

## What The Law Saw: Repertoires of Violence and Regimes of Impunity

Suvendrini Perera and Joseph Pugliese

*This essay is an immediate response to two recent events, the release of the findings into the death in custody of Ms Dhu in the week before Christmas 2016, and the death in custody of Manus Island refugee, Faysal Ishak Ahmed, on Christmas Eve. As in the case of other deaths in the custody of the state, these were not sudden and unforeseeable events, but the outcome of a range of violent practices—denial, delay, accusations of malingering, verbal and physical abuse, misdiagnosis, non-diagnosis, active neglect—by the state and its agents, including its healthcare practitioners. In these instances, a store of visual as well as other documentary evidence bears witness to the repertoires of gestural violence enacted on racialised bodies. Yet how does this evidence become visible in and to law?*

### I

Ms Dhu, 25 years old, was of the Yamatji Nanda family group on her mother's side, and the Bunjima family group on her father's side. Ms Dhu was taken into custody at South Headland Lock-Up on August 2, 2014 as a way of acquitting accumulated fines. She was dead two days later, on August 4.

*130. Ten minutes after that (at 11.09 am) the CCTV camera in Cell 3 showed Ms Dhu lying down on the mattress on her back. She did not stand up again after this time and was only ever able to lift herself up twice to a seated position before she fell backwards striking her head on the concrete.<sup>84</sup> There is no evidence that any police officer saw Ms Dhu fall on either occasion.*

*134. Sergeant Bond, Senior Constable Burgess and Senior Aboriginal Police Liaison Officer Edwards then walked over to Cell 3. Mr Bond then walked away in order to obtain gloves. The other two officers entered the Cell 3. As depicted on the Cell 3's CCTV (that had no audio), at 12.11 pm Senior Constable Burgess approached Ms Dhu who was still lying on her back and with her right hand grabbed Ms Dhu's right hand to pull her up into a sitting position. She then lost her grip of Ms Dhu who fell backwards, striking her head on the concrete floor.*

*135. After that, at 12.14 pm Mr Bond entered Cell 3. Ms Dhu was lifted by the police, this time to a supported seated position, and then the police returned her to a position lying on her back. All three police officers then left Cell 3.*

Inquest into the death of Julieka Ivanna Dhu, WA State Coroner, Delivered on 11 December 2016 <http://www.coronerscourt.wa.gov.au/files/dhu%20finding.pdf>

### II

Mulrunji Doomadgee, a 36 year-old old Palm Island man, was arrested for allegedly causing a public nuisance. Forty minutes later he was found dead in his cell.

200. Roy Bramwell was electronically interviewed by Detective Senior Sergeant Kitching and Detective Sergeant Robinson on 20 November 2004 at the police station at conclusion of which Robinson obtained a signed statement from Bramwell in which he gave a description of events in which Mulrunji was on the ground, with Hurley standing over him. Hurley's elbow could be seen moving up and down in a punching action, while Hurley was saying "Do you want more Mr Doomadgee, do you want more?"

201. As stated, in the next interview with Hurley, conducted by Inspectors Webber and Williams at 11.53 am, Hurley described an action which he explained as being that which occurred in the course of "helping Mulrunji up". This action involved his elbow moving up and down. Hurley's account explains what Roy Bramwell purported to have seen and an innocent explanation was given for a damaging piece of evidence.

Inquest into the death of Mulrunji Doomadgee, Queensland State Coroner,  
Delivered on 14 May 2010.  
[http://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0008/86858/cif-doomadgee-mulrunji-20100514.pdf](http://www.courts.qld.gov.au/_data/assets/pdf_file/0008/86858/cif-doomadgee-mulrunji-20100514.pdf)

### III

What does the law see? On a silent monitor, the impact of flesh and bone on concrete; the reflexive movement of recoil of a young woman's broken frame as it is "grabbed," then falls backwards. Is there a small twitch in the arm that grabs, then "loses grip"? No moans, cries or curses to be heard, but a slight turn of heads to the reverberation of skull on floor, a reverberation that seems to run through a current on the screen to a shudder in our own bodies?

