Multi-Method Interdisciplinary Research In Archival Science: The Case Of Recordkeeping, Ethics And Law

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Abstract. This article describes the issues involved in using a multi-method approach to address multi-faceted interdisciplinary research in archival science. The example chosen to illustrate the multi-method approach is taken from recent research, which explored the recordkeeping-ethics-law nexus from the perspective of communities as social systems, regulatory models for recordkeeping and their continuing application to online records. The methods combined traditional archival and social science research techniques, as well as legal and ethics research tools drawn from law and moral philosophy, together with disciplinary discourse analysis, concept mapping and empirical examples to illustrate the concepts. The example demonstrates that complex research questions that cross disciplinary boundaries need to draw from a number of research paradigms and conceptual understandings, which assist in breaking down the barriers with knowledge domains that have to date, had limited contact with archival science.

Keywords: ethics, interdisciplinary archival research, law, research methods

Introduction

The need for interdisciplinary research is found in archival professional discourse which has pointed to a dearth of archival research that extracts pertinent knowledge from other relevant disciplines. Frank Upward acknowledges that archival science had been the foundation for organising knowledge about recordkeeping and that '...this should be combined with the acceptance that we need to continue to identify the knowledge and skills in other disciplines of relevance to our endeavours'.[1] Luciana Duranti, pointing out that archival science absorbs knowledge from other relevant disciplines, states that there is a particular need to reconnect archival knowledge with law, a discipline with which it has had a strong historical association:

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[1] Upward, F., "Structuring the Records Continuum, Part One: Post-custodial Principles and Properties", *Archives and Manuscripts*, **24**(2) (1996): 277.

Naturally, archival science needs support in this endeavour from two areas that over the centuries have been vital factors in its development the law and the education system...The large body of ideas embedded in laws, policies and decisions needs to be filtered through archival understanding and integrated within archival knowledge coherently and systematically as 'archival science is the indispensable substance on which other knowledge is brought to bear'.[2]

Wendy Duff, in highlighting the similarities between recordkeeping requirements and those found in law and professional practices, states:

If archivists are to take their rightful place as regulators of an organisation's documentary requirements, they will have to reach beyond their own professional literature, and understand the requirements for recordkeeping imposed by other professions and society in general.[3]

Duff extols us to understand the needs of the professionals whom archivists serve. Is the converse also the case, however? Should lawyers, ethicists and other professionals also absorb archival concepts and methods? More archival research needs to be disseminated back into those arenas upon whose methods the research originally drew if it is to have a reciprocal effect.[4] However, before archivists go looking for methods that they can adopt or adapt from other fields of research, they need to review the efficacy of the methods they have used to date, in relation to their specific research goals and research questions.

Research Methods in Archival Science

Research methods in the field of archival science[5] have been grounded in the disciplines from which the field was formed, namely

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[2] Duranti, L., "Archival Science", in *Encyclopedia of Library and Information Science* **59** (supplement 22) (1997): 13–14.

[3] Duff, W.M., "Harnessing the Power of Warrant", *The American Archivist* **61** (Spring) (1998): 105.

[4] For example: Iacovino, L. "The Patient-Therapist Relationship: Reliable and Authentic Mental Health Records in a Shared Electronic Environment", *Psychiatry, Psychology and Law*, 11(1) (2004): 63–72; Iacovino, L. "Trustworthy Shared Electronic Health Records: Recordkeeping Requirements and Health *Connect*", *Journal of Law and Medicine*, 12 (1) (2004): 40–59.

[5] Archival science is defined as "the body of knowledge about the nature and characteristics of archives and archival work, systematically organized into theory, methodology, and practice". Duranti, "Archival Science": p. 1.

diplomatics, law and historiography. However, archival science, like its formative disciplines, has also evolved and over time has augmented its research approaches through the adoption of a range of research methodologies including 'surveys, structured interviews, case studies, action research, ethnography, grounded theory development, analysis of literary warrant and best practice, and narrative analysis.'[6] Much recent research is collaborative and multidisciplinary, thus exposing archival research to additional research methods, including systems analysis and computer science approaches.[7] Although research in archival science has tended to fall into what is described as the interpretive paradigm, which adopts qualitative methods, it may integrate empirical evidence, which is often defined as positivist. Indeed, this author would speculate that positivist methods are likely to become the dominant research method in archival science as a result of the influence of systems analysis. In practice all research processes are iterative, and rarely does a research project settle on the most suitable method until a number have been tested in the course of the research itself. A very rigid research design may impede rather than enhance a research project, nevertheless it is essential in structuring the final outcome, and so a fine balance must be struck. The prior research experience of the researcher is another component in a successful research design.

Recent research on ethical-legal frameworks for recordkeeping provides a good illustration of the issues involved in merging different research methods to gather and analyse data, in particular, through model building.[8] The research methods that were adopted in this research included a mix of conventional archival methods such as

[6] Williamson, K. with F. Burstein and S. McKemmish, "The Two Major Traditions of Research", in ed. K. Williamson with A. Bow ...[et al.], *Research Methods for Students, Academics and Professionals: Information Management and Systems*, 2nd edn., (Wagga Wagga, NSW: Charles Sturt University, 2002), p. 39.

