

A Question of Custody: The Colonial Archives of the United States Virgin Islands

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Abstract

This article examines the relationship between custody, access, and provenance through a case study of the records of a former Danish colony, the United States Virgin Islands. In 1917, when the United States purchased the Virgin Islands from Denmark, Danish archivists removed the majority of records created there during colonial rule and deposited them in the Danish National Archives. Following its establishment in the 1930s, the National Archives of the United States sent an archivist to the Virgin Islands to claim most of the remaining records and ship them to Washington. The native population of the Virgin Islands, primarily former colonials whose ancestors were brought from Africa as slaves, were left without access to the written sources that comprised their history. While all three parties have claims to custody of the records, the claim of the people of the Virgin Islands relies on an expanded definition of provenance that includes territoriality or locale, as well as on a custodial responsibility for access. The competing custodial claims suggest a dissonance between legal custody, physical custody, and archival principles that may be resolvable through post-custodial management practices.

Introduction

On March 31, 1917, a small group of islands in the Caribbean began losing its memory. On that day, the three islands of the Danish West Indies, St. Thomas, St. Croix and St. John, were transferred from Denmark to the United States and renamed the United States Virgin Islands.

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The transfer initiated a series of archival events in which competing custodial claims for the archival records of the islands resulted in the loss of access to them by the community in which they were created. Custody claims by both the United States and Denmark not only caused fragmentation of the records but denied Virgin Islanders access to their collective memory.

Custody, both the legal and physical ownership of records, has long been recognized as a fundamental principle of archival management. Indeed, custody can be traced back to the clay tablets of the Assyrians. Archeologists have uncovered Assyrian records dating back to ca. 2100 B.C. collected in single locations, suggesting that either control was imposed or value was placed upon the records by housing them together.¹ Hilary Jenkinson based the sanctity of evidence on the ability to prove continuous custody. T.R. Schellenberg, while rejecting “continuous custody” as unworkable for the National Archives of the United States, still considered that having custody of the records that crossed the threshold of the Archives was essential to protecting their integrity. In 1980 F. Gerald Ham further evolved this principle by introducing postcustodialism into archival vocabulary and theory. Ham foresaw that ‘managing’ rather than merely ‘keeping’ records would become the role for the archivist of the future. Today, postcustodialism increasingly offers a way to address electronic records, favoring distributed custody and accountability over physical custody as a way of protecting evidential value.

At the same time, if archives, whether virtual or physical, are the ‘houses of memory’ described by former International Council on Archives president Jean Pierre Wallot, then the ability to access records is a vital factor in their custody. As the evolving nature of custody suggests, providing access may be just one more step towards defining the custodial obligation, one that reflects the needs of communities of users to construct their collective memories. In this custodial equation, managing the records also means managing access to the records.

This article examines the pivotal relationship between custody and access through a case study of the records of a former Danish colony, the United States Virgin Islands, now a territory of the United States located in the Caribbean Sea and bordered by the Atlantic Ocean. In 1917, when the United States purchased the Virgin Islands (then the Danish West Indies) from Denmark, Danish archivists removed the majority of the records created in the islands during their colonial rule and deposited them in the Danish National Archives in Copenhagen. Following their establishment in the 1930s the National Archives of the United States sent an archivist to the Virgin Islands to claim most of the

¹ Ernst Posner in *Archives in the Ancient World* (Cambridge: Harvard University Press, 1972), 3–70, identifies the Assyrians as the earliest records keepers. However, the birth of records themselves has been traced to 3500 B.C. and the use of ‘bullae’ or clay seals as signifiers for “registering transactions and managing an accumulated wealth,” Henri-Jean Martin, *The History and the Power of Writing* (Chicago: University of Chicago Press, 1994), 9.

remaining records and ship them to Washington. The native population of the Virgin Islands, primarily former colonials whose ancestors were brought from Africa as slaves, were left without access to the sources that comprised their history.

Historical Background²

Colonized by Denmark during the seventeenth century and characterized in 1918 as “the place which is on the way to every other place,”³ the Virgin Islands lies at the hub of sea routes extending north to Europe and North America and south to other islands in the Caribbean. Its strategic position was extremely attractive to the European powers vying for colonial footholds.

Early settlement in St. Thomas was sponsored by the Danish West India Company, a commercial venture chartered by the Danish crown to develop trading areas for Denmark in the West Indies. Although the first colony established in St. Thomas in 1665 failed because of fatal attacks by English privateers and disease, the Danes recognized the potential of St. Thomas as a trading center and as a plantation colony, and a second attempt at colonization in 1672 succeeded. Because of rampant yellow fever and malaria, as well as limited opportunities for individual profit, it was difficult for the company to find willing settlers. They were forced to fall back on indentured immigrants and prisoners for labor. The poor quality of the laborers as well as the high mortality rate influenced the rapid development of the slave trade since a reliable source of labor was needed if the plantations were to be profitable.⁴

The colonization of St. Thomas coincided with the outbreak of war in Europe, and large numbers of settlers from Dutch island possessions fled to the relative safety and neutrality of St. Thomas. This sizable Dutch population—as well as Germans, Jews, English and French colonists who migrated from other islands to the new colony—were welcomed by the Danes, not only because they boosted the population but also because they brought with them experience in

² This brief account of the historical development of the Danish West Indies and the United States Virgin Islands relies heavily on the following secondary sources: Isaac Dookhan, *A History of the Virgin Islands of the United States* (Essex, England: Caribbean Universities Press for the College of the Virgin Islands, 1974); Waldemar Westergaard, *The Danish West Indies Under Company Rule, 1671–1754* (New York: Macmillan, 1917); Neville A. T. Hall, *Slave Society in the Danish West Indies; St. Thomas, St. John and St. Croix*, ed. Barry Higman (Mona, Jamaica: University of the West Indies Press, 1992).

³ Quoted in Theodore de Booy and John T. Faris, *The Virgin Islands: Our New Possessions and the British Islands* (1918, reprint, Westport, Conn: Greenwood Publishing Group, 1970), 54.

