INSTITUTIONS OF THE DEAD:

LAW, OFFICE AND THE CORONER

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Submitted in total fulfillment of the requirements of

the degree of Doctor of Philosophy

April 2017

Melbourne Law School,

University of Melbourne
ABSTRACT

This thesis writes a history of the institutional life of coronial law in the nineteenth and twentieth centuries. The office of coroner has occupied an important role in the common law since the twelfth century. Its status may have waned, its duties may have changed, yet its enduring concern with investigating the causes of death has preserved its vital role in the juridical governance of the dead. This thesis offers a historical account of the modalities by which coroners have occupied their offices and formed lawful relations with the dead in Australia. It does so by examining coronial law in terms of its technologies and its institutional formations. The chapters that follow explore a range of lawful technologies, including place-making, architecture, super visum corporis, manuals and files, each of which became attached to the conduct of the office of coroner in the nineteenth and twentieth centuries. The thesis thus offers an institutional history of the coroner by thinking through how technologies have attached the dead to coronial institutions, how coroners have performed their offices, and how they have assumed responsibilities for caring for the dead.
DECLARATION

I make the following declarations:

i. The thesis comprises only my original work towards the degree of Doctor of Philosophy.

ii. Due acknowledgement has been made in the text of this thesis to all other material used.

iii. The thesis is fewer than 100,000 words in length, exclusive of the bibliography and appendices.

Marc Benjamin Trabsky
ACKNOWLEDGMENTS

To write a doctoral thesis involves learning from others, writing alongside others and a training in the conduct of scholarly office. I am indebted to the long mentorship provided by my supervisors at Melbourne Law School, Associate Professor Shaun McVeigh and Associate Professor Peter Rush. I thank Shaun and Peter for their intellectual generosity, critical support and pastoral care. Peter has been an invaluable mentor since undertaking my LLB and I first met Shaun as I was completing my MPhil. I thank Shaun for being an early supporter of my research interests in the dead and Peter for directing me towards the Old Melbourne Cemetery underneath the Queen Victoria Market. Both Peter and Shaun have challenged me, not only in supervising my thesis, but in their work as well, to think, write and live with law. I thank them for their patience while I embarked on my academic career.

Since 2011, I have enjoyed working with a diverse group of doctoral students and early career researchers at Melbourne Law School: Tom Andrews, Olivia Barr, Kathleen Birrell, Jason Bosland, Claire Oppermann, James Parker, Laura Petersen and Cait Storr. And since then a number of my colleagues have joined other law schools in Australia and elsewhere: Madelaine Chiam, Julia Dehm, Sara Dehm, Maria Elander, Luis Eslava, Jake Goldenfein, Vicki Huang, Edward Mussawir, Yoriko Otomo, Connal Parsley and Amanda Scardamaglia. I want to thank all of them for establishing, fostering and contributing to a dynamic, collegial and creative community for writing a doctoral thesis. I also want to acknowledge the mentorship I received in both research and teaching opportunities from Professor Andrew Kenyon, Dave McDonald, Professor Megan Richardson, Juliet Rogers and Professor Alison Young at The University of Melbourne.
From 2013, I worked on my doctoral thesis while also juggling my duties as a Lecturer at La Trobe Law School, La Trobe University. I want to first thank Professor Paula Baron for taking a chance on employing me, but also Professor Patrick Keyzer for providing material support throughout the later stages of the process. I am fortunate to work in a dynamic law school that actively promotes law and humanities research as well as interdisciplinary scholarship. I have thus enjoyed the encouragement, enthusiasm and support of my colleagues: Tobias Barkley, Fleur Beaupert, Madelaine Chiam, Pascale Chifflet, Kirsty Duncanson, Maria Elander, Professor Anne-Maree Farrell, Emma Henderson, Anita Mackay, Jill Murray, Tarryn Phillips, Hannah Robert, Savitri Taylor, Raul Sanchez Urribarri and David Wishart. Lastly, I want to especially thank at La Trobe Law School for their friendship, generosity and emotional support: Laura Griffin and Fiona Kelly.

This thesis was supported by an Australian Government Research Training Program Scholarship. I also received a living allowance through a Melbourne Research Scholarship from 2011 to 2012. I have received funding to present research based on my doctoral thesis at various conferences, seminars and workshops since 2011 from Melbourne Law School Research Support Funds, La Trobe Law School Conference Funds and La Trobe University. I presented draft versions of Chapter 3 while as a Visiting Scholar at Kent Law School, University of Kent in 2016. I thank Connal Parsley for his hospitality during my visit, but also for his comments on my chapter. I also want to thank Professor Maria Drakopoulou, Hyo Yoon Kang, Ed Kirton-Darling, Rose Parfitt and Nick Piska for participating in the conversations that followed the seminar. This chapter was additionally presented at the Law Futures Centre, Griffith University and Centre for Social Ethics and Policy, Manchester University in 2016. I thank Professor John Flood and Ed Mussawir for inviting me to Griffith University,
and Professor Margot Brazier, Professor Ian Burney and Danielle Griffith for their engaging conversations around my work at Manchester University.

I wish to thank staff at the Public Records Office of Victoria, Victoria Police Museum, Victorian Institute of Forensic Medicine Library, State Library of Victoria, Special Collections at the Baillieu Library, The University of Melbourne and the Wellcome Library in the United Kingdom. I published an early version of Chapter 1 as Marc Trabsky, ‘Walking With the Dead: Coronial Law and Spatial Justice in the Necropolis’ in Edward Mussawir and Chris Butler (eds), *Spaces of Justice: Positions, Passages, Appropriations* (Routledge, 2017). This chapter has benefited from conversations following conferences as far back as 2012, but more recently during invited seminars at Flinders University and the University of Newcastle in 2016. I thank Professor Margaret Davies, Maria Giannacopoulos, Angela Melville and Kevin Sobel-Read for their insightful comments. I published an early version of Chapter 2 as Marc Trabsky, 'The Custodian of Memories: Coronial Architecture in Nineteenth Century Melbourne' (2015) 24(2) *Griffith Law Review* 199. This chapter benefited from the intimate conversations during a workshop on ‘Spaces of Justice: Grounds, Walls, Openings’ at Griffith University, 12-13 December 2013. I want to thank Ed Mussawir and Chris Butler for inviting me to the workshop on North Stradbroke Island, but also to all the participants at the workshop for their encouraging words and astute suggestions. Lastly, I published an early version of Chapter 4 as Marc Trabsky, 'The Coronial Manual and the Bureaucratic Logic of the Coroner's Office' (2016) 12(2) *International Journal of Law in Context* 195. I want to thank Rebecca Scott Bray for inviting me to participate in the special issue and her long support of my research in coronial studies.

For their stimulating and thought-provoking conversations about art, philosophy and life, I thank my dear friends: Bella Li, Ohad Kozminsky and
Agata Wierzbowski. I also want to thank again my friend, Laura Griffin, for her indispensable copy-editing of my thesis. Lastly, I want to show my appreciation to my parents, Karen and Morris Trabsky, who encouraged me from an early age to write, to keep on writing, and to learn from my mistakes. They have unconditionally supported my pursuit of higher education. I acknowledge their financial sacrifice, material contributions and emotional support. My sister Dani Trabsky has also given me inspiration over the years and if it was not for her own academic pursuits I may never have followed this pathway.

Jacinthe Flore has been my most ardent interlocutor, reviewer and supporter throughout this project. She has been often patient, sometimes tough, but always caring. I couldn’t have completed this enormous task without her and I cannot capture in words the incredible support that she has given me. I thank her for the love that we share.

I dedicate this thesis to the memory of our ancestors.
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INTRODUCTION

One does not get rid of the dead, one is never finished with them.¹

Many events precipitated the abolition of the deodand in the nineteenth century. The most notable was the Sonning Cutting railway accident of 1841, which profoundly affected the political appetite for legislative reform. On 24 December 1841, a goods train travelling from London Paddington to Bristol Temple Mead derailed near Reading, resulting in nine deaths and injuring sixteen passengers. The coronial inquest that immediately followed the incident found that a bank slip in the cutting lead to the derailment, while the deaths were caused by the proximity of the coaches to the engine. The jury, much to the chagrin of the coroner, held the owner of the train responsible for causing the derailment and declared that the train, its engine, tender and carriage, constituted a deodand, which they appraised at £1000. They required Great Western Railways to pay the value of the deodand to the Crown, who would presumably forward it as compensation to the families of the deceased.²

However, the company successfully appealed against the inquest on a technicality, resulting in public outcry and media furore concerning the difficulty in the modern era of holding train owners accountable for causing railway deaths. The Sonning Cutting accident inflamed political debates about

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² Legal historians point to the origins of the deodand in the twelfth century, though its derivation from the Latin *deo donatus* (‘a gift to God’) suggests that it could have appeared much earlier. Its initial purpose was to raise revenue for the King, however, over time the Crown passed the value of the chattel to the deceased’s relatives or a charitable institution. For a critique of the contingency of the deodand as a remedy for families of the deceased, see Edward Kirton-Darling, ‘Searching for Pigeons in the Belfry: The Inquest, the Abolition of the Deodand and the Rise of the Family’ (2014) *Law, Culture and the Humanities* 1, 8-9 <http://journals.sagepub.com/doi/full/10.1177/1743872114560701>
the equity, utility and economics of the deodand in the age of mechanised transportation.

Deodands posed a fiscal problem for the railway industry in the nineteenth century. The doctrine prescribed that any animate or inanimate object that moved towards the death of a person was to be forfeited to the sovereign: “[t]hus a mill-wheel was often deodand but not the whole mill, a ship but not its cargo, or a branch and not the whole tree”. 3 Certainly a train, but not its goods, would fit this vague definition. With the rise of urbanisation, the invention of steam power and machine based production, the number of fatal accidents caused by movable entities increased exponentially in the first half of the nineteenth century. Without any recourse to financial compensation, families resorted to the remedy of the deodand, hoping that coronial jurors would hold capitalists responsible for the deaths their chattels caused and compel them to properly recompense families for the loss of the deceased. In the industrialisation of Britain, as labourers eschewed horses for trains and moved from rural farms to urban factories, the deodand threatened to financially cripple railway owners. It is no wonder then that they strenuously lobbied parliament to put an end to what was believed to be an anachronistic law. The invention of the railway accident preceded both the Deodands Act 1846 (UK) and the Fatal Accidents Act 1846 (UK), which abolished the law of deodands and replaced it with a right for bereaved relatives to claim damages following the death of the victim. 4 The abolition of the law of deodands

represented a pivotal moment in the modernisation of the office of coroner in the British Empire.

The coroner first appeared in England in 1194.\(^5\) His primary duty through much of the Middle Ages was conducting inquests on specific types of deaths, such as violent, sudden or accidental deaths, however, he also held inquests on treasure troves, wrecks of the sea and royal fish; received abjurations of the realm; heard confessions of felons and appeals from approvers; and managed exactions and outlawries.\(^6\) The coroner was recognised as a powerful and influential officer of the realm, second to none other than the sheriff, whose actions became subject to the former’s oversight. His importance was concomitant to his duties, which involved collecting fines, amercements, forfeitures and deodands, and keeping other financial interests of the Crown.\(^7\) The expense of waging crusades in the

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\(^7\) Hunnissett argues that this constituted the initial instructions received by coroners in 1194: above n 3, 3. The duties of the coroner were first set out in *Officio Coronatoris: The Office of The Coroner* (4 Edward I AD 1275, 1276), which Hunnissett notes was actually an extract from Henri de Bracton’s *De Legibus et Consuetudinibus Angliae*, but over time assumed the form of a statute. It regulated the conduct of the English coroner until the enactment of the *Coroners Act 1887* (UK).
twelfth century placed immense pressures on the sovereign to devise new avenues for raising revenue, particularly with regards to the administration of criminal law, and it was the responsibility of the coroner to assist the sheriff in directing such profits to the Crown. The medieval coroner essentially served as a tax collector and his responsibilities towards the King were fiscal in nature. Even an inquest on a dead body, following an unnatural death, provided many opportunities for collecting amercements from individuals or townships.  

We have begun with a historical account of the deodand not simply because it recalls the fiscal origins of the coroner or because it refers to the potentiality of the inquest as a tool for social welfare. Rather, the deodand is significant because it exemplifies the important role that technology assumed in the transformations of the coronial office in the nineteenth century. The deodand was both a juridical technique and a material object deployed by the coroner to cultivate a fiscal relationship between the living and the dead. Several scholars have described the legislative reforms of the nineteenth century, including the abolition of the deodand, as part of a process to “rationalize and standardize the office of coroner”. While many of the coroner’s financial duties were certainly consigned by statutes to the tomes of legal history, we should consider the role that technology played in rationalising, professionalising and bureaucratising the institutional life of coronial law. The nineteenth century coroner differed from the medieval knight elected by county freeholders to

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10 Kirton-Darling, above n 2, 5. Legislative reforms included the Births, Deaths and Marriages Registration Act 1836 (UK), which formally required coroners to report all deaths to local registrars; the County Coroners Act 1860 (UK), which provided them with an annual salary; the Coroners Act 1887 (UK), which stripped them of all remaining fiscal duties; and the Local Government Act 1888 (UK), which abolished the election of coroners and replaced it with council appointments.
“keep watch over the profits of the Crown” in the thirteenth century.\textsuperscript{11} By the 1880s, he had assumed the persona of a civil servant, preoccupied with form-filling and other administrative tasks, collecting statistics and recording the particulars of death, and submitting detailed reports, such as inquisitions, to relevant governmental agencies.

This thesis writes a history of the institutional life of coronial law in the nineteenth and twentieth centuries. The office of coroner has occupied an important role in the common law since the twelfth century. Its status may have waned, its duties may have changed, yet its enduring concern with investigating the causes of death has preserved its vital role in the juridical governance of the dead. This thesis offers a historical account of the modalities by which coroners have occupied their offices and formed lawful relations with the dead in Australia. It does so by examining coronial law in terms of its technologies and its institutional formations. The chapters that follow explore a range of lawful technologies, including place-making, architecture, \textit{super visum corporis}, manuals and files, each of which became attached to the conduct of the office of coroner in the nineteenth and twentieth centuries. The thesis thus offers an institutional history of the coroner by thinking through how technologies have attached the dead to coronial institutions, how coroners have performed their offices, and how they have assumed responsibilities for caring for the dead.

\textsuperscript{11} Wellington, above n 5, 6.
Literature and Methods

In this section, I situate the thesis within the ‘archival turn’ in legal history and literature on ‘jurisdictional thinking’. The thesis contributes to both fields of scholarship by developing a methodology for writing an institutional history of coronial law. I detail what it means to write a history of the institutional life of coronial law, in particular how legal scholars must pay attention to the technologies of office, forms of jurisdiction and conduct of lawful relations with the dead. Towards the end of this section, I note how this thesis contributes to historiographies of death in the nineteenth and twentieth centuries by holding on to institutions of the dead as an object of historical writing.

Coronial Archives

In a special issue on ‘Evidence and the Archive’, Katherine Biber and Trish Luker ask what it means for legal scholars to ‘think archivally’.\(^\text{12}\) They question the “ethical, aesthetic, and emotional aspects of archives and the demands that law’s materials make upon scholars to exercise care and judgment”.\(^\text{13}\) While the ‘archival turn’ in legal scholarship is recent, as Renisa Mawani explains, it follows an earlier turn in the humanities and social sciences.\(^\text{14}\) Historians, anthropologists and literary scholars have long questioned “conventional modes of writing history, highlighting the (im)possibility of recuperating historical and archival texts as ‘truth’ and urging the need to employ critical and literary modes of reading”.\(^\text{15}\) Inspired by insights from postcolonial studies,

\(^{\text{13}}\) Ibid.
\(^{\text{15}}\) Ibid 340. Since the early 2000s there has been a proliferation of publications on archival history: Carolyn Hamilton et al (eds), Refiguring the Archive (Springer, 2002); Carolyn Steedman, Dust: The Archive and Cultural History (Rutgers University Press, 2002); Antoinette Burton (ed),
“[s]cholars have questioned the truth, authority, and authenticity of the archive as an unshakable and privileged domain of the past”.

In the legal discipline, the archival turn problematises the way scholars have approached legal archives as a source of truth, a site of enlightenment about the origins of law. But more than this, it has prompted legal historians to reflect on the ‘allure and anxieties’ of ‘law’s archives’, to question the ethics of our own engagement with its records. The question that arises in working archivally with law is one of scholarly conduct. It is a problem of establishing an ethical relation to the uses of archival research.

Thinking archivally involves conceptualising law’s archives as “the product of ongoing struggles over the production, politicization, and institutionalization of knowledge”. It entails approaching legal archives as already marked by infinitesimal acts of curation. Echoing Keith Jenkins words about history in general, we can say that the archive is “a literary narrative about the past, a literary composition of the data into a narrative where the historian creates a meaning for the past”. The chapters that follow construct a coronial archive from newspapers, blueprints, rolls, registers, memos, circulars, documents and manuals. Yet this specific archive, like all legal archives, remains incomplete,
inexhaustible and uncertain. This is particularly so in what it fails to record: the unknown dead.\footnote{On what is forgotten, excluded and silenced from the archive, see Michel-Rolph Trouillot, \textit{Silencing the Past: Power and the Production of History} (Beacon Press Books, 1995).} Here, I refer not only to deaths that were not investigated by coroners, inquests that were not recorded and correspondence that was lost along the way, but the names of the dead that were forgotten, that were never identified and will remain forever absent. These names belonged predominantly to women, non-Europeans and the poor and they are redolent of many untold stories of botched abortions, suicides, hate crimes, industrial accidents, and deaths in custody. To reflect on how we can form an ethical relationship to the archive, this thesis argues that legal scholars must take responsibility for its incompleteness and the subjectivity of academic curation. Following from Michel Foucault’s assertion that the archive is “the law of what can be said”,\footnote{Michel Foucault, \textit{The Archaeology of Knowledge & The Discourse on Language} (A. M. Sheridan Smith trans, Pantheon Books, 1972) 129 [trans of: \textit{L’Archéologie du Savoir} (first published 1969)].} our legal histories must do more than describe what happened in the past, they should interrogate the excesses of the archive, the “marginalia, transgressions between official and unofficial records, rumour, the unexpected, unwritten, and the unsaid”.\footnote{Biber and Luker, above n 12, 9.}

offered a methodology for challenging materialist and functionalist dispositions to historical writing. As Robert W Gordon opines, it included

any approach to the past that produces disturbances in the field—that inverts or scrambles familiar narratives of stasis, recovery or progress; anything that advances rival perspectives ... or that posits alternative trajectories ... in short any approach that unsettles the familiar strategies that we use to tame the past in order to normalize the present.25

Critical legal history positioned law and society as mutually constitutive. It proffered “a ‘constitutive’ theory of law-society relations” and in doing so, set out a methodology for writing a history of the everyday practices of legal institutions.26 Influenced by poststructuralism, critical legal history provided scholars with tools for writing a history of ideas, a history that renders law contingent, its origins socially constitutive and its doctrine contradictory. It problematised both a static and dynamic view of legal history. The former treats the past as timeless, while the latter constructs grand narratives of law’s progress.27

Christopher Tomlins argues that the critical turn in historical-legal scholarship and its focus on contingency “has resulted in a fetishisation of the irreducible

complexity of relations between legal phenomena and their environment”. What constitutes the ‘critical’ in critical legal history is its emphasis on the plurality, contingency and indeterminacy of legal histories. Yet as Tomlins explains, its “totalization of indeterminacy” risks re-introducing determinacy into historical practices. This is most apparent in critical legal history’s “endorsement of legal history as the history of doctrine”. Hence, while I am sympathetic to Gordon’s assertion that law is plural, indeterminate and ambiguous, this thesis follows Tomlins’ critique that writing a history of law is irreducible to rendering it contingent. Theories of contingency seldom allow for histories of the specificity of lawful technologies and administrative practices. They provide little opportunity for writing a history of the temporal particularities of juridical techniques and the materialising forms of institutional life.

Guided by the archival turn in legal scholarship, and critical approaches to legal history, this thesis develops a methodology for writing a history of coronial institutions. Firstly, it contends that an institutional history of coronial law must be attuned to a plurality of archives, to their inexhaustibility, and to the role of the scholar in shaping their contours. Writing from and with archives is a form of ethical conduct. Thinking archivally asks legal scholars to take responsibility for the judgements they make and the narratives they construct of the past. Secondly, in writing a history of the institutional formations of coronial law, we


30 Ibid 160.

31 For a recent example of scholars attending to the responsibility of narrating the past as well as the present, see Ann Genovese, Shaun McVeigh and Peter D Rush, ‘Lives Lived with Law: An Introduction’ (2016) 20 Law Text Culture 1.
must be cognisant of the *specificity* of the historical accounts that are narrated, and track their continuities and discontinuities. While the writing of an institutional history acknowledges its epistemological fragility, what makes this genre important for accounting for the transformations of the coronial office, is the way it holds coronial law to the particularity of its technologies and institutional arrangements.

**Thinking Institutionally**

Michel Foucault’s œuvre provides tools for writing an institutional history of coronial law. In *Discipline and Punish*, he historicised the birth of the prison by theorising the modalities of institutions, which had at their disposal specific technologies for investing the body “to carry out tasks, to perform ceremonies, to emit signs”.32 And in the *History of Sexuality, Volume 1*, Foucault critiqued discourses of sexuality by examining a range of institutions in their concrete arrangements.33 Institutions appear in his writings on prisons, sexuality, medicine and the human sciences as material and discursive functionings in a network of power-knowledge relations.34 In this thesis, however, my understanding of institutions is also influenced by Giambattista Vico’s assertion that “[t]he order of ideas must proceed from the order of institutions”.35 Institutions bind human life. They attach life to laws, but also life to places, traditions and rituals. Institutions are thus inherently relational, material and

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technical. They bring human beings together and organise the conduct of their relations. I argue in this thesis that a history of the conduct of the office of coroner should not be thought of outside of its institutional relations, formations and arrangements.

Thinking institutionally offers a distinctive methodology for writing a history of coronial law in the nineteenth and twentieth centuries. This turn towards examining the institutional life of law has been inspired by recent reflections in critical legal theory on the problem of jurisdiction. Following the writings of Shaunnagh Dorsett and Shaun McVeigh, jurisdiction has become understood as much more than the exercise of sovereignty over territory or land. They develop “[j]urisdictional thinking” as a “distinct way of representing authority because it gives us the voice or idiom of law”. To put this differently, jurisdiction is both technical and material; it is, as McVeigh writes, “the technical means by which a conduct of lawful relations is given shape”. Jurisdiction is thus a practice and activity of lawfulness. It is a technique for forming lawful relations with humans, things and places. Jurisdictional thinking is therefore important for writing an institutional history of coronial law, because it provides tools for examining the ways in which the office of

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36 See e.g., Shaun McVeigh (ed), Jurisprudence of Jurisdiction (Routledge, 2007); Edward Mussawir, Jurisdiction in Deleuze: The Expression and Representation of Law (Routledge, 2011); James E K Parker, Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi (Oxford University Press, 2015); Mariana Valverde, Chronotopes of Law: Jurisdiction, Scale, and Governance (Routledge, 2015); Olivia Barr, A Jurisprudence of Movement: Common Law, Walking, Unsettling Place (Routledge, 2016).

37 Shaunnagh Dorsett and Shaun McVeigh, Jurisdiction (Routledge, 2012).


coroner cultivated lawful relations with the dead; that is, how the office of coroner cared for the dead in the nineteenth and twentieth centuries.\(^{40}\)

In ‘The Political Technology of Individuals’, Foucault asserted that ‘caring’ for individual life emerged as “a duty for the state” in the eighteenth century.\(^{41}\) This accompanied additional writings on the care of the self and the ethical conduct of life in antiquity.\(^{42}\) I argue in this thesis that the dead appeared as an object of juridical governance through the need to ‘care’ for them in the eighteenth and nineteenth centuries. However, where I diverge from Foucault is in his emphasis on governance as a political technology. Indeed, this thesis conceives of practices of caring for the dead as more specific, perhaps more local than techniques of governmentality.\(^{43}\) It conceptualises care as a form of jurisdictional techniques. What jurisdictional thinking brings to the fore then is an idea of law as an arrangement of institutional relations, ethical conduct and technologies of office.\(^{44}\) Thinking with jurisdiction asks legal scholars to conceive of law in terms of the materiality of its institutions, the technologies attached to institutional practices and the performances of office that sustain the vitality of institutional life.

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\(^{40}\) In *A Jurisprudence of Movement*, Olivia Barr studies “the creation and conduct of lawful relations with the dead … as a jurisdictional relationship”: above n 36, 209. I briefly discuss this text in the following section and then in Chapter 1.

\(^{41}\) Michel Foucault, ‘The Political Technology of Individuals’ in Luther H Martin, Huck Gutman and Patrick H Hutton (eds), *Technologies of the Self: A Seminar with Michel Foucault* (Tavistock, 1988) 145, 147.


\(^{44}\) This thesis examines the languages of law in the context of other jurisdictional technologies, and thus suggests that law cannot be reduced to an interplay of language. Hence, the technologies of coronial institutions must be studied in their particular disciplines, rather than collapsed into the all signifying concept of language: Cf Peter Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (Weidenfeld and Nicolson, 1990) 4. For more on the relationships between language and law see Judith Butler, *Excitable Speech: A Politics of the Performative* (Routledge, 1997); Marianne Constable, *Our Word is Our Bond: How Legal Speech Acts* (Stanford University Press, 2014).
To write an institutional history of coronial law, a history that pays attention to its institutional formations, we need to explore the ways in which coroners occupied their offices, and the technologies that pertained to the performances of those offices. The language of office, derived from the Latin word officium and the Greek word leitourgia, etymologically refers to the conduct of a role. Cicero described officium, which he translated from the Greek word kathekon, in De Officiis, as “what is appropriate, opportune” in the circumstances.45 Officium was not equivalent to “a juridical or moral obligation nor a pure and simple natural necessity”.46 Rather, it determined what one ought to do and how one ought to behave in a social situation, that is what was most appropriate to do in the circumstances in which one occupied a particular role. In Ancient Rome, when appearing in public or private life, in households or in the agora, every (free male) person occupied a role, an officium, and during their incumbency they were bound by certain powers and rights. Giorgio Agamben suggests that from the seventeenth century officium came to denote duty and responsibility, whether moral or juridical.47

In the introduction to Opus Dei: An Archaeology of Duty, Agamben remarks that the language of office continues to influence modern culture, philosophy and politics. One of the reasons for this is that office has come to designate the conduct of government and in particular the government of public service. It has also provided a specificity that is missing in Foucault’s concept of the technology of government. The state has become identified as “a structure of offices”, while civil servants, especially ministers, have become typified by the

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46 Ibid 72.
office they perform. For Paul du Gay, the office is “an institution that the state and other juristic bodies of public law make use of in order to accomplish certain purposes”. It forms part of a hierarchy of government and institutes delegated responsibilities. The notion that an office is performed indicates that office holders cultivate a persona and require necessary technical skills and competencies to carry out acts that pertain to their persona.

This thesis draws on seventeenth century ideas of office as duty, obligation and responsibility, as well as the concept of role as the expression or performance of office. The language of office is useful for thinking institutionally about law, because it allows for connections to be made between conduct and institutions, duties and personae, and responsibilities and character. Office reveals a plurality of judicial roles in legal institutions and signifies the particularity of each performance or expression of a role.

In writing an institutional history of coronial law, we must also concern ourselves with questions of technology that are particular to the jurisdiction, for as Dorsett and McVeigh write, technologies comprise the repertoire of institutional practice. Technology derives from the Ancient Greek word for technique (technē), which denotes a skill, art or craft. For Marcel Mauss, technē was conceived of as an implement, tool or instrument capable of producing “a

52 Dorsett and McVeigh, above n 37.
mechanical, physical, or chemical effect”.54 Technique involved a skilful, operational or industrial process, action or practice, which could only be harnessed by human “technician[s]”.55 It is thus possible to conceive of coroners as occupying the role of Mauss’ technicians in the nineteenth and twentieth centuries, who with the assistance of a wide range of techniques (technê) were capable of forming and shaping relations properly belonging to law.

Dorsett and McVeigh contend that jurisdiction is a “technique and craft of legal ordering and the art of creating legal relations”.56 It is a practice, an activity and a skill not simply confined to reading case law or interpreting legislation. Jurisdictional techniques “mark the existence of legal institutions and give shape to lawful relations [and] the institutional forms of the authorisation of law”.57 The jurisdictional techniques studied in this thesis, such as place-making, architecture, super visum corporis, manuals and files, hold on to law’s institutional life. They represent the way the coroner occupied his office and the way he conducted lawful relations with the dead. To put this differently, jurisdiction, office and technique are not abstract concepts; they are intrinsic to writing an institutional history, to account for how lawful technologies have attached the dead to coronial law. They are indispensable for framing how the living formed and cultivated lawful relations with the dead with the nineteenth and twentieth centuries.

By ‘lawful’ I am specifically referring to a quality of relations that properly belong to law, and I am denoting technologies that mediate how humans live

55 Ibid 114.
56 Dorsett and McVeigh, above n 37, 4.
57 Ibid 34. Parker, above n 36, 40, likewise discusses the concept of technique as “capable of holding together all the various dimensions of law’s formal and material life ... [in] juridical practice and the craft of judgment”.

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with law, how they attend to law and how they inhabit its institutions.\textsuperscript{58} Lawfulness then alludes to the way different relations – technical, spatial, sensory, intimate and political – and technologies – place-making, architecture, \textit{super visum corporis}, manuals and files – are attached to laws and in turn, hold laws to institutions. This thesis demonstrates that the question of lawful relations, and the technologies that bind the dead to law, has assumed many different forms in the nineteenth and twentieth centuries. Caring for the dead has been central to the occupation of the office of coroner, and as I will show, the technologies that attached the dead to coronial institutions in the modern era, ranged from walking to filing, viewing to recording. The concept of lawfulness thus draws attention to a particular genre of writing an institutional history, which I employ to examine the way coroners assumed responsibility for caring for the dead in the nineteenth and twentieth centuries.

\textit{Historiographies of Death}

This thesis challenges historiographies of death, which emerged as a prominent field of historical scholarship in the 1970s.\textsuperscript{59} Death as an object of social history is relatively recent, particularly when compared to the sustained interest across sociology, anthropology, psychology and theology since at least the late

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\textsuperscript{58} Dorsett and McVeigh, above n 37, 6; Barr, above n 36, 35.  
\end{flushleft}
Indeed, the social sciences have informed histories of death (especially the psychoanalytic notion that its denial is a natural quality of being human) and they have contributed to what I term a ‘repressive hypothesis’ of death, most eloquently articulated by the French historian, Philippe Ariès. In Ariès’ oeuvre, transformations in Western attitudes towards death were spread across four temporally distinct stages: tamed death, the individual death, the death of the other, and the denial of death. Whereas the taming of death in the Middle Ages fostered a close intimacy between the living and the dead, the eighteenth century projected death as an “unaccepted separation” between the self and other, and by the late nineteenth century death had become forbidden, “unnameable” and sequestered in medical and legal institutions. In the final chapter of The Hour of Our Death, Ariès argued that the institutionalisation of the dead in the nineteenth century progressed to its banishment in the twentieth century, where death was refused and the dead


63 Ariès, Western Attitudes Toward Death, above n 62, 106 (emphasis in original).
were hidden in hospitals, morgues and cemeteries. For Walter Benjamin, this historical process took place much earlier in the West:

It has been observable for a number of centuries how in the general consciousness the thought of death has declined in omnipresence and vividness. ... Dying was once a public process in the life of the individual and a most exemplary one ... In the course of modern times dying has been pushed further and further out of the perceptual world of the living.

The repressive hypothesis dominated social histories of death until a ‘critical turn’ in the 1990s. Refuting Ariès’ thesis that death had disappeared from the public sphere – as well as the writings of Sigmund Freud, Geoffrey Gorer, and others – historians, sociologists and anthropologists claimed that the late twentieth century has witnessed an incitement to discourse about death. Challenging the notion that the dead were sequestered from the living by the late nineteenth century, several scholars have also argued that death has been both absent and present across all time periods, or as Warren Smith writes, “it

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64 Ariès, *The Hour of Our Death*, above n 62, 559-601.
66 Though an early critique of Ariès’ thesis was by the social historian David Cannadine, ‘War and Death, Grief and Mourning in Modern Britain’ in Whaley, above n 59, 187-242.
surfaces and submerges but never disappears”.68 Despite this critical turn, as Jonathan Dollimore points out, the repressive hypothesis still persisted in historical, sociological and philosophical treatises on death towards the end of the twentieth century.69 Even in The Revival of Death, one of the most prominent works associated with the birth of ‘death studies’, the emphasis on a revival (and a recent incitement of discourse) presupposes a prohibition against discourses of death in the past. I argue that the persistence of the repressive hypothesis – or rather its oblique revival in scholarship that encourages us to talk more about death – arises from a misrecognition of the institutional forms that the dead occupied in the past.

While social histories of death have provided tools for historicising how the living engaged with the dead in different epochs, advocates of the hypothesis that death was denied in the late nineteenth century tend to render institutions from that period monolithic, despotic and lifeless. On the contrary, I contend that historical writing must pay attention to a plurality of institutional practices in the modern era and account for their productive capacity in forming and cultivating lawful relations with the dead. There has always been life in legal institutions, as this thesis will argue by way of the coronial office in Australia and in the expression of their vitality, it depicts institutions teeming with the chatter of the dead. To put this differently, discourses of death were not repressed per se by medical and legal institutions in the nineteenth and twentieth centuries. But they were resignified, reconceptualised and

69 Jonathan Dollimore, Death, Desire and Loss in Western Culture (Routledge, 1998) 119-123. Examples of this persistence include Zygmunt Bauman, Mortality, Immortality and Other Life Strategies (Polity Press, 1992); Jean Baudrillard, Symbolic Exchange and Death (Iain Hamilton Grant trans, Sage Publications, 1993) 126 [trans of: L’échange symbolique et la mort (first published 1976)]. For Baudrillard the entire ‘rationality’ of Western culture is organised around “the exclusion of the dead and of death”.

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transfigured, where denial was but one element of speaking with and relating to the dead.\textsuperscript{70}

This thesis challenges social histories of death by giving a historical account of institutions of the dead. It is all too common to find in the literature a conceptual slippage between the syntax of the dead and death. For example, in *Western Attitudes Towards Death*, Ariès often fails to distinguish between the materiality of the dead and the phenomenon of death. This is further apparent in philosophical treatises on the relationship between language and death, as well as metaphysical reflections on the impossible experience of death.\textsuperscript{71} A notable exception to this general trend is Thomas Laqueur’s monumental tome, *The Work of the Dead*, where the dead are positioned as isomorphic to the corpse: “[T]he dead body matters, everywhere and across time, as well as in particular

\textsuperscript{70} Lindsay Prior has made a similar point in *The Social Organisation of Death: Medical Discourse and Social Practices in Belfast* (Macmillan, 1989) 5. As a sociologist, Prior is interested in “the ways and means through which death is socially organised in the city of Belfast”. However, in the first chapter he critiques the idea that “death has been hidden, isolated and privatised in modern western societies. … Indeed, when we examine the various disciplines through which that condition is represented we can see quite clearly that the analysis of death has always maintained a steady and sturdy footing in the consciousness of the West”.

times and particular places”.\textsuperscript{72} While this thesis often deploys the language of the corpse and the dead interchangeably, my intention is not to reduce the latter to the decaying flesh of mortal remains. The work of the dead was far more pervasive in the nineteenth and twentieth centuries than setting the final resting place of the corpse or activities of burial, which appear as the favoured subjects of social historians of death.\textsuperscript{73} The institutional presence of the dead was far more penetrating than the mere inscription of names on tombstones.

I argue that it is only by holding on to the dead as historical objects in themselves, and giving a historical account of the institutional relations they form, that we can interrogate questions of lawful relations. To write an institutional history of the life of coronial law, I suggest that we must disavow the temptations to liberate death from the conceptual shackles of its banishment in the past, and interrogate the dispositions of the dead, the conduct, forms and roles they assumed in the histories of our world. If this hypothesis is accepted, it follows that collapsing the language of death with the language of the dead may account for the conspicuous absence of legal institutions in most social histories of death. As such, this thesis questions the place of legal institutions in social histories of death by taking seriously the technologies of the coronial office and the formation of lawful relations between the living and the dead.

Situated in the interdisciplinary field of comparative literature, and inspired by the writings of Giambattista Vico and Martin Heidegger, Robert Pogue Harrison questions in \textit{The Dominion of the Dead} the material, technical and institutional philology of the dead. His book explores “some of the manifold relations the living maintain with the giant family of the dead in Western

\textsuperscript{72} Laqueur, above n\ 59, 1.
\textsuperscript{73} See e.g., above n\ 59.
culture, both in past and present times”.74 While not a social historian, Harrison examines how law was ‘authored’ by the dead in antiquity, that is how the act of burial grounded the gathering of laws in human history, and how law continues to gain its legitimacy by the exertion of the powers of the dead over the living.75 The relations that Harrison studies in this book are not limited to the grave, and include the earth, house, grief, logos, repetition, name and image. In each chapter, he resolutely holds on to the dead as an object of inquiry, sometimes as a corpse, other times as an image, a person and even an institution, but never as death itself. In fact, he berates Martin Heidegger for writing an ontology of death, which in Harrison’s view remains inferior to a philological interrogation of the dead.76

In the preceding paragraphs, I have outlined how this thesis intervenes in historiographies of death by giving a historical account of institutions of the dead. This account refutes the ‘repressive hypothesis’ of death and holds on to the dead as an object of historical writing. To conclude this section I question the role that the dead have played in legal scholarship, specifically what Rebecca Scott Bray and Greg Martin have recently named ‘coronial studies’.77 For the category of the dead as an object of legal scholarship has long been subject to doctrinal analysis, in particular as to whether a corpse constitutes a person or a thing in law.78 The question of the juridical status of the corpse has

75 Ibid ix-x.
76 Ibid 93.
77 Rebecca Scott Bray and Greg Martin, ‘Introduction: Frontiers in Coronial Justice – ushering in a new era of coronial research’ (2016) 12(2) International Journal of Law in Context 103, 103. They note that “[w]here the uptake of the death studies movement in the social sciences more broadly has expanded the interdisciplinary study of death, comparatively little attention has focused on the work of coroners or their death investigation practices”. As such “coronial studies continue to percolate at disciplinary margins”.
78 There is an abundance of literature on this topic: see e.g., Prue Vines, ‘Resting in Peace? A Comparison of the Legal Control of Bodily Remains in Cemeteries and Aboriginal Burial
unsettled the common law since at least the seventeenth century.\textsuperscript{79} Where it has been held to be a thing, scholars have asked what obligations, if any, pertain to owning the corpse, and where it has been held to constitute a person, they have queried whether the dead possess rights.\textsuperscript{80} The central question in doctrinal

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\textsuperscript{79} The seventeenth century Haynes Case (1614) 77 ER 1389, 1389, which questioned whether a winding sheet could be stolen from a grave, defined the corpse as neither a person nor a thing (\textit{res nullius}), “but a lump of earth hath no capacity”. Following this case Edward Coke affirmed that the corpse could not own things, but neither could it be considered property in itself: Sir Edward Coke, \textit{The Third Part of the Institutes of the Laws of England: Concerning High Treason, and Other Pleas of the Crown and Criminal Causes} (Lawbook Exchange, 2001). Throughout the eighteenth to the twentieth centuries, the common law reinforced this doctrine, notably the High Court of Australia decision in \textit{Doodeward v Spence} [1908] HCA 45 that a corpse could only become a thing if by the labour or skill of the living it was transformed into something else. See also \textit{R v Lynn} (1788) 100 ER 394; \textit{R v Sharpe} (1856–1857) 169 ER 959; \textit{Williams v Williams} (1882) 20 Ch 659. This history is complicated though by the jurisprudence of succession law, which since at least the twelfth century has developed rules by which the dead may exert their property rights over future generations. Several scholars argue that the modern law of testamentation demonstrated how the will could express a legal personality of the dead: Richard Tur, \textit{The “Person” in Law’} in Arthur Peacocke and Grant Gillett (eds), \textit{Persons and Personality: A Contemporary Inquiry} (Basil Blackwell, 1987) 119, 123. Tur’s argument that the will expresses a personality of the dead, while the physical corpse remains inexpressible, relies upon the reification of a mind-body dualism. See also Ngaire Naffine, ‘When Does the Legal Person Die? Jeremy Bentham and the “Auto-icon”’ (2000) 25 \textit{Australian Journal of Legal Philosophy} 80, 89-91 who reiterates this argument, while acknowledging that it problematically reproduces a Cartesian discourse of the body.

analyses of the dead has been how to fit the corpse within existing categories of law. On the other hand, jurisprudence has recently questioned how the dead have become integral to the transmission and inheritance of the common law.

