doi:10.1017/S0149767723000360

# A "Tick and Flick" Exercise: Movement and Form in Australian Parliamentary Human Rights Scrutiny

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## Introduction: From Metaphor to Methodology

International human rights law recognizes the right to liberty of movement, often conceived of as a right to move freely. However, what if we were to conceive rights themselves and, particularly, the ways in which and through which they are made (through bills, charters, and other legal documents and practices of law) as themselves a form of movement? What could dance studies—a discipline inhered in movement—illuminate about the movement practices in human rights law?

Australia is signatory to multiple international human rights conventions but is unique among Western democracies in that it does not have a national bill or charter of human rights. In lieu of this, some states and territories have developed their own charters of human rights and scrutiny processes, which require consideration of the human rights impact of proposed legislation, and the national or Commonwealth parliament has also instituted a scrutiny process, albeit there is no national charter of human rights. This system of scrutiny, which is largely based on the United Kingdom's model of parliamentary human rights scrutiny and unique to these jurisdictions (Fletcher 2018), is usually performed in two ways: proponents of legislation will typically provide a statement setting out whether and how the legislation is compatible with human rights; and a parliamentary committee, generally consisting of parliamentarians, a secretariat, and an external human rights advisor/s, will review the statement of compatibility and issue a report on the same.

Although there has been considerable research on the practice of parliamentary human rights scrutiny in Australia (Fletcher 2018; Debeljak and Grenfell 2020), some issues have received little attention, including analyses of the format of parliamentary human rights scrutiny reports themselves, as well as what the formats enable and/or foreclose. As part of a project investigating human rights

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scrutiny funded by the Australian Research Council, we conducted thirty interviews with those involved in parliamentary human rights scrutiny systems in Australian jurisdictions about these scrutiny processes, including reflections on their format. In this article, we draw on these interview data to explore a series of issues regarding the form of human rights scrutiny reports—by which we mean the format of the reports and the practices and conventions by which they are drafted. The format of these reports and the processes by which they are drafted, we argue, reveal important insights into how human rights scrutiny is practiced in Australia. We also argue that closer attention needs be paid to the calligraphic dimensions of parliamentary human rights scrutiny.

This article considers the form of parliamentary human rights scrutiny reports through the prism of dance choreography. This approach is novel, but we come to it because of the repeated references to movement practices in our interviews. We argue that parliamentary human rights scrutiny processes are an elaborate dance that cannot simply be distilled into the (sometimes rigid) format of a report. In earlier work on dance and law, the first author called for the need to "stretch beyond dance . . . as a material *metaphor* of law, to consider dance as a *method* of feeling and embodying law" (Mulcahy 2021, 131). Here, we work further with this innovation in which dance is method, while also seeking to demonstrate that dance bears all the characteristics of what Andreas Philippopoulos-Mihalopoulos calls a "successful" material legal metaphor—namely, that it has a material provenance, is contingent and undetermined, is counterintuitive, and allows a perception that can take different paths (Philippopoulos-Mihalopoulos 2016, 62). However, we go further to argue that the dance as law *metaphor* offers a legitimate *method* for researching law. One of the major benefits of metaphor is that it opens up possible methods of considering law—and in this case, parliamentary human rights scrutiny reports—differently. As the first author has argued, it "can produce alternative forms of knowledge and understanding of the law and, in particular, law's impact on the human body and how law makes one feel in an embodied sense. It can allow the researcher as practitioner to see and feel new possibilities for the law" (Mulcahy 2021, 122). It also compels dance scholarship to consider the role of law—and human rights law, in particular—in simultaneously regulating and co-opting movement in making (quite literally) *bodies of law*.

We explore these ideas through interviews we conducted with those involved in the parliamentary human rights scrutiny process, including former and current members of Parliament, their staff, and others directly involved in the scrutiny process (such as human rights advisors to scrutiny committees, scrutiny committee staff, and parliamentary counsel) between 2021–2022. Because these scrutiny processes often occur behind closed doors and in spaces closed to the public, these interviews provided unique insight into how those involved understand the processes to unfold. The interviews were conducted as part of a larger project investigating how human rights scrutiny processes have unfolded in the context of alcohol and other drug legislation. In total, thirty in-depth, semi-structured interviews were conducted, including eight with participants from each of the Commonwealth, Australian Capital Territory, and Victoria, and six from Queensland. Each interview was transcribed, de-identified, and anonymized. We assigned pseudonyms to the interviewees to protect their anonymity. In this article, we examine how these participants describe the form of parliamentary human rights scrutiny reports, as well as other dimensions such as time and movement. In what follows, we consider each of these aspects of the scrutiny reports in turn, drawing from an analysis of the reports themselves and interview data, making an argument about how form helps constitute the content of parliamentary human rights scrutiny in Australia.

## Theoretical Background: Choreography and Human Rights

The Queensland Human Rights Commissioner Scott McDougall has raised concerns about the human rights scrutiny process becoming a "perfunctory 'tick and flick' exercise" in which decision-makers perform the "dance steps to [rights] derogation" (McDougall 2020, 122), a concern that has been emulated by others. Taking these notions of "tick and flick" and "dance steps" literally, this

article explores the usage of ticks, formatting devices, and choreographic dimensions in human rights scrutiny reports through the application of dance theory.

Explorations of the links between dance, law, politics, and human rights are not entirely new. Previous work has examined the ways in which dance conforms to legal concepts such as copyright (Kraut 2015; Gover 2021), how public policy can be conceived of as a "choreographic act" (Belling 2021), and how dance and dancers advance or abuse human rights (Jackson 2005; Jackson and Shapiro-Phim 2008). In writing on politics and dance, Randy Martin has argued for the need to "destabilise the conventional ways of thinking dance and politics so as to appreciate their interdependence" because "a critical understanding of dance might make a contribution to conceptions of politics" given that "the concrete labour of participation necessary to executive [political] ideas is gathered through the movement of bodies in social time and space" (Martin 1998, 3). His approach is "to identify and apply certain methodological insights gleaned from dance studies to political theory" (15), while acknowledging that "the question of what dance does for politics cannot be answered a priori; its effects need to be specified in any given instance" (14). Similarly, our approach applies certain concepts from dance studies to the political practice of human rights scrutiny.

