

*White Law of the Biopolitical*

Suvendrini Perera and Joseph Pugliese<sup>1</sup>

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*We dedicate this essay to Ruby Langford Ginibi (26/1/1934 - 2/10/2011).*



Fig.1. “Ruby Langford Ginibi’s protest on 26<sup>th</sup> January 1988 at Mrs MacQuarie’s Chair in the Domain, the Bicentennial Year 1988.” Photo: This photograph is by Lisa Bellear and it was gifted to John Barnes by Ruby Langford Ginibi in 1998

**Abstract:** Drawing on Ruby Langford Ginibi’s writings on the law throughout the 1990s we discuss how law, as an apparatus of biopolitical governmentality, frames, positions and inscribes the very sites, institutions and bodies essential to the reproduction of Australia as a racialised nation-state. The paper builds on the collective work we have done for over a decade in documenting how whiteness enmeshes with law in securing and reproducing colonial and racist forms of biopower, and its effects

on the embodied subjects who are its targets: the scandal of the *Tampa*; the horrors of refugee suicide and self-harm in immigration prisons; the Cronulla race riots; the continuing attempts to extinguish Indigenous sovereignty; the fomenting of Islamophobia and the normalising of racial profiling; the violence of the Northern Territory Intervention; and escalating Aboriginal deaths in and out of custody. Our paper focuses on a number of current crises that evidence only too clearly the violences unleashed and licensed by white laws of the biopolitical.

**Key Words:** Ruby Langford Ginibi, colonialism, whiteness, law, biopolitics

Ruby Langford Ginibi opens her introductory essay for the inaugural issue of the journal *Law/ Text/ Culture* with a story about a Lebanese-Australian woman, Ramya, ringing to ask for assistance with a homework assignment that her son has been asked to complete on Aboriginal customary law.

“I was flabbergasted” Ginibi writes:

How ironic it was that the education system now wanted to know about Aboriginal law when in fact we were dispossessed of our own land, and that we urban Kooris were forced to assimilate and give up our languages and culture and become like white people. We were forced to conform to their laws and standards, the invaders of our country (Ginibi 1994, 8).

Aboriginal law, reified and delimited, and qualified by the patronizing adjective “customary,” becomes one of the forms of knowledge by which non-Anglo migrants are schooled into national subjects, inducted within an order of citizenship that is founded on the denial of the very possibility of Aboriginal law. In her response, Ginibi challenges the relegation of Aboriginal law to the status of a colonial trophy within the education system. Mounting her own campaign of counter education, or *edu-ma-cation*, of her Lebanese-Australian interlocutor and her wider readership, Ginibi uncompromisingly reminds us of the racialised foundations, structures, operations and effects of Australian law and its violent imposition of what she named elsewhere a Gubbaising/whitening order. This uncompromising opposition to Gubbaising law, we would maintain (as against those readings that situate her as a black counterpart of the classic Aussie battler) is at the heart of her project as a writer, historian and edu-ma-cator.

Ginibi’s story of the homework assignment on Aboriginal customary law is illuminated by Dylan Rodriguez’s astute analysis of “the ‘multiculturalization’ of white supremacy.” In the U.S. context Rodriguez discusses how a “normative civic whiteness” is produced through

an ongoing and complex relation of hierarchy, discipline, power, and violence that has come to oversee the current and increasingly incorporative “multicultural” modalities of white supremacy wherein “people of color” [and other racialised groups] are selectively and incrementally solicited, rewarded, and

absorbed into the operative functionings of white supremacist institutions (e.g., the military, police, and school) and discourses” (Rodriguez 2006, 25).

Normative civic whiteness, Rodriguez writes, works “aggressively” as “biopolitical power, creatively transposing the technologies of racism and white supremacy on to alternate (putatively ‘nonwhite’) racial identifications and embodiments” as it also operates punitively to establish and reproduce the sites and institutions that uphold Australia as a racialised nation-state. The “discursive and material expansion” of the regime of normative civic whiteness and the production of a “white civilian ontology” form the basis of the “contemporary hegemony of law and order, its materialization into a “way of life.” (Rodriguez 2006, 25).