This is one of the key concerns of Olivia Barr’s *A Jurisprudence of Movement*, which tracks how “common law moves … through patterns of technical and material practice”. Specifically she investigates how common law moves through jurisdictional techniques of walking, camping and burying the dead, which will be discussed further in Chapter 1. In a similar fashion to this thesis, Barr attends to “a jurisprudential concern with the dead”, not as a concern with the category of death itself, but “with the form and conduct of common law’s relations with the dead”. However, she argues that because the juridical status of the dead in law is uncertain, common law is “[u]nable to bind the dead directly … [and] struggle[s] to relate to the dead”. This description of the failures of the common law – and she highlights the failures of the office of coroner specifically – to properly care for the dead marks a point of difference

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81 But see Desmond Manderson ‘Introduction: Tales from the Crypt – A Metaphor, An Image, A Story’ in Desmond Manderson (ed), *Courting Death: The Law of Mortality* (Pluto Press, 1999) 1, 2. Manderson maintains that turning our attention beyond doctrinal questions to the jurisprudential relationship between law and death will assist us in “investigat[ing] how death has constituted our selves, and how this mutual constitution is evidenced, articulated and realised by human law”.

82 Barr, above n 36, 3 (emphasis in original).

83 Ibid 45.

84 Ibid 47.

85 Sometimes the responsibility of the coroner to take care of the dead is characterised as a “common law responsibility”, whereas at other times it is an institutional or jurisdictional responsibility that is different from that of the jurist: Ibid 53. This is evident in Chapter 4 when Barr argues that while the coroner offers “a method of care”, the case study of the work of a contemporary New Zealand coroner shows that “this official account of care is somewhat thin and necessarily incomplete”: Ibid 216. This account of the failures of the coroner needs to be contextualised by her earlier remarks that while “it is for the jurist to care for the dead. Of course, it is not solely for the jurist to care. … [T]he office of coroner also has a responsibility to
with this thesis. Barr is most interested in how the office of jurist assumes responsibility for the dead, and she describes the office of coroner as inheriting an institutional and medieval jurisdictional responsibility. But the way that she characterises the coroner as struggling where the jurist succeeds, misrecognises how the coroner historically cared for the dead. Indeed, Barr’s conceptualisation of the conduct of lawful relations as burial practices or more precisely, “movements towards burial”, ignores how the office of coroner, who did not bury the dead, took care of the dead in the nineteenth and twentieth centuries through a range of lawful technologies. What is missing then from her jurisprudence of how the “common law … camps with the jurisdiction of the dead” and how “care of the dead [is placed] as a jurisprudential matter of office” is an institutional history of how the office of coroner cultivated lawful relations with the dead in the modern era.

In contrast to Barr’s writings on the limits of the office of coroner for taking care for the dead, Rebecca Scott Bray has examined an enlarged range of jurisdictional techniques that affect the way the contemporary coroner conducts lawful relations with the dead. These techniques include “inquisitorial fact-finding”, “medico-legal portraits of the dead” and other technologies of representation, and in general, administrative decisions, legislative care for the dead but this is a responsibility of a different office that manifests in different ways”: Ibid 102.

86 Ibid 149-50. I suggest that Barr’s understanding of lawfulness as “a responsibility for place” binds her to an analysis of burial practices as a model for “care for the dead” and “creating and engaging lawful relations with the dead”: Ibid 47-8.

87 Ibid 165.


instruments and appellate decisions. This thesis expands upon Scott Bray’s work by offering an institutional history of how the coroner assumed responsibility for care of the dead in the nineteenth and twentieth centuries. Historical scholarship in coronial studies has mostly been confined to the work of the medieval coroner. Historiographies of modern coroners have largely been written by social, medical and cultural historians, thus further marginalising questions of jurisdiction, office and law. This thesis thus makes a significant contribution to both fields by challenging legal and historical scholars to think institutionally about law, to take seriously the question of lawful relations, and to trace the historical formations between legal institutions and the dead.

**Thesis Structure**

The thesis begins by tracing a spatial history of the office of coroner in the nineteenth century. It offers a historical account of how the movements of the colonial coroner incorporated the dead in the political life of the city. The

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91 In addition to above n 5 – 8, see also Rab Houston, *The Coroners of Northern Britain c. 1300-1700* (Palgrave Macmillan, 2014).
proximity of the dead to the living emerged as a spatial problem in the colonial city in the eighteenth and nineteenth centuries. The unburied corpse not only posed a danger to the physical and moral health of townsfolk, its presence was believed to threaten the civilising process of colonial society. Coroners were appointed in the colonies to collect, identify and investigate the remains of the dead. However, the manner in which they moved, the way they carried and hawked the dead through the streets of the city, how they set up inquests in taverns and stored remains in outhouses, reveals different ways in which they formed lawful relations with the dead. The itinerant coroner harnessed an array of technologies of place-making, such as walking, naming and story-telling, to establish a lawful place for the dead in the city.

The first section of Chapter 1, ‘Law in the Necropolis’, examines the problem of the place of the dead in the nineteenth century colonial city, while the second section traces the place-making activities of the coroner and unravels a history of itinerancy. I extend this analysis of coronial place-making in the third section, which questions what was at stake in building a proper place and insisting upon a proper name for a permanent structure to store the dead. The role that the coroner played in walking with the dead and lobbying for the construction of a deadhouse in the city reveals that place-making was an important aspect of how coroners assumed responsibility for caring for the dead in the nineteenth century. In the final section of the chapter, I consider place-making a jurisdictional technique that attaches law to a place, that encloses and institutes a legal ordering of spatial relations. The idea that places are historically contingent, that they are formed through techniques of walking, naming and story-telling, suggests that the movements of the coroner rendered possible a lawful place for the dead in the political life of the city.
In Chapter 2, I continue to explore how the conduct of the coroner was mediated by spatial practices, by investigating how the technology of architecture modified the way coroners formed lawful relations with the dead in colonial society. This chapter offers a history of the development of the genre of coronial architecture in the late nineteenth century. Its case study is the design of the first purpose-built coroners courthouse in the city of Melbourne, which was constructed alongside the Yarra River in 1888. The first section considers how the layout of the courthouse affected the temporal and spatial movements of the living. The vestibule, corridor and walls symbolised a rite of passage, a journey through clearly demarcated rituals, traditions and ceremonies. These design elements also signified a journey for the living through thresholds, realms and barriers, a circumscribed passage towards the charnel house of the dead.

The second section explores the extent to which forensic techniques were interwoven in the architecture of the courthouse. The design of the building facilitated the conduct of death investigations by framing a forum for the living to engage with the dead. I suggest in particular that the architectonics of the post-mortem and inquest rooms were inextricable from the performance of the coronial inquest. The third section examines how coronial architecture transformed techniques for inventorying the dead. The hermetically sealed glass screen, which was installed to separate the mortuary from the courthouse, framed the inquest as a legal forum for the dead to appear before the living. ‘Inventories of Coronial Architecture’ concludes by explaining how coronial architecture modified the way the coroner cultivated a lawful encounter between the living and the dead. The coroner facilitated, witnessed and participated in forums of law that had as their aim the institutionalisation of a collective memory of the dead.
The post-mortem examination became a compulsory procedure of the death investigation process from the mid-nineteenth century. Prior to this autopsies were seldom conducted before an inquest. It would suffice for the coroner to merely glance over the surface of the corpse. By the late nineteenth century, the development of forensic medicine had transformed the conduct of the legal custom of *super visum corporis*, which meant an inquest could only take place ‘upon view of the dead body’. It positioned the forensic gaze as intrinsic to the performance of the legal duty to view the corpse. Chapter 3 offers an institutional history of the transformations of *super visum corporis* in the nineteenth and twentieth centuries. The first section examines the centrality of the gaze in the development of forensic medicine in England and Australia. The anatomical view of the corpse rose to prominence in medical discourse in the seventeenth century. The autopsy instituted a new mode of seeing, it reified the knowledge of the medical expert, and it cast the corpse as a technical-scientific object.

In the second section, I argue that transformations of *super visum corporis* in the nineteenth and twentieth centuries took place amidst jurisdictional conflict between the disciplines of medicine and law over who should assume responsibility for care of the dead. This lead to, as I narrate in the third section, calls for the abolition of the coronial office, the dissipation of the authority of the coronial jury, and the attenuation of the jury’s view of the dead. Several historians have interpreted these movements, shifts and conflicts as evidence of the medicalisation of the coronial inquest at the turn of the twentieth century. The final section examines how *super visum corporis* became not only a distinctive mode of seeing, but a rhetorical style particular to the persona of the coroner. By the twentieth century, the pathologist had become solely responsible for visually examining the corpse. However, this did not mean that the coroner relinquished his official duty to view the dead. Rather, I argue that
the coroner assumed responsibility for caring for the dead by translating the wounds of the corpse into an institutional narrative of death causation. *Super visum corporis* was an institutional practice, a jurisdictional technique and a rhetorical procedure for speaking on behalf of the dead.

In Chapter 4, I offer a historical account of the coronial manual as a technology of office in the late nineteenth and early twentieth centuries. In previous chapters, I examined how technologies of place-making, architecture and *super visum corporis* formed part of the repertoire of office and affected the ways in which coroners cultivated lawful relations with the dead. In ‘The Bureaucratic Logic of the Coroner’s Office,’ I explore how the technology of the manual bureaucratised the office of coroner, while providing guidance on how officials should practice an ethical conduct towards the dead. The professional manual was preoccupied in the late nineteenth century with questions of technical knowledge, administrative expertise and bureaucratic governance. The procedural language that characterised juridical treatises prior to the eighteenth century was supplemented by a rhetoric of technocracy. The manual became an increasingly technocratic device and assumed an indispensable role in the formation of the modern office of coroner.

The first section explores how the manual redefined the jurisdiction of the coroner and reshaped the technical operations of the office in the late nineteenth century. Coronial jurisdiction was never simply delimited by case law or legislation in Australian colonies. The manual and its inventory of circulars, forms and precedents augmented the authority of the coroner, instructed his office in the proper conduct of inquest proceedings, and assimilated his role into the hierarchical career structure of the civil service. The second section investigates the attention placed in handbooks in the early twentieth century on the liabilities and privileges of the office of coroner. The
manual increasingly held coroners accountable for their conduct, while simultaneously providing guidance on how to assume responsibility for care of the dead. The manual was not bereft of an ethics of responsibility. It held on to the question of conduct by anthologising forms of attaching the dead to the institutional life of coronial law. The chapter concludes by considering the manual as a technological conduit between an ethics of responsibility and the bureaucratic logic of the coroner’s office.

While Chapter 4 studies a bureaucratic logic in the transformations of the coronial manual, Chapter 5 investigates how files, documents, certificates and dispositions, created, collected, submitted and reproduced in the performance of office, shaped the technocratic impulse of the coronial jurisdiction. ‘Dead Records Office’ delves into a study of files themselves and questions how the modernisation of a coronial archive affected the way the coroner cultivated lawful relations with the dead. Transcribed by hand, fastened by staples and couriered to civil servants, the files produced during and after the inquisitorial forum transformed the rhetoric of the coroner into institutional narratives, formal records, and technocratic reports.

The first section argues that filing was integral to the modernisation of the coroner’s court. Several cases from the nineteenth century challenged the authority of the coroner to commit a witness for contempt of court, and in turn questioned the place of the coroner’s court in the history of the common law. These cases centred upon whether it was possible to classify the coroner as an official who sits in a court, and if so, whether he sits as a judge of record. I argue that the conduct of office was institutionalised as a court of record, a sitting of the coroner’s court, through the technology of the file. Court of record was thus a jurisdictional device to manage questions of authority, but also a lawful technology that consisted of practices of record-keeping.
The second section considers the effects of this technology on the role of the coroner, who increasingly assumed responsibility for narrating a biography of the dead, who appeared as neither things nor persons, but files, cases and names, in an expanding archive of institutional memory. I contend that the history of coronial law reveals a duty to record, a duty that arose from files themselves. The burden of keeping records, collating evidence and filing documents has always been inherent in the performance of the coroner’s office. Indeed, an ethics of record-keeping and the responsibility of filing remains key to understanding how the coroner took care of the dead in the nineteenth and twentieth centuries. The coroner narrated a biography of the dead, recording their lives and honouring their memories through the technology of the file, which has come to signify one of the most important functions of the coronial jurisdiction.

Concluding Thoughts

The transformations of the office of coroner in the nineteenth and twentieth centuries took place amid significant political, social and economic transitions in the West. The Industrial Revolution refers to a period of rapid changes in mechanised transportation, machine production and manufacturing technology from the 1760s to the 1840s. The movement was concomitant with urbanisation, that is the mass movement of proletariat populations from small agricultural towns to large manufacturing cities, the liberalisation of trade and the emergence of a market based economy, and the rise of bureaucratic

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governance and the administrative nation-state. What distinguished industrial capitalism from earlier forms of acquisition, according to Max Weber, was “the pursuit of profit, and forever renewed profit, by means of continuous, rational, capitalist enterprise”. And what conditioned this unrelenting accumulation but also reinvestment of capital, was “the rational capitalistic organization of (formally) free labour”. Though, as Weber further explained, the separation of factories from households, the invention of ‘double-entry book-keeping’, the technical calculability of knowledge, the rational codification of law and a Protestant ascetics were all historically specific to the emergence of modern capitalism in the West. The work of the coroner was not immune from the widespread changes shaped by the industrialisation of Britain in the eighteenth and nineteenth centuries. This epoch saw the provision of an annual salary to coroners, the payment of medical witnesses and jurors for their attendance at inquests, the formation of coronial societies, and the emergence of medical jurisprudence as a specialised field of expertise. The Industrial Revolution heralded changes to the conceptualisation of the inquest as a technocratic, judicial and forensic enterprise.

96 Ibid xxxiv.
97 Ibid xxxix. It is important, as Georges Bataille wrote, not to reduce capitalist enterprise to the ‘restrictive economy’ of ‘historical materialism’. Waste, excess, and consumption are as important as production, growth, and accumulation for understanding a history of capitalism in the West. Bataille identified excess as the accursed share of a general economy, which must be exuded, spent, squandered, to avoid, for example, its inundation in times of war. Interestingly, Bataille described eating, sex and death, as the ultimate luxuries of accumulation, an excess that revealed the fragility of a restrictive economy of capitalism: Georges Bataille, The Accursed Share: An Essay on General Economy: Volume 1 Consumption (Robert Hurley trans, Zone Books, 1991) [trans of: La Part Maudite (first published 1967)].
98 See for instance, An Act to Provide for the Attendance and Remuneration of Medical Witnesses at Coroners Inquests 1836 (UK) and the Coroner’s Inquests Expenses Act 1837 (UK). Freckelton and Ranson, above n 6, 16, note that the Coroners’ Society of England and Wales was established in 1846.
In *History of Sexuality, Volume 1*, Michel Foucault traced a shift in the eighteenth century between the sovereign’s “right to decide life and death” to a “power of life and death”.\(^99\) The latter was more concerned with techniques for managing life, maximising its efficacy and exploiting its vitality, evinced by a preoccupation with auditing the rhythms of birth and death. Foucault called this new relation of power-knowledge ‘biopower’, which consisted of an *anatomo-politics* of the body and a *bio-politics* of the population.\(^100\) The regulation of death, its control by the state and a range of medical, legal and financial institutions, also gave rise to a *thanato-politics*, or a politics of death.\(^101\) The coroner’s office was enmeshed in this new power-knowledge network, at the nexus of the nation-state’s burgeoning interest in managing populations of the living and the dead. Changes to the technologies of production, specifically the transition to machine-based labour, and the institutionalisation of class difference and social stratification, produced devastating, often fatal consequences for workers and their families. This resulted in disdain for coroners, particularly from capitalists and their supporters, due to an increase in the number of inquests conducted on workplace deaths. But coroners were also revered by the relatives of the deceased and communities in general, for holding employers accountable for causing deaths. They were often venerated for admonishing capitalists for creating dangerous workplaces, recommending changes to industrial practices, and recognising the existence of legal responsibility for occupational health and safety, which was oriented towards the bio-political objective of elongating life and improving the health and

\(^{99}\) Foucault, above n 33, 136.

\(^{100}\) Ibid 139.

\(^{101}\) Foucault, above n 41, 160. See also Mitchell Dean, ‘Four Theses on the Powers of Life and Death’ (2004) 5 *Contretemps* 16, 20, who argues that bio-power did not replace sovereign power, but was rather “articulated with elements of sovereignty and its symbolics”; and Lindsay Prior, ‘The Good, the Bad and the Unnatural: A Study of Coroners’ Decisions in Northern Ireland’ (1985) 33(1) *The Sociological Review* 64, who claims that Foucault’s schema of bio-power is as applicable to the dead as the living.
wellbeing of the population. We could therefore conclude that the institutionalisation of the office of coroner during the nineteenth and twentieth centuries had as its remit, alongside other medical and legal institutions, the management of the longevity of populations.

The role that coroners performed during the expansion of industrial capitalism was not confined to Britain. The office was disseminated throughout British colonies in the eighteenth and nineteenth centuries through the expansion of the colonial project of empire building.\textsuperscript{102} While procedures, rituals and traditions differed on a local level between various colonies, the role of the office in managing lawful relations between the living and the dead was similarly tied to legitimating imperial rule. In holding inquests on the deaths of settlers – though also less frequently on the remains of indigenous persons\textsuperscript{103} – the coroner not only disavowed the investigatory rituals of indigenous peoples, but also authorised the appropriation of indigenous lands as lawful. This thesis thus offers to the reader an institutional history of coronial law in Australia. Our focus on the Australian colonies provides an opportunity to examine the technologies of the office of coroner during a turbulent, violent epoch of empire building. The appropriation of indigenous lands and the oppression of its inhabitants, the tyranny of distance and the exploitation of natural resources,

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\textsuperscript{103} McVeigh, above n 39, 478, explains that “[p]rior to the 1830s, the common law applied to settlers because of their status as subjects. It did not apply to Indigenous Australians precisely because they were not yet considered to be subjects”.
makes Australia in the nineteenth century, a distinctive site to examine the formation and cultivation of lawful relations between the living and the dead.  

This thesis contends that key to making sense of the manifold ways in which the Australian coroner encountered the dead in the nineteenth and twentieth centuries is by conceptualising law as a relation of technologies, offices and institutions. I argue that it is important when giving a historical account of the colonial coroner to analyse how his office was conducted, how the duties of his office were performed, and how technologies corresponding to such performances shaped lawful relations. In other words, I contend that writing a history of coronial law necessarily involves thinking institutionally about law. This means taking seriously how judicial officers assumed responsibility for the living and the dead in the performance of a civic role and how the technologies that mediated the conduct of their roles attached both the living and the dead to institutional formations of law. While this thesis narrates a historical account of a specific legal institution, by offering tools for writing an institutional history, I hope that it may provide a model for paying attention to how other institutions have formed lawful relations between the living and the dead. The chapters that follow demonstrate that jurisprudence is enriched by an institutional history of law and that scholars need to think through and with legal institutions when theorising ethical, political and juridical problems that relate to the presence of the dead in our world.

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CHAPTER 1: LAW IN THE NECROPOLIS

The movements of the colonial coroner paint a grim portrait of the plight of the dead in the nineteenth century. When the dead were found on a public street, the coroner would carry the corpse from one public house to another, hoping to find a hospitable innkeeper willing to let a room for holding an inquest or at least an outbuilding for storage until a hearing could be held. When the dead were found in a prison or a hospital without a mortuary, the coroner would transform a cell or a ward into a makeshift morgue. The footprints of the coroner determined the itineraries of the dead. They unfurled a map that bore traces of an institutional relationship between the living and the dead. In walking through the city, in the performance of his civic role, the coroner not only carried corpses upon his shoulders, he wrote their histories and biographies, he collected their memories and legacies. In ambulating through alleyways and strolling along promenades, in the routes he walked and the trajectories he followed, the coroner gathered material for honouring the dead.

This chapter traces a spatial history of the office of coroner in the nineteenth century. It offers a historical account of how the movements of the colonial coroner incorporated the dead in the political life of the city. The proximity of the dead to the living emerged as a spatial problem in the colonial city in the eighteenth and nineteenth centuries. The unburied corpse not only posed a danger to the physical and moral health of townsfolk, its presence was believed to threaten the civilising process of colonial society. Coroners were appointed in the colonies to collect, identify and investigate the remains of the dead. However, the manner in which they moved, the way they carried and hawked the dead through the streets of the city, how they set up inquests in taverns and stored remains in outhouses, reveals different ways in which they formed
lawful relations with the dead. The itinerant coroner harnessed an array of technologies of place-making, such as walking, naming and story-telling, to establish a lawful place for the dead in the city.

The first section examines the problem of the place of the dead in the nineteenth century colonial city, while the second section traces the place-making activities of the coroner and unravels a history of itinerancy. I extend this analysis of coronial place-making in the third section, which questions what was at stake in building a proper place and insisting upon a proper name for a permanent structure to store the dead. The role that the coroner played in walking with the dead and lobbying for the construction of a deadhouse in the city reveals that place-making was an important aspect of how coroners assumed responsibility for caring for the dead in the nineteenth century. In the final section of the chapter, I consider place-making a jurisdictional technique that attaches law to a place, that encloses and institutes a legal ordering of spatial relations. The idea that places are historically contingent, that they are formed through techniques of walking, naming and story-telling, suggests that the movements of the coroner rendered possible a lawful place for the dead in the political life of the city.

The City of the Dead

Transformations of attitudes towards the dead shaped the spatial arrangement of Western cities in the eighteenth and nineteenth centuries. In the eighteenth century, western cities exhibited a morbid curiosity with the “death of the

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other” (la mort de toi).\textsuperscript{2} This inspired the personalisation of funerary rituals and tomb inscriptions and in the nineteenth century, the romanticisation of the cult of the dead. “Mourning” became excessive, Philippe Ariès claimed, returning “to the excessive and spontaneous demonstrations – or apparently spontaneous demonstrations – of the Early Middle Ages, after seven centuries of sobriety”.\textsuperscript{3} The city was transformed during this period by the rapid construction of garden cemeteries, baroque mausoleums and moribund alleyway attractions. The dead were buried in individual tombs in extravagant necropolises, routinely visited by survivors seeking “a [visible] sign of their presence after death”.\textsuperscript{4} The urban-dweller could embrace moribund titillations in arcades and laneways, ranging from penny dreadfuls to macabre theatre, waxworks to the scaffold. Yet, at the same time, the presence of the dead in the city was to be feared. Popular beliefs in miasmatic theories of disease causation depicted the human cadaver as a moral, physical and telluric threat to all human beings.\textsuperscript{5} By the end of the nineteenth century the place of the dead – from the unburied corpse to the mass grave – was to be respected and dreaded, venerated and segregated from the world of the living.

These attitudes towards the dead shaped the decision to appoint a coroner for the periphery of the colony of New South Wales in the nineteenth century.\textsuperscript{6} The superintendent for the district of Port Phillip, Charles La Trobe, appointed Dr William Byam Wilmot as the first coroner of Melbourne in 1841. Previously, Captain William Lonsdale, the resident magistrate of the district, fulfilled the

\begin{enumerate}
\item Philippe Ariès, *Western Attitudes Toward Death: From the Middle Ages to the Present* (Patricia M Ranum trans, John Hopkins University Press, 1974) 56.
\item Ibid 67.
\item Ibid 70.
\item For an extended analysis of the reception of miasma theory in colonial society, see Marc Trabsky, ‘Institutionalising the Public Abattoir in Nineteenth Century Colonial Society’ (2014) 40(2) *Australian Feminist Law Journal* 169.
\item The first appointment of a coroner the Colony of New South Wales was made possible by a Letters of Patent of 1787: *Attorney-General v Maksimovich* (1985) 4 NSWLR 300, 305 (Kirby P).
\end{enumerate}
duties of the office, alongside a rudimentary group of police magistrates and justices of the peace. Duties included investigating the identity of a specific dead – those who were suspected of dying suddenly, violently, accidently or while detained in a penal institution – as well as the causes of their death. The historical records of the Melbourne Court Register reveal that from 1836 to 1840 coronial inquests did not formally take place in the district. The dead were often buried without post mortem examinations, while Lonsdale and his clerks merely recorded witness depositions to either sudden or suspicious deaths. Witnesses testified that they “were obliged to bury [corpses] immediately” and cited religion, public health discourses or humanism in support of their decisions. Whether it was due to Christian precepts on the sanctity of the soul, miasmatic theories of disease causation, or simply fear that the unburied dead would become prey to ravenous animals, townsfolk justified burial as “the best method that could be followed for [the corpse’s] preservation until the necessary legal steps could be taken”. In a growing populace colonial burial rituals frustrated the death investigation process, obfuscated the conduct of


10 ‘John Buffington, alias Ramsay, shot on Manifold’s station, 3 February 1837’ in Jones, above n 7, 307. This was even evident after the appointment of a coroner for the Colony of South Australia in 1839. In one inquest the coroner declared that “the body was in a decomposed state and represented a health hazard and this was considered sufficient justification for burial prior to the inquest”: Derrick J Pounder, ‘Death Investigation in Early Colonial South Australia, 1839-40’ (1984) 24(4) Medicine, Science and the Law 273, 277.
autopsies and compromised a thorough analysis of death scenes.\textsuperscript{11} They disrupted the effective performance of coronial law to the extent that Lonsdale sought advice as to whether “the sum of five shillings [be] allowed in each case, for finding a dead body subject to a Coroner’s inquest”.\textsuperscript{12} It was presumed that a monetary reward would discourage townsfolk from immediately burying the dead before contacting the resident magistrate.

The place of the dead became a spatial problem in Western cities in the eighteenth and nineteenth centuries. Or rather, it returned as a problem when “the cemetery once again gained a place in the city – a place both physical and moral – which it had lost in the early Middle Ages, but which it had occupied throughout Antiquity”.\textsuperscript{13} The dead came to occupy a place, which Michel Foucault described in ‘Of Other Spaces’, without a place.\textsuperscript{14} What he meant here was that the dead became subject to a different kind of spatial arrangement, precisely because of a decline in the religious belief of the resurrection of the immortal spirit. The corpse and the soul were reunited during this period in the body of the dead, which demanded to be housed, buried and allotted a place within the city.

\textsuperscript{11} See for instance, \textit{R v Clerk} (1702) 1 Salkeld 377; 91 ER 328, where it was held that “to bury the body before, or without sending for the coroner, is a misdemeanour”.
\textsuperscript{12} ‘Reward of five shillings for finding bodies subject to inquest, 26 June 1838’ in Jones, above n 7, 310.
\textsuperscript{13} Ariès, above n 2, 74.
Foucault employed the term heterotopia to denote places that “neutralize, or invert the set of relations that they happen to designate, mirror, or reflect”. In the nineteenth century, the cemetery was a heterotopia par excellence. It functioned as a counter-site to the city of the living insofar as it inverted, contested and reversed the images of a street, garden and park, while remaining firmly entrenched in them. The graveyard replicated an obverse residential estate with its arrangement of separate dwellings for the dead: charnel houses, mausoleums, crypts, and tombs. But these resting places were only empty façades and absent spaces, where time stood still and yet remained perpetually in motion. The time of the cemetery was incongruous and asynchronous; it marked the end of time as well as its permanence. The problem that troubled this counter-site in the antipodean frontier was how to fold “the other city”, the under-world, within the civilising process of colonial society. In Melbourne, for example, the transformation of the first cemetery into a thriving marketplace, framed the place of the dead as other to the economic, social and cultural domains of the living.

Dead bodies posed a threat to the spatiality of the city beyond constituting harbingers of destruction or contagions of miasma. Their indwelling threatened to disrupt the equilibrium between the heterotopia of the cemetery and the topos of the city. In The Dominion of the Dead, Robert Pogue Harrison argues that burial practices are part of “the humic foundations of our life worlds”. What he means by this is that the act of burying the dead prepares the land for human habitation and makes possible the formation of a place. He writes that

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15 Foucault, above n 14, 24.
16 Ibid 25.
17 For more information about the transformation of the Old Cemetery into the Queen Victoria Market, see Marc Trabsky, ‘Law in the Marketplace’ in Yoriko Otomo and Ed Mussawir (eds), Law and the Question of the Animal (Routledge, 2013) 133.
burial practices humanise the earth by making sense of land as the groundwork of human history. History can only unfurl through the preservation of the past:

humans bury not simply to achieve closure and effect a separation from the dead but also and above all to humanize the ground on which they build their worlds and found their histories.19

To put this differently, burial practices transform space into place, which as Paul Carter writes is “a space with a history”.20 The most obvious way that they do so is through the sign of the grave, which signifies the presence of human place-making. The mark of ‘here lies’ historicises the ground, appropriates the land, and founds a city, a nation, an empire on the entombment of ancestors. It “effectively opens up the place of the ‘here’, giving it the human foundation without which there would be no places in nature”.21 If the dead were to remain unburied in the nineteenth century city, for example, the heterotopia of the cemetery would spread throughout, to the extent that it would no longer be discernible from its inverse, the worlds of the living. The places of the dead would be at once everywhere and nowhere, and the city would transform itself into a necropolis.

La Trobe’s decision to appoint a coroner for the district of Port Phillip in 1841, who would be tasked to collect, identify and examine human remains of suspicious, violent and sudden deaths, could be seen as an integral, not merely incidental, part of the imperial project of humanising the land. Melbourne was a contested place in the nineteenth century. The indigenous people that

19 Ibid xi. Harrison also writes that “humanity is not a species … it is a way of being mortal and relating to the dead. To be human means above all to bury”.
20 Paul Carter, The Road to Botany Bay: An Exploration of Landscape and History (University of Minnesota Press, 2010) xxiv.
21 Harrison, above n 19, 20.
occupied the land prior to the British invasion in 1788 was “posited as antithetical to the creation and sustainability of an ordered and orderly social space through which the settlement, the colony and the Empire invented and inhabits a place”.\(^2\) The colonial project of inhabiting place by burying white settlers on indigenous lands involved forcefully reiterating the fictional doctrine of *terra nullius* and the notion that the land lacked a history of human presence. Burial rituals formed part of a suite of technologies, which included enclosing, surveying and mapping the land, through which the British Empire could inhabit, occupy and emplace indigenous lands.\(^3\) In this sense, the practice of burying the dead attempted to eradicate or remove the legacy of the indigenous people that already dwelled within those lands. For if burial practices humanise the earth, transform space into a place and condition the possibility of human history, then burying the dead in the city of Melbourne was a violent attempt by settlers to erase and rewrite the history of the land. While coroners were never obliged to bury the dead – this duty fell to the office of the undertaker – and in some circumstances, they were even required to exhume the dead, I will argue in the next section, that by carrying them upon their shoulders, and by walking with the dead through the city, they also participated in the imperial project of humanising indigenous lands. Coroners enacted a colonial history of the lands by assuming responsibility for the movements of the unknown dead through the streets of the city.

In his request for the appointment of a coroner for the district of Port Phillip, Lonsdale cited the demographic growth of the late 1830s and a concomitant increase in the number of unidentified corpses appearing in the colony. His letter to La Trobe also expressed a concern that “the public would be better


satisfied if these inquiries [into the causes of death] were made in the accustomed manner before a Coroner and jury than before a Magistrate only”.24 The absence of coronial inquests in the colony created the impression that the office of coroner, insofar as it was occupied by the resident magistrate, was derelict in its duties towards the living. However, the public’s dissatisfaction with the performance of office had more to do with the appointment of “Military men to Civil duties” rather than any dereliction of responsibility.25 The appointment of a civilian to the role of coroner sought to restore public confidence in the way that the colonial government formed lawful relations with the dead. In the next section, I will discuss how the coroner occupied this civic role by transforming spatial relations between the living and the dead, particularly where the presence of the latter threatened the continuity of the imperial project of civilising colonial society. In the nineteenth century, the jurisdiction of the coroner pertained to corpses floating in rivers or lying along muddy streets, cadavers prostrate in quasi-public spaces or human remains in private lodgings, albeit subject to suspicious circumstances. Yet the way the coroner collected the dead from where they lay, walked with them through the city, hawked them from one public house to another, and stored them in outhouses, revealed how he formed lawful relations with the dead in the nineteenth century.

24 ‘Increase in sudden deaths requires a coroner, 31 January 1840’ in Jones, above n 7, 311.
The Itinerant Coroner

Court sittings were peripatetic in Australia in the late eighteenth and early nineteenth centuries. Judicial proceedings took place wherever a magistrate could find temporary accommodation, which included public houses, hotels, churches, schools and hospitals. The first courthouse in Melbourne consisted of “a wattle and daub hut”, however the “police magistrate … moved around at will, setting up shop wherever whim or duty dictated”. By the mid-nineteenth century court sittings had moved from temporary multi-purpose spaces into specially designed courthouses. The history of the movements of the coroner largely followed this trajectory. Prior to the construction of purpose-built courthouses in the late nineteenth century, coroners would travel to wherever the dead lay and hold inquests at the nearest available public house, hotel or brothel.

The movements of the coroner across the English countryside unravelled a narrative of itinerancy. The history of the office of coroner in England depicts an itinerant, who from the twelfth century onwards, travelled across the country keeping the pleas of the Crown by collecting forfeitures, amercements and deodands on behalf of the King. In *De Republica Anglorum*, published in the sixteenth century, Sir Thomas Smith observed “[t]he empanelling of the ses enquest, and the viewe of the bodie, and the giving of the verdict, is commonly in the strete in an open place”. While the fiscal responsibilities of the coroner were abolished in British colonies by the mid nineteenth century,

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27 Ian Freckleton and David Ranson, *Death Investigation and the Coroner’s Inquest* (Oxford University Press, 2006) 35.
the office still possessed the character of an itinerant. If the dead lay in a place other than a prison or a hospital, the coroner would ‘hawk’ to the corpse from one public house to another with the expectation that a hospitable publican would let a room for holding an inquest, or at least provide an outbuilding for storing the dead until a hearing could be held. The Coroners Statute 1865 (Vic) obliged all publicans in the colony of Victoria to accept any request from a coroner to accommodate a corpse on their premises for the purposes of an inquest. If they were to accept the request, they would be financially compensated, while to refuse would result in a fine before a justice of the peace. Only towards the end of the nineteenth century were publicans allowed in some circumstances to refuse entry to a corpse in an offensive state of decomposition.

The role of the public house in the death investigation process sheds light on how the contingency of place affected the administration of coronial justice in the nineteenth century. The laws that initially governed the office of coroner were received from England at settlement and only later amended, to reflect not only legislative reforms in England, but also the specific circumstances of the colony. Yet no permanent site was ever reserved in Robert Hoddle’s rigid survey of the land in 1837 for the purposes of holding coronial inquests or storing dead bodies. The idea of a central morgue, where bodies would be...

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29 The word ‘hawk’, which connotes the practices of a commercial traveller, was used by Coroner Wilmot in his correspondence with the Colonial Secretary on 14 January 1853: PROV, VPRS 1189, P0, Unit 128, Item 53/446.
30 Section 11 of the Coroners Statute 1865 (Vic) set out the legal requirement that “[e]very holder of a publican’s license”, if required by the coroner or constable, must “receive into [his or her] house ... any dead body that may be brought to such house for the purpose of an inquest being held thereon”. This section was condemned by members of the licensing board who objected the obligation on a number of grounds: The Argus (Melbourne), 5 May 1858, 6.
31 See e.g., Liquor Act 1898 (NSW) s 100.
32 Freckleton and Ranson, above n 27, 35.
kept for identification and inquest, was a new one in the urban culture of the nineteenth-century British Empire".\textsuperscript{34} Nor were there any discussions during meetings of the Melbourne City Council of the problem of “public accommodation” until 1852.\textsuperscript{35} Hence, when Wilmot assumed the role of city coroner in 1841, the city lacked public buildings or structures of any kind to serve as a central place to inspect, collect or store the dead during the death investigation process.

In a letter addressed to the Colonial Secretary in 1853, Wilmot dismayed at the spatial problem of accommodating the dead in the city:

In the present crowded state of the City, the danger attending to the introduction of bodies perhaps in an advanced stage of decomposition into public houses for the purpose of an inquest must be obvious, and the disgraceful scene which took place on Sunday evening last when a corpse was hawked about the streets before any publican would admit it upon his premises, induces me to urge this matter upon His Excellency. There is great allowance to be made for some publicans in this matter, who have had premises licensed without the compliment of stabling and out offices prescribed by the law.\textsuperscript{36}


\textsuperscript{34} Andrew Brown-May, 'History and Development of the Site' in Andrew Brown-May and Norman Day, \textit{Federation Square} (Hardie Grant Books, 2003) 1, 18.

\textsuperscript{35} Melbourne City Council Minutes, 7 June 1852, Volume 6 (1894).

\textsuperscript{36} Correspondence between Coroner Wilmot and Colonial Secretary, 14 January 1853, PROV, VPRS 1189, P0, Unit 128, Item 53/446. The 'disgraceful scene' alluded to in his letter was summarised by \textit{The Argus} (Melbourne), 11 January 1853. In short, on Sunday 9 January 1853, Wilmot "hawked [a corpse] from house to house" until "it was accepted by the Friend-In-Hand".
Wilmot was clearly enraged by the refusal of certain publicans to accept a
corpse into their dwellings. This frustration was driven from a belief that
taverns and their outhouses provided the only practical solution to the problem
of finding a place in a city bereft of adequate and specialised facilities for
performing inquests and storing the dead.

