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Law's Materials

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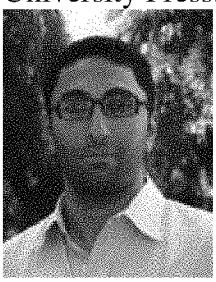
Cornelia Vismann, Files: Law and Media Technology (Geoffrey Winthrop-Young trans.) (Stanford University Press, 2008).



Kunal Parker

This month, I would like to draw legal historians' attention to an intriguing book, the late Cornelia Vismann's *Files: Law and Media Technology*. Vismann (1961 – 2010) was a German legal historian and media theorist whose work needs, in my view, to be far better known among American legal scholars. I had the privilege of meeting Vismann once, years ago, at a conference in Cleveland. It was hard not to be impressed by her brilliance.

At its most basic, *Files* provides a history of, well, files: those ubiquitous, daunting, overwhelming, often crushingly tedious accompanists of law. Fiction has concerned itself occasionally with files—one thinks of famous works by Kafka and Melville—but academics (especially legal academics) have not often done so. We think of law in all kinds of ways—as a system of ideas, as a form of politics, as a means of exercising power, as a way of shaping social practice, as the troubled realization of justice—but not enough in terms of its *materiality* , its existence as sheaves of papers inserted into folders, as a forest of folders. And yet, for much of its history, law has been unimaginable without files of one kind or another.

It is a tribute to Vismann's inventiveness as a scholar that she chose to make files objects of knowledge. She chose to do so, furthermore, through recourse to a range of scholarly techniques and perspectives. In the book, she is at once literary theorist, psychoanalyist, a science-and-technology studies ("STS") scholar, historian, and legal philosopher. She offers us a series of "cuts," as it were into the vast, unknown, history of files and filing techniques, showing us how different ways of processing information enabled different kinds of legal subjectivities. I, for one, knew little about the stakes of the technological shift from papyrus to parchment. Many legal historians, I imagine, will be similarly situated. This is a fascinating story, worth reading for its own intrinsic interest.

This challenging book will offer different things to different people. I make no claim to capture everything it has to offer. In what remains, accordingly, I will highlight just two of the issues raised by the book that speak to my own current intellectual preoccupations.

First, what is at stake in converting any particular object into an object of knowledge, as something to be framed, contextualized? One goal, I submit, is often to render that object contingent. This is clearly what Vismann does with files. Thanks to her book, we now know that files have, well, a history. And in showing that files have a history, Vismann takes on professional historians. Vismann's critique of Leopold von Ranke, the early nineteenth century German historian who pioneered the use of archival materials, is precisely that historians often believe that files give them unmediated access to the truth of the historical past, that files do not

interfere unduly with the past's ability to speak through them. Vismann's point is a little different from the one we are more familiar with through the work of Natalie Davis and others—namely, that archives are repositories of politics and fictions. She argues that the *techniques* of filing themselves impede any unmediated access to the past because those techniques—and the social functions they enable–are themselves products of a history.

To have argued this, however, raises other questions. What does it mean for historical (or lawyerly) practice to be told that files as technologies have a history? In what sense are historians or lawyers to keep this truth uppermost in their minds as they go about their daily work? In what sense will files—notwithstanding Vismann's wonderful work—remain merely files, objects of daily use and manipulation, their complicated histories receding into the background as we get along with our daily practices and look into them? In short, what might Leopold von Ranke have done had he had access to Vismann's book? It might have changed the way he approached archives. Or it might not have. Vismann does not provide us answers.

Second, and as a point related to the first, one could ask questions about how this book—as a history of media technology—might be related to history as we are often wont to think of it, as a tapestry crowded with the deeds and thoughts, the mishaps and triumphs, of historical agents. Vismann offers us a history without historical agents, at least in the sense in which most historians are used to conceiving of historical agency. "Papyrus" gives way to "parchment," with a whole series of corresponding effects. Old ways of organizing materials are foreclosed, new ones are opened up. As an intellectual historian occasionally frustrated by the sheer predictability of much contemporary social and sociolegal history, I find Vismann's kind of history—in its cleanness and abstraction—brisk, cleansing, refreshing. There is little here of the social history that we have come to expect: the history that emphasizes the tangled and complex and contradictory, the multiplicity of opposed voices, and so on. In giving us a different way of writing history, Vismann should be applauded. This is a history not of actors, but of the "actants" of STS (Vismann makes much of the multiple meanings of the German word for "files"—*Akten*—that allow files themselves to be acts, hence actors).

But does this history of actants help us avoid questions that social historians might want to ask? In one sense, could not one render "papyrus" or "parchment" themselves contingent as the product of the acts of a whole range of historical agents? One can almost hear the predictable questions. Were these technologies promoted or suppressed by pharaohs and emperors and popes? Did they serve the ends of enforcing or speaking to power? Did they enable the rise of specific social or economic or professional interest groups? "Actants" might be dissolved into the work of historical agents, the old conventional human subjects that histories such as Vismann's want to move away from. The swarm of questions that Vismann holds at bay can overwhelm the spareness and beauty of her story. As historians, we know perfectly well how to do this. This is not to say that I agree with the social historian's strategy, merely that I am aware of its ubiquity.

How actants become historical actors and *vice versa*, how each can alternately be made to recede and appear as objects of knowledge, is a question of how and why and when we organize knowledge. Why a history of files as actants? Why now? Against what background? Vismann does not address such questions in her book. This is regrettable, for there is much I could have learned, I imagine, from her answers.

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