Animating the Archive: Artefacts of Law

Trish Luker

Introduction

This chapter investigates law's counter-archive through a reflection on the materiality of archival sources and the significance of objective status when such sources are presented as evidence in legal proceedings. It suggests that rather than regarding archival sources simply as documents, they might better be understood as *artefacts* – 'the imprint or inscription of the human on the object, the page or the body' (Ezell & O'Brien O'Keeffe 1994, p. 3). Understanding documents as artefacts requires a materialist approach which takes heed of their existence as specific forms of written and printed inscription, the characteristics of which facilitates their privileged status and contributes to their agentic power (Latour 1986). This chapter investigates these issues with reference to documentary evidence tendered in a legal claim for compensation taken by members of the Stolen Generations in Australia in the case of *Cubillo v Commonwealth* ('*Cubillo*').[1] Thinking of archival sources not as legal documents, but as artefacts with specific agentic powers, draws attention to the material conditions of their creation and demonstrates the way they are productive of colonial relations. In particular, this chapter will consider the status of administrative *forms*, the proforma documents that remain as traces of the embodied encounters between state officials and the subjects/objects of governance.

The investigation of the legal historical archive is supplemented by reflections on counter-archival artistic practice that redeploys archival documents in contemporary creative work, to produce historical documents in the present. As the work of a number of contemporary Australian Indigenous artists demonstrates,[2] taking an anti-colonising stance in relation to material from colonial archives can animate the past, and in this way contribute to historical understanding. By moving between material artefacts from the historical archive and the redeployment of archives in creative practice, this chapter raises questions of the materiality of law. In this way, it engages with the notion of the counter-archive not only as a metaphor

[1] (2000) 174 ALR 97 ('*Cubillo*').

[2] In this chapter, I will examine a work of Judy Watson. Other Australian artists engaged in work which uses archival material or ethnographic modes of viewing the Indigenous subject included Brook Andrew, Richard Bell, Gordon Bennett, Fiona Foley, Danie Mellor and r e a. See Jane Lydon (2014) for an investigation of the appropriative use of historical photographs to tell Aboriginal stories.

for practices which destabilise law's claims to authority, but also as objects which themselves have performative and productive capacity.

In Australia, there is inconsistency in judicial decisions about the evidentiary value of sources of historical knowledge and insufficient judicial understanding of approaches to interpretation of archival documents.[3] These decisions have led to contentious debates about the inadequacy of colonial archives and their predisposition to reproduce colonial relations, particularly as sources of evidence for claims made by Indigenous people. They exemplify the extent to which law's engagement with archival sources gives rise to legal reasoning and jurisprudential outcomes which often pays too much attention to content, but which fails to appreciate the significance of material qualities – characteristics such as the genre and format of a document, whether it is handwritten or typed, its legibility, whether it is complete or incomplete, as well as its possible life trajectory or 'career'. Documents are not simply representational, and the significance of their materiality changes over time – a document created initially as a medium of communication inevitably becomes an historical artefact once it is collected and preserved in an archive or a museum.

Is it the ontological character of archival sources, the fact that they have existed in other times and places, and their proximity to past events that facilitates the authority accorded to them, as a foundation for the resuscitation of historical events and subjects? In the area of colonial history, studies of material culture have helped challenge the textual dominance in historiography, offering new ways of thinking about the past. Penelope Edmonds points to the productive tension that may emerge when historians of colonialism read objects as *texts*, exploring their contradictions and ambiguities in relation to other archival material as evidence of the inherent uncertainty and instability of the colonial space. She argues that it is in the juncture between written archival sources and the life of material objects that the tensions and discontinuities of empire are revealed (Edmonds 2006, p. 84). In addition to reading objects as texts, it is also possible to read texts as objects, as more akin to artefacts. Such an approach is productive not only because it reveals asymmetry and contradiction, but

[3] Such as the first case heard under native title legislation, *Members of the Yorta Yorta Aboriginal Community v Victoria & Ors* [1998] FCA 1606 (18 December 1998), the landmark action in relation to claims by members of the Stolen Generations in *Cubillo*, and the key case in relation to Indigenous cultural heritage *Kartinyeri v The Commonwealth of Australia* [1998] HCA 22.

also because it undermines the self-evident authority attributed to text, nowhere more apparent than when colonial archival sources are tendered as evidence in legal proceedings.

Thinking of evidentiary sources as artefacts requires us to see them less as records of information and more as cultural objects. It resists the epistemology of evidence law by which information contained in documents may acquire the status of fact. An ethnographic approach to archival documents attends to material characteristics such as structure, form and aesthetics. It 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 (Trundle & Kaplonski 2011).

When archival sources appear as evidence in legal proceedings, such as in claims concerning historical injustices, they are commonly accorded authority based on their content, on the character of documents as storehouses of information, with scant attention to their material existence and form. Such an approach facilitates law's objectifying stance. However, a far more nuanced approach is called for when dealing with archival sources, one which takes account of the production of the archive as well as its materiality, and which recognises the contribution that can be made by other interpretative frames, such as those of artistic practice, as informing our understanding of the past in the present: a process which might be characterised as counter-archival. In this way, 'contemporary art also contributes productively to the revision of history that has been standardised by the political interests of the past' (von Zinnenburg Carroll 2014, p. 4).

Recovering archives

In a work entitled 'under the act', Australian artist Judy Watson uses archival sources such as letters, photographs, reports and other official documents that she found in the Queensland State Archives in government files concerning her great-grandmother and grandmother, whose lives were controlled under the *Aboriginal Protection and Restriction of the Sale of Opium Act of 1897* (Qld).[4] Included in this work is her great-grandmother's 'exemption card',

[4] Judy Watson (Waanyi), whose matrilineal family is from country in north-west Queensland, is one of Australia's leading contemporary artists. The work 'under the act' was exhibited in *Culture Warriors*, the National Indigenous Art Triennial 2007 at the National Gallery of Australia and in *Taboo* at the Museum of

referred to by Aboriginal people as ‘dog tags’, which permitted them to work outside missions and reserves, and which they were required under the legislation, to carry at all times. There is correspondence between her grandmother, Grace Isaacson, and the Director of Native Affairs concerning her application for exemption from the Act and a report on her eligibility (see Figure 4.1); Grace’s application for permission to marry a white man, and the subsequent report by the regional Protector of Aboriginals on her character, level of education, living conditions and with whom she associated; as well as Grace’s application to have access to her bank balance, held by the government ‘in trust’. The documents include the use of the blood-based racial categorisations (‘full blood’, ‘half-caste’, ‘quadroon’, ‘octroon’) used to describe Aboriginal people at the time. Watson said that she thought she was the first person from her immediate family to have accessed her grandmother’s personal welfare file in the State Archives and that she was shocked by the derogatory language used to describe Aboriginal people (Watson & Martin-Chew 2009, p. 76). ‘under the act’ follows an earlier work titled ‘a preponderance of aboriginal blood’, which also uses documents from the Queensland State Archives as the basis of the work, including letters and official correspondence concerning the electoral franchise, which denied the vote to Aboriginal people deemed to have ‘a preponderance of Aboriginal blood’. Watson had been commissioned by the State Library of Queensland to produce work to celebrate the Queensland Centenary of Women’s Suffrage and Forty Years of Aboriginal Suffrage.[5]

Watson’s powerful and personal work demonstrates a counter-archival artistic practice which redeploys archival sources. Each of the archival documents has been photocopied onto thin paper, and using *chine-collé,* are overlaid with etched images of blood made out of pigment, drawing attention not only to the terminology of racial categorisation, but also references the warfare, violence and death which frequently occurred on the frontier in Australia. The use of the form of an artist’s book enhances the familiar intimacy of the archival records and points to the significance of the relationship between the artist and the material, as if they might perhaps have been family heirlooms discovered in an attic. The reproduction of the archival material in their original size and format also accentuates the material and visual character of the historical sources. When I saw the work exhibited, it appeared in glass display boxes,

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Contemporary Art in Sydney, curated by Brook Andrew. It is available as numero uno publications in an edition of 20 plus 5 artists proofs from Grahame Galleries, Brisbane.