*"Do you want more Mr Doomadgee, do you want more?":*

A body is on the floor, another stands above it. A post-mortem examination of the sprawled figure on the floor will show that "he had a cut above his right eye, four broken ribs, his portal vein had been ruptured and his liver had been almost cleaved in two" (¶1). That much is not in question. But consider the up and down movement of an elbow, its point of impact obscured by a standard issue filing cabinet. Is the moving arm violently punching down or helpfully raising up?

What *can* the law see? Although in the 2010 inquest into the death of Mulrunji Doomadgee Coroner Brian Hine accepted Patrick Branwell's testimony with regard to the punching movement of Chris Hurley's arm, he discounted every other aspect of Branwell's evidence, finding that even "taking that version at its highest ... Such a

description of blows may be consistent with the injuries to Mulrunji's right eye and bruising to the jaw and scalp, but does not explain the fatal injuries" (§128).<sup>1</sup> Coroner Hine not only returned an open finding, but placed responsibility for his failure to "make a proper judgment" on the "two main witnesses of the incident, namely Bengaroo and Bramwell" (§366). In the case of Ms Dhu, Coroner Rosalinda Fogliani concluded that she was "satisfied that the backwards fall that occurred when Senior Constable Burgess lost her grip on Ms Dhu's hand did not contribute to Ms Dhu's death" (§529). As in the final inquest for Mulrunji, no prosecutions were recommended for the manner of Ms Dhu's death in custody.

### **Virtual Accomplices: Visual Technologies of Police Violence**

While there are numerous matters to be taken up in relation to each of these coronial findings, in these preliminary notes written shortly after the coronial findings into Ms Dhu's death were released, we are concerned with *what the law sees* when it is presented with evidence of official violence against racialized bodies in custody. The records of racialised deaths in custody are an archive of such repertoires of gestural violence that remain outside the purview of the law. These repertoires of violence are becoming increasingly visible as they are recorded by screen technologies such as CCTV. Yet, as we have discussed elsewhere, so profoundly entrenched is the institutional racism that transpires within the police cells, corridors, vans and triage areas that Aboriginal or refugee victims traverse that the CCTV cameras become *virtual accomplices* in the crimes perpetrated against the victims of police violence (Perera and Pugliese 2016, Perera 2016).

Our writing of this commentary was interrupted by news of the death on Christmas Eve 2016 of [Faysal Ishak Ahmed](#), aged 27, a refugee from Sudan held on Manus Island. As with the fatalities of [Hamid Khazaei](#), a 24 year-old Kurdish Iranian

---

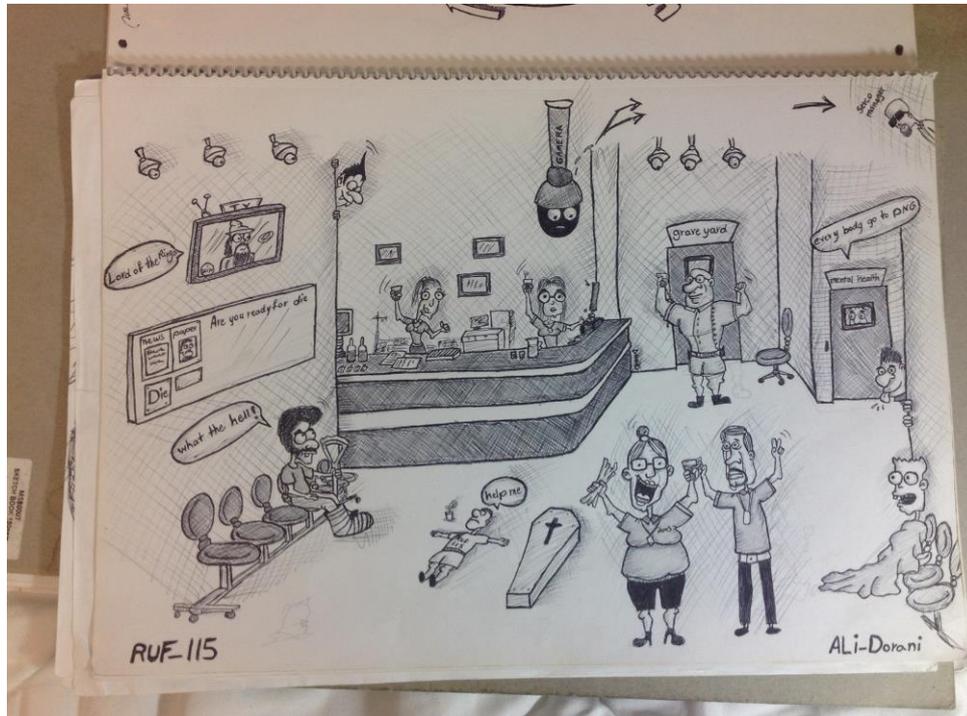
<sup>1</sup> The initial findings of the 2006 inquest into Mulrunji's death delivered a finding that the fatal injuries to Mulrunji were the result of three punches to the abdomen delivered by Senior Sergeant Chris Hurley. These recommendations were dismissed by the DPP. A new inquest was held in 2010. For a timeline of the convoluted legal history of this case see <http://www.smh.com.au/news/national/palm-island-death-in-custodytimeline/2007/06/20/1182019177280.html>

