

Law's Documents: Authority, Materiality, Aesthetics.

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Law's Documents: Authority, Materiality, Aesthetics. Katherine Biber, Trish Luker, Priya Vaughan, eds. London and New York: Routledge, 2022. xii, 375 pp. 9781003247593. EPUB

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In an article published in 2012 entitled “Law’s Archive,” the socio-legal studies scholar Renisa Mawani reflected on the significant critical attention scholars in the fields of history, historical anthropology, philosophy, and literary studies had directed toward the archive over the past few decades. Archival-turn scholarship, she observed, had repositioned history’s archive as “a site of epistemic and political struggle,” throwing into question “the integrity of historical evidence and the narrations it makes possible.”¹ She contrasted this attention with the noticeable absence of critical attention legal scholars had paid to law’s archive over the same period – a surprising absence given the close connection between archives and the law asserted by foundational archival-turn theorists (Foucault and Derrida being the most obvious examples). Mawani argued that archival-turn literature provided a productive starting point for elucidating and problematizing law’s archive, which she defined as

an . . . expanding locus of juridico-political command, one that is
operative through . . . a mutual and reciprocal violence of law as
symbolic and material force and law as document and documentation.
. . . a site from which law derives its meanings, authority and legitimacy,
a proliferation of documents that obscures its originary violence and its

¹ Renisa Mawani, “Law’s Archive,” *Annual Review of Law and Social Science* 8 (2012): 340.

ongoing force, and a trace that holds the potential to reveal its foundations as (il)legitimate.²

In the 10 years that have elapsed since the publication of Mawani's article, there has been a steady growth in the critical legal literature exploring the nature, limits, and possibilities of law's archive.³ A defining characteristic of this literature is its engagement with archival documents as cultural objects. As Trish Luker describes it, such engagement "attends to material characteristics such as structure, form and aesthetics. . . . [and] engages in analysis of the careers or political genealogies of documents to demonstrate how they function as agents in the production of knowledge, with political, legal and social consequences."⁴ The writings of legal historians and anthropologists such as Cornelia Vismann, Christopher Tomlins, Annelise Riles, and Bruno Latour, who have investigated the materiality of legal and bureaucratic forms of documentation and the agentive role they play in producing law and legal systems,⁵ are thus significant touchstones.

The collection of essays brought together in *Law's Documents: Authority, Materiality, Aesthetics* is the most recent contribution to this growing body of literature. The collection emerged out of an Australian Research Council-funded project entitled *What is a Document?*, carried out between 2016 and 2018, and is edited by Katherine Biber and Trish Luker, legal scholars based at the Faculty of Law, University of Technology Sydney, and Priya Vaughan, a post-doctoral fellow at the Black Dog Institute, University of New South Wales, and a lecturer at the National Art School. The editors' aim was "to capture and re-think law's relationship with the documentary form . . . to challenge what can be understood as a legal document, and . . . explore the ways that legal documentation might

² Mawani, 337.

³ See, for example, Katherine Biber and Trish Luker, "Evidence and the Archive: Ethics, Aesthetics, and Emotion," in "Evidence and the Archive: Ethics, Aesthetics, and Emotion," ed. Katherine Biber and Trish Luker, special issue, *Australian Feminist Law Journal* 40, no. 1 (2014): 1–14; Stewart Motha and Honni van Rijswijk, eds., *Law, Memory, Violence: Uncovering the Counter-Archive* (New York: Routledge, 2016); Katherine Biber, *In Crime's Archive: The Cultural Afterlife of Evidence* (New York: Routledge, 2019).

⁴ Trish Luker, "Animating the Archive: Artefacts of Law," in *Law, Memory, Violence*, 72.

⁵ Cornelia Vismann, *Files: Law and Media Technology* (Stanford: Stanford University Press, 2008); Bruno Latour, *The Making of Law: An Ethnography of the Conseil d'Etat*, trans. Marina Brilman and Alain Pottage (Cambridge, UK: Polity Press, 2010); Annelise Riles, ed., *Documents: Artifacts of Modern Knowledge* (Ann Arbor, MI: University of Michigan Press, 2006); Christopher Tomlins, "The Confessions of Nat Turner: A Paratextual Analysis," *Law & History* 1 (2014): 1–28.

generate harm, violence, pain, trauma and also sometimes acts of liberation and transformation” (p. 3). The contributors include academics, community leaders, artists, and poets and bring perspectives from diverse fields, including law, history, anthropology, information science, material culture studies, and the visual arts. As Biber, Luker, and Vaughan make clear, *Law's Documents* “is not a complete or comprehensive survey of approaches to law’s documents, but rather represents the debates and challenges of our current moment” (p. 3). They flag the disruptive impact of the digital age and the reckoning with historical and contemporary injustices as emblematic concerns of the current moment, and both are recurring sub-themes across the collection. The reckoning with injustice is reflected in the particular attention the editors have paid “to examining the ongoing violence of settler colonialism, and the demand by First Nations peoples to be heard and prioritized” (p. 3). The 18 chapters that make up *Law's Documents* are organized into four parts: an introductory section entitled “What is a Document?” followed by three thematic sections: “Authority,” “Materiality,” and “Aesthetics.”

