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EFFECTS OF CHANGES OF SOVEREIGNTY ON ARCHIVES¹

IT IS still too early to estimate the extent of the destruction that totalitarian warfare has inflicted upon the archives of Europe, and it is obviously impossible to predict what losses may be expected in the future. After the war it will almost certainly be found that, apart from complete annihilation, many records will have suffered from inadequate storage conditions while in "protective custody," that well-organized fonds will have become disarranged, and that, in general, years of strenuous work will be needed to restore order to the archival repositories of Europe. But, in addition to rehabilitation and rearrangement of archival materials, there will arise other problems that our European colleagues must face and try to solve on that still distant day that will bring peace to a tormented world. Although some "new order" may restrict the states of Europe in the future exercise of their sovereignty, it is certain that once again the map of the world will be redrafted, that new bodies politic will emerge, that territory will change hands, and that, with the territory, archives will be transferred from one state to another. As archivists we may well interest ourselves in the question of how archives have been treated when provinces were ceded in the past as a result of war or peaceful negotiation. The diplomatic history of Europe, and to a lesser extent that of this country, furnishes numerous examples from which conclusions may be drawn as to the nature and extent of the archival problems which accompany a change of sovereignty. This does not seem an inappropriate time for a study of the question. It was in 1915, three years before the end of the first World War, that Louis Jacob, a French doctor of jurisprudence, found it opportune to set forth the principles and determine the rules that had come to be accepted by the nations of Europe with respect to the delivery of archives by the ceding to the annexing

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state. His monograph is still the only general study in this particular field, but since its approach quite naturally is that of the jurist, not that of the archivist, and since the archival clauses of the treaties of 1919 have resulted in a new, highly controversial literature on the subject, I may be justified in setting before American archivists the problem, a discussion of which they have been spared thus far.

It is evident that the treatment of archives in connection with the cession and annexation of territory has been and is still in the first place a matter of international law. If a province or a part of it is ceded and annexed by another state, a new sovereignty is substituted for the former one. As a result of this substitution, the public property within the ceded territory becomes the property of the successor state. During the last centuries archives everywhere have come to be considered as part of the public property, sharing this character with public grounds, buildings, fortifications, and so on. So far the consequences of a change of sovereignty for the archives seem to be obvious: the archives share the fate of the territory; the records follow the flag. But even if this is generally admitted, does it follow that *all* the records relating to the ceded territory must be delivered up, including those of a purely historical character and those preserved with the central administrative bodies and in the national depositories of the ceding state? For example, when in 1871 Alsace-Lorraine was annexed by Germany, did the latter obtain all the records relating to the two provinces, even those of the Archives Nationales, of the archives of the Ministry of War, and of the other archival establishments, or only those of Metz, Strasbourg, and Colmar? When Austria-Hungary was dissected and divided among seven states, did it mean that each of these states received its share of the records in the Haus-, Hof-, und Staatsarchiv in Vienna along with the railroads and the barracks? Because of the increasing centralization of administration and because of the setting up of archival repositories, the transfer of archives from state to state involves problems so difficult and complex as to require definite provision in international treaties. It is in the so-called technical clauses of the treaties that regulations as to the treatment of archives are found.

Peace instruments of the Middle Ages and of early modern times frequently did not contain regulatory clauses of this kind. In the period of the patrimonial and feudal state a principality was a cluster of properties of the prince and of feudal services owed him by his vassals. If territory was annexed the new owner needed the docu-

ments that were evidence of prior and present ownership of the property and of the feudal services due him as the successor of the former lord. Private law required that title to property had to be delivered with the property itself and there did not in this period exist a clear-cut distinction between private and public law. Cession of territory was accomplished in the form of a transfer of real estate. When clauses referring to archives began to appear in international treaties, they were exclusively aimed at the lawful delivery of the documents that could serve as the evidence of ownership or feudal rights acquired. Only as private and public law tended to become distinct spheres and as sovereignty began to be conceived as a distinguishing mark of the emerging modern state was a more specific provision adopted; the cessionary was required to deliver all titles and documents establishing the sovereignty of and the rights to the ceded territory. The archival document as the proof of territorial rights received its utmost significance in the policy of Louis XIV. Whenever a country was conquered by the French armies, legal experts began to search its archives for titles on which new claims could be based. Louis XIV called this discovering new countries. The archives no longer followed the flag; the flag seemed to follow the archives.