Historians have provided several reasons as to why public houses emerged as
an ideal solution to the spatial problem of accommodating the dead in the
Australian colonies in the nineteenth century.\textsuperscript{37} They have referred, for instance,
to the history of the tradition of holding inquests in public houses in England,
which continued to be practiced in parts of that country until the early
twentieth century.\textsuperscript{38} However, more specifically, historians have cited as a
factor the exponential growth in the population of the colony of Victoria in the
1850s due to the discovery of gold in the north-western town of Ballarat, which
in turn catalysed an increase in the number of unidentified corpses appearing in
the city of Melbourne.\textsuperscript{39} Given the rise in the number of inquests held each year
to determine the identity of the unknown dead, the use of public houses for
such purposes enabled the coroner to provide the public with an opportunity to
inspect and possibly identify the dead. Yet, paradoxically, the public house
allowed the coroner to avoid, as much as possible, conveying the dead through
the ‘crowded’ streets of the city to, for instance, the mortuary at the hospital.

While Wilmot did not specify in his correspondence with the Colonial Secretary

\textsuperscript{37} See Brown-May and Cooke, above n 33.

\textsuperscript{38} There are several differences between how this history of itinerancy unfolded in England and the
Australian colonies. What is most notable is that while inquests were likewise held in public houses in the
nineteenth century, the London County Council, which was created in the late nineteenth century, “took over
administrative control of London inquests after the 1888 Local Government Act” and it mounted an impressive
“campaign against public inquests”: Ian Burney, \textit{Bodies of Evidence: Medicine and the Politics of the English
Inquest, 1803-1926} (John Hopkins University Press, 2000) 204 fn 2. The gradual transition between pub and court
inquests in England can be contrasted with the urgency and immediacy of finding a solution for
the spatial problem of the place of the dead in the Australian colonies.

\textsuperscript{39} Brown-May and Cooke, above n 33.
the ‘obvious’ dangers of hawking the dead from one public house to another, as I discussed in the previous section, the places of the dead emerged as a spatial problem in the nineteenth century. The practice of carrying the dead through the streets of the city troubled the porous boundaries between the realms of the living and the dead, the *topos* of the city and the heterotopia of the cemetery.

The reception in the colony of the English custom that an inquest be conducted upon view of the body (*super visum corporis*), which will be explored further in Chapter 3, meant that a jury and their view of the corpse were requisite elements of any coronial proceeding. Conducting the ceremony in hotels, brothels or public houses, conveniently provided the coroner with a steady stream of available, though often intoxicated, jurors willing to sit in front of a corpse for a small fee. In other words, public houses were opportune places to round up a jury of peers. The unbearable heat of the antipodean summer also situated public houses as the most convenient place to conduct an inquest. The reason for this was that heat accelerated the material process of decomposition and threatened to compromise evidence of the death scene, and the only way to avoid the horrid sensory experience of holding an inquest before a jury upon the view of a partially decomposing body was to hold the inquest as close as possible to the place of death and as soon as possible after death occurred. The alternative option of storing dead bodies in the outhouses or stables of taverns

The requirement that an inquest be held before a jury was enshrined in the *Coroners Statute 1865* (Vic) s 5. The *Coroners’ Juries Act 1887* (Vic) s 4 set out a scheme for paying jurors a small fee for attending coronial inquests. However, section 2 of the *Coroners Act 1903* (Vic), which amended previous legislation, granted coroners the power to hold an inquest without a jury, unless required by another legal institution. Note that the custom of recruiting jurors in public houses incidentally led to accusations that the coroner’s inquest was a farce. Several prominent members of the community chided the coroner for relying on drunk patrons in summoning a jury for the purposes of an inquest: Freckleton and Ranson, above n 27, 49. For a history of critiques of the pub inquest in England: Ibid Ch 3.

“Coroners held their inquests there, doctors interviewed patients there, governments collected their taxes there, the authorities held their prisoners there, and publicans even sometimes acted as registrars of births and deaths”: Brian Harrison, *Drink and the Victorians: The Temperance Question in England, 1815-1872* (Keele University Press, 1994) 54.
was not ideal, but pertinent given that Wilmot lived in a quasi-rural seaside town.\textsuperscript{42} The languor of his stride and the delays that ensued from the long horse ride into the city led to the postponement of inquests and his censure by \textit{The Argus} newspaper.\textsuperscript{43}

Wilmot did not simply complain about the behaviour of publicans in his correspondence with the Colonial Secretary in 1853. He also proposed a site for his office and a morgue near the embankment of the Yarra River, which was later described as “a kind of catacomb, which will be marked with shrubs”.\textsuperscript{44} He even sketched designs for a courthouse building that would eventually become the coroner’s office – a neat low building with a fence in which to remove any offence to the public\textsuperscript{45} – and he urged La Trobe to comply promptly with his requests.\textsuperscript{46} Wilmot linked the construction of a proper building with a proper name to the effective performance of the office of coroner:

\begin{quote}
[A]n increasing need arises for an office for my department, it’s [sic] duties now absorb my undivided attention and I feel it requisite to be
\end{quote}

\textsuperscript{42} Reid, above n 25, 15. Cordner and Leahy write that “[i]f he was called upon to hold an inquest for a body found in Melbourne, the hearing could be delayed for days in bad weather because of the impassable roads”: above n 25, 241.

\textsuperscript{43} ‘The Lame, the Halt and the Blind’, \textit{The Argus} (Melbourne), 12 October 1855. Consider that corpses were sometimes stored for days on end, for only following the completion of an investigation would the coroner grant a death certificate and call upon the undertaker to carry the dead to one of the city’s cemeteries. This led \textit{The Argus} to surmise that “the ends of justice must often be endangered, if not actually defeated, before the attendance of the coroner can be obtained”: \textit{The Argus} (Melbourne), 25 June 1849.

\textsuperscript{44} \textit{The Argus} (Melbourne), 13 May 1854, 5.

\textsuperscript{45} The actual designs of the building cannot be found in the Public Records Office, however, its description is contained in Correspondence between Coroner Wilmot and Colonial Secretary, 29 March 1853, PROV, VPRS 1189, P0, Unit 128, Item A53/3173.

\textsuperscript{46} Correspondence between Coroner Wilmot and Colonial Secretary, 2 March 1853, PROV, VPRS 1189, P0, Unit 128, Item A53/2203. The Mayor of Melbourne likewise informed La Trobe of the hardship of licensed owners being required to accommodate bodies awaiting inquests in crowded public houses. He likewise requested the erection of a morgue or dead house along the Yarra River: Correspondence between Mayor of Melbourne and Colonial Secretary, 23 September 1853, PROV, VPRS 1189, P0, UNIT 128, Item C53/8470.
completely identified with the offence in order to seem [sic] me from the constant interruptions to which my professional position [require].

In *Bodies of Evidence*, Ian Burney suggests that critics of the nineteenth century inquest denounced its location in the public house for its profanation of institutional life and its celebration of “civic popular liberties”. Not to mention its characteristic stench of alcohol, tobacco, prurience and gossip. Only an inquest conducted in a private place, in a proper building with a proper name, could elevate it to “a more technical, administrative, and jurisdictional plane”.

Yet while “the pub inquest was disparaged as the exemplary sign of inefficiency, disorder, and irrational archaism,” Burney further writes, “the frustrations to scientific inquiry that it represented were also recognized as springing from important – and in some senses necessary – political exigencies”. While I do not disagree with his assessment that the ‘public inquest’ was venerated by some as politically indispensable for public confidence in the administration of justice, this chapter argues that the place-making activities of the coroner, which included walking with the dead, holding inquests in public houses and designing a building for a courthouse, more importantly constituted jurisdictional techniques that had implications for the way the coroner conducted lawful relations with the dead. In the remaining sections of this chapter, I explore how the movements of the coroner transformed the spatial relations between the living and the dead by making possible a lawful place for the dead in the city.

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47 Correspondence between Coroner Wilmot and Colonial Secretary, 2 March 1853, PROV, VPRS 1189, P0, UNIT 128, Item A53/2203.
48 Burney, above n 38, 81-2. Burney further notes on pages 84-5 that such critiques “can be seen as a sign of a deepening anxiety about traditional bastions of popular politics in the era of mass democracy and the consequent attempt to construct a more disciplined and decorous citizenry”.
49 Ibid 82.
50 Ibid 83.
Building, Dwelling, Place-making

In ‘Building, Dwelling, Thinking’, Martin Heidegger explored the etymological origins of the word building. He argued that the ineluctable relationship between building and dwelling derives from the etymology of “[t]he Old English and High German word for building, buan, [which] means to dwell. This signifies: to remain, to stay in a place”. The verb bauen, which in modern German means ‘to build’, signified not only the practice of dwelling, but the manner of being, the manner of dwelling. “To be a human being means to be on the earth as a mortal. It means to dwell”. The notion that building is dwelling and that dwelling implies an ethos is advanced by Heidegger’s assertion that cultivating constitutes the means by which to dwell. To cultivate signifies to produce, to ‘bring forth’ not only buildings, but to nurture the growth of oneself. It is in this sense that Heidegger revealed a syntactic link between the Latin term for cultivating and the Greek word for ‘bringing forth’. Cultivation is a technique of making “something appear, within what is present, as this or that, in this way or that way. The Greeks conceive of technē, producing, in terms of letting appear”. Dwelling is thus a technique for cultivating relations between places, persons and things.

Following the writings of Heidegger, Harrison suggests that language is the ultimate expression of dwelling. He argues that before dwelling in place,

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52 Ibid 146.

53 Ibid 147.

54 Ibid 159.
humans dwell in *logos*. *Logos*, as Harrison understands it, is something irreducible to language. While the word undoubtedly denoted language in Ancient Greek, it also signified *relation*:

> *Logos* is that which binds, gathers, or relates. It binds humans to nature in the mode of openness and difference. It is that wherein we dwell and by which we relate ourselves to this or that place.\(^{55}\)

The ineluctability of *logos* and dwelling is precisely what Paul Carter gestures towards in his historical account of the spatial constitution of Australia in *The Road to Botany Bay*.\(^{56}\) Place-making is an activity of dwelling *par excellence*. The manner of this dwelling makes use of techniques of place-naming and storytelling; surveying and mapping the land. The making of a spatial history, the inhabitation of a place, the discovery of lands, begins first and foremost in language. The purpose of place-naming “was to preserve the means by which [names] came to be known, the occasion of places, the sense in which places are means, not of settling, but of travelling on”.\(^{57}\) In other words, both language and walking, naming and travelling were techniques of place-making by which settlers moved across, dwelled within, built upon and formed relations with indigenous lands. They were means through which colonial history could congeal into a place. Place-making was not simply a technique of appropriating lands, but a means of transforming space into a place and inscribing within place an imperial history, a history of the British Empire.

Coroner Wilmot’s insistence upon a proper place, a proper name for his office and a deadhouse was concomitant with techniques of place-making that had as

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\(^{56}\) Carter, above n 20.

\(^{57}\) Ibid 32. See also Paul Carter, *The Lie of the Land* (Faber and Faber, 1996).
their aim the transformations of space into a place. This was a place of dwelling, a place of making history, where not only could the dead appear, remain and gather, but where the coroner could bind to a place the performance of his office. In walking with the dead through the streets of the city, the coroner transformed spatial relations between the living and the dead. But by petitioning the colonial government to construct a proper place to house the dead, by offering designs for the building of a coroner’s office, Wilmot went much further than this. His actions revealed that these relations were first and foremost lawful. The place-making activities of the coroner attached the dead to a place and a place to the performance of the office of coroner. To be sure, the places through which the coroner walked, the sites where he conducted inquests and the houses where the dead dwelled were integral to the way he performed the duties of his juridical office.

It could be said that this is nothing new. Legal historians have long argued that the effective performance of legal institutions in British colonies was contingent upon the construction of public buildings to house court sittings. Russell Hogg pursues this idea further by suggesting that purpose-built structures were necessary to position legal institutions “in relation to those it seeks to rule, as separate from and above them”. In Melbourne, though, the absence of a specially designed courthouse did not so much render the coronial inquest ineffectual; as Burney notes of similar practices in London, many found the “informal setting” of the public inquest ‘admirable’. Rather the absence of an office and a morgue exposed techniques of carrying, walking, hawking and

60 Burney, above n 38, 206 fn 11. Burney quotes here the writings of Joshua Toulmin Smith: “It brings the eye of the Law directly home to every spot; so that no fact shall escape the searchingness of direct inquiry, and that every man shall know and feel the immediate presence of the course of Justice”.
naming as intrinsic to the performance of the office of coroner. In walking with the dead through the streets of the city, the *topos* of the living collided head on with the heterotopia of the dead. The spatial activities of the coroner were far from “removed from private homes and the streets into the purpose designed, functionally specific, ritually demarcated and ostensibly socially neutral spaces of the courtroom”. Yet I argue that it was precisely this proximity that obliged the coroner to cultivate lawful relations with the dead.

The inaugural coroner of Melbourne was only partially successful in petitioning La Trobe for the construction of a proper place to house his office and a morgue. While everyone agreed with Wilmot that “[d]ead bodies in varying states of decomposition should be seen as little as possible”, La Trobe and the Colonial Architect disagreed with Wilmot on the proposed central location of the morgue. La Trobe found the mooted site “horrible”. Despite such criticisms, Wilmot’s office was built in 1854 on the corner of a main thoroughfare, which *The Argus* chided as infringing upon the “busy street-life of a bustling city”, while the morgue was added to the site in 1871. The subsequent city coroner, Dr Richard Youl, was more successful in lobbying the government for a purpose built structure for conducting inquests and storing

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61 Hogg, above n 59, 37.
62 Correspondence between Coroner Wilmot and Colonial Secretary, 2 March 1853, PROV, VPRS 1189, P0, UNIT 128, Item A53/2204. Note that the initial plans for the office included a room for the coroner, another for the registrar of births, deaths and marriages and a post mortem examination room. See Correspondence between Colonial Engineer and Colonial Secretary, 26 May 1854, PROV, VPRS 1189, P0, UNIT 128, Item E54/5695 and Correspondence between Auditor General and Colonial Engineer, 18 December 1854, PROV, VPRS 1189, P0, UNIT 128, Item 54/14059.
63 Correspondence from Lieutenant General, 26 April 1854, PROV, VPRS 1189, P0, UNIT 128, Item E54/5695.
64 *The Argus* (Melbourne), 25 August 1886, 4. Both buildings were compulsorily acquired by the Railway Department in 1883. The Melbourne Fish Market stood opposite the coroner’s office from 1865 to 1892, which was demolished in 1900 to make way for the new Flinders Street train station. The location of the office can be gleaned from railway maps from the late nineteenth century: see e.g., Victorian Railways, Melbourne and Oakleigh Line, Plan of Land, PROV, VPRS 266, Unit 413, Item 87/3691.
dead bodies. His tenure oversaw the passing of the *Melbourne Morgue Site Act 1886* (Vic) and the construction of a specially designed coroner's courthouse along the Yarra River in 1888, which will be discussed further in Chapter 2. However, for the purposes of this chapter, I want to emphasise that the proposed location of the new coroner's courthouse remained problematic towards the end of the nineteenth century. As Alfred Deakin announced in Parliament in 1886,

> [t]he [city] corporation objected to any site which they considered would be disfigured by the erection of a morgue, which, on account of its association, was supposed – however perfect it might be from an architectural point of view – to be an undesirable object to be placed in any public position.\(^65\)

Persistent calls for the construction of a deadhouse in the city were not simply idiosyncrasies of piqued coroners. Such concerns were equally shared by jurors, councillors, undertakers, journalists and other legal officers of the colony. When Youl, as acting city coroner, sent a report in 1855 to a committee investigating “the condition and accommodation of Government Offices”, and implored the surveyor general and colonial engineer of “the absolute necessity which exists for the erection of a morgue, in connection with the office of the coroner”, he was not simply speaking on behalf of a disgruntled, low level, government officer.\(^66\) He was voicing the chagrin of the public who were compelled by the

\(^{65}\)‘Parliament: Legislative Council’, *The Argus* (Melbourne), 25 August 1886, 4 and 9. Note that Youl requested a central site that would be convenient for collecting the dead but also summoning a jury. “[T]he Lands office considers its south bank sites too valuable for the purpose; the City Council objects to a prominent Flinders-street situation; and last of all, whatever the locality, aggrieved individuals join in a chorus of indignation”. In addition to this, the Public Works department felt that locating the morgue under Princes’ bridge “would spoil the bridge”.

\(^{66}\) *The Argus* (Melbourne), 27 January 1855, 6. The medically trained Youl was appointed the district coroner for Bourke in 1853. His jurisdiction included the surrounding suburbs of
absence of a morgue to share their dwellings with the dead. Particularly in the scorching summer days of January, when decomposing corpses lay in public houses awaiting coronial inquests, which as one journalist intimated was “an intolerable nuisance, at this season of the year especially”, the plea for a deadhouse could be heard from the coroner, the publican and the drunkard alike.  

The deplorable situation continued throughout much of the nineteenth century and perhaps only came to a head following the Windsor Railway accident in 1887, which not only rendered visible before the public the appalling state of another ‘temporary morgue’, but even stymied the conduct of the death investigation process:

So bad was the stench, the filth and the whole of the surroundings, that the jury would not proceed with the business, and after viewing the bodies, the inquest had to be adjourned to a suitable building at a cost of [missing word].

In the nineteenth century, the coroner would travel to where the dead lay and hawk them from one public house to another hoping to find a hospitable innkeeper willing to accommodate them for the purpose of an inquest or at least provide an outhouse for storing the dead until a hearing could be held. In


67 *The Argus* (Melbourne), 3 January 1855, 5. On 3 January 1855, Coroner Youl, believing that the erection of the morgue was imminent, arranged with Mr Crofts, the undertaker, to store dead bodies found in the city at his premises in Queensberry Street, North Melbourne. Each corpse would be stored in the outbuilding until an inquest could be held. It seems that the scorching temperatures during December 1854 precipitated this informal arrangement, as evident by a report in *The Argus*, that Alexander McQueen, who drowned in the Yarra River was “deposited in a fowl-house” while awaiting an inquest, and in turn, his decomposing body was “exposed to the heat of the atmosphere”, which caused not only great distress for his friends, but also for the journalist: *The Argus* (Melbourne), 1 December 1854.

68 Secretary Harriman to Minister of Justice, Crown Law Office, Memo, 8 July 1887, PROV, VPRS 266, P0, Unit 413, Item 87/3721.
walking with the dead through the streets of the city, the coroner transformed the spatial relations between the living and the dead. He brought the dead inside the dwellings of the living. As I discussed above, this was a problem for the colonial government, for it threatened to unravel the imperial project of civilising colonial society. While it could be argued that the building of a proper place to house the work of the office of coroner mollified this threat, in this chapter I have shown that the construction of a deadhouse revealed that the coroner’s movements were intrinsic to how the office was performed. The place-making activities of the coroner had as their aim the cultivation of lawful relations with the dead. Wherever the coroner travelled with the dead, the itineraries he followed and the routes he took, he sought to attach the dead to the institutional life of coronial law. In the last section of this chapter, I will show how the coroner’s movements made possible a lawful place for the dead in the city.

**Walking in the Necropolis**

Walking has long been subject to philosophical, historical and legal analysis in academic scholarship. In an often-cited chapter in *The Practice of Everyday Life*, Michel de Certeau identified walking in the city with storytelling. Walking is a ‘way of operating’, a strategy for disrupting the ‘rational organisation’ of the

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city, which “repress[es] all the physical, mental and political pollutions that would compromise it”. It does so by tracing a narrative of footprints and collecting singularities of movements in a story that “weave[s] places together”. On the one hand, to walk is to be without a place, to be lost in space, yet as a rhetorical style, it is a speech act that enunciates place. The walker makes places “exist as well as emerge … moves them about and he invents others”.

Later in *The Practice of Everyday Life*, de Certeau drew a distinction between place and space, much like Carter’s articulation of place as “a space with a history”. Place is determined by propriety, a proper name, mark or sign, a history; whereas space is characterised by the unsettling of movement and different ways of operating. The corpse is, according to de Certeau, a paradigmatic symbol of place: “the being-there of something dead, the law of a ‘place’”. In comparison to the inertness of the corpse, walking is a dynamic technique of storytelling, a craft that “constantl_

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71 Ibid 97.
72 Ibid 98.
73 Carter, above n 20.
74 See also, Nicholas Blomley, ‘Landscapes of Property’ (1998) 32(3) *Law and Society Review* 567, 581, where place is “actively constructed through a constellation of material and discursive practices”.
75 de Certeau, above n 70, 118.
76 Ibid.
77 In conceptualising walking as a technology of jurisdiction, Barr is indebted to the writings of Shaunnagh Dorsett, Shaun McVeigh and Peter Rush, who conceive of jurisdiction as more than the exercise of sovereignty over territory. Jurisdiction, as I mentioned in the introduction to this thesis, is “the technical means by which a conduct of lawful relations is given shape”: Shaun
Barr’s main contention in *A Jurisprudence of Movement* is that “common law moves” through technologies of jurisdiction. Common law moves, it moves across and within lands, it binds lawful relations to a place, through the jurisdictional techniques of walking, camping and burial practices. Indeed, chapters three and four of her book are devoted to tracing the movements of a burial party walking and camping with the dead in the colony of New South Wales in the eighteenth century, and the spatial practices of a New Zealand coroner in Antarctica in the twenty-first century. The rhythms of the common law, its trajectories and itineraries are entangled with the wanderings of the burial party and the proposed flight lines of the coronial jurisdiction. In both examples, Barr argues that

burial is the practice that relates, most materially, to the care of the dead … Whether ceremonial burial or the covering in memory, it is through the institution of burial that we live in relation to the dead, and we inherit from the ones that came before.

Burial practices, according to Barr, along with camping and walking, are inextricable not only from how the common law moves, but from how the office of jurist (and to a lesser extent the office of coroner) forms lawful relations with

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This idea is built upon the assertion that common law only “comes into its relations and comes to be in place” through the jurisdictional technique of movement.\textsuperscript{81} Or, as she also puts it, “[w]hile there are many movements, and many meanings, most fundamentally this is movement as the institution and form of common law, and one that is given shape by jurisdiction”.\textsuperscript{82} In other words, movement is itself a jurisdictional technique, and because the institution of burial is a paradigm of movement, according to Barr, if not an essential component of how common law moves, burial practices institute a lawful place for the common law. Barr concludes from this that the way common law moves, the making of its place and the conduct of lawful relations, are all tied to the burial of the dead:

For it is through movement that common law comes into its relations with the dead; through movements in ceremonies of burial common law comes to be or at least seem to be in place; and through movement common law creates and conducts lawful relations with the dead.\textsuperscript{83}

The ineluctable relationship Barr draws between movement, place-making and burial practices is inspired by Harrison’s claim that “places are not only founded but also appropriated by burial of the dead”.\textsuperscript{84} For Harrison the institution of burial is essential for humanity, it is foundational to the building


\textsuperscript{81} Barr, A Jurisprudence of Movement, above n 78, 65.

\textsuperscript{82} Ibid.

\textsuperscript{83} Ibid 102. On the one hand, Barr suggests that it is the ceremony of burial in itself that institutes “lawful relations between common law and the dead”. At other times, “it is not burial per se, but rather movements towards burial that become significant”. This is most apparent in the story narrated in chapter three, for “the series of burials in and around Hawkesbury in 1799 are burials that never quite happen”: Ibid 149-50.

\textsuperscript{84} Harrison, above n 18, 24.
of our houses, the making of our histories and the humanisation of the earth. Yet, more than this, Barr suggests that burial practices attach common law to the earth; “such movements are one of the ways in which common law comes to be in place”.  

This thesis agrees that the conduct of lawful relations with the dead cannot be reduced to jurisdictional techniques of movement. As the following chapters will show, place-making is but one technology utilised by the office of coroner to take care of the dead. But where this chapter differs from Barr’s insightful analysis of common law’s movements, is that it was precisely by not burying the dead that the coroner formed and cultivated lawful relations with the dead. That is, he assumed responsibility for caring for the dead in the nineteenth century by practices of movement away from burial. In walking with the dead through the streets of the city, hawking them from one public house to another and designing a building to house the dead – in short through all of the different place-making activities that have been discussed in this chapter – the itinerant coroner attached the dead to coronial law and its institutional formations. Of course, institutions of burial were a form of conducting lawful relations with the dead in the nineteenth century, but as this chapter has shown, they were not the only way the office of coroner properly cared for the dead in the colonial city.  

In this chapter I have argued that by walking with the dead, not burying the dead or moving towards their burial, but by carrying them through the city

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85 Barr, A Jurisprudence of Movement, above n78, 96 (emphasis added). Yet Barr also writes that “without movement there would be no lawful relations. This is because movement is how common law comes into its relations ...”: Ibid 84.  
86 Towards the end of A Jurisprudence of Movement, Barr concludes that because the contemporary coroner did not bury the dead or move the dead towards burial, “the coroner’s technical and material practices of legal and institutional care are limited; unable to bury the dead in the polar South; unable to properly and finally care”: Ibid 206.
towards the ceremony of the inquest, the office of coroner formed and cultivated lawful relations with the dead. In lobbying the colonial government for the construction of an office and a morgue, and even offering to participate in the design process, the coroner assumed responsibility for constructing a lawful place for the dead in the city. Lawfulness does not simply denote here the belonging or attachment of place to law. Neither is it reducible to the authorisation or legitimation of a place for the disposal of the dead. Lawfulness is instead a useful term for drawing attention to the way in which the dead dwelled in technologies, institutions and the public sphere. The construction of a lawful place, its cultivation and management through techniques of place-making, incorporated the dead into the political life of the city, or what I also call the *polis*.

The *polis* is a contested term in history, philosophy and legal theory. The classicist, H D F Kitto, claimed that it is untranslatable, that it is an Athenian concept particular to a ‘way of life’. It has historically been equated in Ancient Greek to the city-state or even the citadel. Other times it has denoted civic space or the public sphere more generally. Kitto spoke of *polis* as “the whole communal life of the people, political, cultural, moral – even economic”. For Hannah Arendt, the communal life of the *polis*, which is opposed to the home

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87 My conceptualisation of lawfulness in this sentence is indebted to Michel Foucault’s definition of apparatus (*dispositif*): “a thoroughly heterogeneous ensemble consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions – in short, the said as much as the unsaid. ... The apparatus itself is the system of relations that can be established between these elements”. Michel Foucault, ‘The Confession of the Flesh’ in Colin Gordon (ed), *Power/Knowledge: Selected Interviews and Other Writings*, 1972-1977 (Colin Gordon trans, Harvester Press, 1980) 194, 194 [trans of: *Le jeu de Michel Foucault* (first published 1977)]. See further Giorgio Agamben, ‘What is an Apparatus?’ in *What is an Apparatus? And Other Essays* (David Kishik and Stefan Pedatella trans, Stanford University Press, 2009) 1 [trans of: *Che cosè un dispositivo?* (first published 2006)].

(oikos) and family life, is the world of appearance, a space of collective action and speech:

The polis, properly speaking, is not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together, and its true space lies between people living together for this purpose, no matter where they happen to be.89

Arendt thus argued that the polis is irreducible to a singular site or place. Rather, as Stuart Elden writes, it defines “the network of relations between various members of a community based on a particular location”.90 The polis is a relational concept that represents the intermixture of people (demos) and place (khôra); a network of political, cultural, spatial and lawful relations.

In a similar vein to the thought pursued in this chapter, Harrison conceives of the polis as the institutionalisation of a meeting place between the living and the dead.91 The public sphere incorporates not only a place, but also the people that inhabit it and the ancestors that dwell within it. In the first section of this chapter, I remarked that the problem of the unknown dead manifested in the nineteenth century as a fear of the place of the dead at once everywhere and nowhere. It was a fear that the dead lacked a proper place in the polis, in the communal or political life of the city, because they could be said to constitute the polis. The appointment of a coroner for the colony in the nineteenth century

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91 See also Paul Carter on Federation Square – the place in which the coroner’s office once stood in Melbourne – as a meeting place of becoming a “federal community” of the past and the present: Paul Carter, Mythform: The Making of Nearamnew at Federation Square (Miegunyah Press, 2005) 5.
was intended to extricate the dead from the *topos* of the living. It was intended to revive the *polis*, in pursuit of an imperial project of colonising the land as the exclusive realm of colonial settlers. Yet the place-making activities of the coroner, the way he carried and hawked the dead, moved and stopped with them, sought to incorporate the dead in the political life of the city. Parading the dead through the streets of the city towards the nearest public house, the coroner collected a heady mix of intoxicated jurors, hurried reporters and curious onlookers, to participate in a civic process of communing with and caring for the dead.

The construction of an office for the coroner and a morgue to house the dead in the late nineteenth century was undoubtedly intended, as I mentioned previously, to address the proximity of the dead in the public sphere. While it succeeded in physically removing the conduct of inquests from public houses, and constraining the movements of the coroner from the place where the dead lay to a centrally determined location in the city, it did not simply extricate them from the worlds of the living. Instead, this site granted the dead a lawful place in the city. The place-making activities of the coroner were central to how the coroner formed and cultivated lawful relations with the dead. The deadhouse became by the end of the nineteenth century an institution of the necro-*polis*, a civilised under-world, which as I will discuss in the following chapter, framed an architecturally designed encounter between the living and the dead.
Conclusion

It would not have been surprising to read in The Argus newspaper on 11 November 1852 about the arduous journey that an unknown corpse suffered under the jurisdiction of the office of coroner. When the corpse was found on Monday evening it was hawked from one public house to another, and refused entry by a number of innkeepers, before finally it was accepted by the landlord of the Queen’s Arms on Swanston Street. The partially decomposing body was stored in a cramped tavern for two days awaiting an inquest. While the jury returned an enigmatic verdict of ‘Found Dead’, what was more important for The Argus were the calls made by the Mayor of Melbourne for the incident to be investigated:

Some great dereliction of duty has occurred somewhere which demands an inquiry, how a dead body should be allowed to remain from Monday until Wednesday before an inquest could be held and in a house crowded with lodgers.⁹²

It is unclear whether The Argus suggested that the ‘dereliction of duty’ lay with the coroner himself, who often took a couple of days to reach the city, or whether it lay with the failure of the government to provide proper facilities for interring the dead until an inquest could take place. In any case, what this critique revealed was the ineluctable connection between the duties that pertain to the performance of an institutional role and the places in which those performances materialise. It also exposed a failure to properly care for the dead because of a lack of any lawful place for them in the city.

⁹² The Argus (Melbourne), 11 November 1852, 5.
In this chapter, I have argued that writing a spatial history of the movements of the coroner is imperative for accounting for how the office made possible a lawful place for the dead in the city. However, this history also narrates how the office of coroner became materially placed in the city. The place-making activities of the coroner did not only cultivate lawful relations between the living and the dead, but institutionalised the practice of coronial law and procedure in the colony. In the following chapter I will expand upon this argument by analysing how the technology of architecture conditioned the institutionalisation of the office in colonial society.

This chapter has described the practice of walking with the dead as a jurisdictional technique of the office of coroner in the nineteenth century. The ways in which the coroner travelled to the place where the dead lay, hawked them from one public house to another, and conducted inquests in crowded taverns, hotels and brothels, transformed the spatial relations between the living and the dead. Techniques of place-making attached the dead to a place and bound them to the institutional life of coronial law. Far from expropriating the dead from the realms of the living, the jurisdictional movements of the coroner incorporated them into the political life of the city or what I also called the *polis*.

The role of the coroner was not to bury the dead. Far from it: he assumed responsibility for caring for the dead by carrying them, in full view of the public, through the ceremony of coronial procedure. This chapter thus shows how techniques of place-making were an important, if not essential, aspect of the performance of the coronial office in the nineteenth century. They were inextricable from the way the coroner formed and cultivated lawful relations with the dead. In walking with the dead the coroner called for the living to honour, not banish, the legacy of colonial ancestors, or to put it differently,
learn to share their dwellings with the dead, learn to live alongside the dead. For as Michel de Certeau writes, “[h]aunted places are the only ones people can live in”.93

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93 de Certeau, above n 70, 108.
CHAPTER 2: INVENTORIES OF CORONIAL ARCHITECTURE

The emergence of legal architecture as a specialist field of expertise in the nineteenth century materially affected the conduct of law in the Australian colonies. The shift from temporary multi-purpose spaces to custom-designed courthouses played a crucial role in legitimating the authority of the colonial judiciary. Monumental facades signified the formality of legal rituals, while the layout of courtrooms instituted a hierarchy of roles. Courthouse architecture framed the parameters of legal process and shaped the way actors participated in judicial ceremonies. The previous chapter examined how the place-making activities of the colonial coroner affected the way his office formed lawful relations with the dead in the nineteenth century. This chapter continues to explore how the conduct of the coroner was mediated by spatial practices. However, rather than focusing on techniques of walking, carrying and hawking the dead, I investigate how architectural techniques institutionalised the coroner’s office in colonial society.

This chapter offers a history of the development of the genre of coronial architecture in the late nineteenth century. Its case study is the design of the

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2 Coronial architecture has received little attention in legal scholarship, that is, apart from Clare Graham’s historical analysis of the design of coroners courts in London prior to World War I: Clare Graham, Ordering Law: The Architectural and Social History of the English Law Court to 1914 (Ashgate, 2003). See also Clare Graham, ‘Sudden death and the LCC: accommodation for inquests in London before the First World War’ (1995) 1 Arq 60 and Clare Graham, ‘The History of law court architecture in England and Wales: The Institutionalisation of Law’ in SAVE
first purpose-built coroners courthouse in the city of Melbourne, which was constructed alongside the Yarra River in 1888. The first section considers how the layout of the courthouse affected the temporal and spatial movements of the living. The vestibule, corridor and walls symbolised a rite of passage, a journey through clearly demarcated rituals, traditions and ceremonies. These design elements also signified a journey for the living through thresholds, realms and barriers, a circumscribed passage towards the charnel house of the dead. The second section explores the extent to which forensic techniques were interwoven in the architecture of the courthouse. The design of the building facilitated the conduct of death investigations by framing a forum for the living to engage with the dead. I suggest that the architectonics of the post-mortem and inquest rooms were inextricable from the performance of the coronial inquest.

Yet the material foundations for the inquest – the architecturally framed forums for the dead to encounter the living – were not the only examples in the courthouse of how forensic techniques were incorporated into the design of the building. The third section examines how coronial architecture transformed techniques for inventorying the dead. The hermetically sealed glass screen, which was installed to separate the mortuary from the courthouse, framed the inquest as a legal forum for the dead to appear before the living. The chapter concludes by explaining how coronial architecture modified the way the coroner cultivated a lawful encounter between the living and the dead. The

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3 The courthouse was decommissioned in 1955 and demolished in 1959: ‘Wreckers At Old Morgue’, Police Life (Melbourne), June 1959, 6. The architectural descriptions of the building can be gleaned from a couple of newspaper articles from the 1880s: see ‘The Proposed New Morgue’, The Argus (Melbourne), 19 May 1887, 6 and ‘The New Morgue’, The Argus (Melbourne), 26 September 1888, 11.
coroner facilitated, witnessed and participated in forums of law that had as
their aim the institutionalisation of a collective memory of the dead.

Rituals of Passage

Melbourne’s purpose-built coroners’ courthouse was occasionally transformed
into a site of conviviality towards the end of the nineteenth century. On 25 May
1897 the inquest room was transfigured, with the careful arrangement of
bouquets of flowers and bottles of champagne, into what The Argus newspaper
called a spectacle of “unusual gaiety”.4 The festive scene witnessed the
unveiling of a photographic portrait of the incumbent city coroner. In honour of
his long-standing occupation in the office, and before a gathering of prominent
medical and legal professionals, Dr Richard Youl was presented with a portrait
to be hung on the wall of the inquest room. It was later revealed that his
portrait was hung directly behind the coroner’s chair,5 implying that even in his
death, “the old dictator of the Morgue”,6 as he was described in his obituary,
would continue to preside over the conduct of office.

The following year the inquest room was once again transformed into a
spectacle. On 4 March 1898, a number of pathology staff gathered to witness the
unveiling of photographic portraits of the new city coroner, Mr Samuel Curtis
Candler, and the coroner’s surgeon, who was also the district coroner of
Bourke, Dr Crawford Henry Mollison. Both portraits were to be hung in the

4 ‘Presentation to Dr Youl’, The Argus (Melbourne), 26 May 1897, 6.
5 Andrew Brown-May and Simon Cooke, ‘Death, Decency and the Dead-House: The City
dead-house>.
6 ‘Death of Dr Youl’, The Argus (Melbourne), 7 August 1897, 10.
inquest room “on each side of the photograph of the late Dr Youl”. The Argus described the “convivial gathering” on that day as a “somewhat incongruous hilarity”. The apparent oddness of the event might have reflected the difficulty of reconciling a jubilant atmosphere with the death-bound images that framed the architecture of the courthouse. The dead were not absent from the courthouse during such gatherings. They were prostrate in the mortuary, hermetically sealed from the inquest room by a thick glass wall. Their presence reverberated throughout the building, for as Jacques Derrida once wrote, the dead never disappear when they pass away. Whether they are memorialised in portraits, effigies or death masks, or simply linger in absent objects and empty spaces, the dead always remain at work. Immortalised in their portraits, imprinted on a wall above the coroner’s chair, the absent dead surveyed the activities of the living.

When Dr James Edward Neild, a renowned forensic pathologist, spoke at the event, he “warmly eulogised both coroners for the manner in which they performed their duties”. In ‘Death, Decency and the Dead-House’, Andrew Brown-May and Simon Cooke interpret this spectacle as evidence of how the office came to understand its place in the administration of colonial government. “Clearly,” they write, “the morgue was an institution that had a sense of its own past and identity”. However, such an event also revealed how the office assumed responsibility for caring for the dead. It exemplified how architectural techniques were imbricated in the conduct of lawful relations with the dead. The design of the courthouse, the construction of windows, walls and

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7 The Argus (Melbourne), 5 March 1898, 9.
8 Ibid.
10 The Argus (Melbourne), 5 March 1898, 9.
11 Brown-May and Cooke, above n 5, 4-5.
doors, the positioning of furniture and the hanging of photographs were never simply perfunctory. These acts furnished for the coroner jurisdictional techniques for learning to live with the dead and for honouring the legacy of the coroner’s office.

The first purpose-built coroners courthouse was designed by the government architect, Mr G W Watson of the Public Works Department, who was also responsible for designing a number of civic buildings throughout Victoria. The most striking aspect of Watson’s design was its complexity. The architectural blueprint of the old morgue, first proposed in 1854 but not constructed until 1871, depicted a small bluestone building with a separate room for post-mortems and another for inquests. It also set out an office for the coroner and a yard separating the morgue from the courtroom. Conversely, Watson’s design featured additional rooms, including a waiting room for witnesses, a retiring room for jury deliberation, quarters for receiving and displaying corpses, a large mortuary, a post-mortem room and an airy courtroom. Rooms therefore corresponded to the diverse range of activities that took place during the death investigation process.

Ornamental iron gates, which marked the formal entrance to the courthouse, opened onto a public vestibule flanked “on each side by private offices of the

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12 Bruce Trethowan, *The Public Works Department of Victoria 1851-1900: An Architectural History* (PhD Thesis, The University of Melbourne, 1975). Many aspects of the construction process, particularly the costs involved, were criticised by lawyers, councillors, politicians and journalists. The project was substantially delayed for a number of years, even though Crown land was reserved for the courthouse under the *Melbourne Morgue Site Act 1886* (Vic). Nonetheless, the elaborate design was championed by the secretary of the Crown Law Department: ‘The Proposed New Morgue’, *The Argus* (Melbourne), 19 May 1887, 6.

