

Human rights, human remains: forensic humanitarianism and the human rights of the dead*

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... tens of thousands of victims of war and catastrophes the world over have been able to mourn their dead, overcome grief and recover human dignity thanks to the contribution from forensic sciences to humanitarian action. – Morris Tidball-Binz (2012)

My contribution to this discussion of the contours and characteristics of contemporary humanitarianism is concerned with a particular, scientific, branch of it: what I call ‘forensic humanitarianism’.¹

Forensic humanitarianism is a distinctive variant of humanitarianism. It entails the exhumation of mass graves in the effort to establish, forensically, the individual and collective identities of the dead victims of mass atrocity, and the causes of their deaths. This effort became historically and politically significant in the later decades of the twentieth century in the context of determining the numbers, identities and cause of death of victims of state crimes and violent conflict, returning their bodies to family members, and contributing evidence to legal trials for crimes such as crimes against humanity and genocide. Key examples include: attempts to establish the identities of the dead victims of torture and enforced disappearance in Argentina in the mid-1980s; ongoing efforts to return human remains to families of the dead in the former-Yugoslavia in the long aftermath of the wars of the 1990s; the International Criminal Tribunal for Rwanda’s (ICTR) attempts

to do justice in the wake of Rwanda’s 1994 genocide; recent exhumations of clandestine graves in Spain, the legacy of its 1936–1939 Civil War; the (unsuccessful) trial for genocide of Guatemala’s former President Rios Montt in 2013; and current efforts by NGOs to establish the numbers and identities of victims of torture, murder, and enforced disappearance in the context of Mexico’s war against organised crime.

Broadly speaking, forensic humanitarianism makes the epistemologies and practices of scientific enquiry speak to, and within, the frameworks of humanitarianism and human rights in order to address two key questions: who are the dead and

how were they killed? In attempting to answer these questions forensic science, particularly forensic anthropology, has come to play a critical role in the adjudication of past atrocities and the amelioration of human suffering.

In what follows I advance a definition of the forensic humanitarian phenomenon, identify its central principles and practices, trace the historical, scientific and political conditions of its appearance, and conclude by arguing that forensic humanitarianism deserves particular attention because it addresses the dead as the subject of humanitarian concern and care, with the implication that we can argue that the dead, now, have human rights.

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Forensic humanitarianism: concept, characteristics, entrepreneurs

In this section I identify and characterise the forensic humanitarian phenomenon, outline its characteristics and describe its practices and agents.

Forensic humanitarianism conjoins two domains of meaning and practice: forensic and humanitarian. The term ‘forensic’ refers, in its contemporary incarnation, to the application of scientific knowledge and methodology to the resolution of legal problems. It denotes those scientific techniques deployed in the analysis of physical artifacts to establish facts or present evidence in a court of law. As such, the term belongs to, and simultaneously connects, two domains: the field (scientific enquiry) and the forum (the court as forum for the presentation of evidence) within which ‘things’ (in this case, human remains) are made to speak, or testify. As a consequence, the term ‘forensic’ invokes and unites science, law and the public forum. The power of the term owes something to its history and mercurial etymology. It has its roots in the Latin *forensis*, which pertained to the forum of ancient Rome where people gathered to conduct business and public affairs. The word entered English usage in the mid-seventeenth century and over time came to be almost exclusively associated with the court of law and the public presentation of evidence within the legal forum.

The term ‘humanitarian’ referred, in the eighteenth and nineteenth centuries, to a *type of person*: the social reformer publicly concerned with human suffering. Most notable examples include the abolitionists Olaudah Equiano, Elizabeth Heyrick and Thomas Clarkson; Anthony Ashley-Cooper and Robert Owen, who campaigned for humane working conditions in the factories and mines during the industrial revolution in England;² prison reformers such as John Howard and Elizabeth Fry; and campaigners, such as Philippe Pinel, for the improved treatment of psychiatric patients. Yet in the twentieth century invocations of ‘humanitarian’ more frequently denoted a *type of action* (either aid or military action) associated with saving lives, alleviating suffering and maintaining or restoring human dignity during, or in the wake of, social and political crises and natural disasters.³ Humanitarian action came to be driven by the protection of the ‘rights’ of those affected, such as the right to life

with dignity, including, although not exclusively, the right to life, the right to an adequate standard of living, freedom from torture, freedom to practise beliefs; the right to receive humanitarian assistance including food, water, sanitation, shelter and health services; and the right to protection and security in situations where the state lacks the will or ability to ensure the safety and security of people in areas of disaster or conflict, particularly refugees and internally displaced persons.⁴ The humanitarian orientation to rights was manifest and embedded in the post-1945 international legal regime – international humanitarian law (IHL), human rights and refugee law – which both constitutes and activates the rights of disaster and conflict-affected peoples *and* the responsibilities of humanitarian actors.⁵

Forensic humanitarianism inherits two defining characteristics from its parent fields: it both services law *and* it simultaneously seeks to advance humanitarian objectives. It connects the field (scientific enquiry) and the forum (law) in pursuit of these objectives in two ways:

- (1) *Adjudicative*: the scientific determination of identity of the dead and cause of death can come to constitute legal proof in the context of public legal enquiries into atrocity. As a consequence, forensic humanitarians claim to consolidate law and legal institutions “by providing tools to uphold the rule of law” (Doretto and Snow 2003, p. 304), and by uncovering “legally admissible evidence that will result in the conviction of those responsible for the crimes” (Kirschner and Hannibal 1994, p. 453). Examples of this endeavour are numerous, including the use of forensic expertise in the international criminal tribunals for the former-Yugoslavia (ICTY) and Rwanda, the permanent International Criminal Court (ICC), and some of the national tribunals that have made legal attempts to establish responsibility for past state crimes such as Argentina’s *ESMA* trial,⁶ as well as a host of truth commission enquiries into the perpetration of atrocities such as in South Africa, Argentina, Chile, and Peru.
- (2) *Ameliorative*: its humanitarian potential is pursued through the scientific identification of human remains. This aims to fulfil two humanitarian functions: “protecting the dignity of the dead” and “addressing the needs of

the bereaved” (Tidball-Binz 2012). First, as Tidball-Binz, forensic anthropologist working with the International Committee of the Red Cross (ICRC) puts it, scientific identification arises from our “shared responsibility for the dead, from which derives the humanitarian need for ensuring their proper recovery, management, analysis and identification, to protect their dignity and to prevent them from becoming missing persons” (Tidball-Binz 2012). Second, recovery and identification of the dead enables their return to families for proper burial which, potentially, facilitates grief. As the Argentine Forensic Anthropology Team (EAAF) argue, their work has a therapeutic dimension. They aim “to maintain the utmost respect for the wishes of victims’ relatives and communities concerning the investigations, and to work closely with them through all stages of exhumation and identification processes . . .” with a keen awareness that “the identification of remains are a great source of solace to families suffering from trauma caused by having a loved one ‘disappeared’”.⁷ And third, identification also facilitates the pursuit by families of the dead of the rights to truth, justice and reparation.