⁴ Dookhan, *A History of the Virgin Islands of the United States* 48, 61. The difficulty in finding settlers initially forced the Danes to conscript prisoners as laborers on the plantations. Both William W. Boyer, *America's Virgin Islands: a History of Human Rights and Wrongs* (Durham N.C.: Carolina Academic Press, 1983), 13, and Dookhan, 29, discuss the economic imperative for a labor force that drove the development of slavery. Boyer notes that the failure of Indian slavery, combined with the “limited servitude extracted from poor Europeans, including indentured servants and convicts, laid the historic base for the construction of African slavery.”

plantation agriculture. From the outset then, St. Thomas was a polyglot of nationalities and languages. Although the Danes were the owners and primary recordkeepers of the colony, they were at no time during their two hundred fifty years of colonial rule the majority population. While Danish was the official language of record, it was never the primary language of the populace. Initially that language was Dutch, and later, English.⁵

In 1674, the king of Denmark granted the Danish West India Company a royal charter to assume control of the Guinea Company, a Danish slave trade operation formed in 1672 and located on the coast of West Africa. The need for labor on the plantations of St. Thomas had become acute. Both the advantages and the profitability of African slave labor and the ensuing triangular trade were so great that by 1715, the white population of St. Thomas was only 547 while the enslaved African population located on 160 plantations numbered 3,042.⁶

Despite the lucrative possibilities of the African slave trade, the now Danish West India and Guinea Company continued to operate at a loss because of the costs of colonization, debts incurred by planters that were underwritten by the Company, and the losses of slave ships. Seeking to establish a profit, the Danes settled the neighboring island of St. John in 1718 and purchased St. Croix from France in 1733. However, the Company still did not make a profit and in 1754, at the urging of the planters, the Danish West India and Guinea Company, which had been running at a financial loss since its inception, was dissolved, and the Danish Crown took over administration of the islands.

In 1733 a violent and harshly repressed rebellion by the enslaved Africans on St. John temporarily discouraged further plantation development on that island and many planters moved to St. Croix. St. Thomas, with its mountainous terrain, had never been well-suited to agriculture, but its wide, deep, natural harbor encouraged rapid development as a major port and trading center. St. Croix, flat and three times the area of St. Thomas, was perfectly suited to a plantation economy and became the focus of Danish colonial agricultural development. Because of this plantation development with its total dependence on chattel slavery, St. Croix also became the center of the slave economy in the Danish West Indies. It was St. Croix that eventually became the major center of unrest and rebellion and where the social reforms leading to emancipation and beyond were fomented.

In 1803, in spite of planter opposition, Denmark officially abolished its slave trade, becoming the first slave-trading European power to do so. At that time, the number of enslaved Africans recorded on St. Croix was 27,161,

⁵ Hall, *Slave Society in the Danish West Indies*, 1–33. In the first chapter, “Empire Without Dominion: The Danish West Indies, 1671–1848,” Hall explores the language development in the context of the Danish minority population in the colonies.

⁶ Waldemar Westergaard, *The Danish West Indies Under Company Rule* (New York: Macmillan, 1917), 126.

greatly outnumbering the white population. Although the white population had always been small in proportion to the black population, by 1803 it was only 7 percent of the entire population.⁷ In 1833 enslaved Africans in the colonies of the British Caribbean were emancipated by order of the British parliament. This event became a catalyst for the slaves of the Danish West Indies, and on July 3, 1848 on St. Croix they successfully won their freedom in a bloodless rebellion.

Employment conditions for the newly-freed were so poor and wages so minimal that living conditions were little better, and often worse that they had been under slavery. These agricultural laborers finally revolted in 1878. Known as “the Fireburn,” this organized rebellion led by a woman named Queen Mary, resulted in the destruction of both plantations and lives. It also led to the institution of labor reforms, and dealt the final blow to the plantation economy of St. Croix.

The increasing use of the beet as a sugar source in the latter part of the nineteenth century combined with the simultaneous loss of importance of St. Thomas as the shipping center of the Caribbean to damage the economy of the islands. A series of natural disasters also contributed to their economic decline. By 1867 Denmark saw its West Indian colonies as a financial and social burden and was therefore receptive to an offer of purchase from the United States. This initiative, fueled primarily by Secretary of State William Seward who, following the Civil War, saw the need for the United States to protect itself on all sides, failed for lack of congressional support.⁸ A second attempt at purchase in 1892 was not ratified by the Danish parliament. A final agreement was reached in 1916, and the Danish West Indies was sold to the United States for twenty-five million dollars and renamed the United States Virgin Islands. The new territory was initially placed under the Department of the Navy, which administered the islands under a naval governor appointed by the President.

The Records of the Danish West Indies

From its earliest settlement, the population of the Danish West Indies was heterogeneous, and demographics indicate that African people, enslaved or free, were always in the majority and played a central role in the earliest records of the colony. Whether involved in transactions or as the actual transactions

⁷ Svend E. Green-Pedersen, “The Scope and Structure of the Danish Negro Slave Trade,” *Bondsmen and Freedmen in the Danish West Indies, Scholarly Perspectives*, ed. George F. Tyson (St. Thomas: V.I. Humanities Council, 1996), 18.

⁸ A detailed account of the negotiations leading up to the eventual 1916 sale from the American point of view can be found in Charles Callan Tansill’s, *The Purchase of the Danish West Indies* (Gloucester, Mass.: Peter Smith, 1966). A partial account from the Danish point of view is presented in Erik Overgaard Pederson’s “The Attempted Sale of the Danish West Indies to the United States of America, 1865–1870,” (Ph.D. Diss., City University of New York, 1992).

themselves, the enslaved were integral to the life of the colony. Although the enslaved Africans created no written records, to a great extent, the records reflect their lives. The conditions of enslavement continue to form a central touchstone in the collective memory of Virgin Islanders today.⁹

Beginning with the early days of the Danish West Indian Company in the late seventeenth century, recordkeeping was an important part of daily activity. Careful records of all transactions and events were kept both by the Colonial Offices in Denmark and by the colonial government offices in the Danish West Indies. The Danes were notoriously meticulous and assiduous record keepers, and their records not only give a very rich, complete and detailed account of over two hundred fifty years of colonial development, but provide valuable documentation about colonial societies, slavery, and the slave trade.