During this early period of the formation of the state and of the history of archives, the successor state could not be interested in getting the administrative records of the annexed territory because administration in the sense of a continuous action of the government did not exist. In the seventeenth century the picture began to change. The emerging modern state entered new fields of activity, set up an ever expanding machinery for their administration, and began to accumulate records as a by-product of administrative work. In an age of steadily growing competition between the European states, when each of them was fervently striving to increase its economic and military power, techniques of administration became secrets that were to be guarded as closely as the production methods of an industrial concern of our day. For the first time we learn of large scale removals of records from provinces in danger of being invaded in order to prevent the enemy from administering, that is, exploiting them; for administration has become dependent on records. It was only logical that, when territory changed hands, the new lord wanted to obtain the records of the prior administration. Peace treaties of the seventeenth and eighteenth centuries, therefore, show

that gradually a formula came into use that took into consideration the administrative needs of the successor state. Their archival clauses were no longer confined to titles of dominion and sovereignty. They began to provide for a transfer of all the letter books, documents, papers, and archives pertaining to or belonging to the ceded territory. All these materials, if they were preserved in the territory, became the property of the annexing state, and if they had been removed in the course of hostilities they were to be restored to their former place of custody. But what was to happen if, as an effect of the cession, parts of a province were separated from their former capital where the records relating to them were preserved? It was obvious that in such a case the successor state needed more than the records found in the territory itself. The cessionary, therefore, had to promise to deliver the records pertaining to the ceded region from the archives of its former administrative center. On the other hand, since it was realized that the archives of the ceded territory might contain documents of importance to the cessionary, the acquirer had to retrocede them to the former possessor. Where a separation of the records in accordance with the new status appeared to be infeasible, the contracting parties promised each other copies of documents which they might need in the future.

The effects of a change of sovereignty on archives thus became more complex, and the clauses of international treaties correspondingly more articulate. A definite procedure for the delivery of archival material was being worked out. The contracting parties stipulated that special commissioners should be nominated for this purpose and that the extradition and retraction of records should be effectuated within certain time limits, extending from two to six months. Not always were these archival clauses faithfully observed. After the diplomats had finished their work and ratifications of the treaty had been exchanged, the ceding party frequently withheld whatever documents it could, hoping that some day it would recover the territory that it had been forced to yield. The result was that in the next treaty there had to be inserted retrospective and retro-active clauses aimed at forcing the reluctant state to pay its archival debts and to deliver documents that should have been handed over decades ago.

All difficulties remained on a minor scale, however, for reasons which can readily be explained. In the first place, in spite of the expansion and intensification of administrative activities, the absolute

state was less centralized than one would assume. In many respects the different provinces enjoyed a considerable degree of independent life, and the records of the provincial authorities would tell the story so completely that, in case of annexation, the acquiring state would not need to claim the records from the central authorities of the cessionary. The customary wording of the archival clauses, "records belonging to" or "records pertaining to the ceded territory," was never interpreted to mean anything else than the archives found within the territory and possibly those of the former provincial capital if that capital remained outside of the cession. Delivery and disintegration of archival bodies were thus confined to those of the outlying regions, and the records of the central government were left untouched. Such a clause, however, could very well be interpreted in an all inclusive sense, and that is what happened for the first time at the end of the eighteenth century. With the third division of Poland, one of the major states had been wiped off the map of Europe. Russia had laid her hands on the central fonds in Warsaw but her partners were not willing to let her get away with her booty. Therefore, it was agreed that there be allotted to each of the partitioning powers the portion of the Polish archives that pertained to its share of the territory. The partition was carried out with the greatest strictness and rigor. It was applied not only to the unbound papers. Even bound books were taken apart if it appeared that some of the documents copied in them referred to Prussian possessions and others to Austrian or Russian possessions. All the dangerous consequences of the provision, formerly so harmless, that records pertaining to the ceded province must fall to the annexing state, were thus revealed for the first time.