We explore the choreography of human rights scrutiny, drawing upon Andrew Hewitt's conception of social choreography as something that can "enact rather than simply reflect social order" (Hewitt 2005, 25). In his work, Hewitt explores "the dynamic choreographic configurations produced in dance and [seeks] to apply those forms to the broader social and political sphere" (3). Both Hewitt and Martin are interested in the relationship between aesthetics and political and social order. Hewitt imputes "a fundamental role to the aesthetic in the formulation of the political" (3). Martin laments that "aesthetics and politics are treated as the mirror of each other … rather than as the inextricably joined terms of an uneasy relation of form and content" and argues that "while aesthetics and politics can be conceptualised apart from each other, any expression of one—whether in the concert hall or the statehouse—assumes an articulation of the other" (1998, 15). We take up this provocation to argue that the aesthetic form of the human rights scrutiny report both reflects and enacts the political process of human rights scrutiny, with particular attention to its choreographic dimensions. In essence, we regard the administration of the process of human rights scrutiny as a social choreography, and the choreographic process as a way of constructing rights. Importantly, ways of *constructing* rights are also generative, and can have lived, embodied, and material effects insofar as these constructions choreograph, constrain, and enable where bodies can go and what bodies can do. As Hewitt concludes, "Choreography has provided a discursive realm for articulating and working out the shifting, moving relation of aesthetics to politics" (2005, 11). We are certainly not the first legal scholars to reflect on the connection between legal practices and choreography. As Conor Heaney has recently observed, "Legal practices are infused with aesthetic symbolisms, rituals and various forms of choreography which order the movements of our bodies as well as distribute who should speak, when they should speak, what they should say" (2023, 5). We adopt Heaney's approach to explore the choreography of human rights scrutiny and how it affects what is said by whom and how when it comes to contested questions of human rights.

Our focus is on the role of dance in the creation of parliamentary human rights scrutiny reports—a particular dimension of the legal-political process of human rights scrutiny. Drawing from Marie-Andrée Jacob's notion of calligraphic practices in legal documents, and her and Anna Macdonald's notion of lines as material, somatic, and metaphorical forms, we analyze the *choreography of calligraphic forms* in these reports and how they constitute human rights in parliamentary scrutiny processes. In their work, Jacob and Macdonald combine their "socio-legal analysis and embodied practice-based research … [and their] distinctive lenses of law and dance in order to glean potential meanings out of the affective change of the corporeal anchor of a digital line that strikes through text" (2019, 263). They argue that, in the context of medical disciplinary tribunal decisions, the typography of the strikethrough has a particular "affective force and tangible effect"

because it both carries consequences for the individual and enables "regulatory functions of transparency, authentication and individuation" on the part of the decision-maker (263). Focussing on the strikethrough in tribunal decisions, Jacob argues that this calligraphic practice is multivalent and evocative. It "evokes the performance of incremental transparency" (2017, 139), allowing the reader to "peep into the writer's process before the final product" (161), but also evokes a sense of erasure in that "the names of the culpable ones have a black line running through them . . . [indicating] the stigma of sanction" (158). It also recalls Carrie Noland's observation that "culture is both embodied and challenged through corporeal performance, that is, through kinetic acts" (2009, 2). Like Jacob, Noland is interested in the act of gesture and the way in which it acts as "the inscription on the body of skills that allow individuals to traverse spaces" (7). Jacob is particularly interested in the legal gesture of the strikethrough and, in collaboration with Macdonald, the two developed a series of dance-based artworks to analyze this calligraphic practice in legal forms.

We want to think through calligraphic practices in parliamentary human rights scrutiny practices as choreographic practices. Legal documents are often structured through calligraphic gestures—the strikethrough in tribunal decisions or the tick in scrutiny reports. The calligraphic gesture of the textual symbol requires a writer to perform an action but also invites the reader to engage with it in a physical way, prompting a choreographic response. In essence, the practice of calligraphic textualization is embodied, in that it enlists the involvement of the writer in a movement and invites an embodied response on the part of the reader. These calligraphic gestures—often performed through mechanical movements such as clicks, taps, and swipes on computer mouses, keyboards, and screens—accumulate into the phrasing and structure of scrutiny reports and provide a method or way of navigating the task of human rights scrutiny, and responding to it. The human rights scrutiny reports can therefore be regarded as a dance between the form itself and its reader or writer, a partnership, dialogue, or duet between form and user. In this article, we explore the impact of these movement practices on the process of human rights scrutiny, acknowledging that if the perfunctory approach that McDougall describes (or the mechanical approach, as we put it) is reflected in the forms of scrutiny, that in turn impacts the methods and ways of scrutiny, or in essence, if the *form* of scrutiny is mechanized and perfunctory, then the *practice* of scrutiny will be likewise.

In adopting this approach, we heed Lisa Doolittle and Anne Flynn's call to "dismantle the framework that has set up dance and rights as apparently unrelated" (2005, 277). They instead argue that "convergence between dance and human rights is not only conceivable, but also essential" because this convergence allows the authors to expose and examine the ways in which human rights are embodied, not simply embedded in the mind, and they thus propose "a new way of connecting rights and dancing by approaching human rights through what we, as dancers, know about bodies in motion" (271). Terri Gordon argues that "corporeality and textuality have long been intertwined" (2000, 205) and that dance "has long been considered the first form of writing, a visual hieroglyph" (207). This is perhaps best captured in the art of dance notation or choreology (also referred to as "choreo-graphics" in Guest 1989). In his study of dance notation, Laurence Louppe argues that "dance notations, like all writing, once confront the law" (1994, 32). This relationship between corporeality and textuality is not one-way but a complex interrelationship. As Mary Shaw writes, "The dancer uses her *body* as a vehicle or instrument.... This instrument, which draws out form, is at once similar to and different from the writer's pen, which verbally communicates or transcribes the conceptual world of thought" (1988, 5). While dance is embodied and ambulant (Doolittle and Flynn 2005, 270–271), like the pen to paper, the dancer is grounded. However, the choreologic process shifts the choreography of bodies in movement and flux into a written, calligraphic, and inevitably static form. We argue here that *parliamentary human rights scrutiny is a practice of choreology* in that a complex choreography of contestation over human rights is performed by various actors, and then, through the report, reduced to text and graphics. What this requires is taking seriously the aesthetic dimensions of scrutiny reports because of the impact that they have on the political process of human rights scrutiny (Hewitt 2005) and, more broadly,

the way in which they inform political questions about the impacts of legislative measures on the people's human rights, including rights to movement that can enable and constrain how bodies move in and through places.

