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*Maine State Archives*

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CHALLENGES TO ARCHIVAL SURVIVAL  
PUBLIC POLICY AND GOVERNMENT ARCHIVES ADMINISTRATION

Samuel S. Silsby, Jr.\*

As many of you are undoubtedly aware, the Executive Branch agencies of Maine State Government were recently the subjects of an efficiency and economy study conducted by a team of businessmen under the direction of a professional firm of management consultants. Some of you may be familiar with such studies, as this particular firm has had consultant contracts in eighteen other states, and is now engaged in a similar survey of state government operations in Florida. These studies, which are designed to utilize the expertise of local businessmen to recommend cost saving efficiencies and economics by applying business methodology to state government, have enjoyed widespread attention in recent years, in a time when inflationary spirals have dramatically increased the cost of state government, when taxpayers are alleged to be in near revolt, and when the prospects of a serious economic recession seem imminent. Governors and state legislatures have therefore been eager to underwrite these efficiency studies, and the concept of a hard-headed, objective study of the government bureaucracy by sound and practical businessmen has considerable popular appeal.

The format for these studies is much the same in each state: The business community donates the funds to support the study and the fees of the professional consultant firm. Under the direction of the consultants teams of businessmen who have been appointed to conduct the study then survey the individual state agencies by on-the-spot investigation and by personal interviews with agency heads and administrators. A report containing recommendations for improvements in economy and efficiency is then submitted to the governor and legislature for implementation.

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\*Mr. Silsby is the State Archivist of Maine. He read this paper at the South Atlantic Archives and Records Conference in Atlanta, May 2, 1974.

The Maine Management and Cost Survey Report was released in September, 1973, following a two-month study completed the previous April. Its recommendations for the Maine State Archives can be summarized as follows: The Maine State Archives was to be abolished as an organizational entity, as was the office of State Archivist itself. The centralized state records management program was to be discontinued, responsibility for the disposition of current records was to be returned to the individual departments, and the State Records Center was to be abandoned. Temporary labor was to be utilized to eliminate the 150 year backlog of executive records that had been transferred to the Maine State Archives and which, due to pressures induced by the need to bring the material into safe custody, had not yet been fully arranged and described. Laboratory services were to be eliminated, and the identified archival holdings were to be transferred to the Maine State Library Bureau, including presumably nearly 300 years of judicial records transferred to the Maine State Archives by the Supreme Judicial Court.

It is not my intention here to describe in detail the events of the intervening months between the release of the report in September and the legislative committee hearing held on February 5, 1974, at which all of these recommendations were unanimously rejected. Suffice it to say that a combination of factors having to do with the vagaries of the current political situation, with the interplay of personalities, with shortcomings of the whole report as it affected the entire executive branch, and a number of unique phenomena not likely to occur in any other state, all contributed in part to that unanimous rejection of the recommendations for the Maine State Archives. But we can draw no comfort from the random set of circumstantial peculiarities that were at work in Maine during that particular period. The fate of the Maine State Archives could easily have been different; the recommendations of the businessmen could well have been implemented if the agency had not had an affirmative policy position and a record of achievement that transcended the then current circumstances. And there is no guarantee that the rejection of the survey recommendations by the most recent legislature is final, or that a worsening economic climate will not revive and revitalize any study that purports to have discovered cost saving expedencies. It should also be noted that none of the state surveys directed by this or any other management consultant firm have produced reports that are very favor-



able to state archival programs; nor can it be expected that similar efficiency studies to come will take a different view. Whether or not states indulge in formal efficiency studies, how can we insure archival survival, or the continued existence of publicly supported programs for the preservation and maintenance of government records during cycles of economic recession or against the pressure of political realities as they are enacted in governmental reorganization? Why are archival and records management programs invariably the losers when streamlining or efficiency drives are unleashed in state government? And how can we reverse the trend, so that archival survival need no longer be a topic for professional gatherings such as this?