13 ‘Plan of Proposed Temporary Morgue – Flinders St, Melbourne’, PROV, VPRS 266, Unit 413, Item 57/5705.

14 ‘Yarra Bank Road Morgue’, PROV, LCM 11.51. There are similarities between Watson’s designs and the London County Council’s model designs for coroners courthouses, which were created following the *Public Health (London) Act 1891* (UK).
The vestibule was a common architectural device in the construction of courthouses in the nineteenth century. It marked a formal passageway between the exteriority and interiority of the court building. But it also symbolised the limits of the jurisdiction of the judiciary and the scope of colonial administration. In other words, it signified the exclusive authority that the judiciary holds in matters of adjudication and the performance of legal rituals, ceremonies and procedures. The ‘frame’ of courthouse architecture, as Piyel Haldar puts it, maintained “that authority-to-judge which can only be found inside a court of law and nowhere else, it assign[ed] legal discourse to a proper place”. In framing the act of judgment and marking an access point to the law, the entrance hall constituted a liminal space between the inside and outside of legal discourse, between what was excluded and included from the edifices of law.

In the genre of coronial architecture the vestibule arguably symbolised the expurgation of religious rites from the jurisdiction of the coroner. The cleric’s role in burying the dead was antithetical to the conduct of the coroner, who delayed burial for the purposes of investigating the identity of the deceased and the causes of death. The lobby marked a liminal space in which ecclesiastical authority ceased to operate and the coroner assumed an institutional responsibility for caring for the dead. This was a space where, as David Evans writes of the Inns of Court, officials transitioned between different kinds of

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15 The courthouse was surrounded by a yard, which was “enclosed on three sides by a substantial brick wall, and on the front by an ornamental palisade iron fence on brick base with large iron gates”: ‘The New Morgue’, The Argus (Melbourne), 26 September 1888, 11.
roles. In coronial architecture the vestibule specifically framed a passage of transition between the performance of religious and juridical roles. It symbolised for the living the assumption of civic duties towards the dead, whether they performed the role of coroner, orderly or surgeon, whether they were summoned to attend the courthouse for the purposes of identification or collecting the remains of a loved one for burial, or whether they were obliged to attend as a witness or a juror during an inquisitorial hearing. The vestibule framed the institutional home of the coroner as an isolated, immobile and consecrated place, but also paradoxically, a liminal space of movement. It created a threshold between the performances of ecclesiastical and institutional roles, between the conduct of religious and lawful relations with the dead.

The vestibule signalled the commencement of a rite of passage that contained all movement throughout the courthouse. This passage was framed architecturally by the corridor, which first appeared in domestic architecture in Europe in the seventeenth century, in order to remove foot traffic from rooms and increase accessibility to different parts of a building. The corridor sought to institute in the courthouse a hierarchy of roles performed during the death investigation process. It separated rooms for witnesses and jurors, symbolising the importance that each actor played during the inquest hearing. In contrast, when inquests took place in the old morgue, where there was no corridor let alone separate rooms for different actors, it was not always clear who performed each

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18 Robin Evans, Translations from Drawing to Building and Other Essays (Architectural Association, 1997) 70 and 79. The inclusion of a corridor in the courthouse may have also been influenced by Philip Edward Masey’s designs for a coroners courthouse in London in 1867 and H Saxon Snell’s designs for a courthouse in Clerkenwell in 1876. See The Builder (London), 15 June 1867, 423-4 and The Builder (London), 22 July 1876, 709 quoted in Graham, Ordering Law, above n 2, 242.
role. The absence of a corridor running through the course of the building, differentiating each room according to its function, had opened the coronial institution to criticism from journalists, politicians and medico-legal professionals, as discussed in Chapter 1, that the inquest hearing was a farce.19

In the new courthouse the corridor terminated at the base of the mortuary. Since the dead could only enter the mortuary from a door located at the back of the receiving room, the corridor was the exclusive province of the living. It segregated and enclosed routes, passages and channels of the courthouse from the movements of the dead. It was also the only means by which the living could approach the place of the dead, which was sealed from the corridor by an airtight glass screen. This meant that the corridor effectively functioned as a liminal space between the realms of the living and the dead. While townsfolk were encouraged to make use of the corridor to fulfil their civic duty of identifying the dead, they could only perform their duty from a remote, detached point. The idea that the corridor created an economy of distance and proximity between the living and the dead, is unsurprising given its depiction in romantic and gothic literature in the nineteenth century as “places for restless souls [and] places of spectral encounter”.20 The relations between the realm of the living and the dead were regulated by the circulatory nature of the corridor. The architecture of the courthouse designed the corridor as a dynamic space where the living had to keep moving, where they could not linger or loiter like the dead in the morgue.

The layout of the coroner’s courthouse symbolised a rite of passage between the realms of the living and the dead. On the one hand, the walls of the inquest

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19 See e.g., ‘Debate on Coroners in the Legislative Assembly Tuesday 2nd October 1877’ (1877) 22(10) Australian Medical Journal 305, 305-6.
room framed a journey through the legacy of the office of coroner. Photographs of former coroners adorning the walls of the inquest room signified the inheritance of an institutional history of place-making. On the other hand, the vestibule constituted a liminal space between religious and secular roles towards the dead. It symbolised a period of transition between the cessation of ecclesiastical authority and the commencement of the coronial jurisdiction. Lastly, the corridor, which flowed past rooms for witnesses and jurors towards the charnel house of the dead, framed a circulatory journey, what Ian Burney calls of the London County Council’s model designs of coroner courthouses, “an orderly flow of activity”, between the worlds of the living and the dead. When combined, the wall, vestibule and corridor facilitated and instituted a passage, journey and movement through rituals, thresholds and boundaries.

**Forensic Architecture**

The post-mortem room was hidden at the rear of the courthouse beyond the glass screen that separated the corridor from the mortuary. Coroner Youl once compared the post-mortem room of the old morgue to a vault because it contained neither windows nor a fireplace. The unpleasantness of its austere design was compounded by an infestation of river rats. To ventilate the building, autopsies were conducted with the doors left open, often exposing forensic investigations to the vicissitudes of the elements. This practice also inadvertently exposed the conduct of post-mortems to the voyeurism of the outside world, which as I explored in the previous chapter, raised the ire of officials and resulted in public calls for decorum. The Argus declared in 1886 that “[t]here is no proper accommodation [in the old morgue] either for the

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dead or the living”.

In contrast, plans for the new post-mortem room in the purpose-built courthouse featured an open timber roof for ventilation and sidelights and skylights for illumination. Not only was it constructed “under the direction” of the coroner and the dean of medicine, but the latter designed a bespoke table to conduct post-mortem examinations.

Forensic investigations had been obscured by darkness in the old morgue. The absence of windows had a detrimental effect on the way the coroner and his surgeon discharged their duties. The post-mortem room had caused much discomfort for juries, who found the room stultifying and nauseating. The surgeon’s ability to accurately conduct autopsies and the capacity for the jury to properly view the dead body was compromised by a lack of natural light. The oppressive atmosphere also contributed to mounting secrecy surrounding the rituals of the coronial institution. In contrast, the installation of windows in the new post-mortem room “enable[d] the most minute microscopic examinations to be made with success”. They flooded the room with natural light, permitting the coroner’s surgeon to effectively dissect the corpse and infer from its remains the causes of death. The window also symbolically exposed the conduct of office, particularly the finesse of the forensic investigation, to the outside world, even if the materials used to construct the sidelights obfuscated...

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23 The Argus (Melbourne), 25 August 1886, 4. Burney notes similar calls made in London in the 1870s: “‘Decency’ was clearly on the minds of the City of London Corporation when it met in January 1877 to approve plans for a spatially reconstituted inquest. ... At the cost of twelve thousand pounds, the commissioners provided the district with a model inquest site, featuring a coroner’s court, a deadhouse fitted for postmortem examinations, a laboratory with weighing and consulting rooms, a keeper’s house, and sheds for a disinfecting apparatus and an ambulance. ... The Lancet, for its part, touted the corporation’s achievement, celebrating it as an ideal inquest complex that substituted the ‘grotesque surroundings’ of the tavern and the outhouse with one ‘in an isolated area, replete with every convenience for the due performance of the coroner’s function’”:

24 ‘The New Morgue’, The Argus (Melbourne), 26 September 1888, 11. Professor Harry Allen was employed at the time as the dean of the Faculty of Medicine at the University of Melbourne and as a pathologist at the Melbourne Hospital.

25 See The Argus (Melbourne), 10 July 1884, 10 and The Argus (Melbourne), 25 August 1886, 4.

the interiority of the room from the surrounding environment. Towards the end of the nineteenth century, coronial architecture enhanced the manner in which the office performed forensic investigations by shedding light on the institutional activities of the clandestine charnel house of the dead.

Windows inscribed forensic techniques in the architectural fabric of the courthouse. The concept of forensic architecture was first developed by Eyal Weizman to describe the practice of forensic analysis on built structures. He coined the phrase to define the use of scientific techniques to examine the remains of buildings destroyed during military strikes. Forensic architecture, Weizman writes, “refer[s] to an analytical method for reconstructing scenes of violence as they are inscribed in spatial artefacts and in built environments.” The concept of forensic is likewise useful in this chapter for examining how jurisdictional techniques employed by the coroner and his surgeon during the death investigation can be imprinted in the design of a building. For example, the windows installed in the post-mortem room materially affected the use of analytical-scientific methods to conduct an autopsy on the deceased. They were structurally indispensable for illuminating the room and enabling the coroner and his surgeon to translate anatomical signs into a lawful account of how a person died. In other words, windows augmented and enhanced the jurisdictional value of post-mortem examinations for conducting a coronial inquest. What is more, the windows revealed the extent to which forensic techniques became intertwined with architectural practices in the building of the courthouse.

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28 Ibid 101.
The rich etymology of forensics points to the ineluctability between jurisdictional techniques and architectural practices. The word descends from the Latin *forensis*, which refers to speech pertaining to or of a *forum*. Weizman notes that at root *forensis* denotes “the art of the forum – the practice and skill of presenting an argument before a professional, political, or legal gathering”. Forensic oratory was a distinctive genre of legal rhetoric in antiquity. It defined precepts for the formulation and presentation of arguments before a court of law. In Chapter 3, I will discuss how forensic rhetoric not only applied to the speech of litigants, but also the speech of things. Yet for the purposes of this chapter, I argue simply that the rhetorical origins of forensics reappeared in the architecture of the coroner’s courthouse in the nineteenth century. It had been displaced, as Piyel Haldar writes of the common law in general, “in the physical architecture of law and can be reconstructed through the analysis of the tropes and figures of courtroom design”. Haldar argues that far from disappearing from legal discourse, rhetorical styles reappeared in the form of ornamental architecture, where they became “the essence and meaning of the work, be it the work of an argument or of an edifice”. He refers specifically to the writings of the Renaissance architect, Leon Battista Alberti, who outlined how ornament in public secular buildings structurally conditioned the rituals of institutional life.

Forensic rhetoric rematerialised in the architecture of the purpose-built coroner’s courthouse in the late nineteenth century, but not simply in the

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31 Ibid 123.
ornamental dado that decorated the inquest room or the kauri pine woodwork that gave “it a most cheerful effect”. The inquest room was “sumptuously furnished” like other court buildings, with a desk for the coroner, a raised platform for the jury, a witness box, tables for lawyers and journalists, and seating for members of the public. The arrangement of furniture in the room was not merely perfunctory. It was important to what Linda Mulcahy defines as “a broader and more nuanced understanding of judge craft”. Furniture provided material conditions in the courthouse whereby the living could lawfully engage with an institutional memory of the dead. It also differentiated the expression of specific roles during the inquisitorial hearing and acted as a conduit between the art of persuasion and the conduct of the coroner. The result then of the implementation of such architectural techniques was the transformation of the inquest hearing into a public forum for the living to encounter the dead. Here, the inquest embraced forensic rhetoric – “the gestures, techniques and technologies of demonstration, methods of theatricality, narrative and dramatization” – through the technologies of courtroom design.

The conduct of the inquest was framed in the courthouse by a person and a technology; the coroner and architecture. The coroner had a duty to make sense of the forensic evidence presented before the inquest and to transform it into a narrative understood by the public assembly. This task was especially arduous when the inscrutable words of the dead, which revealed the causes of their deaths, were buried beneath layers of decomposing flesh and the thickness of esoteric scientific jargon. Youl was particularly praised in *The Argus* for being

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33 ‘The New Morgue’, *The Argus* (Melbourne), 26 September 1888, 11.
34 Ibid.
36 Weizman, above n 27, 107.
able to “seize the salient points of a difficult case, or more ably set them forth in the language understood [sic] of the people”.37 However, his accomplished performance was not simply the result of highly tuned rhetorical skills and figures of speech. It was made possible by the installation of windows in the post-mortem room and the careful arrangement of furniture in the inquest room. Architectural techniques complemented inquisitorial procedures by framing the material conditions for a public forum where the living could lawfully engage with the dead.

**Screening the Dead**

The hallmark of Watson’s design for the courthouse was a hermetically sealed glass screen that formally separated the mortuary from the inquest room. The screen effectively segregated the building into places occupied by the dead and places inhabited by the living.38 It also transformed the way in which the jury viewed the dead body during an inquest. Prior to the use of a transparent partition separating the living from the dead, as I mentioned in Chapter 1 it was commonplace for juries to view the dead body in the same room as the inquest. Only where more space was available, would the viewing take place in an adjacent room or even an outbuilding. And as a letter written by a juryman to the colonial secretary in 1855 showed, this practice often offended the senses. It was said to be ‘intolerable’ and ‘disgusting’, especially in ‘the heat of the day’.39

38 See Burney, above n 21, 88-9; Graham, *Ordering Law*, above n 2, 251; Graham, ‘Sudden Death and the LCC’, above n 2, 64 for discussions of how the London County Council’s model design of coroners courthouses sought to contain, separate and isolate the worlds of the living and the dead. Lindsay Prior offers a similar reading of the design of a morgue in the twentieth century, “where the investigative powers of the state and explanatory principles of scientific medicine intermingle to police the dead”: ‘Policing the Dead: A Sociology of the Mortuary’ (1987) 21(3) *Sociology* 355.
39 A Jury Man to Colonial Secretary, 16 February 1855, PROV, VPRS 1189, Unit 146, Item L55/2462.
The screen thus played a technical role in the courthouse in insulating the living from the odours of the dead. It mediated sensory relations between the jury, the public and the corpse.

In the late nineteenth century, public health discourses preached that the nauseating stench of the dead was a sign of miasma, which when in contact with the living could lead to disease, pestilence or even death.\textsuperscript{40} Theories of miasma were largely embraced by medico-legal circles in the colony of Victoria.\textsuperscript{41} Even Dr Neild believed that cadavers liberated “offensive gases” that contaminated the air “and rendered [it] to that extent less fit for respiration”.\textsuperscript{42} He wrote, for example, in a lengthy plea in favour of cremation that a corpse “offends the senses, and it shocks the sensibilities, even of those whose duties make them familiar with the sight”.\textsuperscript{43} The putrid human cadaver, the forensic pathologist described, emitted bad air which “from the surface of the ground above dead bodies, there was continually arising a miasma possessing directly poisonous qualities”.\textsuperscript{44} Undoubtedly, then, the design of the mortuary responded to popular fears that miasma caused disease and that its origins lay in vapours emanating from rotting organic matter.

The screen as such enabled jurors to identify a corpse while preserving the imagined purity of their sensibilities. “Not only will it be absolutely impossible for any offensive smell to make its way into this passage,” \textit{The Argus} newspaper reported at the opening of the courthouse, “but [it] has been so successfully

\textsuperscript{40} Marc Trabsky, ‘Institutionalising the Public Abattoir in Nineteenth Century Colonial Society’ (2014) 40(2) \textit{Australian Feminist Law Journal} 169.

\textsuperscript{41} See, for example, Samuel Curtis Candler, \textit{Theory of the Causation, and Suggestions for the Prevention of Dysentery} (Melbourne, 1873); Samuel Curtis Candler, \textit{The Prevention of Consumption: A Mode of Prevention Founded on a New Theory on the Nature of the Tubercle-Bacillus} (Melbourne, 1887).

\textsuperscript{42} James Edward Neild, \textit{On the Advantages of Burning the Dead} (Melbourne, 1873) 1.

\textsuperscript{43} Ibid.

\textsuperscript{44} Ibid 3.
arranged that it is as sound proof as a double brick wall”. In other words, the screen instituted an auditory, olfactory and tactile division between the living and dead. It was sealed such that jurors could not even hear the dripping of cold water or the forensic pathologist ‘tampering’ with cadavers. The airtight passage also transformed the ocular relations between the dead and the living. It designated the only viewing platform in the courthouse where the living could encounter the materiality of the dead. The screen technically framed a speculative narrative of the dead by transforming anatomical wounds into a theatre of intrigue. This frame was not supplementary to the spectacle, it mediated the appearance of the dead before the inquisitorial forum.

While the use of “an air-tight glass passage” in the coroners’ courthouse was unique in Australia, and yet preceded its introduction in England, the design was not unprecedented in France. The device was initially developed for the construction of La Morgue in Paris. The practice of displaying cadavers for identification in ‘a morgue’ originated in France in the eighteenth century, however the invention of a screen to facilitate such encounters was not implemented in the Parisian morgue until 1864. The use of this device reflected a gradual shift in the perception of the dead in France in the

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46 ‘The New Morgue’, The Argus (Melbourne), 26 September 1888, 11. Viewing lobbies and inspection windows were also installed in coroners courthouses in London during this period. However, they were smaller in size from the glass screen installed in the Melbourne courthouse: Graham, ‘Sudden Death and the LCC’, above n 2, 64-5. The screen was interestingly criticised by the British Medical Journal as offering an ‘unscientific’ view of the corpse: “In all well-equipped mortuaries recently built, the jury actually ‘view’ the body through a window standing outside. How can such a casual glance help the jury to ascertain the cause of death?”: “‘The View’ at Inquests’, British Medical Journal (London), 1 October 1898, 995. I will discuss this issue further in Chapter 3.

47 Frederick Nash, ‘La Morgue 1829’, Gallica Bibliothèque Numérique, A29427.

nineteenth century. Death, as Michel Ragon claimed, increasingly transformed into “a spectacle, [it] made a spectacle of itself”. \(^{49}\) Indeed, the screen projected a sanitised spectacle of the macabre, which similarly to the display cases found in anatomy museums, zoos and aquariums, formalised an institutional relationship between the object of display and the gaze of the observer. In his vivid description of the Parisian morgue, Allan Mitchell noted that

the main room resembled nothing so much as an aquarium. Stretching nearly the length of the hall was a large exhibition case with a panelled glass front, in appearance much like a huge sky-light. Behind the glass façade were two rows of black marble slabs, a dozen in all, illuminated and titled to afford easier viewing of the subjects displayed. Above each headrest was a faucet to permit occasional sprinkling of the corpse with water and chemicals, the only means of preservation employed before the installation of a refrigerating system in the early 1880’s.\(^ {50}\)

*La Morgue* was familiar to the readers of *The Argus*.\(^ {51}\) As early as 1871 the newspaper admonished the landmark as “one of the dismal sights of Paris” and “a gloomy emanation from the morbid sentimentality of a French mind”.\(^ {52}\) The

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\(^ {50}\) Mitchell, above n 48, 584. See also *Vue intérieure de la Morgue en 1845 (dessin d’après une peinture de Carré)*, Gallica Bibliothèque Numérique, A29479.

\(^ {51}\) It was also familiar to public servants and government officials. In a letter from the Office of Health, complaining about the deplorable state of the temporary morgue on the Australian Wharf, the secretary wrote “[s]o far as I am aware, the Morgue in Paris is now the most complete structure of the kind, and should the Officers entrusted with the erection of the new Morgue in Melbourne require details of that building I shall be happy to [procure] them from the Parisian authorities”: Correspondence from the Office of Health, 16 April 1869, PROV, VPRS 266, P0, Unit 284, Item 75/4301.

\(^ {52}\) *The Argus* (Melbourne), 13 January 1871 quoted in Brown-May and Cooke, above n 5, 8. See also Victoria, *Parliamentary Debates*, Legislative Assembly, 8 December 1886, 2699 (Mr L L Smith and Mr Nimmo) (emphasis in original): Mr L L Smith argued that the coroners courthouse “should contain suitable accommodation for post mortem examinations, and for the holding of
morgue was decried as "'La Musée de la Mort', a morbid attraction listed in guide books to the city as a must-see alongside the Eiffel Tower, the Louvre, the waxworks and the theatre". The morgue served multiple purposes in the burgeoning metropolis of Paris in the mid nineteenth century. It provided an accessible and central point in the city where the public could search for missing persons and identify the unknown dead, particularly those collected by orderlies from the Seine River. Yet it also served to satiate the morbid curiosity of visitors and tourists who flocked to the morgue in search of the macabre. For Vanessa Schwartz the morgue was "a spectacle of the real", a "grand display" of distressing, titillating and salacious scenes. She quotes an administrative director from the nineteenth century who opined "the morgue is considered in Paris like a museum that is much more fascinating than even a wax museum because the people displayed are real flesh and blood". The fact that the building contained a separate room for photography, the glass windows were curtained to change the display of bodies every three days, and most corpses were exhibited nude except for a small cloth covering their genitals, only served to heighten the extent to which it appeared as a spectacle of the dead.

The coroner’s courthouse in Melbourne was similarly depicted "as a lurid but nonetheless acceptable venue for macabre titillation" towards the end of the nineteenth century. Censure of its moribund theatricality was primarily directed towards professional jurors who loitered outside for the opportunity to

inquests, and that it should be arranged after the mode adopted in continental cities, whereby the public were enabled to view the cadavers, decently laid out, through glass plates – a proceeding which often assisted in the discovery of the crime”. Mr Nimmo, the Minister of Public Works, responded that "[t]he room for the reception of the bodies would have a glazed screen, so as to admit inspection by the public without offence".

53 Brown-May and Cooke, above n 5, 7-8.
55 Brown-May and Cooke, above n 5, 4.
56 Schwartz, above n 54, 58.
57 Brown-May and Cooke, above n 5, 14.
earn money as jurymen. But it also included members of the public who flocked to the courthouse to gawk at the newly found dead. Brown-May and Cooke write that there was an increase in foot traffic and public interest in the morgue after the installation of the glass screen in the new coroner’s courthouse.\textsuperscript{58} The principal aim of visiting the institution was to identify bodies deposited in the mortuary, as a politician claimed in Parliament in 1886.\textsuperscript{59} In contrast, ‘They Met at the Morgue’, a story written by Mannington Caffyn for \textit{The Bulletin} in 1892, gleefully described two friends visiting the courthouse during their lunch break purely to satisfy their morbid curiosities. “[F]lattening [their] noses against the screen of glass”, they gawked at the most recent “loads of wretched humanity – the flotsam and jetsam of life’s boisterousness”.\textsuperscript{60} The two friends decided to meet at the courthouse because towards the end of the nineteenth century it formalised – or as Schwartz writes of the Parisian morgue – it “institutionalized the public viewing of corpses”.\textsuperscript{61}

Etymological origins of the term ‘morgue’ reveal how it was associated with instituting new ocular relations between the living and the dead.\textsuperscript{62} In French, \textit{morgue} designates a place to exhibit the dead for the purposes of identification. However, as a verb it denotes the practice of identifying the dead. \textit{Morgue} derives from the archaic verb \textit{morguer} – “to stare, to have a ‘fixed and questioning gaze’ … to look solemnly”.\textsuperscript{63} In the seventeenth century, \textit{morguer} referred to a procedure for classifying prisoners upon their entrance to and exit from penal institutions. Guards were required to \textit{morguer} the prisoners upon their arrival at the gaol, that is take time to stare at their faces and remember their features in a visual inventory. This procedure enabled the guards to

\textsuperscript{58} Ibid, 13.
\textsuperscript{59} See Victoria, \textit{Parliamentary Debates}, Legislative Assembly, 8 December 1886, 2699.
\textsuperscript{60} Mannington Caffyn, ‘They Met at the Morgue’, \textit{The Bulletin} (Melbourne), 9 July 1892, 21.
\textsuperscript{61} Schwartz, above n 54, 50.
\textsuperscript{62} I will further examine ocular technologies of the coronial jurisdiction in Chapter 3.
\textsuperscript{63} Schwartz, above n 54, 50.
identify whether a particular individual had died in custody or escaped from prison. In the eighteenth and nineteenth century, the technique for inventorying prisoners was expanded into other social and legal institutions, including the hospital, factory, workhouse and morgue.⁶⁴ It brought to those institutions a new mode of screening the dead.

The coronial screen framed, in the specificity of a place of law, jurisdictional techniques for inventorying the dead. In fact, a key difference between the use of the screen in Melbourne and Paris was that the French legal system did not possess a history of the office of coroner. The coroner did not occupy an equivalent role in the Institut Médico-Légal. The primary functions of the administrative director of the Parisian morgue was to register, examine and display corpses, supply information to the police in relation to criminal investigations and offer training in the science of forensic medicine:

It was administered by three different agencies: the Prefecture of the Seine maintained the building, the Prefecture of Police was in charge of hygiene and daily administration, including the varied expert services, and finally the Ministry of Public Instruction was responsible for the courses in forensic medicine …⁶⁵

Whereas in the common law the coroner was responsible, with the assistance of the police and medical practitioners from at least the mid nineteenth century, for each aspect of the death investigation process. Hence, in Melbourne techniques for inventorying the dead were part of the jurisdictional practices of coronial law and procedure. The dead were not simply exhibits to be viewed by

⁶⁵ Schwartz, above n 54, 50 fn 19.
the public in a morbid spectacle or scientific curiosities to be studied by medical professionals. They were inventoried as lawful objects in the conduct of the inquest. The glass screen – in conjunction with formalin solution to preserve cadavers and a large lantern shining light onto “seven tables of white marble, resting on movable iron stands”66 – mediated the appearance of the dead before the inquisitorial forum.

The hermetically sealed glass screen facilitated a sensory encounter between the living and the dead. It also brought members of the public into an intimate relation with each other, as exemplified in the short story titled ‘They Met at the Morgue’. This architectural device did not simply consist of an elongated length of glass that projected a spectacle of the dead. It mediated and transformed jurisdictional techniques for viewing, identifying and inventorying the dead. It should come as no surprise then that the nineteenth century coroner was praised not only for his expertise in coronial law and procedure, but for his astute observational skills, and his architecturally framed stare, which contrasted the inquisitorial jurisdiction from the adversarial orientation of the common law. To be sure, one way to differentiate the conduct of coroners from that of magistrates was by staring into the eyes of the former to discern whether they possessed

a pair of keen eyes [that] are taking a sharp, quick inventory of you. … It only happens to be his habit to observe. He notices or seems to notice everything, as he goes along.67

66 See Crawford Henry Mollison, ‘Some Medico-Legal Reminiscences, 13 April 1935’ (1937) 2 The Proceedings of the Medico-Legal Society of Victoria 63, 79 and ‘The New Morgue’, The Argus (Melbourne), 26 September 1888, 11. Formalin solution and cold running water was used to preserve cadavers in the mortuary until the installation of refrigeration units in the twentieth century.
A Sepulchre of Memory

This chapter has investigated how forensic techniques were intertwined in the architecture of the coroner’s courthouse in the late nineteenth century. It has also examined how specific design features affected the way in which the coroner formed and cultivated lawful relations with the dead. The layout of the building framed a rite of passage through the coronial jurisdiction, a circulatory journey for the living through the death investigation process. The design of the post-mortem and inquest rooms shaped a forum for the living to lawfully engage with the dead, while the mortuary, and in particular the hermetically sealed glass screen separating the morgue from the courtroom, transformed techniques for inventorying the dead. This section explores how coronial architecture as a technology of jurisdiction mediated the way that the living encountered an institutional memory of the dead. While the conclusion asserts that architecture transformed the courthouse into a place where the living could honour an institutional memory of the dead.

The courthouse was designed in the Queen Anne revival style, which was popular in private dwellings in Australia in the late 1880s.68 This style appropriated the architectural language prevalent in England during the reign of Queen Anne in the eighteenth century. Its translation in Australia romanticised “the art and craft conditions of pre-industrial England” and sought “a return to native craftsmanship”.69 In the coroner’s courthouse this resulted in the idiosyncratic combination of a gabled roof, ornamental dado, red

bricks and varnished kauri pine woodwork. In effect, the appropriation of this style transposed a domestic setting into a civic building. As described in *The Argus*, the decorative woodwork, for example, gave the inquest room “a most cheerful effect.” From the vestibule to the inquest room, in all of the passages, routes and corridors that framed the journey through the realms of the living and the dead, the aesthetic of Queen Anne projected an atmosphere of domesticity.

The deployment of a domestic architectural style in civic buildings in Australia resulted in the design of an idiosyncratic aesthetic, later to be called ‘Federation’ style. The most distinctive element of this uniquely Australian aesthetic was the verandah. In the coroner’s courthouse, verandahs were constructed on both the west and east sides of the building. Their primary purpose was to shade the inquest room from the sun, but they also “afford[ed] comfortable shelter for the witnesses who prefer[red] to remain outside”. In other words, verandahs were both functional and symbolic. Their design undoubtedly responded to the harsh climate of the antipodes, however, they equally projected within the confines of a court building an imagined space ‘outside’ of the coronial jurisdiction. The verandahs provided a tranquil setting for any person distressed by the ceremony of the coronial inquest. They emplaced in the courthouse a moment of respite for contemplation; a temporal disjuncture in the institutional process of narrating a memory of the dead.

Verandahs were not the only design elements to symbolise a place for contemplation in the courthouse. The windows in the inquest room were made

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70 ‘The New Morgue’, *The Argus* (Melbourne), 26 September 1888, 11.
of “cathedral glass of chaste design”73 – a type commonly used in the construction of nineteenth century churches. Cathedral glass differed from stained glass insofar as it was usually monochromatic and inexpensive to manufacture. It was typically textured on one side, which meant it could let light into a room while obscuring visibility from the outside. The use of this kind of glass in the inquest room created an ecclesiastical sensibility. In referencing the sacral atmosphere of a church, the cathedral glass windows not only directed the attention of the public to the coronial inquest taking place before them, but like in a church the windows encouraged in the courthouse contemplation of the vicissitudes of life and death.74 It is not to be forgotten though that while the windows introduced an ecclesiastical sensibility in the inquest room, as I discussed in the first section of this chapter, the vestibule marked a liminal space between the religious duties owed by the clergy and the secular responsibilities assumed by the coroner, to care for the dead. Hence, the installation of cathedral glass windows in the courthouse paradoxically sought to secularise the religious connotations that were usually associated with their deployment in church architecture. The windows sought to foster an atmosphere of domesticity in the courthouse, and with it the practices of contemplation and reflection, which while influenced by the design of churches, were ideally attached to the institutional life of coronial law.

It has often been remarked that courthouses function as memorials to a past that is no longer accessible from the present. This idea is usually associated with the monumental function of court buildings.75 The government architects of the nineteenth century utilised monumentality to symbolise the sovereignty

73 Ibid.
74 Note that “[d]uring the Middle Ages, church architecture became the blueprint for remapping the social structure of the living in the space of the dead”: Mark C Taylor and Dietrich Christian Lammerts, Grave Matters (Reaktion Books, 2002) 14.
75 See Resnik and Curtis, above n 1.
of legal rituals, ceremonies and procedures. Classical court architecture sought to emplace in the colonies the immemorial origins of the law. For Lior Barshack, monumental architecture separates the realms of the living from the dead and this separation is a condition of possibility of law.\textsuperscript{76} He argues that law emerges in the architectural ordering of space, which isolates the dead from the place of the living. Not only is law founded upon this separation, it is the only way the living can continue to live ‘with’ the dead. I argue instead that the institutional life of coronial law was conducted by fostering an intimacy with, not simply a detachment from the dead. The design of the coroner’s courthouse, which rejected the monumentality of classical architecture in favour of the domesticity of Queen Anne, is an example of how court buildings can mediate the conduct of lawful relations between the living and the dead. Coronial architecture, I then argue, shares a sensibility with funerary architecture, insofar as it sought to physically, emotionally and symbolically found a place whereby the living could continue to engage with the dead. Like the cemetery, the courthouse was a place of memory where “we keep the dead alive as dead”.\textsuperscript{77} It represented the tomb as “both a transitory resting place in which the body undergoes the beginnings of the journey to the next, more real sacred world, and a monument to that world’s existence.”\textsuperscript{78} Or, put differently, the courthouse brought the living together as a collective, and in this moment of collectivity, it encouraged the living to contemplate and participate in what the coroner unravelled before them: an institutional memory of the dead.

Institutional memory is thus collective. It assumes form through shared discourses of language, techniques of narration and a social framework of


\textsuperscript{77} Taylor and Lammerts, above n 74, 23.

living together. It is also always attached to a site, a location, a place. Or, as Pierre Nora writes, “memory is above all archival. It relies entirely on the materiality of the trace”. ‘Les lieux de mémoire’ mark the traces of memory on multiple sites and in different institutions in society, such as cemeteries, museums, monuments and hospitals. These places institute encounters between the past and the present, the dead and the living, the collective and the individual. The coroner’s courthouse emerged in the nineteenth century as another lieu for encountering a collective memory of the dead. In contrast with the other sites just listed, the courthouse became a place where the living could lawfully encounter an institutional memory of the dead. The layout of the building, the fittings of rooms and the materials used in the construction process all shaped the way in which the living memorialised the dead. It attached a collective memory of the dead to the institutional life of coronial law. Architectural techniques attached material traces of the dead to the performance of the coronial institution “to block the work of forgetting, to establish a state of things, to immortalize death, to materialize the immaterial”.

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81 Ibid.
83 Nora, above n 80, 19.
The central role the dead played in the theatre of the inquest reverberated memories throughout the courthouse. The different architectural techniques that fostered contemplation of the dead, instituted the courthouse not only as a lawful place in the city for the dead, as discussed in Chapter 1, but also as a site for the cultivation of a lawful encounter between the living and the dead. While Haldar writes that “juridical architecture represses past events, surrendering them to a silent sepulchre of memories, a monumental necropolis of forgotten untraceable and unacknowledged foundations”, coronial architecture encouraged a collective process of memorialising the dead. The building was a sepulchre of memory, but not a silent tomb. It brought the realms of the dead and the living intimately together before a forum of law. The coroner played an active role in curating an institutional memory of the dead. He witnessed, facilitated and participated in forums where the living engaged with the dead and he institutionalised as indispensable to these forums, techniques for inventorying the dead. He escorted the living through the courthouse and administrated the movement of the dead through the mortuary. He even arranged furniture in the inquest room to create a hierarchy of roles and hung photographs of deceased coroners behind his chair in respect of the legacy of his office. The ways in which the coroner conducted inquest hearings, even the most mundane aspects of his role, were concomitant with the architectural techniques that framed such practices. They corresponded with the coroner’s responsibility to care for the dead.

84 Haldar, above n 16, 195.
Conclusion

Coronial architecture emerged as a distinctive genre of legal architecture in the late nineteenth century. The key feature of this genre was the intermingling of architectural and forensic techniques in the construction of a purpose-built courthouse. The design of the first permanent coroner’s courthouse in Melbourne was not supplementary to the performance of the coronial jurisdiction. It materially shaped the conduct of post mortem examinations and inquest hearings. The hallmark of this building was the use of a hermetically sealed glass screen to separate the mortuary from the inquest room. While insulating life from the stench of death, I demonstrated in this chapter that the screen also cultivated a lawful encounter between the living and the dead. It brought the living intimately together with the world of the dead. In the twentieth century, the glass screen was removed from the courthouse during renovations, primarily due to the widespread use of photography to represent the dead for the purposes of identification, as well as advances in the technology of refrigeration to preserve cadavers until they could be identified by a relative or friend of the deceased.85 In addition, the dissolution of the coronial jury in the twentieth century, which will be discussed in the following chapter, led to a decline in the custom of viewing the body during an inquest hearing, while public demands for the censorship of the display of the dead from legal and medical institutions saw declining numbers of pedestrians attending courthouses to satisfy their morbid curiosities. The demise of the civic participation of the jury in the coronial jurisdiction saw the inquest hearing shift from a public spectacle into a more private setting.86

85 The glass screen was removed in renovation drawings in 1936. Cubicles 1, 2 & 3 were also fitted for refrigeration.
86 See Burney, above n 21 for an informative analysis of the demise of the ‘public inquest’ in England in the early twentieth century. I will explore strands of this narrative in Chapter 3.
Despite the eventual removal of the glass screen in the twentieth century, coronial architecture transformed techniques for inventorying the dead, which had wide ranging effects on the coronial inquest. In the next chapter, I will show how transformations in techniques for viewing the corpse modified the way the coroner cared for the dead in the nineteenth and twentieth centuries. In contrast with the role of the magistrate, the conduct of the coroner was defined by inquisitorial not adversarial skills, observational not accusatorial techniques. The coroner had to possess expertise in interpreting signs, such as anatomical wounds, and translating those signs into a lawful narrative of how a person met their death. The screen was not supplementary to the development of that expertise. Rather, it provided the condition of possibilities for mastering skills for curating an institutional memory of the dead. Architecture invited the living to view the dead, to reflect upon the stories of the dead, and to participate in a collective practice of memorialising the dead. It imprinted the memories of the dead on the walls of the courthouse, alongside the photographs of deceased coroners hung above the coroner’s chair.

Lawful encounters between the living and the dead became a defining feature of coronial architecture in the nineteenth century. The coroner assumed responsibility for collating sensory, spatial and technical relations between the living and the dead, and attaching them to the conduct of lawful relations as well as the institutional life of coronial law. Whether he was presiding over the crowds that visited the courthouse in search of a morbid spectacle or the conduct of an autopsy in the specially designed post-mortem room, the coroner witnessed, facilitated and participated in forums where the living could lawfully engage with the dead. The design of the vestibule, corridor, mortuary, inquest room and verandah illustrated that proximity between the living and the dead continued to remain a problem for the coronial institution. What conditioned the possibility of this problem, and at the same time sought to
resolve its pernicious effects, was architecture. The architectural fabric of the courthouse redressed the proximity between the living and the dead by institutionalising lawful forms of engagement between the living and the dead.