As such, forensic humanitarianism entails the application of forensic techniques to the *adjudication* and *amelioration* of human suffering.

Forensic anthropologists recover skeletonised remains and apply the principles of physical or biological anthropology in order to ascertain two things: (1) the identity of the remains, and (2) the cause of death, by analysing trauma to the skeleton. They sometimes draw upon the technique of forensic DNA analysis, or genetic fingerprinting, which proceeds by taking DNA samples. Genetic fingerprinting is predicated on the idea that DNA is unique and can thus answer, categorically, questions about biological identity,⁸ kinship and blood relations, and, by extension, place a suspect at a crime scene. These techniques together – skeletal and DNA analysis – have been deployed to establish the identities of dead victims of atrocities. A significant example of the development of DNA analysis and databases is the work of the International Commission on Missing Persons (ICMP) in Bosnia, which is engaged in a large-scale operation to recover and return the dead victims of the Bosnian

war to their families. Forensic DNA techniques have also played a key role in establishing the biological identities of the living victims of atrocity, most famously in cases of clandestine adoption in Argentina. During the military regime’s 1976–1983 “Dirty War” against its citizens, children born to women in military detention were taken from their mothers at birth (the mothers were killed shortly afterwards), “adopted” by military personnel and raised as their biological children. With the help of geneticists, the grandmothers of the missing established a movement for the recovery of their biological identities. They advocated for the first “grand-paternity testing” used in courts, originally based on kinship recognition testing using phenotypic blood cell and serum markers, and later incorporated DNA analysis when this became available for forensic use. Their work led to the establishment under national law of the Argentine National Genetic Data Bank in 1987 for the search of missing children. So far almost 120 of these children have been identified by drawing on genetic fingerprinting techniques (BBC 2015).

Today’s forensic humanitarians are, primarily, forensic anthropologists who work at the behest of multiple and varied agents such as state institutions like the truth commissions in South Africa and Argentina; international legal institutions such as the ICC, the ICTR and the ICTY; non-state organisations associated with humanitarian relief and human rights, such as the ICRC, the ICMP, Physicians for Human Rights (PHR) and a number of locally-trained but now internationally operating teams such as the EAAF, The Peruvian Forensic Anthropology Team (EPAF) and the Guatemalan Forensic Anthropology Foundation (FAFG); or at the request of the families of the disappeared such as Clyde Snow’s historic intervention in Argentina in the early to mid-1980s (which I discuss later in this article), and currently in Mexico where there are infrequent and (often deliberately) impotent official investigations into deaths and enforced disappearances. In Mexico, due to the absence of adequate official enquiries, widespread corruption and a lack of trust in state and legal institutions, families and forensic humanitarians such as the EAAF and EPAF drive mass grave investigations. The best known case to date is that of Ayotzinapa in which 43 students were kidnapped by police on 26 September 2014, handed over to cartel members and later killed (see Guillermoprieto 2014 and 2015). The official

investigation led by Mexico's Attorney General, Jesus Murillo Karam, concluded in January 2015 that the students were murdered by cartel members and that state security personnel were not responsible. The EAAF, who also worked on the case on behalf of the families of the dead students, contested the conclusions of the official enquiry citing irregularities in the investigation (EAAF 2015). In this context, forensic humanitarians are providing scientific refutation of official enquiries that attempt to deny responsibility for atrocities.

Forensic humanitarians resemble, in some ways, the "moral entrepreneur" archetype in Becker's classic criminological paradigm (Becker 1963). Moral entrepreneurs are reformer-crusaders (much like the nineteenth-century humanitarian type of person) driven by the conviction that their work provides the conditions for a better way of life. These convictions are manifest in a set of "field faiths" which underpin the work of forensic humanitarians. They claim that their work contributes to social and political betterment by: (a) *facilitating historical revision*, by scientifically reconstructing "the often distorted or hidden histories of repressive regimes" (Doretti and Snow 2003 p. 293), and by "synthesizing the frequency, location and demographic profile of victims across the continents" to create "a new, objective perspective on some of the most notorious, as well as forgotten, events of the 20th century" (Steadman and Haglund 2005, p. 24); (b) *consolidating law and legal institutions*, by uncovering "legally admissible evidence that will result in the conviction of those responsible for the crimes" (Kirschner and Hannibal 1994, p. 453); and thereby making "significant contributions to . . . the international justice system" (Steadman and Haglund 2005, p. 24); (c) *furthering humanitarian objectives*, by providing "solace to their families who are at last able to properly mourn and bury their dead" (Doretti and Snow 2003, p. 293); (d) *advancing political change*, because "forensic anthropological evidence may also contribute to strengthening democratic . . . institutions by providing new tools to uphold the rule of law" (Doretti and Snow 2003 p. 304); (e) *facilitating deterrence*, as "through forensic documentation and subsequent litigation, the knowledge that governments can be held accountable for their actions may act as a deterrent to such practices in the future both in Argentina and elsewhere" (Snow *et al.* 1984, p. 298).⁹

Whilst forensic humanitarians lack the absolutist inclinations of some of Becker's moral crusaders, they go some way towards fulfilling the paradigm insofar as their work and convictions are inflected with humanitarian inclinations and have driven new norms that have found their way into law. Ute Hofmeister, forensic anthropologist at the ICRC puts it like this: "if forensics is to help prevent future violations, it must fulfill a humanitarian objective: *it must enable people to exercise their right to know what has happened to members of their families*' (*emphasis added*) (ICRC 2009). This "right to know" has provided a critical guiding principle for forensic humanitarianism and is a reflection of the importance and role of families of the disappeared to its work. It is a norm now crucial to forensic humanitarian work and forms a cornerstone of its work and training. The "right to know" has also been a driver of a relatively new human right – the "right to truth" – adopted as a Resolution by the United Nations Commission on Human Rights in 2005 (UN Commission on Human Rights 2005).¹⁰ This development evidences "one major consequence of a successful crusade . . . the establishment of a new rule or set of rules, usually with the appropriate enforcement machinery being provided at the same time" (Becker 1963, p. 172).

