The Role of History in International Law Scholarship
A Personal Reflection

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Abstract

The structures and strictures of international law derive from long historical practices and principles. Even though we may now find some of them abhorrent, examining how they have shaped, and continue to shape, contemporary practices both helps us to understand them and contest them. In this keynote address, I will offer a personal reflection on the use of history in international law scholarship, and what it has enabled me to uncover about the phenomenon, conceptualization and regulation of human mobility over time. Whose voices and experiences are silenced or forgotten, and what might remembrance look like?

1 Introduction*

When I was invited to deliver a keynote address for this conference on the themes of silence, forgetting and remembrance, I immediately internalized it as a talk about the ways I use history in my legal scholarship. You see, at heart, I am a frustrated historian disguised as an international lawyer.

But this is not a talk about international legal history or the histories of international law. It is not about the historical turn in international law. What it offers is a far more personal reflection on how I use history in my scholarship, and in my approach to research more generally – how it motivates or animates my research questions in the first place. I will try to show how and why I take a historical approach in my work, and what that has helped me to uncover and understand about human mobility, its regulation and its conceptualization over time.

As international lawyers, we are all historians. Documenting State practice, for instance, involves the collation of past practices that, taken together, may provide evidence of a customary rule. Analysis of *travaux préparatoires* are a search for meaning back in time, of what those drafting a treaty intended, or did not intend. So often our work involves trying to trace the evolution of a legal principle, or piecing together incremental arguments, building layer upon layer. As Anne Orford writes: 'International law is already deeply engaged with history, historians are deeply engaged with law, and the two have been intimately related for centuries'.[1]

The very structures and strictures of international law derive from long historical practices and principles, however abhorrent we may now find some of them. We may not like those legacies but nor can they be ignored, and examining how they have shaped, and continue to shape, contemporary practices both helps to understand as well as contest them. And at times, we may allow each other to remain blind to them. I suspect many of us have been guilty of drawing on State practice from a handful of English-speaking, developed States and universalizing it, reflecting an inherent bias that continues to pervade our discipline.

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* Keynote Address, Australian & New Zealand Society of International Law Annual Conference, Australian National University, 2 July 2025.
[1] Anne Orford, 'What is the History of International Law For?' (2024) 9(6) *Global Intellectual History* 760, 760.

In an article published in the *Australian Journal of International Affairs* earlier this year, my contemporary, Sundhya Pahuja, reflected on how our international law education of the early 1990s 'was conspicuously silent on the historical role of colonisation and imperialism in shaping international law'.[2] Such topics were 'largely absent from the curriculum', she wrote – 'a reflection of the broader disciplinary neglect of the ways in which international legal doctrines, institutions, and professional practices were deeply embedded in the imperial project'.[3] This bias is reflected in the formal historical records of national archives and institutions as well. The 10,000-plus pages of historical documents I pored over in the national archives of Australia, New Zealand, the United Kingdom, Fiji and Kiribati were nearly exclusively colonial-era records created by white, male civil servants and administrators.

As Pahuja explains, '[t]he break between the colonial past and the post-colonial present is far from clean, and the legacy of imperialism continues to shape international law in profound ways.'[4] What we call 'law' is in fact 'a product of historical processes that have been contested, resisted, and re-authorised over time'. It is not a neutral 'approach'.[5]

We cannot understand the words on a page as text alone; they are informed by the political, social, cultural, environmental[6] and economic influences of their time, and by the experiences and position of the people recording them. And, of course, written evidence is only a small part of the historical record, yet mostly the one to which lawyers have recourse.

We must always ask: whose history are we reading? Whose voices do we hear, and whose are silenced or forgotten?

The idea that the historian is simply a neutral documenter and narrator of a past that can be uncovered through painstaking research is as inaccurate as the idea of the judge making purely objective decisions based on the facts at hand, sealed off from all personal or other experiences.[7] Yet, the way we, as scholars, are trained to write in the third person claims an impartial, detached authority, rather than revealing our own subjectivity and positionality – which is conventionally seen as idiosyncratic and less authoritative.