refugee from Manus Island, and [Omid Masoumali](#), a 22 year-old held on Nauru, Faysal's death occurred after a lethal delay in airlifting him to Australia for urgent medical care. All these deaths in the custody of the state occurred not as sudden and unforeseeable events, but as the outcome of a range of violent practices—denial, delay, accusations of malingering, verbal and physical abuse, misdiagnosis, non-diagnosis, active neglect—by the state and its agents, including its healthcare practitioners. In all of these instances, a store of visual as well as other documentary evidence bears witness to the repertoires of gestural violence enacted on racialised bodies.

Yet how does this evidence *become visible in and to law*? The question becomes more and more urgent as screen evidence (such as that in the Black Lives Matter movement, from Australia's Black Sites on Manus or Nauru, or from the video from the Don Dale Detention Centre) reveals the full repertoire of official violence, a violence that yet remains imperceptible to law. And it is here that we identify a paradox that is in fact no paradox: a historical repertoire of gestural violence is reproduced and captured by surveillance cameras that police officers and camp guards know is recording their actions as a form of visual testimony that might yet be used as admissible evidence in either a court or coronial inquiry; yet their actions are shadowed by this knowledge to no visible effect. The evidentiary apparatuses of the state are rather transmuted into passive witnesses that become, both during and after the fact, instrumentalities that enable, if not provoke, the ongoing reproduction, with impunity, of a lethal institutional repertoire of gestural violence.

What shadows this repertoire of gestural violence appears to be an embodied, internalized and historically validated knowledge in which the actions of the state's agents, from medical staff to prison authorities, are proactively invested with impunity. It even appears that ever more flagrant repertoires of abuse and trauma are incited through recording devices, which, even as they are installed to supply the evidentiary grounds for any crime or misdemeanor, will systemically fail to result in any prosecution or serious level of accountability for their actions. A drawing by the award winning artist Eaten Fish, imprisoned on Manus Island,

depicts staff at the IHMS run medical centre wilfully oblivious to the cries of patients in an area festooned with monitoring devices. It was at this centre that both Hamid Khazaei and Faysal Ishak Ahmed were subjected to the (non)treatment that would lead to their deaths.



©Eaten Fish, reproduced with permission of the artist

<http://researchersagainstpacificblacksites.org/>

## Normalizing Racist Violence

523. *Shortly before Senior Constable Burgess pulled her up and whilst she was lying on her back, Ms Dhu appeared vulnerable and fragile on the CCTV. She was moving her arms about and her demeanour is of someone who is vexed and trying to communicate something, without success. It ought not to have been followed by any attempt to lift her whatsoever. Senior Constable Burgess ought to have endeavoured to understand what Ms Dhu was trying to communicate. I have no doubt that Ms Dhu was trying to convey information that ought to have led to the immediate calling for an ambulance.*

524. *I accept counsel assisting's submission that if in fact Senior Constable Burgess was genuinely contrite at what occurred and had been concerned that Ms Dhu had struck her head on the concrete floor then she would have apologised.*

Inquest into the death of Julieka Ivanna Dhu, WA State Coroner, Delivered on 11 December 2016

<http://www.coronerscourt.wa.gov.au/files/dhu%20finding.pdf>

In the recently released footage of the police treatment of Ms Dhu in her final hours of custody before her untimely and unnecessary death, footage that graphically evidences the shocking repertoire of gestural violence, including dragging, flinging, shoving, gripping, and other forms of manhandling, we are compelled to witness the mobilisation of CCTV footage as a virtual accomplice in the punitive and gratuitous violence inflicted upon Ms Dhu's body. As police officers enter her cell following Ms Dhu's complaints about pains in her ribs, Senior Constable Burgess roughly yanks the prosthetic body of Ms Dhu by one arm and loses her grip, leading to Ms Dhu's falling on her back and hitting her head on the concrete floor.