Histories of a practice

Forensic humanitarianism has emerged out of several distinct but coincidental historical routes – humanitarian, legal-humanitarian, political and scientific – which I delineate in what follows. This section illuminates the historical field that has shaped forensic humanitarianism in order to show how the claims of the field are a consequence of, and inflected by, these histories and how, in turn, the field speaks to these various histories with respect to its adjudicative and ameliorative ambitions.

Humanitarian and legal-humanitarian pathway

The humanitarian pathway of development has a long and complex history, beginning with early nineteenth-century antislavery and missionary movements, to Cold War interventions in Biafra

and Cambodia, and to post-Cold War humanitarian interventions in Iraq, Somalia, Rwanda, the former-Yugoslavia and Libya (see Barnett 2011).¹¹ Humanitarian thought and practice has run through three distinct global periods, imperial, postcolonial and liberal, which have in turn inflected the moral imaginaries and the practical (or rather political) contours of humanitarianism itself. This history witnessed the appearance of the first international humanitarian organisation, the ICRC in 1863, and the subsequent development of a vast complex of international humanitarian organisations in the twentieth century.

However, this history is preceded by another, longer, intellectual history that can in part be narrated through Saint Augustine's thinking on just war in the early fifth century AD, some of the principles of which found legal articulation much later in the Geneva Conventions. It can also be narrated through the lens of Kant's *Perpetual Peace* ([1795] 1979) in which Kant developed the idea of a "cosmopolitan right" in order to argue that "a violation of rights in *one* part of the world is felt *everywhere*" (p. 93). The cosmopolitan right appears, thus, fundamental to the very idea of the humanitarian intervention.

I cannot do justice to this history here and will, instead, concentrate on one strand of international humanitarianism that is relevant to the evolution of forensic humanitarianism: the humanitarian *type of action* that came to prominence in relation to war crimes and the crimes of state. This historical strand is crucial to the development of forensic humanitarianism because it testifies to the appearance of the corpse as both subject of, and witness to, war crimes and crimes perpetrated by the state against its citizens.

I should note that in my focus on this historical thread, which is weighted towards a consideration of developments in the latter part of the twentieth century, I am conscious of appearing to reproduce, and thus reinforce, the "regular" histories of humanitarianism that concentrate on the post-Cold War period, histories against which Barnett (2011), rightly, writes. This emphasis is, however, unavoidable in the context of accounting for the emergence of forensic humanitarianism, because the phenomenon is itself a distinctive feature of late, or liberal, humanitarianism.

The ICRC holds a central place in this history as it is a key historical driver of contemporary

humanitarian ideals, legal development and forensic intervention and thus provides a sharp lens onto this cluster of issues.¹² Formed in 1863 in the wake of the Battle of Solferino, the ICRC was set up with the express purpose of formalising and regulating humanitarian intervention into war. In so doing, it inaugurated a set of enduring principles by which humanitarian action came to be guided: humanity, impartiality, neutrality, independence and universality.¹³ As well as generating a set of principles governing humanitarian action, the ICRC also stimulated the emergence of IHL.¹⁴ It was a key agent in the development of the First, and later, laws of Geneva¹⁵ and is the only institution explicitly named under IHL as a controlling authority.¹⁶ In turn, the mandate of the ICRC stems from the four Geneva Conventions of 1949. During World War I the ICRC amplified its concerns and started to address *the fate of the dead and the missing*, heralding a later twentieth-century emphasis on locating and identifying the dead, missing and disappeared.¹⁷

The ICRC thus animated the legal transformation of humanitarian action, and the legal-humanitarian complex becomes most relevant to this story in the wake of World War II when widespread and systematic atrocities assumed legal codification as "crimes against humanity" and "genocide". These new crimes found institutional expression at the Nuremberg and Tokyo trials from 1945 to 1946 and 1946 to 1948 respectively.¹⁸ Particular atrocities were, from that point on, constituted as heinous crimes within the broader discourse on human rights and their protection, and it was in this moment that the corpse began to bear *legal* witness to atrocities, thus opening up the arena for forensic intervention. Note, as Laqueur (2002) also argues, that this legal event does not mark the *first* moment within which the individual dead body came to bear witness to the substantial fact of atrocity – that honour belongs, dubiously, to the investigation of the Katyn forest massacre in 1940, discussed briefly later in this article – but it is the moment in which mass and systematic atrocities came to be constituted as *crimes*, and thus punishable by new laws and legal institutions set up for the purpose.

However, the foundations of contemporary forensic humanitarianism were laid later. In Argentina in 1984 a delegation of forensic scientists visited Argentina at the invitation of the

newly-formed truth commission (CONADEP) set up to investigate the fate of the thousands of disappeared during the country's period of military rule from 1976 to 1983, and at the request of the mothers of those disappeared. The EAAF, the first team of its kind, was established in the same year. It pioneered the development and application of forensic anthropological techniques to the investigation of atrocities and also became known for its role in training similar teams around the world, such as in Guatemala and Peru. The EAAF made the dead testify, powerfully, to atrocity. The EAAF called the dead into being as witnesses to mass crimes by using scientific techniques that made the dead body appear to speak with an authority that exceeded that of living witnesses. As Clyde Snow, legendary forensic anthropologist renowned for setting up and training the EAAF, has remarked with characteristic wit, "bones don't lie, and they don't forget" (Snow in Guntzel 2004). This is a powerful remark that speaks to the faith which both law and families of the disappeared invest in scientific determinations of atrocity.