[7] See for example, Monash University, School of Information Management and Systems, *Recordkeeping Metadata Standards for Managing and Accessing Information Resources in Networked Environments Over Time for Government, Social and Cultural Purposes*, 1998–1999, http://www.sims.monash.edu.au/research/rcrg/research/spirt/index.html last revision 22 November 2000. (consulted 30 October 2004). University of British Columbia, *International Research on Permanent Authentic Records in Electronic Systems* Project (InterPARES 1(1999–2001) and InterPARES 2 (2002–2005), http://www.interpares.org (consulted 30 October 2004)).

[8] See L. Iacovino, *Ethical-Legal Frameworks for Recordkeeping: Regulatory Models, Participants and their Rights and Obligations PhD dissertation* (Melbourne: Monash University, 2002). Also Deakin and Monash University, *Electronic Health Records: Achieving an Effective and Ethical Legal and Recordkeeping Framework*, Australian Research Council, Discovery Grant, 2002–2004, Chief Investigators: Associate Professor Danuta Mendelson, School of Law Deakin University, Dr Livia Iacovino, School of Information Management and Systems Monash University, Associate Professor Bernadette McSherry and Moira Paterson, Faculty of Law Monash University.

historiography; general research methods such as literature reviews, argumentation, and intellectual discourses using interpretive social science techniques; and more advanced uses of discourse analysis and literary warrant, as well as deductive reasoning, theory building, concept mapping and empirical instantiation. The research itself created a methodological tool in the form of a regulatory matrix, derived from archival and legal concepts, for analysing the ethical and legal rights and obligations of recordkeeping participants.[9]

Law and Ethics: Research Goals and Outcomes

The research related to law and ethics centred on the legal and social relationship model as an analytical tool for identifying the rights and obligations of recordkeeping participants in networked 'business' transactions within communities of common interest based on trust. As legal relationships have their basis in the law of obligations found in both common and civil law systems, the model could be applied to two major world legal systems. The model was also used to examine the legal concepts of property, access, privacy and evidence from within the legal domain, with reference to current Australian law and its Internet context. The contextualisation of the regulatory model, using medical, business and government examples, illustrated the practical application of legal and social relationships to recordkeeping contexts. However, the application of the law of obligations to private law is espoused by only a minority of common law lawyers, illustrating that even within the discipline from which the concept has been drawn, there are opposing interpretations.[10]

The research discussed in this paper explored the recordkeeping-ethics-law nexus from the perspective of communities as social systems, regulatory models for recordkeeping and their continuing application to online records. It built on existing recordkeeping regulatory models as applied within the Australian legal context using a records continuum[11] framework inclusive of European archival

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[9] Iacovino, L. *Ethical-Legal Frameworks for Recordkeeping: Regulatory Models, Participants and their Rights and Obligations*, *PhD dissertation* (Melbourne, Monash University, 2002), p. 248.

[10] Fisher, S., "Preface", in S. Fisher (ed.), *The Law of Commercial and Professional Relationships*, (South Melbourne: F.T. Law & Tax, 1996), p. vii. According to Fisher, an obligation approach to Australian private law is uncommon.

[11] McKemmish, S., "General Introduction", in S. McKemmish and F. Upward (eds), *Archival Documents: Providing Accountability Through Recordkeeping*, (Melbourne: Ancora Press, Monash University, 1993), pp. 1–4; McKemmish, S. and Piggott, M., (eds), *The Records Continuum*, (Melbourne: Ancora Press, Monash University, 1994).

theory, which operates on managing the record throughout its existence as a continuous process. Italian archival theory was chosen because it has as its sources diplomatics and law, and is therefore, highly significant to interdisciplinary research on law, as well as supporting the complementary nature of the record as both evidence and memory.

As a major research goal was to further interdisciplinary bridges between ethics, law and archival science, the research extrapolated related but often subtly different concepts, and focused on 'points of interconnection', for example, the understanding of 'evidence' from the archival and legal perspective. However, the concept of the record 'over time' is not found in legal texts and legislation in particular, and therefore provides a significant challenge if the research is to be presented to a non-archival audience.[12]

Because the research aimed to reconcile a number of archival traditions – the common strands rather than the differences, in particular concepts of identity, trust, acts, actors, and social relationships – it analysed the fundamental importance of these concepts in law, ethics and archival science from the discourses of the disciplines themselves. The examination of discourses in law, ethics and archival science was a key research method aimed at advancing interdisciplinary research in areas of mutual interest. The research, therefore, had a strong theory-building component, the need for which has been demonstrated as a requirement in current research in the archival and records field.[13]

A number of related outcomes emerged from the research. Major outcomes included new conceptual models and definitions. The definition of a record expanded on existing ones, with a refocus on intentional action.[14] The notion of mandates as adopted by recordkeeping metadata standards needed to be supplemented by the notion of a

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[12] See for example Paterson, M., and Iacovino, L., "Health Privacy: The Draft Australian National Health Privacy Code and the Shared Longitudinal Electronic Health Record", *Health Information Management*, **33**(1) (2004): 5–11.

[13] In fact it was pointed out in the Social Sciences and Humanities Research Council of Canada (SSHRC), Major Collaborative Research Initiatives, Site Visit Report, The Long Term Preservation of Authentic Records, InterPARES (unpublished, copy held by author), held at the University of British Columbia, Vancouver, February 2001, that good research requires time spent on conceptual frameworks on which to base methodologies.

