

## Fugitive performances of death and injury

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### Introduction: unlawful experiments

I have certainly myself, I have certainly used a surgical knife and inserted it — you can call it stabbing if you like — onto a rib, through a rib, or between a rib, in order to satisfy myself how much force is needed to do this. This is a question which is put in the court not infrequently. It's of great value if the expert witness doesn't theorise and philosophise, but in actual fact knows the force that's required (Hilton *Sunday* 18 March 2001).<sup>1</sup>

A legal trial, Felman states, 'is presumed to be a search for truth, but, technically, it is a search for a decision, and thus, in essence, it seeks not simply truth but a finality: a force of resolution' (1997: 738). The opening quote to my article reflects one scene of an attempt to support such resolution — that is, a search for knowledge of the 'actual' force required to injure a body, thereby eliminating or limiting speculation. Associate Professor John Hilton, a forensic pathologist and the former Director of the New South Wales Institute of Forensic Medicine (NSWIFM, also known as 'the Glebe morgue'), made the remark on the Australian television program *Sunday* in March 2001, in response to a number of allegations, including that dead bodies in the care of the Institute were subject to 'unethical' forensic medical practice, such as 'stabbing' experiments, to reproduce or replicate injuries to the deceased. Public outrage followed his comments and, as a result of the

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allegations raised on *Sunday*, the then NSW Health Minister launched an independent inquiry into practices at the mortuary and Hilton was removed from his position as Director. The Inquiry report ('the Walker report') found that the majority of these experiments, conducted by a number of forensic personnel at the NSWIFM, were unlawful. Bret Walker SC conducted a careful analysis of the scope and meaning of the law that regulates post-mortem and anatomical examinations, including issues of organ and tissue retention and forensic experiments, and found it wanting (Walker 2001: 10).

While illustrating one example of the regulation of doubt (knowledge of the force required to injure a body), Hilton's statement also indicates a more extensive catalogue of tensions surrounding the management of the dead body in law and culture. Placing his statement at the centre of my discussion, I will argue that this televisual exhumation of the relationship between mortuary life, culture and law highlights a dissonance between representing the dead body in (medico)legal discourse and remembering, or memorialising, the dead in culture. This tension is informed by an awareness of limits. That is, the dead body is a finite thing in culture. It is managed temporarily by forensic medical practices, but thereafter the dead must leave us and be substituted by images, memories, ashes and so on; they cannot remain in the figure, as the person, they were. My argument echoes Bronfen, who writes that with the destabilising event of death, '[a] stability of categories must again be recuperated, namely in the act of representation, so that we move from the experience of decomposition to composition, from the dying body/corpse to a representation and narration of the dying body/corpse' (1992: 52). Despite this knowledge, there is a cultural and legal obscurity around the dead body and post-mortem practices that informs the response to Hilton's televisual statement. This article traces the ambivalence associated with representing the dead, and the literal touch that is required to do so.

To achieve this, my argument is shaped through a four-part structure. Part 1 places Hilton's statement in the relevant cultural landscape to set the scene of crisis around post-mortem practices. Part 2 more fully

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considers the event of Hilton's statement, exploring the confusion of legitimate/illegitimate wounding, and the cultural ambivalence towards medico-legal practice. Parts 3 and 4 analyse the three-fold response to the crisis of death actioned by forensic pathology's relationship to law; it is a precise response, and drives Hilton's actions. This response begins as the forensic pathologist performs an autopsy and creates a number of medico-legal portraits to fix the dead. Such work taps into a historiography of forensic medicine and Part 3 places Hilton's statement within this frame. Secondly, the abstraction of the dead to an image moves from the mortuary to the courtroom, where the forensic pathologist stages injury via testimony, often returning to the body to make medico-legal meaning clear. Thirdly, however, despite the seeming stability of these images, this 'reality' can be challenged by different interpretations of injury, thereby undoing stable meaning and potentially rewriting death. Part 4 thus continues to explore the pathologist's testimonial role to highlight the problems in turning the dead body over to representation. In conclusion, I recall the crisis around the NSWIFM to consider: what is at stake in our attachment to the image of the dead, and what erupts in the process of the abstraction of the dead body to image?

### **1 Mortuary life at the turn of the century: the restless return of a barely repressed past**

The past can only be deciphered, and the only reason for that decipherment is the interest, pleasure, crisis, or peril of the contemporary (Goodrich 1995: 20).

When *Sunday* journalist Helen Dalley questioned Associate Professor Hilton about alleged unethical practices at the NSWIFM, she was reporting at a time of heightened national and international attention towards clinical and forensic pathology practices. The *Sunday* program was a response to an inquiry launched in October 2000 by the NSW Minister for Health to review human tissue and organ retention practices following post-mortems in NSW, including an audit of human tissue

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held in NSW (NSW Health Media Release 10 October 2000). This review was announced following two substantial inquiries in the United Kingdom: the Bristol Royal Infirmary Inquiry and the Royal Liverpool Children's Inquiry (Alder Hey), followed by the McLean Inquiry in Scotland.<sup>2</sup> The UK inquiries investigated the removal and retention of organs at post-mortem and revealed that consent procedures relating to organ and tissue retention had been insufficient, and that in many cases consent had not been sought or had been over-ridden (see Skene 2002a, 2002b, Harris 2002, Brazier 2002, Mason & Laurie 2001).