The ICRC persists in its relevance to this story by turning its attention, in the last decade, to "missing persons": those people unaccounted for as a result of armed conflict or internal (state) violence. This work is directed towards bringing greater state accountability for missing persons, to assist families in their search and to alleviate their suffering, and to help prevent further enforced disappearances. This shift in humanitarian logics reflects, in part, the changing nature of warfare in the post-Cold War era in which the deliberate targeting of civilians through ethnic cleansing, genocide and enforced disappearances, such as in Bosnia-Herzegovina and Rwanda, has been a defining characteristic (Kaldor 2007). In 2003, the ICRC issued a call to attend to this "hidden tragedy", highlighting the "right to know" the fate of missing people. It emphasised the role of forensics and the proper handling of human remains to help to restore family links, and participated in drafting the International Convention of the Protection of All Persons from Enforced Disappearances which was adopted by the UN General Assembly in December 2006. The ICRC has been joined in recent years by multiple other organisations dedicated to the task of locating the missing and identifying the cause of death. Notably, ICMP and PHR conjoin similar humanitarian principles with forensic investigations.

Political pathway

The emergence of forensic humanitarianism is also intimately tied to and temporally coterminous with distinctive political conditions that have underpinned "the politics of the past" (Moon 2013). This concerns the ways in which states have reflected on past atrocities in three distinctive, and sometimes overlapping, contexts.

The first of these contexts relates to the field of transitology, in which incoming political regimes account for atrocities perpetrated by outgoing regimes. This context includes the wave of democratisation across Latin America from the 1980s onwards (Argentina and Chile are prominent examples); post-Cold War decommunisation in Eastern Europe; and South Africa's transition from apartheid in 1994, the exemplar of the politics of the past. The second set of political contexts concerns transitions from conflict from the early 1990s onwards, such as in El Salvador, Guatemala, Sierra Leone, Liberia and the former-Yugoslavia.

These two sets of cases, and the politics of the past that they have deployed, are typically described as "transitional justice" cases. They have been characterised by the deployment of a variety of techniques, norms and institutions of justice, from amnesties, pardons and lustration to punishment and reparations, from restorative to retributive justice, and from truth commissions to criminal tribunals.

A third set of accountability scenarios has opened up concomitantly with, and partly as a consequence of, the burgeoning power of transitional justice and its tropes of truth and reconciliation. In this set of cases, a more distant political past is the object of reflection by already existing liberal democracies. These include post-colonial reflections, such as in the Canadian and Australian accounts of the harms suffered by indigenous populations at the hands of settler states; reflections on the legacy of slavery in the US; and the revision of historic civil war, such as in the case of Spain. This cluster of cases I call "historical injustice" to mark them out as distinct from "transitional justice cases".¹⁹ Only one of these cases is relevant here, that of Spain, because it became subject to forensic intervention when the investigation of clandestine Civil War graves began in 2002.

This broad political environment has provided a fertile context for the emergence of forensic expertise, because establishing the truth about past crimes has become a powerful moral cornerstone of transitions to democracy, from conflict, and to the practice of “corrective history”, such as in Spain.

The politics of the past has been accompanied by the rise of new justice institutions – truth commissions and international criminal tribunals – which have, to some extent, generated new faith in the teleology of “the global justice project”. The forensic turn in humanitarianism has been deeply entwined with the appearance of new human rights, some of which have made their way into legal mandates. The “right to truth” is an important example and has emerged in part out of the experience of violence and political transition in the Latin American context, the rise of the truth commission institution, and also the promise that forensic humanitarianism makes to secure, scientifically and unequivocally, the truth about past violence.

Scientific pathway

A third, scientific, pathway witnessed increasing scientific interventions into humanitarian problems, and provided a constitutive force in the appearance of the forensic humanitarian phenomenon. The awakening of science to human rights was stimulated in the wake of World War II by the Nuremberg Doctors’ Trials which investigated and condemned medical experiments on human subjects by Nazi physicians and resulted in the Nuremberg Code in 1949. The Nuremberg Code advanced a ten-point code by which future human experimentation would be governed. It invoked the “laws of humanity” against which Nazi human experimentation had grossly offended, and which resonated profoundly with the newly minted “crimes against humanity”.²⁰ It introduced the doctrine of voluntary, or what later became known as “informed”, consent and was a landmark statement on medical ethics, simultaneously giving rise to modern bioethics and constituting one of the first human rights documents. As Annas puts it, “World War II was the crucible in which both human rights and bioethics were forged” (2009, p. 23).²¹

Whilst the Nuremberg Code provided the critical juncture at which science and human rights conjoined, forensic sciences also started to take

a prominent role in humanitarian work. Several constitutive historical events, and advancements in its professionalisation, progressed the science in a humanitarian direction.

Two forensic investigations of the Katyn massacres in Poland called upon the dead as witness to mass atrocity. In 1940, on Stalin’s orders, the Soviet Secret police executed around 4,000 Polish military officers taken prisoner during the Soviet invasion of Poland in 1939.²² They were buried in the Katyn Forest. When Germany announced discovery of a mass grave in 1943 it called for the establishment of an international commission to determine responsibility for the massacre. An ICRC-assisted German investigation followed, attributing responsibility for the massacre to the Soviets. The very same bodies were re-exhumed by the Soviets shortly afterwards in 1944 after they resumed control of the area. Their investigation reversed the conclusions of the earlier one, returning the blame to the Nazi regime.²³

The inclusion of Katyn in this history of forensic humanitarianism might seem controversial given the obvious and disturbing political utility of the exhumation.²⁴ However, I offer this detail in the spirit of genealogical enquiry, of mining the “conditions of possibility” of the appearance of historical phenomena. In this spirit, following Kant and Foucault, I would argue that it is important to note all historical instances, paradoxical *and* productive, in the appearance and development of any phenomenon. Genealogical history requires that we work against tracing the linear appearance of a field and its ideological contours and acknowledge instead, or at least as well, the accidental and sometimes contradictory forces at work in its emergence (Foucault, 1977). In this spirit, the insertion of Katyn into this history serves to demonstrate that it was a notable, if ironic, prototype of contemporary forensic investigations of crimes against humanity, and simultaneously evidences with clarity the entanglement of the interests of state with those of humanitarianism. In other words, Katyn provides a window onto “the political lives of dead bodies” (Verdery, 1999), and the ways in which diplomatic, military, political and ethical considerations enmesh at the site of the mass grave.

