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ANTHROPOLOGY OF VIOLENT DEATH

THEORETICAL
FOUNDATIONS FOR
FORENSIC HUMANITARIAN
ACTION

Edited by

Roberto C. Parra
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Foreword

The loss of human life as a result of violence anywhere is a matter of central concern for my mandate as United Nations special Rapporteur of extrajudicial, summary, or arbitrary executions. I therefore welcome this publication which stands as a testimony and a landmark of the remarkable evolution of knowledge and experience gained over the past 40 years in forensic anthropology applied to human rights and humanitarian action, for the investigation, documentation, analysis, and understanding of lethal violence.

During the first systematic use in the early 1980s of forensic anthropology and related forensic disciplines to investigate human rights violations in Argentina, few at that time could have foreseen the remarkable contribution which those investigations would make to the development of forensic science, human rights standards, and humanitarian action.

Also, when we carried out those pioneering forensic investigations into human rights violations in Argentina using forensic anthropology, there was no reference made to forensic science in existing international human rights standards and documents. Similarly, there was no reference made to human rights or humanitarian investigations in the forensic science literature of the time. This would change dramatically in the years, which followed and led to the growing intertwining of forensic science with human rights and humanitarian action.

The remarkable synergy which followed those first steps, between evolving forensic sciences and international human rights and humanitarian law, made these developments possible. This was triggered and is still guided by the plight of victims of violence, in particular the relatives of those killed or “disappeared.” Above all, they are the result of the extraordinary and innovative contribution from a growing community of activists, including families of victims, on one hand; and academics on the other, including jurists, social scientists, and, principally, forensic scientists from the world over.

Today, it would be inconceivable to carry out any large-scale investigation into violent death resulting from violations of human rights, of international humanitarian law, or from natural causes, without the central concourse of forensic science, principally forensic anthropology; and the use of multiple human rights and humanitarian standards which have been developed since to guide such investigations. As a result, atrocities which in the past would have remained undocumented and often contested, with resulting impunity for perpetrators and the risk of recurrence, can today be reliably documented to help ensure the necessary reparatory and preventive measures.

Forensic science understandably plays a growingly important role in supporting the United Nations (U.N.) efforts to protect and promote human rights worldwide.

In particular, the Geneva-based United Nations human rights bodies, including the Human Rights Commission and its successor the Human Rights Council, as well as the Office of the High Commissioner for Human Rights and many U.N. human rights Special Procedures have made growing use, since the early 1990s, of forensic expertise in support of many of their activities, from the investigation and documentation of human rights violations to technical cooperation and advice for governments to help enhance their forensic capacity and improving compliance with human rights obligations.

At the same time, the United Nations has been instrumental in developing, promoting, and helping implement important standards of forensic best practices applied to human rights investigations. Some of these, such as the *Minnesota Protocol on the Investigation of Potentially Unlawful Death*, published by the United Nations in 2017,¹ are today considered as universal standards and are positively impacting forensic practice, research, and training worldwide.

It is also fair to say that the forensic profession has been enriched by its incorporation of human rights standards to a range of fields of forensic research and practice. An example of this is humanitarian forensic action, a novel discipline of forensic sciences applied to humanitarian activities, the development of which is rooted in the experience gained from forensic human rights investigations. Humanitarian forensic action is today recognized as essential for ensuring the proper and dignified management of the dead from armed conflicts and disasters and their reliable identification. For example, the *Guiding Principles for Dignified Management of the Dead in Humanitarian Emergencies and to Prevent them Becoming Missing Persons*, published in 2021 by the International Committee of the Red Cross,² reaffirms the central role of forensic science, in particular forensic anthropology, for the proper management, documentation, and identification of those who died a violent death.

In summary, against the background of the relatively recent upsurge of forensic knowledge, standards, and investigative capacity to document violent death, normative standards of justice included in national and international instruments also came progressively to the forefront, to help ensure truth, justice, accountability, and non-repetition. Forensic anthropology's contribution to these developments has been paramount.

Reminding us all about the millions of children, women, and men who have been victims over the last century of unimaginable atrocities that deeply shock the conscience of humanity, the Preamble of the Rome Statute of the International Criminal Court underlines the shared determination to put an end to impunity for the perpetrators of these crimes and to contribute to their prevention.³

Combating impunity and preventing atrocities worldwide requires, first and foremost, effective and reliable investigations, made possible today by forensic science applied to human rights investigations and humanitarian action.