By the late nineteenth century, it could be said the coroner had effectively assumed the role of custodian of institutionalised memories of the dead. The performance of this role was mediated in the courthouse by the jurisdictional technique of architecture. Indeed, the way the coroner assumed care for the dead was conditioned by adequate provision of skylights and sidelights in the post-mortem room and ample room for witnesses and jurors to honour, contemplate and reflect upon the lives of the dead. The coroner did not sit passively before this spectacle; he shaped through architectural and forensic techniques an institutional memory of the dead. He encouraged the living to view the dead for themselves, with their own eyes, and contemplate their biographies. The many different lawful encounters between the living and dead in the courthouse were the result not of serendipity but the careful work of its curator, the coroner.
CHAPTER 3: *SUPER VISUM CORPORIS*

The post-mortem examination became a compulsory procedure of the death investigation process from the mid-nineteenth century. Prior to this, autopsies were seldom conducted before an inquest. It would suffice for the coroner to merely glance over the surface of the corpse. By the late nineteenth century, the development of forensic medicine had transformed the conduct of the legal custom of *super visum corporis*, which meant an inquest could only take place ‘upon view of the dead body’. It positioned the forensic gaze as intrinsic to the performance of the legal duty to view the corpse. This chapter writes an institutional history of the transformations of *super visum corporis* in the nineteenth and twentieth centuries. It builds upon the discussion in the previous chapter of how architectural techniques framed a forum for the living to lawfully engage with the dead. I argue here that the transformations of *super visum corporis* were integral not only for shaping the limits of this lawful encounter, but also for how the coroner assumed responsibility for speaking on behalf of the dead.

The first section examines the centrality of the gaze in the development of forensic medicine in England and Australia in the nineteenth century. The anatomical view of the corpse had already risen to prominence in medical discourse during the seventeenth century. The autopsy instituted a new mode of seeing, it reified the knowledge of the medical expert, and cast the corpse as a technical-scientific object. In the second section, I argue that by the late nineteenth century the forensic gaze had become bound to the way the coroner conducted the legal view of the dead. *Super visum corporis* possessed a specific judicial meaning in the twelfth and thirteen centuries and it arguably remained detached from medical epistemologies until the introduction of the autopsy in
England in the seventeenth century. Its subsequent modifications took place amidst jurisdictional conflicts between the disciplines of medicine and law over who should assume responsibility for care of the dead. I narrate in the third section how such conflicts lead to calls for the abolition of the coronial office, the dissipation of the coronial jury and the attenuation of the jury’s view of the dead. Several historians have interpreted these movements, shifts and conflicts as evidence of the medicalisation of the coronial inquest at the turn of the twentieth century.

This chapter traces how the technology of the forensic gaze became attached to the institutional life of coronial law in the nineteenth and twentieth centuries. In the final section, I question the quality of this attachment. I examine how the gaze was bound to the conduct of the coroner through the rhetoric of *prosopopoeia*. In the twentieth century, the pathologist became solely responsible for visually examining the corpse, however, this did not mean that the coroner relinquished his official duty to view the dead. For *super visum corporis* was not only a distinctive mode of seeing, it was a rhetorical style particular to the persona of the coroner. I thus argue that the coroner assumed responsibility for caring for the dead by translating the wounds of the corpse into an institutional narrative of death causation. *Super visum corporis* was an institutional practice, a jurisdictional technique and a rhetorical procedure for speaking on behalf of the dead.

**Situating the Forensic Gaze**

The science of human anatomy rose to prominence in England at the beginning of the seventeenth century, although it had emerged much earlier in Europe
during the Renaissance.\footnote{Thomas Rogers Forbes, ‘Crowner’s Quest’ in \textit{Transactions of the American Philosophical Society, Volume 68, Number 1} (The American Philosophical Society, 1978) 42. See also Bernard Schultz, \textit{Art and Anatomy in Renaissance Italy} (UMI Research Press, 1985); Jonathan Sawday, \textit{The Body Emblazoned: Dissection and the Human Body in Renaissance Culture} (Routledge, 1995).} Human dissection was taught at European universities from as early as the fourteenth century.\footnote{Elizabeth Klaver, ‘Introduction’ in Elizabeth Klaver (ed), \textit{Images of the Corpse: From the Renaissance to Cyberspace} (The University of Wisconsin Press, 2004) xi, xiii: The first recorded academic autopsy was made by Mondino de’Liuzzi around 1315.} The term autopsy, which was popularised during the seventeenth century, derives from the Latin \textit{autopsia} and the Greek \textit{autoptes}, which means seeing (\textit{optos}) for one self (\textit{autos}). The autopsy instituted new visual technologies for inventorifying the body. It mediated the formation of knowledge through empirical learning, that is, through direct observation as opposed to hearsay evidence. In the seventeenth century, William Harvey used the autopsy to prove that blood circulated throughout the human body, while Giovanni Battista Morgangi developed a hermeneutics of the post-mortem for classifying and interpreting signs of morbid pathology.\footnote{Ibid xiv.} The medical practice for determining causes of death cultivated ocular, haptic and auditory relations with the dead. Integral to the technology of the autopsy was what Michel Foucault described in \textit{The Birth of the Clinic} as the reorganisation of the ‘medical gaze’.\footnote{Michel Foucault, \textit{The Birth of the Clinic: An Archaeology of Medical Perception} (Alan Sheridan trans, Routledge Classics, 2003) xiii [trans of: \textit{Naissance de la Clinique} (first published 1963)].}

The epistemology of the gaze consisted of unfurling the body, unfolding its dark crevices and opaque cavities, tracing signs of morbidity in organs and tissue, while simultaneously constructing an ideal type of the non-diseased body. Foucault claimed that Western medicine was founded upon a visual hermeneutics of death, which constructed the corpse as measurable, cartographic and normative. In other words, the medical gaze was originally forensic. “Medical rationality”, he wrote, “plunges into the marvellous density
of perception, offering the grain of things as the first face of truth, with their
colours, their spots, their hardness, their adherence”.

Techniques of observation played a foundational role in the birth of the clinic and the
development of medical discourses of the body. The forensic gaze anatomised
the body and cast the corpse as a scientific-technical object. Yet whether the
autopsy was practiced ceremonially, ritually, pedagogically or spectacularly, it
failed to absolutely excavate the corpse from the normative foundations of
human life. Instead the autopsy plunged the corpse into a liminal space
between subjectivity and objectivity, personhood and the order of things that
was nonetheless understood by the nineteenth century as properly belonging to
the medical profession.

Human cadavers were legally supplied to medical schools for the purposes of
pedagogical anatomy from the early sixteenth century. However, in the
eighteenth and nineteenth centuries, the study of human dissection was marred
by controversy. This period witnessed a sharp increase in the number of
students studying medicine in London and Edinburgh, which in turn created a

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5 Ibid xiv.
6 See further for an insightful analysis of the emergence of the observer in the nineteenth
century, Jonathan Crary, Techniques of the Observer: On Vision and Modernity in the Nineteenth
8 “In 1540 the Company of Barbers of London united with the Fraternity of Surgeons to form the
United Company of Barber-Surgeons [which later became known as the Royal College of
Surgeons]. The Charter given [to] them by Henry VIII made provision for the study of
anatomy …. In 1565, Queen Elizabeth I granted the Royal College of Physicians 4 bodies
annually for dissection”: Vernon D Pluckhahn, Lectures on Forensic Medicine and Pathology
(University of Melbourne Printing Services, 5th ed, 1982) 107-8. See also Sawday, above n 1, 4.
9 The history of human dissection in England and Australia has been discussed widely in
academic scholarship: Tim Marshall, Murdering to Dissect: Grave-robbing, Frankenstein and the
Anatomy Literature (Manchester University Press, 1995); Ruth Richardson, Death Dissection and
the Destitute (University of Chicago Press, 2001); Michael Sappol, A Traffic of Dead Bodies:
Anatomy and Embodied Social Identity in Nineteenth-Century America (Princeton University Press,
2004); Helen MacDonald, Possessing the Dead: The Artful Science of Anatomy (Melbourne
University Press, 2010).
situation where the demand for cadavers quickly exceeded their supply.\textsuperscript{10} The proliferation of medical schools in both cities, particularly privately run institutions which were barred from using lawful means to obtain corpses, resulted in an underground market for trafficking dead bodies. The traders in this market, also known as the ‘resurrectionists’, resorted to any means, including body snatching, grave robbing and even murder to lucratively supply cadavers to (private) medical schools.\textsuperscript{11} It was not until the enactment of the \textit{Anatomy Act 1832} (UK) (and similar legislation in the British colonies) that this underground market came to an abrupt halt.\textsuperscript{12} The Act regulated the study of anatomy in medical schools and established a legal stream for the provision of cadavers by permitting an executor or any party who had lawful possession of a corpse to send it to a medical school in exchange for a fee. The subjects of dissection were still overwhelmingly collected from public institutions, such as workhouses, prisons and hospitals, and disproportionately affected convicted criminals, the poor, women and indigenous people.\textsuperscript{13}

Forensic medicine emerged as a specialised sub-discipline of human anatomy in England in the nineteenth century.\textsuperscript{14} Initially taught in English medical

\textsuperscript{10} \textit{An Act for Better Preventing the Horrid Crime of Murder} (25 George II c. 37, 1752) made it lawful for prisons to supply medical schools with the bodies of executed criminals. MacDonald writes that only eleven cadavers obtained from executions were made available to the Royal College of Surgeons in London in 1831, while at the same time “nine hundred men were studying anatomy in the city”: above n 7, 11.

\textsuperscript{11} MacDonald, above n 8, 7-14. Since the corpse was held under common law to constitute neither a person nor property, it was only illegal to steal shrouds, monuments or other items from the grave, but not the cadaver itself. See further, Margaret Davies and Ngaire Naffine, \textit{Are Persons Property? Legal Debates On Property and Personality} (Ashgate, 2001) Ch 5.

\textsuperscript{12} \textit{Anatomy Schools Act 1862} (Vic); \textit{Anatomy Act 1869} (Tas); \textit{Anatomy Act 1881} (NSW); \textit{Anatomy Act 1884} (SA).

\textsuperscript{13} See e.g., Elisabeth Bronfen, \textit{Over Her Dead Body: Death, Femininity and the Aesthetic} (Manchester University Press, 1992); Cressida Fforde, ‘From Edinburgh University to the Ngarrindjeri Nation, South Australia’ (2009) 61(1-2) \textit{Museum International} 41.

\textsuperscript{14} It is believed that forensic medicine originated in China in the thirteenth century with the publication of \textit{Hfi Yuan Lu}, which “described the way in which medical knowledge could be used to solve crimes and to assist the courts”: David Ranson, ‘The Role of the Pathologist’ in Hugh Selby (ed), \textit{The Aftermath of Death: Coronials} (Federation Press, 1992) 80, 84. It was further
schools in the early 1800s, by the end of the nineteenth century it had become a compulsory part of the medical curriculum.\textsuperscript{15} In turn, forensic medicine was to be taught solely by professors who specialised in the art of human dissection. In 1788 Samuel Farr published the first English textbook on the discipline. He wrote that
\begin{quote}
the examination of the dead body should be as soon as possible after death, in the day time, at a proper place, where a dissection, if necessary, (and it is almost always necessary) may be performed, and not according to vulgar custom, where it is found, let it be ever so improper, and likewise by proper instruments, such as are generally used by surgeons in their dissections, and not by coarse and rude knives and scissors, which may mangle and tear the body, but cannot ascertain the cause of its death.\textsuperscript{16}
\end{quote}

The Foundation Lecturer of Forensic Medicine in the Australian colonies, James Edward Neild, also highlighted the centrality of the forensic gaze in “[t]hat developed in Italy and France in the sixteenth century. The \textit{Constitutio Vambergensis Criminalisi} (1507) and \textit{Constitutio Criminalis Carolina} (1532) advised “judges to consult surgeons in all cases of suspected homicide, and midwives in suspected infanticides”: Catherine Crawford, ‘Medicine and the Law’ in W F Bynum and Roy Porter (eds), \textit{The Companion Encyclopedia of the History of Medicine} (Routledge, 1993) 1619, 1623.

\textsuperscript{15} Forensic medicine was first taught in European universities during the Renaissance. Ranson contends that “the development of forensic medicine in England remained retarded compared to the development within Europe”: Ranson, above n 14. Though Carol Loar argues that forensic evidence and medical expertise had a greater role in the early modern inquest in England than has previously been imagined by medico-legal historians: ‘Medical Knowledge and the Early Modern English Coroner’s Inquest’ (2010) 23(3) \textit{Social History of Medicine} 475. See also Catherine Crawford, ‘Legalizing Medicine: Early Modern Legal Systems and the Growth of Medico-Legal Knowledge’ in Michael Clark and Catherine Crawford (eds), \textit{Legal Medicine in History} (Cambridge University Press, 1994) 89.

\textsuperscript{16} Samuel Farr, ‘Elements of Medical Jurisprudence’ in Thos Cooper, \textit{Tracts on Medical Jurisprudence} (James Webster, first published 1788, 1819 ed) 1, 43. This book was essentially a translation of J F Fazelius’ \textit{Elementa medicinae forensis} (1767). The first original treatise published in English was George E Male, \textit{An Epitome of Juridical or Forensic Medicine; for the use of Medical Men, Coroners, and Barristers} (T and G Underwood, 1816).
science which teaches the application of every branch of medical knowledge to
the purposes of the law”. He intimated that its efficacy relied upon the use of a
microscopical gaze to search “[i]nto those dark mysterious chambers of the soul
where bad passions lurk, and evil desires spawn and multiply”. The purpose
then, of the science of forensic medicine was to bring to light what the judicial
eye could not see; to apply rigorous, scientific techniques of observation to
reveal what could be concealed by secret crimes, such as poisoning.

Metaphors of light and dark infused the science of forensic medicine in the
nineteenth century. The corpse was represented as a black box of obscurity,
while the autopsy was depicted as a beacon of light. Central to this interplay of
chiaroscuro was the forensic gaze. Only the meticulous gaze of the post-mortem
examination could peel away the shrouds of the body to uncover a truth of
death, to unearth the bile of crime. In this section, I have argued that the
technology of the gaze occupied a central role in the development of forensic
medicine in England and Australia in the nineteenth century. The anatomical
view of the corpse instituted a new mode of seeing. It projected the corpse as a
dark entity which could only be enlightened through forensic techniques of
observation.

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17 James Edward Neild, ‘Introductory Lecture to the Course of Forensic Medicine, 12 March
1866’ (1866) 5 Australian Medical Journal 144, 146. In his Address delivered to the annual meeting of
the Victorian branch of The British Medical Association, July 28, 1882 (Stillwell & Co, 1882) 8, he
asserted that “the study of disease is most completely pursued in the dead-house, and that the
progress of medicine is intimately associated with practical pathology”. This idea was
advocated much earlier by the London surgeon, John Abernethy, who said “[t]here is but one
way to obtain knowledge ... we must be companions with the dead”: cited in MacDonald,
above n 7, 11.

18 Neild, ‘Introductory Lecture to the Course of Forensic Medicine, 12 March 1866’, above n 17,
153.

19 See e.g., Ian Burney, Poison, Detection and the Victorian Imagination (Manchester University
The Legal View of the Dead

Super visum corporis first appeared in Sir Matthew Hale’s History of the Pleas of the Crown in a passage outlining the proceedings in the twelfth and thirteenth centuries of the law of murdrorum.20 In the Middle Ages, Lex Murdrorum imposed amercements on townships for the slaying of Normans or even the concealment of a Norman corpse within the vicinity of the town, regardless of whether death was caused by violence or accident.21 It also required the coroner to hold an inquest ‘upon the view of the body’ to confirm whether the corpse in question belonged to an Englishmen or a Norman. This was the case especially where the town could not pay the amercement or disputed the initial findings of the coroner. In such situations, the coroner was required under law to provide the community with an opportunity to prove the ‘presentment of Englishry’. In other words, the legal presumption was that all unidentified corpses belonged to Normans and the onus of proving Englishry fell upon the townships that refused to be amerced. To view the body before a jury of peers was a vital administrative procedure designed to encourage the community to guard the corpse and prevent its burial prior to the arrival of the coroner. It also determined the limits of the coronial jurisdiction by preventing the coroner from demanding fines for the discovery of a non-existent corpse.

While Lex Murdrorum was abolished in the fourteenth century, the legal custom of super visum corporis remained imperative, as I will show in subsequent sections, until at least the early twentieth century. This was initially due to the

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20 Sir Matthew Hale, Historia Placitorum Coronæ: The History of the Pleas of the Crown, Volume I (E and R Nutt, and R Gosling, 1736). R F Hunnisett claims that the law was “[o]riginally introduced in order to safeguard the ascendant Norman minority ... [but was] possibly the original raison d’être of inquests upon dead bodies in England”: The Medieval Coroner (Cambridge University Press, 1961) 27.
emphasis placed in *Officio Coronatoris* on the coroner’s duty to view all wounds when investigating a sudden, suspicious, violent or unnatural death.\(^{22}\) It was also owing to the fact that until the nineteenth century, coroners were required to self-fund the costs of conducting an inquest and they were only reimbursed for their expenses and remunerated for their services by applying directly to the judiciary.\(^{23}\) The custom thus sought to prevent coroners from holding unnecessary inquests or falsifying depositions for the purposes of claiming fraudulent expenses. Yet prior to the nineteenth century, the English inquest lacked any *formal* forensic component and provided little room for the presentation of medical evidence.\(^{24}\) While the coroner, as Jill McKeough opines, “no doubt became quite proficient at recognising certain causes of death”, during the Middle Ages, the legal view merely involved a ‘casual glance’ over the surface of the corpse.\(^{25}\) It was incomparable to the thorough gaze demanded by the rigour of forensic medicine.\(^{26}\) As Hale wrote, *super visum corporis* was limited to an *external* examination of the body, an investigation of “the place, length and depth of the wound”.\(^{27}\)

The development of forensic medicine in the nineteenth century transformed the procedures for viewing the dead. Previously a simple glance by the coroner

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\(^{22}\) *Officio Coronatoris: The Office of The Coroner* (4 Edward I AD 1275, 1276). The coroner was not only obliged to view the length, breadth, and depth of all wounds, but also as Hunnisett discusses, to record these in writing; above n 20, 19.  
\(^{23}\) Ranson, above n 14, 83. This system was overturned by the *County Coroners Act 1860* (UK), which will be discussed further in Chapter 4.  
\(^{24}\) Ibid. As Ranson explains, “this auditing of the coroner’s affairs not only reduced the number of inquests, but effectively restricted the use, by the coroner, of expert witnesses which might have assisted him in his investigations. (If an expert witness was called by the coroner, the fee paid to the witness by the coroner might not be reimbursed if the justices deemed the evidence unnecessary, so that there was little incentive for coroners to be thorough and detailed in their investigation as such an approach might lead to considerable personal financial loss).”  
\(^{25}\) McKeough, above n 21, 203.  
\(^{26}\) “[T]he gaze implies an open field … [t]he glance, on the other hand, does not scan a field: it strikes at one point, which is central or decisive”: Foucault, above n 4, 149.  
(and the jury) was sufficient to fulfil his duty to ascertain the identity of the deceased as well as the manner of their death. But with the advent of forensic medicine, only an internal post-mortem examination of the corpse was adequate to adduce the causes of death. I argue that by the late nineteenth century the forensic gaze had become integral to the way the coroner conducted a legal view of the dead. It was no longer lawful for the coroner to glance superficially at marks of violence on the surface of the body. Of course, the inquest could only lawfully proceed in certain circumstances where the coroner could access the precision of the gaze. In *R v Ferrand*, for example, Justice Best reprimanded a coroner for simply looking at the face of the corpse, which did not provide him with “a sufficient view of the body to give him authority to proceed”.28 What was at stake in the transformations of such procedures was precisely the scope of the coroner’s jurisdiction: “a coroner has no manner of power to take an inquisition of death without a view of the body, and that any such inquest taken by him without a view is merely void”.29

Following the 1814 publication of Mathieu Orfila’s treatise on modern toxicology, the deceased’s body, particularly where there was suspicion of poisoning, demanded a thorough anatomical investigation.30 Ian Burney has written extensively about how the phenomenon of poisoning and the development of techniques of toxicology in the nineteenth century catalysed an increase in the number of autopsies conducted during the English inquest.31 Yet post-mortem examinations were not regularly performed in the Australian colonies until the late nineteenth century. Recalling my discussion of Dr

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28 *R v Ferrand* (1819) 3 B & ALD 260, 264.
29 Ibid 263 (Holroyd J).
William Byam Wilmot in Chapter 1, the first coroner of Melbourne rarely conducted autopsies on corpses under his jurisdiction. It was not that he opposed the science of medical jurisprudence; in fact, he often called for medical witnesses to attend his inquests. Rather, he believed that the post-mortem did not radically affect the quality of the viewing. He expressed such sentiment in an article written for the first issue of the *Australian Medical Journal*, where he stated that the “morbid condition of parts with which the post examination makes us acquainted, unfolds to us rather the effects of disease than the disease itself”. Much to the coroner’s chagrin, the judiciary did not share “his airy manner of dismissing an inquest”. His verdicts of ‘found dead’ or ‘visitation of god’ were often characterised in newspapers as imprecise. It was not until the appointment of his successor that the autopsy became a mandatory component of the death investigation process:

Human life was not very highly esteemed in those early days, and the ‘crowners’ quests’ were not of a very searching character. Frequently they were quite perfunctory, no post-mortem examination being made. [In contrast,] Dr. Youl insisted on a post-mortem examination in every case, in order that the cause of death might be set beyond a doubt, and

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32 Ian Freckelton and David Ranson observe that *An Act to Provide for the Attendance and Remuneration of Medical Witnesses at Coroners Inquests 1836* (UK), which enabled coroners to compel medical practitioners to conduct an autopsy and remunerate them for presenting evidence at an inquest, “marked an important stage in the acceptance of forensic medicine and also constituted an acknowledgement of the significance of its contribution to scientifically conducted coroner’s inquests”: *Death Investigation and the Coroner’s Inquest* (Oxford University Press, 2006) 16.

33 William B Wilmot, ‘On the Principles of Pathology’ (1856) 1(1) *Australian Medical Journal* 1, 2.


35 See also ‘The Lame, The Halt and The Blind’, *The Argus* (Melbourne), 12 October 1855, 4: “No effective means of identification! – ‘found drowned’ – ‘Visitation of God,’ &c., &c., constituted the sort of verdicts which satisfied the community of the freedom from all suspicion of foul play, and yet left the question ‘open’; in case of any fresh light being thrown upon it. Vagueness and uncertainty were the grand characteristics of the decisions of those days …”
he also made a careful inquiry into all [of] the surrounding circumstances.\textsuperscript{36}

Coroner Youl’s insistence that an autopsy be undertaken before every inquest formed part of a larger project to reform the death investigations process in the colony.\textsuperscript{37} His reforms were guided by the ideal that “the actual cause of death might be placed beyond doubt”,\textsuperscript{38} but they also sought to revalorise the efficacy of the coronial office, particularly when it came under attack from politicians, physicians and journalists. I contend that his demand that coroners carefully examine the surrounding circumstances of death and meaningfully gaze into the internal cavities of the body was central to his understanding of the way that a modern coroner should care for the dead. Youl maintained that the office had a duty to ensure that all lines of inquiry had been exhausted, that all possible theories had been truly excluded, when investigating the truth of what caused a death. By the late nineteenth century, the forensic gaze had become attached to the institutional life of coronial law, which affected the way the coroner assumed responsibility for care of the dead.

\textsuperscript{36} \textit{The Argus} (Melbourne), 7 August 1897, 10. Youl’s belief in the necessity of post-mortem examinations was shared by the first coroner of New Zealand, Dr John Johnston. Johnston insisted on conducting post-mortem examinations in each case where the death was not “very apparent”: A J Johnston, \textit{A Handy Book for the Coroners of New Zealand} (Government Printer, 1868) 12.


In the third edition of *Manual for Coroners and Magistrates in New South Wales*, which was published in 1895, Thomas MacNevin reiterated that the technology of the gaze was a necessary condition of the jurisdiction of the coroner. In the absence of a rigorous examination of the corpse, MacNevin declared, the inquest was void: “If the body cannot be viewed, the Coroner can do nothing”. The authority of the coroner could only materialise where the corpse could be viewed. This was influenced by Hale’s earlier assertion in the seventeenth century, that “[t]he coroner cannot take an inquisition but upon the view of the body, and if he doth, such inquisition is void; and the reason is, because oftentimes much of the evidence ariseth upon the view”. However, where MacNevin differed from Hale was in delimiting precise procedures for charging the coronial jury both before and after they viewed the body, and instructing coroners in how the body should be viewed. In other words, the coroner’s jurisdiction depended as much on the fact of viewing the dead as on the quality of that view:

The Coroner will then go with the jury and examine the body *minutely* and *carefully*. ... The position of the body, any external marks of violence, the state of the clothes, the position, appearance, and direction of the wounds (if any), and the relation of the surrounding objects, as well as any stains, marks, or appearances of blood, whether on the clothes of the deceased or near to the place where the body was first discovered, should be observed and accurately noted.

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39 Thomas E MacNevin, *Manual for Coroners and Magistrates in New South Wales: being a practical guide to the proceedings of the coroner’s court and to the holding of magisterial inquiries in lieu of inquests by justices of the peace* (Charles Potter, Government Printer, 3rd edition, 1895) 24. Note that the coroner’s jurisdiction was extended to the investigation of fires in the late nineteenth century. In each case the coroner and the jury were required to view the charred remains of the deceased.

40 Hale, above n 27. This was confirmed in *R v Clerk* (1702) 2 Salk 277; 91 ER 328.

41 MacNevin, above n 39, 36 (emphasis added).
The problem of whether the coroner and his jury paid attention to how they viewed the body was bound to the question of the scope of coronial jurisdiction. By the end of the nineteenth century the notion that a corpse must be viewed by the coroner before an inquest was not enough to authorise proceeding with the hearing. The custom of super visum corporis necessarily involved a forensic view, that was not only attuned to whether a post-mortem examination might be required – which was inevitable in every case of sudden, suspicious, violent or unnatural death – but one that would take in the scene of death carefully, holistically and judiciously. The manual unambiguously rejected the perfunctory glance that was conducted prior to the nineteenth century. It instructed coroners to replace it with a rigorous, piercing gaze. Indeed, by the early twentieth century coronial manuals stressed that “a mere external manipulation of a body does not constitute a post-mortem examination”.42 The attachment of the technology of the gaze to the custom of super visum corporis had become an integral condition of the jurisdiction of the coroner.

Jurisdictional Conflicts

The transformations of super visum corporis became a site of jurisdictional conflict in the Australian colonies at the turn of the twentieth century. Local disputes between coroners and physicians led to calls for the gradual attenuation of the view, the abolition of the coronial jury and the development of forensic medicine as a distinct vocation with specialised training. In addition, politicians, journalists and medical practitioners questioned the purpose, relevance and efficacy of the office of coroner. I argue in this section that the jurisdictional conflicts between the disciplines of law and medicine were

produced by, but also constitutive of, the attachment of the technology of the gaze to the institutional life of coronial law. The question of who should assume responsibility for the dead was discussed at length during these debates by a medical profession, who desired to retain the corpse as a technical-scientific object of medical knowledge, and the legal profession, who saw in the history of the coronial office the cultivation of relations that belonged properly to law. As I will show in the following section, these conflicts repositioned the legal custom of viewing the dead as both an artefact of medical expertise and a rhetorical device for speaking on behalf of the dead.

While post-mortem examinations were rarely conducted in England between the seventeenth and nineteenth centuries, when they did occur medical practitioners ably assisted coroners. It was thus not surprising in colonial cities for autopsies to be conducted by local physicians even though the majority of coroners were medically trained. It was not until the 1860s that this procedure began to change, when legislation was enacted to prohibit physicians from conducting autopsies on their own patients, particularly when the coroner had grounds to suspect that the physician may have contributed to his or her death. This enraged local medical professionals who maintained that only the physician, who possessed intimate knowledge of his patient’s medical history, could determine the true cause of death. They were also opposed to changes in

43 However, most rural coroners neither had medical or legal training: Freckelton and Ranson, above n 32, 48. This was not the case in England, where the majority of coroners were educated in law: see Ian Adnan Burney, ‘Viewing Bodies: Medicine, Public Order, and English Inquest Practice’ (1994) 2(1) Configurations 33.

44 The coroner was authorised under s 16 of the Medical Practitioners Statute 1865 (Vic) to “direct any legally qualified medical practitioner to perform a post-mortem examination of the body of the deceased either with or without an analysis of the contents of the stomach or intestines. Provided that if in any case it appears to the coroner or justice that the death of such deceased person was probably caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person then such practitioner or other person shall not be allowed to perform or assist at any such examination or analysis although he shall in every such case be allowed to be present thereat”.

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procedures, because the post-mortem was a source of extra income for a number of practitioners in the colony. Early criticism of the office of coroner then was directed towards this legal prohibition, which many considered an affront to the Hippocratic oath and the doctor’s responsibility to care for their patients.

Much to the chagrin of the medical profession, early coroners went further in sidelining general practitioners by lobbying governments for the creation of the role of medical jurist. In the 1850s and 1860s, for example, coroners called for colonial authorities to enact an office of the coroner’s surgeon – or government pathologist, as it later became known – who would be solely responsible for performing all post-mortems in a specific district. They lobbied for the formation of this role because they believed it would mitigate conflicts of interest as well as improve the efficacy of the inquest.45 For general practitioners it was simply another attempt by law to usurp their jurisdiction to care for the dead. Indeed, in 1868, a meeting of physicians in the colony of Victoria complained that

the appointment of a Government pathologist and medical jurist is a novel idea in the British empire, and would dissoever the study of health from disease, supersede the vocation of the general medical practitioner, and divest him of his legitimate position and responsibility; lower him in the public estimation; and subject him to inquisitorial investigations,

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45 In correspondence between Coroner Wilmot and the Colonial Secretary, it was suggested that the role of medical jurist was required for the colony of Victoria, because physicians, while desiring to perform autopsies on their own patients, were often unable to do so “within a proper time” and frequently left the corpse to decompose until a post-mortem was no longer valuable: Correspondence between Coroner Wilmot and Colonial Secretary, 9 July 1853, PROV, VPRS 1189, P0, UNIT 146, Item C53/6852.
ruinously unnecessary inquests and harrowing to the feelings of the public.46

They were concerned, as Stephen Cordner and Fiona Leahy point out, that “a government-appointed medical jurist, would operate as a ‘medical policeman’, seeking to expose incompetent medical practitioners to public embarrassment and even the risk of criminal prosecution”.47 The rise of medical specialisation in the colonies threatened to expose the work of the general practitioner to the vagaries of law and undermine the longstanding independence of the medical societies in adjudicating allegations of misconduct and malpractice.48 While the exclusion of practitioners from the death investigation process was undoubtedly a source of discontent for many in the medical profession, by the same token physicians were dissatisfied with their inclusion within the scope of the coronial inquiry.49

46 Stephen Cordner and Fiona Leahy, ‘Forensic Medicine and the Supreme Court’ in Simon Smith (ed), Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 (Allen & Unwin, 2016) 235, 249. In 1862, 335 medical practitioners were registered in Victoria, while by 1881 this number had increased to 454. The tripartite division of the medical profession in England into colleges of physicians, surgeons and apothecaries was not replicated in the Australian colonies. Instead, all university-trained practitioners were listed on a single register. This difference is important to note when accounting for how medicine was institutionalised in the colony. The Medical Society of Victoria was established in 1855, while the British Medical Association opened an outpost in the colony in 1879: see further, Milton J Lewis, ‘Medicine in Colonial Australia, 1788-1900’ (2014) 201(1) Medical Journal of Australia S5, S5 – S6.

47 Cordner and Leahy, above n 46, 246. The authors explain that in 1868 Coroner Youl raised the possibility of employing James Edward Neild as the first medical jurist for the colony, at a meeting of the committee of the Melbourne Hospital. His view “was supported by the hospital committee and the council of the university. Following formal endorsement by the Medical Society, it was further agreed to by the Minister of Justice. However, opponents of the scheme in the medical profession made a strong representation to the minister and ultimately defeated the proposal”: Ibid 248.


49 While coronial investigations into deaths in hospitals and asylums were lauded in the press media and led to numerous reforms in the provision of medical care in England and its colonies, the coroner’s “vigorous attack upon the authorities for their neglect of sanitary precautions” was not equally well regarded by the medical professions: ‘Death of Dr Youl’, The Argus (Melbourne), 7 August 1897, 10.
The future of the coronership in the colonies was discussed at length by politicians, lawyers, journalists and physicians at the turn of the twentieth century. Several politicians argued that the office should be abolished because “medical men were the worst men to judge the cases which they had to deal with”. They claimed that trained lawyers, such as police magistrates or justices of the peace should be solely responsible for conducting death investigations. Such debates referenced fiery discussions that had taken place much earlier in England, about the suitability of electing a physician to the role of coroner. For instance, the successful election of Dr Thomas Wakley to the coronership for Middlesex in 1839 was underpinned by a fierce rivalry between justices of the peace and members of the medical professions. Both viewed the other as lacking objectivity, inherently biased and conspicuously partisan. For justices of the peace, Wakley’s election to the post threatened to “introduce a ‘pernicious’ form of professional prejudice”, while medical practitioners protested that lawyers failed the public by conducting imprecise, unscientific inquests. These debates nonetheless operated differently in the colonies, where as I will discuss further in Chapter 4, all nineteenth century coroners were medically trained and appointed rather than elected to their post.

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50 Mr Bent, as quoted in ‘Debate on Coroners in the Legislative Assembly Tuesday 2nd October 1877’ (1877) 22(10) Australian Medical Journal 305, 305. The notion that either medical or legal professionals could occupy the role of coroner was formalised by the Coroners (Amendment) Act 1926 (Vic). In Victoria, the last medically trained coroner was appointed in the early twentieth century. Since then only magistrates and judges have been appointed to the role.

51 This is despite the fact that twenty years earlier, when criticised for only appointing medically trained coroners in the colony of Victoria, the Attorney-General opined that “legal knowledge was very little wanted in investigating causes of death … Medical men were the best of all qualified to act as coroners”: Victoria, Parliamentary Debates, Legislative Assembly, 16 June 1857, 809 (Mr Owens). See also for a similar opinion in England, George Lowther, ‘A Knowledge of Medicine an Essential Requirement in a Coroner’ (1839) 1 The Lancet 578.

52 Ian A Burney, Bodies of Evidence: Medicine and the Politics of the English Inquest 1830 – 1926 (Johns Hopkins University Press, 2000) 19. Thomas Wakley was a medical practitioner, the founder and editor of The Lancet and a member of parliament. He was credited alongside William Farr for the enactment of a civil death registration system in 1836: An Act for Registering Births, Deaths and Marriages in England 1836 (UK).
Differences between the procedures for appointing and electing coroners in Australia and England may help explain why colonial medical societies at times adopted contradictory attitudes towards the continued existence of the coronial office. On the one hand, the medically trained coroner symbolised a betrayal of their profession. The stench of law tainted what may have appeared to the medical societies to offer a potentially partisan role. Despite the possibility of medical practitioners positively influencing the conduct of coronial investigations, it was feared that a medical rather than legal coroner would further encroach on the jurisdiction of the general practitioner. It was for such reasons that physicians initially lobbied the government to abolish the office of coroner and quash the proposal to appoint a medical jurist for the colony. On the other hand, and on the off chance that their efforts were not successful, the further appointment of medically trained professionals to the post was preferred over the selection of lawyers, as a means to prevent the legal coroner from inquiring obtrusively into the way they practiced their craft. Sections of the medical community thereby lobbied in the alternative for the substitution of the coronial office with a system of medical examiners, which was popular at the time in continental Europe and some states of America.53

This two-pronged attack led to appeals in parliament and elsewhere to split the duties of the coroner between justices of the peace and medical examiners. Numerous reasons were provided to justify this proposition. But what was missing from such calls – even those from the medical community who opposed the continued existence of the coroner’s office and any proposal to

53 See R R Scholl, ‘Coroner’s Inquests’ in John Barry and R J Wright-Smith (eds), The Proceedings of the Medico-Legal Society of Victoria 1939-1940-1941, Volume IV (Brown, Prior, Anderson, 1941) 173, 186. This argument was considered by a Departmental Committee in England in 1936 and rejected as “not practicable or desirable in the present organization of the legal system”. However, the committee recommended limiting the coronership to the appointment of solicitors or barristers.
create an office for a medical jurist – was an acknowledgement that the conduct of coronial inquests had substantially changed during the nineteenth century. The attachment of the technology of the forensic gaze to the conduct of the office of coroner was both a cause and an effect of jurisdictional conflicts between lawyers and physicians about who should assume responsibility for care of the dead. In other words, the criticism from the medical profession that the inquest lacked scientific expertise, that it was inherently unscientific, was premised on an anachronistic interpretation of the technologies of the coronial jurisdiction. By the time the future of the coronership was debated in politics, the press and the community, the casual glance had been utterly rejected by coroners. Professional manuals, but also administrative procedures, conveyed a coroner already equipped with the lawful technology of the forensic gaze.

That the legal custom of super visum corporis was already undergoing a process of transformation amidst calls for abolishing the coronial inquest, is further exemplified by examining the criticism levelled against the view of the coronial jury. In the late nineteenth and early twentieth centuries, the jury was variously denounced by politicians as careless, slavish and useless. They alleged that jurors were a wasteful expense, servile to the testimony of medical opinion and routinely deferred to the coroner to make findings on their behalf. What was of most concern, though, was their view of the dead – even where, as I discussed in Chapter 2, it was mediated by a glass screen. In fact, the screen

55 This point was made by Burney in reference to England, but it also applied to the Australian colonies: see Burney, above n 43, 39. For example, the Victorian Parliamentarian, Mr Gaunson, described the inquest as an expensive farce: “jurors and witnesses were crammed up into small rooms, and the coroners might be seen with jugs of beer at their sides and large bowled pipes in their mouths”: ‘Debate on Coroners in the Legislative Assembly Tuesday 2nd October 1877’ (1877) 22(10) Australian Medical Journal 305, 306.
itself, which physically separated the jury from the corpse, was thought in the early twentieth century to have rendered the legal custom of *super visum corporis* potentially useless.\(^{56}\) To be sure, the purpose of the jury’s view of the dead was questioned at length by physicians, politicians and journalists, particularly once post-mortems were regularly performed to diagnose the manner of death.\(^ {57}\) *Super visum coporis* came to be seen as morally, physically and spiritually unsettling. The legal view was characterised as deleterious, misinformed and yet also too interested, which could also lead to perverse findings:

On several occasions the view of the body by the jury, even when a Medical Practitioner has made a post-mortem examination, has been found to be misleading to the Inquiry. Post-mortem staining has been mistaken for bruises; the opening of the head has been mistaken for fractures of the skull, and it has been with the greatest difficulty that the matter has been explained to the Jury.\(^ {58}\)

The jury’s view of the dead was considered at best ignorant, and at worst misleading. “Confusion, misreadings, and inaccurate verdicts”, writes Burney, “were the inevitable result of an uninitiated set of visual interpreters of the body, whose tendency to fix on meaningless external signs reflected an archaic

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\(^{56}\) Burney, above n 43, 39. The Secretary of the British Medical Defense Union claimed before a Department Committee in 1909 that “[y]ou may have had a dummy there so far as being able to assert anything as to the cause of death by that view is concerned. It is an absolute farce”.

\(^{57}\) See Scholl, above n 53, 195-6: “The risk of the coroner being tricked into a fictitious inquest seems so remote, provided reasonable evidence is forthcoming of the existence of the body, that the ‘view’, occasioning the expenditure of time, and sometimes of money ... should be dispersed with”.