In the specific case of the Maine State Archives and the recommendations of the Maine Management and Cost Survey, the fundamental answer was provided by Mr. Herbert E. Angel, in his presentation in defense of the agency's programs to the Legislative Committee on February 5, 1974, an answer reinforced by Dr. Frank B. Evans, who also testified in behalf of the agency and its program. Mr. Angel observed that "The Maine Management and Cost Survey in its study of the Maine State Archives: 1. did not understand what it saw; (and) 2. did not know what proven and effective recommendations to make about what it did see. . ."1

Although the Maine report did not, as is the case with survey reports of other states that we have been able to review, cite any supporting rationale for any of its recommendations, it may be supposed that the recommendations were drawn from whatever general assumptions and premises about the nature of state archival programs the consultant firm may have drawn from its experience in other parts of the country, and by the overall impression that non-professionals might glean from the available descriptive information about state archival programs elsewhere. The Survey's avowed purpose was to eliminate unnecessary programs, marginal operations and frills from Maine State Government, and the comment of one of the management consultants--"Archives! Who needs them!"--is a good indication of the attitude that can prevail if government archival agencies continue to be administered as marginal luxuries, rather than as inherently fundamental government services. We were able to defeat their recommendations because the Maine State Archives has projected itself as a basic government service since its inception, and because the Maine Legislature has consistently supported a policy that recognizes that the responsibility for pre-

servicing, maintaining and servicing its own records is an essential responsibility of government, undertaken for its own continuance as well as for the benefit of all its citizens. This represents, therefore, not a "Maine State Archives policy," although we have articulated it more explicitly than any other archival institution, but a public policy which has long been implicit in the very nature of government itself. It has roots squarely in the Anglo-American tradition of self-government, which, upon analysis, has much to do with the nature and purpose of government record-keeping, and therefore with what ought to be fundamental to government archives administration.

Any discussion of what is or ought to be the nature and purpose of American state government archives must begin with an analysis of the origins of American governmental systems. There are significant differences between the administrative policies of the three great colonial powers who dominated the North American continent. Two of them, the French and the Spanish, because of a variety of economic and social factors as well as a deliberate matter of policy, failed to develop or promote mechanisms for local self-government on this side of the Atlantic. The French transported a limiting system of vestigial manorial feudalism which inhibited rather than encouraged the emigration of large numbers of permanent settlers into the French territories and prevented the development of strong institutions of local self-government. The royal governors and civil administrators, the church and the army were under the direct supervision of hierarchical superiors abroad and reported to them.<sup>2</sup>

The Spanish government neither encouraged the emigration of settlers nor had any significant economic need of them in the new world. Again, an administrative system divided between royal governors and civil servants, the church and the army functioned with an appropriate record-keeping system that had its origins in, and flowed back to, Madrid. The great private landowners operated in a semi-feudal status, with manpower provided by a largely illiterate native population. Those aspects of their daily lives that required record-keeping--births, marriages and deaths--were attended to by the church. Except for census purposes, these vital registry functions were not conducted by civil authorities until after 1789 in France and much later in Spain. Since land titles and inheritance were based upon royal grants subject to laws



of primogeniture and other quasi-feudal procedures, other crucial aspects of what we have come to know as typical of local government record-keeping responsibilities were minimal or totally absent.<sup>3</sup>

The nature of the English administrative attitude toward its colonial possessions in North America, however, provides a dramatic contrast to the French and Spanish systems. Both the theory and practice of English colonial government and the subsequent political system that later emerged produced a very different concept of what the responsibilities and purposes of government should be.<sup>4</sup> Obviously, we are here on well-trodden ground, for most of us are familiar with the philosophical principles and the sequence of circumstances that promoted the American democratic system of government. There has, however, been a conspicuous lack of consideration directed to the implications of this kind of government in relation to its record-keeping practices, and to the responsibilities of government for the documents that are its tangible foundation.