In the following years, so abundant in changes of sovereignty, what has been called the "principle of pertinence" was more and more enforced by the victorious state. It called for a complete delivery of all the records whether preserved in local repositories, in regional agencies remaining outside the ceded territory, or in central agencies and in central establishments of the cessionary. Very soon Prussia was to experience its effects. She lost most of her former Polish possessions by terms of the Treaty of Tilsit that stipulated delivery of the following archival materials to the new Grand Duchy of Warsaw: "The archives containing the titles of ownership, documents and papers in general whatsoever relating to the countries, territories, domains, estates that H. M. the King of Prussia

has ceded under the present treaty and also the maps and plans of the fortified places, citadels, castles, and fortifications situated in the ceded countries." Once again the extradition comprised not only local and regional materials but also records of the central agencies and even the holdings of the Privy State Archives in Berlin. The traveling era of records had been inaugurated, as the following case shows even more clearly. In the same Treaty of Tilsit the Kingdom of the Netherlands obtained the Prussian province of Ostfriesland. Central records relating to the province were delivered from Berlin; were in 1815 turned over to Hanover together with the territory; and, finally, were returned to the Privy State Archives in Berlin when Hanover was swallowed by Prussia in 1866.

Wholesale extradition of records in connection with a change of sovereignty when conscientiously carried out proved to be a painstaking and time consuming procedure. Prussia set the record when after the Congress of Vienna of 1815 she claimed all the record materials relating to territory ceded to her by Saxony. The Prussian commissioners took their task so seriously, insisting on the delivery of thousands of binders dating back to the seventeenth century, that the work had not been finished when in 1866 war between Prussia and Saxony made its continuation impossible. But the Saxon archivists could not rejoice for long. When peaceful relations between the two countries had been restored, the extradition problem of 1815 was reopened and records were transferred until 1883. Needless to say, this transfer of records in "slow motion" has left serious gaps in the holdings of the Saxon State Archives.

Another case of wholesale extradition of archival materials did not have any better results. When in 1831 Belgium seceded from the Kingdom of the Netherlands, all the archives, maps, plans, and papers belonging to her territory and concerning its administration had to be handed over. The Belgian government apparently was in no haste to obtain them, however, for it was as late as 1839 before arrangements were made for the necessary separation of the documents, a difficult task since mostly chronological files were involved. Great masses of papers were singled out for Belgium and shipped to the Archives générales du Royaume at Brussels where they immediately became dormant. Talking about this transaction in 1924, R. Fruin, co-author of the famous Dutch manual, mentioned that these papers had been kept wholly unarranged for decades and that even then he was very much in doubt whether or not they had been

described in an inventory. This indeed was by no means a minor task since quite naturally the indexes and other finding mediums had been retained at the Hague.

While these unpleasant experiences were taking place as a result of the all inclusive transfer of archival materials from the ceding to the annexing state, the character and the meaning of archival bodies were undergoing a far reaching change. The events of the French Revolution had caused the setting up of special repositories for the older materials turned loose by destruction of the institutions and agencies of the past, and the idea of a specialized archives service had been taken over by other countries of Europe. At the same time the holdings of these archival repositories had acquired a new meaning. The dignity of source materials of history, previously restricted to medieval charters and chronicles, was extended to an ever widening scope of documents. With nationalism emerging in a period of French hegemony, historiography received its impulses from the needs of nations desirous of asserting their individuality and their right to independent existence by studying their past. And this past lived on not only in monuments but also in the records.

That a nation which is robbed of its archives loses more than heaps of dusty papers was brought home to the peoples of Europe in a most drastic way. The Roman emperors returning from victorious campaigns led illustrious prisoners and displayed the treasures of the conquered enemies in their triumphal processions. The conquering armies of the French Revolution took over this Roman idea of conquest by forcing the subjugated countries to deliver some of their most cherished treasures of art. By removing them from a state where they had been polluted by the spirit of servitude and transferring them to the sanctuary of liberty and equality they underwent what was called a process of purification. Under Napoleon archives began to share the fate of works of art. From Germany, the Netherlands, Italy, Spain, and Austria masses of archival materials were abducted to Paris where they were to be preserved in a huge archives building near the Pont de Jéna, all this being done without any provision in the peace treaties. This move had a practical and at the same time an ideological background. There were, in the first place, financial advantages that Napoleon hoped to derive from this unique concentration of records. He had been promised that by servicing them as much as 500,000 florins in fees could be collected annually. But, beyond that, the foundation of the new imperial

archives had a deeper significance: it embodied the idea of the French Empire, the successor of the empire of Charlemagne, and it was meant to deprive the subjugated countries of something more precious than paper—the silent witnesses of their individuality and their independence.