[5] Judy Watson, 2005, ‘a preponderance of aboriginal blood’, published by the artist and available as numero uno publications in an edition of 5 plus a special edition commissioned by the State Library of Queensland.

thereby referencing the archival collection from which the documentary material is originally drawn. Such a curatorial approach suggests a museological aesthetic, and in this way offers a direct critique of ethnographic modes through which Aboriginality is constituted and objectified in the discourses represented by the documents.

Watson has described the material from the archives as already having 'latent power', saying that as a result of this, she didn't want to change very much and that the leakage onto the page was enough (2005). The suggestion that the archival documents have latent power brings to mind the type of agentic capacity described by Jane Bennett as the 'curious ability of inanimate things to animate, to act, to produce effects dramatic and subtle' (2010, p. 6). As with Watson's work, it is often the materiality of archival sources which draws our attention, visual traces of the past found in documents, letters, notebooks or maps, where we might encounter torn fragments, stains or imprints, suggesting the possibility of a close relationship to subjects of history.

It is not surprising that Watson was able to locate so many personal records relating to her family in the Queensland Archives. Bureaucratic record-keeping is a well-established technology of control and the colonial venture in Australia amassed an enormous archive of documentation relating to the regulation of Aboriginal people. Written documents – including reports, correspondence, photographs, maps, certificates, applications, declarations, surveys, calculations, inventories, registrations and other administrative records, in addition to legislation, regulations and legal judgments – are intrinsic to the armoury of colonialism. Colonial nations produce administrative records for national purposes in the affirmation of sovereignty. Indeed, it is these bureaucratic and legal records through which much of the force of colonial power and authority is wielded. As Achille Mbembe reminds us, there is no state without archives (2002, p. 19). In this way, archives are understood as institutions that exert power over all aspects of society, including the administrative, legal and financial accountability of government, corporations and individuals (Schwartz & Cook 2002).

Despite the fact that the colonial archive is largely constituted by legal and governmental records, there has been far less attention to archival theory within legal scholarship. Where scholarly interest in the relationship between law and history is emerging, it is generally

associated with postcolonial perspectives, examining the role of law in imperialism and in the construction of the colonial subject (Darian-Smith 1999; Kirkby & Coleborne 2001; Stoler 2009; Ford 2010). Postcolonial approaches to historical scholarship have contributed to the understanding that archives cannot be considered simply as repositories of information, but as historical agents themselves, 'less as stories for a colonial history than as active, generative substances with histories, as documents with itineraries of their own' (Stoler 2009, p. 1). Following Foucault's methodological approach to reading the archive, and his genealogy of historiography, the archive is now understood as 'first the law of what can be said, the system that governs the appearance of statements as unique events' (1972, p. 129). The notion of the archive as a site of epistemological struggle is taken up in work which explores the encounter with the archive itself, its promises of verification, revelation or intimacy, played out as romantic tussles between researcher and the materiality of history (Steedman 2001; Farge 2013). In these 'archive stories', historians and other researchers narrate physical encounters with collections, institutions and historical figures in their search for historical knowledge (Burton 2005). These are fruitful approaches to reconsidering the archive as they contribute to deconstructing its monolithic status as arbiter of historical truth.

The production of administrative documents requires buildings to house the records, bureaucrats to administer the imperatives demanded therein to classify, locate and relocate, as well as inspectors and officers to regulate and police legislative proscriptions. As Ann Laura Stoler puts it: 'accumulations of paper and edifices of stone were both monuments to the asserted know-how of rule, artefacts of bureaucratic labor duly performed, artifices of a colonial state declared to be in efficient operation' (Stoler 2009, p 2). Tony Ballantyne argues that the entire system of modern empire building was 'underpinned by the shuffling and shuttling of paper' (2014, p. 20). Accentuating the importance of the mobility of paper to the creation of empire, he suggests that rather than thinking about texts as 'words' or 'ideas', they might be understood as material forms manifest as paper and writing designed to be mobile, 'to be shared, to be sent, to be stored and retrieved', which by their nature lent themselves to colonial governance, including law (Ballantyne 2014, p. 21).

Genealogical approaches to historiography are productive because they attend to the operation and circulation of power/knowledge through discursive constructions. They also

may lead to consideration of materiality and form in the constitution of historical knowledge and interest in thinking about archival documents as artefacts of knowledge production (Riles 2006). This attention to documentary practices assists in revealing the 'agentive quality of documents' (Trundle & Kaplonski 2011), recognising the way they participate and operate in webs of material and discursive relations. To engage in an ethnographic approach to the colonial state archive contributes to understanding the way the state actually 'produces, adjudicates, organizes, and maintains the discourse that become available as the primary texts of history' (Dirks 2002, p. 58-59).

Postcolonial scholarship has contributed to critical engagement with the reception of history's archive as a source of evidence about what went on in the past and how to value different forms of historical knowledge, examining the role of law in imperialism and in the construction of the colonial subject (Kirkby & Coleborne 2001; Stoler 2009). However, when archival evidence is presented in legal claims in courts, law has remained largely impervious to these critical approaches, maintaining a positivist attitude to interpretation of historical sources which privileges impartiality, neutrality and objectivity. Questions about the nature, extent and accuracy of the colonial state archive has come into sharp relief in 'postcolonising'[6] settler states particularly as a result of Indigenous legal claims in relation to historical injustices. However, as Adele Perry points out, 'the archive is at best an unreliable ally in postcolonial struggles' (2005, p. 327). On the one hand the extent of the colonial archive is evidence of the hyper-surveillance of Indigenous people in colonial and neo-colonial times; on the other, it is an entirely inadequate source, largely written from the perspective of the colonial state, where Indigenous voices and perspectives are absent or retrospectively inserted through critical artistic practice, such as in Watson's work.

Colonial archives produce and reproduce hierarchical categories of evidence. While oral history has become increasingly acceptable to historians over recent decades, law remains attached to the claims of originality and objectivity associated with the materiality of the documentary form, endowing it with stability and legitimacy and granting it status as an arbiter of truth. The materiality of the archive, by which I mean both what is and is not to be found there, is in this way determinative of the legal outcomes of those who most seek to

[6] I am using this term to describe the condition of ongoing colonial relations, but when the legitimacy of the settler colonial state has been challenged. See Aileen Moreton-Robinson (2003).

draw on its sources for remediation of historical wrongs. In some contexts, the notion of an oral archive has emerged as a result of legal claims, such as in the Truth and Reconciliation Commission in South Africa (Harris 2002). However, in other contexts, including Australia, oral evidence has been valued only to the extent that it can verify the written record.[7]

Miranda Johnson points out that the juxtaposition of oral and written history in the way that occurs in law serves to understate the varieties of historical resources and interpretative possibilities of re-reading and re-contextualising colonial archives (2008). For example, the performance in court by witnesses and the subsequent transcription of Indigenous elders' testimony and their cross-examination produces a documentary record that transgresses these forms. She suggests a practice of 'listening to documents', or interpreting the 'written-oral, *as oral*', serves to overcome some of the assumptions embedded in the dichotomy written/oral (Johnson 2008, p. 116). Such a practice 'transforms local pasts into public histories by producing a text and a set of textual practices out of such past so that they can circulate beyond the bounds of a particular community' (Johnson 2008, p. 110).