[14] "A record is a manifestation of a set of relationships between legal and moral persons, intentional acts, and their legal and social effects. It arises from a business transaction which forms part of a business process. It is both an object which memorialises evidence of a business transaction and an outcome of a business process. The participants in the transaction must have *the intention* to communicate, and to have consented to the communication. The procedures that inform the communication must be captured". Iacovino, L. *Ethical-Legal Frameworks for Recordkeeping*, p. 12.

reciprocal right-duty evidenced by the record.[15] Relationships were found to determine rights and liabilities of the legal persons participating in the action of the record, and fitted the records continuum view of a transaction as a social interaction which encompasses individual communications, corporate transactions, social and business activities and relationships that are documented in records at all levels of aggregation, as well as incorporating a strictly legal view of a transaction as one that changes the legal relationship of the parties concerned in an action.[16] In turn, records supported the rights and obligations of the persons involved in the action.

Research Questions, Design and Methods for Multi-faceted Interdisciplinary Archival Research

Theoretical research is needed, in part, to explain why individual professional practices are followed.[17] Particular research methods were selected for this research in order both to develop theory in order to understand practice, and to apply theory. A postmodernist model – the records continuum – was adopted as a conceptual framework, but also drew upon the traditional research methods of archival science as well as evolving ones, including discourse analysis. Professional discourse is also referred to as 'literary warrant'.[18] Literary warrant is best known to the recordkeeping profession as the identification of

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[15] Ibid. In Chapters 3 and 6 an analysis of recordkeeping regulatory models derived from cdiplomatics-archival science and the "warrant" approach had found that both methods provided insufficient emphasis on the obligations and rights of recordkeeping participants. The "warrant" approach has had a strong influence on the interpretation of "mandates" in recordkeeping metadata standards, for example, "external mandates (e.g., social mores and conditioning, laws, regulations, standards, best practice codes, professional ethics) and internal mandates (e.g., corporate culture, policies, administrative instructions, delegations, authorities)" in McKemmish S., G. Acland, N. Ward and B. Reed, "Describing Records in Context in the Continuum: the Australian Recordkeeping Metadata Schema", *Archivaria* **48** (Fall 1999): 13. Mandates have limitations in terms of ethics, where ethics is defined as separate from social mores, and each action has a unique ethical aspect. A number of ethical theories do not consider rules or social mores as ethical drivers as they are subject to change, while ethical action is specific to the demands of each individual action.

[16] See Figure 1.

[17] Gilliland-Swetland, A., "Archival Research: A 'New' Issue for Graduate Education", *The American Archivist* **63**(2) (Fall 2000), p. 260.

[18] Literary warrant is E. Wyndham Hulme's theory of library classification, which propounds the idea that classification systems should utilise the literature of a subject for forming the basis of a class. Social and legal warrant are sub-categories of the literary warrant. W. M. Duff, *The Influence of Literary Warrant on the Acceptance and Credibility of the Functional Requirements for Recordkeeping: A Dissertation Proposal* (unpublished draft), 1995, Pittsburgh, University of Pittsburgh, p. 11. The Pittsburgh team is credited as the first to propose the use of the term 'literary warrant' in the records context. See Duff, W.M., "Harnessing the Power of Warrant", *The American Archivist* **61** (Spring 1998), p. 92, footnote 9.

professional regulations, standards and best practices for ascertaining the functional requirements for recordkeeping which organisations or individuals comply with because their authority is derived from their own profession's or industry's best practices.[19] However, literary warrant also refers to the authority of the concepts, literature, research and practice of a profession which provides a form of empirical or accepted evidence from which the profession's knowledge domain builds its theory and models. Literary warrant in this sense provides an essential research tool for interdisciplinary research. The disciplinary discourses in the research under discussion included diplomatics, moral philosophy and law, all of which have their own epistemologies and research methods which had to be taken into account. For example, legal positivism uses deductive reasoning which is usually associated with quantitative research and positivism. Both deductive and inductive reasoning are used in the analysis of meta-ethics. Ethics adopts dialectics (also called rhetoric or argumentative research), which searches for truth via logical discussion, axiology, which is concerned with universally accepted principles (like diplomatics), and normative ethics, which like legal positivism, adopts rules or standards. These various disciplinary approaches were absorbed into the methods employed by the research.

The nature of the research on the whole called for qualitative approaches, but also used deductive reasoning, argumentative methods, analytical frameworks (interpretive social science), discourse analysis (a form of ethnography), concept mapping and empirical instantiation in order to address a series of research questions and sub-components that deal with the nature of things, as well as conceptual models and frameworks. In order to cope with the multi-faceted research topic, the research questions were divided into two major parts (see Appendix A). The first part addressed the interrelationships between recordkeeping, ethics and law by investigating existing regulatory models and developing new ones. The second part considered the application of the new models to the online context. However, the questions were cumulative, so that each section contributed to answering the previous questions. In effect, all questions contributed to answering the first two research questions. What is the interrelationship of recordkeeping, ethics and law? Why is this interrelationship relevant to recordkeeping theory and practice? The incorporation of disciplinary discourses into recordkeeping

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[19] Bearman, D., et al., ''The Warrant for Recordkeeping Requirements'', in *University of Pittsburgh, Recordkeeping Functional Requirements Project: Reports and Working Papers, LIS055/LS9400*, (Pittsburgh: School of Library and Information Science, University of Pittsburgh, 1994).

theory is the major conceptual construct adopted to answer the first two fundamental research questions.