Ruby Langford Ginibi’s writings throughout the 1990s stand as stubbornly dissonant and resistant at all levels to the regime of Gubbaisation or normative civic whiteness, established as a national “way of life”: its biopolitical ordering of sexuality, family and domesticity, its relentless disciplining of aberrant bodies and subjectivities (*Don’t Take Your Love to Town, Real Deadly*), working in tandem with the violent operations of law and order through what she named the White Injustice System (*My Bundjalung People, Haunted by the Past*).

In what follows we focus in particular on law as an apparatus of biopolitical governmentality. The article builds on the collective work we have done for over a decade in documenting how whiteness enmeshes with law in securing and reproducing colonial and racist forms of biopower, and its effects on the embodied subjects who are its targets. We examine whiteness in the form of its multiple laws precisely because it is through law that the colonial operations of race are enabled and legitimated.

### **Racial Suicide and the White Law of the Biopolitical**

Soon after the election of the Howard Liberal government in 1996, in the wake of a raft of legislative interventions that signalled a critical transformation of the Australian political and social landscape, we published an essay that attempted to inventory the raft of new legislations and to document their destructive effects on their intended human targets. We titled the essay “Racial Suicide: The Re-licensing of Racism in Australia.” Amongst other things, we discussed: the massive budget cuts to the Aboriginal and Torres Strait Islander Commission (ATSIC), and its consequent abolition; the passing of a law that made it illegal for asylum seekers and refugees in Australia’s immigration detention prisons to make contact with the Human Rights Commission in order to be informed of their rights under Australian law; the defunding and consequent abolition of the Bureau of Immigration, Multicultural and Population Research and the Office of Multicultural Research; the re-activation of assimilationist policies; and the neutering of the Wik legislation, which effectively extinguished native title claims on pastoral leases. These legislative changes effectively enunciated a systemic effort to dismantle the meagre gains achieved by Indigenous Australians post-Mabo, and to neutralise the emergence of non-Anglo constituencies that were now unapologetically visible and vocal in the context of the larger Australian polity. In order to make sense of the changes initiated by the Howard regime in 1996, we proposed an analytic model that posited the self-representation of whites as hapless

victims who were at risk of losing their hegemonic hold on the country's key institutions of power. Under the fear-producing banner of "racial suicide," and its various incarnations, the Howard government mobilised both law and the media in order to legitimate its campaign of dismantling whatever small decolonising and anti-racist gains had been made since the end of the White Australia policy in the early 1970s.

We have taken the invitation to contribute to this conference as an opportunity to take stock of the changes that were largely set in train with the election of the Howard government and to identify their contemporary re-orientations and ramifications. We do so because we want to resist forms of analysis that situate the developments of the Howard era as aberrant or extreme instances of Australian nationalism. Rather, in our analysis, Australian nationalism is structured by racist violence and exclusion. As Maria Giannacopoulos has pointed out, racialised state violence is not to be viewed as an exceptional instance of paranoid nationalism, but rather is foundational to the operation of the Australian state (Giannacopoulos 2011, 7-9). Where Giannacopoulos articulated the critical connections between refugees policies, colonial law and the imposition of a political and economic program of individualist property ownership on Indigenous people, we want to mark the systemic function of Indigenous and refugee deaths in custody, and the exercise of state violence through a biopolitics of health that determines which racialised subjects will live or die. This concern with the biopolitics of health is something that we see as a critical, though often neglected, concern in the writings of Ruby Langford Ginibi and, indeed one that governed the very conditions of her life and death.