Since the official language of the colonies was Danish, all official records were written in that language, even though Danish was not the lingua franca of the majority of the population. The enslaved Africans on St. Thomas and St. John developed a Dutch Creole known as Negerhollands, a language combining both Dutch and African influences. The Dutch influence, while strongly reinforced through the predominance of Dutch planters, was probably initially acquired through Dutch slavers on the coast of Africa and reinforced by Moravian missionaries.¹⁰ On St. Croix, due to the predominance of English planters, an English-based Creole developed. The Danish language was not taught to the populace and it was not until the 1860s, at the insistence of local Colonial Councils, that official public documents were published in both English and Danish. Even court testimony taken in English or any other language was transcribed and then translated by the clerk into Danish.

By the mid-nineteenth century, colonial officials in the Danish West Indies, as well as officials in Denmark, had become concerned about maintaining their local government records. The tropical weather, insects, and the uncertain political climate were taking their toll on the records and hastening their deterioration. The constant moving of the government itself between buildings and islands with varying qualities of unstable storage conditions

⁹ As of a July 1998 estimate, the population of the islands is approximately 118,000 persons. About 74% of the population is Black West Indian of African descent, 5% Hispanic (residing primarily on St. Croix), 13%, both Black and White from the U.S. mainland, and 8% other. Of the West Indian population, about 45% are native Virgin Islanders and 29% are immigrants from other Caribbean islands. Of the White population, a small number, resident on St. Thomas, are native-born of French descent. Their ancestors migrated to the Virgin Islands from the French Caribbean island of St. Barts in the late-nineteenth century. Oral interviews with Virgin Islanders conducted by the author between December 1998 and April 1999, and other indicators such as annual celebrations of local holidays such as Emancipation Day, clearly suggest that Virgin Islanders consider the circumstances of enslavement to be pivotal to their history. For latest statistics, see <<http://www.odci.gov/cia/publications/factbook/geos/vq.html>>.

¹⁰ Robin Sabino in her dissertation, "Towards a Phonology of Negerhollands: an analysis of Phonological Variation" (Ph.D. diss, University of Pennsylvania, 1990), supports the work of earlier linguists Gilbert Sprauve and Lesmore Emanuel in demonstrating that the beginnings of this creole were in Africa.

encouraged disorder.¹¹ A hurricane in 1772 had destroyed many pre-1755 records, and during the 1848 Emancipation rebellion, all the court and criminal records in the Frederiksted Police Station were destroyed by an angry mob.¹² It is also clear from views of chroniclers of the time who frequently refer to the deteriorated condition of records,¹³ that although records were kept, they were not always kept well. In 1894 the Danish government began making attempts to bring the archives to Denmark.

The Danish National Archives, formerly known as the Royal Archives, was established in 1582 as the central repository for documents of importance to the Crown and the State. It was not until passage of the Archives Law of 1889, however, that all the government archival institutions in the country were unified and given the official name, Rigsarkivet. In 1891 rules were promulgated to accommodate the transfer of records from local authorities to one of the three Provincial Archives established by the 1889 Law as part of the Rigsarkivet. Until these rules came into effect, nothing could have been transferred from the local Danish overseas possessions to the mother country.¹⁴ The Danish government determined that pre-1848 records, those created pre-Emancipation and prior to major constitutional shifts in Denmark, should be transferred from the Danish West Indies to Copenhagen on the grounds that these records could be considered purely historical.¹⁵

Despite reluctance and prevarication by numerous colonial offices on the islands, small but steady deliveries of pre-1848 records to Copenhagen continued until the second attempted sale of the islands in 1902. After the actual transfer of the islands to the United States in 1917, a final large shipment of records was made in 1921. The records of the Danish West India Company, some two hundred linear feet, had already been sent to the Royal Archives in 1754 upon the

¹¹ This account of the state of the archives in the Danish West Indies is drawn primarily from an article by Poul Erik Olsen, currently an archivist at the Danish National Archives. Poul Olsen, "Negeroprør, Termitter og Landsarkiver Saxild, Om de Dansk-Vestindiske Lokalarkivers Skaebne [Negro Rebellion, Termites and the National Archivist Saxild; On the Fate of the Danish West Indies Local Archives], trans. Pernille Levine *Arkiv* 10 (1985): 156–175. This is the only full and chronological accounting of the Danish West Indian archives that the author has been able to locate.

¹² Account in Svend E. Holsoe's, "The 1848 Emancipation Rebellion on St. Croix" (paper presented at the Tenth Annual Conference of Virgin Islands Historians, January 18, 1998), video-tape recording. For discussion about hostility towards records, see James M. O'Toole, "The Symbolic Significance of Archives," *American Archivist* 56 (Spring 1993): 253–255.

¹³ See John P. Knox, *A Historical Account of St. Thomas, W.I.* (New York: Charles Scribner, 1852), and Charles Edwin Taylor, *Leaflets from the Danish West Indies: Social, Political, and Commercial Condition of These Islands* (London: Wm. Dawson, 1888, repr. New York: Negro Universities Press, 1970). Both these authors, writing in St. Thomas, refer often to consulting 'dusty' records on that island.

¹⁴ Poul Erik Olsen, interview by author, email, 17 May, 1999. Olsen notes that the three Provincial Archives of the Rigsarkivet were in Copenhagen, Odense and Viborg.