The NSW inquiry interim report was released in March 2001. It identified that, as in the UK, organs have been collected and stored in NSW without the knowledge of next-of-kin (NSW Health Department February 2001). In response to the NSW inquiry and the release of the interim report, *Sunday* aired allegations that the problems went beyond the scope of that inquiry. It alleged that the NSWIFM was virtually a 'body parts supermarket for medical researchers', that there was significant post-mortem retention of organs (such as brains) and other human material (such as bones), and the use of this material for medical research was questionable (*Sunday* 18 March 2001). *Sunday* also raised allegations of improper conduct in relation to dead bodies; allegations that began to echo an earlier investigation into the Institute in 1998. The 1998 inquiry by the Independent Commission against Corruption (ICAC) revealed that mortuary workers had stolen property from the deceased (Scott Bray 1999). Forensic workers adversely named in the ICAC report told *Sunday* about practices on bodies, including the removal of spinal columns, long bones and joints for research purposes, and 'stabbing' experiments involving the replication of injuries to the deceased. It was here that Associate Professor Hilton articulated that he had inserted a knife into a body to determine the force required to injure.

The NSW Minister for Health immediately responded by announcing an inquiry into the NSWIFM (NSW Health Media Release 18 March 2001). The attention towards NSWIFM practices reflected in part an emerging consideration of legislation in Australian states

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and territories regarding post-mortem practices and the retention of human tissue and organs.<sup>3</sup> Since the UK inquiries and the NSW inquiry into post-mortem organ removal and retention, pathological post-mortem practices throughout Australia have been the subject of newspaper reports in most states. Much attention has been given to the retention and storage of body parts (such as brains and hearts) without consent after coronial and hospital autopsies, and the reactions of people discovering that they had buried their deceased without some organs, tantamount to burying an ‘incomplete’ body (*The Advertiser* 27 June 2001: 1, *Sydney Morning Herald* [SMH] 19 March 2001: 3). When *The Sydney Morning Herald* ran a story on the NSWIFM, it recalled a history of revealed concerns, including the 1994 discovery that body parts removed in NSW mortuaries were transported to Queensland for incineration (SMH 19 March 2001: 3). Allegations also emerged in South Australia of the removal and ‘swapping’ of body parts between dead bodies, leading the SA Human Services Minister to announce an inquiry into the post-mortem retention of body parts (*The Australian* 3 July 2001: 8, *Herald Sun* 3 July 2001: 11).

The newspaper coverage of the NSWIFM and wider organ retention issues is extensive.<sup>4</sup> The issues raised constitute an eddy of concerns relating to allegations of unethical or improper movement and treatment of, touch on and interference with dead bodies. These concerns resound with the public need to investigate death (and examine organs to further medical research), and the private (and cultural) need for individuals to put dead bodies to ‘rest’ (*The Australian* 21 March 2001: 12). As governments around Australia investigated both the treatment of dead bodies in mortuary space and wider organ and tissue retention practices, the cultural landscape suggested that pathology practices assumed ‘secret’, infinite examination and touching of dead bodies and body parts. This contradicted the understanding of families that bodies had been wholly ritually disposed of. The retention of ‘body parts’ without public knowledge thus elicits the return and circulation of dead bodies dispersed throughout medical and legal institutions. This touch examines, stores and moves the dead in opposition to their physical disappearance.

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Echoing the UK inquiries, situations in Australia raised the possibility of organ retrieval so that families could obtain retained material and conduct further burials or cremation. This troubling and distressing scenario of retrieval maintains the traumatic and literal resurgence of the dead body in culture. This unspeakable presence of dead bodies as ‘body parts’ not only exists in opposition to the cultural limit of dealing with the dead (as a finite figure), it reminds us of the traumatic fracture of the dead that occurs post-mortem, where bodies are dissected. Even worse, in spite of funerary rituals of closure, the dead remain, in pieces. The UK and Australian inquiries identified the benefits of using tissue and organs obtained post-mortem for medical research. The distinguishing issue in all cases was knowledge of retention (and thus the matter of ‘consent’). Following this, there is an identified need for public awareness of pathology practices that rely upon the investigation of death (by way of retained organ and tissue examination), and the practice of scientific experiments that can aid forensic knowledge.<sup>5</sup> These practices depend upon the retention and circulation of human organs and tissue, and thus the dispersal of the body after death. Again, this dispersal is contrary to the cultural limit of the finite dead body (Mason & Laurie 2001).

This was the cultural landscape across which Hilton’s televisual statement was broadcast in March 2001. The title of the segment — ‘The Body Snatchers’ — efficiently raised the spectre of grave robbing by the ‘resurrectionists’ that haunts the history of anatomical medicine in 18th and 19th century Britain, and the popular textuality of the resurrected ‘living’ dead exemplified in films such as *Invasion of the Body Snatchers* (1956) and *Night of the Living Dead* (1968) (Richardson 1988, Jones 2000, see also Žižek 1991: 22–3). The UK inquiries further secured this history as a contemporary concern, and allegations throughout the states and territories of Australia attached these scenes to Australian mortuaries, with their own troubled history in managing the dead (see MacDonald 2005). Specifically situated at the centre of the NSW controversy was Hilton. In speaking with *Sunday*, Hilton became the key figure in this renewed, disquieting historiography of

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medicine and the dead body. In the next section, I am specifically interested in his role as a forensic pathologist, and the perceived perversion of this role in the aftermath of the *Sunday* program.

### 2 Fugitive performances and the descent into horror

[O]ne no longer speaks the same death where one no longer speaks the same language (Derrida 1993: 24).