In their opening essay, the editors respond to the question *What is a document?* by drawing the readers’ attention to documentation theorists, legal historians, media theorists, literary theorists, and philosophers, whose work has been instrumental in broadening and deepening our understanding of how legal and other official forms of documentation “perform, proliferate and perpetuate the law” (p. 21). Deftly weaving together key concepts and themes that have emerged from this body of documentary scholarship, the editors show how these are taken up, interpreted, and extended by the various contributors to the collection. In the chapter that follows, book-history scholar Bonnie Mak responds to the more specific question *What is a scholarly document?* Drawing on Vismann’s observation that “files can be understood as a mode of creating a legal identity,” Mak argues that “the research publication is an act that produces and demonstrates allegiance to a scholarly identity” (p. 26). She teases out that argument through an examination of the conventions underpinning the production, assessment, and publication of humanistic research that discipline academic practice and determine what counts as legitimate scholarly knowledge. She offers as a counterpoint her own experiment with creating two alternative scholarly “publications” – a cabinet and a box – that perform scholarship in material and affective ways that defy the infrastructures of academic publishing and suggest provocative new ways of embodying, substantiating, and sharing scholarly knowledge.

Contributors to “Authority” explore the insidious role played by state bureaucratic documentation practices in weaponizing concepts like evidence and authenticity to marginalize and exclude “outsiders.” Anthea Vogl, for example, uncovers the “racist logic” (p. 95) and circular reasoning concealed in the Australian government’s procedures for identifying “bogus” refugee identity documents, which make it almost impossible for refugee applicants to prove their refugee status; while Sara Dehm positions the passport as an instrument of “migration control, identity surveillance and racial exclusion” (p. 72) and a foundational identity document that nullifies gender diversity and Indigenous nationhood. Vogl and Dehm’s analyses of the inner workings of present-day state bureaucratic practices bring to mind Ann Stoler’s characterization of 19th-century colonial recordkeeping practices as “intricate technologies of rule,”⁶ underlining a depressing continuity in the agentive role of documents and documentary practices in upholding and perpetuating oppression.

Other chapters in “Authority” focus on acts of resistance, or talking back to law’s authority. Two Aboriginal poets and scholars, Jeanine Leane and Natalie Harkin, draw on decolonizing scholarship and their own lived experiences as Wiradjuri and Narungga women to share their thoughts about what the colonial archive means to them and to come to terms with their “intuitive recognition” of the archive as “our blood memory. Our sense of belonging and ‘relationality’ centered through our ways of knowing, being and doing,” which sits uncomfortably alongside the “entrenched default position” on the archive as “a dark room. A square box. . . . brick and mortar gods that hold and withhold; include and exclude” (pp. 51–52). In their conversation, Leane and Harkin reflect on their own use of poetry as “an affective-tool and literary-intervention; our way to actively transform out from the archive-box and rupture the ongoing violence of the colonial archive” (p. 51). Poetry’s potential to disrupt the violence of the colonial archive is also given voice by the editors’ inclusion of “Forty-Nine Most Common Phrases,” a selection of found poems by the Gomeroi poet and legal scholar Alison Whittaker, from her 2018 collection *Blakwork*. Whittaker uses the bureaucratic language of law, much of it taken from judicial decisions involving the rights and lives of Aboriginal people, to create poems that both critique and counter the dehumanizing effects of the legal system on their daily lives.

6 Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009), 20.

The chapters included in “Materiality” focus on documents as material artifacts and consider the various kinds of authority, agency, and relationality they embody. Jessie Hohmann examines the formal and informal elements of three types of treaty – the colonial treaties used in the European “scramble for Africa” in the late 19th century, the wampum belts produced by Indigenous peoples to assert their treaty rights against the state, and the modern multi-lateral treaties that govern international relations – to demonstrate how treaty documents function as “preeminent legal artefacts, potent symbols of power, and resistance, in the international order” (p. 172). Luker considers how new technologies for inscribing, interpreting, and circulating documents are forcing the legal system to pay greater attention to the performative aspects of writing acts such as signatures, while Biber draws on judicial decisions upholding the legality of “informal” wills to demonstrate how courts are beginning to acknowledge the capacity of *objects* (a tractor fender, a wall, an eggshell) to function as legally enforceable *documents*. Donna West Brett shows how the surveillance photographs held by the Stasi Archives materialize the multi-layered acts of violence associated with Stasi surveillance practices – a violence made manifest in the tears, folds, and scratches on the physical photographs and in the redaction and pixilation of their digitized counterparts.