Law's documentary practices

Clearly, written records are central to the operation of law. After all, documents, and the paper that constitutes them, are fundamental mediums of law and function as a source of legal authority. Common law archives itself ceaselessly. Indeed, it exists in order to create an archive, which assists in determining its future direction. However, it is not only finalised court decisions which constitute the legal archive, but also the products of parliamentary processes, police and prison records, bureaucratic records, evidentiary and litigation materials as well as court administrative material.

In an account of the history of the emergence of written records in England, Michael Clanchy points to the political function of writing and reading in his contention that lay literacy

[7] In significant Australian legal decisions, archival records have played a central role as evidence. For example, in claims for native title, historical evidence is used to address the requirement that title-holders prove an on-going traditional connection to the land in question. However, in the first judicial decision in relation to a claim for native title, *Members of the Yorta Yorta Community v State of Victoria* (1998), Justice Olney drew on the diary entries of a pastoral squatter as evidence, finding that the claimants had lost their traditional connection to country. In doing so, he effectively reversed the legal principle attributing authority to the oral form of evidence, determining that archival texts would serve as the basis for interpretation of testimonial evidence.

developed out of bureaucratic and legal requirements, rather than any particular demand for knowledge (1993). Clanchy identified legal procedures, such as oral summons and pleadings, as exemplary of the continuing privileging of the spoken word, despite the increasing proliferation of documents. He points to the historic function of the *narrator* or *conteur*, the precursor to barristers, who 'spoke on the litigant's behalf in his presence' as 'an extension of the litigant's faculty of speech' (Clanchy 1993, p. 274). According to Clanchy, '[w]riting shifted the emphasis in testing truth from speech to documents', but the privileging of oral testimony over documents 'shows how cautiously – and perhaps reluctantly – written evidence was accepted' (1993, pp. 275, 263).

However, Cornelia Vismann suggests that in theorisations about the origins of law, undue attention has been paid to the orality/literacy binary (2008). She argues that it is the functional logic of administrative processes represented in the documentary forms of law that 'contribute to the formation of the three major entities on which the law is based: truth, state, and subject' (Vismann 2008, p. xii). In particular, Vismann elaborates on the importance of the media technology of files, and their precursor, lists, as basic functional, process-generating administrative procedure, conforming 'neither to orality nor to literacy', in the production of legal systems (2008, p. 5). She suggests that files, by virtue of their capacity to be updated, appearing 'live, ever-changing, acting and inexhaustible', take on ontological qualities along the lines of speech (Vismann 2008, p. 10).

Vismann argues that files are the foundation of legal activity, but that they 'remain below the perception threshold of the law' and have received scant attention from legal theorists (2008, p. 11). It is only when they are removed from their administrative context, such as when they appear as evidence in court, that they become objects of scrutiny, because it is here that a determination is made as to whether they fulfil the requirements of evidence and attention is directed to their probative force. It is at this point in the trajectory of files, Vismann argues, that truth claims emerge. Once files move from the status of personal notebooks to become documents kept in public places, ultimately entering the courtroom, they acquire a different speech act status, moving from an imperative, prescriptive form to an evidentiary descriptive one. She says:

> ‘Here the regime of literalness arises with the question of truth: is what was written down an accurate recording of what was said? Does what is stored correspond to what took place? Is it complete? It becomes necessary to establish criteria for the reliability of written records and to furnish means to authenticate them’ (Vismann 2008, p. 52).

In this way, Vismann argues that files are performative and fact-producing. Law generates its own reality through the production of files: indeed, she suggests that for law, what is not on file is not in the world. Law believes only in its own literality; it is impossible to prove the non-existence of something (Vismann 2008, p. 57).

This is a radical genealogical approach to the history of law, tracing the evolution and role of one of its primary products, files. It is an overtly materialist approach to legal history that suggests the need for close attention to documentary genre in analyses of organisational paradigms and documentary forms as artefacts of modern knowledge practices. In the context of the development of the modernist ‘automation of order’ during the late 19th century, with the emergence of mechanisation in reproducible communication, such as the invention of the typewriter, we might ask, following Vismann, what significance should be attributed to administrative *forms*, that is, proforma documents, as media central to the bureaucratisation of governmental processes, or governmentality? Forms, by which I mean documents based on or replicating a formula, and the demands they place on subjects to complete them, epitomise the media of late modern legal agency and proliferated in colonial contexts.

Archival forms as evidence

Thousands of archival documents were tendered as evidence in the trial of *Cubillo*, a landmark legal action taken by Lorna Cubillo and Peter Gunner against the Australian Government. Cubillo and Gunner had been removed as children from their families and communities in the Northern Territory of Australia during the 1940s and 1950s under policies of assimilation implemented with respect to Aboriginal people and resulting in what is known as the Stolen Generations. The evidence presented included federal government correspondence, letters and memoranda between officers and the Director of Native Affairs, patrol officers’ diaries and reports, records and correspondence of the institutions where the claimants resided, welfare and medical files, education and employment records of the

claimants, government reports, conference proceedings, newspaper articles and parliamentary statements, and maps and photos. The documents spanned a period of over 50 years.

The applicants argued that the Commonwealth was vicariously liable for their removals from their families and communities as children and subsequent detentions. There were four causes of action: wrongful imprisonment and deprivation of liberty, breach of statutory duty, breach of duty of care and breach of fiduciary duty. They argued that under the legislative regime in force at the time, the Commonwealth, via the Director of Native Affairs and his officers, was vicariously liable for the acts of its employees and that there had been a general policy of removal of 'part-Aboriginal' children from their families and communities, without regard to their individual circumstances. Justice O'Loughlin found that the Commonwealth was not vicariously liable because the relevant legislation in force at the time, the *Aboriginals Ordinance 1918* (NT), gave the Director of Native Affairs the power to undertake the care, custody and control of a 'part-Aboriginal' child if, in the Director's opinion, it was necessary or desirable, in the interests of the child. Under section 17 of the *Welfare Ordinance 1953* (NT), the Director of Welfare had the power to take a 'ward' into custody and to order that he or she be removed to and kept within a reserve or institution.