In this scene, Senior Constable Burgess treats Ms Dhu as though she were inert matter, or already dead. Burgess conveys no sense that Ms Dhu could have been injured by the reckless way in which she is handled. Framed as a mere body of colour, specifically, an Aboriginal body, Ms Dhu is placed beyond the purview of the sentient human who could suffer. What the viewer is compelled to bear witness to in this CCTV footage returns us to the framework of biological racism: the Aboriginal body as nonhuman, insentient, impervious to suffering or feeling. Yet the Coroner's discussion of this incident hones in, not on the evidence of Senior Constable Burgess's brutal treatment of Ms Dhu, but on whether she manifested "contrition" for the fall by saying sorry. Contrary to the visual evidence, the discussion implies that Ms Dhu's fall was an unforeseeable consequence of Senior Constable Burgess's actions rather than an entirely predictable outcome of the reckless and brutal handling of Ms Dhu's as if she were an inert piece of matter.

The focus on contrition and apology, as if what were at stake here were a matter of social etiquette or mere breach of good manners, obfuscates the entire chain of prior actions and gestures leading up to the moment of Ms Dhu's fall, a chain of events that situates the fall not as an accident followed by a passing incivility, but as the outcome of the racist assumptions upon which the entire treatment of Ms Dhu—as hysterical, addicted, diseased, malingering, and so on—was premised. The invocation of the codes of civility and good manners by Coroner Fogliani, as with the deployment throughout her findings of terminologies such as "unprofessional" and "inhumane," instantiates a refusal or failure to recognize the gestural violence

of racism, and consequent culpability for potentially criminal negligence and breach of responsibility and accountability. Instead, the register of social breach and lack of contrition is invoked—as if the mere utterance of the word “sorry” would invalidate the actions and assumptions that led to what must be described as a purposive, not incidental, manhandling of Ms Dhu’s weakened and ill body. “Inhumane,” as a euphemism for “racist,” also serves to invoke a different register, one of an attenuated human rights lexicon that carries with it a limited purchase of liability within the limits of the law.<sup>2</sup>

The CCTV footage of Ms Dhu’s footage was publicly released only after intensive lobbying by her family, who wanted the palpable violence it exposed to be made visible to all. The request was initially refused by the Coroner who cited protection of the family’s sensibilities as her rationale. Viewed in conjunction with the Coronial findings, the footage is devastating evidence of the *normalization* of racist violence within both the carceral and judicial systems, *despite the presence of CCTV monitors*. It demonstrates, we argue, the law’s inability to see racist violence and its lethal consequences. Instead, the Coroner’s findings identify “lapses” in “professional behavior” and failings in “duty of care”—in other words, minor and non-prosecutable misdemeanors in what is otherwise viewed as the standard operating procedure of police in their everyday treatment of Aboriginal prisoners in custody.

*139. Ms Dhu was unable to get up. She had limited use of her head and hands, which can be seen moving on the CCTV. After being handcuffed by First Class Constable Matier as she remained lying on her back on the mattress, Ms Dhu was dragged along the floor and then carried by the two police officers to the waiting police vehicle in the sally port area.<sup>91</sup>*

Inquest into the death of Julieka Ivanna Dhu, WA State Coroner, Delivered on 11 December 2016 <http://www.coronerscourt.wa.gov.au/files/dhu%20finding.pdf>

---

<sup>2</sup> In its statement on the Ms Dhu Inquest, the Human Rights Commission states: “We note the Government’s recent consideration of ratification of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) which provides for monitoring mechanisms aimed at raising the standards of treatment for anyone deprived of their liberty. We all have much to gain from the implementation of such instruments and the laws that give effect to them.” The Optional Protocol, which potentially offers protection to subjects in custody, then, has not been ratified by the Australian government. <https://www.humanrights.gov.au/news/stories/seismic-shift-required-stop-aboriginal-deaths-custody>