What the nascent research on law and dance draws attention to is, first, in writing (righting) or dancing, there is always an actor behind the instrument, and that it is therefore necessary to consider the role of parliamentary actors in producing the instrument that is the human rights scrutiny report. Second, Doolittle and Flynn conclude that "documents . . . will not suffice in meeting the challenge to recognise the complexity of human interaction and make our interactions more equitable" (2005, 285). In essence, they argue that human rights are not like a document because a document lacks the complexity that arises from interactivity. Instead, we need to think beyond human rights as documents, and consider and explore the ways in which human rights are constituted and produced. They suggest that we instead need to think of human rights as akin to a dance because dance allows these attributes of complexity and interactivity to flourish. This conclusion is relevant to the study of parliamentary human rights scrutiny reports in that it suggests that these reports, being themselves documents, lack interactivity and the complexity that follows. Instead, we should regard the negotiations that lead to the reports as a complex, interactive dance, which often requires balancing competing interests, and is then effectively distilled down into a documentary report. This distillation of human rights dance into human rights document has effects we need to attend to.

In earlier work, the first author advanced a "jurisprudence of dance" as "both a call back and a way in to the embodied and emotional nature of law and the connection of law to our moving bodies" (Mulcahy 2021, 132). Although law as dance suggests a degree of fluidity to the moving human body, the first author also acknowledges that "choreography is a lawful mechanism of controlling movement and, through it, instilling law" (131), meaning that lawful directions constrain the free movement of bodies (see also Shaw, forthcoming). This draws from Susan Foster's observation that "choreography constitutes a plan or a score according to which movement unfolds" (2010, 2). Here we regard the form of written reports as a form of choreographing human rights scrutiny. As Gerald Siegmund argues, there is a complex relationship between the dance of law and the choreography of its written form: "Law breaks and mirrors itself in writing, word against flesh, in the writing with the body and its movements. Law is thus ultimately ruptured in the choreography with which it nonetheless enters a close relation" (2012, 201). What we do in this article is explore how the written form of reports constrains the embodied practice of human rights scrutiny, an often-exhausting, durational, repeated performance that demands examination of each law that comes before a parliament.

In what follows, we consider parliamentary human rights scrutiny reports through the prism of dance in four respects: the format elements that we consider in part 1; temporal elements of exhaustion and improvisation that we consider in parts 2 and 3; and movement elements of repetition that we consider in part 4. We conclude with a discussion of human rights as movement that challenges the practice of documentation conducted by parliamentary human rights scrutiny committees.

## The Tick: Form and Substance in Dance and Scrutiny

The question of form is often overlooked in scholarship on parliamentary human rights scrutiny, despite form shaping the process of analysis and the resultant content. In interviews we conducted with parliamentary stakeholders, the nature and form of rights scrutiny was raised on multiple occasions, often without any prompting. It quickly became clear that the form and format of rights scrutiny appeared inextricably linked to how our interviewees felt about the quality and nature of rights deliberations, and therefore were a subject warranting more detailed analysis. For instance, one parliamentarian, whom we will refer to as George, stated:

> Looking at human rights and how it operates, I'm pretty disappointed with how it works. I'd see it as basically a tick and flick exercise in many cases.... I think the human rights assessments are just a tick and flick exercise.... I don't feel like they're taking human rights seriously at all.

Other interviewees expressed worry about the perfunctory nature of the process. A parliamentary advisor, Adrian, suggested that members involved in the scrutiny process are "doing it by numbers," possibly based on guides developed by the scrutiny committee. The views among our interviewees were not uniform, however. Another parliamentarian, Anne, stated that "it certainly was never in my experience a sort of a tick and flick exercise; there was some real engagement there from the committee." Here, there is a contrast between automation and engagement by the scrutiny committee. Another parliamentarian, Michael, concluded that the scrutiny process is "all about the performance of it. It's not about scrutiny; it's not about debate; it's pure performative politics." In this sense, the tick and flick exercise is not purely an automated calligraphic process, but a performance—a "dance," to use the words of the Queensland Human Rights Commissioner.

As Francis, a parliamentary advisor, described, there is a "culture of justification" (Grenfell and Debeljak 2020) for limitations of human rights:

> I think you can see that ... in the way the committee structures its reports. It used to have an analysis of the rights engaged, and the committee consideration, then conclusions, and the stuff in bold I think was what particularly occupied parliamentarians that they were concerned that they were comfortable with that. But I am not sure when it began but they began to have a separate heading for international human rights legal advice and preliminary international human rights legal advice and that is clearly seen as a factum which is taken into account by the politicians but is not necessarily determinative. So you'll see if you read some of the human rights analysis, it will be absolutely be clear beyond peradventure that the limitation has not been justified and then you'll move to the bold print of the committee view which is to say, 'oh, there may be some issues' and bring this to the attention of the Minister, so there is a disconnection between what the analysis compels and I suppose a political conclusion which wasn't necessary.

Another parliamentary advisor, Julia, suggested close attention needed to be paid to the form of scrutiny reports:

> You'd have to be following, I suppose, the committee's reports and reading them, you know, pretty closely to sort of see the changes in how the reports are now being put together, whether it's a separate section on, you know, this is what the legal advice is and here's what the committee thinks kind of thing, you know, which sometimes line up, sometimes they're night and day, and it's not always clear as to why that's happened, but you can attribute those to some problem that would've taken place in the committee room.

Adopting this close reading approach to explore whether the forms themselves have bearing on the process of human rights scrutiny, how the forms shape the substance of the reports, and what insight the forms might give us into what takes place in the committee room, we shall consider a case study. Our research has found that human rights scrutiny reports often change in form, with different uses of typographical devices, graphics, and widgets. In 2018, the Victorian Parliament's Scrutiny of Acts and Regulations Committee used checkboxes in its scrutiny reports. Under the subheading "Charter Issues" were four checkboxes (Figure 1). A cross was placed in one of the checkboxes. Quite literally, the rights assessment was, as a parliamentarian, Helen, stated, a "tick in the box exercise ... but you still need to do it."