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[2] Sundhya Pahuja, 'No Future without History: The Future of International Law' (2025) 79(1) *Australian Journal of International Affairs* 79, 80.
[3] Ibid.
[4] Ibid, 81.
[5] Ibid, 83.
[6] Alec Israeli, 'Broadly Speaking: An Interview with Joyce E. Chaplin, Part One' (2023) on *Journal of the History of Ideas Blog* (29 November 2023) <https://www.jhiblog.org/2023/11/29/broadly-speaking-an-interview-with-joyce-e-chaplin-part-one/>: 'Fernand Braudel's great work examining *The Mediterranean and the Mediterranean World in the Age of Philip II* (1949), which explicitly identified different temporalities, ranging from the slow passage of geological time to the quickest tempo of human-driven events.'
[7] 'Most litigation depends entirely on fact and not on law at all … . Even when there is a real issue of law, it will usually be found to turn on the correct classification of the facts. The more arcane the facts are, the more valuable it is to have some background knowledge of the kind of conditions that produced them. … I cannot speak from experience, but I would expect that a feel for the social world from which [refugees and migrants] come is essential if one is to decide what the facts of these cases are likely to be. It is just one illustration, although quite an important one, of the value of a grasp of history and its methods for the practice of law, whether as an advocate or a judge': Lord Sumption, 'The Historian as Judge' (Speech delivered at the Rolls Building, London, 6 October 2016) 7 <https://supremecourt.uk/uploads/speech_161006_347600ce1f.pdf>.

Whose stories are told, by whom and to what ends must be front of mind. It means that we must seek to understand not just the text, but the context – and that goes for the intermediary as much as the original sources.

Orford argues that '[c]ontexts are made not found',[8] since there

> is no uncontested account of the context into which particular legal texts or concepts should be placed, the methods by which texts should be interpreted, whose interpretation of a text or concept is authoritative, who counts as a 'subject' of international law, which texts or practices count as 'sources' of international law, the sites in which international law is made, and thus what kinds of archives offer what kinds of 'evidence' about what international law really means or meant at any given moment or where it really originated. The answer to any of these questions is political or normative rather than technical or empirical.[9]

When I studied history, postmodernist theory was at its height. The idea that there was any authentic history was being critiqued. At this time, an emerging appreciation of silenced perspectives was developing – sources such as women's diaries, oral histories, and so on were being studied as offering new and unheard views. In Germany, I studied 'contemporary history' – an interesting concept in itself – which in many respects was a meditation on how recent events connected to, shed light on and could themselves be (re)interpreted in light of the Nazi past.

Conceptions of time, of meaning, of how stories are passed down necessarily shape what is remembered and what is forgotten, and how an author chooses to construct a story. Silences on the archival page are often linked to the silences created by social structures, prejudice and exclusion. But they can also arise because history is preserved in non-documentary or intangible forms, such as orally or through dance, or because there are different value systems in place about what constitutes historically significant knowledge, or because items physically deteriorate or disappear. I remember when I managed to gain direct access to the archives in Kiribati, and by chance unearthed an apparently random assortment of documents in the bottom drawer of a filing cabinet, which turned out to be highly relevant Cabinet papers that I was looking for. None were filed and all were at risk of deterioration in the humidity, with insufficient resources to digitalize them. I made inquiries at the time with the Pacific Manuscripts Bureau at ANU, which used to assist with digitization, and while there were many people eager to help, I understood that the chances of a new digitization programme were slim given funding cuts by AusAID at the time.

2 How do I use history?

A common thread of my scholarship has been about reconceptualizing, reconsidering, re-evaluating what we think we know. A failure to look at history can result in ahistoric reasoning, the drawing of false analogies, and inaccurate claims being made about world firsts and unprecedented practices, which can be particularly problematic when it comes to international law.

[8] Orford (n 1) 761.
[9] Ibid, 765.

