

Archivists, Collectors, Dealers, and Replevin: Case Studies on Private Ownership of Public Documents. By Elizabeth H. Dow. Lanham, MD: Scarecrow Press, 2012. 128 pp. Bibliography, index. Hardcover. \$70.00. \$62.00 for SAA members.

In *Archivists, Collectors, Dealers, and Replevin: Case Studies on Private Ownership of Public Documents*, respected archival practitioner and library and information science educator Elizabeth H. Dow studies the conflicts that arise from “a legal action brought for the purpose of recovering specified items” (p. vii). She asserts that, despite her professional ties to the Manuscript Society (MS), she is capable of bringing to the neglected archival topic of replevin a dispassionate and independent voice when presenting the viewpoints of the community of collectors and dealers as well as those of the Council of State Archivists (CoSA). Dow concludes that each side has much “to gain by understanding the other’s perspective” (p. xiii).

The book contains clear prose and straightforward organization. Dow writes informative introductory chapters on the development of archival practice and the archival profession in the United States; on the recurrent problems of “theft and neglect” of documents that often occur owing to weak management practices for maintaining public records; on the circumstances that surround the collecting of original documents, whether by public institutions holding a mandate under state law to collect, or by dealers and collector-hobbyists tied to collecting for profit and gain; and on relevant state and federal statutes on public documents in private hands that serve as legal instruments by which public archives can reestablish ownership of property improperly or illegally removed from an archival agency by no fault of its own. In grouping the chapters thematically, Dow attempts to build a bridge between the parties; she encourages government archivists and collectors to understand the mindset of each other as both want to preserve the documentary past.

Dow has a good understanding of the public archives and manuscript traditions. She paints, however, a dark picture of conflict among competing parties arising from the presence of public documents in private hands. Key elements in the storyline are the absence of specific legislation that defines what records belong to the public and who authorizes their disposition. She also argues that public officials discarding documents in good faith years ago adds to the ambiguity over the ownership of alienated documents and makes recovery action(s) by government archivists even more vexing for all participants. As for this claim, this reviewer must conclude that Dow’s portrait of replevin of public records and the level of tension that exists between parties is a bit overdrawn in light of the infrequent use of the practice by all levels of government. She is on the right track, however, emphasizing how archivists and manuscript curators initially had to gain physical and intellectual control over the records in their custody to understand what gaps existed in the documentary corpus, to determine where the missing records were, and to establish whether they could be rightfully retrieved by the public through legal means if they had become in some way alienated. Cases do exist where a current holder held some semilegitimate claim to the title of the property.

Dow correctly appreciates that the enduring conflict or the clash between state archivists and the collecting community comes down to “perspective and what theory one applies to the circumstances” (p. 65). The differing perspectives, the several legal

theories that accommodate either side of the ownership question, and the ways each party makes its respective case represent the content in chapter 6. In comparing the perspectives of the two sides, Dow here again blames the confused state of affairs on decades of “inadequate management” in governmental archives (p. 69). Though this is a fair observation and offers some of the freshest material, it is overly harsh if one understands the emergence of state records programs and records management in the United States. The formation of state archives began in Alabama in 1901. Those archival programs that followed, like Pennsylvania, developed slowly in terms of practice. The National Archives—“America’s Ministry of Documents”—was not established until 1934. Before 1940, few agency records management programs existed to handle the huge volume of unscheduled federal and state records. During the Works Progress Administration (WPA) era of the 1930s and the subsequent two decades, staff historians in many states often blocked the functioning and development of state archival programs to protect their own interests.