Justice O'Loughlin found that there was neither enough evidence to support a finding of a general policy of removal of 'part-Aboriginal' children, and that, even if there had been, the evidence presented in the proceedings did not justify the conclusion that it was implemented in respect to the applicants. He found that there was a prima facie case of wrongful imprisonment of Lorna Cubillo, but that the Commonwealth was not liable because the burden of proof had not been satisfied, highlighting the incompleteness of the history and the lack of documentary evidence. In the case of Peter Gunner, however, Justice O'Loughlin found that there were several pieces of documentary evidence that 'pointed strongly to the Director, through his officers, having given close consideration to the welfare of the young Peter'.[8] In particular, Justice O'Loughlin identified a form of consent with the purported thumbprint of his mother, Topsy Kundrilba, which he interpreted as a request that Peter be removed to St Mary's Hostel. The form of consent was crucial to Justice O'Loughlin's decision in relation to Peter Gunner. While the judge determined that it was not possible to make findings of fact about the circumstances of his removal from his family, he nevertheless

[8] *Cubillo*, Summary of Reasons for Judgment, para 11.

found the form of consent a sufficiently persuasive exhibit that it formed the basis for the court's rejection of the claim. Justice O'Loughlin determined that it functioned as documentary evidence that Topsy Kundrilba had given her informed consent to the removal of her son.[9]

The archival documents tendered as evidence in the *Cubillo* case exemplifies what Renisa Mawani describes as the 'double logic' of law's archive (2012). Arguing that law's archive operates through both symbolic and material force, as well as document and documentation, Mawani suggests that '[l]aw's archive is a site from which law derives its meanings, authority, and legitimacy, a proliferation of documents that obscures its originary violence and its ongoing force, and a trace that holds the potential to reveal its foundations as (il)legitimate' (2012, p. 337). The existence and volume of the archival records pertaining to the claimants in *Cubillo* is certainly evidence of the symbolic and material force of colonial rule and the assertion of sovereignty. As artefacts of colonial knowledge production, it also demonstrates the function of documents and documentation as instruments of legal and governmental practices. However, there are also ways in which these documents can be read as evidence of uncertainty and doubt, marking 'anxieties about subject-formation, about the psychic space of empire, about what went without saying' (Stoler 2009, p. 25).

Exhibit A21: Form of Consent

Exhibit A21 was identified in the proceedings as a 'Form of Consent by a Parent'. The exhibit is a simple, typed pro forma document of apparent legal character, akin to a statutory declaration, where names are inserted into a narrative statement that is phrased in the form of a request. The declarant, Topsy Kundrilba, is defined pursuant to the *Aboriginals Ordinance 1918-1953* (NT), and she requests the Director of Native Affairs to declare her 7-year-old son, Peter Gunner, to be an Aboriginal under the same Ordinance. Four grounds are listed: that he is of Part-European blood, his father being a European; that she desires that he be educated and trained in accordance with accepted European standards, to which he is entitled by reason of his caste; that she is unable to provide the means by which her son may derive the benefits of a standard European education; and that by placing her son in the care,

[9] I have discussed this exhibit using a different analytic framework in previously published article: Luker (2009).

custody and control of the Director of Native Affairs, the facilities of a standard education will be made available to him by admission to St Mary's Church of England Hostel at Alice Springs. The document holds the purported thumbprint of Gunner's mother and includes the statement 'signed of my own free will this ___ day of 1956 in the presence of ___ ', but the gaps have not been filled in. The typed words 'her' and 'mark' appear on either side of the print, and 'TOPSY' and 'KUNDRILBA' above and below. The document is undated, unwitnessed and bears no official letterhead, seal or insignia. It had been sourced in the National Archives of Australia. As such, it was regarded as a public document, making further evidence as to its authenticity unnecessary.

The document was apparently produced under the policy of assimilation to classify Peter Gunner as an Aboriginal and declare him a ward of the state subject to legislation under which he was removed from his family and placed in St Mary's Hostel in Alice Springs. However, under the *Aboriginals Ordinance 1918*, the Director of Native Affairs had power over all Aboriginal people, including the discretionary power to remove children. Under section 7(1), all Aboriginal children were deemed to be subject to the legal guardianship of the Chief Protector of Aboriginals, notwithstanding that they had a parent or other relative living. Section 6(1) gave the Chief Protector discretion to undertake the care and control of any Aboriginal person or 'half-caste', including an adult, if it was considered necessary or desirable in the interests of the person. Under the subsequent *Welfare Ordinance 1953-1957* (NT), any Aboriginal person in the Northern Territory of Australia could be declared a ward of the state. The Welfare Ordinance introduced the legal framework for the policy of assimilation. It facilitated the removal of children from their families based on their purported need of care, rather than race.

Heather Douglas and John Chesterman point out that prior to the introduction of the 1953 legislation, a census was conducted of all Aboriginal people and that this was a critical tool in the implementation of the assimilation policy (2008). Inclusion in the census led to Aboriginal people being created as legal subjects, as wards of the state, and subsequently as subjects of legal regulation under the assimilation policy (Dougler & Chesterman 2008, p. 376). Clearly, defining the legal status of Indigenous subjects has political and symbolic significance for colonial and neo-colonial rule. I have argued elsewhere that the form of

consent functioned to interpellate both Kundrilba and Gunner as subjects of colonial regulation and demonstrates the colonial production of legible subjects and of patronymic legal identity (Luker 2009). Here, I am less interested in the semiotic and more with the material and archival nature of exhibits. As Annalise Riles explains, approaching documents as ethnographic objects or artefacts engages with questions of temporality, form and genre, authorship and agency (2006, pp. 18-22). In particular, I am interested in the function of documentation and archivisation as a process of fact production and as an aid in the rationalisation of decision-making as technologies of colonial rule.

Gunner was removed from his mother in 1956, the year after the *Welfare Ordinance 1953* came into effect.[10] Under the new legislation, the definition of 'Aboriginals' was revised to exclude 'half-castes'. However, a new sub-section was introduced which empowered the Director of Native Affairs to declare a person, if one of their ancestors came within the statutory definition of 'Aboriginal', to be deemed an Aboriginal if the Director considered it to be in their best interests, and the person requested it. Despite the power available under the legislation at the time Gunner was removed, Justice O'Loughlin concluded that as Gunner was himself only a child at the time, the authorities had perceived the need for his mother to request the declaration.[11]

Justice O'Loughlin's conclusion is possibly a response to the document's unofficial and rudimentary appearance. While it seems to be a 'pro forma', it is the fact that the typewriter font used for both generic and inserted text is the same which gives it the appearance of uniformity and coherence. This is not a document that has been officially designed and printed by a government department. It is more likely that the document was originally produced and subsequently completed on the same typewriter, in the same office by the same person, perhaps the patrol officer responsible for the community residing at Utopia Station. It appears that the authority responsible, most likely the local patrol officer, believed that some form of documentation was called for to facilitate the removal of Gunner and his admission at St Mary's Hostel, although we do not know who this was, because the form has not been witnessed. While the names, residence, relationship and gender of Peter Gunner and his mother, Topsy Kundrilba, apparently have been inserted into a template, it may just as readily

[10] The *Welfare Ordinance 1953* (NT) commenced in May 1957, repealing the *Aboriginals Ordinance 1918*.
[11] *Cubillo* [139].

have appeared as a piece of correspondence unique to these individuals.[12] Justice O'Loughlin acknowledged that many questions remained unanswered as to how or whether the contents of the document were explained to Kundrilba, or whether they were explained at all; in which case, he asserted, that the document would probably be a nullity.[13] On the balance of probabilities however, the judge found that the 'line of documents' favoured a positive conclusion that Kundrilba gave her informed consent to her son going to St Mary's. It is this apparently individualised treatment that facilitated the conclusion that Justice O'Loughlin reached, that he could not find evidence of a general policy of removal of Aboriginal people in the documentary sources.