Ms Dhu cannot stand or even lift her head. She is, in fact, in a state of septic shock and is slowly dying. Despite this, she is handcuffed. Unable to stand or walk, she is dragged along the floor of the police station by two police officers. The CCTV footage here enacts the total subjection of the black body in the hands of state authorities. *It*, not *she*, is what can be dropped, handcuffed even when hardly conscious, then dragged as if nothing more than a bag of rubbish across the floor. Always already criminal, always already beyond the purview of both law and human rights, the Indigenous body is what can be violated across the multiple spaces of the carceral complex because that is what is its due; because the infliction of gestural violence on the body affirms at once its congenital criminality (in this case, a failure to pay fines), its inveterate capacity to lie (the assumption by both medical and custodial staff that Ms Dhu is faking her pathological symptoms), and its stubborn resistance and defiance (repeated calls for help) of the state's ongoing regime of subjection.

### **Who killed Ms Dhu?**

*142. The CCTV cameras outside and inside the emergency department's reception area of HHC recorded Ms Dhu's cardiac arrest. The police vehicle arrived and was parked outside the emergency department doorway shortly after 12.40 pm. Senior Constable Burgess walked off and returned about one minute later with a wheelchair.*

*143. Ms Dhu was clearly completely incapacitated as the police officers lifted her out of the back of the police vehicle. She appeared to be unconscious. The two police officers placed her into the wheelchair. There was no urgency shown by either police officer, notwithstanding Ms Dhu's evident state of collapse.*

*169. The police officers adjusted Ms Dhu's body into the wheelchair. Alarmingly, they left her with her head hanging backwards over the top of the wheelchair, facing upwards and with her neck hyperextended. She had no independent movement in her neck. From the CCTV images, Ms Dhu does not display any signs of life at this point. The police officers did not display any sense of urgency in their conveyance of Ms Dhu into the emergency department of HHC.<sup>108</sup>*

Inquest into the death of Julieka Ivanna Dhu, WA State Coroner, Delivered on 11 December 2016 <http://www.coronerscourt.wa.gov.au/files/dhu%20finding.pdf>

The CCTV cameras are present recording Ms Dhu's final moments: they record her cardiac arrest. Her process of dying is recorded for posterity. Her heart finally gives way to the cascade of pathological symptoms that have been slowly but inexorably

building up untreated. With the CCTV cameras still rolling, the hospital's emergency department reception area becomes another stage for the reproduction of the established repertoire of racist violence. Ms Dhu is unconscious and dying. Is it because of this that the police officers "showed no urgency" in their actions? They leave Ms Dhu in the wheelchair with her "head hanging backwards over the top of the wheelchair, facing upwards and with her neck hyperextended." Ms Dhu is thus left in a position which in fact leaves her prone to asphyxiation: "From the CCTV images, Ms Dhu does not display any signs of life at this moment." This is more than a lapse in "duty of care": surely, the actions of the police officers here must be seen as tantamount to negligent manslaughter?

### **Screening Law: Terror and Spectacle**

*160. At the inquest a concern was raised about some apparently dark brown coloured matter left on the Lock-Up's corridor floor on 4 August 2014, after Ms Dhu was carried along it, on the way to the police vehicle. Specifically, this was when First Class Constable Matier and Senior Constable Burgess commenced carrying Ms Dhu to the sally port. At one point she was lowered onto or close to the floor. Though there was no dark brown coloured matter on the floor before Ms Dhu was placed there, it was evident once she was removed from that spot.*

*161. The question then arose concerning the nature of that material, and whether it could have been from an involuntary bowel movement from Ms Dhu. **The dark brown coloured matter also appeared to have later been removed, and the question then arose as to whether the area had been cleaned before forensic investigators arrived.** [our emphasis]*

*167. I am satisfied that the dark brown coloured material under Ms Dhu's trousers on the floor of the corridor that she was being carried along was not faecal matter. It was either a magazine or a paper bag. It has a dark brown appearance on the CCTV. It is still visible on the CCTV on the floor of the corridor at 1.10 pm on 4 August 2014.<sup>107</sup> No CCTV vision is available after that point.*