As my history colleague and co-author, Alison Bashford, has said: 'If we don't understand how political ideas have been shaped by past contexts, if we don't understand why or how particular cultural ideas have been shaped or influenced from the past, … how do we understand what's going on now? How do we understand where we're going if we don't know where we've come from?'[10]

A classic example is the perennial debate about the ongoing relevance of the 1951 Refugee Convention[11] – that it is either too restrictive and outdated in its application, that it does not cope with security threats, or that it is responsible for the ever-increasing numbers of displaced people seeking protection. Ahistoric approaches and misunderstandings about its genesis and purpose abound. It was never intended as a comprehensive document: 'it did not deal with, and was not intended specifically to deal with: large-scale refugee movements, the question of asylum or admission to asylum, the details of international co-operation or the promotion of solutions other than those related to the status of the individual as a refugee'.[12] 'The fact is that without the Refugee Convention, the international protection regime would lose one of its key regulating components, and would likely result in even larger numbers of disorderly movements.'[13] Historical practices cannot just be plucked out of context or selectively to prove a contemporary point.

For me, there are multiple purposes for resorting to historical analysis. First, to bring to the fore and 'document' material that has remained hidden in archives, or which is known within a particular context but not recorded for a wider scholarly or public audience. This serves both 'academic and forensic purposes'.[14]

It can be slow, painstaking, needle-in-a-haystack kind of work. You spend weeks, months in archives and even longer trawling back through the materials, not knowing whether and what narrative can be shaped from them. More often than not, the volume of material is quite overwhelming, and simply categorizing and trying to make sense of what you have in front of you takes a lot of patience and trust that there are stories there to be told.

In the course of my research, I have had some hunches confirmed, but also many assumptions turned on their head – British parliamentarians welcoming refugees at the turn of the 20th century, for instance; or colonial administrators recognizing the self-determination of Pacific communities; or aristocratic English women who regarded working class children evacuated from London during the Second World War as causing 'more trouble than the Germans' and posing a greater danger 'than explosive bombs'.[15] So much for the idea it would be a great social leveller. The work is not inspired by a desire to hunt down something new or to prove a point; usually, there is a question that prompts it, or an unrelated investigation that yields an unexpected outcome.

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[10] Professor Alison Bashford on *YouTube* (30 November 2018) <https://www.youtube.com/watch?v=T-VCnEAKbSY>.
[11] *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954), read in conjunction with the *Protocol relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).
[12] Guy S Goodwin-Gill, 'Editorial: The International Protection of Refugees: What Future?' (2000) 12(1) *International Journal of Refugee Law* 1, 2.
[13] Jane McAdam, 'Editorial: The Enduring Relevance of the 1951 Refugee Convention' (2017) 29(1) *International Journal of Refugee Law* 1, 1.
[14] Guy S Goodwin-Gill, 'International Refugee Law in the Early Years' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press, 2021) 23.
[15] Travis L Crosby, *The Impact of Civilian Evacuation in the Second World War* (Routledge, 1986) 35.

And as Harvard historian, David Armitage, puts it: 'the framework that you choose to bring to bear on your materials will generate new kinds of questions as well. There is a reciprocity, a back and forth, between the problems and the methodologies available to solve them. ... All approaches should be in play in order to generate the questions to open up the archives and to create the discussions that are necessary to solve particular problems.'[16]

Sometimes an act of writing is itself a letter to the future, recording events in the here and now that might otherwise be forgotten or only half remembered.[17] What were those involved thinking at the time? What was driving their actions? Why was one outcome celebrated over another? As Director of the Kaldor Centre, I made a strategic decision that even if asylum law and policy reform could not realistically be achieved now, then by documenting what happened here and offshore, we would help to create an evidence base for the future. No one could say we didn't know of the abusive, unlawful practices carried out by, or at the behest of, the Australian government.

Secondly, history can help us learn from past practices – what worked and why, what innovations from the past might be applicable now? What were the broader social and structural impediments or enablers? What innovations now in fact have their roots in historical practices? As Harvard historian, Joyce Chaplin, notes, 'past practice may warn us against things that have never worked or have constituted compromised solutions that, by focusing only on some variables, impaired greater social good or longer-term recovery. Ideas matter here'.[18]

Thirdly, how stable is the legal or scholarly orthodoxy? How have contemporary developments enabled us to understand past approaches differently? What might we see in 2025 that we wouldn't have noticed in 1995, or 1925?