In the fourteen years since the publication of our "Racial Suicide" essay much has, of course, transpired. Our point of departure for this reflective revisitation is the epigraph by Frantz Fanon (1998 41. Emphasis added) that mastheaded our 1997 essay: "*A society has race prejudice or it has not. There are no degrees of prejudice. One cannot say that a given society is racist but that lynchings or extermination camps are not to be found there. The truth is that all that and still other things exist on the horizon.*" With his characteristic and uncompromising incisiveness, Fanon here stakes out a ground that refuses the liberal-humanist ruse of "tolerance," a ruse that effectively works to manage, rationalise and legitimate *degrees* of structural racism in order to secure racial hierarchies in the interests of the hegemonic white order. In our 1998 essay, we worked to do justice to Fanon's inspirational epigraph precisely by naming and identifying the specificities that encompassed the "all that" of a society in which racism had been virulently re-licensed. Here we attempt to delineate "the other things" that were always "on the horizon" and that now have come to pass.

If we cast the white fear of racial suicide in our original essay in terms of the sorry exercise of a sullen and aggressive *ressentiment* that legislatively attempted to claw back the gains made by Indigenous people and non-Anglo Australians over the period of two decades, we want to suggest that this white *ressentiment* has since mutated and metastasized into lethal forms of what we would now term white laws of the biopolitical, that is, the entrenchment of "white civilian ontology," as a "way of life" and its normalization as the basis of contemporary law and order. Nowhere is this more evident than in the ways in which "border protection" has come to be proclaimed as a

paramount doctrine of the state, and one that is continually publicly affirmed and enacted. The discourse of racial suicide has provided the rationale in the intervening decade for the forms of necropolitical violence enforced at the borders of the nation, or over the horizon at the very edges of our vision: it was exactly 10 years ago that Senator John Faulkner forcefully denounced the exercise of the “the license to kill” in the case of the sinking of the SIEV X (Faulkner 2003). In this same period, suicide and self harm have become endemic in our detention centres. Writing about a Sri Lankan man, “Shooty,” found dead in his room in October 2011, Renee Chan noted that:

Whether we care to acknowledge it or not, within detention, suicide — the language of it, the thought of it, its potential, its significance — is always on the tip of everyone’s tongue...[I]ts notional presence hangs heavy in the air so that when it does happen, we feel very little — not anger, horror or shock — only a deep loss for the friend who came so close but never got to see life on the other side of the fence. It’s the chilling sense of familiarity that scares me the most...Within the broader context of mandatory detention....the act of suicide, while tragic, is no longer a shock (Chan 2011).

As one psychiatrist put it, such deaths are “unsurprising” within the detention system (Needham 2011). Indeed, the broader context of mandatory detention and its enabling legislative framework of border protection vindicate and sanction the routinised, chillingly familiar violence they generate, so much so that, as Chan points out, “the standard response from the Minister [to deaths inside the camps] is that “the government cannot and will not compromise on matters of national security” (Chan 2011, Needham 2011). As we underscore in the concluding section of our article, the normalization of lethal violence in the name of protecting the borders and securing national values virulently reproduces itself on a number of fronts.

The biopolitical, in Foucauldian terms, is principally concerned with the insistent governmental monitoring, surveillance and management of a nation’s population, and the life and death of its subjects. Transposed to our contemporary context, this understanding of the biopolitical works well to illuminate the enmeshing of whiteness with law in securing and reproducing colonial and racist forms of biopower and the consequent effects on the embodied subjects who are its targets (see Perera and Pugliese 2011). This is not to say that we envisage law as an homogenised totality free of contradictions or contestations. On the contrary, as the recent decision by the High Court to throw out the Gillard government’s “Malaysian solution” evidences, law, in all of its jurisdictions, is trammelled by competing interests, ongoing contestations and re-inscriptions.<sup>1</sup> So, for example, as the Gillard government now mobilises to draft new legislation in order to mandate its “Malaysian solution” and other off-shore processing

