (emphasis added): “In many evidence acts, the admissibility of business records is not only restricted to those which have been created in the usual and ordinary course of business, *but there is the additional requirement that it be the usual and ordinary course of business to create such records*. This criterion is introduced as a disincentive to businesses that might be tempted to introduce self-serving evidence that does not form part of the fulfillment of the business duty, but is simply made in relation to it.”¹⁰

8 Duranti, “The Archival Bond”: 216.

9 Ibid., 214.

10 Ibid., 215.