The Napoleonic rape of archives was only an interlude, but it contributed no doubt toward a greater realization of the delicate nature of a transfer of archives from state to state. On the other hand, the Prussian and Belgian experiences had evinced the technical difficulties of the procedure if carried out too assiduously. It is therefore not surprising that from about the middle of the nineteenth century there began to prevail a more carefully considered idea of the meaning and scope of such transactions. The peace treaty of Vienna concluded between Austria and Italy in 1866 makes this apparent. It gave to Italy the archives of the ceded territories, the documents concerning their administration, and the political and historical documents of the old Republic of Venice, which had been removed to Vienna. The retradition of documents relating to those parts of the cession that remained in Austrian hands was also stipulated. Both parties furthermore promised "to allow authentic copies to be taken of historical and political documents which may interest the territories remaining respectively in the possession of the other contracting power and which, in the interest of scholarship, cannot be taken from the archives to which they belong."

This provision undoubtedly marks a turning point in the treatment of the problem under consideration. It is the first echo of the famous *respect des fonds* in the sphere of international law, and it seems to have exercised a lasting influence, which was especially exemplified by the way in which in 1871, Article 3 of the Treaty of Frankfort between France and Germany was formulated. This article stipulated that the archives, documents, and registers relating to the civil, military, and judicial administration of Alsace-Lorraine had to be delivered up by France and that if some of them had been removed they had to be returned to their prior depository. The ceded territory consisted roughly of the three départements of Haut-Rhin, Bas-Rhin, and Moselle. But, since some districts of these départements remained with France, while from the département of the Meurthe, with its seat in Nancy, the arrondissements of Sarrebourg and Château-Salins fell to Germany, some further regulation was given in Article 18 of the additional Convention of Frankfort.

It said: "The High Contracting Powers promise reciprocally to deliver all the titles, plans, books of assessment, registers and papers of the respective communities which the new frontier has detached from their former administrative centers and which are preserved in the archives of the seats of *département* or *arrondissement* on which they formerly depended. . . . The High Contracting Powers will make available to each other . . . all the documents and all the information relating to matters concerning both France and the ceded territory."

The implication of these two articles is perfectly clear. Germany receives the three archival depots of Colmar, Strasbourg, and Metz as a normal consequence of annexation; therefore, this is not specifically stipulated. It is expressly stated, however, that records concerning the administration of the cession must be delivered and, since it is provided that records that had been removed must be returned to their former place, it follows that only local materials and not records of central authorities are meant. With regard to records concerning localities that had been detached from their former administrative centers, the scope of the extradition of records is definitely settled; only records of the prefectorial and subprefectorial administrations are involved.

Nothing is known about the genesis of these two clauses. French authors are inclined to ascribe their formulation to the French negotiators and believe that in proposing them to the Germans they had a special objective in mind. Months before the armistice German archivists had paid an unwelcome visit to the archives of Nancy and had compiled a list of all the historical fonds of Lorraine that were to be claimed by Germany; hence, Article 3 of the peace treaty was phrased in such a way as to preclude any attempt at breaking up the valuable archives of Nancy. Since Bismarck was inclined not to offend French sensibilities for minor purposes, it is quite probable that the archival clauses of 1871 are indeed the result of the protective exertions of the French negotiators.