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<sup>1</sup> Under the proposed terms of the ‘Malaysian solution,’ the Gillard government wanted to establish a system of exchange that would have seen Australia accept 4,000 refugees from Malaysian camps in return for 800 asylum seekers who had arrived to Australia by boat, thus precluding them from claiming asylum in Australia. The High Court made permanent injunctions preventing the transfer of asylum seekers to Malaysia on the grounds that Malaysia is not a signatory to the U.N. Refugee Convention and that the proposed ‘solution’ thereby violated ‘Section 198a Migration Act provisions’ that ensure ‘that a country has to be legally bound to provide access for asylum seekers to effective procedures and to provide protection for asylum seekers’ (O’Sullivan 2011).

centres (such as the re-opening of Nauru) for unauthorised refugees and asylum seekers, the name of the game is to fight law with law, to create ever-new laws that extend and consolidate the colonial usurpation of Indigenous sovereignty in relation to the control of the nation's territory and borders.

Over the span of the last decade, the white law of biopolitics has wrenched from the futural line of the horizon so many vulnerable and fragile lives and cast them into the harrowing reality of unlivable crises. In our work, we have documented a number of these crises, including: the scandal of the *Tampa*; the horrors of refugee suicide and self-harm in our immigration prisons; the Cronulla race riots; the continuing attempts to extinguish Indigenous sovereignty; the fomenting of Islamophobia and the normalising of racial profiling; the violence of the Northern Territory Intervention; and the escalating Aboriginal deaths in and out of custody. Throughout all our work, our two critical points of reference for attempting to understand the unlivable crises generated by white law of the biopolitical have been the ongoing colonial occupation of the Australian continent and the systemic attempts to extinguish Indigenous sovereignty; this is something, indeed, that Ginibi insistently underscored throughout her body of work. The seemingly unrelated acts of state violence that we have documented, then, can be seen to possess complex and layered points of connection that can only become visibilised when situated within colonial genealogies of punishment, racialisation and biopolitical governance. In the following section of our article we return to Ginibi's compelling articulation of the colonial genealogy of Australian racialised punishment and imprisonment as a way of marking the unfinished status of the colonial project and its contemporary reincarnations through various forms of white biopolitical law.

### **Genealogies of the Australian Prison and the White Injustice System**

When does Nobby's story begin? With his birth...? Or further back with my struggles as an Aboriginal woman raising nine children mostly on my own? Or maybe Nobby's story starts even earlier than that in the 1880s, when my family went to live on Box Ridge Mission after their traditional lands were taken over by the first squatters up in the north of New South Wales. Thinking about it, I'd say Nobby's story has its roots way back....It's part of a bigger historical picture and a longer story....This story continues today. (Ginibi 1998, 1)

These are the opening lines of *Haunted by the Past*, in a chapter titled 'Beginnings'. But the 'beginning' of Nobby's story, as the passage tells us, cannot be separated from a 'bigger picture and a longer story' that starts with the removal of the Bundjalung people to Box Ridge mission. *Haunted by the Past* is nothing less than Ginibi's own racialised genealogy of the Australian prison system. It aims to show how, since colonization, the history of institutionalisation and incarceration of Indigenous peoples has taken varied forms: expulsion away from traditional country to distant camps and reserves; incarceration in detention centres or penal settlements for people deemed 'uncooperative', and the systematic forced removal of children for confinement in missions for the purposes of assimilation. *Haunted by the Past* does not tell Nobby's story in isolation, but interweaves it with the stories of a number of Aboriginal men

who were also casualties of the prison system: John Pat, Robert Walker, Charlie Michaels, Eddie Murray, David Gundy, Daniel Yock. Since its writing this infamous litany of names has expanded to include many more, most notoriously T.J. Hickey, Mulrunji Doomadgee and Mr Ward.