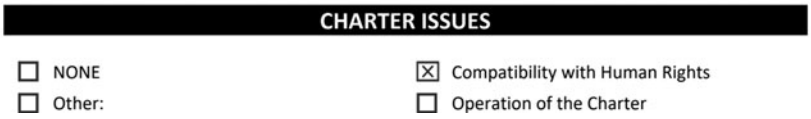


*Figure 1. Excerpt from Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest, No 1 of 2018, 6 February 2018.*

This was followed by a subheading on "Details," with a discussion of whether the legislation was compatible with the rights set out in the *Charter of Human Rights and Responsibilities Act 2006*. This discussion would list the relevant right, and discussion would proceed under different subsections: summary; relevant provisions; charter analysis; committee comment (only in some discussions); relevant comparisons (only in some discussions); and conclusion. A parliamentary advisor, Bianca, described the process of reviewing legislation to determine if a measure was necessary, reasonable, and proportionate. After reviewing the measure and the evidence provided in support of it, "I'd say 'that's a tick, it's necessary.'" What we also see here is the occasional separating out of the charter analysis and the committee comment that suggests a disconnect between what the analysis compels and the committee's conclusion. This may be attributed to the politicization of the process. As an interviewee, Alexander, explained, this can occur when government members of the committee are "going in to play for government bills that are, in the view of the legal advisors, going to infringe upon human rights in some way."

At the end of each section, under the subheading "Recommendation" was a table with three cells and in each, a checkbox (Figure 2). Again, a cross was placed in one of the checkboxes. A parliamentary advisor, Imogen, described this process of analyzing legislation against human rights criteria as "sort of stick it into a table and give analysis" as to whether it breaches any human rights, pointing to the "different tables" that appear in the scrutiny reports. A parliamentarian, Marcus, described the scrutiny process as one in which "in most cases it was just a rubber stamp." Except here, the metaphoric stamp takes the place of a literal check.

One interviewee, also named Imogen, explained the use of the checkbox on recommendations as follows:

> What we used to do is flag [a provision] as a potential issue and then if the committee wanted to dig a bit deeper, it was up to them to go back to the Minister and get more information as to whether or not it's compatible. So, you might say, 'hey, this could raise an issue of this versus this,' and then you'd throw it back at them because you don't have time to mud it down [*sic*] to the final conclusion.

The checkboxes play a central role in the report themselves, positioned across the page rather than at the margins. In this respect, we argue against a distinction between the written words of the report and the checkboxes; both play an equivalent role in conveying whether a piece of legislation

*Figure 2. Except from Scrutiny of Acts and Regulations Committee, Parliament of Victoria, Alert Digest, No 1 of 2018, 6 February 2018.*

is compatible with human rights. As such, it is important to read the checkbox as one would the text to determine questions of human rights compatibility. The information that the checkbox conveys—the issues raised and the recommendations—could be conveyed in text, but here a typographical device is instead used. As Jacob and Macdonald remind us, "Words can only get us so far" (2019, 264). Instead, the symbol of the checkbox and the cross therein points to "the embodied, subjective, mortal form of law-making's effect at the moment of impact" (269). Though the checkbox and the report it is in does not make law, it does affect assessments of whether that law is compatible with human rights—assessments that are, despite pretences of objectivity, often subjective decisions based on the knowledge, political background, and experience of the humans making them. These are also unmistakably legal assessments.

Another dimension of the typographical symbol is what Jacob and Macdonald refer to as its "affective embodied force" (263). Though it is computerized, the checkbox is created through a movement of striking a combination of keys on a keyboard that itself carries a force—the cross in the checkbox affects both "the body that is striking, and the body being struck" (265). The body that is striking is doing so through digital form, but the form recalls the hand drawn tick or cross and the movement of creating that figure on paper. The earliest versions of checkboxes were holes poked into clay tablets, before the clay had hardened, to make a written list of rations disbursed (Schmandt-Besserat 1996). The tick's genesis is more complicated. Some speculated that it could have been from the first letter *v* in the Latin *veritas*, meaning "truth," but the right side was elongated by speed writing and the left side shortened by ink pens that do not flow. Alternatively, it could be that a slash (/) was used for "correct" but evolved to the tick of today due to the need for a down stroke to avoid an ink blot when an ink pen touches paper. The term "tick" itself comes from a Dutch word meaning "pat or light touch" and was used to indicate the smallest distinct mark—a light touch—to mark up a written document. What is clear is that all these movements have an embodied dimension to them—poking holes into clay tablets, casting strokes with ink pens; even the etymology of the word refers to the touch-based movement of patting. However, who might be "the body that is being struck" by a cross in a checkbox in a scrutiny report? It could be those whose human rights are affected by the legislation under scrutiny, or it could also be the reader of the report—both of whom have an affective embodied response to the typographical symbol. These bodies may not be specifically mentioned in the report but are affected by the conclusions it reaches. What the checkbox more evocatively displays than words could is the impact of rights determinations on human bodies.

The next year, 2019, the checkboxes were gone, though the discussion in the report proceeded under the same subheadings. Why did the committee use this checkbox format and why only for this year? A parliamentary advisor, Gregory, stated that scrutiny reports were, in the view of some parliamentarians, too detailed and that "they want a report that is more readily digestible." There is something both evocative and convenient about the check. It suggests, like a stamp, a degree of definitiveness—human rights simply are or are not engaged by the legislation—and it also compels action or inaction—the Minister must respond, Parliament should consider this, or no further action is required. Although the checkboxes may now be gone, their traces remain in the language and formatting devices retained in the report that suggest definitiveness on questions of human rights.

The checkbox also reduces a complex choreography of political considerations and assessments of reasonableness, justifiability, and proportionality of any human rights limitations into something much more rudimentary. The document, as dance scholars have pointed out, cannot capture complexity—in this case, complex questions of human rights. Instead, documents and forms simplify the process and therefore the content of human rights negotiations, helping to shape the nature of human rights themselves. Shawn Rajanayagam argues that parliamentary human rights scrutiny "should not focus solely on compliance, but also the process by which legislatures engage with rights questions," in particular, the degree to which any process facilitates dialogue and contestation

around human rights issues (2015, 1056–1058). If we accept that human rights scrutiny processes are an elaborate dance or negotiation between competing interests, then it is important to consider how to choreograph and calligraph rights considerations in ways that better embrace the complexity of the questions that legislators face in determining the human rights compatibility of legislation, opening human rights issues for discussion, debate, and dialogue, rather than foreclosing them.