The expansion and professionalisation of the field was later consequential on the work of physical anthropologists during World War II and the Korean

war who identified the skeletal remains of soldiers missing in action overseas for the purposes of repatriation. Yet the field of forensic anthropology itself was not formally consolidated until the physical anthropology section of the American Academy of Forensic Sciences was founded in 1972, and the American Board of Forensic Anthropology established in 1977 (Nafte 2009, pp. 31–32). These institutions accredited forensic anthropologists, leading to further professionalisation and expansion of the field throughout the 1970s and 1980s.

In 1977, the American Association for the Advancement of Science (AAAS) created the Science and Human Rights Program and mandated it to engage scientists and scientific techniques with the enhancement and advancement of human rights work and in turn, to bring human rights norms into the conduct of science. From this point on, forensic anthropology began actively to engage with, and to intervene in, humanitarian questions by investigating matters related to crimes against humanity, and in the process developed a range of techniques by which to arbitrate them. The identification of the skull of Josef Mengele – Auschwitz’s “Angel of Death” hunted by the Israeli secret services since the end of the Second World War – provided a key moment in the development of the science, bringing it to international attention. Mengele escaped a legal forum, unlike his compatriot and fellow exile in Argentina, Adolf Eichmann who was executed after trial in Israel in 1962. Instead, and in death, Mengele faced a scientific forum when his remains were recovered in Brazil in 1984 (Keenan and Weizman 2012). The forensic team, led by Clyde Snow, identified Mengele’s skull by a process of “osteobiography”: the analysis of human remains alongside biographical details, photographs and medical records to reconstruct Mengele’s life and identity. The investigation advanced the field in new ways via the technique of face-skull superimposition, a videographic technique pioneered by Snow’s colleague, Richard Helmer, a German pathologist and photographer, in which a video image of a photograph of the subject in life is superimposed over a video image of the skull in order to determine a match between the two. The technique, historically important and since refined, increased the probabilistic odds of a positive identification of the dead body (see Joyce and Stover 1991 and Keenan and Weizman 2012).

The central event within which these humanitarian, political and scientific histories coalesced was Argentina’s search for its “disappeared”, in which Snow also played a key role. In 1984, just after the political transition, the CONADEP along with the mothers of the disappeared invited a delegation from the AAAS, comprised of Eric Stover and Clyde Snow, to investigate Argentina’s clandestine mass graves in order to identify the dead and the causes of their deaths. Snow assembled an Argentinean team of archaeologists, anthropologists and physicians and trained them in the analysis of skeletal remains using traditional archaeological and forensic anthropological techniques. Although he was not to know this at the time, Snow was training the prototypical forensic humanitarians, the EAAF, who went on to pioneer the application of forensic techniques to the documentation of, and solicitation of justice for, crimes against humanity. This moment brought together in powerful ways the multiple domains of idea and practice – political, scientific, humanitarian – defining forensic humanitarianism.

By the late 1980s, the science was deeply entwined with humanitarian work and was shifting from a phase of professionalisation to one of proliferation. The EAAF was a key agent of this shift. It was intensively active in training local teams in Chile, El Salvador, Peru, Guatemala (whose experts went on to assist Spanish teams in their recovery of remains from Civil War graves), and the Philippines, as well as training many more students, professionals and activists who went on to apply forensic science to human rights work globally. The EAAF has since worked in nearly 30 countries throughout the Americas, Asia, Africa and Europe, and for major legal institutions such as the ICTY and has been described as the “true cornerstone” in the development of global forensic humanitarianism (Tidball-Binz 2012). In addition, during the late 1980s and 1990s, PHR and Amnesty International were amongst other human rights NGOs that started to employ forensic experts in their own investigations of human rights abuses.

Legal developments in the 1980s contributed to the professionalisation and expansion of the science. In 1986, the Minnesota Lawyers International Human Rights Committee drafted guidelines outlining methods for investigating crimes against humanity. The Minnesota Protocol, adopted in 1989 by the UN, provided a model for investigating

extra-legal, arbitrary and summary executions, and carrying out autopsies, disinterments and analysis of human remains within the framework of international human rights standards. The Manual became a blueprint for other UN documents on forensic sciences, including the *UN Manual for the investigation and documentation of torture*, also known as the *Istanbul Protocol* (1999), and also for the first UN Resolution on human rights and forensic sciences, adopted by the UN Commission on Human Rights in 1992.²⁵

Throughout the 1990s, the inauguration of a number of truth commissions and ad hoc criminal tribunals, some of which had their own forensics units, provided a rapidly expanding set of official institutions at the behest of which forensic anthropologists investigated state crimes and violent conflict, such as in the Balkans in the early to mid-1990s and the 1994 genocide in Rwanda. Efforts, still ongoing, to recover the missing in Bosnia spurred the development of forensic practices of recovery, management and identification of the dead. For example, the ICTY's Office of the Prosecutor conducted an extensive exhumation programme drawing on the expertise of its international Forensic Team comprised of around 50 members drawn from various countries and disciplines. The Balkans crisis also stimulated the emergence of a new international organisation, the ICMP in 1996, dedicated to locating and identifying the missing from the conflict. The ICMP has conducted the world's largest missing persons DNA testing programme, having successfully tested more than 50,000 bone samples and established a database of almost 100 family DNA profiles to support the identification of almost 20,000 missing persons.²⁶ A further development in 2002, the establishment of the permanent ICC, saw it develop its own forensic unit which further confirmed the role of forensic expertise in the investigation of crimes against humanity.²⁷

To conclude this section, the ideas and interests at work in legal-humanitarianism, transitional politics, and the application of science to human rights provided a fertile condition for the unification of these areas of activity in the post-war period. These historical co-ordinates – legal-humanitarian, political and scientific – are marked by distinctive “elective affinities” (Weber 1958, pp. 91–92). For instance, the principles of neutrality and independence are shared in particular and historically by

both science and humanitarianism. Coupled with an escalating faith in law and its institutions to settle matters of political significance, these affinities facilitated the convergence of these diverse spheres of activity and ideology *and* the conditions for the appearance of forensic humanitarianism at their intersection. As a consequence, forensic humanitarianism is practised at the junction of, and in dialogue with, law, politics and humanitarianism, making it the result of “different practices of creating and warranting knowledge in different domains” (Knorr-Cetina 1999, p. 246). As such, forensic humanitarianism is indivisible, rather than separate from, those histories: the field and the field claims are radically shaped by them.

