Comment: The Violence of Being Not Quite There

Susan Coutin
Department of Criminology, Law and Society, University of California, Irvine

The papers in this symposium open up a space between originality and reproduction, in that the kin relations created through new legal documents are both the same as but also not quite like other kin relations (presumably forged through other technologies). The space between sameness and imitation is a source of violence for the women, fiancés, spouses, partners, parents, children and siblings whose experiences are analyzed here. This slippage between authentication and approximation is intrinsic to both law and kinship, the two domains that are the foci of these papers. Kinship could appear to be “natural,” and therefore not in need of a technology at all. And yet kinship takes form through law, which, likewise, could not exist without kinship. Kinship statuses (parent, guardian, spouse) are also legal categories, and law is itself given – passed on, formulated – through kin relations (e.g., from generation to generation). Though in some ways indistinguishable, kinship and law are also mutually exclusive – the domain of “kinship” is also the domain of the affective, the “domestic,” the private, to which law has historically (and erroneously) been contrasted. And in this set of papers, there are multiple types of law at issue – Islamic, Hindu, Western, municipal, state, national. Add to the mix the temporal shifts that create new understandings of rights and persons and one has a rich analytical focus indeed!

1. Sylvia Yanagisako and Carol Delaney, eds., Naturalizing Power: Essays in Feminist Cultural Analysis (New York: Routledge, 1995).
2. David M. Schneider, American Kinship: A Cultural Account (2nd edition) (Chicago: University of Chicago Press, 1980).
3. Joseph Jenkins, “Editor’s Introduction: What Should Inheritance Law Be?” Special Issue of Law & Literature 20(2), 2008, pp. 129–50.
4. Jeannie Suk, At Home in the Law: How the Domestic Violence Revolution is Transforming Privacy (New Haven: Yale University Press, 2009).
The authors in this symposium adopt a variety of approaches to interrogating documents. Srimati Basu examines the language used in Kolkata and Dhaka family courtroom narratives and appellate texts, focusing particularly on gaps in translation, including mistranslations, incommensurabilities, and that which cannot be articulated. Shonna Trinch analyzes assault narratives recorded in paralegals’ notes and in affidavits that were filed in a U.S. court, noting how these documents represent family, relationships, and abuse. Christine Hegel-Cantarella studies how surety devices are used in Egypt to shore up the uncertainty surrounding betrothals’ outcomes. Sameena Mulla examines documents that shape and are produced through forensic examinations of sexual assault victims. Silvia Posocco considers the claims and counterclaims that surround adoption files in Guatemala, where women are disputing the contention that they willingly surrendered their children for adoption. These approaches allow authors to examine how law takes cognizance of family, the limitations of legal recognition, the force of legal language, the ways that documents’ purposes are subverted, documents’ power to shape actions, and the ambivalence or uncertainty incorporated into documents themselves. What these approaches have in common is that they take legal documents seriously, interrogating their form, substance, circulation, power, and inadequacies. By treating documents as a technology, as powerful in their own right but also as having particular qualities and taking particular forms, the authors perform the analytical work of opening up the space between documents and the relationships to which they refer.

One quality that is attended to in these papers is documents’ ability to link and move between domains, languages, knowledge forms; in short, to translate. Translation is supposed to produce equivalencies, but as Walter Benjamin famously pointed out, translation’s inexactitude always leads to a failure of sorts. Such failures take multiple forms. As Basu notes, violence can only inadequately be translated into the language of compensation, while pain and desire may not be translatable at all. There is an incommensurability, for example, between a desire for justice, the admission of wrong-doing on the part of a sexually violent husband, and what law is able to deliver: a monetary settlement. Euphemisms (a form of avoidance more than translation) and shifts to different languages also add to legal texts, as “living together” becomes the “consummation” of a marriage. And language spills over through an excess of meaning. Documents not only link, through translation, but also are themselves transformed, from notes into affidavits, from affidavits into warning letters, but throughout such transformations, narratives undergo alterations, taking on additional capacities (see Trinch). And of course, that which is not recorded and is simply behind or presumed in documents cannot be translated at all. For instance, in the adoption documents analyzed by Posocco, there is no discussion of why a mother was “of scarce resources,” why a single mother could not raise a child, or why international adoption flourished during the Guatemalan post-war period.

---

5. Walter Benjamin, “The Task of the Translator,” in W. Benjamin, Illuminations: Essays and Reflections, edited and with an Introduction by Hannah Arendt (New York: Shocken Books, 1968), pp. 69–82.
6. Silvia Posocco, “Expedientes: Fissured Legality and Affective States in the Transnational Adoption Archives in Guatemala,” Special Issue of Law, Culture and Humanities 7(3), 2011, p. 36.
Such omissions are linked to another quality of legal documents: their record-keeping capacity, their ability to make particular histories and relationships visible or invisible. By attending to documents’ abilities to record and erase or omit, this symposium evokes a world that is both post-colonial and futuristic. The legal documents discussed here seem to retain some of the ritual, pomp, and legal flourish of colonial law but also to partake of a science-fiction-like artificiality. They thus appear to move backward and forward in time, simultaneously. For instance, the adoption documents analyzed by Posocco cite civil registry records and use ornate phrasings, but also sever kin relationships and make powers beyond documents themselves materialize. Documents occupy a liminal space, linking the visible and the invisible, as do some of the relationships – betrothal, separation – to which they refer. Liminality works a separation in that it both bridges and keeps apart. Thus the litigants in Kolkata and Dhaka family courts are “between languages” as the absence of lawyers requires litigants to speak in their “own” words, which enter records primarily through appropriation and translation by judges. “Direct” speech becomes a multiplicity of languages, and turns out to be anything but direct. Relatedly, Hegel-Cantarella notes the ways that parties to a betrothal use indirect legal strategies that defy documents’ ostensible purposes. For instance, the visible action of filing a maintenance petition may actually be an indirect and less visible (but perhaps well understood) means of seeking a divorce.