For instance, my Laureate Fellowship examines the role of evacuations in international law, including as a form of displacement. But what exactly is an evacuation? A review of the relevant literature – both contemporary and historical – shows that it has been applied to 'rescue efforts, summer holidays, temporary rest and recuperation periods, temporary asylum, long-term care' for children;[19] child rescue and adoption schemes; child migrants; organized civilian evacuation schemes for women, children, the elderly and people with disabilities; refugees; population transfers; repatriation flights; humanitarian airlifts; international organizations assisting people to move away from dangerous areas; and emergency protection.[20] Evacuations are thus 'caught up in contentious histories of colonialism, displacement, occupation, resource

[16] 'Are We All Global Historians Now?: Interview with David Armitage' in Alicia Schrikker and Carolien Stolte (eds), *World History – A Genealogy: Private Conversations with World Historians, 1996–2016* (Leiden University Press, 2017) 371.
[17] See eg Jane McAdam, 'Creating New Norms on Climate Change, Natural Disasters and Displacement: International Developments 2010–13' (2014) 29(2) *Refuge* 11; Jane McAdam, 'From the Nansen Initiative to the Platform on Disaster Displacement: Shaping International Approaches to Climate Change, Disasters and Displacement' (2016) 39(4) *UNSW Law Journal* 1518.
[18] Alec Israeli, 'Broadly Speaking: An Interview with Joyce E. Chaplin, Part Two' on *Journal of the History of Ideas Blog* (1 December 2023) <https://www.jhiblog.org/2023/12/01/broadly-speaking-an-interview-with-joyce-e-chaplin-part-two/>.
[19] Everett M Ressler, *Evacuation of Children from Conflict Areas: Considerations and Guidelines* (UNHCR and UNICEF, 1992) 3.
[20] For references, see Jane McAdam, 'Evacuations as Displacement: Conceptual and Legal Challenges' (2025) 44(2) *Refugee Survey Quarterly* 204, 213.

extraction, and state and civic power'[21] – in fact, it could be argued that they are another lens through which to view the history of human mobility over time.[22]

I try to use history in my legal scholarship as a critical and constructive lens – both to illuminate the origins and development of legal norms, and to challenge the assumptions underlying current legal frameworks and dominant narratives. History can be a way of mapping legal absences, and at times to reveal that what is often treated as 'new' is actually part of a longer pattern of unacknowledged or marginalized displacement. A historical lens can help us to spot patterns. We need to be wary of this, since contexts vary considerably and there is a risk of universalizing the particular, but we can see how certain influences or forces have shaped law and policy at other times, and what has come from that.

For example, planned relocation has gained recent prominence as a tool for reducing communities' exposure to the impacts of climate change and disasters. My archival research enabled me to situation the phenomenon of cross-border relocation within a much longer history spanning the 18th century to the present, connecting resettlement programmes with legally-sanctioned population transfers and exchanges.[23]

From the late 18th century to the mid-20th century, population redistribution was regarded as a legitimate means of addressing problems of overcrowding, resource scarcity and conflict. Relocation was understood both as a pre-emptive solution to anticipated overpopulation and resource scarcity, and as an answer to existing displacement. Throughout this period, scholars and statesmen concocted an array of schemes to address concerns about global population. Many genuinely believed that migration, population transfers and colonization (also described as 'migration for settlement') could redistribute the world's people from densely populated regions to low-density or 'empty' areas.