Human rights, human remains

Forensic humanitarianism bridges what Barnett (2011) describes as two classic humanitarian impulses: “emergency humanitarianism”, which is dedicated to immediate relief from suffering, and “alchemical humanitarianism”, which is directed towards transforming the conditions that lead to suffering. Together, these impulses are at the heart of contemporary humanitarian action. Forensic humanitarianism bridges these humanitarian inclinations through: (a) its ameliorative aim, providing solace to families by recovering and identifying human remains and establishing the cause of death of missing family members; and (b) its adjudicative aim, bolstering the norm of punishment for crimes against humanity by providing scientific evidence to support the prosecution of perpetrators, contributing to accountability and strengthening the institutions (particularly legal ones) that underpin democracy. Thus forensic humanitarianism is firmly placed within the broader tradition of humanitarian action by being distinguished, driven and governed by the emergency and alchemical proclivities.

More controversially, forensic humanitarianism goes beyond both emergency and alchemical mandates by expanding the range of subjects towards whom humanitarian intervention is directed. Namely, it configures not only the living but also the dead as the subject of humanitarian concern and object of intervention.

This begs us to consider the vexing question of whether the dead, now, have human rights.

Arguments about the *rights* of the dead have, traditionally, been conducted within the fields of law and medical ethics in relation, respectively, to property rights (see Smolensky 2009), and organ and tissue donation (Boddington 1998; Emson 2003; Harris 2003; and Savulescu 2003). Attempts to establish the *human rights* of the dead have generated mainly philosophical interest so far, but they have also eluded such justification (see Rosenblatt 2010).

I would suggest that this question might, instead, more fruitfully be explored sociologically, and specifically empirically. That is to say, *we can assert that the dead have human rights insofar as people act as though they have rights*. That is to say that insofar as there are social conventions and customs that confer rights (and *human rights*) upon the dead, and insofar as these conventions shape social practices, then the claim can be sustained. After all, human rights is as much a practical activity as it is one of principle and we can argue that human rights “exist” in the world insofar as people behave in accordance, and can be observed to behave in accordance, with the principles it sets out. That is to say, human rights are “social facts” (Durkheim [1895] 1982): values and norms that shape and constrain human action that can be observed and documented.

An immediate and obvious problem arises: the dead cannot be rights claimers, and neither can they be bearers of responsibilities. But, I would argue, they can be seen to be rights *holders* insofar as the living behave as if they have obligations towards the dead, treat them as if they have rights, and confer rights upon them *in practice*. It thus becomes necessary to enquire into the *protocols and practices* upon which this activity is built, and the *principles* that confer rights upon the dead.

Evidence of such principle and practical activity is historic, abundant and absolutely central to humanitarian activity. Formal humanitarian practice is governed by IHL which provides legally binding rules (rules 112 to 117) that regulate the treatment of the dead, specifically the search for, collection, treatment, return, disposal and identification of the dead in the context of armed conflict (ICRC 2005: 407). These rules have a distinguished lineage. They are derived from the 1907 Hague Convention, the 1929 and 1949 Geneva Conventions and Additional Protocols of 1977, and the Statute of the ICC. Strikingly, they apply the same obligations to the dead as to certain categories of

the living. For instance, and notably, the obligation to search for and collect the wounded, sick and shipwrecked “also extends to the dead”.

The obligation to search for and collect the dead is claimed, within these rules, to derive from the principle of “respect for every dead” (408). The prohibition against despoiling or mutilating the dead is covered by the war crime of “committing outrages upon personal dignity” (409). The practice of returning the dead and their personal effects “is in keeping with the requirement of respect for family life” (412). IHL articulates the dead as family members, and their “right treatment” overlaps with respect for family life (Customary IHL rules 105 and 117). IHL stipulates that the dead “must be disposed of in a respectful manner and their graves respected and properly maintained” (rule 115: 414). This rule “reflects a general principle of law requiring respect for the dead and their graves” (416). There is some interesting detail here, including requirements that the dead be buried according to rites prescribed by their religion, that they may be cremated only in exceptional circumstances, that they be buried in individual and not collective graves, and that war graves be grouped according to nationality where possible. These stipulations imply a respect for the customs and beliefs of the dead *held in life*, and also for the beliefs and customs of the living members of the communities from which the dead person came. Finally, IHL stipulates that the dead *must be identified* prior to their disposal (rule 116: 417).²⁸ IHL’s regulatory norms, and proliferating forensic humanitarian practice, have underpinned the development of further norms governing its practice. For instance, the Interpol General Assembly of 1996 on disaster victim identification stipulated that “human beings have the right not to lose their identities after death” (ICPO-Interpol 1996).

The principles of “respect” and “dignity” underpin, shape and dominate the protocols governing humanitarian treatment of the dead. These principles tell us something about the social importance of the dead and are reflections of widespread social norms older and more pervasive than those of IHL which, in turn, reflects and objectifies those norms. That is, it turns them into the objects of legal administration. The principle of “dignity” is of particular interest here insofar as it is absolutely central to the idea of the human that is elaborated in the central human rights document, the

Universal Declaration of Human Rights (UDHR).²⁹ The UDHR (UN General Assembly, 1948) “recognises” (constitutes) “the inherent dignity of all members of the human family”.

IHL protocols require that the dead be treated *as if they have rights* – or at least, and more specifically, *as if they have the right to dignity* – and they require that the living act in ways that are concordant with this belief. As a consequence, whilst it would be a nonsense to suggest that the dead can be fully and comprehensively invested with human rights (most human rights, of course, are entirely irrelevant in death), we can argue that the dead, within these legal codes, are understood to have at least one, *residual*, human right: the right to be treated with dignity. I use the word “residual” here deliberately in reference to two things: (a) the dead body as what is left over, or is “remaining”, of the human in life; and (b) what remains of human rights after death.