What emerged in the wake of the *Sunday* revelations and the discussion of pathology practices in the media was a horror at mortuary practice.<sup>6</sup> Interviewed by *Sunday* a week after ‘The Body Snatchers’ aired, the Minister for Health stated he was ‘frankly sickened’ by the allegations, and the NSW Premier added he was ‘numb with horror’ (*Sunday* 25 March 2001). This descent into horror was also expressed in a media statement issued by the Minister when the Inquiry report was released in August 2001. The Minister said: ‘I have said all along that while I, like most people, find it hard to contemplate the kind of work that goes on in morgues, I know it is important and necessary work and I do not want to see forensic science impeded in NSW’ (NSW Health Media Release 17 August 2001). In light of the practices investigated by the inquiry, the ‘kind of work that goes on in morgues’ that the Minister speaks of is ambivalent — if necessary — activity. It is only by way of sanctioned results and community benefits that such touching is tolerated. Even then, as the Minister himself stated, the ‘kinds of things that go on in morgues’ are ‘hard to contemplate’ (NSW Health Media Release 17 August 2001). It is the aim of this section to retrace the wounds opened by the *Sunday* program in relation to Hilton’s statement. Latter parts of this article query the role of and expectations on forensic pathologists that motivated Hilton’s attention to forensic experiments to augment his value for law. However, in this section I want to home back in on Hilton’s statement, to more fully uncover what is at stake in imagining mortuary practices (Young 1996).

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It is in light of law's expectations that Hilton defended his actions in the days following the *Sunday* report. He is quoted as stating that NSWIFM practices were conducted 'in the interests of justice' (Whelan & Brown 2001: 27). One newspaper article focused at length on Hilton and his role. The authors wrote:

Of course the bodies were treated with respect, he said. But they also had to be dissected, subjected to whatever treatment was necessary to determine the cause of death, to put together cogent evidence that would stand up to cross-examination, and to build up a body of empirical data. "If I give an opinion in court on the likely cause of death, and counsel asks on what I have based my opinion, if I have experimental data on my side, I am in a much stronger position," he said (Whelan & Brown 2001: 27).

It is worth examining this position more closely, especially in light of the findings of the NSW inquiry. Six months after Hilton uttered his remark on *Sunday*, Bret Walker SC published his findings.<sup>7</sup> Walker comments on a number of alleged statutory contraventions and alleged unethical practices at the NSWIFM including removal and retention of brains, long bones and joints, however my specific concern throughout this article is with forensic experiments. In reading the Walker report, it becomes evident that courts both ask and expect the forensic pathologist to speak beyond the dead body and this relationship to criminal justice explains both the professional interest of pathologists in injury and the forensic relevance of experiments. That is, law asks the pathologist to comment on aspects of injury — such as force required to injure — which may be used to impute others. Through understanding and exercising accuracy (stabbing experiments to ascertain the force required to injure), medico-legal knowledge, and the resultant images and texts, may be liberated from ambivalence, which may in turn readily identify criminal others. Such is their legal and cultural weight — that they may discover volition and ratify evidence of criminality. Walker summarises this perspective as follows:

As to stabbing experiments generally, it is to be borne in mind that the difference between crimes involving knives and accidents involving knives is a perennial and crucial one. Conviction and very long imprisonment

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follow from knife murders, and acquittal may result where there has simply been a fatal accident. In between, different degrees of criminality, and thus appropriate punishment, may follow depending on the aggressive intention attributed by a criminal court to a person accused of killing with a knife. For these reasons, it has long been a topic of professional interest to forensic pathologists, who are the leading expert witnesses in criminal justice on such matters, how one may safely (if at all) infer the force or strength of a blow (and thus inferentially the mental volition behind it) from the depth or nature of the resultant penetration. ... The scientific endeavour of such work is manifest. Its forensic relevance is clear (2001: 74–5).

Hilton's actions thus have the potential to make 'real' the intentions and actions of the criminal other. Yet Hilton's insertions into the dead body bring him perilously close to not only the dead but also to the body of the criminal. In the wake of the NSWIFM crisis, he is seen to embody both law and unlawfulness — a bi-lingual body incising on behalf of the law so as to (possibly) speak of criminal intent. Therefore the call for precise bridging between the dead body and law installs ambiguity to the forensic pathologist. In the situation of Hilton, injury becomes indexed to his body. Furthermore, by raising two terms describing injury — 'inserted' and 'stabbing' — Hilton highlights language's devastating slipperiness as his statement precipitates utterly traumatic visuals. Divulged in the media and thus loosened from 'scientific' context, the language of forensic touch here escalates and Hilton becomes the accused. Hilton summarises this linguistic fragility when he says 'you can call it stabbing if you like' (*Sunday* 18 March 2001). The slipperiness of language thus laces Hilton to legal perversion. The image this scene of 'stabbing' yields elevates forensic vision and knowledge-production as violence, where Hilton's ambiguous touch bespeaks a cultural confusion with crime and the law. This scene of wounding haunts as repetitious puncturing, and as such, acts as a reminder of the unseen forensic spaces and touches on the mute figure of the dead. Death, then, becomes an event for translation, and this translation itself also becomes inescapably strange.

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The attention given to Hilton's actions suggests that in securing knowledge about the body, the potential for representational disorder emerges. Thus, within a perversion of duty, the forensic pathologist is declared an illegal agent of trauma rather than the legal agent for the articulation of trauma. Hilton defended his position by somewhat echoing this perversion. When asked about 'stabbing' experiments, and experiments generally, one newspaper report quoted Hilton as saying, '[o]f course it is distasteful. It's distasteful to me, for God's sake' (in Whelan & Brown 2001: 27). As stated earlier, compelled by his role for law, Hilton elevates the collective over the individual body, making insertions, conducting and authorising experiments in 'the interests of justice' (in Whelan & Brown 2001: 27).