Notwithstanding a lack of clear provenance, the document was stored, together with many other records, in a departmental welfare file created for Peter Gunner. It survived for over 50 years before being tendered as evidence in the case. At the time of the legal proceedings, it was preserved in the National Archives of Australia. Within archival theory, the principle of provenance, or *respect de fonds*, means that records are preserved to reflect the arrangement employed by the organisation, administration or individual responsible for their creation. This is said to enhance the authenticity and integrity of the records, and ensures that they maintain a close relationship to the administration that produced them. According to John Ridener, one of the distinctive characteristics of modern archival theory is that it endorses a key public role for archives as participants in the creation of government efficiency and accountability (2008, p. 81). While 19th century archives were collections of records for use by historians and other scholars, arranged chronologically without regard to the source, during the early 20th century, government records became more important as national governments consolidated their rule through the spread of colonial enterprises over the world. This reflected an enhanced value being placed on documentary records as forms of evidence, as a paper trail providing

[12] In the trial, Harry Kitching, patrol officer in the area covering Utopia Station at the time and considered by Justice O'Loughlin probably to be responsible for Gunner's removal, said he recognised the form, but could not recall anything about Peter Gunner's situation at Utopia, nor the reasons for his recommendation that he be admitted to St Mary's. In his affidavit, he said 'I had no recollection of being present when Topsy marked the form. I note that it was not signed or dated': Kitching's affidavit, paras 82–4, cited in transcript, 7 August 1998, p 95. Yet documentary evidence that referred to Gunner, recorded by Kitching, was presented in the trial: Exhibit A15, Memo from Evans to Acting Director, dated 4 November 1954, includes copies of an inspection report of Utopia conducted by Kitching in June 1954; Exhibit HSK4 contains extracts from Kitching's diary reports of visits to Utopia between January–June 1955, in which he notes that when he arrived at the camp on 4 April 1955, the 'children fled into scrub'; Exhibit A17, Undated Memorandum from Mr McCoy to the Director of Welfare, (September 1955), written by Kitching, included the suggestion that he had met with Kundrilba and Gunner and that he was willing to attend St Marys.

[13] *Cubillo* [788].

verification and details of government action and activity. In this way, archival practices of collection, storage and management of material records respond to and reflect geo-political movements. This rationale is particularly evident in the role of archives in the propagation of imperial rule.

The development of modern archival theory coincided with the period during which standardisation of forms was introduced in an attempt to ensure efficiency in administrative and classification functions and to impose order on record keeping (Ridener 2008, p. 93). The advent of mechanical reproduction had a profound effect on archival theory and practice. As Ridener explains, the ability to create multiple copies of documents quickly, 'the technological innovations wrought through the typewriter multiplied issues of duplication and authenticity' (2008, p. 12). Unlike handwritten documents such as letters, authorial provenance is far more difficult to establish with typewritten documents. Furthermore, mechanical reproduction resulted in a dramatic increase in the production of administrative records, resulting in changes in the meaning of the archive and approaches to archival practice.

As Latour has demonstrated, the materiality and movement of documents is central to law (2010). In his ethnography of the French Conseil D'État, he describes in detail the generation, compilation and circulation of legal files resulting in their ultimate 'ripening' into useful pieces of evidence in a case (Latour 2010, pp. 75-76). In this way, law is a process of movement – 'weaving', 'shaping' and 'formatting' – of material objects, including files, texts, litigants and decision-makers. Indeed, Latour claims that it is the fabrication and circulation of files that facilitates the movement of the people engaged in legal processes which actually produces 'legal effects' (2010, p. 80). This dynamic of 'transition, movement or metamorphosis' (Latour 2010, p. 129) of files and textuality is also channelled in the interactions of legal decision makers. In this way, law 'is largely a *documentary network* through which the social is arranged and assembled' (Levi & Valverde 2008, p. 818).

Files were central to colonial administration in Australia, particularly in the documentary practices employed for the regulation of Indigenous people. The early 20th century was characterised by a burgeoning colonial administration, producing an enormous archive of

bureaucratic records, documenting information about identity (births, deaths, marriages, racial classifications); health, welfare and medical records; residential location, movement and removal; educational achievements; employment; police and prison records. In *Cubillo*, the evidentiary status of the form of consent was enhanced by virtue of it being one in a line of documents that had been compiled in the Native Affairs Branch and preserved in Gunner's welfare file, including diaries prepared by patrol officer Harry Kitching and correspondence between the offices in Alice Springs and Darwin of the Director of Native Affairs, the Director of Welfare and the District Superintendent.[14]

As the claimants acknowledged, under the legislation in force at the time, the Director of Native Affairs had the power to remove Gunner from his mother, if he deemed it to be in the child's best interests. However, it is apparent that the local patrol officer responsible for his removal believed that a documentary record including evidence of the purported consent of Kundrilba was necessary to authorise the removal. In this way, not only was the form of consent a material agent in the subjection of Gunner to the legislative framework in force at the time, it was also a folio in a file containing other documents which together functioned to record and rationalise the actions of the colonial authorities in controlling many aspects of Gunner's life. As Hannah Robert points out, it removed the requirement to invoke the statutory provisions of the Aboriginals Ordinance in force at the time, and therefore transferred the responsibility of removal and subsequent detention from the state to the mother (2001, p. 6).

Perceived materially, as an administrative file containing an accumulation of bureaucratic knowledge, it is possible to ascertain a level of anxiety on the part of the authorities about the implementation of colonial rule in the volume of correspondence recorded and preserved. In this way, the generation of documentary records was part of a process of fact-production designed to rationalise the practice of removing children. For example, patrol officer Harry Kitching thought it necessary to record that, when he visited on 4 April 1955: 'The majority

[14] The exhibits included Exhibit HSK9: Letter from Mr McLeod, station owner Utopia, to Mr Evans, Acting District Superintendent (14 November 1953); Exhibit HSK2.1: Census (1954); Exhibit HSK3 and HSK4: Diary extracts of Mr Kitching (January–June 1955); Exhibit A13: Mr Richards Memorandum (25 February 1955); Exhibit A14: Letter from FJS Wise; Exhibit A15: Memo from Evans to Acting Director (4 November 1954); Exhibit A16: Letter dated 21 February 1955; Exhibit A17: Undated Memorandum from Mr McCoy to the Director of Welfare; Exhibit HSK13: Correspondence from Mr Giese to Acting Director, Alice Springs (1 April 1955); Exhibit R6: Report of A E Richards (12 April 1955); Exhibit R9: Document dated September 1955.

of children on Utopia all disappear as quickly as possible' when he approached, noting that he made 'no attempt to chase them but have tried to build the confidence of the remainder in native affairs officers being [sic] in mind the coming census and the need for an accurate count'.[15] At a later date, a further note records that on 14 September 1955 when he returned to compile the census: 'Two children, Florie Ware, and Peter, were seen with their parents, and it now appears that they will both be willing to attend school and to go to St Mary's Hostel in the coming year'[16] and that he had promised that the children would be able to come home at Christmas.[17] In between these two occasions, correspondence between Kitching's superior, Mr Richards, and the Director of Welfare which supported 'Kitching's judgment as to the inadvisability of chasing the half-caste children', resulted in a response from Mr Giese, the Acting District Welfare Officer, which stated that: 'Every endeavour should however be made to gain the confidence of these half-caste children, as I feel that this branch is responsible for their future. I would like to be advised of the progress made by Patrol Officer Kitching in this matter'.[18]

Ultimately, it was this 'line of documents' which, compiled together as a welfare file, produced a narrative, which Justice O'Loughlin found sufficiently convincing that consideration had been given to Gunner's wellbeing. As Latour points out, documentary evidence always carries the mark of other institutions, which are already capable of producing law, for when a decision is made, 'it has only pronounced itself on a file which is composed of documents that have already been profiled so as to be … "judgment-compatible"' (2010, p. 75). As he reminds us, any document may be mobilised as a piece of evidence, and it is because it is mobilised in a legal claim that it takes on a legal form. He points out, however, that this only occurs retroactively: 'Still, if they have been able to slip into the file so easily it is because they had been preformed and pre-folded to respond to this type of contestation' (Latour 2010, p. 77).