\(^{58}\) ‘Annual Reports of the Coroner’s Society’ (1897-98) 48 quoted in Burney, above n 43, 40. While the British Coroner’s Society ultimately rejected proposals to restrict the view of the jury, Burney writes that it was still considered by others as “an intrusive outrage, a sign of residual barbarity out of place in the modern world; it was a sanitarian’s nightmare; finally, it was a source of profane interference with the efficient and purposeful production of scientific knowledge”: Ibid 36.
order of knowledge”. The coronial jury first became optional in parts of Australia from 1911, while in England it was no longer mandatory from 1926. Simon Cooke suggests that the demise of the jury resulted in the loss of the inquest’s civic purpose; it “became increasingly professionalized and bureaucratised”. I will return to the question of bureaucracy in Chapter 4, but for now it suffices to say that one interpretation of this history is that the abolition of the jury restricted the coroner’s view of the dead. For absent the jury, as Burney has suggested, the conduct of super visum corporis was emptied of its legal significance. It became a historical curiosity of the medieval coroner and a legal artefact destined for a museum of medical jurisprudence. Initially, after the jury was dismissed, the coroner viewed the body alone, while later in the twentieth century even this task was left to the forensic pathologist.

This section has documented how transformations of super visum corporis in the nineteenth and twentieth centuries became a contentious point of disagreement between the disciplines of law and medicine. It was precariously positioned between the truth claims made by the medical expert, bolstered by a belief in the objectivity of the autopsy, and a jury often characterised as subject to the whims of the coroner and reliant on the conjecture of circumstantial evidence.

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59 Ibid 40.
60 Section 8 of Coroners Act 1911 (Vic) allowed coroners to hold inquests without summoning a jury. See also section 3 of the Coroners (Amendment) Act 1926 (UK), which made the jury optional in only certain circumstances. It remained compulsory, for example, where there was suspicion of murder or manslaughter.
62 Victoria, Parliamentary Debates, Legislative Council, 1 August 1911, ‘Coroners’ Law Consolidation and Amendment Bill’, 356.
63 “[S]cientific objectivity … emerged in the mid-nineteenth century and in a matter of decades became established not only as a scientific norm but also as a set of practices”: Lorraine Daston and Peter Galison, Objectivity (Zone Books, 2010) 27. Belinda Carpenter and Gordon Tait contend that during this period a hermeneutic of law was often “regarded as inferior mechanisms of truth-assessment”: ‘The Autopsy Imperative: Medicine, Law and the Coronial Investigation’ (2010) 31 Journal of Medical Humanities 205, 210-211. That being said, medical
In *Bodies of Evidence*, Burney characterises this as an epistemological crisis and he argues that it conditioned the medicalisation of the inquest in England. He further asserts that the emergence of medical expertise in the nineteenth century challenged the longstanding notion of the inquest as a bulwark of public liberties, and foreshadowed the demise of civic participation during the death investigation process.\(^{64}\) Michel Foucault offered a similar argument about the privileging of expert evidence as statements of truth, the medicalisation of judicial institutions and calls for the demise of the jury in nineteenth century France.\(^{65}\) While acknowledging that the authority of forensic medicine and the judicial status of the medical expert “constituted an attempt to recast inquests science, in particular forensic medicine, was challenged by its own subjectivity, insofar as the autopsy was a contextual practice that involved the making of certain interested decisions over others. The subjectivity of medical knowledges did not, as Carpenter and Tait write, “immediately translate into the necessary production of medical truth, and from there to a concomitant clear and infallible answer to all the questions raised in the coronial investigation”. Indeed, the laws of evidence did not empower the coroner simply to accept the truth claims made by medical experts. Rather, he could allow them to provide an ‘opinion’ subject to cross-examination, even if their opinion did not originate from their direct observation of an event, but was mediated by their interactions with patients and other professionals. For more information on the history of epistemological conflicts between coronial law and forensic medicine in the colonies, see William Ramsay Smith, *Medical Jurisprudence from the Judicial Standpoint* (Stevens and Sons, 1913); Crawford Henry Mollison, *Lectures on Forensic Medicine* (University of Melbourne, 1921).


\(^{65}\) Michel Foucault, *Abnormal: Lectures at the Collège de France 1974-1975* (Graham Burchell trans, Picador, 2003) 11 and 39 [trans of: *Anormaux* (first published 1999)]. Foucault wrote that towards the end of the nineteenth century “we hear quite serious proposals for the suppression of the jury. The jury, it is argued, [is made up of] people who are neither doctors nor judges and who consequently are competent neither in law nor in medicine. A jury of this kind can only be an obstacle, an opaque element, a resistant block within the judicial institution as it ought to be ideally. How would the true judicial institution be composed? It would be made up of a jury of experts under the juridical responsibility of a magistrate”: Ibid 39.
as primarily scientific events”, the transformations of *super visum corporis* at the turn of the twentieth century also had significant effects for how the coroner maintained lawful relations with the dead. To put this differently, the medicalisation of the inquest was only one consequence of the attachment of the technology of the gaze to the institutional life of coronial law in the nineteenth and twentieth centuries. In the following section, I will explore how the transformations of *super visum corporis* affected the way the coroner assumed responsibility for care of the dead.

The coroner’s authority to hold inquests into the identity of the deceased and the manner of his or her death, whether the death was sudden, accidental or the result of violence, was challenged by politicians, journalists and physicians at the turn of the twentieth century. The transformations of *super visum corporis* were central to calls for the abolition of the coronership, the dissipation of the jury and its replacement with a system of medical examiners. I have documented how modifications of the legal view were not simply a result of, but were inherently associated with, jurisdictional conflicts between coroners and physicians about who should assume responsibility for care of the dead. Burney has interpreted these conflicts in England as evidence of the medicalisation of the coronial inquest. He argues that a consequence of this process was the evacuation of the body from the inquest, what he calls a process of ‘decorporealization’, which transformed the inquest into “an expert-based, efficiency-oriented system of death management”. The body effectively became an ‘abstract’ sign in a witness’ deposition or pathologist’s report, while the coronial inquest was itself reduced to “a paper inquiry”. At the same time

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66 Burney, above n 43, 33.
67 Ibid 41.
68 Ibid 42. See also “The View” at Inquests’, *British Medical Journal* (London), 1 October 1898, 996: “To omit the view by the coroner would be to throw away the one outward and visible sign by which his direct control is manifested”.

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Burney notes that the body could never completely vanish from the inquest, because its presence granted the coroner the authority to inquire into the who, when and where of how a person met their death. Indeed, as I discussed in the previous section, the legal custom of *super visum corporis* had to be performed before the coroner could lawfully proceed with a coronial inquest. Even if he desired to remove himself from the “unsettling materiality” of death – Burney cites an example of an English coroner attempting to distinguish in a memoir the duties of his office from the indignity of conducting an autopsy, which was the responsibility of the pathologist – his jurisdiction depended on him forming technical relations with the corpse.\(^69\)

I have suggested in this section that the transformations of *super visum corporis* did not simply result in the medicalisation of the inquest at the turn of the twentieth century. While the development of forensic medicine, the privileging of the medical expert and the attenuation of the jury’s view problematised the jurisdiction of the coroner in the Australian colonies, it does not follow that the coroner no longer assumed responsibility for care of the dead. On the contrary, coroners were keen to quell any doubt that their reliance on expert evidence and the waning of the jury’s view undermined their authority to perform the duties of their office. What is important then is not the question of whether the office of coroner lost exclusive control for viewing the corpse – a question that is premised on the erroneous presupposition that the coroner once possessed exclusive control – but rather how the office transformed the means through which it cultivated lawful relations with the dead.

In the next section, I explore how the technology of the gaze was bound to the conduct of the office of coroner through the rhetoric of *prosopopoeia*. I explain

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\(^{69}\) Ibid. See e.g., S Ingeby Oddie, *Inquest: A Coroner Looks Back* (Hutchinson, 1941).
how super visum corporis was not only a visual technology, but was also an expression of a persona particular to the coroner. While the forensic pathologist increasingly assumed authority in the early twentieth century for viewing the corpse alone in the laboratory, the coroner maintained responsibility for caring for the dead by translating the wounds of the corpse into an institutional narrative of causation.

The Rhetoric of the Coroner

In The Birth of the Clinic, Foucault demonstrated that changes to the medical gaze in the nineteenth century shaped “[a] new alliance … between words and things, enabling one to see and to say”.70 The technology of the gaze uncovered a truth of the body by expressing in language what had previously been invisible and inexpressible. It translated a spectacle into language and language into a spectacle, such that it was both “[a] hearing gaze and a speaking gaze”.71 Translation, for Foucault, entailed a description of things, which “is to see and to know at the same time, because by saying what one sees, one integrates it spontaneously into knowledge”.72 The transformations of super visum corporis similarly forged a new relationship between a visual technology and an oratory style. Super visum corporis was never simply a mode of seeing, it became a technique of speaking, a rhetorical device particular to the persona of the coroner. I argue that at the turn of the twentieth century the question of the scope of the coronial jurisdiction was less concerned with whether the coroner had exclusive control over the dead body, and was instead more concerned by his ability to form and cultivate lawful relations with the dead. To speak on

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70 Foucault, above n 4 (emphasis in original).
71 Ibid 142.
72 Ibid 140.
behalf of the dead was part of the repertoire of jurisdictional techniques through which the coroner maintained responsibility for caring for the dead.

The idea that super visum corporis attached a rhetorical style to how the coroner conducted lawful relations with the dead requires further elucidation through a historical analysis of the theory of persona. In Latin persona denotes a role, a character, a mask. In a wide ranging essay on the history of the term, Marcel Mauss noted that the link between persona and mask was firmly established by the Romans, even though many other ancient civilisations also developed an economy of masks: “if it is not the Latins who invented the word and the institutions, at least it was they who gave it the original meaning which has become our own”.73 Roman citizens adorned different masks in civil life, including ancestral, ritual or tragic masks, which corresponded to the occupation of different roles. The performance of the mask represented the citizen’s rank, status and privilege in society.74 It attached an individual to the assumption of a name, the inheritance of a lineage and the expression of a juridical capacity. In other words, the mask enabled access to the political life of the city. But so too was it a jurisdictional technique that “[spoke] to the masked performances that reproduce legal subjectivity”.75 For Edward Mussawir, the mask did not reveal a ‘true identity’; it depicted “a fragmented or non-totalized

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74 Only freemen in Rome could cultivate a civil persona. The slave was “Servus non habet personam … He does not own his body, nor has he ancestors, name, cognomen, or personal belongings”: Mauss, above n 73, 17.

identity linked to a discrete civic function”. To appear before the law, Roman citizens had to adorn the masks of their ancestors, and they had to perform a specific role that corresponded with the particularity of the mask. As Roberto Esposito writes, “[p]ersona was not what one is, but what one has, like a faculty that, precisely for this reason, you could also lose”.

The technology of the mask bound a persona to a juridical capacity. It was, as Connal Parsley writes, “a device, dispositif or apparatus – through which a juridical relation to life comes to be engendered”. The Latin persona was originally translated by Cicero from the Greek prosopon (the imago, a death mask), which signified both the face and a disguise. Hence, the mask more accurately attached a juridical persona to the artifice of the face. The latter is the mask that lies beyond the mask, when “every mask [is] torn away ... there is retained the sense of the artificial”. In Leviathan, Thomas Hobbes demonstrated the ineluctability of the face and the mask:

76 Ibid 31.
77 Roberto Esposito, Persons and Things: From the Body's Point of View (Zakiya Hanafi trans, Polity Press, 2015) 30 [trans of: Persone e le cose].
The word Person is latine: instead whereof the Greeks have [prosopon], which signifies the Face, as Persona in latine signifies the disguise, or outward appearance of a man, counterfeited on the Stage; and sometimes more particularly that part of it, which disguiseth the face, as a Mask or Visard: And from the Stage, hath been translated to any Representer of speech and action, as well in Tribunalls, as Theaters. So that a Person, is the same that an Actor is, both on the stage and in common Conversation; and to Personate, is to Act, or Represent himselfe, or an other; and he that acteth another is said to beare his Person, or act in his name.\textsuperscript{82}

What is most interesting about this passage is how rhetoric occupied a central role in framing the discursive relationship between the face and the disguise. This means that the mask was not simply a visual technique for appearing in person, but a rhetorical device for personification, which as Mauss noted, derives from per and sonare, “the mask through which (per) resounds the voice (of the actor)”.\textsuperscript{83} Indeed, the mask of persona was an apparatus of vocalisation, a juridical device for translating the speech and actions of the actor from the theatrical stage to the legal forum. It was a means of translation, recalling Foucault’s characterisation of the medical gaze in \textit{The Birth of the Clinic} – a rhetorical technique for describing what one sees and hears. In addition, the mask of persona was not only used in Roman law to personify the actions or speech of oneself, but deployed as a figure of speech to personate an other.\textsuperscript{84} In


\footnotesize{\textsuperscript{83} Mauss, above n 73, 15. Though Mauss noted that this interpretation of persona emerged later than the mask, such that the Romans distinguished “between persona and persona muta, the silent role in drama and mime”.}

this act of personification, the ‘actor’ was said to bear or adorn the other’s persona through the performance of the mask.

Hobbes’ description of the rhetorical functions of the mask of persona recalls the rhetorical device of prosopopoeia, which also derives from the Greek word for prosopon. Prosopopoeia is a trope or figure of speech that enables a writer or orator to speak on behalf of another. Classic examples of the use of this trope can be found in Greek and Roman mythology where inanimate objects are bestowed with a human voice. In the Institutes of the Orator, Quintilian described prosopopoeia as the most difficult kind of rhetorical speech. It provided the Roman orator with techniques for not only speaking on behalf of others, but also speaking on behalf of things. In fact, Quintilian specified the dead, who were incapable of appearing before a legal forum, as important beneficiaries of the use of this device. The rhetorical figure enabled the orator to raise the dead from their graves and lend them the means of locution. Quintilian, Institutes of the Orator, Volume 2 (J Patsall trans, B Law and J Wilkie, 1774) Book 9, Chapter 2 [trans of: Institutio oratoria]. On the orality of things, see Joel Snyder, ‘Res Ipsa Loquitur’ in Lorraine Daston (ed), Things That Talk: Object Lessors from Art and Science (Zone Books, 2008) 195; Eyal Weizman, The Least of All Possible Evils: Humanitarian Violence from Arendt to Gaza (Verso, 2011) 105-6; Patrick R Crowley, ‘Roman Death Masks and the Metaphorics of the Negative’ (2016) 64 Grey Room 64. While the voices of the dead have not been subject to much academic analysis, there exists a broad field of literature on the philosophy of the voice. See e.g., Adriana Cavarero, For More Than One Voice: Toward a Philosophy of Vocal Express (Paul A Kottman trans, Stanford University Press, 2005) [trans of: A più voci: Per una filosofia dell’espressione vocale (first published 2003)]; Mladen Dolar, A Voice and Nothing More (MIT Press, 2006); Michel Serres, The Five Senses: A Philosophy of Mingled Bodies (I) (Margaret Sankey and Peter Cowley trans, Continuum, 2008) [trans of: Les cinq sens (first published 1985)].
This section concludes by applying a theory of persona to enrich an institutional history of the transformations of super visum corporis in the nineteenth and twentieth centuries. In the previous section, I discussed the idea, usually offered by medical historians, that in the early twentieth century the forensic pathologist had assumed almost exclusive authority for viewing the corpse before a coronial inquest. According to Burney, this was evidence that the coronial inquest had become medicalised by the late nineteenth century. On the contrary, I propose that far from diminishing the jurisdiction of the coroner, the attachment of the forensic gaze to the legal custom of super visum corporis, transformed the way the coroner formed lawful relations with the dead. If super visum corporis is viewed through its history as a jurisdictional technique that belonged to the institutional life of coronial law, I argue that its conduct was an expression of a persona particular to the role of the coroner. In other words, no matter how super visum corporis was modified in the nineteenth and twentieth centuries by the development of forensic medicine and the rise of the medical expert, the technology remained attached to the performance of the coronial office. It follows then that if super visum corporis was always a lawful technology – a technology of jurisdiction that belonged to an expression of a coronial persona – it was not simply a visual technique. Through a history of the mask of persona and the rhetoric of prosopopoeia, it is possible to conceive of super visum corporis in the nineteenth and twentieth centuries as a jurisdictional technique for speaking on behalf of the dead.

The theatricality of the inquest should not come as a surprise to modern readers. The idea that coroners were actors among others in the unfurling tragedy of the inquest is not out of place with modern scholarship that depicts the dramatic functions of law.  

speak for those who have no means of locution emerged as a common trope in academic scholarship towards the end of the twentieth century.\textsuperscript{87} In the writings of Rebecca Scott Bray, the coroner appears as an intermediary between the living and the dead by translating medical evidence into an institutional narrative of death causation.\textsuperscript{88} But what is missing in this literature is an explanation of how the coroner was capable of speaking for the dead – that is, what techniques enabled the coroner to translate wounds of the corpse into figures of speech. In this section, I have argued that it is the combination of a technology, persona and rhetoric that instituted modes of speaking on behalf of another as indispensable for how the coroner cared for the dead. Speaking on behalf of the dead was one of the ways in which the coroner formed and

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\textsuperscript{88} Rebecca Scott Bray, ‘Fugitive Performances of Death and Injury’ (2006) 10 \textit{Law Text Culture} 41, 52. Yet at the same time Scott Bray also positions the forensic pathologist as an intermediary between the image of a dead body and the coroner. Her reading of the expert builds upon Joseph Pugliese’s identification of the forensic pathologist as a translator of “the visual into the verbal … the corporeal into the linguistic, in the textual genre of the autopsy protocol or report, that finally establishes the evidentiary value of the body of the victim”: “\textit{Super Visum Corporis}”: Visuality, Race, Narrativity and the Body of Forensic Pathology’ (2002) 14(2) \textit{Law and Literature} 367, 369, 384. His article offers an insightful analysis of how forensic techniques unreflexively racialise the body. But the article also elides any differences between the practices of the forensic pathologist and jurisdictional techniques of the coroner. For example, Pugliese writes that

\begin{quote}
[i]n the texts of forensic pathology, the bringing into visibility the body of the victim is tantamount to enabling the corpse to speak, to giving the dead a voice. This demand to bring the obtuse and silent corporeality of the corpse into speech and language is tersely encapsulated in the coroner’s motto: “To speak for the dead”. The body of the victim, in the texts of forensic pathology is characterised in terms of an entity disabled by a ‘verbal muteness’: Ibid 369 (emphasis added).
\end{quote}

The quotation implies that there is no distinction between the duties of the pathologist and the obligations of the coroner during the death investigation process. It also reveals a lack of consideration of the role played by legal procedure in mediating “the authorised reception of forensic knowledge into the court of law”: Ibid 368. It is unclear whether Pugliese is investigating forensic textbooks, the laws of evidence or visual practices in the morgue.
cultivated lawful relations with the dead in the nineteenth and twentieth century. This means that the medicalisation of the inquest was only part of the story that involved the attachment of the technology of the gaze to the legal custom of *super visum corporis*. The other part of the story is that *super visum corporis* was never simply a visual device: it was an institutional practice, a lawful technology and a rhetorical procedure that authorised the coroner to speak on behalf of the dead.

**Conclusion**

This chapter has examined how the technology of the forensic gaze became attached to the institutional life of coronial law in the nineteenth and twentieth centuries. It explored how the transformations of *super visum corporis* affected the way the coroner assumed responsibility for care of the dead. The chapter argued that the legal duty to view the corpse before proceeding with an inquest offered the coroner a rhetorical device for speaking on behalf of the dead. This device was a jurisdictional technique that framed the expression of a coronial persona and became integral to how the coroner formed lawful relations with the dead. When Robert Pogue Harrison writes that “[w]e speak with the words of the dead”, he means that “[t]he dead speak in and through the voices of the living. We inherit their words so as to lend them voice”. 89 *Super visum corporis* was a mode through which the living could lawfully speak with the words of the dead. This perhaps explains why “[w]ounds do not speak until and unless they have the voice and utterance of another”90 – that is to say, until they are attached to an institutional idiom of law. *Super visum corporis* bound the forensic gaze to the conduct of coronial law by providing the coroner with lawful

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technologies for translating wounds, lesions and bruises into an institutional narrative of death causation.91

Earlier in this chapter, I explored how the forensic gaze was attached to the legal view of the dead in the nineteenth and twentieth centuries. I also analysed how this attachment took place amidst jurisdictional conflicts between the disciplines of medicine and law over who should assume responsibility for caring for the dead. While such conflicts lead to calls for the abolition of the coronial office, the dissipation of the coronial jury and the attenuation of the jury’s view of the dead, this chapter concluded that these events were not mere evidence of the medicalisation of the inquest. While the forensic pathologist became solely responsible for the conduct of post-mortem examinations in the early twentieth century, I emphasised towards the end of the chapter that the legal view remained important to how the office of coroner cultivated lawful relations with the dead. The last section argued that we should read the transformations of super visum corporis in the nineteenth and twentieth century through the genre of jurisdictional thinking. Super visum corporis remained integral to the way the coroner performed his role, because it functioned as a technique of the expression of a persona. The coroner maintained responsibility for caring for the dead by translating the wounds of the corpse into an institutional narrative of causation.

91 Pugliese argues that in disclosing the “hidden and effaced cause of death … the organic material of the body must be transmuted into intelligible data through a series of instrumental mediations”: above n 88, 381. He briefly discusses that “the duty of the forensic pathologist [is] to ventriloquise the cause of death after a rigorous and scientific analysis of the trauma of the body”: Ibid 369. This chapter has differed from Pugliese’s analysis by examining techniques of ventriloquising the cause of death as rhetorical functions of the conduct of the coroner.
CHAPTER 4: THE BUREAUCRATIC LOGIC OF THE CORONER’S OFFICE

The coronial manual first appeared in England in the eighteenth century.\(^1\) *The Coroner’s Guide* (1756) and *Lex Coronatoria* (1761) were followed throughout the nineteenth century by several handbooks written specially for coroners, including John Impey’s *The Office and Duty of Coroners* (1800), Sir John Jervis’ *A Practical Treatise on the Office and Duties of Coroners* (1829), Richard Sewell’s *A Treatise on the Law of Coroner* (1843) and William Baker’s *A Practical Compendium* (1851).\(^2\) While English handbooks initially served as guidance in British colonies, over the course of the nineteenth century, specialised manuals were later written by local coroners to address the particular circumstances of colonial life. In Canada, William F A Boys wrote *A Practical Treatise on the Office and Duties of Coroners in Upper Canada* (1864), while in New Zealand, Alexander J Johnston published *A Handy Book for the Coroners of New Zealand* (1868).\(^3\)

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\(^1\) The earliest handbook written for coroners was published in England in 1756. The first edition of this orphan work remains unknown. Multi-purpose handbooks written for sheriffs, bailiffs, justices of the peace, constables and coroners were circulated prior to the eighteenth century: see Sir Anthony Fitzherbert, *In this boke is conteyned ye office of shyryffes, baylyffes of lybertyes, escheatours, constables, & coroners: and sheweth what euerye one of them may do by vertue of theyr offyces drawen out of bokes of the comen lawe & of the statutes* (Wyllyam Powell, 1549); Richard J. Burn, *Justice of the Peace and Parish Officer, Volume II* (Sweet, Maxwell and Son, and Steven’s and Norton, first published 1755, 1845 ed); John H Plunkett, *The Australian Magistrate or A guide to the duties of a justice of the peace for the colony of New South Wales* (Gazette Office, 1835).

\(^2\) The *Coroner’s Guide*: or, the office and duty of a coroner: containing variety of precedents, and proper instructions for executing the said office. Compiled from the best authorities (John Worrall, 1756); Edward Umfreville, *Lex Coronatoria: or, the office and duty of coroners. In three parts. Wherein the theory of the office is distinctly laid down; and the practice illustrated* (R Griffiths and T Becket, 1761); John Impey, *The Office and Duty of Coroners* (J Butterworth, 1800); Sir John Jervis, *A Practical Treatise on the Office and Duties of Coroners* (S Sweet, 1829); Richard Clarke Sewell, *A Treatise on the Law of Coroner* (O Richards, 1843); William Baker, *A Practical Compendium of the Recent Statutes, Cases and Decisions Affecting the Office of the Coroner* (Butterworths, 1851).

Australia, P S Tomlins (1837) and Thomas E MacNevin (1875) produced manuals for the colonies of Van Diemans Land and New South Wales respectively.¹ Manuals written by colonial coroners differed from their English counterparts to the extent that they addressed the problem of a paucity of technical knowledge and the difficulty of transmitting official notices across vast distances.

This chapter offers a historical account of the coronial manual as a technology of office in the late nineteenth and early twentieth centuries. In previous chapters I examined how technologies of place-making, architecture and *super visum corporis* formed part of the repertoire of office and affected the ways in which coroners cultivated lawful relations with the dead. Here, I explore how the technology of the manual bureaucratised the office of coroner, while providing guidance on how officials should practice an ethical conduct towards the dead. The professional manual was preoccupied in the late nineteenth century with questions of technical knowledge, administrative expertise and bureaucratic governance. The procedural language that characterised juridical treatises prior to the eighteenth century was supplemented by a rhetoric of technocracy. The manual became an increasingly technocratic device and assumed an indispensable role in the formation of the modern office of coroner.

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¹ P S Tomlins, *The Coroner’s Guide: A Summary of the Duties, Powers and Liabilities of Coroners From the Most Approved Authorities* (Van Diemens Land, 1837); Thomas E MacNevin, *Manual for Coroners and Magistrates in New South Wales: being a practical guide to the proceedings of the coroner’s court and to the holding of magisterial inquiries in lieu of inquests by justices of the peace* (Government Printer, 1st ed, 1875). In the late nineteenth century, the government of the colony of Victoria published *Acts Relating to Coroners and Instructions for the Guidance of Coroners on Justices Acting as Such* (Government Printer, 1890) [Victoria Police Museum and Historical Services Unit]. In the early twentieth century, James Drysdale Brown wrote *A Short Manual: For the Guidance of Coroners, Deputy Coroners, and Justices Acting as Coroners, in Victoria* (Government Printer, 1911).
The first section explores how the manual redefined the jurisdiction of the coroner and reshaped the technical operations of the office in the late nineteenth century. The coronial jurisdiction was never simply delimited by case law or legislation in the Australian colonies. The manual and its inventory of circulars, forms and precedents augmented the authority of the coroner, instructed his office in the proper conduct of inquest proceedings and assimilated his role into the hierarchical career structure of the civil service. The second section investigates the attention that handbooks in the early twentieth century placed on the liabilities and privileges of the office of coroner. The manual increasingly held coroners accountable for their conduct, while simultaneously providing guidance on how to assume responsibility for care of the dead. The manual was not bereft of an ethics of responsibility. It held on to the question of ethical conduct by anthologising forms for attaching the dead to the institutional life of coronial law. This chapter concludes by representing the manual as a technological conduit between an ethics of responsibility and the bureaucratic logic of the coroner’s office.

The Technocratic Manual

In the preface to the third edition of a Manual for Coroners and Magistrates in New South Wales (1895), Thomas E MacNevin highlighted what had been altered since the previous edition. MacNevin was employed at the time as the chief clerk of the Department of Justice and he compiled the manual with the assistance of Mr Henry Shiell, then coroner of Sydney. The second edition, which was published in 1884, was shorter in length and had not included any circulars. The third edition, by contrast, included all circulars issued to coroners by the Department of Justice since 1868. The reason for this was the necessity of addressing a “failure on the part of Coroners in many instances” to adhere to
procedure in completing forms and “avoid, as far as possible, needless correspondence on the subject”.\(^5\) Irregularities included coroners failing to affix jurats, attach seals or properly compile forms, which as MacNevin explained, “materially affect[ed] the validity of the Inquest”.\(^6\) The importance of ameliorating such procedural errors was explicitly remarked, in the preface to the second edition, as an objective of the manual:

The first edition of this little work, which has been for some time out of print, was published in 1876, and distributed to the Coroners throughout the Colony for their guidance and assistance in the performance of the duties pertaining to their important office; and was rendered necessary in consequence of certain irregularities which occurred from time to time in connection with the holding of inquests in the county districts, and the defective manner in which the evidence of witnesses was taken, without, in many instances, the necessary jurats being attached to each disposition, tending to affect the validity and materially to lessen the usefulness of these investigations.\(^7\)

The manual was indispensable for the late nineteenth century coroner. Alongside a bundle of forms, recognisances, certificates and warrants, a Bible, writing material and “a sufficient quantity of foolscap paper”;\(^8\) MacNevin recommended that upon receiving notice of a suspicious, sudden or unnatural death, coroners should carry his manual to the place of death. In the absence of any formal training for the role – individuals seeking office were presumed to

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\(^5\) Thomas E MacNevin, *Manual for Coroners and Magistrates in New South Wales: being a practical guide to the proceedings of the coroner’s court and to the holding of magisterial inquiries in lieu of inquests by justices of the peace* (Government Printer, 3rd ed, 1895) ii.

\(^6\) Ibid.

\(^7\) Thomas E MacNevin, *Manual for Coroners and Magistrates in New South Wales: being a practical guide to the proceedings of the coroner’s court and to the holding of magisterial inquiries in lieu of inquests by justices of the peace* (Government Printer, 2nd edition, 1884) v.

\(^8\) MacNevin, above n 5, 24.
be “acquainted in a general way with those duties”\(^9\) – his manual provided a set of instructions for guiding coroners in the performance of their duties. While MacNevin recommended “every Coroner should provide himself with a copy of ‘Sir John Jervis on the Office and Duties of Coroners’”,\(^10\) he also acknowledged that there was no equivalent textbook for the colony. He thus saw his manual, which was provided to all coroners upon their first appointment to the role, as an attempt to address this paucity of local knowledge.

MacNevin’s “practical guide to the ordinary duties of their office”\(^11\) was arguably most useful for coroners located in the outlying districts of the colony. The difficulties of obtaining access to circulars issued by the Department of Justice, opinions from the Crown Law Offices and forms distributed by the Government Printer all contributed to the demand for such manuals. These factors also influenced editorial decisions about what should be included and excluded in each edition. The second edition, for example, expanded the ‘practical’ component of the guidebook. It did so by adding opinions of the Crown Law Offices, revising the forms necessary for practice and generally redesigning the typographical arrangement of the book for the sake of professional convenience, but also for ensuring consistency amongst a disparate number of coroners operating across long distances:

It is hoped, in conclusion, that, in the absence of any regular text-book treating of the practice of the Coroner's Court in this Colony, this manual will be found to be a trustworthy guide to the ordinary duties of the Coroner, and that the simple arrangement of the duties incident to the

\(^9\) Ibid 2.
\(^10\) Ibid.
\(^11\) MacNevin, above n 7, v.
office, attempted in the present compilation may in some measure facilitate the performance of those duties, secure uniformity of practice, and assist the Coroner, conveniently and effectually, to discharge the important functions of his office. If these desirable objects be attained, the time, labour, and study that have been devoted by the compiler in the endeavour to produce a practical handbook upon a very difficult subject will have been profitably applied.12

The third edition of MacNevin’s manual brought additional changes to the content and structure of the coroner’s handbook. The chief clerk rearranged the order of chapters, revised the substance of precedents and added a number of forms in an enlarged Appendix. Under ‘Forms of Verdicts’, MacNevin included death “during operation under chloroform” (Form 19), “from effects of injuries” (Forms 20 and 21), “accidentally overlain by mother” (Form 22), “from asphyxia at birth” (Form 23) and “from poison self-administered” (Form 24). The forms of verdicts were expanded from twenty five to thirty two, which did not simply denote that individuals invented new modes of dying over the course of a decade, but rather that the coronial manual became increasingly supplemented by technical knowledge. The technocratisation of the manual is evident when comparing such forms to the categories of verdicts in treatises from the eighteenth century. In The Coroner’s Guide, first published in 1756, the anonymous author confined possible verdicts to felony (suicide or murder), mischance (act of god or act of man) and famine (poverty or pestilence).

12 Ibid vi. There were approximately 130 coroners spread throughout the colony in 1894: Hilary Golder, High and Responsible Office: A History of the NSW Magistracy (Oxford University Press, 1991) 118. While colonial coroners were all medically qualified, English coroners were mostly legally trained. Though see Ian Burney’s discussion of Thomas Wakley’s successful election as the medical coroner for Middlesex in 1830: Ian Burney, Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830-1926 (Johns Hopkins University Press, 2000) Ch 1.
Technical knowledge was not merely supplementary in the manual to judicial statements defining the limits of the coronial jurisdiction. In the nineteenth century, the jurisdiction of the colonial coroner was shaped by a combination of case law and legislation. However, in the third edition of MacNevin's manual, circulars, forms and precedent were interspersed alongside case law and legislation throughout each chapter. The procedures for conducting an inquest, from the proclamations made at the opening of court to pro-forma declarations for the swearing of witnesses to the form of vouchers for the advanced payment of jurors, were not ancillary to legal judgments on the scope of the coroner’s authority. The technical aspects of form-filling were part of the official instructions that guided coroners in navigating their inheritance of coronal law. In other words, substantive law and administrative procedure were not represented in the manual as mutually exclusive aspects of the conduct of the coroner’s office. Rather, the manual embedded techniques on how to interpret the limits of the coronial jurisdiction, how to perform the ordinary duties of office, and how to conduct inquest proceedings amidst judicial consideration of case law and legislation.

Circulars, forms and precedent constituted devices for the transmission and representation of the authority of the coroner in the nineteenth century. The

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13 While British coronial law was transported to the colony in 1788, it was not until 1828 that particular duties of the coroner became codified. The relevant Act at the time of publication of the third edition of MacNevin’s manual was An Act for adopting certain Acts of Parliament passed during the Seventh and Eighth Years of His Present Majesty King George the Fourth for the Amendment of the Law and the Improvement of the Administration of Justice in Criminal Cases (9 George IV c. 66, 1828). This Act was adopted in New South Wales as An Act for Improving the Administration of Criminal Justice in England (7 George IV c. 64, 1826) ss 4 - 6. Coronial jurisdiction remained largely a creation of common law in the colony until the twentieth century: John Abernethy et al, Waller’s Coronial Law and Practice in New South Wales (LexisNexis Butterworths, 4th ed, 2010) 9.

14 The third edition of MacNevin's manual compiled in Part IV of the Appendix a number of cases decided by the Supreme Court of New South Wales on the jurisdiction of the office of coroner. It also contained a collection of relevant English Law Reports, which were absent from the first and second editions.
circular in particular – which transmitted the opinions, minutes and advice of the Attorney-General or the Minister of Justice – functioned as a jurisdictional technique insofar as it was created with the aim of modifying lawful relations between the coroner and the Crown. For example, the Colonial Secretary’s Office admonished coroners on 15 March 1845 for overstepping the limits of their territorial jurisdiction. It transmitted notice of its decision by the use of a circular that stated “in future no Coroner is to act except within the Police district in which he may reside and for which he is understood as holding his appointment”. Yet MacNevin noted, in the preface to the third edition of his manual, that in 1892 the Department of Justice issued another circular expanding the territorial jurisdiction of the office to enable coroners to hold inquests beyond the limits of their appointed district in special circumstances. What is most interesting about the editor’s decision to not simply quote from such devices, but to transcribe both documents in the Appendix of the manual, is that it represented the circular as a technique for delimiting the territorial jurisdiction of the coroner. Coronial jurisdiction did not pre-exist the issuing of official opinions on the matter, but rather materialised through the transcription and dissemination of the manual.

Circulars issued to coroners in the nineteenth century ranged from instructions for the mode of transmitting inquisition documents to procedures for stamping official correspondence, to processes for remunerating medical witnesses for their role in the death investigation process. They gesture towards a more expansive definition of jurisdictional techniques that is irreducible to case law and legislation. In previous chapters I outlined how activities of place-making, architectural techniques and super visum corporis affected the way in which the coroner formed lawful relations with the dead in the nineteenth century. This

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15 Government Gazette (Sydney), No. 22, 15 March 1845, 300.
chapter, however, is concerned with examining how the coronial manual and the practice of anthology functioned as technologies of jurisdiction. I argue that the manual emerged as an important aspect of the performance of office because it attached and bound technical relations between the living and the dead to coronial law. The manual determined the scope of the authority of the office by depicting administrative procedures and bureaucratic processes as relations that properly belonged to law. This chapter thus responds to the question of how the art of anthologising circulars, precedent and forms in a guidebook or handbook for coroners executing their duties, enabled such officials to create lawful relations with the dead.

Transformations of the manual in the latter half of the nineteenth century technocratised the office of coroner in the Australian colonies. Technocracy was coined by William Henry Smyth in the early twentieth century to describe the work of governance through technical knowledge, expertise and skill.¹⁶ I employ the term here to describe how the work of the coroner was transformed by the supplementation of technical knowledge in the manual. In the nineteenth century, the manual emphasised that the bureaucratic activities of coroners were important, if not essential, for the expression of their office and the fulfilment of their obligations. To put this differently, the manual signified that the practice of coronial law in the colony consisted of much more than the act of interpreting and applying rules of the common law and legislation. It materialised in bureaucratic rituals, form-filling and other organisational processes.

In *Jurisdiction*, Shaunnagh Dorsett and Shaun McVeigh describe precedent as a technique that binds “a judgment or case to the body of law”.\(^{17}\) In the compilation of the coronial manual, precedent did not function in exactly the same way. Instead it bound procedure to the conduct of coronial law. Precedent consisted of pro-forma proclamations to be issued at the opening of an inquest, or templates for the making of oaths or affirmations.\(^{18}\) It also assumed form in the instructions requiring coroners not simply to provide specific information on inquest forms,\(^{19}\) but requiring them to transcribe and transmit the forms according to specific guidelines. Witness depositions were to be recorded on “half-sheets of foolscap paper, quarter margin, and only on one side of the sheet”, while a copy of the inquest proceedings, including vouchers, were to be circulated to the Department of Justice “under registered cover ... with duty stamps affixed”.\(^{20}\) The validity of an inquest thus depended not only on whether the dead body was viewed by the coroner (and the jury), which was discussed at length in Chapter 3, but also on whether the inquest documents were properly "fastened with tape or a metal fastener".\(^{21}\) The absence of a seal accompanying documents could lead to delays, if not a declaration that the

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\(^{18}\) The coroner was instructed to direct the constable to open the court by proclaiming “You good men of this district, summoned to appear here this day to inquire for our Sovereign Lady the Queen when, how, and by what means A.B. came to his death, answer to your names as you should be called, every man at the first call, upon the pain and peril that shall fall thereon”: MacNevin, above n 5, 34.

\(^{19}\) Coroners were required to complete the Form of Inquisition (Form 5) and divide the form into three parts: “the caption, the finding, and the attestation”: Ibid 55.

\(^{20}\) Ibid 41 and 57 (emphasis in original). The Department of Justice issued a circular on 16 November 1891 requesting that coroners use registered cover to transmit inquest proceedings due to the “inconvenience” of a number of cases “having gone astray in transit to this Department”: Ibid 92. For an example of this in other colonies, see *Acts Relating to Coroners and Instructions for the Guidance of Coroners on Justices Acting As Such*, above n 4, 24 (emphasis in original): “The inquisitions, depositions, recognisances, and coroner’s remarks (if any), should be carefully annexed together with tape and seal, and forwarded by the first mail to the Crown Law Offices; exact attention to this is indispensable”.