Their ability to record, display, and erase gives documents a generative potential, another quality that authors highlight. Hegel-Cantarella and Trinch, for example, examine the ways that documents potentially beget other documents. Thus, through a “textual chain,” a police report may generate investigative documents, court records, a legal judgment, and so forth. Documents’ locations as parts of chains gives them power, even if, as in the case that Hegel-Cantarella analyzes, the other documents in the chain do not actually exist. But the creation of one document invokes the others, enabling a police report to threaten and to thereby lead disputants to negotiate outside of criminal law. Such negotiation generates another document, a trust receipt guaranteeing that a marriage will take place. In this way, documents are part of a collective, much like the Borg, even as documents do individualize the legal actors to whom they refer. Documents also have the power to shape the ways that events are represented and understood. Mulla points out that the protocols used in forensic examinations screen domestic violence victims for sexual assault, but do not screen sexual assault victims for domestic violence. As a result, in the examinations that Mulla studied, there was no way to refer a rape victim to a domestic violence shelter. On the other hand, documents can be overridden by a user’s assumptions. For example, despite a gender neutral document, a doctor that Mulla encountered assumed that the perpetrators of sexual assaults were male. Thus, while documents seem to create uniformity, documents can be deployed in different ways by different people and therefore also give rise to heterogeneity. As Mulla notes,

7. Srimati Basu, “Impossible Translation: Beyond the Legal Body in Two South Asian Family Courts,” Special Issue of Law, Culture and Humanities 7(3), 2011, p. 2.
8. Christine Hegel-Cantarella, “Family-to-Be: Betrothal, Legal Documents, and Reconfiguring Relational Obligations in Egypt,” Special Issue of Law, Culture and Humanities 7(3), 2011, p. 19.
“potentially disparate fields appear to become uniform, even when the standardization of the fields results in imperfect equivalencies or is itself brought about through uneven processes.”

Documents’ generative potential is highly gendered, particularly in the disparity between legal presumptions that juridical subjects are autonomous individuals and social realities that cluster people as part of kin and other groups. In the cases analyzed by Hegel-Cantarella, the notions of free will, mutual consent, and gender equality that underlie marriage contracts are problematic when women can be “tainted” by betrothals that do not quickly lead to marriages. Women therefore have to use documents – designed for autonomous individuals – to mobilize kin groups, including their fiancés’ families. Likewise, although Kolkata and Dhaka family courts are designed to be more receptive to women, permitting them to speak in their “own” words, definitions of marriage and of sexual acts are highly gendered. Thus, for men, impotency is defined in terms of erection and penetration, whereas for women, a reluctance to have sex in a home with little privacy is considered reasonable. Documents can sever relationships to mothers, as do the Guatemalan adoption files analyzed by Posocco, but in the abuse cases that Trinch studies, the assumptions that fathers have rights to children and that “family” should not be undone expose women to continued risk. Likewise mothers are placed at risk through their assistance to abused daughters, but there are few references to victims’ fathers in Trinch’s narratives of sexual assault. Thus, families are implicated in abuse in complex ways. “Intimates,” Mulla writes, “are perpetrators, victims, and caregivers, yet the documentary practices are not configured to capture these realities.”

Due, perhaps, to the ways that family members are implicated in various forms of violence, the legal documents analyzed in this symposium take on a sinister or disturbing character. The use of surety devices in Egyptian betrothals arises because of the danger that marriages won’t materialize and the suspicion that the betrothed are sexually involved. The “mother’s lap” forensic examination procedure presumes that perpetrators are strangers, not mothers whose laps could be sites of danger rather than safety for abused children. Posocco attends particularly to what she describes as the paranoia and suspicion entailed in transnational adoption. Normally, she points out, adoption is associated with prosocial and affective states – happy families, well-placed children. Such associations, she notes, are made possible by treating children’s histories as unknown. On the other hand, knowledge and documentation of these histories suggests a paranoia, the possibility that adoptions may really have been abductions, that orphanages and transnational placements may have been businesses, a form of trafficking linked to civil war and post-civil war violence in Guatemala. Such attention to the affective is highly political, as documents link emotional states to states of being (or non-being) and to forms of governance – the states that produce documents or with which they are filed.