Other contributors to “Materiality” elucidate the affective power of “Indigenous epistolary” (p. 196) as a tool for decolonizing archives and histories. Anna Haebich, Darryl Kickett, Marion Kickett, Anthony Kickett, and Jeannie Morrison describe the Ancestors’ Words project, in which letters written by Nyungar people to state authorities between 1860 and 1960, held by the Department of Aboriginal Affairs archive in the State Records Office of Western Australia, were returned to the Elders of the community from which they originated. As the authors point out, the project was the first comprehensive study of Nyungar letter writing as a form of “epistolary activism.” By bringing Nyungar families into contact with the words and voices of their ancestors, the letters restored powerful stories of Nyungar survival and resilience “to their status as living knowledge and heritage,” offered the families “solace from the pain and trauma that fill the archives” (p. 195), and inspired descendants to reframe and reimagine their ancestors’ stories through creative writing and theatre.

In the final section, “Aesthetics,” the archival turn in legal scholarship meets the archival turn in art. Priya Vaughan examines the work of contemporary visual artists who have incorporated legal documents into their creative

practices, focusing, in particular, on the counter-archival artistic practices of four Indigenous Australian artists. She demonstrates how these artists engage with the “aesthetic qualities, witnessing capacity or affective power” of legal documents (p. 265) as a form of artistic activism – a means of commenting on “the legacies of colonialism, systemic racism, social inequality and manifestations of prejudice and privilege” or interrogating key legal concepts such as proof, truth, and evidence (p. 266). Carolyn McKay traces the genesis and creative outcomes of a 2018 Australian exhibition entitled *justiceINjustice*, in which six visual artists were commissioned to create artworks based on their immersion in official records documenting cases involving wrongful detention, deaths in custody, deaths during police operations, unsolved homicides, and possible wrongful conviction. The Lock-Up contemporary arts space, a converted heritage building in Newcastle, New South Wales, that had served as the city’s police station between 1861 and 1982, provided the exhibition site. For McKay, the exhibition effectively demonstrated the power of visual art practices to “transform the legal archive into a critique of justice” (p. 278). Shifting from visual art to graphic design, Anne Burdick, Jacqueline Lorber-Kasunic, and Kate Sweetapple draw attention to the ways in which visualization and graphic design tools have been deployed by design scholars to generate new knowledge and elicit alternative meanings from canonical historical documents.

Many of the themes explored in *Law's Documents* resonate with and deepen related discussions that have been taking place in the archival literature. Vogl’s dissection of the oppressive regulations governing the production of Australian refugee identity documents underscores Anne Gilliland’s argument that “evidentiary-based archival discourse privileging the adequacy, reliability, and authenticity of records and provenance-based classifications inevitably throw into relief notions of ‘irregular’ documentation and may even co-construct that of the ‘undocumented’ individual.”⁷ The “slow research” process adopted by the Ancestors’ Words project team, which focused on “culture, family, relationships and creating and sharing good outcomes and hospitality” (pp. 196–97), aligns with the “slow archives” approach to decolonizing archival practices advocated

7 Anne J. Gilliland, “A Matter of Life and Death: A Critical Examination of the Role of Official Records and Archives in Forced Displacement,” *Journal of Critical Library and Information Studies* 1, no. 2 (2017), <https://doi.org/10.24242/jclis.v1i2.36>.

by Kimberly Christen and Jane Anderson.⁸ The project's discovery of the affective power of Nyungar letters as a tool for healing from the trauma and violence of settler colonialism resonates with Hariz Halilovich's ethnographic study of the emotional import of documents for survivors of the Bosnian genocide, who view them as a means of recovering from and reclaiming their past.⁹ Finally, the counter-archival artistic practices in support of social justice described in *Law's Documents* have a counterpart of sorts in the liberatory memory work practices advocated by archival scholars in recent years.¹⁰

Law's Documents is an impressive achievement on many levels: the calibre of writing and rigour of argumentation throughout are consistently high; the examples and case studies are richly detailed and evocative; the personal insights drawn from lived experience are thoughtful, revelatory, and deeply moving; and the editorial shaping of the chapters into a coherent and compelling whole is exemplary. Taken altogether, *Law's Documents* is a valuable contribution to documentary scholarship: it has brought documentary theory into conversation with the law, opened up provocative ways of understanding the world-shaping power and potential of documents, and generated new and unexpected lines of inquiry into the study of law's archive. Its publication is also an encouraging sign that multidisciplinary engagements with the material dimensions of the archive and archives continue to flourish and deepen.

8 Kimberly Christen and Jane Anderson, "Toward Slow Archives," *Archival Science* 19, no. 2 (2019): 87–116.

9 Hariz Halilovich, "Re-imaging and Re-imagining the Past after 'Memoricide': Intimate Archives as Inscribed Memories of the Missing," *Archival Science* 16, no. 1 (2016): 77–92.

10 See, for example, Michelle Caswell, *Urgent Archives: Enacting Liberatory Memory Work* (New York: Routledge, 2021); Jamie Lee, *Producing the Archival Body* (New York: Routledge, 2021); Zakiya Collier and Tonia Sutherland, "Witnessing, Testimony, and Transformation as Genres of Black Archival Practice," *The Black Scholar* 52, no. 2 (2022): 7–15.