\(^{21}\) MacNevin, above n 5, 41.
The inquest was void.\textsuperscript{22} The inconsistency of procedure amongst districts, the irregularities of transcription and transmission of inquest proceedings, all contributed to a growing need to standardise the conduct of coroners. Indeed, such problems were cited by MacNevin in the preface to the second edition as one of his motivations for writing a manual for colonial coroners.

The nineteenth century manual instructed coroners in how to perform the duties that pertained to the assumption of their office. In compiling precedents, forms and circulars, certificates, warrants and vouchers, the coronial manual sought to bind technical relations between the living and the dead to the institutional life of coronial law. The act of anthologising different juridical techniques and administrative procedures in a professional handbook technocratised what was often considered a highly disorganised, inefficient and parochial office. Another way of thinking of the impact of the manual on the office of coroner is that it bureaucratised the way in which he performed his duties. It set out precise instructions, and at times, appeared as a script book for the ceremonial staging of law:

\begin{quote}
The Coroner then asks them if they have agreed in their verdict, and if they say ‘Yes,’ he asks them, ‘Who shall say for you?’ to which they will say, ‘Our foreman.’ The Coroner will then say, ‘Mr. Foreman: How do you find A.D. came to his death, and by what means?’ The foreman then standing, relates and gives the verdict, which it is the Coroner's duty to receive, enter, and record.\textsuperscript{23}
\end{quote}

\textsuperscript{22} Though note that according to William Ramsay Smith, then coroner of Adelaide, "[n]o inquisition is to be quashed on account of technical defects; and if exception be taken to any inquisition on account of such, any judge of the Supreme Court may, if he thinks fit, order the inquisition to be amended": William Ramsay Smith, \textit{A Manual for Coroners: being a guide to coronial inquiries and inquests in South Australia and throughout Australasia and in England} (Hussey & Gillingham, 1904) 72.

\textsuperscript{23} MacNevin, above n 5, 51.
Coronial procedures, which were meticulously outlined in the handbook, promoted a range of theatrical devices for establishing the authority of the coroner and the lawfulness of his conduct. Inquests could only begin once the coroner directed the constable to proclaim the opening of the court: “You good men of this district, summoned to appear here ….” What was particularly important for framing the jurisdiction of the coroner was a collection of forms, precedents and circulars detailing the process for remunerating individuals who took part in inquest proceedings. The coroner was required to occupy the role of a bookkeeper in applying for an advance to pay jurors for attending an inquest, compensating jurors for their time spent on the jury and submitting accounts of expenditure, “properly vouched and receipted”, to the Audit Office within a fortnight of the date on which funds were advanced. Here, the persona of the coroner – what Dorsett and McVeigh define as “the manifestation or expression of office – the way a person fills that office” – was reimagined through the character of the bureaucrat. He was required to request forms from the Government Printer, issue vouchers, pay fees, write legibly, and ensure that all correspondence was properly sealed and stamped.

The jurisdiction of the colonial coroner was shaped in the nineteenth century by the technology of the manual and its array of devices for cultivating lawful relations with the dead. The transformations of this technology throughout the century witnessed changes to the institutionalisation of the office in colonial society. Eighteenth century guidebooks had always included forms and precedents for performing the duties of the coroner’s office. Yet the modern

24 Ibid 34.
manual amplified the technocratic role that coroners assumed in the governance of the dead in the colony. It supplemented judicial statements on current law with technical knowledge, administrative procedures and specialised forms and precedents. It augmented official instructions with opinions, advice and minutes from civil servants and government ministers. The language of technocracy was therefore embedded in and through the manual. As Hilary Golder remarks, by the end of the nineteenth century the office of coroner “was fully integrated into the magisterial career structure”.\(^{27}\) Coroners, who had never been conceptualised as members of the judiciary, yet were often given magisterial duties, became more closely identified as servants of the Department of Justice. The manual technocratised the office of coroner, yet as I argue in the following section, it is precisely through the development of this technology that the office of coroner held on to an ethics of responsibility for caring for the dead.

**An Ethics of Office**

William Ramsay Smith was one of the most questionable physicians to have ever assumed the office of coroner in Australia. Smith was educated in arts, natural sciences and medicine at the University of Edinburgh from 1877 to 1892. He was first employed as a physician at the Royal Adelaide Hospital in 1896 and then appointed as the Inspector of Anatomy, chairman of the Central Board

\(^{27}\) Golder, above n 12, 118. As Golder explains, following the enactment of the *Public Service Act 1895* (NSW), “politicians ceded control of government employment to a central and independent personnel agency. The new Public Service Board was responsible for the classification, discipline and promotion of public servants, but above all for their recruitment by means of competitive or qualifying examination”: Ibid 119. This seems to mirror the Northcote-Trevelyan reforms of government in England in the nineteenth century. These reforms included reductions in public expenditure, the centralisation of auditing processes, the technocratisation of the public service and the increasing independence and autonomy of office: see Oliver MacDonagh, ‘The Nineteenth-Century Revolution in Government: A Reappraisal’ (1958) 1(1) *The Historical Journal* 52.
of Health and coroner of Adelaide in 1899. Smith first raised the ire of the medical profession by holding inquests into deaths in hospitals and lunatic asylums, particularly following surgery – something which had never been conducted in the colony of South Australia. However, what raised the most controversy was his fondness for ‘unlawfully’ dissecting what he called ‘government corpses’ in his Adelaide morgue at West Terrace Cemetery.

Smith maintained that the purpose of his ‘experiments’ was to test his theories of death causation. It was reported that he used mallets to cause puncture wounds, knives to create stab wounds and a range of bullets to analyse the distinctive effects of using different weapons on the flesh. Yet the coroner was also dismembering indigenous (and non-indigenous) corpses and sending their remains – including skulls, organs, skin and genitalia – to the University of Edinburgh and the Royal College of Surgeons in Edinburgh, or adding them to his own personal collection. Smith became renowned by the beginning of the twentieth century as a “prolific colonial collector” of the remains of the Ngarrindjeri people, which were well documented in his numerous


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manuscripts on anatomy, anthropology and odontology.\textsuperscript{32} In pamphlets co-written with Sir Edward Charles Stirling on indigenous burial grounds, he gleefully compared his adventures in grave robbing to prospecting for gold.\textsuperscript{33}

Smith’s unlawful experiments at the Adelaide morgue were made possible through the manipulation of legal procedure.\textsuperscript{34} In the late nineteenth century, coroners were permitted, after the end of an inquest, to lawfully dispose of an unclaimed corpse – which was defined as a corpse that was not claimed by relatives within 12 hours of death – by ordering its burial or sending it to a medical school, as long as the dead had not objected to such use of their cadaver before they passed away.\textsuperscript{35} Yet Smith would first issue a warrant for an unclaimed corpse’s burial following an inquest, while secretly ‘filleting’ the corpse prior to placing what remained of its cadaver in a wooden coffin.\textsuperscript{36} His unlawful conduct was exposed in 1903, when he was charged with being ‘indiscreet’ in his dealings with the dead, under the ‘decency clause’ of the Anatomy Act 1884 (SA).\textsuperscript{37} He claimed, however, before the Board of Inquiry set up in the wake of the scandal, that he was

\textsuperscript{32} Ibid.
\textsuperscript{33} William Ramsay Smith and Edward Charles Stirling, Australian Aborigines - Burial Grounds (Thomas Gill, 1907-1911).
\textsuperscript{34} MacDonald, above n 29, 194.
\textsuperscript{35} Anatomy Act 1884 (SA) ss 8 and 11.
\textsuperscript{36} MacDonald, above n 29, 194.
\textsuperscript{37} Anatomy Act 1884 (SA) s 15: “All persons who shall carry on and practise anatomy shall do so in a manner as to avoid unnecessary mutilation of any bodies that they may be examining anatomically, and shall conduct such examinations in an orderly, quiet, and decent manner”. Claire Scobie, above n 31, summarises the specific case that catalysed the scandal: “[The Board of Inquiry] centred on how Smith handled the body of Tommy Walker, a popular Aboriginal figure who lived on the streets of Adelaide. On Walker’s death in July 1901, city businessmen were so moved they paid for a carved headstone and two obituaries ran in the local papers. But within hours of his death, Smith had intercepted, cut up and decapitated Walker’s body. The coffin, containing only his flesh, was weighed down with sand. [When] news travelled back from Edinburgh that Walker’s remains now formed part of its Anatomy Museum [the] revelations triggered public outrage”. 
unsure whether a coroner had that power to dispose of unclaimed bodies when an inquest concluded and spoke of having asked the government to change the law to enable him to do so since inquest corpses often made excellent subjects for dissection.38

While Smith was initially suspended from the office of coroner once his conduct was exposed, the Board of Inquiry eventually cleared him of any wrongdoing and commended him for “his painstaking research” in medical jurisprudence.39 In 1904, he was reinstated to the office of coroner – but not to the role of inspector of anatomy, which was found to conflict with his other duties – and he continued his art of dissecting, dismembering and collecting corpses. Smith also wrote in 1904 *A Manual for Coroners*, which not only set out guidelines for holding inquests in South Australia, but also compared the legal framework in that state to coronial laws across Australia, New Zealand and England.40

Smith’s innovative guidebook intervened in the genre of the coronial manual. In the first instance it transformed the manual into a textbook that standardised the practice of compiling or anthologising legal devices. The textbook was divided into seven parts that corresponded to different elements of the inquest proceeding. Each chapter in Parts I to V began with an examination of coronial law and procedure in South Australia, before highlighting the differences and similarities amongst other states and countries. Part VIII listed coronial legislation from England, New Zealand and Australia. In contrast to nineteenth century manuals, this edition did not contain an Appendix; it integrated

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38 MacDonald, above n 29, 194.
39 Elmslie and Nance, above n 28. This seems to be in line with Smith’s biography in the *Australian Dictionary of Biography*, where Ronald Elmslie and Susan Nance characterise him as a “courageous, conscientious, effective and diligent public servant” who “administered his duties without fear, favour or rancour”.
40 The colonies of New South Wales, Queensland, Tasmania, Victoria and Western Australia formed a Federation of States of Australia in 1901.
circulars, precedents and forms throughout its comparative analysis of coronial law and procedure. The emergence of this new genre of the textbook correlated with a pluralisation of readers. The enlarged scope of the subject matter appealed to a more diverse audience, including students, doctors, barristers, solicitors, justices and coroners, who sought an authoritative guide for navigating through the procedures of the coronial institutions in different common law jurisdictions.

In the second instance the textbook provided practical advice on how coroners should behave in their office. Following his exoneration by the Board of Inquiry of all charges of indiscreet dealings with the dead, Smith took great care to account for the manner in which he conducted his office. In Part VI he set out the ‘Liabilities and Privileges of a Coroner’, and reiterated a passage from MacNevin’s manual that a coroner was not liable for any acts committed by him “in his judicial capacity, and within scope of his jurisdiction”.41 However, he also went further than MacNevin by insisting that coroners were free “from all vexatious actions for any act done by him in his judicial capacity”.42 It is notable that Smith conspicuously omitted from this Part of his manual any discussion of the possibility that coroners may contravene the Anatomy Act 1884 (SA) for unlawfully dissecting the dead. Nevertheless, he unsurprisingly cautioned his readers that coroners may only be fined or imprisoned under the common law for corruption in office, and could only be removed from office for misbehaviour, wilful neglect or incapacity in the discharge of a duty. Indeed, the chapter revealed much about how his previous experiences before governmental inquiries affected the way he conceptualised the privileges and liabilities of holding office.

41 MacNevin, above n 5, 18 (emphasis in original).
42 Smith, above n 22, 94 (emphasis in original).
While Smith’s advice for coroners seemed to suggest that any act done by them in their judicial capacity was free from accountability, the most contentious aspect of Part VI actually proved to be his understanding of a coroner’s discretion whether to hold an inquest on a sudden, violent or unnatural death.

Earlier in the textbook Smith maintained that inquests into deaths in hospitals and asylums, particularly following surgery – a practice which as I mentioned above raised the chagrin of the colony’s medical profession – should fall under the scope of the coronial jurisdiction. Coroners were bound to exercise their jurisdiction in hospitals and asylums because “the public mind should be satisfied that persons in such institutions, who are outside the circle of their relatives and acquaintance[s], received proper medical care and attention”. Yet he further explained that coroners were obliged to investigate such deaths not simply because the public demanded it, but because of their fealty to their office. At issue here was that the decision to hold an inquest did not simply involve a question of jurisdiction, it raised the question of ethical conduct. The obligation to hold an inquest into a death in a hospital or an asylum was imposed by the way a coroner comported himself in office.

The problem of coronial discretion was broader in colonial society than the vexed issue of whether to hold an inquest into a hospital or asylum death. Smith counselled that “[r]efusing without adequate reason to hold an inquest” or “[h]olding an inquest unnecessarily” constituted an offence that could result in liability. The primary reason for this was that an inquest was a considerable expense for governments, particularly given that all jurors, witnesses and coroners were paid for their attendance during proceedings. Indeed, most coroners in the early nineteenth century were paid partially by salary and

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43 Smith, above n 22, 6.
partially by a fee for conducting an inquest. They were also reimbursed for any expenses incurred while travelling to the place of inquest. Unnecessary proceedings were viewed by government officials with suspicion as an entrepreneurial activity or at worst a distraction from the kind of unlawful actions that Smith was accused of before the Board of Inquiry.

Given the personal stakes at play, Smith sought to clarify in his textbook precisely when a coroner could lawfully exercise his discretion to hold an inquest. The usual course of action was for the coroner to make a decision once he received a report of the death from a constable. According to English case law, a coroner only could assume jurisdiction over a dead body after he received an official notice of the death. Smith quoted from *R v Price* to support this supposition:

> The coroner has no absolute right to hold inquests in every case in which he chooses to do so. It would be intolerable if he had power to intrude without adequate cause upon the privacy of a family in distress, and to interfere with the arrangements for a funeral. Nothing can justify such interference, except a reasonable suspicion that there may have been something peculiar in the death, that it may have been due to other causes than common illness. In such cases the coroner not only may, but ought to hold an inquest ... He should not go, generally speaking, until he is sent for.

However, he also surmised that “he would not be acting illegally if he proceeded on his own knowledge or upon the information of a private person”,

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46 *R v Price* (1884) 12 QBD 247, 248. The coroner could be called to investigate a death by a medical practitioner, a constable, a magistrate or generally a member of the public.
so long as, “he honestly believes [the] information which has been given to him to be true, which, if true, would make it his duty to hold such inquest”. In short, the problem of coronial discretion was ultimately a question of duty. While the ‘truth’ of the information rather than the way it was obtained was an important aspect in the decision to hold an inquest, what is most interesting for the purposes of this chapter was the emphasis Smith placed on the question of conduct. He asserted that in certain situations coroners were compelled by fealty to their office to investigate the cause of a death. Smith’s manual advised coroners that upon the receipt of truthful knowledge, they were obliged by their office to hold an inquest into a sudden, violent or unnatural death; even if his own personal intentions here were to further facilitate his unlawful dealings with the dead.

Part VI of Smith’s textbook demonstrates how the technology of the manual offered coroners a model of ethical conduct in the early twentieth century. It advised coroners when, where and how they should fulfil the duties that corresponded with the conduct of their office. Their conduct was undoubtedly constrained by laws, norms and customs. Yet despite these constraints, the effective performance of the coroner’s office required discretion and interpretation, of what is appropriate conduct, of what obligations are most important and how they should be performed. The occupation of the office of coroner required the development of an ethical mindset, a prudent persona, and a critical awareness of their responsibilities to care for the dead. For Jeffrey Minson, the development of an ethics of office involved acting in accordance with “duties that are incumbent on a person by virtue of his or her occupancy

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47 Smith, above n 22, 13 and 93. He quoted on page 93 the English case of R v Stephenson (1884) 13 QBD 331, 331 (emphasis added).
of a particular role or position”, while rejecting “self-interest, partisan interest or factional interest”.

The cultivation of an ethical mindset was emphasised in coronial manuals in sections that delineated the processes for the appointment of coroners. In the eighteenth century, the manual explicitly linked the problem of who should occupy the office to the question of ethical character. The criterion for assuming office in England was described in relation to the qualities of a person – there were five in total – which were designed to “prevent Men of small Value and little Understanding to be chosen Coroners”. He was required to be a good man (Probus Homo), a lawful man (Legalis Homo), knowledgeable, capable and diligent in performing his office. He was also required to be a landowner such that he could exercise his duties without drawing a salary.

The process for becoming a coroner was transformed in the Australian colonies in the nineteenth century. Not only were they appointed directly by the colonial government – whereas in England county coroners were elected officials and occupied the role for life until 1887 – but there were no special criteria for being appointed to the office. That said, the coronial manuals published by MacNevin in the colony of New South Wales in the late nineteenth century still held that a coroner must possess a prudent persona:

[I]t is presumed that gentlemen accepting the office, and taking upon themselves the duties, are acquainted in a general way with those duties, and prepared to act on their own independent judgment and discretion

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50 Burney, above n 12, 3. The Coroners Act 1887 (UK) transformed the eligibility requirements for becoming a coroner, while the County Coroners Act 1860 (UK) provided coroners with a salary.
in all matters in relation thereto in such manner as they may think best in the public interests and in the interests of the administration of justice.\textsuperscript{51}

The absence of criteria for entrance into the coroner’s office was earlier lamented by William F A Boys in his introduction to \textit{A Practical Treatise on the Office and Duties of Coroners in Upper Canada} (1864):

Formerly the office of coroner was of such high repute that no one under the degree of knighthood could aspire to its attainment ... It has, however, now fallen from such pristine dignity and though still of great respectability, no qualifications are required beyond being a male of the full age of 21 years, of sound mind, and a subject of her Majesty, and possessing the amount of education and mental ability necessary for the proper discharge of the duties.\textsuperscript{52}

Boys emphasised in subsequent editions of his manual the utility of developing particular skills, such as literacy, refinement, chivalry, ‘noblesse oblige’ and social connections, for gaining appointment as a coroner in Upper Canada. He advised aspiring coroners to seek a “recommendation of a member of Parliament, or other person possessing influence with the Executive”.\textsuperscript{53} He even counselled them to show energy when seeking office.\textsuperscript{54} Myles Leslie rightly

\textsuperscript{51} MacNevin, above n 5, 2.
\textsuperscript{52} William F A Boys, \textit{A Practical Treatise on the Office and Duties of Coroners in Upper Canada} (1864) 2 quoted in Myles Leslie, ‘Reforming the Coroner: Death Investigation Manuals in Ontario 1863-1894’ (2008) 100(2) \textit{Ontario History} 221. Most coroners in the United States of America possessed no qualifications in medicine or law. They were “occupants of a minor political office, and were typically farmers, carters or undertakers”: Freckelton and Ranson, above n 45, 71. The political nature of the judicial role led to the demise of the coronership in certain states of America in the early twentieth century and its substitution with the office of medical examiner. The latter was stripped of the former’s judicial powers and appointed as a public servant. See further, Robert H Vickers, \textit{The Powers and Duties of Police Officers and Coroners} (T H Flood, 1889).
\textsuperscript{53} Leslie, above n 52, 227.
\textsuperscript{54} Ibid.
reflects that Boys’ manual professionalised the office of coroner in the nineteenth century: it “reformed [the office] as a professional instrument of modern government, rather than as a minor parochial office”. What is more, the question of conduct, as evident in the manuals I have discussed in this chapter, played an integral role in the institutionalisation of the office of coroner. Even where coroners were appointed directly by government, their expenses were controlled through centralised accounting practices and they were provided with a salaried wage, the office was not devoid of an ethics of responsibility. In each subsequent edition of the coronial manual, authors prompted coroners to consider how to form an ethical conduct of office.

In addition to the question of coronial discretion, for Smith the question of how to form an ethical conduct signified the difficulties of negotiating between the different public roles an individual could occupy in colonial society. Like other coronial manuals at the turn of the twentieth century, Smith’s textbook advised coroners not to act in cases where they may have attended the dead “professionally during the last illness or at the time of the death of such person” or acted as solicitors “in the prosecution or defence of a person for an offence for which such person is charged by an inquisition taken before him as a coroner”. However, what was of greater significance for coroners was his advice against acting in the office while assuming other roles inside or outside the civil service. The South Australian Board of Inquiry acquitted Smith in 1903 of all charges that he contravened the Anatomy Act in dissecting, filleting and collecting indigenous and non-indigenous remains. But they also found that there was a conflict of interest between the multiple roles he assumed in the civil service. Smith was exonerated before the inquiry on the basis that he must choose to either occupy the role of coroner or the inspector of anatomy. The

55 Ibid 225.
56 Smith, above n 22, 1; MacNevin, above n 5, 20.
manual thus advised coroners that mitigating conflicts that could arise from occupying multiple roles in the public service involved the cultivation of an ethics of responsibility.

Smith’s textbook was written during a period when coroners were to become more accountable to the government for their performance in office, and as I have discussed above, the technology of the manual played an integral role in holding coroners responsible for their ethical conduct. With this in mind, I will outline in the remaining pages of this chapter how the manual functioned as a technological conduit between the formation of an ethics of responsibility and the bureaucratic logic of the coroner’s office. As Paul du Gay, Conal Condren and Ian Hunter have all noted, many scholars have mischaracterised Max Weber’s depiction of bureaucracy as an ‘iron cage’ devoid of ethos. They have emphasised that Weber’s account of office rather theorised “bureaucracy as officium and politics as a vocation”. In other words, Weber used the language of office to explain how an individual occupied an ‘order of life’ (Lebensführung), how they expressed themselves in this order through the performance of an ‘instituted personae’, and how that performance was framed around the development of an ethical mindset. Weber thus sought to remind his readers that public roles were performed and their performance involved the cultivation of an ethics of office. Moreover, he stressed that the concept of office was not monolithic or transcendent. His writings revealed a multiplicity

59 Ibid 134-5.
60 Minson, above n 48, 134.
of offices and personae that correspond with “the plural creation of historically specific ethics or Lebensführungen (instituted conducts of ethical life)”.

In Volume 3 of *Economy and Society*, Weber claimed that hierarchy, supervision, subordination and centralisation were all characteristics of Western bureaucracies in the late nineteenth and early twentieth centuries. He described bureaucracy as the institutional pursuit of rational administration through the use of expert knowledge and technical apparatuses. Bureaucratic administration promoted a logic of objectivity, efficiency and continuity by eliminating from the activity of decision-making “love, hatred, and all purely personal, irrational, and emotional elements which escape calculation”. This logic posited that every decision, every judgment, was conditioned by “a system of rationally debatable ‘reasons’ … either subsumption under norms, or a weighing of ends and means”.

The development of a modern bureaucracy in the Australian colonies in the nineteenth century involved a transition from honorific service to the compensation of government officials through money salaries. It also involved the substitution of tenure for life with the appointment of judges, coroners and other officials for a limited period. The reliance upon a money economy in the colonies conditioned the possibility of bureaucratic administration and positioned it as technically superior to other forms of governance, such as administration by patronage. The bureaucratic form also prohibited the use of personal discretion in favour of rational decision making. To this extent, it demanded from judicial officers an impersonal and objective interpretation and

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61 du Gay, above n 58, 134.


63 Ibid 979.
application of law. It required of them a strict adherence to the procedural duties of law. Yet this demand was only ever an ideal, for it failed to consign the judge to “an automaton into which legal documents and fees are stuffed at the top in order that it may spill forth the verdict at the bottom along with the reasons, read mechanically from codified paragraphs”.\textsuperscript{64} Weber rejected this image of the conduct of law for it implied an iron-clad “bureaucratization of justice”.\textsuperscript{65}

Weber denounced in \textit{Economy and Society} the notion that bureaucracy was inconsistent with an ethics of responsibility. He did so by emphasising that “[e]ntrance into an office … is considered an acceptance of a specific duty of fealty to the purpose of the office”.\textsuperscript{66} \textit{In Praise of Bureaucracy: Weber, Organization, Ethics}, Paul du Gay categorises the duty of fealty as the “ethos of bureaucratic office … a certain ethical dignity for a particular form of institution - the bureau - and the category of person - the bureaucrat - that have been the target of considerable critical denigration in recent years”.\textsuperscript{67} He reproaches critiques that reductively position conscience against procedure, ethics against rationality, and conduct against technocracy. In praising an ethos of bureaucracy, du Gay valorises the sequestration of moral or religious beliefs from “the administration of public life”.\textsuperscript{68} For Weber, the bureaucratic office was an ‘order of life’ which developed its own distinctive ethical conduct. Civil servants conducted themselves according to the formation of an ethics of office or as Minson notes, “\textit{Lebensführung} - not only an ensemble of purposes and ideals within a general code of conduct but also ways and means of conducting

\begin{itemize}
\item \textsuperscript{64} Ibid
\item \textsuperscript{65} Ibid
\item \textsuperscript{66} Ibid 959 (emphasis added).
\item \textsuperscript{67} du Gay, above n 57, ix.
\item \textsuperscript{68} Paul du Gay, ‘Office as a Vocation: “Bureaucracy” but not as we know it’ (Cultural Policy Paper No 4, Australian Key Centre for Cultural and Media Policy, Faculty of Humanities, Griffith University, 1995) 5.
\end{itemize}
oneself within a given ‘life-order’”. Techniques of bureaucracy, such as “strict adherence to procedure, acceptance of sub- and superordination, abnegation of personal moral enthusiasms, commitment to the purposes of the office”, constituted the ethical substance of public office at the turn of the twentieth century. They were

the product of particular ethical techniques and practices through which individuals develop[ed] the disposition and capacity to conduct themselves according to the ethos of bureaucratic office.

It is for such reasons that Weber argued in *The Vocation Lectures* that bureaucratic office emerged as a vocation in the nineteenth and twentieth centuries. Vocation (Beruf) means a calling, a training, and a profession. To occupy an office is thus to answer a call, to commit oneself to its purpose, to devote oneself to its ethical demands. Vocation shapes the formation of a particular ethical character, it defines the role of the bureaucrat in terms of duty, fealty and obligation, and it frames the way that they conduct themselves in office. It demands, as Weber wrote, “a highly developed sense of professional honor with an emphasis on probity”. In a sense, the call that the coroner answered was that of fealty. It was a call of responsibility to fulfil the duties that pertained to the effective performance of office. For nineteenth and twentieth century coroners, as I have discussed above, I argue that this call took the form of the assumption of a responsibility for caring for the dead. The ethical demands of the coronial office first and foremost set out obligations to form

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70 du Gay, above n 57, 29
71 Ibid 4.
73 Ibid 44.
lawful relations with the dead. Whether it concerned the question of coronial
discretion, privileges and liabilities of office, or the scope of coronial
jurisdiction, the manual advised coroners how best to answer the call of
responsibility by attaching technical knowledge, bureaucratic forms and
administrative procedures to the institutional life of coronial law. In fact, the
manual itself was a form of this attachment, which bound a bureaucratic logic to
the ethical conduct of office. The manual thus guided coroners in negotiating
the ethical demands of their vocation in the nineteenth and twentieth centuries.

The transformations of the technology of the manual were concomitant with
changes to the vocation of the coroner during this period. No longer an
honorary office holder, but a salaried employee of the Department of Justice,
the colonial coroner became increasingly accountable for his conduct in office.
While this transition was far from a complete and seamless process in the
Australian colonies, and was undoubtedly influenced by the reshaping of the
English coroner from an elected freeholder to an appointed officer, it did reflect
a broader trend towards a bureaucratic logic of the coroner’s office. 74 It was
augmented by the influence of technical knowledge, the development of a
culture of form-filling, demands for the strict adherence to precedent, the
monitoring of coronial expenses, the auditing of inquest documents and the
centralisation of decision making. However, as I have shown in this chapter, a
bureaucratic logic of the coroner’s office still held on to the question of an ethics
of responsibility. The manual and its array of jurisdictional devices emerged as
a technological conduit (conduct) between this logic and the cultivation of an
ethos of office. It technocratised the way in which the coroner conducted

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74 See Paul Finn, ‘The Law and Officials’ in R A Chapman (ed), Ethics in Public Service
himself in office, while at the same time holding on to the question of how to assume responsibility for caring for the dead.

**Conclusion**

In the preface to *A Manual for Coroners*, William Ramsay Smith cautioned that knowledge of legislation and the common law alone was insufficient for performing the duties of the coroner in Australia. “It is as difficult to conduct an inquest properly from merely reading acts of parliament”, he wrote, “as it is to make a logically connected speech from perusing a dictionary”. What was necessary was a guidebook that instructed coroners on the technical procedures of the jurisdiction, not only in Australia, but also New Zealand and England. In the twentieth century, the coronial manual became a comparative textbook that guided a pluralised audience through the bureaucratic logic of the coroner’s office.

In this chapter I have approached the manual as a technology of office that guided coroners in how to form lawful relations with the dead. I have also demonstrated how the manual was a technical means of bureaucratising the office. Upon the completion of an inquest, coroners were required by the handbook to file, fasten and transmit documents, including jurors’ and witnesses’ paysheets to government departments, submit warrants for burying corpses to the police, and tabulate and transmit particulars for annual publication in the Government Gazette. The character of the bureaucrat

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75 Smith, above n 22, v.
emerged from the duties of the coroner in the Australian colonies. The obligations to issue vouchers, submit forms, collect statistics and stamp correspondence formed part of the ethical demands of the office. The professional manual set out this bureaucratic logic in minute detail, but so too did it hold the coroner accountable for the way he performed his duties by holding on to the question of conduct.

The manual reshaped the way in which the coroner cultivated lawful relations between the living and the dead. It bureaucratised the office of coroner while setting out the liabilities and privileges of holding office, the duties, obligations and responsibilities that pertained to the assumption of a public role. This chapter has investigated what was involved in the shift towards a bureaucratic logic of the coroner’s office, what that shift allowed to come into existence, and how that shift was represented by changes to the technology of the manual. Shaunnagh Dorsett and Shaun McVeigh write that “[m]uch of the administration of modern law takes place through bureaucratic modes of writing - an obvious example is the form”,77 In an institutional history of coronial law, the form, but also writing, compiling and anthologising legal devices, was expressed in the manual. The technology bound the conduct of office, its techniques, procedures and rituals, to the institutional life of coronial law. It revealed that law could never simply be expressed in the interpretation of precedent or the proclamation of a finding of death, but more broadly in how the coroner attached the formation of an ethical conduct to the performance of the coronial institution.

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77 Dorsett and McVeigh, above n 17, 62.
CHAPTER 5: DEAD RECORDS OFFICE

In ‘Drawing Things Together’, Bruno Latour disputes the idea that the rational character of bureaucracy can be located in the psyche of the bureaucrat. The civil servant does not hold a unique propensity for rationalisation, any more than the scientist enjoys a predilection for objectivity. Instead, the institutional pursuit of technocratic administration is to be found “in the files themselves”.¹

In a wide-ranging essay on scientific method, ethnography and inscription, Latour compares the bureau to a small laboratory organised by an economy, a cascade of files, records, paperwork. “In our cultures ‘paper shuffling’ is the source of an essential power,” writes Latour, “that constantly escapes attention since its materiality is ignored”.² Chapter 4 traced a bureaucratic logic in the transformations of the coronial manual in the nineteenth and twentieth centuries. What was missing from that chapter was a sustained analysis of how files, documents, certificates, inquisitions and depositions, created, collected, submitted and reproduced in the performance of office, shaped the technocratic impulse of the coronial jurisdiction. The final chapter of the thesis delves into a study of files themselves and questions how the modernisation of a coronial archive affected the way the coroner cultivated lawful relations with the dead.

In the first section I argue that filing was an integral part of the modernisation of the coroner’s court. Several cases from the nineteenth century directly challenged the authority of the coroner to commit a witness for contempt of court and in turn questioned the place of the coroner’s court in the history of the common law. The key legal issues in these cases were whether it was

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² Ibid 55.
possible to classify the coroner as an official who sits in a court and if so, whether he sits as a judge of record. I argue that the conduct of office was institutionalised as a court of record, a sitting of the coroner’s court, through the technology of the file. Court of record was thus a jurisdictional device to manage questions of authority, but also a lawful technology that consisted of practices of record-keeping.

The second section considers the effects of this technology on the role of the coroner, who increasingly assumed responsibility for narrating a biography of the dead, and the dead, who appeared as neither things nor persons, but files, cases, names in an expanding archive of institutional memory. I contend that the history of coronial law reveals a duty to record – a duty that arose from the files themselves. The burden of keeping records, collating evidence and filing documents has always been inherent in the performance of the coroner’s office. Indeed, an ethics of record-keeping and the responsibility of filing remains key to understanding how the coroner took care of the dead in the nineteenth and twentieth centuries. The coroner narrated a biography of the dead, recording their lives and honouring their memories through the technology of the file, which has come to signify one of the most important functions of the coronial jurisdiction.

The Logic of the File

The coronial inquest into the death of Joseph O’Callaghan on 3 April 1899 was full of intrigue. Newspapers were awash with running commentaries about every salacious aspect of the case.\(^3\) Joseph was an illegitimate child, his

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\(^3\) See e.g., ‘Traffic in Babies: The O’Callaghan Case: The Unknown Father’, \textit{The Argus} (Melbourne), 12 May 1899, 6; ‘The O’Callaghan Case: Appeal to the Full Court’, \textit{The Argus}
biological mother had disappeared and his biological father was unknown. He was found emaciated in the home of Catherine Dillon, a respectable nurse, who reported his death to police on the day that he died. Evidence was put forward during the inquest that Joseph died from artificial feeding, yet it was ambiguous as to whether his death was accidental or intentional. The city coroner, Samuel Curtis Candler, suspected foul play when he discovered that Joseph had been ‘adopted’ by Mrs Dillon. The child’s ‘unknown’ father had paid Mrs Dillon £90 to adopt his son and he required her to sign a deed of agreement, written by a solicitor, which stipulated that the child should never know the name or identity of his biological father.\(^4\) When the coroner asked Mrs Dillon to name this unknown person she refused to answer. Her initial response was that the father was already married with a family and she was afraid that by identifying him she would tarnish his reputation. However, after the coroner repeatedly adjourned the inquest and threatened her with a warrant for contempt of court, Mrs Dillon explained that if she were to answer the coroner’s question she might incriminate herself under the *Infant Life Protection Act 1890* (Vic).\(^5\) The irate coroner, unimpressed by her unwillingness to respond to his demands, subsequently issued a warrant committing her for contempt of court. If Mrs Dillon did not answer his question within 14 days she would be sent to gaol until the contempt was purged.

This inquest is notable not simply because it exemplified newspapers’ insatiable appetite for the macabre at the turn of the twentieth century. Much to the chagrin of the public and the press, who flocked to the coroner’s courthouse following the purge of the contempt, in the hope of catching a glimpse of the

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\(^4\) ‘An Infants Death’, *The Argus* (Melbourne), 4 April 1899, 3.
mysterious father providing evidence, Candler declared that in the interests of the family his name would be suppressed from publication and the proceedings would be held “in camera”.6 The inquest of Joseph O’Callaghan is significant because it resurrected the problem of how to define the jurisdiction of the coroner’s court. It troubled what was thought to be settled law by questioning whether coroners, by virtue of their office, have the authority to commit a witness for contempt of court. Lawyers for Mrs Dillon promptly appealed against Candler’s decision and argued that the authority of the coroner was limited by statute.7 And s 4 of the Coroners Act 1890 (Vic) did not grant him any powers to commit a witness for contempt. The integral question before the law then was jurisdictional and its answer depended on an often forgotten aspect of the history of the common law: the doctrine of ‘court of record’.

O’Callaghan’s inquest was not the first time that Candler found himself in a position where his authority was challenged by a superior court. The inquest that catalysed the 1874 case of Casey v Candler8 involved the discovery of a dead body in the seaside town of Brighton. Candler, then coroner for the district of Bourke, promptly attended the scene of death to hold an inquest upon view of the body and called forth Dr C G Casey, who performed the post mortem examination on the corpse, to give evidence of what he had found. There is little information about what exactly piqued Candler, but in any case he became

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6 ‘The O’Callaghan Case: Proceedings in Private: Father’s Name Suppressed’, The Argus (Melbourne), 28 June 1899, 9; ‘The O’Callaghan Case: The Agreement Withheld From the Press’, The Argus (Melbourne), 3 July 1899, 6. The conduct of the coroner was denounced at the time in Parliament. It was alleged that Candler’s ‘prurient’ pursuit of the name of the unknown father gave air to the dangerous circulation of gossip: “The action of the coroner had caused a very disagreeable feeling in the city, for statements found their way into circulation which reflected most unjustly on well-known citizens. It gave pain to several prominent persons … Justice had been brought into contempt.” ‘The Coroner’s Powers’, The Argus (Melbourne), 6 July 1899, 7. It is interesting to consider here how the coroner’s exercise of discretion had consequences beyond the coronial institution.
7 In Re O’Callaghan (1899) 104 VLR 957.
8 [1874] 5 AJR 358.
increasingly irritated by Casey’s performance on the stand and “directed the plaintiff, in a peremptory manner, to describe the appearances in a different order”.9 The Argus reported that the stoic surgeon rejected the interference of the coroner and refused to follow his direction. He said “he would give his evidence as he thought right”.10 This led to an ‘altercation’, which culminated in the coroner committing Casey for contempt of court and directing a policeman to escort him to the local goal until the contempt was purged. In the aftermath of the squabble, Casey brought an action against the coroner for assault and false imprisonment.

Casey v Candler questioned whether a coroner could lawfully commit a person for contempt of court. It was agreed by both the plaintiff and the defendant that the writ of contempt required judicial power, and that a coroner could only possess this power if the inquest could be said to constitute a court of record. In other words, the key issues in this case were whether coroners possessed judicial powers, whether the inquest was a court of law, and if so, whether the conduct of an inquest instituted a court of record. The plaintiff answered all three questions in the negative:

A court of record is a court which keeps its records; the coroner has to send his proceedings to the Crown Law Offices; the proceedings of the justices are filed in the court of General Sessions. The coroner does not hold a court of record, nor is he a judicial officer … There may be certain matters in England in which the coroner holds a court and acts judicially, but an inquest super visum corporis is not one of them. He merely holds

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10 Ibid.
the enquiry, reduces the result to writing, and sends it in to the law officers of the Crown …\textsuperscript{11}

The coroner does not sit on a court, let alone a court of record, according to this line of argument, because the procedures for submitting files following an inquest to the Crown Law Offices, severed the relationship between the act of writing and the act of recording. The inscription of speech, the transmission of a voice to a text was not enough for a legal officer to hold a court of record, as the plaintiff argued, “[t]he filing in some court of record, is essential to the constitution of a record”.\textsuperscript{12}

Unsurprisingly, Justice Barry rejected the claims of the plaintiff and held that the coroner’s court was a court of record. The judge drew upon precedent in England as well as other British colonies to declare that the coroner had always been a judicial officer, a judge of record.\textsuperscript{13} The coroner was one of the most honourable officers of the Crown, not simply a lowly civil servant exercising limited ministerial powers, and when he sat as a coroner on an inquest, his stature should have been respected as much as any judge. His authority still lay in the common law, even if his office had been regulated by statute, and he thus inherited all of the powers that the English coroner possessed. Even if one was

\begin{flushleft}
\textsuperscript{11} Casey v Candler [1874] 5 AJR 358, 360. \\
\textsuperscript{12} Ibid 361. \\
\textsuperscript{13} Barry J cites Garnett v Ferrand [1827] 6 B&C 611, Thomas v Churton [1862] 2 B&S 475 and R v White (1860) 121 ER 394. The English case of Garnett v Ferrand [1827] 6 B&C 611, 612 involved a journalist attending an inquest “for the purpose of wrongfully and illegally taking notes of and publishing the proceedings of the said inquisition”. The legal issue here was whether the journalist could maintain an action for trespass against the coroner, who directed a constable to throw him out of the room for his actions. Lord Tenterden CJ maintained that “no action will lie against a Judge of Record for any matter done by him in the exercise of his judicial functions”: Ibid 625. Hence, the important issue in the case was the meaning of an open court. If the coroner’s court was truly open than the coroner should have had the same powers as a judge of record, namely the power of exclusion. See also a case that was not mentioned by Barry J, but took place prior in the Colony of New South Wales: Chippett v Thompson (1868) 7 SCR (NSW) L 349.
\end{flushleft}
to question whether the English coroner held a court of record, Barry J reminded all parties that a court of record referred to the fact that proceedings were recorded in writing. It was not necessary for the records to be filed, but simply that they be recorded. The coroner had jurisdiction to commit a witness for contempt of court by virtue of his office, which bestowed upon him the judicial authority of a judge of record.