Why have these reports changed format since? One argument could be that human rights are dependent upon restructuring. They are, like choreography, concerned with construction, manufacture, and reproduction. In each change to the format of the reports, a habituated practice is broken but then repaired anew in a new form. In what follows, we depart from the forms themselves to consider the practices underpinning the writing of the reports and their connections to dance theory: both temporal dimensions and movement dimensions.

## The Slouch: Exhaustion in Dance and Scrutiny

In *Exhausting Dance*, Andre Lepecki analyzes choreographic scores. He argues that "choreography displays and makes present a force of law" and, further, that certain language is akin to choreography in that both can be a performative utterance (2006, 24). Here, we can see a parallel with choreography and the performative dimension of the language—and calligraphic dimensions—of scrutiny reports that has the effect of deciding whether certain measures are compatible with human rights. Lepecki goes on to argue that choreography is both "an answer to a call *from* and *for* the law" (26). Again, we notice a parallel with choreography and the scrutiny reports in that the scrutiny reports are both required under law and activate a lawful response: the Minister must respond to or the Parliament must consider the human rights issues raised.

However, another parallel lies in the title of Lepecki's work: the dimension of *exhaustion*. Dance is exhausting—psychologically, affectively, and energetically. Though committee meetings are held behind closed doors, we can speculate that committee members seated around a table deliberating on legislation might rest their heads on their hands or their elbows on neighboring chairs, that they might lean backward, and that they might slouch in their chairs—and this physical embodiment can be read as a symptom of exhaustion. As we have observed elsewhere, the room's "spatial arrangement invites a transactional approach; there is limited space to move around, step back, hide. A parliamentarian familiar with the space will move to their seat; pulled in, their legs are trapped under the table, constraining free movement" (Mulcahy and Seear 2023).

Many of our interviewees described their parliamentary work as similarly exhausting. An indicative comment is that of Alexander, who sat on a scrutiny committee: "As a politician, you're very busy, you're very time poor, and you've got lots of competing interests and I would describe the scrutiny process as something that very easily goes down the bottom of that list." Another interviewee, Helen, said:

> It is difficult to actually sit down and get the time to scrutinise each and every Bill, it's almost just impossible.... We just can't read word by word every Bill and go 'is this going to have, you know, an impact on this' and whatever it might be, so it is in the context of juggling many, many other responsibilities and duties that we have as members.

One interviewee, Diana, noted that "Monday evenings was, when I was on the committee, that was the time [we met] which was a late sitting and we would be interrupted by votes [in the parliamentary chamber] and things through it, which is par for the course." Many of our interviewees described their parliamentary work as "time-consuming" (Charles, Imogen), noting that it "chews up ... time" (Michael), which meant that some "things are done in a hurry" (Isabella).

This led some to question whether, when it comes to parliamentary scrutiny, they were "doing the legislation justice" by properly exploring all the potential human rights implications (Adam). Some acknowledged that "dealing with the volume of the material that we have to deal with in a short space of time means that we're not always fully across" how a piece of legislation complies with human rights and surmised that "time is a real killer in this committee process" (Christopher). Another of the interviewees, Julia, described the challenge of juggling competing demands and timeframes as follows:

> The sheer workload means that it's a lot more difficult because if you're genuinely sort of pulling apart each Bill with the committee, you're blowing up your timeframes in massive ways and chances are you're going to, you know, either not sleep for the rest of the year in trying to keep up or you're going to, you know, be putting out reports late, which is why, like, none of it is tenable.

Lepecki concludes that "choreography, as technology and expression of modernity's being-toward-movement, participates fully of this exhausting psychological, affective and energetic project of modern subjectivation" (2006, 33). To extend Lepecki's argument that choreography makes subjects, we might also say that the form of scrutiny reports makes subjects: certain of these subjects are endowed with rights, other not. The exhaustion of parliamentary work, however, leaves little time and space for the complex dance of human rights subjectivation that rigorous parliamentary scrutiny demands. We have seen, in our interviews, accounts of forgoing sleep just to keep up with the demands of work. Lepecki concludes that "this ontological slowing down initiates a different energetic project, a new regime of attention … [and] new lines of potentiality for the political ontology of the choreographic at the moment of movement's ultimate exhaustion" (64). We might say that human rights scrutiny is by its very nature a slow process as it requires attention to detail and that the slow, attentive detail that it demands is exhausting. This exhaustion must surely carry itself in the body of the parliamentarian and others involved in the parliamentary human rights scrutiny process—and it is no wonder ways of simplifying this process are embraced, to avoid the tax on the body and mind.

The checkbox is perhaps a reaction to this busy, exhausting work in that it distills a complex rights negotiation down to a simple formatting device, making the document quicker to read and thus saving time. There is a risk, however, as noted by McDougall, that, in part because parliamentary work causes exhaustion, the human rights scrutiny process becomes a "perfunctory" exercise that is dealt with swiftly so that the parliamentarians can get up and move on to other work. Reflecting on the format of the reports in their usage of blunt instruments such as checkboxes, as well as the ways in which exhaustion can manifest in the bodies of committee members, this risk may be somewhat realized.

## The Break: Improvisation in Dance and Scrutiny

The question of time also plays out in another way, other than the slow time of exhaustion: the quick time of improvisation. As one interviewee, Christopher, explained, "You get a briefing in relation to [the legislation] and then you have to report, and sometimes between the briefing and report there's not much time." Many interviewees rued not having the time to go through the process in detail. George told us a story of how this played out:

> At one stage, I think the opposition objected to a Bill because, you know, they hadn't seen a SARC [Scrutiny of Acts and Regulations Committee] report and then they said, 'well, you know, SARC should meet today and come back with a report immediately so that we can at least, you know, identify this,' and then they just got a letter

> back from SARC saying, 'oh, we don't have enough time to do this properly so, you know, just go and vote on the Bill.'