¹⁵ Between 1848–1849, Denmark underwent a constitutional change from absolute monarchy to parliamentary democracy. This governmental change, in addition to the changes effected by emancipation, also affected the administration of the colonies and formed a natural administrative break in the records.

dissolution of the Company. In all, there are currently approximately four thousand linear shelf feet of West Indian Archives in the Danish National Archives. Over half of these are the West Indian Local Archives, or, records created in the colonies. The remainder are records created in the colonial offices in Denmark.

The Custody Issue

The Convention or Treaty of Sale of 1916 between Denmark and the United States transferring the Danish West Indies to the United States specifically included stipulations relating to the disposition and custody of the archives and records. The third paragraph of Article One states:

In this cession shall also be included any government archives, records, papers or documents which relate to the cession or to *the rights and property of the inhabitants of the Islands* ceded, and which may now be existing either in the Islands ceded or in Denmark. Such archives and records shall be carefully preserved, and authenticated copies thereof, as may be required shall be at all times given to the United States Government or the Danish Government, as the case may be, or to such properly authorized persons as may apply for them.¹⁶ (emphasis added).

It was normal practice, as the Danish colonial possessions shrunk between 1814 and 1944 (beginning with the loss of Norway and ending with the independence of Iceland), to include a clause in the treaty of cession about archival materials in relationship to the administration of the ceded territories.¹⁷ Conversely, as the United States acquired territories between 1803 and 1917, a clause relating to archives disposition was likewise included, as in treaties for the Louisiana Purchase, the purchase of Florida, and the annexation of Puerto Rico following the Spanish American War in 1898.¹⁸

The archives provision in the Denmark/United States Treaty, therefore, was standard practice on the part of both countries. The transfer of properties and the rights pertaining to them included transfer of the symbols of those properties, namely the records of ownership. Custody of the records was regarded as essential to the ownership of the land.¹⁹ The 1916 treaty referencing

¹⁶ Leary, *Major Political Documents*, 105.

¹⁷ Poul Erik Olsen, email to author, 22 April, 1999.

¹⁸ For example, the "Treaty for the Cession of Louisiana," 30 April, 1803, states, "The Archives, papers & documents relative to the domain and Sovereignty of Louisiana and its dependencies will be left in the possession of the Commissaries of the United States, and copies will be afterwards given in due form to the Magistrates and Municipal officers of Such of the said papers and documents as may be necessary to them" *Treaties and Other International Acts of the United States of America*, vol. 2 (Washington, D.C.: Government Printing Office, 1931), 500.

¹⁹ For further discussion of the equation between possession of the deeds and ownership of the land see chapter five of M.T. Clanchy, *From Memory to Written Record, England 1066–1307* (Oxford: Blackwell, 1993).

the records existing in both the islands and Denmark, specifically mentions that the inhabitants have the right to obtain copies of the records, and recognizes the possibility of a reciprocal flow of records.

However, whatever the stipulations of this archives clause, it is clear that the United States paid little if no attention to it or to the archives in the first years following the transfer. Perhaps, as Ernst Posner suggested in his 1942 article on the effects of sovereignty on archives which references this case, their failure to take custody of the records that were legally theirs was due, at least in part, to lack of competent advice by archivists.²⁰ More likely it was due to the urgency of the overwhelming clean-up task that the Americans were forced to undertake immediately upon assuming control of the islands in 1917. Naval administration Governor James Oliver presented the grim reality in his first annual report to the secretary of the navy, writing that “the problems to be faced in the most elementary improvement of the present conditions in these islands with particular reference to sanitation, hygiene, public morality, finances, etc., are so many and so grave.”²¹ Hospitals, health, and sewage systems were in unspeakable condition. There was no water system, a minimal and ineffective education system, no fire protection, and, worst of all, no employment for the population. It is not surprising that the disposition of archives and records had no priority. In addition, the fact that there was no National Archives in the United States meant that there was no advocate for preserving the records.

Denmark stepped in to fill the vacuum. Once the impending sale became a reality and the Danes had an opportunity to study the archives clause, various Danish historical societies in Denmark began to lobby their government to bring the records to the Danish National Archives. These groups, which included genealogists, biographers and historians, formed a joint committee and sent a petition to the Danish government urging the historical importance of preserving the documents. Deciding that records created before 1863 had to have lost their administrative importance, the committee recommended that these be brought to Denmark, while the remainder be evaluated by archivists before final decisions could be made.²²

The Danish government essentially agreed with this assessment and accordingly, in 1919, sent an archivist, Georg Saxild, to the Virgin Islands to negotiate for certain of the records to be sent to Denmark. The Danish proposal included taking government archives up to 1900, probate inventories until 1885, and records of community committees if they were kept in government archives. It excluded deed and mortgage letter books, which were interpreted

²⁰ Ernst Posner, “Effects of Change of Sovereignty in Archives,” *American Archivist* 5 (July 1942):153.

²¹ “Annual report of the Governor of the Virgin Islands for the fiscal year, 1917,” unpublished typescript, August 1, 1917, 1.

²² Olsen: 12.

as reflecting the “rights and property of the inhabitants.” Upon arriving on St. Thomas, however, Saxild discovered that the Navy had no interest in negotiating and accepted his proposal unconditionally, essentially allowing him to take what he wanted. In his report to the Danish government, Saxild observes that, “in the American administration there is next to no interest in archives. It was very clear that none of the American officials (the school principal, the military doctor et al) who visited me out of curiosity while I was working understood why I wanted all that ‘rubbish’ that I was going through.”²³ Saxild transferred over two thousand linear feet of records to the Danish National Archives.