For instance, at the 1927 World Population Conference, population growth was posited as the most important problem confronting the world. In the 1920s and 1930s, some thinkers suggested that countries should cede their territory to people who needed land (and food) if their own citizens were not cultivating it. In 1937, the International Institute of Intellectual Cooperation brought together 150 scholars at its Peaceful Change conference to examine the idea of 'international decrowding'. In February 1938, the International Labour Office (ILO) held a conference on the 'Organisation of Migration for Settlement'. At the infamous Evian refugee conference of July 1938, US President Roosevelt sought not only immediate solutions for those already displaced in Europe but also long-term plans to address future overcrowding. He argued that land was needed for new settlements of 50,000 to 100,000 people, and for some 10 to 20 million people altogether. In 1942, Roosevelt created a covert research initiative, the 'M Project' ('M' for migration), appointing a small team of experts to study possible resettlement sites across the world. At the project's conclusion in November 1945, they had compiled over 660 land studies, spanning 96 volumes. Argentina, Brazil, Bolivia, Venezuela,

[21] Peter Adey, *Evacuations: The Politics and Aesthetics of Movement in Emergency* (Duke University Press, 2024) 4.
[22] See ibid; Jane McAdam, 'Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to "Danger Zones"' (2015) 3(1) *London Review of International Law* 93. Also note Benjamin T White, 'Grudging Rescue: France, the Armenians of Cilicia, and the History of Humanitarian Evacuations' (2019) 10(1) *Humanity* 1, 2, who suggests that we must locate the emergence of the practice in the forced displacements of World War I and its aftermath', and within 'the larger history of population displacement'.
[23] See McAdam (n 22).

Canada, Manchuria and our own Northern Territory were identified as having the best prospects for settlement.[24]

Looking at relocation through a historical lens, there is much we can learn – substantively, procedurally and conceptually. The history of relocation is characterized by a gulf between grand theoretical visions on the one hand and the challenges of practical implementation on the other. The political and practical obstacles that stood in the way of relocation in the past remain today, and those experiences reinforce the findings of modern scholarship that resettlement is a fraught and complex undertaking.

One of my preoccupations has been notions of time and temporality. As Hilary Charlesworth famously said, international lawyers are consumed by crises,[25] but these can also be understood within a longer timeframe: what is an aberration and what is a continuation? What are the ruptures and why? What perspective does time bring? Part of this is challenging our conventional starting points. Periodization can too easily become embedded and our assumptions entrenched, which may blind us to other possibilities. In reflecting on the origins of international refugee law, Tristan Harley explains that the point at which we start necessarily influences the ways 'we interpret and understand the field' itself.[26] In a chapter entitled 'International Refugee Law in the Early Years', Guy Goodwin-Gill began it with the question: 'Where to begin?'. He decided to start with the establishment of the League of Nations in 1920, since the history of international refugee protection is 'inextricably linked' to 'the twentieth century's first attempts at cooperation on matters of international concern'.[27] But of course the practice of asylum is an ancient one, and how we frame and analyse it is itself a choice rather than a given.

And what we 'see' as international refugee law is a product of particular scholarly traditions. International law takes a very top-down approach with its focus on the State, and its traditional doctrinal methodologies adhere to formal, institutional accounts. Tendayi Achuime powerfully argues that international law, and international refugee law, in particular, is 'implicated in the social construction of race' and 'can compound racial subordination, including through facially neutral institutions and mechanisms'.[28] Veronica Fynn Bruey and her co-authors have argued that 'international refugee law operates as part of the global colour line[,] not in spite of it'.[29]

As Orford has explained, there is 'no uncontested, impartial, or "verifiable" answer to the question "what is the history of international law a history of?", because there is no uncontested, impartial or verifiable answer to the question "what is international law?".'[30]

3 Working with historians

[24] Drawn from Jane McAdam, 'Lessons from Planned Relocation and Resettlement in the Past' (2015) 49 *Forced Migration Review* 30.
[25] Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65(3) *Modern Law Review* 377.
[26] Tristan Harley, 'Look Who's Talking: Reflections on Authorship and Situated Knowledge in Refugee Law Scholarship' in Stephen Meili and Dallal Stevens (eds), *A Research Agenda for Refugee Law* (Edward Elgar Press, forthcoming) 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5315955>.
[27] Goodwin-Gill (n 14) 23 (fn omitted).
[28] E Tendayi Achiume, 'Race, Refugees, and International Law' in Costello, Foster and McAdam (eds) (n 14) 59 (fn omitted).
[29] Veronica Fynn Bruey et al, 'Rewriting Refugee Law: Centring Refugee Knowledges and Lived Experience' (2024) 43(2) *Refugee Survey Quarterly* 115, 115–16.
[30] Orford (n 1) 765.