The seventeenth century English charters granted for purposes of colonization in the new world expressed both the conceptual relationship between citizens and government that had been evolved in the mother country, and a unique extension of it for colonial administration. For example, the charters of the London and Plymouth companies granted by James I in 1606 guaranteed to settlers "the same liberties, franchises and immunities as if they had been abiding and born within this our realm of England." The colonists in their own right presupposed that they would live under a system of local self-government and invariably, as a first undertaking, they created the legal means for doing so. Thus the Mayflower Compact of 1620 expressly authorizes the colonists "...by viture hereof to enacte, constitute and frame such just and equal lawes, ordinances, acts, constitutions and offices from time to time, as shall be thought most meete and convenient for ye generall good of ye colony." The subsequent laws, ordinances, acts, constitutions and offices, and corresponding administrative procedures created by these and other colonists were borrowed, with minor modifications, from English practices and precedents. The English system for local administration was highly sophisticated, having evolved over centuries of the continuous exercise of local responsibility on the shire or county and municipal

levels as well as through a decentralized judicial system. The orderly continuity of such a system depended upon administrative and legal precedent which could only be invoked through equally sophisticated record-keeping practices on every level of civil authority. This tradition was, without exception, transmitted into the governmental policy of the thirteen English colonies.

The political history of England in the seventeenth century, which resulted in profound limitations of royal power, further served to intensify the authority and responsibility of political institutions dominated by the citizenry. At the same time, more emphasis was placed upon "character" rights and other legal instruments which delineated the apportionment of sovereignty. Not for nothing did the English parliamentarians resurrect Magna Carta and other documentary precedents to prove the principles by which they opposed the monarchy, so that it might be said that certain records came to take the place of the royal person of the king, and of God as the concrete, tangible foundation of the State. These developments were not lost on the colonists who continued to create such documentation in the form of charters and constitutions to embody civil polity on these shores.

The intellectual ferment of the late seventeenth and early eighteenth century Enlightenment clarified these tendencies to an even greater degree, and Enlightenment thinking constitutes the second great influential force which shaped the early nature and purpose of government record-keeping. The post-revolutionary founding fathers were steeped in the essence of Enlightenment thought, in the principles of natural law and in its implications for political and social institutions. They were acutely conscious of the opportunity afforded to them to implement these intellectual concepts into practical applications. Unlike their European counterparts, they were in a unique position to implement and eventually enforce a form of government which would as practicably as possible embody the rational ideal of the philosopher. And this could only be done by putting the ideal in documentary form to be ever after invoked and used as a final civil authority. Accordingly, "the form of (enlightenment theory). . . became more concrete, less speculative and metaphysical, more positive and merely legal. Natural rights were numbered, listed, written down and embodied in or annexed to constitutions, in the foundations of the State itself."<sup>5</sup> "Congress, before declaring a final



separation from Great Britain in 1776, formally recommended to the Assemblies and Conventions of the Colonies the establishment of independent governments for 'the maintenance of internal peace, and the defense of their lives, liberties and properties.' The constitutions adopted in response to this request. . .(became) the basis of the State governments. . ."6 The federal constitution in turn became the model for the state constitutions which were to follow, in which these abstract principles were also enumerated.

These government records, these constitutions, together with statutes enacted by the federal and state governments which reinforce, extend, amplify, support and clarify the abstract principles of government are likewise to be considered as the foundations of the state itself--an obvious, but often overlooked fact, with considerable significance for government archival institutions. The fundamental character of this type of documentation can readily be comprehended, because these records constitute what is more precisely termed the organic law of the nation and its political subdivisions, or are supportive of it. Officials of the three branches of government who generate and administer these records have tended to preserve them carefully and have rarely permitted them to become alienated, for these constitute ". . .the law of a commonweal, the very soul of a politic body, the parts whereof are by law animated, held together, and set on work in such actions as the common good requireth."<sup>7</sup>