Whilst recognising the benefits of forensic experiments, the Walker report deemed the majority of experiments conducted by a number of forensic personnel at the NSWIFM unlawful and the law in this area unclear. Under the *Anatomy Act* 1977 (NSW) corpses could be donated for the purposes of anatomical examination — defined as 'disaggregation' of the bodies and its parts (Walker 2001: 32–3). Walker explored the history of what he terms the 'pivotal phrase' *for anatomical examination*, which governs the purpose for which dead bodies are made available as constituted by the 1881 NSW legislation, derived closely from Westminster (2001: 30–2). In addition to commenting on the statutory history of the phrase, Walker also commented on the etymological history of the word 'anatomize' (Walker 2001: 32–3). Consequently, experiments not restricted to disaggregation (such as hammer or stabbing experiments) were not authorised by the Act (Walker 2001: 33). Unlawful conduct at the NSWIFM therefore stemmed from 'ignorance of the law or at least a mistaken view of the limits imposed on statutory authority by reason of particular legislative phraseology' (2001: 88).

Correspondingly, in light of the forensic relevance of experiments and their benefits for criminal justice, Walker identified a 'gap in beneficial legislation' as the law did not authorise experiments considered of clear forensic and thus judicial benefit (2001: 73, see

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also Ranson 2001).<sup>8</sup> Demonstrating the inconsistency of the law in this area, Walker commented on one stabbing situation where a forensic pathologist lawfully demonstrated bone and cartilage resistance to knife penetration by inserting blades into a chest plate removed under the *Coroners Act* 1980 (NSW) for the purposes of the coronial post-mortem examination (Walker 2001: 73–4). In distinction to other experiments on donated bodies, or coronial cases where the body part had *not* been removed, this exercise was deemed lawful because the body part had been removed for the purpose of the post-mortem examination under the *Coroners Act*. Walker concludes that ‘the law should not distinguish in this fashion’ (2001: 74). The law here is noted as inadequate and incomplete. Mistakes and misreadings are to be expected in the lack of law’s attention to its own gap.

The inquiry additionally found that the law was misunderstood, leading to NSWIFM staff breaches of the limits of lawful forensic practice in relation to the dead body and the purpose of coronial post-mortem examinations (Walker 2001). This misleading view of the law was interpreted as looking beyond law (exceeding the strict limit of the letter of law). In summarising, Walker states that ‘[p]ut simply, it is for law rather than individual conscience to regulate the social compact by which dead bodies and human remains are interfered with by compulsory State process’ (2001: 69). Walker additionally notes that ethical practice requires forensic personnel to be well versed in the limit, noting that ethics ‘starts with a thoroughgoing compliance with the statutory requirements of and limits on one’s own conduct’ (2001: 87–8). Here we witness a tension between a legal agenda that requires evidence from forensic pathologists, and an opposing agenda that restricts the forensic work that develops this expertise, a point I will return to in Part 4 below.

The practices ‘revealed’ by *Sunday* and discussed in the media, demonstrate the struggle of the forensic pathologist to unambiguously exercise an authoritative touch on the dead body. The next section explores more fully the numerous forensic images generated in the search for this authoritative closure of the crisis around death.

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### 3 Training the eye: the historiography of forensic medicine

Some of the questions that pathologists must answer, however, cannot be easily studied. ... No one is going to volunteer to be the subject in an experiment to test whether a certain sort of stab wound was caused by a certain sort of blow with a certain sort of knife (Redmayne 2001: 131).

Pugliese has written of the forensic pathologist as an 'intermediary' between the dead body and the autopsy report and oral testimony (2002: 369). It is the critical nature of this intermediary role that interests me here. To understand more fully why Hilton invested in experimental touches, it is necessary to explore the practices of forensic pathology, and the process of the translation of the dead, that Pugliese underscores in his analysis. Inherent in this translation, I argue, is the proliferation of images that highlight the peculiarities of representing the dead body for law, which I examine more fully in the following section. The translation of the dead body into representation has been explored by Bronfen, who notes that the translation 'opens up a plurality of meaning and reference' where '[t]he translation into representation is one that permits a break with the material referent of the signifier — and in the gap that is opened it can refer either to the real body, to a gliding chain of culturally coded signifiers or to the producer of the representation' (1992: 46). I explore the implications of this later, but note here that to achieve this translation, forensic pathology thus necessarily relies upon the image. Therefore, this section explores the creation of images (as undeniable tools for law) and their representational value.

The forensic translation begins when the dead body is examined at the crime scene or received at the mortuary. Here, I am speaking about deaths to be investigated by the coroner. The deaths that fall within the coronial jurisdiction are prescribed by the Coroners Acts of each state and territory; referred to in (most) jurisdictions as 'reportable deaths'.<sup>9</sup> As part of the investigation of the death the coroner orders a post-mortem examination, the goal of which is to confirm or determine identity, cause and circumstances of death as prescribed in Coroners

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Acts throughout Australia.<sup>10</sup> Once delivered to the mortuary, that space of strict regulation and seclusion, law's representational alliance with the body intensifies, as the deceased is tagged, weighed and registered through imaging procedures such as X-ray, video recording and photography (Ranson 1992, 1996, 1998a, 1998b, Freckelton & Ranson 2006).<sup>11</sup> Imaging the body to both detect and record injury is considered of vital importance in the examination of death and accompanies a thorough analysis of trauma (Cordner & Plueckhahn 1991, Di Maio & Dana 1998, Cordner & Ranson 1999, Freckelton & Ranson 2006).