In chapters 7 (“Case Studies”) and 8 (“Avoiding Conflict”), Dow advances pathways to reduce the present conflict that frustrates both sides. There are times in the book when she acknowledges that to recover public property (even for routine documents or abandoned property) can be messy and troublesome for state archivists to execute in a complicated “real world.” Here, the author falls short in giving comment and voice to the negotiations and agreements that state archivists and private parties execute outside of the court to settle public record ownership questions, even when case law precedent and state law are absent. In lieu of actual case studies, she offers (over 20 pages) a series of purported, mostly imagined, case studies that will disappoint many readers. Not to have examined or even sampled the professional papers of Solon J. Buck, Margaret Cross Norton, Ernst Posner, H. G. Jones, Thornton Mitchell, and those of dealers such as Kenneth Rendell are also missed opportunities. For example, following the important recovery claim precedent established in the 1976 case *North Carolina v. West*,¹ did state archivists initiate more recovery applications and crusade against private collectors, historical societies, and libraries? I think not; however, Dow does not account for or even investigate whether the B. C. West case contributed to more replevin requests by state archival agencies over the next 15 years.

In the final chapter, titled “Avoiding Conflict,” Dow argues, “Avoiding a problem always costs less than remedying it” (p. 103). She provides a useful “precautionary measures” statement for archival managers, buyers, and sellers, along with a list of steps for buyers and sellers to consider to avoid replevin and a list of questions for archivists to consider before filing a replevin action. Such “procedural advice,” as well as guidelines, may well result in fostering improved public records legislation by states and in improving future opportunities for the partisans to settle disputes outside of the court system. Heads of most archival agencies cannot count on the legal staff of an attorney general to undertake a lawsuit on its behalf in what is a low priority for that governmental office. On the whole, state archivists tolerate the usual patterns of intermingling that leads to ambiguity on titles of public documents and acquiring records of different origins or unclear provenance. Doubt surely matters in ownership questions. Reasonable men and women should be able to resolve them in a professional manner.

Contextually, the archival community at large is responsible for the lack of attention

given to the powerful tool of replevin and its complications and obstacles. Classical archivists G. Philip Bauer, Philip Brooks, and T. R. Schellenberg barely mention the circumstances of pursuing discovery. Ernst Posner in his survey of *American State Archives* (1964)² did, but offered only three passing references to the recovery of specified items by legal action. Subsequently, H. G. Jones in his *Local Government Records: An Introduction to Their Management, Preservation and Use* (1980) reminded all of us that “public records are public property.”³ The former state archivist of North Carolina sidestepped any direct or full discussion of replevin or when a government holds a right of ownership. The word “replevin” is not in his index. Even so, Jones did argue “public records may be no more altered, defaced, mutilated, or removed from custody than public funds may be embezzled or misappropriated.”⁴ The unity of purpose for public records specialists and for collectors and dealers ought to be to support the advancement of the broad public records mission in the United States. Archivists are duty bound to protect the public interest.

Dow’s critical and singular achievement in *Archivists, Collectors, Dealers, and Replevin* is the way she fills a void in the archival literature on ethics and law. She sets the stage to further the conversation on the replevin problem and to close the divide between government archivists and collectors. She builds on the scholarship of Gary M. and Trudy Huskamp Peterson (1985)⁵ and Menzi L. Behrnd-Klodt (2008).⁶ However, it is unfortunate that Dow advances a limited and narrow examination and investigation of replevin applications at the National Archives and Records Administration (NARA). Of some concern is why she missed covering two important legal cases, those of William Clark and Kenneth D. Sender, in which the court ruled for private collectors, but affirmed the right of the National Archives to use replevin to reclaim public record property.

Finally, Dow’s view of the two competing perspectives more often than not favors the world of the Manuscript Society whose membership includes large numbers of dealers and collectors. Laying aside these quibbles, manuscript and special collections librarians as well as public records specialists should own and read this small but expensive book, albeit with a critical eye.

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NOTES

1. North Carolina v. West, 229 S.E.2d 826 (N.C. Ct. App. 1976).
2. Ernst Posner, *American State Archives* (Chicago: University of Chicago Press, 1964).
3. H. G. Jones, *Local Government Records: An Introduction to Their Management, Preservation and Use* (Nashville: American Association for State and Local History, 1980), 23.
4. *Ibid.*, 23–24.
5. Gary M. Peterson and Trudy Huskamp Peterson, *Archives and Manuscripts: Law, Basic Manual Series* (Chicago: Society of American Archivists, 1985).
6. Menzi L. Behrnd-Klodt, *Navigating Legal Issues in Archives* (Chicago: Society of American Archivists, 2008).