Reaffirming the decision of *Casey v Candler*, Chief Justice Madden in *Re O’Callaghan* held that under the common law the coroner’s court was indisputably a court of record. He stressed that his decision was based upon a survey of precedent from England. In the Middle Ages the coroner held one of the most important offices in England and while modern legislation had gradually whittled away its authority, it nonetheless commanded the power to “enforce the conduct of its own proceedings with propriety and safety”. He further explained that it was “the very nomination of a person to sit as coroner [that] carried with it all the rights of the coroner’s court”. Despite the prominence given to the word ‘right’ in this sentence, what stands out in Madden CJ’s judgment is his emphasis on the question of conduct. Indeed, what was at stake in the question of whether a coroner sits in a court of record was not whether he possessed the rights to make inquiries or issue a writ of contempt, but whether he had authority to conduct his office prudently. This means that the legal determination that the coroner was a judge of record endowed him with jurisdictional techniques to manage his court as he saw fit.

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14 Barry J also made the somewhat tautological argument that a court of record is established by the coroner’s powers, as set out in legislation, to fine or imprison. He declared “no court can fine or imprison which is not a court of record” and “where there is a power de novo created by Parliament to fine and imprison, either of these two makes it a court of record”: *Casey v Candler* [1874] 5 AJR 358, 363.
15 *In Re O’Callaghan* (1899) 104 VLR 957, 963.
16 Ibid 964.
17 Ibid.
The technology of the file was intrinsic to the jurisdictional question of whether the coroner’s court was one of record. This is apparent from a history of the doctrine in the Middle Ages. Court of record originally referred to the ‘indisputability’ of oral accounts and the minuting of proceedings on ‘parchment roll’. The enrolment of decisions in the twelfth and thirteenth centuries marked the court as one of record, and it set forth a practice of judgment based on what had been recorded previously on parchment. In other words, written records conditioned the possibility of a doctrine of precedent and denoted that any decisions made were to be conceived of as conclusive. It is important to note though that the rolls did not immediately supersede oral accounts of proceedings. Instead they simply propagated the concept that written documents were more definitive, final and authoritative than verbal accounts of collective memory. “Records were acts and judicial proceedings enrolled on parchment”, Enid Campbell writes, the truth of which was “not to be called into question”.

The official title of the coroner in the twelfth and thirteenth centuries was Custos Placitorum Corone, which meant ‘keeper of the pleas of the Crown’. The primary duty of the medieval coroner was to keep the pleas of the crown by recording decisions on parchment rolls:

The function implied by their title is that of keeping (custodire) as distinguished from that of holding (tenere) the pleas of the crown; they

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19 Enid Campbell, ‘Inferior and Superior Courts and Courts of Record’ (1997) 6 Journal of Judicial Administration 249, 256. While the emergence of written records in the common law has been said to derive from the Norman conquest of 1066 and the use of the Domesday Book, ‘written law’ has a much longer lineage in Roman jurisprudence: see M T Clanchy, From Memory to Written Record: England 1066-1307 (Blackwell, 2nd ed, 1993).
20 R F Hunnisett, The Medieval Coroner (Cambridge University Press, 1961) 1. Hunnisett notes that the official title was “continued to be used throughout the Middle Ages”. The shortened title of coronator (coroner or crowner) gradually took hold from the thirteenth century onwards.
are not to hear and determine causes, but to keep record of all that goes on in the county and concerns the administration of criminal justice, and more particularly must they guard the revenues which will come to the king if such justice be dully done.  

This distinction between keeping and holding pleas – the former of which became the sole responsibility of the coroner and the latter an obligation of the justice of the peace – was codified in Chapter 24 of the *Magna Carta* in 1215. The effect of this codification saw a decline in the number of pleas that the coroner had to determine for the crown. It also represented the coroner as an itinerant record keeper, an administrative officer, travelling across the lands of England, transcribing the proceedings of courts and overseeing the collection of revenue on behalf of the crown.

Coronial rolls were essential to the administrative practice of keeping the pleas. Inquests on dead bodies, abjurations from the realm, were to be chronicled in “files of small pieces of parchment, each containing the record of a single case in note form”. The coroner’s fiscal duties, including the collection of fines, amercements and forfeitures, revenue from treasure troves, royal fish and the valuation of deodands, would have been arduous, if not impossible, without recording in writing the proceedings of different courts throughout the country. However, what must be emphasised here is that the coroner was not just tasked with transcribing oral accounts into written records, but *keeping* them – that is, copying files onto larger pieces of parchment and storing that parchment in formal rolls, which could be presented to another court in the future. This was

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22 Hunnisett, above n 20, 114.
particularly the case when a superior court, such as the Eyres, arrived in town and demanded coroners (or their descendants) show them their rolls. R F Hunnisett notes that the practice of keeping records was so central to the responsibilities of the coroner such that “[t]he first duty known to have been performed by any coroners was the personal recording of an appeal of homicide by the Lincolnshire coroners in the Curia Regis in November 1194”.23 It was only in the sixteenth century that coroners began submitting duplicates of their files to other offices of the crown.

In the centuries that followed the Middle Ages, and the waning of the authority of the medieval coroner, the doctrine of court of record came to denote the development of specific legal procedures that were inherent in a court that transcribed its decisions on parchment. Only a court that administered the common law and kept records in writing, according to Sir Edward Coke, could fine or imprison a person for contempt of court.24 Hence, while the doctrine initially referred to technologies for recording judgments, by the nineteenth century it had become a referent of a complex hierarchy between inferior and superior courts of law, where the latter were defined by their capacity to issue a writ of contempt. The questions that perplexed the judiciary in Casey v Candler and Re O’Callaghan referenced this obscure aspect of the history of the common law.

The history of the doctrine of court of record gestures towards a broader relationship between the institutional life of the coroner’s office and the technology of files in the nineteenth and twentieth centuries. For Max Weber, as I discussed in the previous chapter, the emergence of the modern bureaucracy

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24 Campbell, above n 19, 255.
was conditioned upon the production, collection and dissemination of files.\textsuperscript{25} However, in \textit{Files: Law and Media Technology}, Cornelia Vismann advanced a more specific historical argument that file-keeping was a condition of the institutionalisation of law. She wrote that law was “a repository of forms of authoritarian and administrative acts that assume[d] concrete shape in files”.\textsuperscript{26} To put this differently, law and files were mutually constitutive. The former assumed its institutional form in the recording of its proceedings, yet files acquired their materiality in the institutional practices of law. Vismann contended that a historiography of legal institutions must consider the role that files played in mediating relations between orality and writing, which were said to have marked the emergence of the common law during the Norman conquest of England.

According to this binary, the validity and security of the law belong to writing, whereas lack of duration, individual case law, and greater proximity to specific events are associated with orality. The evolution of the law finds its place in between the two, presenting itself as a history of progressive rationalization and intensified literacy.\textsuperscript{27}

In other words, Vismann rejected a progressive rational narrative that law was born out of “the substitution of writing for orality”.\textsuperscript{28} But at the same time she suggested that the origins of law do not lie in “an oral culture”, but rather in

\begin{itemize}
\item \textsuperscript{25} Max Weber, \textit{Economy and Society: An Outline of Interpretive Sociology} (Guenther Roth and Claus Wittich trans, Bedminster Press, 1968) 957 [trans of: \textit{Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie} (first published 1956)]
\item \textsuperscript{26} Cornelia Vismann, \textit{Files: Law and Media Technology} (Geoffrey Winthrop-Young trans, Stanford University Press, 2008) xiii [trans of: \textit{Akten. Medientechnik und Recht} (first published 2000)]. In this text Vismann draws a distinction between the materiality of files and the abstractness of records, which does not occur in the German word for file: \textit{Akten}. This chapter deploys the terms files and records interchangeably, to acknowledge their entanglement in the institutional practices of coronial law.
\item \textsuperscript{27} Ibid 3.
\item \textsuperscript{28} Ibid 4.
\end{itemize}
“administrative record keeping”. Files are “one of the oldest of the legal profession’s technologies”, Patricia Tuitt argues, and “[t]he tabulation and storage of the minutiae of human existence is one of its most enduring and important routines”.

Files are irreducible to discourses of literacy or orality. They neither conform to rules of phonetic writing or rhetorical speech. Their force in law however, which Vismann compared to the list, is conditioned by their presence within a writing-speaking dichotomy. Indeed, files are constitutive elements of legal institutions because they functioned “in quasi-oral fashion”, that is they “shed light on their own development, on that which precedes grand acts of writing such as the clean copy or that legal institutes and institutions”. The production of files reveals the formation of administrative procedures of law; they show how legal institutions congeal and how jurisdictional techniques make ordinary actions lawful.

The unlimited capacity for addition and circulation turns files into a medium of presence. It endows them with the same characteristics as speech, with the result that they appear to be up-to-date, live, ever-changing, acting, and inexhaustible.

This is not to say that files lie outside the ‘medium of writing’. Far from it, Vismann contended that “files capture everything that other forms of writing no longer contain – all the life, the struggles and speeches that surround

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29 Ibid.
31 Vismann, above n 26, 8.
32 Ibid 10.
decisions”.33 They circulate in what Michel de Certeau once called the ‘scriptural economy’, a set of operations by which speech acts conceal themselves in writing as a trace, mark or remainder of what lies outside the text.34 “The place from which one speaks is outside the scriptural enterprise”, de Certeau opined; “[t]he uttering occurs outside the places in which systems of statements are composed”.35 The strategies of the scriptural economy include translation and transcription, which attempt to make sense of noises and transform orality into textual narratives. Files are firmly entrenched in this economy of operations, since they inscribe speech acts in forms of writing, while also containing that which haunts writing.

Files assume their shape through institutional practices of the scriptural economy. They are created by bureaucratic processes, jurisdictional techniques and administrative procedures. This section has shown how files played a significant role in the institutionalisation of the coroner’s court in the nineteenth century. However, what I have also suggested is that the formation of coronial institutions and the technology of files were historically linked. This is exemplified by a parliamentary debate in the early twentieth century about the meaning of the word inquisition.36 The debate centered around the syntactic difference between ‘inquest’ and ‘inquisition’. Most legislators sought to define inquisition as either a document, a report or writing, whereas a minority sort to depict it as an inquiry, a judgment or finding. In other words, there was disagreement as to whether the inquisition – what I have described in previous chapters as a forum for engaging with the dead – was scriptural or procedural.

33 Ibid.
36 Victoria, Parliamentary Debates, Legislative Assembly, 19 October 1911. The debate concerned the enactment of the Coroners Act 1911 (Vic), which repealed the Coroners Act 1890 (Vic), Coroners Act 1896 (Vic) and Coroners Act 1903 (Vic).
While one politician argued that the word denoted “writing that is made after or during the inquest”, a decision, finding or verdict in writing, another retorted that the phrase “an inquisition in writing” was so ambiguous such that “it implies that there may be an inquisition which is not in writing”.37

What was at stake here, on the one hand, was a question of hermeneutics. How does one distinguish the speech acts of coroners from their written judgments? What are the rhetorical means by which a voice becomes an inquisition? In addition, the debate problematised the jurisdiction of the coroner. Does the writing of an inquisition authorise the judgment of the coroner? What technologies form part of the institutional life of coronial law? In debating the meaning of the word inquisition, legislators emphasised how technologies of writing, but also filing and recording, were integral to the conduct of an inquest and more broadly the ceremonial performance of the coroner’s office. They revealed that the real issue was not whether an inquisition denoted either a scriptural object or a legal procedure, but rather how the scriptural became procedural, and the procedural became scriptural. If the document “descends from the Latin root docer, to teach or show”, as Lisa Gitelman suggests, this means that the inquisition signified a document not simply because it recorded speech in writing, but because it became a bureaucratic action in itself.38

By the twentieth century the judiciary and parliament had recognised that technical processes of filing were intractably attached to the jurisdiction of the coronal institution. As I discussed above, court of record was first and foremost a technology of record-keeping, and only subsequently became a jurisdictional device to manage questions of authority. In case law and parliamentary

37 Ibid 2004 (Mr Mackay) and 2006 (Mr Prendergast).
debates, technologies of filing, documenting and writing were conceived of as intrinsic to the conduct of the coroner’s court and the performance of the duties of the coronial office. The practices of transcribing the speeches of the coroner, submitting and couriering inquisitions, documents and reports to central government departments were as important for the institutional life of coronial law, if not more, than the perennial question of whether the authority to commit a witness for contempt of court lies in common law or statute. The performance of the duties of office were formalised as a court of record, a sitting of a court of law, through the technology of the file. The materiality of the file endowed the coroner with the authority to hold a court, which bestowed powers upon him to conduct his court as he saw fit.

Archives of the Dead

In Part Three of *Discipline and Punish*, Michel Foucault described the ‘examination’ as a technique particular to the transformation of penal institutions in the eighteenth and nineteenth centuries. The examination made use of “an observing hierarchy” and “a normalizing judgment” to qualify, classify and punish prisoners in their individuality. Yet for the prisoner to be judged as an individual, more was required of the examination than techniques of observation. Individualisation involved describing, inscribing and inventorying prisoners; documenting their actions, capacities and desires, which created “a whole meticulous archive constituted in terms of bodies and days”. The deployment of the examination as an institutional practice demonstrated how files were key to the individualising process. Files facilitated the creation of taxonomies, the discovery of patterns and the comparison of

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40 Ibid 189.
trends, which conditioned the prisoner as a describable, calculable entity in scientific discourse.

The examination that places individuals in a field of surveillance also situates them in a network of writing; it engages them in a whole mass of documents that capture and fix them. The procedures of examination were accompanied at the same time by a system of intense registration and of documentary accumulation. A ‘power of writing’ was constituted as an essential part in the mechanisms of discipline. On many points, it was modelled on the traditional methods of administrative documentation, though with particular techniques and important innovations. Some concerned methods of identification, signalling or description.41

The examination was essentially a documentary technique. It embedded bodies in networks of writing, which had as their model eighteenth century paradigms of bureaucratic paperwork and administrative record-keeping. The examination wrote bodies into files, records and documents. In constructing the individual as an object to be studied, described and measured, the human sciences, including law, integrated techniques of documentation within modes of governance. As Foucault wrote, “[t]hese small techniques of notation, of registration, of constituting files, of arranging facts in columns and tables that are so familiar to us now, were of decisive importance in the epistemological ‘thaw’ of the sciences of the individual”.42 It is thus not possible to give a historical account of the appearance of the individual as an object of knowledge in the eighteenth century without also examining an institutional history of the file. The accumulation of files in archives, their storage, indexing and

41 Ibid.
42 Ibid 190-191.
organisation in administrative cabinets, was imperative for ensuring the efficacy of the examination, the production of knowledge on the individual and the operation of a disciplinary power that was inextricable from the birth of the prison and other judicial institutions.

It is notable that a correlative effect of the use of the examination in the eighteenth and nineteenth centuries was the emergence of the ‘case’. “The examination, surrounded by all its documentary techniques, makes each individual a ‘case’”, Foucault opined,

... [and] clearly indicates the appearance of a new modality of power in which each individual receives as his status his own individuality, and in which he is linked by his status to the features, the measurements, the gaps, the ‘marks’ that characterize him and make him a ‘case’.43

Cases were not equivalent to files. While the former undoubtedly consisted of the latter, its institutional functioning was to be found in how it transformed factual descriptions into biographical narratives. Prior to the deployment of the examination as an institutional practice of writing, Foucault claimed that biographies were written only of ‘privileged’ men. Or to put this differently, prior to the eighteenth century, only a few individuals had their lives chronicled, recorded and archived for future generations. With the innovation of the examination, biographical accounts became a fate that everyone enjoyed, however ordinary, lowly or ignoble an individual was in life. What was once a rarefied genre of literature, extolling the virtues of a life lived well, the ancestral biography was dispersed by bureaucratic writing, which stripped it of its

43 Ibid 191-2 (emphasis in original).
literary flourishes, reducing the individual’s life to a set of scientific, comparative characterisations.

This technique applied not only to the living, which was the sole focus of Foucault’s analysis in *Discipline and Punish*; it also had consequences for writing a biography of the dead. The use of files in the coronial jurisdiction, for example, transformed the literary genre of the obituary – likewise reserved for the privileged few prior to the nineteenth century – into a genre of institutional writing that properly belonged to law. Files transformed the dead into a ‘case’. They individualised the dead by archiving reports, documents, inquisitions and depositions that organised death into ‘comparative fields’, that produced biographical accounts of the lives of the deceased and when taken in their entirety gathered together an institutional memory of the dead. Departing from Foucault, I view the use of files was never simply “a means of control and a method of domination”. They were tools for engaging lawfully with the dead. The case was a jurisdictional technique for attaching a biography of the dead to the institutional life of coronial law. If, as we have seen, the lawfulness of the technology of the file was taken seriously by the judiciary in the nineteenth century, it follows that the ‘case’ has significant implications for how we understand the history of the juridical status of the corpse in the common law.

In the Introduction to this thesis I remarked that the question of whether a corpse constitutes a person or a thing has long perplexed the common law. The seventeenth century *Haynes Case*, which questioned whether a winding sheet could be stolen from a grave, defined the corpse as neither person nor thing (*res nullius*), “but a lump of earth hath no capacity”. Yet since then there have been more conflicting cases, such as the decision in *Doodeward v Spence*, which

44 Ibid 191.
45 (1614) 77 ER 1389, 1389.
declared that a corpse could only become a thing if by the labour or skill of the living it was transformed into something else.\textsuperscript{46} What I want to suggest in this chapter however is that the more obviously legal question of whether the corpse constitutes a person or a thing in law is altogether unhelpful for understanding how the coroner formed lawful relations with the dead in the nineteenth and twentieth centuries. Indeed, a more useful approach would be to conceive of files as a technology of office that attached the dead to the coronial institution by making them a case. As I have shown in this thesis, it is only by examining the lawful technologies that belonged to the office of coroner that we can understand how the coroner assumed a responsibility to care for the dead.

The modality of this institutional attachment was archival; the dead only became cases when they were stored, indexed and named in an archive.\textsuperscript{47} This description of the conduct of the coroner and his duty to keep files recalls Vismann’s account of Melville’s Bartleby – “a recording machine that without any sign of fatigue copies whatever it is presented with”.\textsuperscript{48} Yet as I have remarked previously, this image of bureaucratic administration was only ever an ideal. The inquest could not proceed, as I discussed in Chapter 3, without a quality view of the corpse, and if the files were improperly fastened, stapled and couriered, as seen in Chapter 4, the inquest was deemed void, the record of the dead was cancelled. The incomplete file or inadequate record-keeping also became a problem for establishing the jurisdiction of the coroner’s court, as I showed in the previous section. I contend, then, that the first effect of the

\textsuperscript{46} [1908] HCA 45.
\textsuperscript{47} My understanding of the archive has been inspired by Foucault’s conceptualisation of it as a system that arranges and manages relations between the said and unsaid. For Foucault, the archive was for discourse “the system of its enunciability … [and] its functioning”: Michel Foucault, \textit{The Archaeology of Knowledge & The Discourse on Language} (A. M. Sheridan Smith trans, Pantheon Books, 1972) 129 [trans of: \textit{L’Archéologie du Savoir} (first published 1969)] (emphasis in original).
\textsuperscript{48} Vismann, above n 26, 31.
technology of the file on the institutional life of coronial law was that it transformed the dead, who appeared in law as neither things nor persons, into cases, records and files in an archive of institutional memory.

The question that remains, though, is how the technology of the file affected the performance of the coroner’s office in the nineteenth and twentieth century. In the first section I contended that a duty to record derived from the history of the medieval coroner. The obligation to keep records, transcribe evidence and file inquisitions in rolls of parchment was inherent in the performance of office in the Middle Ages. It was a central component of the duties of the medieval coroner and to this extent typified the lawful relations that the coroner established with the dead. Yet following the emergence of the case in the eighteenth century, I argue that this duty took on additional significance. The duty to record arose from files themselves, not only from the performance of office. One way of considering this shift has been discussed in the previous chapter by way of the transformations of the manual, but another way is by writing a history of the birth of the archive and examining how the archive developed an ethics of the file. In concluding this chapter I assert that the archive imposed an obligation on coroners to narrate a biography of the dead – an obligation to record their names, lives and deaths.

In the wake of the French Revolution, the modern archive was born.49 The National Archive of France was established in 1790, while the Public Record Office of England was founded in 1838.50 Public Record Offices were established throughout Australia in the twentieth century. In this sense, I am defining the archive as a governmental institution for the accommodation,

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serialisation and organisation of official records, files and documents. For Mike Featherstone this means that “[t]he archive was part of the apparatus of social rule and regulation, it facilitated the governance of the territory and population through accumulated information”. 51 Influenced by Foucault’s analysis of the case as a technique of disciplinary power, Featherstone considers the archive as “the place in which the sacred texts and objects were stored that were used to generate collective identity and social solidarity”. 52 In the nineteenth century the archive came to signify the memory of the nation-state.

These institutional arrangements ushered in “a radical new ethics of paperwork, one designed to sustain a state whose legitimacy was founded on the claim to represent, at every moment, every member of the nation”. 53 It also did much more than this. The archive was not only directed towards strategies of governance. It focussed inwardly on the ethical conduct of officials who produced copious volumes of paperwork that found their final resting places in archives. Indeed, techniques of filing not only transformed individuals into a case, they documented the process of documentation, they recorded techniques of writing and they transformed the disciplinary state, as Kafka writes, into a ‘disciplined state’. The invention of the archive in the eighteenth and nineteenth centuries thus affected the modalities of occupying office. In the assumption of bureaucratic office, which I discussed in Chapter 4, all undertakings were to be recorded; every decision, action and task was to be indexed in writing. The performance of official duties was to be inscribed and appraised. No obligation was completed until documents were preserved, submitted and received, and even all of these actions were to be recorded in writing. Kafka remarks “[e]very

51 Ibid 591.
52 Ibid 592.
53 Kafka, above n 49, 21.
action or transaction undertaken by any person with or on behalf of the state had to be documented in certain anticipation of an eventual accounting”.

This new bureaucratic ethos was attached to the conduct of the coroner, who in performing a persona of archivist, became responsible for determining which files to archive, how to classify what was stored, and how to use the archive to cultivate lawful relations with the dead. By attaching the technology of the file to questions of jurisdiction the coroner cultivated an ethics of care for the dead. What I mean here by care is the cultivation of lawful relations with the dead, which means the attachment or binding of the dead to the institutional life of coronial law. The coroner formed an ethos of care; he curated ethical relations with the dead through acts of filing, recording and archiving the dead as a case. These techniques represented the dead in coronial institutions as a case-narrative, a case-biography. Taking care of the dead meant writing their biography, recording their name and binding both to the life of the coronial institution.

Filing is a form of burying. The technological components of the file call to mind all the associated paraphernalia of the dead and of all forms of passing. ... When a story is narrated and reduced to an administrative file, something of its narrator remains; and it is something absolutely vulnerable because it has passed into another form and is already nearing its end. It is for these reasons that the keeper of the file bears a great responsibility. All of mortality is brought to life by the action of

54 Ibid 44.
55 Rebecca Scott Bray investigates how images, particularly photographs of the dead, “elevat[e] a ‘case’ to the status of a record” and constitute archives that “maintain in tangible proximity the means through which to narrate the endlessly accessible dead body”. Rebecca Scott Bray, *The Eschatology of the Image* (PhD Thesis, The University of Melbourne, 2001) 128-9. While her thesis provides an insightful analysis on the work of contemporary forensic investigations, it is not concerned with writing a history of how the archive became a jurisdictional technique of the coroner’s office.
inserting a file in its allocated space in a filing cabinet, of the turn of the lock and of the regular routing out of files that have lain too long.56

**Conclusion**

Files transformed the way in which coroners took care of the dead in the nineteenth and twentieth centuries. The effects of this transformation can be seen most acutely in the aftermath of the *O'Callaghan* case. While the jurisdictional question of whether the coroner’s court was of record was debated before the judiciary, the broader question of how law’s files make the dead into a case, and the ethical implications of this jurisdictional technique was not lost on the public. In a popular gossip magazine in Melbourne, *Table Talk*, William Fink wrote a poem about the Baby O’Callaghan case, concluding that

Though dead, has wrought himself a deathless name.  
Emblamed in V.L.R and A.L.T,  
Peeping, it may be, from his angel loft,  
The while keen lawyers ‘turn him up’ to cite,  
And quote him as of great authority.  
Or e’er the child was in his leading strings  
He is a leading case. The herd may rage  
About his unnamed father, but the son  
Though dead, yet speaketh, his unhappy case  
Becomes a happy one, and Coroners  
Sitting on hapless children, haply may  
Do right to millions for all time to come.57

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56 Tuitt, above n 30, 114.
While the name of the baby’s father was ultimately not recorded in the inquisition, much to the chagrin of a titillated press, this poem reveals the key role that files assumed in transforming the dead into a case. Techniques of filing made Joseph O’Callaghan a record, a citation, a reference that would remain integral to the development of the doctrine of coronial law in Australia. Although Joseph’s corpse was buried in the ground, far away from the prying eyes of the judiciary, his name lived on, his presence haunted the courtroom, his soul was embalmed in the record. This was for the coronial institution perhaps what Robert Pogue Harrison calls the ‘afterimage’ of the corpse. The history of this afterimage, a history of the curation of coroner’s rolls, his files and records, references an institutional shift in the conduct of the office at the turn of the twentieth century. Joseph O’Callaghan called the coroner from his file. This call was an ethical demand to narrate a biography of the dead, to record their names and honour their lives. The call, which originated deep within the ethics of office, requested that the coroner assume a responsibility to curate an archive of the dead.

In this chapter the history of the institutional life of coronial law demonstrates a peculiar affinity with what Michel de Certeau wrote of law in The Practice of Everyday Life:

[T]he law constantly writes itself on bodies. It engraves itself on parchments made from the skin of its subjects. It articulates them in a juridical corpus. It makes its book out of them. These writings carry out two complementary operations through them, living beings are ‘packed

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57 William Fink, ‘The O’Callaghan Baby Case [From the ‘Australian Law Times’], Table Talk (Melbourne), 25 August 1899, 3.
into a text’ (in the sense that products are canned or padded), transformed into signifiers of rules (a sort of ‘intextuation’) and, on the other hand, the reason or *Logos* of a society ‘becomes flesh’ (an incarnation).\textsuperscript{59}

I have shown that coroners had at their disposal an inventory of techniques for transforming the corpse into a word, “a single name that can be read and quoted by others”.\textsuperscript{60} These included techniques of filing and recording, indexing and archiving reports, documents and inquisitions. The earlier discussion of the history of the doctrine of court of record revealed how the technology of the file was integral to the modernisation of the coroner’s court in the nineteenth century. The file was a lawful technology and a jurisdictional device that attached the dead to coronial institutions. In the second half of the chapter, I examined the effects of this technology on the dead and the coroner. While the dead became cases in an archive of institutional memory, coroners performed a persona of archivist, assuming responsibility for keeping records of the dead.

The image of a coronial archive, an ever expanding archive, evoked in Fink’s poem, concludes a thread of an argument that has flowed throughout this thesis. In previous chapters I examined different technologies of the office of coroner and contended that they shaped the way the coroner assumed responsibility to care for the dead. Here, it becomes clear that the way the coroner exercised care was by recording a biography of the dead. The office made possible a lawful place for the dead, it curated an institutional memory of the dead, and it spoke on their behalf before an inquisitorial forum. This chapter has now shown that all of these technologies were made possible

\textsuperscript{59} de Certeau, above n 34, 140.

\textsuperscript{60} Ibid 149.
through the technical processes of filing, their collection, accumulation and arrangement in a coronial archive. The archive thus signifies the importance of lawful technologies for how coroners took care of the dead, how they narrated a biography of the dead, recorded their lives and honoured their memories in the nineteenth and twentieth centuries.
CONCLUSION

In a short article written for *The Juridical Review* in 1896, an eminent law journal based in Edinburgh, Sir Henry Littlejohn opined that “[t]o render a medical report of a post-mortem examination as distinct and as easily comprehended as possible, is no easy matter”.1 While his grievance was ostensibly directed to the authors of such reports, as a forensic expert himself, it appeared more as a defence to charges levelled by the judiciary in the late nineteenth century that post-mortem reports were opaque, inscrutable and jargonistic. Littlejohn acknowledged that it was surely a difficult, if not formidable task, to translate the wounds of the corpse into a language that could be understood not only by an esoteric judiciary, but a lay jury. His solution to this quandary was the increased use of photography during the death investigation process. He recommended that “[e]very county constable, in my opinion, should be provided with a camera, by means of which he could indicate with unerring accuracy the attitude of a dead body”.2

Littlejohn did not have in mind the office of coroner when he expressed his frustration with the obscure language of the medical report. Perhaps this was an implicit acknowledgement of the skills that coroners had acquired for translating the wounds of the corpse into an institutional narrative of death causation. It may have been an indirect nod to how coroners had developed techniques for attaching medical knowledge to a legal language that could be understood by the judiciary, but also by grieving relatives, a curious public, a rapacious press and a dutiful jury. Yet photography was quickly adopted in coronial institutions in the early twentieth century and it had a considerable

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2 Ibid 16.
effect on the way the living lawfully engaged with the dead. In Chapter 2, I discussed how coronial architecture transformed techniques for inventorying the dead, and ended the chapter with a brief allusion to the removal of the hermetically sealed glass screen in the first custom-built courthouse in Melbourne due to the widespread use of photography to represent the dead. While as early as 1888 “[p]hotographs of unclaimed bodies [were] displayed in a glass case in the glass screen” in the courthouse, it was not until the invention of refrigeration in the early twentieth century that photographs of the dead were substituted for the corpse. The corpse had become replaced by its image – or as Robert Pogue Harrison writes, photography detached an image of the dead from the corpse, “[f]or what is a corpse if not the connatural image, or afterimage of the person who has vanished, leaving behind a lifeless likeness of him- or herself?”

Earlier manifestations of the production of this after-image in the coroner’s courthouse made use of the technology of the death mask. The mask was placed on display behind the glass screen to accompany the corpse, or where a view of the corpse would offend bourgeois sensibilities, it stood in place of the corpse itself. Death masks were composed immediately after a person had died to capture the likeness of the face. They were collected and displayed in homes, galleries and museums, and increasingly used in the nineteenth century as teaching aids in universities and hospitals. The British Museum in London and

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5 See further, Patrick R Crowley, ‘Roman Death Masks and the Metaphorics of the Negative’ (2016) 64 Grey Room 64
6 In the late eighteenth and early nineteenth century, medical institutions began to create and exhibit death masks for the purposes of instruction and education. The mask was primarily used as a pedagogical tool in phrenology, which analysed the personality or character of individuals based on the shape, size and texture of their heads. The science of phrenology was established by Franz Joseph Gall in 1796. Gall believed that the character of a person could be identified by touching the skull, examining its shape and reading indentations as an indication of a prominent mental faculty. Phrenology was conceptualised as a reformist science: different
the Fitzwilliam Museum in Cambridge amassed a small collection of death masks throughout the eighteenth and nineteenth centuries, of mostly eminent individuals. In the twentieth century, prison museums, such as the Port Arthur Museum and the Old Melbourne Gaol, exhibited death masks of executed prisoners to trace the history of capital punishment and penal discourses in colonial society. In the coroner’s courthouse in the late nineteenth century the death mask framed a lawful encounter between the living and the dead.

*L’Inconnue de la Seine*, ‘The Unknown Girl from the Seine’, was cast in *La Morgue* in Paris in the nineteenth century. The young woman depicted in the image was found drowned in the Seine River. As I discussed in Chapter 2, the public routinely visited *La Morgue* to search for missing persons, fulfil their civic duty of identifying the dead and satiate their desires for macabre entertainment. But this mask in particular captivated Parisians; casts were sold widely throughout the country. Maurice Blanchot wrote of his fascination with the mask in *A Voice From Elsewhere*: “one might have thought she had drowned in an instant of extreme happiness”. This contrasted with the reception of Mabel Ambrose’s death mask in Melbourne. Mabel was found by the city coroner in a box drifting in the Yarra River in 1898. Her head was removed from her body for the purposes of casting the mask and her head was displayed in the coroner’s courthouse for the purposes of identification. Prior to a positive identification on 11 January 1899, over 8,000 city dwellers had visited the courthouse to get a glimpse of her severed head and then due to uproar caused by its public display, her death mask. The inquest into her death enthralled the city of

Faculties could be manipulated; deviant faculties could be excised and criminals could be retrained through cerebral gymnastics. See Dean Wilson, ‘Reading Ned’s head: Colonial phrenology, popular science and entertainment’ in Craig Cormick (ed), *Ned Kelly Under the Microscope: Solving the Forensic Mystery of Ned Kelly’s Remains* (CSIRO Publishing, 2014) 121, 124-5.

Melbourne. Both examples reveal how the death mask functioned as a lawful technology for identifying the corpse at the turn of the twentieth century. Certainly, its history requires elaboration in further research beyond this thesis, yet similar to the technologies studied in each chapter, the mask bound an image of the dead to the conduct of coronial law in the nineteenth and twentieth centuries.

This thesis has narrated a history of the institutional life of coronial law in the nineteenth and twentieth centuries. It offered a historical account of the institutionalisation of the office of coroner during a turbulent period of empire building. In writing an institutional history of coronial law in Australia, I argued that technology mediated how coroners occupied their offices, how they performed their roles and how they formed lawful relations with the dead. I traced how technologies of jurisdiction, from place-making to architecture, viewing to recording, attached the dead to the conduct of coronial law and its institutional formations. Lawful technologies shaped the way coroners cared for the dead in the nineteenth and twentieth centuries. The duty to care was central to how coroners performed their offices, and as I have shown in this thesis, the technologies that attached the dead to coronial institutions in the modern era were inextricable from how coroners cultivated an ethics of care. Coroners assumed a responsibility to care for the dead by walking with them, framing a lawful encounter between the living and the dead, speaking on their behalf before an inquisitorial forum, cultivating an ethos of bureaucratic office and narrating an institutional biography of the dead.

In *Institutions of the Dead: Law, Office and the Coroner* I have emphasised that the concepts of jurisdiction, office and technology are essential for writing an institutional history of law. The institutional life of coronial law, for example, is comprised of technologies of jurisdiction that shape the formation of lawful
relations with the dead and the performances of office that cultivate an ethics of responsibility to care for the dead. Thinking institutionally denotes in this thesis a methodology for thinking about law as jurisdiction, office and technology, law as a practice of care, ethical conduct and a technical relation. Here, coroners were shown to perform the persona of a technician, who with the assistance of specific technologies, formed and cultivated relations that properly belonged to law. In writing an institutional history of coronial law, I have revealed how the dead not only appeared before inquisitorial forums, but how the coroner attached them to the technologies of coronial law and its institutional formations. The question that united each chapter was how coronial institutions engaged with the dead who were brought before their laws. In other words, each chapter was guided by the problem of how technology mediated the forms by which the coroner lawfully encountered the dead.

In Chapter 1, I traced a spatial history of the office of coroner in the nineteenth century colonial city. I examined how, prior to the construction of a permanent structure for the purposes of conducting inquests, coroners carried and hawked the dead through the streets of the city, setting up inquests in taverns and storing their remains in outhouses. The movements of the coroner transformed spatial relations between the living and the dead. In walking with the dead, I argued the coroner rendered possible a lawful place for them in the political life of the city. The technology of place-making was thus an important aspect of how coroners assumed responsibility for caring for the dead in the nineteenth century. In Chapter 2, I turned to the technology of architecture, which in the construction of Melbourne’s first purpose-built coroner’s courthouse, modified the way coroners formed lawful relations with the dead. Coronial architecture transformed how coroners cultivated a lawful encounter between the living and the dead. It framed the coronial inquest as a legal forum for engaging with an institutional memory of the dead.
In Chapter 3, the legal view of the dead became for the corpse a site of institutional attachment. This chapter wrote an institutional history of the transformations of *super visum corporis* in the nineteenth and twentieth centuries. It read the technology of the view as not only a distinctive mode of seeing, but a rhetorical style particular to the persona of the coroner. *Super visum corporis* became for the coroner a technique for assuming responsibility for speaking on behalf of the dead. Chapter 4 demonstrated how the performance of the coroner’s office became infused with the language of technocracy by the late nineteenth century. I contended that the coronial manual bureaucratised the office of coroner, yet also guided coroners in practicing an ethical conduct towards the dead. The manual provided coroners in the twentieth century guidance on how to assume responsibility for caring for the dead. It thus became a technological conduit between an ethics of responsibility and the bureaucratic logic of the coroner’s office. Lastly, I examined in Chapter 5 how the technology of the file transformed the rhetoric of the coroner into institutional narratives, formal records, and technocratic reports. I concluded that the burden of record-keeping is key to understanding how the coroner cared for the dead in the nineteenth and twentieth centuries. Indeed, coroners assumed this responsibility by narrating their biographies, recording their lives and honouring their memories.

This thesis has brought together different technologies of jurisdiction to show what sustained the institutional life of coronial law in Australia in the nineteenth and twentieth centuries. The technologies analysed in each chapter are historically significant for writing an institutional history of coronial law, but for also comprehending how the office of coroner came to assume the role that it now occupies in modern society. This thesis offers a historical account of how a juridical office, which underwent significant change in the nineteenth
and twentieth centuries, implemented technologies for caring for the dead. I have shown that for the coroner, caring for the dead means making a place for them, honouring their memory, speaking on their behalf and recording their lives. The dead gave the coroner their names and the coroner attached them to the institutional life of coronial law. In the conduct of their office, coroners cultivated an ethics of responsibility for living with the dead. This thesis thus puts forward the coroner as a model of how legal institutions may form lawful relations with the dead. It is hoped that we can learn from this complicated history what is at stake when a legal institution learns to live with the dead.
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