The solution adopted in 1871 satisfied the legitimate needs of both parties. It gave to the acquirer the archives repositories of Alsace-Lorraine and the papers needed for administrative purposes; it left untouched the central records of the cessionary and the historical fonds outside the territory. When Louis Jacob, in his study of 1915, raised the question of what should be asked from Germany in the case of the recovery of the two provinces, he felt that France

could not claim more than she herself had ceded in 1871. Jacob's monograph may have attracted the attention of French statesmen. When the Allied and Associated Powers concluded with Germany and her former allies what the Nazis like to call the "Paris Suburban Treaties," Article 3 of the Treaty of Frankfort was almost literally taken over into the different peace instruments. On the basis of Articles 38 and 52 of the Treaty of Versailles, the extradition of records from Germany to France and Belgium was carried out without any friction worth mentioning. Poland, on the other hand, wanted to interpret the archival clauses of the treaty in the widest sense and to obtain all materials relating to that part of her territory that was formerly German, including those of the State Archives in Berlin and of the central authorities. In parrying these claims the German archival experts made effective use of the principle of provenance as a weapon of defense.

Indeed, such claims could not very well be based on the letter of the Treaty of Versailles, a fact that may have induced the Polish government to insist on more explicit clauses in the Treaty of Riga, concluded with Russia on March 21, 1921. It called for the extradition by Russia of all archives abducted from Poland since 1772 and of all records of central as well as of local authorities relating to Polish territory with the exception of documents preserved in central state archives and constituting historical collections. The Polish claims to some of the central records at least could be justified, since many of the administrations whose records were involved had been central authorities of Poland with their seat in Warsaw, or, if located in St. Petersburg, had dealt with Polish affairs exclusively. As a result of stubborn Russian resistance, however, actual deliveries under the Riga treaty have not been very satisfactory for Poland.

By far the greatest archival problems were caused by the disintegration of the Hapsburg monarchy. They have resulted in a rich and highly technical literature in which the divergent viewpoints are brought out in sharp relief. The archival clauses of the Treaty of St. Germain are more comprehensive than those of the Versailles treaty. Article 93 of the former stipulates the extradition of the archives pertaining to the administration of the ceded territories and is simply a repetition of the respective articles of Versailles and Frankfort. Beyond that, Austria was to relinquish to the successor states all the fonds of an historical character that, since the seventeenth century, had been removed to Vienna. The Austrian govern-

ment and its committee of experts were willing to part with these fonds and to carry out Article 93 in the accepted sense, but they were equally determined to prevent the disintegration of the central fonds of the Vienna archives. Early in 1919 they had agreed to make the principle of provenance the basis of negotiations with the six successor states, and Ludwig Bittner, the present director of the State Archives in Vienna, had given to it a version that was particularly advantageous for that purpose. According to Bittner, the principle of provenance prescribes that a body of archives must be preserved in its original form and at the place of its origin. Two noted archival theoreticians, Jenkinson and Fruin, have pointed out that this is giving to the principle of provenance a completely new turn, since the place where a body of archives is preserved is a fact of minor importance and need by no means be that where it originated. The Austrians, however, were lucky enough to create a precedent. The Italians, anxious to get hold of some fonds which in contradiction to the treaty of 1866 had been retained by Austria, had sent, together with their armistice commission, a committee of archival experts to Vienna. The eminent Italian archivist Eugenio Casanova was not a member of this committee, else he would have warned his colleagues against signing the convention of May 26, 1919, in which the principle of provenance in the Austrian sense was formally adopted as the basis for all future transactions.

The interpretation that the other successor states thought to give to Article 93 of the Treaty of St. Germain was entirely different. They felt that the territories they had acquired had contributed for a long time to the upkeep of the Vienna archives and that these archives contained materials indispensable for the administration of these territories. If in the course of administrative reorganization functions were transferred from a discontinued agency to other agencies, it was considered obvious that the records should follow the functions. Was it not natural that the same procedure should obtain if different states took over the functions of a disintegrated state with respect to certain territory? But not only administrative problems seemed to be involved. Was it not true that the Vienna archives comprised the documents without which the history of the different states could never be completely understood—documents that were a monument of their dependency on the much hated monarchy? While Napoleon had intended to deprive the subdued nations of their past by abducting their archives, the heirs of Austria

wanted to obtain their full share of the Vienna archives to extinguish the last vestiges of Austrian domination.

