

By Stephen Mihm

In an attempt to quell the firestorm over her private e-mail account, Hillary Clinton announced Tuesday that she had delivered all her messages "that could possibly be work-related" to the State Department, while retaining or deleting those she deemed private.

Her office broke down the numbers, saying that in December she had turned over paper copies of 30,490 e-mails relating to government business from her four years as secretary of state, though 31,830 personal messages were deleted.

That Clinton, rather than a government archivist, decided which e-mails to keep and release is a reminder that the preservation of official annals has been the subject of debate since the founding of the republic. In particular, the brouhaha revives two longstanding questions: What is the proper relationship between the agents of government and the records they produce? And what obligation do they have to retain records for posterity?

Such questions first arose when the American colonies broke free in the late 18th century. The revolution had severed ties with the imperial record-keeping systems in use in Britain and other European nations. These included centralized registries as well as rules governing the classification, control, storage and destruction of official documents.

These collection efforts led many European nations to establish formal national institutions to house government records. The French created their Archives Nationales in the 1790s, and the Dutch founded the Nationaal Archief in 1802. The British took a bit longer, centralizing their archives within the Public Record Office in 1838. These reforms helped insure that anything produced by a government official remained government property.

In the early U.S., however, the idea that government officials needed to deposit records in a central location for posterity was unknown. The federal government simply wasn't big enough, and that kind of centralized control smacked of the sort of imperial authority the revolutionaries had left behind. When officials -- especially presidents -- left office, they usually took their correspondence with them, or selectively removed items for their personal files. Other times, they simply destroyed material.

In fact, it wasn't until 1853 that Congress passed a law forbidding public officials from removing or destroying records without permission. But these provisions, buried in legislation that sought to prevent frauds on the Treasury Department, did little to curb mishandling or misappropriation of government documents. Nor did they seem to have applied to presidents, who continued to remove their own records on leaving office or even while still in office (Abraham Lincoln was especially fond of giving away manuscripts, including a draft of the Emancipation Proclamation).

As a consequence, government records often remained in private hands. In 1900, a report by Representative J.T. McCleary noted “that manuscripts of official documents, especially those of the years prior to 1861, are constantly appearing at auction sales in the large cities, and are being bought by libraries, historical societies, and individuals, and scattered in this way about the country.”

No less problematic, every department of the federal government maintained its own records in its own idiosyncratic fashion. McCleary warned that anyone who wished to consult the nation’s archives “can feel in advance any assurance that the papers to which he wishes access are to be found in the place in Washington where they would naturally be supposed to be, or even that they are actually in the possession of the United States.”

Part of the problem was storage space: few government offices had room. As a consequence, the historian W.G. Leland noted in 1912, the government’s records “are in cellars, and sub cellars, and under terraces, in attics and over porticos, in corridors and closed-up doorways, piled in heaps upon the floor or crowded into alcoves: this, if they are not farmed out and stored in such rented structures as abandoned car-barns, storage warehouses, deserted theaters, or ancient but more humble edifices.”

The obvious solution was to create a central repository. The idea had been floated numerous times over the 19th century, but it wasn't until the 20th that Congress actually got around to acting, thanks to pressure from the newly created American Historical Association.

After many false starts, the legislature appropriated money for a building to house records in 1926. But it didn't create an agency to oversee the process until 1934, when the first Federal Records Act formally established what is known today as the National Archives.

R.D.W. Connor, the first to hold the title of archivist of the United States, began the difficult process of prying records out of the hands of other government agencies as well as private individuals.

That didn't mean it was smooth from then on. After Watergate, for example, Congress took action to prevent Richard Nixon from destroying his papers; four years later, Congress passed the Presidential Records Act, which ensured that papers from the executive branch would remain available to the public via a system of presidential libraries. At the same time, subsequent amendments to the original Federal Records Act of 1934 broadened the scope and definition of what constituted a “record,” insuring that nothing would inadvertently escape consideration.

Increasingly, anything written or recorded by a government official wound up in the National Archives, or was disposed of by a government archivist. The idea that government officials could keep their own private archive and take it with them became increasingly unthinkable under the new order.

In Clinton's case, the State Department has been provided with 55,000 pages of correspondence that she turned over to fulfill her obligations under the Federal Records Act. And when it comes to the e-mails on her private server, she said she had "broken no rules or laws." When Clinton was in the office, no rule explicitly prohibited federal employees from using private accounts. In October 2009, 10 months into her tenure at state, new regulations from the National Archives and Records Administration required federal agencies to ensure that records sent or received on private e-mail systems "are preserved in the appropriate agency record-keeping system."

These rules were tightened after she left office, in 2013, to require federal officials to use government e-mail addresses to conduct official business.

And that's the crux of Clinton's e-mail problem. The trouble isn't that she had a private account, it's that she has behaved as though her public correspondence belonged in her personal archives.