So much for protocols but what about practice? These regulatory norms profoundly shape the practice of forensic humanitarianism. As Tidball-Binz notes, our “shared responsibility for the dead” underpins the “humanitarian need for ensuring their proper recovery, management, analysis and identification, to protect their dignity and to prevent them from becoming missing persons” (Tidball-Binz 2012). This comment identifies the forensic practices – recovery and management of human remains, analysis for the purpose of establishing the cause of death, and identification – and the manner in which these are now carried out that are claimed to “protect the dignity” of the dead. The ICRC, as other forensic humanitarians, sets out the operational practices for recovery and identification of the missing, including *ante mortem* data collection, the treatment of graves, exhumation and autopsy protocols, the recording of *post mortem* data and identification of human remains (ICRC 2003). It emphasises the imperative of treating the dead with dignity and that “at all times” forensic practice must respect the “dignity, honour, reputation and privacy” of the dead (ICRC 2003, p.131). *The practice of identification must be singled out here: in a sense, it can be seen to restore personhood in death.*

Humanitarian action towards the dead has not been without controversy. In the early years of the ICRC’s forensic unit (from 2004) “many . . . in the ICRC were still unfamiliar with forensics and unimpressed with the idea of humanitarian action

for the dead” (Tidball-Binz 2012). That this attitude has now changed is testimony to “results coming from the field, which proved . . . the . . . value of forensic sciences for protecting the dignity of the dead”.

Conclusions

In this article I have identified, defined, and characterised a relatively recent, distinctive, and now burgeoning humanitarian practice. In so doing, I have shown how forensic humanitarianism is intimately linked to the broader humanitarian project through its ameliorative and adjudicative ambitions. I have also historicised the emergence of this phenomenon, demonstrating how it appeared at the conjunction of various historical pathways of development – humanitarian, legal-humanitarian, political and scientific – that have, in turn, inflected the claims of the field. Finally, I argued that the practice of forensic humanitarianism sustains the claim that the dead have human rights, or at least *one residual human right*: the right to dignity.

I want to make one brief and final note which points to radical and potentially new directions in this field. The global reach and success of the forensic humanitarianism, and in particular its close work with the families of the disappeared, has invigorated new and progressive sites of engagement with forensic techniques. Forensic science is now providing the means through which new contestations of state power are taking place. In Mexico, where around 150,000 people have been killed and another 27,000 disappeared since the government declared a war against organised crime in 2006, there is an unusual degree of forensic literacy amongst families of the disappeared and a faith in its ability to provide invaluable information about the fate of missing family members.³⁰ At the same time, there is also a widespread lack of faith in official forensic investigations due to the high degree of state corruption and almost complete impunity. The Ayotzinapa investigation provides a window onto the near absolute failure of the state to investigate and prosecute the perpetrators of atrocity. In this context, a group of families of the disappeared formed the first ever citizen-led forensics organisation in 2014. *Gobernanza Forense Ciudadana* put basic forensic DNA collection techniques into the hands of the families of the disappeared in order to generate a DNA database

that might be used to identify the many unidentified dead. This model provocatively contests the regular centres of expertise and control of forensic techniques, and, albeit controversially, is breathing life into a different, more radical, model of forensic

engagement with human rights and humanitarianism. This model emanates not from the state or from traditional humanitarian institutions, but issues instead from a politics of suffering, solidarity and citizen activism.

Notes

*I am grateful to Iain Wilkinson and other participants in the ‘Understanding Modern Humanitarianism’ workshop at the Social Trends Institute in Barcelona, 8–10 January 2015, at which an earlier version of this paper was presented. My thanks also to Dejan Djokic for his advice.

1. I first used this term in a paper entitled “Forensic Humanitarianism and the Politics of the Grave” presented at the Manchester University workshop “Towards a criminology of mass violence and the corpse”, on 6–7 November 2014. At that workshop, Ian Hanson, forensic anthropologist with the International Commission on Missing Persons (ICMP), introduced me to Tidball-Binz’s idea of “humanitarian forensic action” (2012) and I am grateful to him for that.

2. Engels famously attested to the squalid living conditions of workers in the slums of England’s new industrial towns ([1844] 1973).

3. I do not wish to imply in my analysis here that the humanitarian type of person and humanitarian action are neatly bounded and separate historical phenomena. Whilst humanitarianism came to be strongly associated with the humanitarian *type of action* in the latter part of the twentieth century, it also predates this period, most notably with the appearance of the International Committee of the Red Cross (ICRC) which was set up in 1863 to care for the war wounded in the wake of the 1859 Battle of Solferino, the second war of Italian independence from the Habsburg

Empire. In addition, the twentieth century has its own humanitarian *type of person*, the most recent incarnation of which is the “celebrity humanitarian” (see Chouliaraki 2011).

4. For a useful summary of these rights see The Sphere Project’s *Humanitarian Charter and Minimum Standards in Humanitarian Response* (2011). The Sphere Project was initiated in 1997 by a group of NGOs and the Red Cross and Red Crescent Movements to develop a set of universal minimum standards in core areas of humanitarian response and to enhance the accountability of humanitarian actors.

5. Yet, although it is beyond the parameters of this piece to go into these debates, the arena of humanitarian action is plagued by questions surrounding the use of force in its furtherance. Prominent and controversial examples include the so-called “military humanitarian interventions” in Iraq, Somalia, Rwanda, Bosnia and Kosovo in the 1990s (see Wheeler 2000).

6. On 28 November 2012, the most significant trial to date in Argentina began. It focused on crimes committed during Argentina’s “Dirty War” at the Superior School of Mechanics of the Navy (ESMA) from 1976 to 1983. During this period around 30,000 people were killed in Argentina and the ESMA was used as a secret detention and torture centre for political prisoners. The trial was originally set up to try 88 defendants in cases involving around 800 victims.

7. See http://eaaf.typepad.com/founding_of_eaaf/.

8. Although, as Hoeffel, amongst others, has argued, this is a flawed assumption (1990).

9. I identified an earlier version of these themes in my analysis of professional and training literature in the field of forensic anthropology in its application to atrocity investigations (Moon 2013).

10. It invoked the 1949 Geneva Conventions and the Protection of Victims of International Armed Conflicts (1977 Protocol) which recognises the right of families to know the fate of their relatives.

11. This list is not meant to be exhaustive but indicative. This “list” simply picks out some of the key moments in which interventions have been made in the name of humanitarianism. Unfortunately, I do not have the space to go into the various controversies around the ethics and politics of interventions that operate in the name of humanitarianism (see instead Asad 2014).

12. It is beyond the remit of this article to give a comprehensive history of the ICRC. For a comprehensive account see Forsythe (2005).

13. “Neutrality” is one of its most widely criticised principles. See the exchange between Forsythe (2006) and Warner (2006) for some insights into this.