It is impossible to discuss in detail the complicated and lengthy negotiations that followed. In these Austria's bargaining position was extremely weak. Largely dependent on the good will of her neighbors, she had to sacrifice archives, without which people can live, to get bread and other food, without which they cannot live. While in the special conventions with Czechoslovakia and later with the other successor states, the principle of provenance was still theoretically acknowledged as the basis for extradition, Austria promised to deliver from her central repositories to the successor states all the records pertaining to their newly acquired territories for the period from 1888 to 1918. The technical difficulties that resulted were enormous, and special delegations had to be sent to Vienna to carry through the work of separation. Since in most cases the inventories were not detailed enough to indicate whether transactions dealt with the whole of the monarchy or with any particular section, it became necessary to consult the indexes and even the documents themselves. How much the successor states have gained by obtaining fragmentary materials torn from the fonds to which they belonged and almost unusable since not only the general materials, but also the finding mediums remained in Vienna, it is impossible to state. It is clear that the modern holdings of the Vienna archives have been torn apart in a most undesirable way, and even a neutral observer such as Dr. Fruin has been highly critical in his comments on the procedure, which indeed is against the true spirit of the principle of provenance.

This survey would be incomplete without a brief indication of what have been the effects of territorial changes on the archives of this country. The treaties through which the United States acquired Louisiana and the Floridas claimed, along with vacant lands, public buildings, fortifications, and barracks, the "archives and documents relating to the property and sovereignty of the ceded territory." They thus used a clause that was already outmoded in Europe, and one that has considerably hampered American efforts to obtain the records needed for the judicial administration of the ceded territories. The treaty of Guadalupe Hidalgo does not refer at all to the treatment of archival materials. In the treaty with Spain of December 10, 1898, once again only "documents exclusively referring to the sovereignty relinquished or ceded" were demanded, documents, it

was said, "that may exist in the archives of the Peninsula." This proviso, however, has never been carried into effect. Most comprehensive in its scope is the archival clause of the convention for the cession of the Danish West Indies. While the unratified convention of 1902 was confined explicitly to the "government archives, papers, and documents relative to the Islands ceded and the dominion of the same which may be existing there," the text of 1916 says: "In this cession shall also be included any government archives, records, papers, or documents which relate to the cession or the rights of property of the Islands ceded, and which may now be existing in the Islands ceded or in Denmark." Neglecting textual difficulties—the word cession is used in the same sentence with two different meanings, namely, the act of ceding and the territory ceded—we can conclude that thus the United States acquired a right to all the public records of the islands as well as to those relating to them that were preserved in the Royal Archives in Copenhagen and in the different provincial archives of the kingdom. Seldom, in the history of our problem, has there been a greater discrepancy between what could be claimed and what was actually obtained by a successor state. The United States did not get any records from the Danish motherland; instead, a large portion of the local materials was removed from the islands before the United States took possession. The indifference shown by the federal government may be partly explained by lack of the competent advice of archivists.

The preceding discussion should have indicated reasonable ways of treating archives at some future peace. Where only border districts are involved in a change of sovereignty, the acquiring state will have a perfectly good title to the archives found in the territory itself and to the administrative records pertaining to it that exist in the files of regional and local administrative centers which remain outside the cession. The soundness of such a provision is borne out by the experience had with Article 3 of the Treaty of Frankfort. But future territorial changes may be more far-reaching. Whole states may again be dismembered. Whatever the outcome of the war, let us hope that existing national repositories will not be broken up, and that files of central agencies will be left untouched. That resuscitated nations like the Poles and the Czechs considered the records of a foreign domination as essential to the history of their past and as part of their national patrimony and wanted to obtain them, is readily understood. But, while a picture that is taken from the walls

of a museum has never been an integrated part of the collection to which it belonged and will have same value whether it hangs in Vienna or in Prague, records that are torn from the body of which they are an organic part lose in value and meaning. That archival amputations can be avoided even where a political structure is entirely destroyed is proved in the history of our problem by a remarkable instance of the use of common sense. When, in 1715, High-Guelderland was divided among Austria, Prussia, and the Netherlands, its archives were maintained intact in Roermonde in the Austrian part. Each of the successor states received a copy of the inventory, and each of them could ask for copies of all the documents needed. To the vast masses of nineteenth and twentieth century records such a remedy would not be applicable. Microphotography, however, suggests itself as a possible solution for many of the difficulties that might be encountered. The rapid advance of technology is mainly responsible for the dangers that menace our archives in times of war. May technology atone, in part at least, by protecting them against the dangers of peace.

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