Imaging practices optimise forensic vision as they can attest to the unseen presence of injury (for example, fractures detected through X-ray) and the specifics of injury. It is useful here to note that issues of accuracy and precision in investigating injury bear a direct relation to the transient and disintegrating status of the dead body; forensic practices directly call upon the image to manage this movement. As the body is examined, both externally and internally, images, such as photographs, record the process of autopsy, recording all-over general views of the front and back of the body (clothed and unclothed, unwashed and washed) thereafter canvassing the interior after the body is opened (Cordner & Ranson 1999: 446–7). The post-mortem examination is inseparable from representation, as images of the body develop from reading, measuring, photographing, X-ray or sketching the body contemporaneous to analysis (Ranson 1996, Pugliese 2005). In addition, body samples are collected, blood and other fluids are drawn and tested. Ante-mortem records are gathered and reports are written. From these activities, significant memoranda are built. This scission and fracture of the body turns the dead body entirely over to representation.<sup>12</sup>

Amidst all this activity, the chief specialty of the forensic pathologist is the interpretation of injury and pathology. As Freckelton and Ranson note: '[i]t is the interpretation of injuries with regard to their causation and effects and the interpretation of the effects of natural disease that lie at the heart of the expertise of the forensic pathologist' (2006: 447). In examining the dead and identifying what has gone wrong, the forensic

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pathologist concentrates on the language of injury and trauma. This language has precise significance and includes the classification of injuries — such as abrasions, lacerations, bruises, incised wounds et cetera — which have particular characteristics (Cordner & Ranson 1999). Freckelton and Ranson state that ‘perhaps the most important aspect of classification is the fact that different injuries imply different forms of causation — correctly describing an injury can provide a more accurate reconstruction of the events that led to the injury’ (2006: 453). They go on to note the value of attention to injury patterns:

The interpretation of wound patterns is as important as the interpretation of the causation of individual wounds. The existence of a deliberately inflicted fatal wound does not necessarily imply criminality or negligent behaviour. The circumstances in which the wound occurred usually have far greater legal significance ... than does the mechanistic interpretation of how the wound was caused ... experience of examining individuals with numerous wounds shows that there are common patterns. It is familiarity with these patterns that allows the forensic pathologist to express his or her opinion about both the physical and sociological aspects of the wounding. ... An understanding of the social settings in which trauma occurs, as well as skill in interpreting the appearance of wounds, can provide extremely valuable information (2006: 477).

Here we see a move from the specifics of the dead body to matters of significance beyond the individual. The forensic pathologist becomes one who details individual material trauma that will ultimately speak of ‘culture’, engaging in a form of ‘forensic sociology’ (see for example Polk 1994). If we return to Hilton’s interview on *Sunday*, he followed up his comment by adding that ‘I felt I was justified in doing it because it was going to help other people down the track’ (18 March 2001). Indeed, recent literature characterises forensic pathology practice as an activity in commune with the living, as death examination and subsequent knowledge about injury disperses into public health policy and planning, community health and safety, education, and therapeutic development (Ranson 1992, 1996, Cordner & Ranson 1999).

This entanglement of the forensic pathologist into spaces beyond the body will be further discussed in the following section. What I

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want to note here is that in repeatedly identifying patterns and learning of circumstances of death and injury, forensic pathology, as a discourse, is built from a history that remembers the body, signifying a medico-legal impetus that transcends the present and contributes to an expanding historical enterprise. As individual dead are translated, this translation embraces innumerable bodies — those dead already enlisted in texts and others yet to come. The translative force of this process is thus founded in tracking the corpse as familiar. This process installs the pathologist as the privileged interpreter of death and the body, who retains knowledge and stores this insight for both present events and future recall. As the next section explores, representations, as supplements, aid this recall.

The medico-legal memory of the body therefore resides in the proliferation of texts and images of the dead. These pieces of representation — photographs, video, X-ray, anatomical body charts or sketches, medical notes and autopsy reports — achieve the following: they align others with the forensic pathologist's insight and, in so doing, signify the faith in representation to deliver the real. Corder and Ranson note that one of the aims of the forensic pathology investigation is:

To record all the relevant observations and negative findings in such a way that they can be used effectively to communicate the information obtained from the autopsy to the court and legal agencies. If the documentation is comprehensive, it should come close to providing another pathologist with the information needed to put that person in the same position as the pathologist performing the autopsy (1999: 440).

Accurate citation of the body can therefore substitute the pathologist, situating others in proximity to the dead. An exhaustive forensic response thus achieves and archives the 'clear picture of what has been seen', and concentrates fragments with the force of the real (Corder & Plueckhahn 1991: 174). It is the precise drive to summarise and learn of the body that generates these forensic portraits. The paradox is, that in creating numerous images to adequately capture injury, the stability of the forensic image is disrupted by this proliferation of texts. What may be seen in law's definitive desire for closure, expressed in

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the forensic drive for conclusion, are medico-legal images that in fact signify representational flux. As the next section will discuss, no singular representation can grasp the three-dimensional dead body, and thus forensic representation umpires a real that is consistent with fracture. Hilton recalls this gap in signification when he states '[i]t's of great value if the expert witness doesn't theorise and philosophise, but in actual fact knows the force that's required' (*Sunday* 18 March 2001). This focus on personal knowledge, harboured in memory as a material witness, is what also interests me next.

#### **4 Medico-legal portraits of death and injury: legal agendas and the forensic pathologist**

The law ... believes that while people may lie, the body generally tells the truth, providing the test and diagnosis are clear enough. Medicine, for law, functions to guarantee body-truth (Phelan 1997: 95).

The Walker report highlights that forensic pathologists in New South Wales have negotiated between competing legal agendas: firstly, the legal agenda that asks forensic pathologists to provide expert opinion and 'legal' answers as to the type and character of wounds, and secondly the law that restricts forensic pathologists from conducting the work needed to form their opinions and educate others. As noted in Part 2 above, Walker affirmed the serious scientific, forensic and educational work of experiments, and the implications of such work for expert testimony, and also commented on the unlawfulness of experiments due to, for example, the legislative restrictions around the statutory phrase *for anatomical examination*. Walker reiterates throughout his report that experiments were undertaken seriously and scientifically and, commenting on a specific exercise, notes it was undertaken 'for the purposes of the administration of justice as that is informed by forensic pathology' (2001: 71). This section is interested in the agenda that seeks evidence from the forensic pathologist, and the issue of touch and demonstration inherent in this expertise. Notwithstanding the specialism developed from personal knowledge about injury, forensic

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pathology practices exist in tension with cultural and individual remembrance of the dead.