This is further explained in the committee chair's statement to Parliament:

> We had a meeting at lunchtime. And it is true to say, and other members of the Committee can put their perspectives forward at the right time, that a majority of the Committee did not believe—and we were urged to produce a report prior to the voting tonight and then any voting in the Legislative Assembly, and we took the advice from our human rights consultant, who is the pre-eminent expert of the Charter in this state, as well as the staff from the committee—at the end of the day that we were going to be in a position to produce a report of either the depth or the quality that the Parliament would expect on a Bill that has got so much public attention. So by majority the Committee resolved that I issue a statement, which I have provided to the Presiding Officers, both in this place and in the other place, that: '1. Acknowledges the Bill is a significant piece of legislation; 2. States the committee is satisfied that the legislation does engage the Charter; 3. Advises that to the extent that the legislation engages the Charter whether it is proportionate and reasonable is a matter for the Parliament' and finally '4. The Committee, as is its usual practices, will undertake a full and thorough analysis of the Bill and prepare a complete report to the Parliament to be tabled in [the next] Alert Digest.'[1]

What we see here is a remarkable act of improvised quasi scrutiny. After legislation was presented to Parliament, the committee met over lunchtime to consider it, and then issued a statement that acknowledges that the legislation before parliament engages human rights but that it is up to Parliament to determine whether any human rights limitations are proportionate and reasonable. Nevertheless, the committee promises a report to Parliament *after* the legislation has passed to analyze, in depth and quality, any human rights limitations.

Sara Ramshaw argues that "all law is improvision" (2013, 3). Though her predominant focus is on jazz improvisation as a metaphor for justice, she has latterly worked on the connections with dance improvisation and law (Ramshaw, Lassonde, and Lewis 2018, 2019a, 2019b). Julie Lassonde, a student of Ramshaw's, argues that improvisation is a skill that can help answer questions relating to "various justice issues and legal mechanisms" (2021, 243). In other work, she argues that improvisation involves "thinking through the body" and understanding through doing, and that these "embodied experiences produce a form of knowledge" (2008, 7). Another student, Kristen Lewis, describes the process of reading legal documents and then noticing "the gestures that would come up in my body as I read them" and allowing those gestures "to amplify the reactions I have" through dance (cited in Ramshaw 2023, 87). What this suggests is embodied improvisation as both an exploration of law and as a reaction to law. In reflecting on this work, Ryan Roberts (2021, 130) argues that:

> Spontaneous improvisation promotes the idea . . . of flexibility to maintain the law's relevance, especially as the law is applied to different situations at, in some instances, very different points in time. It provides a mechanism to maintain the law's relevancy. . . . It also invites the attention to the way that audiences to the law . . . interpret these improvisations.

To draw the law as improvisation analogy to present circumstances, we see here lawmakers, confronted with urgent legislation, improvising in a dexterous manner to find a way forward, namely, deciding that the proportionality and reasonableness of the proposed legislation is a matter for Parliament to determine instead of the time-strapped committee. This also meant that

Parliament had to improvise in response to the statement from the committee. In the context of arts-based research, Jacob and Macdonald connect improvisation with "chance encounter" (2019, 271), but we see here how this improvised scrutiny was also unplanned. There is, indeed, something very fleeting about this encounter with the committee members and their human rights legal advisor, occurring over a sixty-four-minute lunch break. For Jacob and McDonald, improvisation involves "fumbling" about but, through that, gleaning different meanings and possibilities, and materializing things anew (271). However, as Danielle Goldman reminds us, there are "shifting constraints that improvisers negotiate," particular to this case is time, and "one's social and historical positions in the world affect one's ability to move, both literally and figuratively" (2010, 5). Also crucial to this is the degree of agency that one has over one's work (Ravn 2020). It should also be noted that this improvision occurred in a break in parliamentary proceedings, during a lunchtime suspension. Goldman notes that breaks interrupt the flow of movement (2010, 107) but, in so doing, offer an opportunity for "choosing when and how to move again" (29) or the possibility of rupture, in the sense of to "break habitual patterns of movement" (53) or to "break . . . chains binding me" (136). The break itself can be embodied or accentuated through the body (52). We suggest that it is significant that this improvisation occurred during a break for these very reasons as it ruptured proceedings and, in so doing, offered the opportunity to consider how to move on the issue. We also question whether the embodied practice of lunch affected the scrutiny: Was the discussion around human rights compatibility interrupted by gestures of biting, chewing, and swallowing, and did this focus on the manual task of masticating diminish the necessary to-ing and fro-ing on human rights issues in the legislation?

The key point is that improvisation is generative; in the present case, it results in a particular—arguably impoverished—approach to human rights, in which human rights scrutiny is performed in passing, with little depth. Through this improvisatory process, it becomes possible for human rights to be analyzed and *thus made* differently in a seemingly extemporaneous fashion. For the committee, they can cobble together a quick meeting and reach a position that effectively exonerates them from any responsibility for adverse human rights ramifications for the legislation, shifting that responsibility to Parliament. So fleeting was this dance that the statement provided to Parliament's presiding officers was not tabled in Parliament and exists only in the excerpt from Hansard cited above. The statement is six lines in the Hansard with a number and dot preceding each point. The numbered list reads much like the checkbox. Each point being covered, the chair concludes his speech. This improvised dance led to proposed reforms to properly scrutinize urgent legislation.[2] These reforms did not pass, however, attesting to the endurance of established ways of doing things.

## The Marathon: Repetition in Dance and Scrutiny

If we return from time to movement, another parallel with dance and parliamentary human rights scrutiny lies in repetition. In recent work, Heaney examines "the ritual of lawmaking, combining orthographic and choreographic arrangements" (2023, 90) and argues that lawmaking is predicated on both "sequences of repetition (adherence to participation in embedded rituals, customs, and norms) and improvisions of difference (whenever one is confronted with a 'new' context to respond to)" (88–89). Pierre Legendre connects dance with law through their common interest in patterns of repetition (1997, 41). It is through this act of repetition that complex ideas and actions are transmitted. Indeed, our interviewees raised practices of repetition feeding into parliamentary human rights scrutiny of proposed laws. One interviewee, Nicholas, drew attention to the need for the public to repeatedly lobby parliamentarians on human rights issues:

> People constantly not underestimating, I guess, the frequency, the number of times and the multiple ways they communicate with MPs about the same things is really important. So, what I mean by that is, you know, they sent in some written

> correspondence, people have met, we've tried to get them to go to a particular briefing about particular issues, the evidence base about things, they need to do that, and often I mean it's all about the marathon and not the sprint.