In his critical analysis of the intersection of law with visual technologies, Richard Sherwin notes that "when law migrates to the screen it lives there as other images do" entering "a condition of ontological and ethical uneasiness threatens the legality of law's claim to power" (Sherwin 2102). For Sherwin this is an argument for the importance of visual literacy for legal practitioners. Our interest here is in how access to the images on which the law bases its judgments enable us to ask in turn how the law sees, and to identify the visual blockages and blind spots in its line of vision that challenge its claim to mystical authority and that expose its

institutionalised repertoires of racist violence. On the question of the appearance of a dark brown stain under Ms Dhu while she was being roughly hauled by police officers, and on the critical issue of whether forensic evidence might have been prematurely cleaned up, for instance, the Coroner is content to pronounce herself “satisfied” that the matter in question was “either a magazine or a paper bag.”

Our analysis of the CCTV footage of Ms Dhu’s time in police custody and her eventual death has worked to identify what we have termed a “repertoire of gestural violence” that underpins, enables and normalizes institutionalised racism. The migration of these repertoires of racist gestural violence to the screen exposes complex economies of law, visual spectacle and regimes of impunity. The conditions of ontological and ethical uneasiness that are produced by these visual recordings emerge from their evidencing of the convergence of police violence and terror with spectacle. We say “spectacle” as these CCTV recordings’ purported status as legal evidence is consistently undermined by the law’s failure to perceive forms of gestural violence that would lead to a recommendation to the DPP of grounds for prosecution of any individuals captured in *flagrante delicto* (acts of blating offence). We say “spectacle” as what the corpus of CCTV recordings serves to evidence is a type of object lesson to the settler-colonial state’s racialised subject: You are the property of state; you are a priori suspect and criminal; you are beyond the purview of legal redress; you can be tortured and let die with impunity; indeed, it is legally permissible to do so, that is why your trauma and death can be recorded. It is *the law*.

Yet, in the face of this necropolitical spectacle, something else also becomes manifest: the very “legality of law’s claim to power.” As the images available to the law migrate to the screen, able to be juxtaposed alongside other images, as well as viewed against historical knowledges and experiences of repertoires of racist violence, the law demonstrates its own inability to see. What sort of law can assert its claim to justice when its repeated failures *to see* ensure the serial production of Aboriginal deaths in custody with impunity? We repeat: What sort of law can assert its claim to justice when its repeated failures *to see* ensure the serial production of asylum seeker and refugee deaths in custody with impunity? In our repetition is

evidenced the law's sanctioning, by default, of the serial racial deaths at the hands of the state's penal apparatuses. In our repetition is evidenced the failure of law to do justice.

\*\*\*

*We express our heartfelt sadness for, and solidarity with, the families and loved ones of Ms Dhu, Mulrunji Doomadjee, Faysal Ishak Ahmed, Omid Masoumali and so many, many others who have died in state custody.*

[researchersagainstpacificblacksites.org](http://researchersagainstpacificblacksites.org)

Dec 30, 2016

#### WORKS CITED

Perera, Suvendrini. "See you in the funny pages: Penal Sites, Teletechnics, Counter-Artifactualities," Keynote address, Somatechnics Conference, December 2016.

---, and Joseph Pugliese, "A Nightmare World in Plain Sight: The Artworks of Mr Eaten Fish," Researchers Against Pacific Black Sites, July 15, 2016. <http://researchersagainstpacificblacksites.org/index.php/2016/07/15/a-nightmare-world-in-plain-sight/>

Queensland State Coroner, Inquest into the death of Mulrunji Doomadgee, Queensland State Coroner, Delivered on 14 May 2010. [http://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0008/86858/cif-doomadgee-mulrunji-20100514.pdf](http://www.courts.qld.gov.au/_data/assets/pdf_file/0008/86858/cif-doomadgee-mulrunji-20100514.pdf)

Sherwin, Richard K. Visual Jurisprudence (August 24, 2012). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.2135801>

WA State Coroner, Inquest into the death of Julieka Ivanna Dhu, Delivered on 11 December 2016 <http://www.coronerscourt.wa.gov.au/files/dhu%20finding.pdf>