The importance of medico-legal testimony is described by Cordner and Ranson, who note that the forensic pathologist's focus 'is the endpoint of the forensic investigation, which is the judicial process, usually a criminal court trial or coroner's inquest' (1999: 413). Ranson similarly states that delivering medico-legal results to law is the 'principal output' of the labour of forensic medicine (1996: 29). Therefore, it is the work of this section to more fully explore the ways in which the forensic pathologist represents the dead body in court. To examine the importance of their testimonial function, I partially draw upon interviews I have conducted with forensic pathologists.

As translators of the dead body, forensic pathologists provide expert medical evidence attesting, if possible, to the cause and manner of death of the deceased. In so doing, and, as we know from Hilton's statement and the Walker report, forensic pathologists are often called upon in courts to comment on issues related to injury, such as circumstances, force, which wound was caused first, weapon type et cetera (Freckelton & Ranson 2006). At the heart of this summons is an attempt to eliminate doubt at the body of the dead as expert opinion can distinguish between the classification, characteristics and causation of injuries. The admissibility of differing expert opinion about the nature of injury has been subject to appeal before the courts; consequent judgments note the field of injury interpretation and forensic medical knowledge as a field of specialism and expertise. For example, in *Middleton v The Queen* Anderson J held that issues of whether wounds were self-inflicted are:

matters the full significance of which might not be appreciated by the layman unaided by evidence from a person skilled in interpreting wounds. Although the untrained eye is able to see wounds and observe their severity and the pattern of them and where they are on the body and so on, the question as to what features are significant and the inferences to be drawn from them are questions of judgment, assessment and opinion (2000 at 21).

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Despite this acceptance, the courts may sometimes reluctantly concede the expertise of injury interpretation. In *R v Anderson*, a case involving expert opinion evidence on whether wounds to the defendant were self-inflicted (thereby potentially extinguishing claims of self-defence and provocation), Winneke P expressed ‘difficulty in comprehending how a person, medically qualified or not, by merely observing wounds, can express an opinion that they have been “self-inflicted.” However, I am prepared to accept that such a body of knowledge exists’ (2000 at 55). There is an acceptance at common law of forensic medical expertise and that it can involve the field of injury interpretation. I want to query the function of the forensic pathologist that surfaced in the cultural crisis of Hilton’s statement, studying it in light of the value of the forensic pathologist for law. Armed with specialised training and forensic experience, Hilton’s statement concerns his capacity to function effectively as an expert.

Importantly, this function is driven by the material absence of the dead body but nonetheless signals a return to the material (corporeal) witness; although this time, it is the body of the pathologist. Forensic pathologists often explain injury through the performance of their own body in court. This substitution is a response to the inexact accounts provided through medico-legal pieces such as photographs, written text and verbal testimony. As aids to describe the dead body, these pieces are often insufficient to produce clear meaning for the court. In interview one forensic pathologist discussed the difficulty with trying to explain three-dimensional human anatomy in court, stating that people usually think of the body as ‘solid, rigid, not flexible and moving’. They continued:

[W]hen the alleged statement by the shooter and the injuries to the victim are such as to say “well when this person was shot they had to be two foot in the air leaning backwards at an angle of thirty-five degrees” people say “well that’s impossible, you can’t be suspended two-feet in the air ... leaning backwards by thirty-five degrees”. And of course you can’t in a static sense, but you could in a dynamic sense ... but ... it’s hard to represent that ... that’s why the use of your own body is useful in court. It’s much better to put a pen to the side of my head showing the direction than it is to say

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“well it was going backwards at forty-five degrees and downwards by thirty-five degrees and medially by this degree”. . . . it has no real meaning (P P Interview 11 October 1999).

The value of the forensic pathologist therefore resides in staging injury and returning to the material body to make ‘real’ (the) meaning of death, thereby enabling the court to comprehend death three-dimensionally. This return to the body marks the ‘miss’ of representations such as photographs and utterance, and the cultural and legal strength of the body to express reality. Injury and death are read in accordance with a material ‘truth’ that cannot always be verbalised, but which may be gestured or figured (Bronfen 1992: 52). Just as forensic pathologists translate the dead body into medico-legal images, they again reinterpret these images for law via expert testimony. As a bridge between the dead body and law, the forensic pathologist signifies the ‘ambivalent and indeterminant shift between real body and substituting image’ (Bronfen 1992: 52). Correspondingly, this performance also destabilises a fixed reading of death from that otherwise figured in partial portraits of injury, such as forensic photographs or written texts. This is not to say that photographs of wounds are inaccurate records of injury, or that pathologists perform in opposition to these portraits. Instead, the testimony of the pathologist demonstrates the contradiction in stability provided through representations of the dead body. That is, images inadequately capture the dynamic body. Since the corpse is seen through fractured images that require explanation, the stability of meaning achieved by representation is dubious.

In terms of the dead body, reinterpretation of injury can emerge in the expert testimony of a pathologist called for the defence. In Australia the testimony of a defence pathologist is not contingent upon touching or directly witnessing the dead body at autopsy; they read injury primarily through the medico-legal image. In interview, one forensic pathologist noted the irony that defence pathologists ‘can honestly stand by a remote hypothetical situation because they haven’t had that removed from their armory of possible scenarios by actually seeing

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more evidence that would lead them to say “well that couldn’t happen after all” (P P Interview 11 October 1999).