Brief definitions of the methods adopted are as follows:[20]

Method	Use
Discourse analysis	
Discourse asks the following questions: How did it come about that some particular way of organising, thinking, talking, doing, about some selected topic took the form and content that it did?	Unlike the positivist historical perspective, discourse analysis is a method that accepts the constant evolution in ideas and identifies when radical changes occur and their impact on existing concepts. It works through clearly establishing the analytical framework to be adopted.
How do specific forms of knowledge and theory become possible?	
Interpretive social science	
Analytical methodology/analytical frameworks are the principal aspects of a discourse in terms of the context of the time. Another form of interpretive methodology is *argumentative research methodology*, or argumentation which adopts *dialectics* or *rhetoric* to establish a 'truth' by setting forth reasons by way of logical argument, which may adopt deductive or inductive reasoning. It may be ontological so that particular definitions are established which provide consistency to the argument.	*Analytical methodology/analytical frameworks* are used for the historical analysis of ideas. *Argumentative research methodology* justifies 'first principles' adopted and is the most common form of research method adopted by ethicists. It is research well argued with or without empirical evidence intended to persuade the reader of the truth.[21]
Concept mapping	
Concept mapping is a method for representing knowledge structure. It identifies major concepts and illustrates the relationships among concepts.	In *concept mapping* relationships between concepts are made explicit by the use of linking words that create a proposition, and thus assign a meaning to the linked concepts.[22] It is used for the development of concepts, theories and models.

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[20] Iacovino, L. *Ethical-Legal Frameworks for Recordkeeping*, pp. 17–18.
[21] Metcalfe, M. *Business Research Through Argument*, (Boston: Kluwer, 1996), Chapter 3, "Argument".
[22] Novak as quoted by Fraser, K. *Curriculum Design: Developing a Conceptual Framework*, Special Interest Workshop, Teaching and Learning, Professional Development Centre, (Melbourne, Monash University, 1996).

Method	Use
Empirical instantiation	
Empirical instantiation is the systematic use of examples to populate models in order to test their validity, and highlight areas for further investigation.[23]	The use of examples explains the application of concepts.

Research Processes

In order to build the theory and models, and to test their applicability, much foundation work had to be done, as there has been little research to date that addressed the recordkeeping-ethics-law nexus in an integrated fashion. The conceptual foundation work on legal and ethics theories was an integral part of exploring regulatory models as they apply to recordkeeping within professional and organisational boundaries, and the extent to which these models might be valid or extendable to the Internet.

One of the key issues that arises in a multi-method interdisciplinary research context is how to present the data that may be read by different disciplinary backgrounds. Law and ethics have tended to use narrative text but also use flowcharts and other diagrammatic representations. The interdisciplinary research discussed in this paper found that narrative, diagrams and textual commentary provided the necessary balance, even though narrative analysis continues to be the dominant presentation style in law and ethics.

The major steps in answering the research questions and the research process and methods adopted are included below. However, they did not all take place sequentially, nor are they self-contained processes, but rather they operated cumulatively as the conceptual analysis consolidated the relevant aspects of the disciplinary domains under investigation.

Consolidating previous research

- The first step in any research process is the *literature review* which consolidates previous knowledge. This process used *analytical methodology*, *argumentation/rhetoric/dialectics* and *discourse analysis*.

A literature review is generally a forerunner to any research project. However, it is also an integral part of the research process and

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[23] McKemmish, S. *"Constantly Evolving, Ever Mutating": An Australian Contribution to the Archival Metatext, PhD dissertation*, (Melbourne, Monash University, 2001), "Introduction", p. 10.

provides evidence that previous knowledge of the research area has been analysed. Literature reviews are not, however, without bias and the 'lens' through which they are filtered should be documented as part of the review. In the case in question, the Australian records continuum framework provided a unifying theme for the conceptual relationship between recordkeeping, law and ethics. Although record-keeping literature on regulatory models takes account of ethics and law, further research into the recordkeeping needs of different com-munities was found to be lacking. However, the extent to which established recordkeeping regulatory models are still valid in a global context of networked records had not been fully explored in record-keeping literature. Thus previous research and professional discourse from the literature provided the rationale for the research.

Establishing conceptual and interdisciplinary frameworks

- The establishment of a number of conceptual and interdisciplinary frameworks from current intellectual paradigms from the literature of recordkeeping, law and ethics using *analytical methodology argu-mentation/rhetoric/dialectics* and *discourse analysis*.

Any interpretation of the interrelationship of recordkeeping, ethics and the law will depend on the framework in which the discourse takes place. Sociological positivism, economic rationalism, empirical or interpretive social science, historicism or postmodernism all provide valid frameworks for understanding law, ethics and recordkeeping from both a disciplinary and/or an interdisciplinary perspective.[24] For any research this framework must be established early in the process and be clearly stated.

Interdisciplinary research also requires clear definitions of key terms as these may vary from one discipline to another, for example, in this case, the terms 'nexus' and 'relationship'.[25] An interrelationship focuses on the points of interconnection between relationships, for example the use of records as evidence has been an important point of interconnection between law and recordkeeping. In order to relate

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[24] Hunt, A. and Wickham, G. *Foucault and Law, Towards a Sociology of Law as Governance*, (London, and Boulder Colorado: Pluto Press, 1994), Part 1.