Another interviewee, Audrey, emphasized the "need to keep repeating" the importance of human rights. Here, Audrey suggests that repetition is needed for things to sink in, and for human rights to be considered as valuable, valid, important, and worthy of robust and detailed consideration. Nicholas continues by stating that repetition is a necessary part of "socialising what [advocates are] wanting to achieve with people, to shape their views." To turn to the parliamentary human rights scrutiny process, we can also see practices of repetition as ways of embedding understandings of human rights. Looking again at the forms of scrutiny reports, we see a repeated format of checkboxes, headings, etc. The repetition of form has a way of establishing a norm around how human rights impacts are to be scrutinized. Jacob and Macdonald highlight the way in which the line "repeatedly performs its action" (2019, 270). The checks on the form state once and for all whether legislation is compatible with human rights and repeats this statement upon each reading. These records endure as a lasting distillation of a complex and continual dance around human rights compatibility that is made material.

The interviewee, Nicholas, also describes lobbying parliamentarians on human rights issues as a marathon not a sprint. Of course, a marathon requires the repeated movement of the arms and legs in a feat of endurance and strength. To think of lobbying on human rights as a marathon is to think of it as a repeated bodily movement that the lobbyist must endure over a long period of time, and for which strength is required. D. Soyini Madison points to how human rights activism is an embodied practice that often requires repeated words and movements (2010). We can think here of human rights activism as a durational performance that demands repeating movements and words over and over again in order for them to sink in.

The "tick and flick" is also a repeated practice. It is through repeating this practice that parliamentarians learn the steps to human rights scrutiny. Much like the drill of a march (Legendre 1997, 62–63), it is through repeated action that this way of doing things becomes embedded. Philippopoulos-Mihalopoulos argues that repetition "characterises the whole of the legal edifice" most particularly in the "hypnotic mundanity of repetitive norm application and the superimposition of norms to facts" most evident in the common law system of precedent (2011, 46). However, we might also see law's repetition in the repeated uses of standard format checkboxes on human rights scrutiny reports and the imposition of the facts of a particular piece of legislation into this format of human rights scrutiny. This also has the potential to render facts as malleable; facts must be shaped, in other words, to fit the format of the report. Against the notion that repetition is mindless, the repeated use of a format demands critical thinking about how a piece of legislation might fit within that format: is it compliant with human rights or not? Philippopoulos-Mihalopoulos goes on to argue that repetition is "a movement that moves away from both recollection *and* mediation, and opens itself with abandon to the future. And although repetition is the absence of endeavour, at the same time [it] is inviting of rupture: a transfiguration that makes repetition every time different" (48). Several points may be made here. First, there is the possibility that the repeated checkbox could be crossed or uncrossed, signalling a different approach to human rights. As Lepecki reminds us, "Repetition unleashes series of differences" (2006, 61). Like watching the same dance movements over and over again, the reader of these reports can skim through and pick up the salient differences through the repeated formatting devices. Second, there is also the idea of repetition as a movement—each time the box is crossed or not, it requires the striking of keys on the part of the writer. It is through this repetition of movement that practices become embedded in the body of the writer, in the same way that Norbert Servos describes the repetitive movement of the march as a means by which the "state structure . . . attempted to anchor itself into the bodies of its 'subjects'" (1990, 64). Third and finally, the repeated checkboxes demand definitiveness—the committee cannot dance around the issue; it must decide. However, the format elides complexity, disallows ambiguity or ambivalence, and

demands concreteness. Because the format is narrow (the checkboxes are only so wide) and prescriptive in its repetition, it requires those who make human rights assessments to reduce the complexity of the process to a simple yes or no answer, and so erases other possibilities, including more ambiguous or ambivalent responses to whether (and how) human rights are engaged. The checkbox distills a complex dance into a rudimentary decision and, in doing so, the nuance is not only tripped over but erased almost entirely. Lepecki describes choreography as

> a haunting machine, a body snatcher . . . [a] haunting and uncanny force. Under the paronomastic display of choreography, dance emerges as a disembodied power ready to be occupied by any body. By peeling off dance from the dancer, the dancer can be inhabited by other non-performing steps; and choreography reveals itself as always diluted by each body's tremors, involuntary acts, morphology, imbalances and techniques. (2006, 63)

What we suggest here is that *the form of the scrutiny report operates as a mode of choreography* for the human rights scrutiny process. The textual dimension of the report and the intertextual features, such as the checkbox, force the body of human rights law to conform with certain constraints—the dance of human rights scrutiny is constrained by the choreologic demands of written text and symbols. It is like the body has been snatched away or at least forced to the format that the report commands, being a written format of texts and symbols. In so doing, human rights scrutiny becomes a true "tick and flick" exercise that any body can do by following a prescribed format and formula. As Noland writes of a graffiti artist she observes, "If the writer performs the motion repeatedly, his own body will be eventually inscribed, the muscles and ligaments physiologically altered, by the gestural routine that expresses and confines his body at the very same time" (2009, 1). Here, we suggest that repeated practices in human rights scrutiny train the body in particular ways that can, over time, be hard to challenge.

We do not mean to dismiss the training required in human rights scrutiny (or dance, for that matter) but to highlight that this is a training in a choreographed way of doing things—and that both training in and formatting of human rights scrutiny operate as constraints on potentially divergent movements. By removing freedom of movement from actors in the human rights scrutiny process (noting, ironically, that free movement is generally a protected human right[3]), it opens the possibility that the process could be overtaken by automation or at least an automated way of doing in which the same conclusions are repeated time and time again when a particular human right is in some way limited. However, what Lepecki points to is that dance is still a human process—and so, we say, is human rights scrutiny—that is affected by the subjectivities of those engaged in the process. We need to acknowledge that, despite the idea that repetition might lead to an automated way of acting, the human body doing this scrutiny work is still affected by exhaustion and, in some cases, an embodied reaction to human rights issues that can affect the way they conduct their scrutiny work.