Medico-legal images can simultaneously memorialise an original touch that can refresh an expert’s memory, renew narrative and yet prompt difference in expert opinion. The move from the reality to the ‘virtuality’ of the body in the image paradoxically depends on, yet departs from, the definitive ‘original’ touch (Pugliese 2002: 370). Where the forensic pathologist records the dead body in such a way as to ascribe similar insight to other qualified pathologists, injury can now be revised in representational gaps. Therefore, the prospect of substitution, of handling the body by way of the image, is inexact. Just as repetition as reformulation inscribes anew, pathology’s first touch is both echoed and lost (Bronfen 1992: 324). The picture becomes a point of tension, a place of additional interpretation. In considering the role of defence pathology, one forensic pathologist stated: ‘I believe I’m in a better position to say what went on than someone who hasn’t actually dealt with the body’ (W S Interview 14 March 2000). Yet, while talking about the value of the direct touch for legal testimony, another forensic pathologist noted the touch as possible subsidiary; they said:

I’ve often argued “well you had to be there to look at the body”. The photo ... does not show this three-dimensional quality ... but ... how good is a jury at evaluating the significance of three-dimensional involvement in the body as opposed to two-dimensional analysis? (G F Interview 18 October 1999).

Consequently, the dead body is filtered through images which attest to an original touch, but which also support re-readings that reconfigure meaning. Consequently, the idea of an ‘originary’ touch actually echoes the historiography of forensic medicine, a history that launches the experience (and expertise) of forensic pathologists outlined here and in Part 3 (Pugliese 2002: 370, Bronfen 1992). As I have outlined, in court, the forensic pathologist is the figure of relational value and this testimony is entangled in questions of touch. Within the confines of medico-legal discourse this touch remains necessary and desirable. Hilton’s statement certainly indicates that this section’s discussion of

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touch and substitution demonstrates that personal knowledge, as part of forensic medical historiography, is significant. Yet clearly, the cultural attention towards pathology practices illustrates that this history is seen to operate in opposition to efforts of individual and cultural memorialisation of the dead. Indeed, the issues raised by a lack of legal clarity around how dead bodies are managed, in addition to forensic pathologists' negotiation of this confusion where law asks for specialism and cultural fears about unethical treatment in mortuaries, has significant implications including, as Ranson notes, 'the tendency to confuse the community and, at worst, to bring the law into this area into disrepute' (2001: 154).

## Conclusion: investigating lacunae

The reason why it's valid to ask a pathologist as opposed to anyone else is that of course, in most cases, in most of those killing injuries, the pathologist will in their career have inflicted most of those injuries on a body in one form or another. Though not in that way, hopefully. So, in other words, if the argument is "well how much force does it take to stick a knife through X, Y and Z?", well because the pathologist is probably one of the few people in the community who has stuck knives through X, Y and Z as part of their ordinary daily work, they're the only people who are going to know how, what it takes. So that's a real, pragmatic and experiential basis for opinion making (P P Interview 11 October 1999).

In the everyday labour of forensic pathology, infliction of 'injury' is not uncommon and this experience can yield juridical benefits. I include this statement on the 'pragmatism' of forensic pathology in my conclusion to highlight the themes of this article. Firstly, as scientific knowledge, forensic pathology is concerned with precise, 'objective' attention to detail, such as classifying injuries (Pugliese 2004). Correspondingly, the retrieval of a precise touch ghosts the experimentally driven touch of Hilton. His efforts to know of another's touch — 'in order to satisfy myself how much force is needed to do this' — nevertheless disturbs the image of closure that prescribes mortuary space. It paradoxically introduces cultural doubt into spaces

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of forensic practice. This doubt illustrates the tensions between culture that needs to put the dead to rest, and medico-legal knowledge which requires a corpus (corpses) to qualify knowledge. Here, the cultural horizon of looking at the dead is a limit that is weighted to time and space whereas law paradoxically desires re-narration and redefinition in the elimination of doubt. Since medico-legal knowledge has historically been gained through troubling practices such as experiments and organ retention, Hilton reveals forensic pathology's seemingly 'endless' incisions into the body.

Furthermore, Hilton's comment encapsulates the panic of signification that constitutes language. As the word 'stabbing' in Hilton's statement mobilises numerous, repetitive images of violence, it offers a sliding language of injury that both bespeaks and belies scientific precision. The statement illustrates the difficulties in articulating methods of forensic knowledge using terms of language that are already unstable and signifies the problems inherent in the creation of a 'material witness' (a valid image of death born of a 'real' body). The response to Hilton's interview on *Sunday* illustrates that the imperiled translation of the dead is always proximate to the body of the forensic pathologist. As the intimate reader of the dead, the forensic pathologist moves close to the body to diagnose trauma. This enables superlative insight — 'I've often argued "well you had to be there to look at the body"' — yet constitutes a fraught privilege (G F Interview 18 October 1999). Following this culturally questionable proximity that alerts the community to unlawful forensic practices, law's ambiguous touch here recalls the spectre. That is, forensic authority is interlaced with a criminal shape, one that both embodies and breaks the law to know the limit (see Hutchings 2001, Biber 2006). At the same time that forensic pathology authorises itself by building bodily histories, it has been presented as a practice that looks beyond law.