The form of consent is part of the colonial administration's bureaucratic paper trail, produced to counter political concerns about the removal of Aboriginal children. Such concerns were by then increasingly being expressed to the federal government by citizens and humanitarian

[15] Transcript, cross examination of Kitching, 6 August 1998, referring to exhibit of letter dated 6 April 1955.
[16] Exhibit HSK15, Transcript, cross examination of Kitching, 6 August 1998, p. 78.
[17] Exhibit HSK15, Transcript, cross examination of Kitching, 7 August 1998, p 103.
[18] Exhibit HSK14, Transcript, cross examination of Kitching, 6 August 1998, p 77.

organisations. As an expert witness, and the only historian ultimately called to provide evidence in the case, Professor Ann McGrath, stated that her research of the period 1946–62 revealed 'disquiet, sometimes deep concern', evident within the Australian community, including amongst white women, Aboriginal protection groups, unionists and other groups including the YWCA, and a wide array of individual people.[19] She said she had also found evidence of 'government people who were deeply concerned about the policy … of child removal' and that she was 'surprised, in looking at all these primary sources, by the amount of activism in the community … to get the Government to change the legislation because 'they felt that something cruel and inhuman was happening to Aboriginal mothers and their children'.[20] McGrath concluded that she did not find 'overwhelming evidence saying that that policy—that that actual way of implementing assimilation by a removal of children from their mothers was endorsed by the wider community to any significant degree'.[21]

Exhibit R93: Form of Information of Birth

Peter Gunner's welfare file, produced as the Applicant's exhibit A45, released by the Territory Health Services for the purposes of the litigation, contains many further documents, including forms, records, notes and correspondence pertaining to Gunner's health, scholastic progress, movement and employment. Another exhibit tendered as evidence in the proceedings was a *Form of Information of Birth*, also displaying the purported thumbprint of Kundrilba (see Figure 4.3). This is a more formal document than the form of consent, produced pursuant to the *Registration of Births, Deaths and Marriages Ordinance 1941* (NT) and states that it is to be furnished to the District Registrar within twenty-one days of the date of birth, failing which, it required a solemn declaration of the facts to be made before a Magistrate. However, with this form, there is a striking anomaly in the dates: the date of birth is recorded as 19 September 1948, but the form is dated and signed as 17 May 1956. The file includes correspondence from the Acting District Welfare Officer, Mr McCoy, to the Director of Native Affairs discussing the 'forms of information of births of Aboriginal children Kathleen and Jeffrey and Peter Gunner'; a request to the Administrator for approval of the registration of the births; a letter from McCoy to the Director concerning admission of Gunner to St Mary's Hostel; a letter from Harry Giese to the Administrator requesting that

[19] Transcript, cross-examination of Dr McGrath, 24 September 1999, p. 3353.
[20] Ibid.
[21] Ibid.

Gunner be declared an Aboriginal in accordance with the provisions of the Ordinance; and a letter, dated 24 May 1956, from Mr McCoy to the Director with details of Gunner's proposed admission to St Mary's.[22]

This correspondence suggests that the creation of the record of Gunner's birth, making him subject to legal regulation, was necessary to facilitate his institutionalisation at St Mary's Hostel. The particulars of the birth certificate, its retrospective creation and existence in the file together with the correspondence, further demonstrate the way the process of documentation not only facilitated state regulation of Aboriginal people, but was also regarded as a necessary adjunct to the actions being taken. Richard Harper argues that for institutions 'documents provide resources whereby objectivity can be achieved. This objectivity provides the materials which organizational actors can use to "see", "recognise" and "constitute" the rational basis for choosing one course of action over another' (Harper 1998, p. 33). In this way, the creation of multiple records all held on an official file – birth certificate, letters, request, approval, admission – contributes to rationalise and legitimise a process that was otherwise contrary to legislative requirement. As a documentary practice, it also provided an explanatory rationale acceptable to Justice O'Loughlin when it was presented as legal evidence.

Creative anachronism

Archival practices that preserve documents in original and rationally ordered form are not the only way to reconstitute sources of historical knowledge as evidence of the past. As the work of Judy Watson and other artists demonstrates, there is increasing interest in use of archival materials as the basis of creative works that productively engage with documentary and archival practices to critique epistemological premises underlying the production of modern knowledge. When artists appropriate archival sources in creative work, they are able to create material objects that accentuate details we may not otherwise observe, instil resonance between subjects, places and institutions, reframe established ways of understanding our own relationship to the past, and thereby rewrite history from the present. As Khadija von Zinnenburg Carroll suggests, contemporary artists working with and appropriating from the colonial archive engage in a productive form of anachronism which facilitates the possibility

[22] Transcript, opening address by the respondent, 3 March 1999, p. 416–20.

of a conversation across time and the opportunity 'literally to see the past in the present' (2014, p. 14).

The creative use of archival documents by Watson demonstrates this productive form of anachronistic dialogue. Notwithstanding their now faded and fissured formality, the aesthetic quality of bureaucratic Times Roman typeface and black ink on the archival documents functions to interpellate Kundrilba and Gunner within historically-specific colonial relations of power.[23] In contrast, the blood-coloured pigment employed by Watson in her contemporary creative work obscures the details of the archival documents, and in this way engages in a counter-archival practice to undermine their apparent historical authority.

Contemporary Indigenous art that draws on archival material often uses images to overtly critique the foundational disciplines of anthropology and ethnography and their objectifying stance, challenging the epistemological foundations of Western knowledge practices. Ethnographic images have particular valency because of the significance attributed to the power of representation and photography to accurately portray and 'capture' its subjects. However, these contemporary artists are able to refigure subjects, animating their existence and in this way contribute to new and critical approaches to historiography. The use of archival sources in contemporary artistic work demonstrates the mobile character of documents, the way they travel though space and time, shuffled through bureaucratic and archival processes, now to be found in newly animated form on display in art galleries across the world.