In her detailed mapping of the colonial history of racialised punishment, and in her naming of the Australian criminal-justice system as the White Injustice System, Ginibi brings into acute focus the *systemic* structures of biopolitical power enabled by white law, structures of white law that are deployed in the continuing exercise of colonial governance of Aboriginal peoples – with all of the devastating results. The catalogue of deaths in custody so relentlessly generated by the efficient operation of the White Injustice System have been documented in an extraordinary body of work compiled by Uncle Ray Jackson, President of the Indigenous Social Justice Association, and Charandev Singh, working in his capacity as paralegal, counselor, archivist and activist. In moving toward the close of our article, we draw on a set of texts placed in the public domain by Jackson that document some of the most recent deaths in custody generated by the White Injustice System.

We begin with an analysis of the events that led to the harrowing death of the Wongai elder, Mr Ward, as he was being transported in a prison van. Mr Ward was arrested in relation to traffic offences at 9.30 pm on Australia Day 2008. By next day he was dead, with a body temperature registering over 41 degrees and a large burn mark where his flesh had sizzled when it came into contact with the scorching sides of the airless metal van in which he was being transported through the Central Desert. In the graphic words of several commentators, he had been painfully “cooked to death.” The conditions of this horrific death had been foreshadowed for years before in unheeded warnings against the dangers of this mode of transport.<sup>2</sup> The WA State Coroner found that Mr Ward “suffered a terrible death while in custody which was wholly unnecessary and avoidable” (WA State Coroner’s Report 2009, 5).

While much of the attention on Mr Ward’s case has focused on questions of transport and the state of the vehicle in which he was being moved, the conditions of his transportation are only the last fatal link in a chain of seemingly minor decisions and incidental circumstances that led to his death. Viewed in their totality, however, this chain of eventualities and small preventable acts indicates how the conditions of Aboriginal lives combine in destructive and inevitable ways to place them continually at risk of death or of being let die even, as in this instance, for an infringement as trivial as a traffic offence. The “litany of errors” as one of his relatives described it, that was to prove lethal for Mr Ward was made up of the interlinking of different forms of racism: the racist material conditions of remote Australia with its colonial systems of policing and patently inadequate conditions for the treatment of its (overwhelmingly Aboriginal) prisoners; the everyday racism of small places where decision making is arbitrary and whimsical and the dispensation of justice is itself above the law—in this instance the coroner found a contravention of bail act in the refusal of bail for Mr Ward. These old forms of racism entwine destructively with new: neoliberal policies that value lives primarily in economic terms and result in unequal outcomes for vulnerable groups as the state outsources its key responsibilities and duty of care to private providers.

The white law of the biopolitical must be seen as operating, as we discussed above, across different institutional sites and bodies. Even as a different set of racial inflections mark its operations, the lethality of this biopolitical law produces similar fatal affects in terms of its targeted custodial subjects. We want, in this context, to juxtapose the death of Mr Ward with the custodial death of Mark Stephen Holcroft, a non-Indigenous man who, however, was linked to the Aboriginal community through his sometime partner. On the 27 August 2009, Mark Stephen Holcroft died whilst being transported from Parramatta Correctional Centre (CC) to Manus CC, a journey of approximately five hours duration. Holcroft had been convicted on charges of drink driving and driving with a disqualified licence. He was given a sentence of eight months imprisonment. He commenced his journey in the prison van on the morning of 27 August and was found dead on arrival at Mannus CC at 1.40pm. The NSW State Coroner's Report documents the fact that Holcroft had a history of heart disease. Holcroft, on the 20 August 2009, whilst being held at the Metropolitan Remand and Reception Centre (MRRC), Silverwater, said:

He was suffering chest pain and sought medical assistance. He initially consulted Registered Nurse Elaine Pointer in the Goldsmith clinic within the jail. Nurse Pointer provided a statement to the inquest and gave evidence. She said she saw Mark at about 10.25am. She recorded that he complained of chest pain described as a cramping feeling in the centre of his chest, cold left hand, pallor of the left fingers and face and was sweating profusely. (NSW SCR 2011, 6)