As I have identified, the Walker report found a number of problems with the law in this area. The inquiry found that the law was unclear and was misunderstood by forensic specialists, leading to breaches of the limits of lawful forensic practice in relation to the dead body and

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the purpose of coronial post-mortem examinations (Walker 2001). Notwithstanding these breaches, Walker concluded that ‘the motivations and methods of all those involved were respectful of the donated bodies and sincere as to their beliefs that what they were doing was permissible. They should not be individually criticized for their mistaken views of the law’ (2001: 72–3). The insufficiency of the law which fails to fully regulate ‘the social compact by which dead bodies and human remains are interfered with by compulsory State process’ thus emerges as a crucial problem, where the law fails to effectively adjudicate these fraught tensions between representing and remembering the dead (2001: 69). Here, the law inadequately sanctions the examination and management of the dead body, lending confusion not only to the community, but also to the specialists charged with the responsibility of managing the dead. Following the Walker report, it emerges that forensic pathologists have navigated an inchoate legal path to develop their expertise.

The lacunae of death therefore widen, as forensic personnel, legislation and media reports miss the mark in the aftermath of death. In this sense, forensic workers exceeded the (unsatisfactory) limits of law in their service for law and trauma surged unconfined by law in law’s spaces. What emerges is the struggle of forensic service with both the law and wider culture — the latter exemplified in media attention that intensely closed in on Hilton seeking response and redress. Assuaging this ambivalence, Walker states that misreadings of the law are commonplace, and a matter of language — a ‘particular legislative phraseology’ — and that ‘people do misunderstand or make mistakes about the law, from time to time’ (2001: 88). Correspondingly and given this lacunae in law, he also noted that the unlawful experiments reflected a deficiency of ‘adequate legal instruction concerning the use of dead bodies and human remains’ (Walker 2001: 71). In light of the fact that the activities were founded in respect, with serious forensic, scientific and educational purposes, the report concludes that, crucially, the language used by the media misrepresented the situation (Walker 2001: 71–3). The Walker report also made a number of

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recommendations for reforms to the law which were effected by the *Human Tissue and Anatomy Legislation Amendment Act 2003* (NSW), including clarification of the statutory phrase ‘anatomical examination’ that covers subjecting the body to an experiment for medical or scientific purposes, clarification of the purpose of the coronial post-mortem examination and consent requirements around the use of human tissue.

It is appropriate, in my closing paragraph, to recall the media and their gothic imagination of Hilton. The crisis around the NSWIFM reminds us that imagination of mortuary practices betrays the apparent fluency of law’s administration of death. To bridle doubt law must exacerbate the wound, cut into the body and interrogate the gaps. These are scenes of acute ambivalence, no matter how the legislation is worded. Consequently, of crucial concern here have been the troubling images that come to us in the aftermath of death. These images signal the difficulties associated with managing the dead, as they force us to imagine the touch that is required to do so.

## Notes

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- 1 For the *Sunday* program transcript see: <[http://news.ninemsn.com.au/sunday/cover\\_transcripts](http://news.ninemsn.com.au/sunday/cover_transcripts)>.
- 2 See respectively <[www.bristol-inquiry.org.uk](http://www.bristol-inquiry.org.uk)>, <[www.rlcinquiry.org.uk](http://www.rlcinquiry.org.uk)>, <[www.show.scot.nhs.uk/scotogrev/Final%20Report/ropm-00.htm](http://www.show.scot.nhs.uk/scotogrev/Final%20Report/ropm-00.htm)>.
- 3 For example, see *Report into the Retention of Body Parts after Postmortems 2001* (SA), Interim and Final Reports of *Removal and Retention of Organs and Tissue Following Post-Mortem Examinations 2001* (WA). Following the recommendations of the WA reports, the *Non-Coronial Post-Mortem Examinations Code of Practice 2001* under s32A(1) of the *Human Tissue and Transplant Act 1982* (WA) was developed. Following recommendations of the Walker report, in 2003 NSW passed the *Human Tissue and Anatomy*

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*Legislation Amendment Act 2003* (NSW) revising earlier incarnations of the Bill. The SA parliament passed the Transplantation and Anatomy (Post-Mortem Examinations) Amendment Bill (2004).

- 4 Please see the reference list for selected details of this coverage. Headlines included: 'Donated Corpse used for Stabbing', 'Jessie's Final Indignity', 'The Truth can be Distasteful', 'Corpse Row Putting off Donors', 'Medical Ethics left at the Morgue Door', 'Privacy is Paramount in Ghoulish Business', 'Body Parts Plundered'.
- 5 Forensic pathologist Stephen Cordner, with Helen McKelvie, published an article containing post-mortem information in *The Sydney Morning Herald* 23 March 2001: 14.
- 6 Please see media articles in the reference list, and also examples of headlines at note 4 above.
- 7 *Inquiry into Matters Arising from the Post-mortem and Anatomical Examination Practices of the Institute of Forensic Medicine*: <[www.health.nsw.gov.au/](http://www.health.nsw.gov.au/)>.
- 8 The *Human Tissue and Anatomy Legislation Amendment Act 2003* (NSW) sought to address the gaps identified by the Walker report.
- 9 See *Coroners Act 1995* (Tas) s3, *Coroners Act 1985* (Vic) s3, *Coroners Act 1980* (NSW) s13, *Coroners Act 2003* (Qld) s8, *Coroners Act 1996* (WA) s3, *Coroners Act 1997* (ACT) s13, *Coroners Act 1993* (NT) s12, *Coroners Act 2003* (SA) s3.
- 10 See *Coroners Act 1995* (Tas) s36, *Coroners Act 1985* (Vic) s27, *Coroners Act 1980* (NSW) s48, *Coroners Act 2003* (Qld) s19, *Coroners Act 1996* (WA) s34, *Coroners Act 1997* (ACT) s21, *Coroners Act 1993* (NT) s20, *Coroners Act 2003* (SA) s22.
- 11 In this section I am partially referencing practices outlined in interviews with forensic personnel at the Victorian Institute of Forensic Medicine.
- 12 On the racialising practices of forensic pathology via the use of body charts and the racial iconography of forensic illustrations, see Pugliese 2004, 2005.

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