Some of the frustrations at finding records in disarray as well as in a foreign language are expressed in the Naval governor’s early annual reports. The report of 1917 discussing the very poor conditions in the government’s administrative offices complains that “there is no place to file correspondence and records except on shelves which are congested with the accumulation of many years.” The law books were all in Danish and had not been translated into English. On the other hand, by 1918, the surveying records, also in Danish, which were found to be kept in a “more or less haphazard manner,” were being translated and organized by Navy personnel.²⁴

In 1936 the newly established National Archives of the United States, finally acknowledging its claim to and responsibility for the records, sent a Danish-speaking archivist, Harold Larson, to the Virgin Islands as part of the Survey of Federal Records Project.²⁵ By that time, the Virgin Islands had been administratively transferred from the Department of the Navy to the Office of Territories in the Department of the Interior. Larson was given a leave of absence and appointed special assistant to Governor Lawrence Cramer, the civilian governor in the Virgin Islands, who had been appointed local administrator of the Works Progress Administration program by President Franklin D. Roosevelt.²⁶

Larson stayed in the Virgin Islands from August 1936 to April 1937, employed five local assistants, and during that time examined and selected Danish records for transfer to the custody of the National Archives. It is clear from Larson’s detailed accession lists that most of the records date from after

²³ Rigsarkivet, Arkivwaesenets arkiv nr. 372a; Sager ang. Hjemsendelse af arkivalier fra de vestindiske oer 1896–1921. “Report on National Archivist Saxild’s Journey to the Former Danish West Indian Islands, 1919,” translated for the author by Pernille Levine.

²⁴ “Annual Report of the Governor of the Virgin Islands,” unpublished manuscripts, 1917, 1918, 1919.

²⁵ The National Archives was established in 1934. The Survey of Federal Records Project was part of the Works Project Administration, a New Deal program. The survey was sponsored by the National Archives.

²⁶ Harold Larson, “The Danish West Indian Records in the U.S. National Archives,” (St. Croix Library Association, St. Croix, Virgin Islands, 1976), photocopy; National Archives, “Accession No. 75. Records of the Danish Government of the Virgin Islands, RG 55 prepared by Harold Larson,” 1937; National Archives. “Works Project Administration Central Files: State 1935–1944,” RG 69, Folders 640, 660; National Archives, “Identification Inventory,” Accession No. 75, 1937.

the initial cut-off date of 1848 set by the Danes, although some, particularly on St. Croix, date back to the seventeenth century. In his selection criteria, Larson excluded all records involving land titles and all that had been created after 1917, feeling that these should remain on the islands. His inventory listed material of historical significance as well as record series dealing with a variety of topics such as agriculture, social conditions, and local legislative and judicial matters. He found the records in very poor physical condition—termite-ridden, brittle, and fragile. He suggested that problems for future researchers, in addition to the fragility of the records, included the fact that they were in Danish, that the older records used gothic script, and that the handwriting was often illegible. In the introduction to his preliminary inventory, Larson took note of the obligations implied under the archives clause in the treaty, writing, “the present accession was made with the understanding that the Government of the Virgin Islands or its representatives, upon request should be given all available information from these records.”²⁷ The entire accession, sent in three shipments, was 1,462 cubic feet or 1,260 linear feet.

In 1942 the National Archives sent archivist Gaston Litton, a field representative for the agency, who was surveying records in Panama, to the Virgin Islands, Puerto Rico and the Canal Zone. His mission was to survey the federal records in these territories as well, to report on their physical conditions, and to recommend dispositions and transfers to Washington.²⁸ Ensuing correspondence between Litton, officials at the National Archives, and Robert Lovett, government secretary and acting-governor in the Virgin Islands, indicates that the survey was eagerly received by Lovett, who was anxious to transfer inactive government records, as well as remaining Danish records to the safe keeping of the National Archives, since the Virgin Islands had neither the facilities nor the staff to take care of them.

However, the Municipal Councils of St. Thomas, St. John and St. Croix were not as tractable and firmly resisted all suggestions that any of the legislative records be removed. Nonetheless, Litton (who recognized that many of the remaining Danish records completed already existing record series at the National Archives), and Lovett were able to persuade many of the other local Virgin Islands offices to transfer their inactive files.

The hazards of sea travel in the Atlantic during World War II prevented any transferring of the records until the 1950s when several smaller accessions of Danish records, one for 95 cubic feet and one for 309 cubic feet, were made in 1954 and 1955. These were primarily records dating from 1818 to 1917, but also included some post-1917 records. In 1953 the Virgin Islands Governor

²⁷ National Archives, “Accession No. 75,” 3.

²⁸ National Archives, “Field Service-Caribbean Area,” Reports and Other Records of Field Representatives, 1942–44, RG 64, Boxes nos. 1 and 3.

again offered to send all the older records, except land records, to the National Archives. Those that were accepted were, like the 1937 accession, placed in Record Group 55 as part of the Natural Resources Records Branch.²⁹ However, it seems clear from the accession lists that many of the legislative records were not transferred, even in the last accession in July 1959, when 204 cubic feet, comprised strictly of post-1917 records with series going up to 1949, were sent to Washington.

Records pertaining to the Danish West Indies/Virgin Islands are found in a number of record groups in the National Archives, but the bulk of them are in Record Group 55. The older records are in such fragile condition that some of them are not available to users. Finding aids are sketchy. The finding aid for the pre-1917 records is merely a shelf-list prepared in 1961 and that for the post-1917 records is only a preliminary inventory prepared in 1960. Both were compiled by the same archivist.³⁰ Various informal record descriptions and limited finding aids have been compiled by Virgin Islands researchers.³¹

Approximately 2,070 cubic feet of records were removed from the Virgin Islands to the National Archives. These records generally complement rather than duplicate those in Denmark. A rough estimate in 1977 found that between 50 to 60 percent of the records were not duplicated; however, 25 to 30 percent were, with the remainder uncertain. Since the records have not been fully described, some bundles never opened, and some marked "miscellaneous," there are still many unknowns.³² Although the older records are in Danish, many of those, particularly Colonial Council records, created from the mid-nineteenth century are also in English. Together they complement and continue the rich history already deposited in Denmark.

In the late 1950s the National Archives stopped taking in records from the Virgin Islands, leaving the responsibility for records to the local government. Historical records remaining in the Virgin Islands are primarily the land records kept by the recorder of deeds as well as survey records in the Department of Public Works. Other remnants of series such as police court records and municipal council proceedings are stored in the Virgin Islands Division of Libraries and Archives facilities on St. Thomas and St. Croix.