[25] Terms such as "relationship", "element", "entity" and "attribute" have their own definitions in information systems modeling. A relationship can be defined to imply that a minimum of two things or elements, one of which in some manner is either materially or ideally connected with the other. There have to be shared facts or points of interconnection between two things. The two elements (for example, law and recordkeeping) can have a relationship with a third point of reference, or the individual elements can have relationships with other elements. These definitions are the author's, based on social science perspectives.

law and ethics to recordkeeping models and to 'points of interconnection' it was essential to understand the principal issues that are, and have been addressed, within their respective domains of knowledge, by using discourse analysis.

Exploring disciplinary discourses

• This process included exploring the field of ethics per se to make the appropriate links with recordkeeping within the legal and social relationship model. A review of selected literature dealing with major meta-ethics theories and current ethical debates was undertaken. Legal literature on major legal theories and relevant legal principles was analysed using *discourse analysis*.

Literature on the importance of trust in communities of common interest, in particular, the reliability of recordkeeping participants, as a sociological phenomenon necessary for trustworthy records, had not been integrated into the recordkeeping-ethics-law nexus. Equally, professional ethics in recordkeeping literature has focused on the professional rather than on the business participants and their ethical motives and actions. This required a review of the literature dealing with major ethics theories, applied ethics in particular, and the current ethics debates, as part of the theory building process. *Discourse analysis* of communities or knowledge domains provided the major source from which theory building emerged.

The legal discourse revealed that recordkeeping and archival theory are not directly addressed by legal theorists but lie at the heart of some of the fundamental assumptions of how and why legal systems develop and how recordkeeping supports and is supported by the law. Ethics, on the other hand, has been applied by a range of disciplines to their respective practices, to form the area of *applied ethics*, which include medical and legal ethics. The application of ethics to recordkeeping practice to date has attracted even less attention than legal issues.

Ethics discourse was found to have its own 'histories' of thought, language and methods of reasoning, much of which are epistemological. For example, depending on which theory of knowledge is applied, observable facts may be classified as relevant to 'moral' discourse or to a value system. As in postmodernism, the use of language is central to ethical argument, in particular the role of evaluative language.

The major issue that was established from the legal discourse is whether current law is either applicable or enforceable in a global economy. Legal system types and the *universality versus contextuality* debate

in postmodernism are central to the question of the role of national
sovereign judicial systems over international jurisprudential principles.
The specific interconnection with recordkeeping is the question of regu-
lation of Internet 'business' transactions. How legal rules are inter-
preted and liabilities attributed in different legal systems are also
central underlying issues to the regulation of recordkeeping. Regula-
tory models in the Internet context, which combine self-regulation and
traditional legal and industry sanctions, including international models
of 'convergence', were, therefore, compared with Australian models.

The relevance of different legal systems to the universality of
recordkeeping principles, in particular in the area of diplomatics as
one foundation of archival science, has been an issue of debate in
the recordkeeping literature. For example, a universal approach for
recordkeeping is found in diplomatics.[26] The research, therefore,
explored a number of legal theories, and the issues surrounding
detailed differences in applicability across legal systems to the extent
necessary to understand its usefulness as a model. This is an important
debate within the legal discourse itself, in particular in relation to the
classification of law. Legal literature brought to the forefront common
legal and archival concerns for reliable and authentic records.

One of the issues that arose in analysing recordkeeping discourse
was how to extrapolate general principles that would be universally
acceptable. Principles in most disciplines develop from a specific
cultural context and at some stage are universalised. There is, there-
fore, a constant tension between the cultural relativist origins of ideas
and the extraction of universal principles required to bind profes-
sional interests. Cultural relativism of disciplines is relevant to how
the law-ethics-recordkeeping nexus is analysed, and whether universal
principles apply. It is also central to the notion of community. In this
research, therefore, it was necessary to understand the discourses of
all three domains under investigation.

Integrating the discourses of recordkeeping, ethics and law

- Analysis of the relationship of recordkeeping, law and ethics from
  the perspective of all three disciplines using *concept mapping*.

Three recordkeeping models were critiqued to integrate the
discourses of law, ethics and recordkeeping – an historical-analytical,
a postmodernist and a practice skills recordkeeping model. An

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[26] Duranti, L., ''Diplomatics: New Uses for an Old Science (Part I)'', *Archivaria* **28** (Summer 1989): 7–27.

historical-analytical perspective analyses the historical evolution of 'archival science' and its relationship with the history of ethics and law in particular. A practice skills recordkeeping model focuses on recordkeeping, ethics and law in terms of its relevance to the core knowledge and practice of the recordkeeping professions. However, the records continuum model, a postmodernist model, provided the overarching conceptual framework for the integration of law and ethics with recordkeeping models as it allows for current, historical and regulatory perspectives of recordkeeping to be viewed from the personal, system, corporate or collective view (see Figure 1). All points of the axes and dimensions of the records continuum model have a legal and social ramification, from the legal and ethical context in which records are created and captured (the first dimension), the characteristics of a record (second dimension), to specific legal and ethical requirements which may be satisfied by recordkeeping system functionality or other approaches (third dimension), and how records are pluralised via legal and social mandates (fourth dimension).[27]

Concept modelling of ethical, legal and recordkeeping theories

- Concept modelling of ethics, law and archival science using *analytical methodology argumentation/rhetoric/dialectics, discourse analysis* and *concept mapping*.