Nurse Pointer arranged for Holcroft to have an electrocardiogram (ECG) and referred him to Dr Suresh Badami, a staff specialist general practitioner working at the jail's medical clinic. Despite the obvious medical symptoms of someone suffering from heart disease, Dr Badami recorded: "Impression. If pain recurs go to hospital. Treat as gastro-oesophageal reflux disease" (NSW SCR 2011, 9). One of the doctors who gave evidence on the Holcroft death at the Coronial Inquiry concluded that "that an ordinary skilled doctor such as Dr Badami":

Should have appreciated that Mr. Holcroft's electrocardiograms were abnormal and that the ST segment elevation meant he was in the high risk group of patients for acute coronary syndrome, treatment of whom should include:

Urgent hospital admission

Medical therapy, and

Urgent reopening of the artery with either coronary angiogram, dilation, and stenting or thrombolytic medication.

Dr Badami's failure to properly interpret the ECG's that were undertaken on 20 August 2009 was catastrophic for Mark. (NSW SCR 2011, 10)

As the Holcroft Coroner's Report unfolds, the chain of systemic catastrophic failures accumulated. They include: the failure of the prison's nursing staff to give Holcroft the medication he requested just prior to his transport (The evidence of one of the inmates states: "Mark had said that he needed medication and the nurse said, well you'll get it at the other end at Mannus" (NSW SCR 2011, 14); the failure of the guards to stop the

van and check on the uproar, including shouting and stamping of feet, generated by the other inmates in order to get the guards to stop the van once Holcroft collapsed on the van floor in the throes of a cardiac arrest; the failure by the guards to register the gravity of this uproar despite it being visible on one of the van's monitors (the guards put down the uproar to the inmates being "bored," "just thought might've been the inmates playing up" (NSW SCR 2011, 18); the failure to have any "capacity for inmates to communicate with the DCS staff and because there was no microphone available there was equally no capacity for the DCS staff to communicate with the inmates" (NSW SCR 2011, 17).

Despite the catalogue of systemic failures documented in the Coroner's Report on Holcroft's death, the State Coroner concludes "that Mark died of a natural process" (NSW SCR 2011, 6). Inscribed at the heart of this coronial conclusion is the lethal logic of the white law of the biopolitical. Mark Holcroft's death can only be read as a "natural process" precisely by naturalising the biopolitical structures that worked, as Michel Foucault would put it, to "*let him die.*" The biopolitical operations of white law can thus be exonerated from any culpability in the death of Holcroft: no one was charged or penalised for the death of Holcroft.

The biopolitical dimensions of white law are perhaps nowhere better manifested than in the moment when the State Coroner, in his findings, reduces Holcroft's untimely death to a "natural death" while, in the very same Coroner's Report, he cites the evidence of one of the medical experts present at the coronial inquiry, who argues that if Mark Holcroft had been given the proper medical attention: "He would then, on the balance of probabilities, not have developed fatal ventricular fibrillation on 27 August 2009 and he could have reasonably have expected a normal lifespan in respect of his coronary artery atherosclerosis" (NSW SCR 2011, 10). In the face of this expert testimony, the State Coroner surmises that "Mark's death was thus entirely preventable," and that if he had received proper medical care, "he could reasonably have expected a normal lifespan" (NSW SCR 2011,10).

At once a "natural death" and also an "entirely preventable" death: these are the aporias of white law of the biopolitical. Situated in the lethal logic of this impasse are Australia's carceral subjects who are let to die from preventable deaths that are critically generated by the very structures of the white colonial state – structures foundationally underpinned by "normative civic whiteness" that guarantees the safety and care of "white civilian ontology" while simultaneously generating the deaths in custody of its various others. We mark, in this context, the seven suicides of refugees and asylum seekers that have unfolded over the last year in Australia's immigration detention prisons, and draw attention to the spiraling cases of mental illness generated within these prisons:

The full extent of despair and unrest inside the immigration detention network has been revealed, with documents showing 1507 detainees hospitalised in the first six months of this year [2011], including 72 psychiatric hospital admissions, and 213 treated for physical injuries resulting from self-harm. International Health and Medical Services, the network's health provider treated 723 detainees for "voluntary starvation" during that period. ... While self-harm is being

recorded at almost every detention centre, Christmas Island is particularly plagued by suicide attempts. There were 620 self-harm incidents on Christmas Island this year to June, including 193 actual acts, 31 serious attempts, and 476 threatened acts. (Needham 2011, 1)

The coronial and human rights reports that document these custodial deaths stand, we would argue, as testaments to what Rodriguez terms the “contemporary hegemony of law and order, its materialisation into a “way of life” – and, we would add, a “way of death.” In the face of this systemic exercise of violent biopolitical power within the carceral confines of Australia’s various penal institutions, we refuse to put the white subject on the couch in order to effect its therapeutic cure and recovery (Giannacopoulos 2011, 9). Rather, what we are calling for is a decolonizing deconstruction of white civilian ontology itself. Nothing less than the racial suicide of the colonising white subject whose life is premised on the letting die and making die of its racialised others can effect a cessation rather than an episodic, merely topical cure of Australia's ongoing necropolitical regime.

### **Aboriginal “Health Refugees”**

Finally, the necropolitical landscape of white colonial Australia and its contemporary hegemony of law and order that we have been delineating needs to be critically supplemented by the inclusion of Aboriginal subjects who, ill with ordinary ailments that can be easily treated in metropolitan medical institutions, are often let to die because of lack of local access to essential medical infrastructure. These matters were critical to the life and death of Ruby Langford Ginibi herself. Ginibi, a disability ambassador for NSW, who spent the last years of her life in a wheelchair and in and out of the hospital system, often harked back in the last months of her life to the lack of proper medical treatment throughout her early years, and in particular to a childhood fall that which went untreated and to which she attributed her later lack of mobility and attendant ills.

Aboriginal subjects are, in Don Palmer’s (2011 6) unforgettable words, “health refugees” in their own country: “They are strangers in a strange land – health refugees who might just as well be on the moon.” Inscribed by the biopolitical tag of “health refugees” in their own country, such Aboriginal subjects are structurally precluded from living what the State Coroner calls a “normal lifespan.” The efficiently lethal operations of what Ginibi calls the White Injustice System ensure that. The categorization of Aboriginal subjects as “health refugees” within their own country discloses the larger biopolitical dimensions of governmentality that are operative in ensuring that target subjects will live while others are left to die. This is perhaps nowhere more graphically evidenced than in the release of a recent study of kidney disease in Aboriginal outback communities, which found “that putting dialysis services away from home forced many Aborigines to choose death at home rather than treatment in remote centres such as Alice Springs and Tennant Creek” (Martin 2011, 2). The study, by the George Institute for Global Health, found that Aboriginal “men and women were seven and eleven time more likely to die from cardiovascular disease, diabetes and chronic kidney disease than other Australians” (Martin 2011, 2). In the face of this urgent report, and its documentation of “the most alarming finding ... that 42 [I]ndigenous people in central Australia had decided not to undertake dialysis – a

decision that would hasten their death” (Dunlevy 2011, 5), the “government has responded ... by promising to build houses rather than fund dialysis machines” (Martin 2011, 2). In the light of this announcement, one health spokesperson declared the “solution” to be “bizarre,” and concluded that “Aboriginal families would be speechless that the solution to dialysis problems was ‘no more dialysis’” (Martin 2011, 2).