²⁹ National Archives, "Transaction Dossier, RG 55 Records of the Government of the Danish West Indies," July 8, 1954 and September 16, 1955.

³⁰ National Archives, "Preliminary Inventory of the Records of the Government of the Virgin Islands of the United States," H. Donn Hooker, comp., 1960; National Archives, "Shelf-List of Records, Record Group 55, Records of the Danish Government of the Virgin Islands, 1672–1917," 1961.

³¹ George F. Tyson, comp, "Family and History Records and the U.S. and Danish National Archives," (prepared for "Researching Your Roots: Genealogy in the Virgin Islands Workshop, St. Croix, 4 May, 1996), photocopy; Harold Larson, "The Danish West Indies Records in the U.S. National Archives," (St. Croix Library Association, 1976), photocopy.

³² Tyson, "The Historical Records of the U.S. Virgin Islands," 37–40.

Analysis of the Custody Issue

The definition of custody currently used by the National Archives of the United States includes both physical possession of and legal responsibility for the records.³³ In what way does the current custodial situation of the Danish West Indian records, where custody of the pre-1917 records are divided between Denmark and the United States, support or violate the dual concept of legal responsibility and physical possession? What are the obligations of custodians, and can these obligations be fulfilled under the conditions described above? Finally, what part do the inhabitants of the U.S. Virgin Islands—whose interests were rarely consulted—play in these issues?

The treaty of 1916 between the United States and Denmark required Denmark to turn certain archival records over to the custody of the United States. These included records relating to the cession itself, as well as those relating to the “property and rights of the inhabitants of the islands.” The treaty also envisioned the exchange of copies of pertinent documents between the two countries upon request. Denmark chose to narrowly interpret that ambiguous phrase “property and rights of the inhabitants” as primarily referring to land records. The Danish government proceeded to remove records to Denmark on the assumption that the records, created by Danes executing Danish policy in Danish offices which functioned as extensions of the colonial offices in the Mother country, belonged to Denmark. Denmark’s position is clear in the consistent references to “bringing the records home” by Danish archivists, both past and present, in official finding aids, reports, and articles on the disposition of the records.³⁴ In archival terms, Danish West Indian colonial records created both in Denmark and in the Danish West Indies could be seen as belonging within the same archival *fonds*, even though they were not all accessioned into the same location in the Danish National Archives.

For the United States Department of the Navy, confronted with the records in situ and generally unable to read them, the records held little interest other than as evidence of property ownership and boundaries. In addition, there was no federal institution with a mandate for archives acquisition. Because the records did not fit into any pre-existing archival collection and seemingly held little significance for the United States, the naval personnel may even have felt

³³ National Archives and Records Administration, *Disposition of Federal Records; A Records Management Handbook* (Washington, D.C.: National Archives and Records Administration, 1992), D-4.

³⁴ For example, Wilhelm von Rosen, in the introduction to his finding aid on the West Indian Local Archives, “Vestindiske Lokalarkiver,” *Rigsarkivet Og Hjaelpemidlerne Til Dets Benyttelse* (Copenhagen: Rigsarkivet, 1983), trans. by Pernille Levine, mentions that the archives “were brought home around the turn of the century,” 1. In his “Report on National Archivist Saxild’s Journey to the Former Danish West Indian Islands, 1919;” Saxild, examining older archives on St. Croix remarks, “they were there and they had to be taken home,” 5; Poul Erik Olsen in “Negro Rebellion, Termites and the National Archivist Saxild,” makes numerous references to the “sending home” of the archives.

relieved that Denmark was eager to take responsibility for them. Certainly they were willing to release the records with no questions asked.

Denmark, therefore, by virtue of its interest, its proactive position, and its recordkeeping practices, claimed physical custody. In terms of the treaty, however, its claim to legal custody is subject to interpretation. To prove legal custody following the treaty, Denmark would have had to demonstrate that none of the records, neither those already accessioned in the Danish National Archives nor those sent there in 1919, concerned the “property and rights” of the inhabitants of the Virgin Islands. Setting the treaty aside, however, from Denmark’s point of view, the archival *fond* of the records was in Denmark, and maintenance of the chain of custody for this *fond* was only possible by depositing the records in the Danish National Archives. Viewed from this nationalistic perspective, Denmark could confidently claim both the legal and the physical right to the records, and place the onus to request copies on the United States.

For the United States, the situation is equally ambiguous. Initially the United States willingly gave up the right to physical custody and ignored legal custody. When, in the 1930s, the United States finally acknowledged its custodial rights under the treaty and began to take the remaining Danish West Indian records into the National Archives, no effort was made to claim records from the Danes, neither those taken from the Virgin Islands, nor those created in Denmark pertaining to the Virgin Islands. Either action, however, could have been justified. From the report of the archivist who gathered the records and the analysis by Ernst Posner, it appears that the National Archives felt that it had missed an opportunity and would have to be satisfied with Danish leftovers.

Record Group 55 was created by the National Archives to hold the Danish West Indian records acquired through the 1937 Survey of Federal Archives project and continued to be the major record group for Virgin Islands holdings. As such, it reflects a political and geographical entity accommodating the records created physically in this Caribbean locale regardless of creating agency. In terms of custody, it also reflects the National Archives policy, first defined by Schellenberg, of taking in records without regard for continuous custody, since the records take on evidential integrity only when they are within the Archives³⁵. Record Group 55 includes both records created under Danish sovereignty as well as those created by the United States and is one of the few record groups in the National Archives containing non-federal records.³⁶

³⁵ In his *Modern Archives: Principles and Techniques* (Chicago: University of Chicago Press, 1956), Schellenberg notes that, “modern records are large in volume, complex in origins, and frequently haphazard in their development. The way they are produced makes futile any attempt to control individual documents or, in other words, to trace ‘unblemished lines’ of ‘unbroken custody’. This is true no matter what kind of record-keeping system is used. If modern records, therefore, are offered to an archival institution they will be accepted as archives, provided they meet the other essential tests, on the ‘reasonable assumption’ that they are actually records of the office that offers them,” 14–15.