The nature of a right and an obligation, ethical and legal responsibility, notions of intention, motive and moral autonomy, moral agents and legal actors were examined from the viewpoint of law, ethics and archival science. A number of concept models were developed based on Christine Korsgaard's neo-Kantian theory of ethical duty and intentional actions of moral agents, and Jeremy Bentham's doctrine regarding consciousness and intention in terms of the record as the evidence of the intention of the author as well its results, that is, as evidence of the action.[28] In particular the notion of will and volition found in the competent author in diplomatics is illustrated in Figure 2.

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[27] Iacovino, L., 'Recordkeeping and Juridical Governance' in S. McKemmish, M. Piggott, B. Reed and F. Upward (eds), *Archives: Recordkeeping in Society*, (Wagga Wagga, NSW: Charles Sturt University, 2005), pp. 262–266.

[28] Korsgaard, C., "Human Action and Normative Standards", Guest Lecture, the Australian Catholic University, Christ Lecture Theatre, Melbourne, Friday 14 July 2000. J. Bentham, *An Introduction to the Principles of Morals and Legislation, Jeremy Bentham, An Authoritative Edition* by J.H. Burns and H.L.A. Hart; with a New Introduction by F. Rosen, and an Interpretive Essay by H.L.A. Hart, (Oxford: Clarendon Press, 1996).
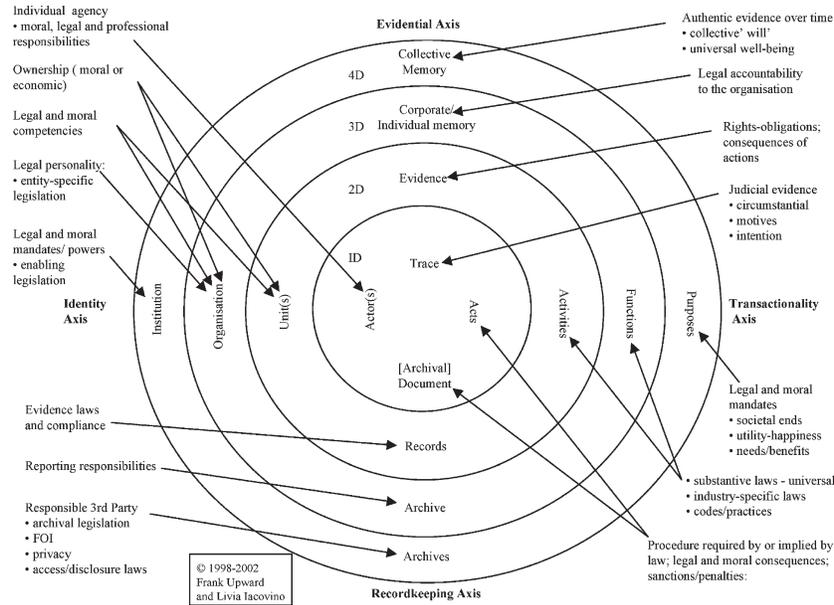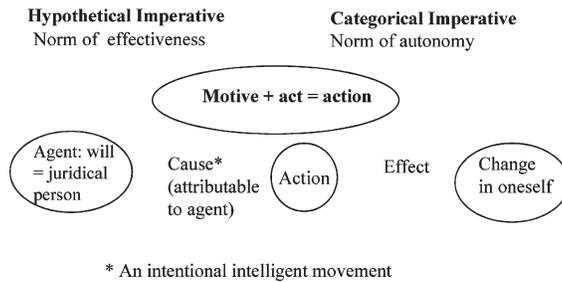
Figure 1. The juridical dimensions of Upward's records continuum model.

Korsgaard's Kantian Model and Diplomatics

* An intentional intelligent movement

Internal standards: standards which a thing must meet in virtue of being the sort of thing that it is, derived from the nature of the object itself, eg the 'recordness' of the record.

Figure 2. Korsgaard's Kantian model and diplomatics.

Conceptualising legal and social relationships

- Establishment of the links between ethics, law and the legal and social relationship model of recordkeeping, including diplomatics

and the records continuum notions of trust. This involved locating relevant concepts in the literature of the disciplinary domains and linking them to recordkeeping concepts using *analytical methodology* and *discourse analysis*.

Legal and social relationships as derived from jurisprudence, ethics and archival science, have a number of applications to recordkeeping theory and practice. Although archival science, jurisprudence, and ethics include legal and social relationships as foundational concepts, these had not been developed in recordkeeping theory or practice as tools for ascertaining the legal and ethical responsibilities of recordkeeping participants. The major theory-building in this research occurred by extracting concepts from law, in particular the law of obligations in both the civil and common law (see Figure 3), and linking them to recordkeeping equivalences in diplomatics and archival science.