In Watson's artistic work 'under the act', two of the archival documents have been superimposed with photographs of members of the artist's family. Peering out from the formality of the official letters, and washed over with blood-coloured pigment, are the strikingly animated faces of women and children, Watson's great-grandmother Mabel Daly, her mother's cousin Mavis Pledger and her grandmother, Gracie Isaacson, then a baby. The correspondence over which these faces appear is from the Director of Native Affairs to the Protector at Mt Isa, Queensland. It is in response to Gracie's request that the money she had

[23] I have discussed this in more detail elsewhere, arguing that the exhibit functions as a somatechnic site: see Luker (2009).

earned and which was held by the department be made available to her. The labour of Indigenous people has been exploited in Australia since the early years of colonisation and has been largely subject to legally-sanctioned government control under Protection Acts.[24] Such practices have come to be known as 'stolen wages'. Under the *Queensland Aboriginals Protection and Restriction of the Sale of Opium Act 1897* (Qld), governments exercised extraordinary levels of control over all aspects of the lives of Aboriginal people, including employment. Government appointed protectors, usually police officers, had the power to make decisions as to whether Aboriginal people were permitted to be employed and negotiate agreements with employers, including wages. As an artistic work, it is not possible clearly to read the text of the letters because they have been washed over in the blood-coloured ink and superimposed with the images of people whose lives were regulated by the documentary regime represented. The treatment of the archival sources by Watson functions as a form of palimpsest where the official documents are scraped away and used again to bring new truth to the surface. It constitutes a counter-archival practice that animates the document with the subjectivities of the colonised, its materiality returning what remains unspoken in their deployment as an artefact of legality.

Conclusion

Colonial archives are a rich source of historical material and are often drawn upon as evidence in legal claims in relation to historical injustices. In considering archival sources as evidence of events that have occurred in the past, attention should be given not only to their informational content, but also to their materiality, including the rationale for the creation of the document, principles of provenance, the process of archivisation and ultimate storage on files in proximity to other records, as well as features such as genre and format, when assessing the evidentiary significance. Rather than considering archival sources as documentary text or representation, they are better understood from an ethnographic perspective, as artefacts, or imprints or inscriptions of the human on the page, and in this way, attend to the possibility of documents as having performative capacity in the production of knowledge practices. As Watson's artistic work demonstrates, a counter-archival

[24] Practices include indentured labour, non-payment and underpayment of wages, under-award payments, withholding and mismanagement of wages, savings and pensions alleged to have been placed in trust accounts, and compulsory redirection of welfare payments and other entitlements. For a discussion of avenues pursued for compensation for stolen wages, see Margaret Thornton and Trish Luker (2009).

engagement with archival sources can lead to seeing them as having 'latent power' which may lead productively to new understandings of the past.

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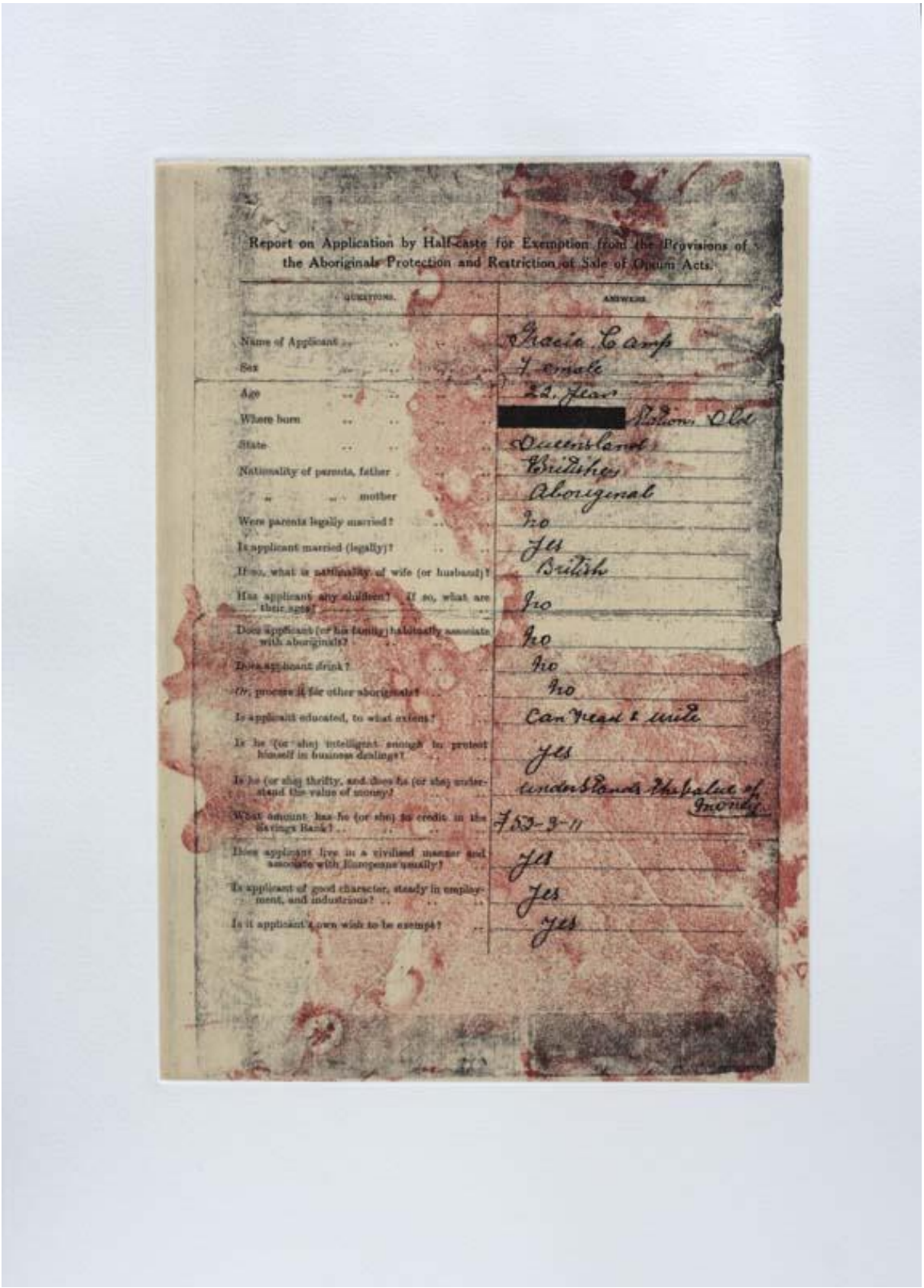


Report on Application by Half-caste for Exemption from the Provisions of the Aboriginals Protection and Restriction of Sale of Opium Acts.

QUESTIONS.	ANSWERS.
Name of Applicant	Gracie Camp
Sex	Female
Age	22. Years
Where born	[redacted] Nelson, Qld
State	Queensland
Nationality of parents, father	British
" " mother	Aboriginal
Were parents legally married?	No
Is applicant married (legally)?	Yes
If so, what is nationality of wife (or husband)?	British
Has applicant any children? If so, what are their ages?	No
Does applicant (or his family) habitually associate with aboriginals?	No
Does applicant drink?	No
Or, procure it for other aborigines?	No
Is applicant educated, to what extent?	Can read & write
Is he (or she) intelligent enough to protect himself in business dealings?	Yes
Is he (or she) thrifty, and does he (or she) understand the value of money?	understands the value of money
What amount has he (or she) to credit in the Savings Bank?	£53-3-11
Does applicant live in a civilised manner and associate with Europeans usually?	Yes
Is applicant of good character, steady in employment, and industrious?	Yes
Is it applicant's own wish to be exempt?	Yes

Figure 1: Judy Watson, Page 12, *under the act* (2007). Etching with chine collé, 30.5 x 42.0 cm. Courtesy of the artist and grahame galleries + editions.

4.

FORM OF CONSENT BY A PARENT

I, TOPSY KUNDRILBA being a full-blood Aboriginal (female) within the meaning of the Aboriginals Ordinance 1918-1953 of the Northern Territory, and residing at UTOPIA STATION do hereby request the DIRECTOR OF NATIVE AFFAIRS to declare my son PETER GUNNER aged seven (7) years, to be an Aboriginal within the meaning and for the purposes of the said Aboriginals Ordinance.