I have held multiple ARC grants with historians and have found these collaborations to be supremely rewarding. Writing with historians inevitably forces one to consider one's own disciplinary methods and ways of working, but also the kinds of questions that might motivate research, which can be challenging. I have been pushed to uncover the why and how of questions that as an international lawyer, I may not otherwise ask, or would simply take for granted. For instance, my piece on the intellectual history of freedom of movement was sparked by my co-investigator pressing me on why borders – including internal borders – became so entrenched, especially given the intellectual liberal tradition in Britain. Trying to connect the intellectual history with the legal history proved far more challenging and temporally sweeping than I had thought, involving painstaking examination of every edition of key international law texts to try to discern how thinking developed and when and why legal analysis changed.

One article I wrote with Alison Bashford concerned the asylum clause in the 1905 British *Aliens Act*. Traditionally, the *Aliens Act* had been understood as an anti-immigration statute. However, we refocused the analysis on an under-investigated and somewhat counter-intuitive element of the statute: an 'asylum' clause that permitted entry for those who were at risk of prosecution or persecution for political or religious reasons. We argued for a major reconsideration of the Act within the international history of refugee law, on the basis that it briefly codified an individual right to asylum in British law, and also effectively established a refugee category as part of immigration law, a practice that became standard in the later 20th century and remains so today.

Another unanticipated piece of work flowed from this. The *Aliens Act* referenced 'persecution' as a defining characteristic of the refugee. Yet, in international refugee law, 'persecution' was seen as a mid-century innovation that became embedded in the 'universal' refugee definition in the 1951 Convention. The refugee instruments developed by the League of Nations in the 1920s and 1930s did not refer to persecution, but rather nominated specific categories of refugees for protection (Russian, Armenian, etc).[31] I wanted to know why. I wondered to what extent the notion of persecution *tacitly* underlay the refugee definitions adopted in those earlier treaties.

Through extensive archival research, I was able to show that there was an unspoken understanding in the 1920s and 1930s that a refugee was someone who was persecuted. With that foundation in mind, attention could then be focused on which *particular* groups of refugees would benefit from the League's protection and assistance.

I also wondered whether the drafters of the Refugee Convention knew about the asylum clause in the 1905 *Aliens Act*, and whether that had been in their mind as they sought to draft a universal definition. I thought they must have but could not find anything confirming that they did. Some years after I had published my article on 'Rethinking the Origins of "Persecution" in Refugee Law', my hunch was somewhat confirmed. While I was researching something quite different in the archives of the International Labour Organization in Geneva, I came across a 1946 memorandum from the Canadian Jewish Congress to the ILO, urging that 'the excellent principle enunciated in … the Aliens Act 1905 of Great Britain concerning those now

[31] See eg *Arrangement with regard to the Issue of Identity Certificates to Russian Refugees*, opened for signature 5 July 1922, 13 LNTS 237 (entered into force 16 November 1922); *Arrangement relating to the Issue of Identify Certificates to Russian and Armenian Refugees*, opened for signature 12 May 1926, 84 LNTS 2004; *Arrangement relating to the Legal Status of Russian and Armenian Refugees*, opened for signature 30 June 1928, 89 LNTS 53; *Convention relating to the International Status of Refugees*, opened for signature 28 October 1933, 159 LNTS 199 (entered into force 13 June 1935); *Convention concerning the Status of Refugees coming from Germany*, opened for signature 10 February 1938, 192 LNTS 59 (entered into force 26 October 1938).

commonly known as "refugees" and "displaced persons" be adopted by all countries and extended in scope to include present requirements'.[32] While this wasn't in the context of the negotiations of the 1951 Convention per se, it did reveal that people at that time still had an awareness of the 1905 Act.