A regulatory matrix was developed that incorporated actors found in diplomatics, which considers legal actors involved in the creation of records as fact, as well as from the terms actor and agent found in the records continuum model to identify recordkeeping participants in any legal system. These actors are represented as the competent author, recipient, data subject and third parties of an action (see Figure 4). The legal concepts of property, ownership, access, privacy and evidence within a recordkeeping perspective of the legal and social relationship model were used to demonstrate
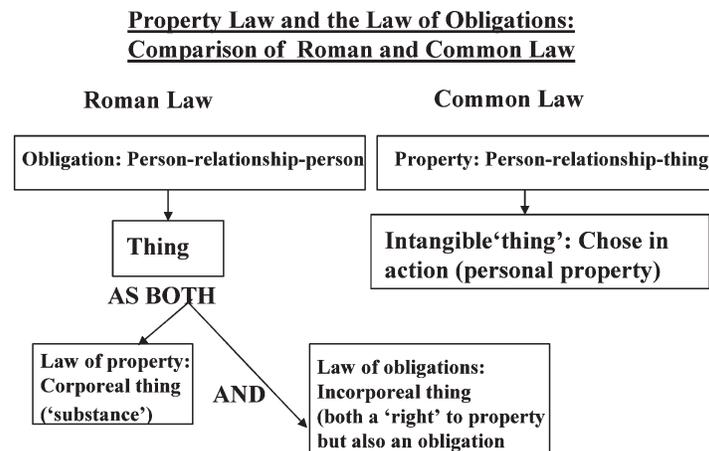

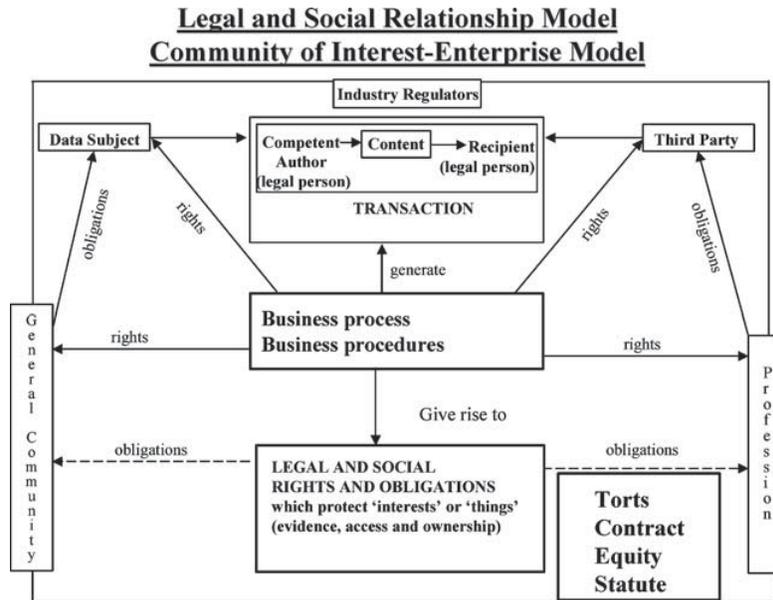*Figure 3*. Property law and the law of obligations: comparison of Roman and common law.

Legal and Social Relationship Model
Community of Interest-Enterprise Model

Figure 4. Legal and social relationship model community of interest–enterprise model.

that the record itself is a form of property that can be bought and sold, but that it is also evidence of a composite right-duty relationship. The latter is a view that had not previously been articulated in recordkeeping theory.

Applying the legal and social relationship model

● The practical application of the legal and social relationship model through examples that illustrate the model in recordkeeping terms including its Internet context using *empirical instantiation*.

The legal and social relationship model was illustrated by using examples that reflect legal and social rights and obligations of recordkeeping participants in specific relationships, adopting the matrix of recordkeeping participants. Firstly, the recognition in law of different kinds of legal relationships was examined, as well the impact of current business models on professional, governmental and commercial relationships. Secondly, three examples were chosen to illustrate the model: *the doctor–patient relationship* (because it has overlapping legal and ethical dimensions, and forms part of a web of relationships within health networks); *the government–citizen relationship* (because it

has commercial elements that have to be balanced with public interest rights); and *the buyer–seller relationship* (because it is a common commercial relationship based on contractual and proprietorial obligations which include strong consumer protection rights). Thirdly, the examples were extended to the online context, focused on identifying the rights and liabilities of Internet legal and social actors in record-keeping transactions, with reference to professional, governmental and business relationships online.

The example of the citizen–government relationship is illustrated in Figure 5.

Conclusion

A number of assumptions about the central role that records play in governance in terms of both law and ethics were made by the author in the course of this research because of her prior research.[29]   The
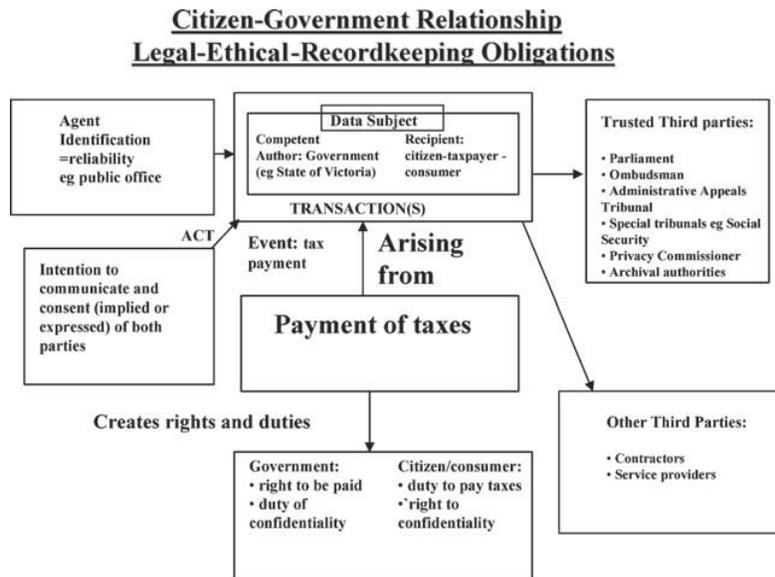

Figure 5. Citizen–Government relationship legal-ethical recordkeeping obligations.