MY reasons for requesting this action by the Director of Native Affairs are:-

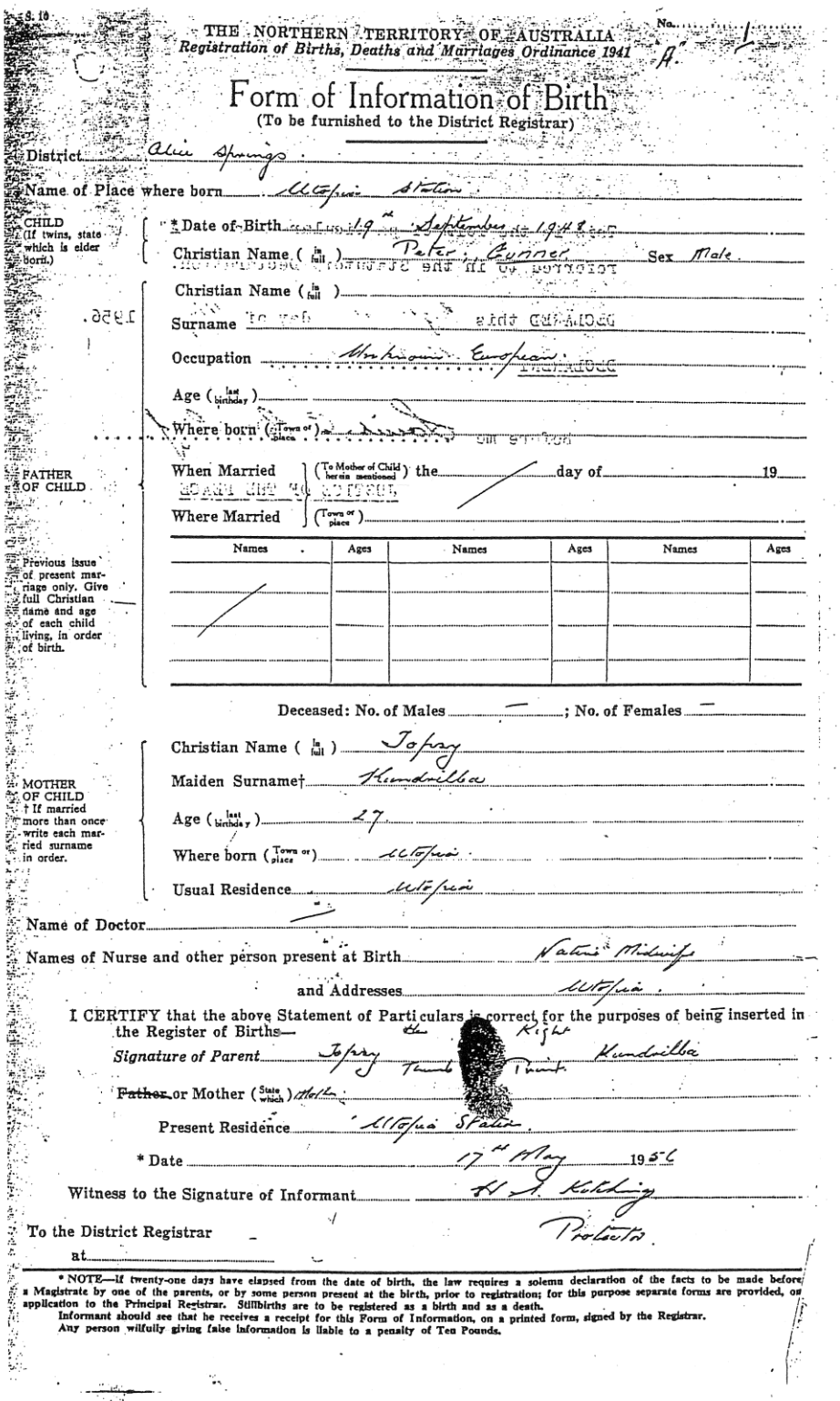
1. My son is of Part-European blood, his father being a European.
2. I desire my son to be educated and trained in accordance with accepted European standards, to which he is entitled by reason of his caste.
3. I am unable myself to provide the means by which my son may derive the benefits of a standard European education.
4. By placing my son in the care, custody and control of the Director of Native Affairs the facilities of a standard education will be made available to him by admission to St. Mary's Church of England Hostel at Alice Springs.

SIGNED of my own free will this day of 1956 in the presence of

TOPSY her mark

KUNDRILBA

Figure 2: National Archives of Australia: Welfare Branch; F1, Correspondence files, annual single number series, 1956-57, 1956/2077, "Welfare Branch Declaration to be a Ward Peter Gunner". Tendered as evidence by the respondent in relation to Peter Gunner in *Cubillo v Commonwealth* (2000) 174 ALR 97 as "Form of Consent by a Parent". Reproduced with the permission of the Federal Court of Australia.



S. 10

THE NORTHERN TERRITORY OF AUSTRALIA
Registration of Births, Deaths and Marriages Ordinance 1941

No. A. 1

Form of Information of Birth
(To be furnished to the District Registrar)

District Alice Springs.

Name of Place where born Utopia Station.

CHILD (If twins, state which is elder born.)

* Date of Birth 19th September 1948

Christian Name (in full) Peter Gunner Sex Male

Christian Name (in full)

Surname

Occupation Married Employed

Age (last birthday)

Where born (Town or place)

FATHER OF CHILD

When Married (To Mother of Child herein mentioned) the day of 19

Where Married (Town or place)

Previous issue of present marriage only. Give full Christian name and age of each child living, in order of birth.

Names	Ages	Names	Ages	Names	Ages

Deceased: No. of Males —; No. of Females —

MOTHER OF CHILD † If married more than once write each married surname in order.

Christian Name (in full) Topsy

Maiden Surname† Kunduilla

Age (last birthday) 27

Where born (Town or place) Utopia

Usual Residence Utopia

Name of Doctor

Names of Nurse and other person present at Birth Native Midwife

and Addresses Utopia.

I CERTIFY that the above Statement of Particulars is correct for the purposes of being inserted in the Register of Births—

Signature of Parent Topsy the Right Thumb Print Kunduilla

~~Father~~ or Mother (State which) Mother

Present Residence Utopia Station.

* Date 17th May 1956

Witness to the Signature of Informant H. T. Kitching Protector

To the District Registrar at

* NOTE—If twenty-one days have elapsed from the date of birth, the law requires a solemn declaration of the facts to be made before a Magistrate by one of the parents, or by some person present at the birth, prior to registration; for this purpose separate forms are provided, on application to the Principal Registrar. Stillbirths are to be registered as a birth and as a death.

Informant should see that he receives a receipt for this Form of Information, on a printed form, signed by the Registrar.

Any person wilfully giving false information is liable to a penalty of Ten Pounds.

Figure 3: "Form of Information of Birth", tendered as evidence by the respondent in relation to Peter Gunner in *Cubillo v Commonwealth* (2000) 174 ALR 97. Reproduced with the permission of the Federal Court of Australia.

Figure 4: Judy Watson, Page 2, *under the act* (2007). Etching with chine collé, 30.5 x 42.0 cm. Courtesy of the artist and grahame galleries + editions.