Importantly, these ways of practicing parliamentary human rights scrutiny have the effect of repeatedly performing rights deliberations as both relatively simple and binary equations, eliding the complex dance of assessing human rights compatibility of proposed legislation. These acts of simplification can have potentially important implications, including shaping how subsequent human rights deliberations are performed over time. Put simply, the repeated use of reductive forms may have the effect of reducing how much time, energy, and consideration is put into human rights assessments. It may also create an impression among relevant decision-makers—and publics—that such rights assessments are simple rather than complex, and that they require less time and energy than other parliamentary deliberative processes do. The forms used in parliamentary human rights scrutiny may also convey the impression that rights assessments are easy, and that there should be little to no uncertainty, complexity, ambiguity, or ambivalence involved in

these deliberations. All of this has the potential to shape how human rights scrutiny is performed, and the resultant parliamentary debate on the human rights implications of proposed legislation.

## Conclusion: Human Rights as Movement

In this article, we have examined the practice of writing human rights scrutiny reports and its synergies with choreography and choreology in terms of repetition, improvisation and exhaustion, and form. Although novel, this method of examining human rights scrutiny reports sensitizes us to the movements that underpin the development of these reports—movements that are often lost in the static and definitive format of the reports themselves. As Jacob and Macdonald argue, "Bringing the embodied practice of dance . . . to the socio-legal study of material forms does not generate singular propositions in response to a singular question. Instead it pools insights . . . [that] interrogate the relation between law and the body, enrich the object of study, and may engender other artefects" (2019, 266). In other words, we need to be alive to the different insights that a movement-based analysis of legal forms can generate.

We find that there is a need to choreograph and calligraph parliamentary human rights scrutiny in ways that better embrace the complexity of the questions that legislators face in determining the rights compatibility of legislation. Such an approach would open human rights issues up for discussion, debate, and dialogue, rather than foreclosing them in rigid formats that preclude this. It could also have important implications for how publics and other public bodies—including parliaments and government agencies responsible for protecting human rights—conceptualize rights. If the way we choreograph and document rights deliberations was more expansive, detailed, and open, allowing space for complex assessments, ambiguities, and ambivalences to be made and laid bare, human rights compatibility may come to be understood as a complex assessment worthy of time and energy, and rights may themselves be taken more seriously by relevant duty holders tasked with respecting them. In other words, because of the inseparability and form and substance, we can transform how human rights are done and made through changes to the way we practice and document these scrutiny processes. All of this requires time and space, however, when so often work of this kind is rushed to avoid sheer exhaustion on the part of parliamentarians and others tasked with scrutinizing human rights impacts. It is important that we find ways to overcome the elements of time and tiredness as they relate to human rights scrutiny, and for relevant actors to give more thought to how this could be achieved.

As we stated at the outset, parliamentary human rights scrutiny is usually done in two ways: proponents of legislation will provide a statement setting out whether and how the legislation is compatible with human rights, and a parliamentary committee will report on the same. Though our focus has been on the latter, we want to turn briefly to the former, namely statements of compatibility. Recently, the United Kingdom Government proposed to abolish the requirement for statements of compatibility on the grounds that this will "allow and encourage innovative and *creative* policy making."[4] Although scholars have noted that "the statement of compatibility procedure was intended to create a mechanism for holding the executive responsible to Parliament" (Jackson 2007, 108), there has not been much focus on this aspect of the government's reforms. This may be because, as noted by John McEldowney, "committees and parliamentary watchdogs . . . are too often overlooked in the discussion of legal and constitutional provided by courts as a check on arbitrary power" in the British human rights system (2018, 217). However, it could also be because there is some force to the government's argument. Given their rigid format, instruments such as statements of compatibility allow limited creativity. Their overwhelming textuality restricts hesitance and demands definitiveness; their predominantly black and white coloration reflects a monochromatic vision of human rights; and despite their online presence, there is scant use of audiovisual elements to better inform understandings and contemplations of rights. We should also note that our interviewees tend to use creative or choreographic analogies to criticize the

human rights scrutiny process, for example, as "performative politics"; thus, for our interviewees, dance and other creative approaches represent a bad approach to doing scrutiny rather than a method for inspiration or insight. Conversely, as the first author has argued, "when freed from a choreographic/lawful direction, legal actors can move—in space and with one another—more freely, developing new relations" (Mulcahy 2021, 132), and, we could add, new approaches. Perhaps innovative approaches to assessing the human rights compatibility of legislation and reporting thereon might yield more creative and deeper ways of understanding how legislation impacts human rights.

It is also worth noting that alcohol and other drug legislation, which is the broader focus of this project, can itself often constrain freedom of movement, whether that be through detaining bodies to conduct alcohol and drug screening tests, holding bodies to search for drugs, or restricting the body from moving in certain ways (e.g., driving a vehicle) while consuming or being under the influence of alcohol or other drugs. In these cases, limitations of the right to free movement are routinely justified on the basis of protecting the safety of bodies. As much as the routine of justifying rights limitations is trained into the body through repeated movements, it also has the effect of constraining the movements of other bodies. To turn back to Hewitt, we must think of "dance not simply as a privileged figure for social order but as the enactment of a social order" (2005, 2), and thus the dance of human rights scrutiny is not simply emblematic of a sociopolitical ordering of human rights but also enacts social order on human bodies. Just as consideration has been given to more humane approaches to dance research and practice (Jackson 2022), so too must we consider more humane or human-centered approaches to the practice of human rights scrutiny.

What we have sought to argue is that human rights are in movement, flow, and flux, as opposed to static or rigid. Further, distilling this movement into text and formatting devices has the effect of reducing the complex dance of human rights compatibility negotiations into a flat form that does not allow for nuance, ambivalence, ambiguity, or complexity. It collapses the different voices and arguments on human rights compatibility into one simple symbol and, in so doing, loses the opportunity to consider different approaches to and ways of thinking about human rights.

## Notes

1. Victoria, *Parliamentary Debates*, Legislative Council, 1 September 2020, 2524 (M. Gepp, Chair of the Scrutiny of Acts and Regulations Committee).

2. Parliamentary Committees Amendment (SARC Protection Against Rights Curtailment by Urgent Bills) Bill 2020 (Vic).

3. *Human Rights Act 2004* (ACT) s 13; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 12; *Human Rights Act 2019* (Qld) s 19.

4. Ministry of Justice, Human Rights Act *Reform: A Modern Bill of Rights – Consultation Response* (2022) p 26 (emphasis added).

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