[29] Iacovino, L., *Legal Education for the Recordkeeping Professional: A Proposed Curriculum Framework Within a Records Continuum-based Educational Model, MA (Archives and Records) dissertation*, (Melbourne: Monash University, 1997), published as '*Things in Action': Teaching Law to Recordkeeping Professionals*, (Melbourne: Ancora Press, Monash University, 1998).

research described here aimed to establish the value of the legal relationship model, which had a common foundation in both the discourse of archival science and in jurisprudence, to recordkeeping theory and practice, and to the online context, in particular to records over time. In order to argue the validity of the model a combination of research techniques were used from argumentation, conceptual and discourse analysis, legal research, and examples with a firm grounding in the professional discourse. The multi-method approach provided great flexibility in that it enabled the research to draw from a number of research traditions and did not lock it into one method. While ethics research methods are within the ambit of known interpretative research, legal methods require formal training in legal research techniques and may, therefore, require reliance on secondary interpretation if the necessary expertise is lacking. But even here, it must be noted that an archivist's perspective is likely to be quite different from that of a lawyer, and may contribute a different analytical dimension.

From the research methods described in this paper, it can be argued that a firm archival theoretical model, such as the records continuum, can be used to map to other disciplinary concepts. Perhaps it is time that other disciplines began to understand 'our methods' and not simply for archivists to incorporate methods of research of other disciplines. This can only happen if we research and publish in literature outside of our own field, a task that is difficult but increasingly available via interdisciplinary journals. Our work with new fields is still at a formative stage but research projects in law, ethics, and records have a promising future.

Appendix A: Research Questions

(From Iacovino, L., *Ethical–Legal Frameworks for Recordkeeping: Regulatory Models, Participants and their Rights and Obligations, PhD dissertation*, (Melbourne: Monash University, 2002, pp. 13–15) .

Part A

What is the interrelationship of recordkeeping, ethics and law?

Why is this interrelationship relevant to recordkeeping theory and practice?

Which frameworks[a] are best suited to analysing the interrelationship?

Do these frameworks provide a useful regulatory model for the obligations of recordkeeping participants?

Do any of the regulatory models establish recordkeeping regimes that are cognisant of the legal and ethical rights and obligations of participants in specific juridical, organisational or professional contexts? Or are these legal and ethical rights and obligations universal to all legal systems?

Do any of the regulatory models provide a tool for analysing the legal and ethical obligations of participants in recordkeeping processes, in particular the legal principles and ethical dimensions of ownership, access, and evidence?

Part B

Do any of the regulatory models analysed in Part A apply equally to recordkeeping regimes in the web environment, in particular legal and social relationships?

How does the web environment affect the legal principles and ethical dimensions of ownership, access, and evidence and the concomitant obligations of recordkeeping participants?

[a] A framework is defined as a flexible structure that can be adapted to different settings; a model is a structured approach which sits within a framework; it provides a view of the framework.

The component questions relating to the principal research questions were:

Part A

1. What is the nature of legal and ethics discourse? Which aspects are relevant to recordkeeping?

2. How is regulation defined in legal and ethics discourse?

3. How is regulation defined in recordkeeping discourse? In particular, how has recordkeeping identified regulatory controls and mandates (legal and social) relevant to recordkeeping regimes in particular industries, organisations or communities? How do regulatory controls operate within boundaries and jurisdictions?

4. Does the legal concept of 'legal relationships' (personal, public, corporate, commercial and professional) provide a useful tool for analysing recordkeeping obligations between the persons involved in 'business' transactions? Can they be extended to include an ethical dimension, that is, as 'social relationships' where ethics is relevant to the relationship?

5. Do professional ethics reduce the risk of professional liability, which can be demonstrated within the legal and social relationship model?

6. Does the legal and social relationship model provide persons participating in recordkeeping processes with a means of ascertaining their rights and obligations of ownership (real and intellectual), access and evidence?

7. Does the legal and social relationship model of recordkeeping support legal and ethical compliance?

Part B

1. Can regulatory controls (legal and social) be applied to recordkeeping on the Internet? Is the organisational perspective of 'regulation' pertaining to a specific industry still relevant in the Internet context?

2. How are new behavioural patterns and boundaries on the Internet altering legal principles of ownership (real and intellectual), access rights and obligations and the need for evidence that we are, or have been, engaged in business and social activity?

3. What is the role of codes of conduct and other self-regulation in the global Internet community?

4. Is the legal and social relationship model with its emphasis on actors and participants equally applicable to the Internet?

5. Is recordkeeping revisiting the problems of electronic information systems without recordkeeping functionality in the Internet environment?

6. Has recordkeeping research on reliable and authentic records addressed the capture and retention of web transactions as records?

7. Who are the entities transacting via the Web? How do we capture information about them and link this information to the records inextricably?

8. Will social protocols that make us trust a record still be required in addition to technological solutions?