Forensic anthropology, with its practical understanding of violent death, plays an essential role in this noble endeavor, for which this important and welcome publication will undoubtedly stand as an important milestone.

Morris Tidball-Binz⁴

UN Special Rapporteur on Extra-judicial,
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Notes

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2. Available at: <https://shop.icrc.org/guiding-principles-for-dignified-management-of-the-dead-in-humanitarian-emergencies-and-to-prevent-them-becoming-missing-persons-pdf-en.html> Last visited on March 1, 2022.
3. Preamble of the Rome Statute of the International Criminal Court. Available at: https://legal.un.org/icc/statute/99_corr/preamble.htm Last visited on March 1, 2022.
4. United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; adjunct clinical professor in Forensic Medicine, School of Public Health and Preventive Medicine, Faculty of Medicine Nursing and Health Sciences, Monash University, Australia visiting professor, Department of Forensic Medicine, Ethics and Medical Law, University of Coimbra; visiting professor, Department of Biomedical Health Sciences, Faculty of Medicine, University of Milano, Italy; directorate member of the University of Coimbra Centre for Humanitarian and Human Rights Forensic Research and Training.

Preface

“As damning as a signed confession left in the grave”: When the dead open the eyes of the living

Whenever we witness violent death brought about by contexts which fall outside the bounds of everyday experience – international crimes, extreme political violence, epidemics and natural disasters, the migration crisis – we find ourselves radically confronted with the realities of mass death and the complexity of the phenomena that give rise to it. These phenomena have been the subject of interdisciplinary research for some time now. It is only recently, however – in the last decade or so – that the social sciences have begun getting to grips in a thorough and systematic manner with the remains of the victims. For a long time, then, the complex issues surrounding dead bodies and their treatment were under-explored, and all the more so when it came to dealing with corpses on a mass scale. For is it not the case that, in the west at any rate, death, accursed and repressed, has long been the “central taboo” of the modern world, following centuries of what Philippe Ariès described as “tamed death”?¹

Following the end of the Cold War, the 1990s saw a proliferation of practices of transitional justice, the enshrining of the right to truth, the expansion of international criminal justice, the implementation of memory policies in the name of the “duty to remember,” the outlawing of genocide denial in most European states, to name a few. These developments went hand-in-hand with the theorization of the doctrine of the “fight against impunity” for massive violations of human rights, based on the famous Louis Joinet report of 1997.² It was also in the mid-1990s that what is now referred to as the “forensic turn,” to use the term employed by the historian Robert Jan van Pelt and reprised by Elisabeth Anstett and Jean-Marc Dreyfus, came about.³ This “turn,” made possible by the emergence of new technologies (specifically DNA testing) to facilitate the identification of dead bodies, normalizes exhumations as a method of dealing with human remains *en masse*. It mobilizes interdisciplinary knowledge, brings together a wide variety of actors (experts, survivors and victims’ families, civil society, NGOs, and national and international entities), and has unquestionably contributed to the expansion of human rights investigations and forensic humanitarian action across the globe. This should not surprise us given that, as the American forensic anthropologist Clyde Snow, a crucial figure who helped found the Argentinian Forensic Anthropology Team (EAAF) in 1984, so aptly put it at the dawn of the forensic turn: “The bones don’t lie and they don’t forget.”⁴ Indeed, bones defy time, denial, and forgetting.

This turning point, marked in particular by the increasing prosecution of human rights violations in the name of the fight against impunity, has favored the adoption of normative texts (at both domestic and international levels) setting out the need to document violent deaths, provide a framework for the handling of human remains, and preserve the traces of disasters. This need is constantly reactivated by the reality of ongoing situations that force us to pursue new approaches not only *in situ* but also on the paths of exile and in the lands of refuge. On every continent, human remains are being searched for, exhumed, gathered, stored, (re)buried, and where possible identified, whether this is carried out in the context of judicial or extra-judicial processes, by professionals or families, within or outside the scope of the law. First and foremost, the work carried out on and around these remains gives the families of the disappeared the opportunity to mourn their loved ones. Importantly, however, it also allows light to be shed on the causes of death, on the *modus operandi* of the perpetrators where applicable, and on a whole array of indicators that can tell us more about the specific and diverse character of the phenomena, whether criminal or natural, behind their presence.

