

***Legal Records in the Commonwealth* (1994, Dartmouth)**

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Reviewed by T.A.Rowland*

This work is the result of a Commonwealth Legal Records Project which was jointly sponsored by the Association of Commonwealth Archivists and Records Managers and the Commonwealth Legal Education Association. The objectives of the study were to: (i) analyse questions relating to the nature, extent and potential uses of legal records of all kinds; (ii) collect information about the state of legal records in selected Commonwealth jurisdictions; (iii) analyse factors relevant to devising informed policies regarding the management, appraisal, preservation and destruction of legal records of semi-current or archival value and suggest guidelines; and (iv) produce and disseminate the findings of the study in a manner which would be useful to interested individuals and institutions. The editors claim that the study will help to save a vast number of records which are at risk in most Commonwealth countries.

The volume contains a theoretical introduction, a series of case studies, three chapters on particular themes (Records Management in the Court Service in England and Wales; The Use of Unpublished Data in Socio-Legal Research; and The Perspective of the Legal Historian: Legal and Socio-Legal Historical Research), an appendix containing detailed, illustrative material and a select bibliography. In short it presents a collection of material which may be of interest to legal history students in Commonwealth countries, and most particularly, to archivists.

The theoretical introduction includes such subjects as how to distinguish between a "record" and an "archive" using Schellenberg's theory and a trio of tests: (i) the provenance test, (ii) the legislative test, and (iii) the special categories test; and the application of Karl Llewellyn's "law-jobs" theory.

The case studies are of legal records in Accra, Ghana, Legal Records and Archives Policies in England and Wales, and the Management of Legal

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Records in Kenya. There is also a chapter entitled "Legal Records in Xanadu" a fictitious country or heuristic device whereby the editor seeks to develop a model of how to approach the study of legal records in a particular country. The Ghanan chapter includes such information as the case load of Ghanan courts, the nature and powers of "public tribunals", a summary of the judicial and legal records in the National Archives of Ghana, and the functions of the Prosecutions Branch of the Ghanan Ministry of Justice. The chapter on England and Wales includes such material as the role of the Public Record Office and the County Record Offices, the role of the Royal Commission on Historical Manuscripts and the role of the British Records Association. The Kenyan chapter is quite short and the tardiness of Kenyan Magistrates is cited as a major problem for legal records keepers in that country.

The first of the three thematic papers traces the history of records management in England and Wales from the nineteenth century through to Lord Denning's Committee on Legal Records (1966) and more recent developments. The second thematic paper is an exposition of the nature of socio-legal studies with a special emphasise on the work of the Oxford Centre for Socio-legal Studies. The third of the thematic papers is Louis A. Knafla's history of socio-legal historical research. It reads as a "who's who" in socio-legal historical research in England, Canada and Africa. The 97 references in this chapter are themselves a guide to the material available in this area.

The culmination of all the strands and threads of this work is the principal editors' list of 14 principles which he argues ought to be implemented in the development of a national archives policy. These points would be of interest to legal archivists, as would the seven pages of bibliographical materials at the end.

Thus the market for this work is rather limited to legal archivists and, to a lesser extent, legal history students. The editor concedes in his conclusion that the work is an exploratory study and has been highly selective in respect both of geographical coverage and of topics dealt with in depth, and that it does not claim to be comprehensive. This is true also of the appendices which offer "selected illustrations of current practices followed in different countries, inside and outside the Commonwealth, in the disposal of legal records." Australian guidelines for the filing of certain legal records rate a mention in these appendices, but again, the information is not comprehensive.

The fact that there are no comprehensive studies of any jurisdiction seriously limits the usefulness of the work, so much so that it reads more as a preliminary work-in-progress report. The research field itself is very valuable to legal archivists and legal historians, but the brief was perhaps too narrowly drawn.