The other point to note is that had I read that document without having written the earlier article, its significance may well have passed me by. I think that is why I can re-read materials at different points in time and discover new things on each occasion. And it is also why we must always remember that we are engaged in an *interpretation* of history, rather than an objective telling of past events, and how we make sense of things is necessarily shaped by our contemporary context, but also how we have been led there by our scholarly traditions.

4 Where to from here?

I have spoken a lot about silencing and forgetting. But what of remembrance? To me, that word connotes commemoration at a collective or institutional level, which seeks to define and shape what is remembered and how. It has a degree of formality and solemnity which is different from simply 'remembering'. While my intuitive reaction was that this is not the role of scholarship, it gave me pause to reflect. Sometimes resurfacing silenced stories and honouring the lives of those whom international law has failed to see or protect might be a form of remembrance. Transitional justice processes can formally document violations of the law and ensure that the experiences of survivors and victims are heard and preserved.

I also thought about the rewriting judgments project which reimagines domestic and international case law from feminist, queer, indigenous, child, refugee and other perspectives. As the editors of the recent 'Rewriting Refugee Law' judgments team explained:

> There remains an enduring asymmetry in the scholarly world and we are in no doubt that legal scholarship and jurisprudence in particular lags sorely behind. This blatant lag may be attributable, at least in part, to a deeply embedded structural blindness to the power asymmetries that inhere in the very foundations of an international refugee law regime unable to deconstruct its depoliticised and dominant Western positionality and disabuse itself of refugee law's presumptive (racial) innocence or neutrality.[33]

Rewriting brings to the fore obscured perspectives – silenced by the strictures of the legal formalities, of perceived authority, of power imbalances, opportunity and recognition. It enables people who have been institutionally marginalized to reclaim language, methodologies and forms. But it still privileges those who can write, and cultures in which the written word is highly valued.

How do we ensure that the academy evolves so as to recognize and celebrate the full diversity of experiences and perspectives, including overcoming conservative and outmoded publishing processes that reinforce a particular tradition and way of doing things that is both exclusive and exclusionary?

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[32] Memorandum on Migration to the International Labour Office from the Canadian Jewish Congress (Saul Hayes, National Executive Director, no date, but around 30 September 1946 – date of accompanying letter).
[33] Fynn Bruey et al (n 29) 118 (fns omitted).

Finally, what of the future? Here I want to return to Pahuja's reflections. She argues that 'there can be no meaningful future for the discipline of international law without a sustained engagement with its history'.[34]

I agree, for all the reasons I have canvassed already. But to end on a practical note, I wonder whether future researchers will be able to access what we produce today? How much forgetting will result from funding cuts depleting archival repositories, or from documents deteriorating in ever-warmer conditions, or from records lost when people are displaced or cities destroyed? How much will result from the overwhelming amount of online data that is impossible to collate, the trillions of emails that cannot possibly be trawled through like papers can, or the websites that simply vanish over time? A quarter of webpages posted between 2013 and 2023 have already disappeared from the internet.[35] Arguably, this makes our role as scholars all the more important in documenting and analysing what we can. Or perhaps not. To leave you with the words of one commentator:

> Silence in international law is not the absence of speech; it is often the presence of constraint.
>
> And yet, silence can also be a space of resistance. Survivors of war, genocide, and displacement often find that law does not – perhaps cannot – fully articulate their experience. In such moments, silence is not an absence but a testimony, a refusal to have their pain reduced to legal language.
>
> If silence is the absence of acknowledgment, forgetting is its institutionalization. … But forgetting is also about whose suffering is historicized, and whose is not. … This selectivity is dangerous. Because what is forgotten legally is often forgotten morally. And when a people's suffering is excluded from memory, it is easier to exclude their rights in the present.

That commentator was ChatGPT.

[34] Pahuja (n 2) 80.
[35] Chris Stokel-Walker, 'We're Losing Our Digital History. Can the Internet Archive Save It?', BBC (online), 16 September 2024 <https://www.bbc.com/future/article/20240912-the-archivists-battling-to-save-the-internet>.