Similarly, records emanating from most registry functions of government, such as records of deeds and land titles, have likewise been viewed as having such an intrinsically official character that their retention and preservation by the government itself has been maintained without challenge. Not so obvious is the equally fundamental character of administrative records, particularly of the executive branch. Yet these records are by their very nature most apt to provide the continuous documentary proof of the government's accountability to its citizens in carrying out the mandates of statutory authority under the constitution and in the expenditure of public funds. A governmental system which exercises its authority by consent of the governed must have the means to account for the stewardship of its officials in the carrying out of a public trust, now and in the past. This is one of the primary purposes of government record-keeping in a democratic system, and therefore, one of the primary purposes of government record preservation. This ought to be the most,



instead of the least, discernible truth about government records in view of the recent pressures for more stringent "right to know" legislation. A corollary to this concept is that records created or received by elected or appointed officials and representatives who exercise authority in behalf of and for the benefit of the entire citizenry belong to the entire citizenry, and should be preserved for the entire citizenry. This has been the implied policy of American government on all levels, and accounts for the survival of a largely intact body of documentation in Maine dating from statehood in the case of the executive and legislative branches and, in the case of the judicial branch, from the seventeenth century.

But unlike judicial records, which never become fully inactive because of precedent and evidentiary value, and unlike legislative acts which have the character of positive law, administrative records of the executive branch in many states have been subject to value judgments which disregard their fundamental character. Because statutes of limitations expire in time, and because the parties involved in past transactions and decisions eventually die, and because their successors in office may seldom need to invoke past documentation for current business, the original character and purposes of these records has often been overlooked and ignored, especially if they are thought to have historical or general research value. Historians and genealogists who have had an intense interest in seeing that these records are made available have been instrumental in establishing archival programs and facilities. Certainly a professional program and appropriate facilities are a desirable goal, for the space provided for these records by the originating agencies is usually inadequate and unsafe; nor can individual agencies provide personnel to meet the exclusive needs of researchers. Unfortunately the solution in many states has been, with the concurrence of special user groups, that any seemingly relevant profession and any seemingly appropriate facility will do. Thus official government records have been alienated into the custody of private organizations and institutions, or transferred to state agencies that are not intrinsically involved with basic functions of government, such as state libraries and museums. It is quite true that these agencies may produce program services that are highly effective in terms of preservation techniques, archival methodology and efficient reference service. But they are solutions that transform archival functions into marginal, "frill" services which, if publicly funded, will surely be questioned

and most probably be eliminated if economic realities require it. Thus, the Maine legislature in 1933 declared that "Whereas, at this particular period the estimated and probable revenues of the state for the ensuing two years will be insufficient to meet the estimated expenditures of the state, based on the requirements of the law as now existing, and Whereas, it is imperative that all disbursements not productive of a corresponding resulting benefit to the state be discontinued at once,"<sup>8</sup> and proceeded to suspend state aid to librarians and the expenses of the State Historian.

If there is also a primary emphasis on the scholarly research value of records to the degree that this becomes the most important purpose for maintaining a publicly funded archives program, if the only rationale provided for funding such a program is to serve the needs of historians, genealogists and other private researchers, then the likelihood of archival survival becomes lessened. Not only is this approach unrealistic for long-term survival, it is a downright distortion and abrogation of the real responsibility inherent in the administration of government records. They are fundamental to the government itself; they belong to the government in trusteeship for all citizens; and the responsibilities delegated to the archivist ought to require him to select and preserve them for those reasons, not for the exclusive benefit of a minority of special users.

One of the factors that has served to distort our understanding of the fundamental nature of government records has been the sheer physical volume of material that concerned individuals have had to confront in every state. By the turn of the century, accumulations of government records on every level constituted a physical problem of sufficient magnitude to induce the American Historical Association, through its Public Archives Commission, to undertake a large scale effort to get these records transferred to adequate facilities, as had Sparks, Bancroft and others in the previous century. All deplored the inadequate storage provided for records by the originating government agencies, and those who were familiar with centralized European archives and with manuscript repositories here and abroad were eager for similar reference services and good working conditions in which they could conduct research. In criticizing government agencies for inadequate storage conditions and physical neglect and for bureaucratic indifference to their research needs, they also



presumed that governments were indifferent to official records in all respects, and that they, as consumers, were by default the proper agents to supervise the disposition of permanently valuable government records, and to establish policy for their utilization. This, as we have seen, should not have been the case.