³⁶ Respondent No.5, interview with author, tape recording, Washington, D.C., April 15, 1999.

Under the treaty, then, custody of the records was arbitrarily divided between the two parties, Denmark and the United States, subject to whatever interpretation and disposition each government chose to make. Efforts were made by both governments to observe the spirit of the treaty and leave property records and some pertinent legal records in the islands. Access rights of citizens to the full body of records was specified in the treaty insofar as each government (and persons authorized by the government) could request documents of one another.

Since neither side could legitimately claim the undisputed right to either physical or legal custody of the entire body of records, in the process of division, the records became fragmented and separated from one another. Comparison of finding aids and accession lists from the Danish National Archives and the National Archives as well as the reports by archivists Saxild and Larson, indicate that even though the mid-nineteenth century generally seems to be the chronological dividing line for records claimed by Denmark, there is considerable overlap. Saxild himself states that he “could only take documents until and including 1900,”³⁷ while Larson’s inventory shows records series beginning in the early nineteenth century and even a few from the eighteenth century.³⁸

Since there was never any discussion or agreement between Denmark and the United States about the disposition of the records, there is no definitive dividing point for the records between 1671 and 1917, either by year or by creating agency. Inevitably, parts of some series appear in both collections, it becomes difficult to account for gaps, and the continuity of the records is lost.³⁹ With the custodial chain broken and the records divided between jurisdictions, the major objective of custody, namely the protection of the integrity of the records for their use as evidence, is considerably weakened. The custodians, thousands of miles away from the point of records creation, are also unable to deliver on their other primary obligation, namely the provision of easy access. Each custodian can only provide access to a portion of the records without any clear idea of what else exists.

At the same time, while each government interpreted the archival disposition of the records in different ways, any possible rights of the native inhabitants

³⁷ Rigsarkivet. Arkivvaesenets arkiv nr.372a: Sager ang. Hjemsendelse af arkivalier fra de vestindiske oer 1896–1921, trans. Pernille Levine, 7. Saxild also mentions that he did take the archive of the Supreme Court whose records went up to 1907.

³⁸ Harold Larson, “Division of Interior Department Archives. Preliminary Report,”

³⁹ For example, various records relating to the St. Thomas Harbormaster appear both in a Danish National Archives finding aid and Larson’s inventory. Although they are firmly divided by date (1867), they seem to belong within the same general series. See Wilhelm von Rosen, “Vestindiske Lokalarhiver” [West Indian Local Archives] in *Rigsarkivet og Hjaelpemidlerne til dets Benyttelse* [The National Archives and the Tool to Use Them], trans. Pernille Levine, 829; and Harold Larson, “Division of Interior Department Archives. Preliminary Report,” 12.

of the Virgin Islands were generally not considered except insofar as property and some legal records remained within the territory. What were these rights and to what extent does the *provenance* of the records suggest that they should have remained in the islands?

Provenance undergirds archival practice. By stipulating that records originating from the same source must remain together and not be mingled with other records, *provenance* also suggests the necessity of maintaining the context of records creation. If providing access to a community's historical records is integral to the custodial obligation, then is a Virgin Islands claim to the records on the basis of context an important link in establishing that obligation? The principle of *provenance* offers an archival framework for understanding a records situation in which the native inhabitants of the Islands assume a more prominent role in the context-creating process.

The demographics of the Danish West Indies since its early colonization indicate the predominance of enslaved Africans in the population. This majority group never diminished but rather increased, and became the primary reason for the continued existence of the colonies. Following emancipation in 1848, they formed the majority of its free citizenry. By 1917 the descendants of African slaves, creolized into native Virgin Islanders, were the overwhelming majority population of the United States Virgin Islands.

Although the enslaved African population was, for the most part, not literate, it is clear that they were involved in the public record-creating process from the beginning. Whether as plantation statistics, transactions at the auction block, objects of punishment, manumission, property transfers, or wills, testifiers in court proceedings or on police blotters, subjects of administrative edicts or council debates, this population was an integral part of record-creating functions. As free citizens, this population (or at least its middle-class) increasingly dominated public records creation to the point where the Colonial Councils successfully insisted that official records be printed in both English and Danish. It could be argued that, in terms of content, the majority of the records created in the Danish West Indies concerned the "rights of the inhabitants." In terms of context, although public records were physically created by Danish clerks and other Danish officials during the daily functioning of their offices, the functions of those offices, as in any administrative office, indirectly reflected the transactions and serviced the needs of the whole society. In this respect, therefore, the records were created by and within the entire colonial milieu. It could also be argued, therefore, that the entire colonial society within the specific locale of the Danish West Indian islands, rather than the colonial offices in Denmark, constitutes the larger context of the records. Equally, it could also be argued that the chain of custody does not necessarily begin with a Central Colonial Office in Copenhagen, but possibly with a small records-creating function in St. Thomas, St. Croix, or St. John.

The importance of location in maintaining both *provenance* and unbroken custody is emphasized in a 1980 report by the Consultive Group on Canadian Archives which wrote:

It is necessary to emphasize the long-standing archival principle of *provenance*, namely, that records originating from the same source should be kept together and not interfiled with records from other sources. We would like to add to this principle a new corollary to the effect that any particular set of records should remain as far as possible, in the locale or milieu in which it was generated. This may be called the extension of the principle of *provenance* (which aims at keeping the context of records intact) to a principle of territoriality (which envisages the locale or milieu of records as part of their context). Allied to the principle of provenance is the principle of unbroken custody.⁴⁰

The ways in which the Danish West Indian records have been used in twentieth-century research further reinforce the concept of the islands as the context of the records. A number of doctoral dissertations on the Danish West Indies/U.S. Virgin Islands, for example, specifically address the development of societal values in the Danish West Indies, as revealed through records involving the African population. For example, tax rolls and census records are used to demonstrate that African languages underpinned the development of Dutch Creole among St. Thomas' enslaved population. Another dissertation utilizes census records, tax rolls, and wills to trace the histories of two generations of six 'free-colored' families living in St. Croix up to the time of Emancipation. None of these families made their own personal records, but the purpose of the study "was to formulate and recreate their every day living without the advantage of autobiographies, diaries, or personal firsthand writings by the subjects being investigated."⁴¹ The records are intertwined with the growth and development of the Virgin Islands community.