This work takes on a unique dimension when carried out as part of investigations, such as those opened on March 2, 2022 by the office of the Prosecutor of the International Criminal Court (ICC) and, in parallel, by the UN Commission of Inquiry on the situation in Ukraine stemming from the Russian aggression, with a view to launching future prosecutions. All perpetrators, as Clyde Snow put it, drop “a trail of clues which, when properly collected, preserved and analyzed, are as damning as a signed confession left in the grave.”⁵ In this respect, the Ukrainian situation will perhaps bring about a paradigm shift in the international (criminal) system. For here we are seeing the beginnings of a model that sets out explicitly to achieve “effective coordination and communication” at the international level in support of “forensic and investigative actions on the ground,” through close collaboration with national authorities in order to “strengthen the impact of [the] collective work in establishing the truth.”⁶

Violent death, and the transversal challenges created by dead bodies and their treatment in these extra-ordinary contexts, is now at the center of multiple political, professional, and societal practices, sometimes working in synergy, sometimes at odds with one another, involving various instruments of hard and soft law, and a rapidly growing volume of scientific studies. Whether treated as a person, as a physical trace, or as a piece of evidence, the corpse – the legal status of which continues to raise many uncertainties – is the focus of much attention, of many demands, and of important strategic considerations. Whether present or absent, identified or anonymous, whole or fragmented, recognized or denied, exhibited or concealed, honored or desecrated, protected or instrumentalized, preserved or destroyed, it bears witness. At once an object and a means of

investigation, it provides eloquent testimony of the inevitable, indissoluble link between the living and the dead. It is this link, the fundamental questions it poses, the manifold practices to which it gives rise, and the different ways in which these are regulated, that form the central thread running through the present volume. A volume that is not only timely but also crucial to a better understanding of how and why the dead are asked to open the eyes of the living.⁷

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Right to Truth, Truth(s) through Rights:
Mass Crimes Impunity and Transitional Justice

Notes

1. Philippe Ariès, *The hour of our death* (transl. Helen Weaver), New York, Alfred A. Knopf, 1981.
2. Named after the French magistrate Louis Joinet, who produced the report for the UN High Commission on Human Rights: *Question of the impunity of perpetrators of human rights violations (civil and political)*, Final report prepared by Louis Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20, June 26, 1997.
3. Elisabeth Anstett and Jean-Marc Dreyfus ed., *Human remains and identification: mass violence, genocide, and the 'forensic turn'*, Manchester, Manchester University Press, 2015.
4. Interviewed by Jeff Guntzel, a *National Catholic Reporter* journalist (July 30, 2004, available online).
5. *Idem*.
6. Statement of the ICC Prosecutor, Karim Khan, announcing the deployment of a forensics and investigative team to Ukraine (42 investigators, forensic experts, and support personnel), which “represents the largest ever single field deployment by [his] Office since its establishment” (May 17, 2022, available online).
7. To quote the Bulgarian proverb: “The living close the eyes of the dead, the dead open the eyes of the living” (“Живите затварят очите на мъртвите, мъртвите отварят очите на живите”, transliterated “Zhivite zatvaryat ochite na mürtvite, mürtvite otvaryat ochite na zhivite”).

Series Preface

The forensic sciences represent diverse, dynamic fields that seek to utilize the very best techniques available to address legal issues. Fueled by advances in technology, research, and methodology, as well as new case applications, the forensic sciences continue to evolve. Forensic scientists strive to improve their analyses and interpretations of evidence and to remain cognizant of the latest advancements. This series results from a collaborative effort between the American Academy of Forensic Sciences (AAFS) and Wiley to publish a select number of books that relate closely to the activities and objectives of the AAFS. The book series reflects the goals of the AAFS to encourage quality scholarship and publication in the forensic sciences. Proposals for publication in the series are reviewed by a committee established for that purpose by the AAFS and also reviewed by Wiley. The AAFS was founded in 1948 and represents a multidisciplinary professional organization that provides leadership to advance science and its application to the legal system. The 11 sections of the AAFS consist of Criminalistics, Digital and Multimedia Sciences, Engineering Sciences, General, Pathology/Biology, Questioned Documents, Jurisprudence, Anthropology, Toxicology, Odontology, and Psychiatry and Behavioral Science. There are over 7000 members of the AAFS, originating from all 50 States of the United States and many countries beyond. This series reflects global AAFS membership interest in new research, scholarship, and publication in the forensic sciences.

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