As their attention to affective states implies, the papers in this symposium go beyond an examination of documents’ materiality to treat the body itself as archive. In so doing, they do not simply mean that events leave bodily traces that can be uncovered

9. Sameena Mulla, “In Mother’s Lap: Forging Care and Kinship in Documentary Protocols of Sexual Assault Intervention,” Special Issue of Law, Culture and the Humanities 7(3), 2011, p. 14.
10. Mulla, “In Mother’s Lap,” p. 16.
forensically, but rather that the body itself takes on documentary qualities. The body is read; legal actors must translate bodily signs into juridical discourse. As Basu queries, summarizing courts’ concerns, “[A]re stretch marks on breasts about a fat body or a once-pregnant body? Can the lack of a visibly ruptured hymen say anything definitive about successfully executed sex?” Likewise, bodies of sexual assault victims are read for signs of assault, evidence that can be brought into court and that forms part of textual chains (see Trinch and Mulla). Like other documents, bodies are liminal, they are visible to investigators but they hide their meanings, they are a record but must be made to speak. Bodies have emotional states – they are sites of desire, and thus danger and instability, but are also objects of terror. They are produced by the state in that their existence is codified and authenticated in other documents – birth certificates, death certificates, medical records – and as they are brought into legal being they are also sexed. Yet, just as disputants can manipulate the meaning of documents, taking law into their own hands and bending it to their own sometimes indirect purposes, so too can bodies be given new meanings as part of particular documentary collections. Thus Hegel-Cantarella points that the use of surety devices in Egyptian betrothals “transforms a non-binding promise to marry into a fictional transfer of funds secured by a commercial paper that stakes the body as collateral.” Bodies, like documents, therefore multiply – a body can simultaneously be collateral, sign, evidence, witness, and linkage. Posocco makes this point most explicitly, arguing that transnational adoptions position “the body of the adoptee as the principal document and archival form in which histories of violence and conflict sediment.”

Bodies are also key to the violence that these papers analyze, a violence that is physical but that also results from being in-between, inauthentic, unrecognized, like but not quite the same as other relations. Every paper in the symposium describes some form of violence – marital rape, rape of a betrothed, sexual assault, domestic violence, the abduction of children, the terror of the Guatemalan civil war. These violent acts are connected to documentary practices in complex ways. For instance, rape may give rise to efforts to secure a marriage through a surety device, produce evidence, classify a victim, obtain a divorce. The authors’ attention to such efforts challenges romanticized notions of kin. As Trinch notes, “‘Family’ will bring with it mechanisms that facilitate survival and mechanisms that can lead to destruction.” Together, these papers raise questions about whether documents’ roles in such destruction makes it possible to reduce violence by changing the forms themselves – for instance, creating revised sexual assault examination protocols, better courtroom translations – or whether the problems that the authors identify are intrinsic to documents themselves, whatever their form. I suspect that the latter is the case, that the potential for fraud, for undoing, for violence lies both within and outside of the documents. Posocco highlights the ways that the use of disclaimers within adoption

11. Basu, “Impossible Translation,” p. 19.
12. Judith Butler,, Bodies that Matter: On the Discursive Limits of ‘Sex’ (New York: Routledge, 1993).
13. Hegel-Cantarella, “Family-to-Be,” p. 20.
14. Posocco, “Expedientes,” p. 4.
15. Shonna Trinch, “Forging violence against women: Documents and regimes of family and intimate-partner abuse,” Special Issue of Law, Culture and Humanities 7(3), 2011, p. 26.
documents undermines these documents’ claim to truth, but also the ways that the circumstances surrounding adoption – war, poverty, postwar, and an international market in children – create the suspicion that transnational adoption is another form of trafficking. Kin, law, documents, and violence, these papers note, are intertwined.

By directing attention to the role of legal documents as new kinship technologies, the authors of this symposium have pointed toward new and highly productive areas of analysis. For instance, while preparing these comments, I had the opportunity to interview a twenty-year-old Salvadoran man living in Southern California. This young man had lived in the United States since the age of three and held Temporary Protected Status (TPS), a status that allowed him to remain in the United States, but that did not lead to permanent residency or citizenship. Furthermore, he would lose this status if he left the country. Nonetheless, when I asked him how connected he felt to the United States, he responded that this is his home, this is the place where important events in his life – graduation, barbecues with friends and family – have occurred, and somewhere that he cannot imagine leaving. As I listened to his response, I heard echoes of interviews that I conducted in 2008 with Salvadorans who had been deported to El Salvador and who, likewise, contended that they never imagined that they would have to leave the country that they considered to be their home. Much like the relationships analyzed in this symposium, relationships between fiancés, separated spouses, parents and children, adoptees and their files, this young man and these deportees’ relationships to the United States were like but not quite those of citizens. Their relationships were affirmed to some degree by documents – a work permit, temporary protected status, other statuses held prior to deportation – but ultimately, these documents failed to protect the deportees. At the same time, the young man whom I interviewed and other TPS-holders can cite their documents as grounds for creating a new mechanism to obtain legal permanent residency. Documents may be components of new governmental practices, but, as these authors suggest, documents can also be deployed by legal actors in novel ways, thus giving rise to new relationships and new legal forms.