The claim of the people of the Virgin Islands to custody of their records rests not only on this expanded interpretation of the *provenance* of the records, but also on the implied intent of the treaty, echoed by both Danish and American archivists, to make the records dealing with the "property and rights of the inhabitants" available to the islanders.⁴² An additional consideration is the right of the people of the Virgin Islands of access to these records by virtue of the historical memory contained in them. The lack of access created by fragmented custody only emphasizes the access responsibilities of the custodian.

⁴⁰ "Canadian Archives. Report to the Social Sciences and Humanities Research Council of Canada by the Consultive Group on Canadian Archives." (Ottawa, Canada: Social Sciences and Humanities Research Council of Canada, 1980), 15–16.

⁴¹ Elizabeth Rezende, "Cultural Identity of the Free Colored in Christiansted, St. Croix, Danish West Indies 1800–1848" (Ph.D. Diss., Union Institute, 1997), 4.

⁴² U.S. archivist Harold Larson in his "Preliminary Report" on the 1937 accession notes that "the present accession was made with the understanding that the Government of the Virgin Islands, or its representatives, upon request should be given all available information from these records," 3.

The recognition that both Denmark and the Virgin Islands share a common colonial history makes an even more compelling case for ease of access to these records that reflect the history of both parties.

The clash between the maintenance of an archival *fonds* in Denmark, the record group in the United States, and the possible *provenance* of locale in the Virgin Islands indicates that all three parties may have legitimate custodial claims to the records. These conflicting rights not only indicate friction between physical custody and legal custody, but also suggest the possibility of dissonance between the maintenance of a *fond*, and the establishment of context, two concepts which have traditionally been seen as interdependent and complimentary. They suggest that one of the consequences of conflicting custody is that archival principles go awry.

While both Denmark and the United States initially felt that they were exercising their legitimate custodial rights as well as fulfilling their archival responsibilities, their actions, each taken from a different archival perspective, only compromised the records they were trying to preserve. In addition, the desire to maintain a Danish West Indian *fond* in Denmark or to establish a record group in the United States neither supports nor accommodates access in the Virgin Islands. The data in finding aids and accession records indicate that this clash of archival principles has also resulted in the fragmentation and alienation of the records, their loss of evidential values and their fundamental inaccessibility in any holistic sense. On the human level, the rights of Virgin Islanders to easily access their own history have been ignored.

Conclusion

Most certainly, the confluence of custody and access goes beyond this specific case. The fundamental rights of nations and individuals to access information concerning their own history and culture has long been affirmed by such international groups as the International Council on Archives.⁴³ UNESCO also has considered problems of the joint custody of archives, particularly as it applies to former colonial situations, and recognizes that “to the problems of ownership of archives must therefore be added related problems of access.”⁴⁴

⁴³ For example, a compilation of documents on archival claims includes a “Resolution on the right of nations to information concerning their history and the return of national archives (A3-0258/90)/January 24th, 1991.” *Reference Dossier on Archival Claims* (Strasbourg: ICA, 1997) 21–24.

⁴⁴ The archival problems posed by competing claims have been extensively explored by Unesco in cooperation with the International Council on Archives. Several studies in the 1970s and 1980s offer a range of solutions. See Charles Kecskemeti, *Archival Claims, Preliminary Study on the Principles and Criteria to be Applied in Negotiations* (Paris: UNESCO, 1977), Charles Kecskemeti and Evert Van Laar, *Model Bilateral and Multilateral Agreements and Conventions Concerning the Transfer of Archives* (Paris: UNESCO, 1981), and “Report of the Director-General on the Study Regarding Problems Involved in the Transfer of Documents from Archives in the Territory of Certain Countries to the Country of Their Origin,” in *Reference Dossier on Archival Claims*, 29.

However, the custodial dilemma created when several parties legitimately claim rights as “keepers” of certain records also suggests a possible postcustodial solution through the ‘managing’ of access to bring these related collections together. Standards such as Encoded Archival Description now offer the potential of virtually reuniting fragmented collections and relating distributed collections through the on-line linking of finding aids. In this utopian scenario, for example, finding aids to Danish West Indian materials encoded by archivists in Copenhagen, Washington, and the Virgin Islands could be embedded with references to each other at many levels, creating the ability for the researcher to seamlessly recreate records series.

In the case of the Virgin Islands, Denmark is currently acknowledging its custodial obligations and the demonstrated need for Virgin Islanders for access to their own history by collaborating with the Virgin Islands on a joint project to inventory, microfilm, and describe records in both locations.⁴⁵ The ultimate goal includes providing online access to finding aids. Denmark even contemplates returning the records if they can be suitably housed, for, while it is true that Virgin Islanders face the intellectual access problems of language, physical access has always presented the major barrier to accessing the records.

While physical and legal custody, judiciously applied, may be sufficient to protect the evidential values of records, such protection of the records satisfies only part of the archival obligation. An additional and equally compelling obligation is surely to enable these records to fulfill their function as the building blocks of personal history and collective memory.

⁴⁵ In December 1998 and March 1999, the author conducted a series of twenty interviews with researchers, primarily Virgin Islanders, who were or had been engaged in historical projects. They overwhelmingly indicated that full access to the historical records of the Danish West Indies was needed in order for the Virgin Islands to write its own history and construct its collective memory. Denmark and the Virgin Islands signed a joint agreement on October 27, 1999 to work together towards providing access to the Danish West Indian records under their control.