The Maine State Archives is in the process of compiling an index-digest of constitutional and statutory records provisions, a compendium of all laws which have prescribed requirements for the creation, retention, disposition, use, recording media, dissemination, copying and accessibility of government records of all branches and all levels within the state. Completed, it will extend to three or four hundred pages. These records provisions, some of them dating from Maine's statehood in 1820, demonstrate that the state has always maintained as its own responsibility all of the elements of proper records administration. It has done so for its own protection and that of its citizens, for its own continuous administrative purposes, and to maintain its accountability. Through these provisions, the responsibility is equally incumbent on all three branches of government and on all levels of government. Presumably, similar provisions can be found in the constitutions and statutes of all states in substantially the same scope and number.

What we are really talking about, then, is the fact that state and local governments have always recognized a responsibility for their own records. They fall short of fulfilling this responsibility when the accumulated volume becomes greater than individual agencies can manage, and when public demands for reference become greater than they can provide. Then this responsibility can be most effectively carried out by providing a central, secure location for the housing of permanently valuable records. Still more effective responsibility can be exercised if professional records management and records center services and facilities are also centrally provided. And if professional methodology is applied to the selection, preservation, arrangement, description and referencing of these records, and if a full range of supportive technical services are provided, then this basic responsibility of government is discharged to the fullest extent. And such a solution is vital, for the volume and complexity of records now being generated is simply beyond the management capacity of the component agencies of government alone. But the centralized professional approach is inadequate if it does not

extend to all three branches and to all levels of government.

A government archival and records management program should be established so that it assumes the full original responsibility of the government on the basis of legislative delegation. The agency's policies, services and placement within the government should reflect this delegation. It cannot do so if its services are indiscriminately combined with seemingly related disciplines, without any clear distinction of what its mission is, or if it collects manuscript material as an equal enterprise undistinguished from its delegated responsibilities for official records, or if it views its government archival holdings only as a resource identical in nature, value and use with artifacts and private papers.

This then, is the affirmative position of the Maine State Archives to which I alluded at the outset of these remarks. You will have noted that the Maine Management and Cost Survey recommendations previously summarized bear little relation to the kind of policy and program that has been described. For some inexplicable reason they ignored the program relationships that have been established with the courts, the counties, and the municipalities. They ignored the fact that the Maine State Archives holds and services the judicial records of the state dating from pre-statehood to 1930, subject to the direction of the Supreme Judicial Court. They made no provision for the administration or disposition of this material in the proposed transfer of archival responsibility and holdings to the State Library. They also made no provision for restoration laboratory services once the agency had been abolished, and there were other inaccuracies that suggest that the study itself was both inadequate and superficial. But the ominous fact is that most of the survey assumptions reflect an approach to government records administration that does prevail in many states. It is most apparent in their cavalier attitude toward the archives and records management professions, and above all, toward government records themselves. Thus they asserted that librarians can administer official records just as well as anybody else; that a distinct state archives program therefore doesn't need to exist; that there need not be a State Archivist; that records administration entails no administrative responsibilities and therefore there is no need for an administrative staff; that there is no need for a photocopying



service exclusively for record material; that although there may be some need for technical assistance in the creation and maintenance of current records, this function has nothing to do with archives; that the impressive mass of government records carefully preserved by the State of Maine over the years simply adds up to too many pieces of paper; that if the departments were left alone they would eagerly throw all this paper away; that there would therefore be no need for a records center; that the whole organization ought to be abolished; and then, in the words of the Survey Report, such actions "will have lasting consequences of substantial value to all Maine people for many years to come."<sup>9</sup>

Such was and is the nature of the latest challenge to centralized state archival and records management programs. To successfully meet this challenge, I urge you to rethink the role of government records in a democratic society, and to develop and support a public records policy based upon their fundamental relationship to the operations of government itself. Government records are not, and never were intended to be, simply a type of cultural resource. To regard and to promote them as such is to invite disaster.

NOTES

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8. Public Laws, 1933. Chapter 252.
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