Cast in a biopolitical light, there is nothing “bizarre” about this “solution” that explicitly denies funding for more dialysis machines in outback Aboriginal communities, whilst proceeding to build more homes to house the dying. This necropolitical tactic must be seen as having been genealogically set in train in the early years of colonial dispossession; specifically, its moment of historical enunciation can be tracked back to the construction of the Wybalenna compound on Flinders Island, a compound that was designed to house the remnant population of mainland Tasmanian Aboriginal people who had survived the Black Wars. Corralled and deported to a foreign territory, and prohibited from speaking language, practicing ceremonies and from supplementing the alien British diet with nutritious bush tucker, this imprisoned Aboriginal population began to develop a range of diseases that systemically began to kill them. Overseen by the camp commander, Augustus Robinson, the damp, dark and insalubrious houses of Wybalenna that had become the homes of these dispossessed people became their houses of dying, with Robinson maintaining a doleful daily record of deaths due to illness in his diary. Wybalenna had become, in the words of Robinson’s son, “a charnel house for them” (cited in Ryan 1996, 193). Wybalenna perfectly fulfilled its biopolitical objectives, becoming at once a charnel house for its Aboriginal subjects and “the model for all other Australian colonies to follow when disposing of their own unwanted indigenes” (Ryan 1996, 203).

The failure to supply more dialysis machines in outback Aboriginal communities, and the perverse channelling of precious funding to the building of houses in which Aboriginal people with kidney disease will “choose” to die, must be situated within this biopolitical genealogy. In effect, there is no “choice” here for sick Aboriginal people; the concept of “choice” is merely the ruse of liberal humanist discourse and its valorising of individual voluntarism as something that effectively obfuscates the very real material relations of power, wealth and privilege that overdetermine precisely what “choices” specific subjects can actually exercise. Outback Aboriginal subjects’ refusal to travel to major cities in order to receive dialysis treatment must also be situated in the context of the historical and systemic racism that they have experienced within institutions such as public hospitals run by whites, and the lack of culturally appropriate healing practices in such institutions (see Phillips 2007). Further evidencing the lethal construction of outback Aboriginal people in terms of “health refugees” in their own country, Bernard Guerin “likened the practice” of telling Aboriginals to travel to major cities receive basic health treatment “to sending an Australian patient to Guatemala for treatment” (cited in Dunlevy 2011, 5).

In his scathing commentary on the Coronial Report on Holcroft’s death, Jackson (2011) uncompromisingly names the biopolitical forces that underlie the White Injustice System and its serial deaths in custody: “the greater majority of deaths in custody always have pertinent and possibly criminal underlying causes brought about by a

complete lack of duty of care. I and others will always argue that custodial deaths are as far removed from natural causes as is the death penalty.” Jackson has, moreover, repeatedly made the critical connections between Aboriginal deaths in custody and asylum and refugee seeker deaths in custody in this country, disclosing how the issue of usurped Aboriginal sovereignty and the continuing imposition of colonial white law articulates a system of relation between the two. As academic-activists, we continue to take inspiration from both Ginibi and Jackson in attempting to denaturalise the seemingly “natural” status of these deaths in custody precisely by situating them within the framework of the White Injustice System and its lethal white law of the biopolitical.

## NOTES

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<sup>2</sup> Almost four years Mr Ward’s death, an inquiry was conducted into the transport of a group of asylum seekers in similar circumstances, although there were no fatalities on that occasion.

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**Suvendrini Perera** is Professor of Cultural Studies and Cultural Criticism at Curtin University. Her recent books include *Australia and the Insular Imagination: Beaches,*

*Borders, Boats and Bodies* (Palgrave 2009), *Living Through Terror* (coedited with Antonio Traverso, Routledge 2010) and the forthcoming collection *Violence in a Far Country: Women of Scholars of Colour Theorize Terror* (coedited with Sherene Razack, University of Toronto Press, 2013).

**Joseph Pugliese** is associate professor in the Department of Media, Music, Communication and Cultural Studies, Macquarie University. Recent publications include *Biometrics: Bodies, Technologies, Biopolitics* (Routledge, 2010), which was shortlisted for the International Surveillance Studies Book Prize and the edited collection *Transmediterranean: Diasporas, Histories, Geopolitical Spaces* (Peter Lang, 2010). He is currently working on a monograph titled *State Violence and the Execution of Law: Torture, Black Sites, Drones* (Routledge). [Joseph.Pugliese@mq.edu.au](mailto:Joseph.Pugliese@mq.edu.au).