14. Also known as the law of war, or the law of armed conflict.

15. The Geneva Conventions establish the standards of international law for the rights and protections afforded to sick and wounded soldiers, prisoners of war, and civilians in and around war zones. The first Geneva Convention followed Solferino in 1864 and was later replaced by the Geneva Conventions of 1906, 1929 and 1949.

16. This means that it has a legal right to visit anyone captured in relation to an international armed conflict, including situations of occupation, on the basis of the Geneva Conventions and their Additional Protocols (GC III, Articles 9 and 126, GC IV, Articles 10 and 143, AP I Article 81).

17. I am making a deliberate distinction between “the missing” and “the disappeared”. “The missing” covers those missing in action (MIA) during conflict, while “the disappeared” refers to those missing or killed in the context, usually, of state crimes against citizens such as during Argentina’s “Dirty War” or during Pinochet’s rule of Chile from 1973 to 1990. “Enforced disappearance” is a crime that emerged out of Latin American experiences of authoritarianism, and is now firmly lodged in the lexicon of “crimes against humanity”.

18. These crimes found later institutional invigoration within a number of ad hoc and permanent institutions: the ICTR, the ICTY and the formal institution of the permanent ICC, the Special Court for Sierra Leone, and the trial of Cambodia’s Khmer Rouge by the Extraordinary Chambers of the Courts of Cambodia (ECCC), all of which breathed new force into these categories of crime.

19. I insist on the distinction between “transitional justice” cases and those cases of what I call “historical injustice”. This distinction is offered as an important antidote to the way in which truth, reconciliation and reparations

practices in Australia and Canada in particular are often understood within the framework of the transitional justice phenomenon. However, the term “transitional justice”, by definition, denotes justice practices that take place in the context of political transitions from authoritarianism or from conflict and reflect upon an immediately preceding period of violence. Yet it has come to be applied promiscuously to a host of justice practices that are happening in already existing liberal democracies that are not transitional in any recognisable sense. As a consequence of its over-extension, the term transitional justice has lost much of its analytical traction. The term has become entropic whilst, paradoxically, its practical power has been amplified by the extensive entrepreneurial activity around it. In short, the term has become a victim of its own success and, I would argue, begs critical re-evaluation. It has been claimed, anecdotally, that Spain *does* sit within the cluster of cases known as transitional justice cases because Spain’s transition to democracy is incomplete. However, this also begs the question of *when* transition to democracy is complete, and whether any democracy is “complete”. I am conscious that the case of Spain does not sit easily within the “historical injustice” cluster of cases. It is quite clearly an outlier, and in many respects sits outside both clusters. I have thus here only provisionally situated the case within the “historical injustice” cluster for three reasons: (1) it entails a reflection on past violence by a well established liberal democracy; (2) it reflects on a period of violence that occupies a place in historical memory rather than being in the immediate past; and (3) redress involves primarily memorial practices and historical revision rather than the address of the direct victims and perpetrators. Note that Waldron has also used the term “historic injustice” and Torpey the term “historical injustices” (Waldron 1992 and Torpey, 2003) in

reference to settler state reflections on colonial violence, and US reflections on the slave trade.

20. “Crimes against humanity” were constituted legally by the International Military Tribunal on 8 August 1945. They make their first appearance in Article 6 of the Nuremberg Charter which inaugurated the Tribunal, setting out its jurisdiction, principles and powers.

21. The Nuremberg Code gave way to the World Medical Association’s Declaration of Helsinki, June 1964, which further developed ethical principles for medical research involving human subjects and identifiable human material and data. One of the arguments advanced for Helsinki taking precedence over the Nuremberg Code is the “guilt by association” argument, making the Nuremberg Code unpopular as a document with scientists, particularly medics, which may have contributed to its failure to make its way into national laws (Caplan 1992). Its suppression was also politically expedient during the Cold War when the US carried out radiation research on human subjects without consent (Annas 2009, p.32). This small history of the Nuremberg Code demonstrates the interplay of ethics and power resulting in both the development and then suppression of norms that were thought to be imperative in advancing the “laws of humanity” in the wake of World War II. It also provides a window onto the social and political field of struggle within which science and scientific codes are constituted and deployed.

22. Two other burial sites revealed that a total of around 25,000 Polish prisoners of war were killed in total.

23. The Soviets continued to deny responsibility for the massacres until 1990 when they formally acknowledged and condemned the massacres and their subsequent concealment.

24. However, note also that the ICRC acknowledges Katyn as a constitutive event in the history of forensic interventions into humanitarian crises (see Debons *et al.* 2009).
25. The Resolution recognised the value of forensic sciences for human rights and humanitarian investigations and called on states to support their development and implementation. The UN set up a global list of forensic scientists and institutions available to participate in UN-led investigations, an arrangement that has been copied by other intergovernmental bodies such as the Organization of American States and the Council of Europe (Tidball-Binz 2012).
26. See the ICMP statement on its technical capacity: [http://www.icmp.int/what-we-](http://www.icmp.int/what-we-do/technical-assistance/standing-capacity/)
- do/technical-assistance/standing-capacity/.
27. The Court's Prosecutor, Luis Moreno Ocampo, was an important personality behind the forensic unit as he had served as Deputy Prosecutor for the trials of the military *junta* in Argentina and had first-hand experience of the value of forensic input into those trials (Tidball-Binz 2012).
28. Notably, the era of mass industrialised slaughter heralded by World War I generated a new memorial practice, initially in France and Britain: "the tomb of the unknown soldier". These memorials were dedicated to the unidentified war dead, and to the common memory of soldiers killed in war. This practice arose in relation to, and perhaps in compensation for, the practical impossibility of identifying, of naming each and every war dead. I am grateful to Harriet Gray for reminding me of this practice.
29. Although I must point out an obvious historical anomaly: the UDHR was not the midwife to the concept of dignity. It is an idea in law that predates that document, as I have illustrated. That said, the era of forensic humanitarianism would perhaps not be recognizable (at least in its current form) without the UDHR and the concept of dignity that is central to it.
30. Interviews with Alejandro Velez from the human rights organisation *Nuestra Aparente Rendicion*, Ernesto Schwartz-Marin of *Gobernanza Forense Ciudadana*, and Mercedes Doretti, director of the EAAF in Mexico City, August 2015.

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