



D69 Humanitarianism and Human Rights in the Context of Post-Conflict Forensic Investigations

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After attending this presentation, attendees will understand the distinctions that have been drawn between international forensic investigations serving the cause of human rights and those motivated by humanitarian concern for families of the missing. They will acquire background in the historical circumstances, particularly in Latin America and the former Yugoslavia, that lead to a perceived competition between these two purposes, as well as the roots of the human rights/humanitarian split in a broader, non-forensic context.

This presentation will impact the forensic science community by providing a critical look at how terms borrowed from international law and politics can ill-serve the specific context of scientific investigations of violence, and by fostering dialogue amongst practitioners about the basic terminology they employ in the field.

The current use of a humanitarian/human rights distinction for international forensic investigations tends to confuse practical questions of institutional and political constraint for questions of political philosophy. In Argentina, where the first wholly independent forensic team was created in the mid-1980s to deal with persons missing as a result of repression, impunity laws made it next to impossible to put the perpetrators of dictatorship-era human rights abuses on trial until decades later. The Argentine Forensic Anthropology Team thus focused its efforts on identifying individual victims and accompanying families in their grief—a set of priorities they shared with other organizations conducting forensic investigations throughout Latin America, where impunity laws have been widespread. On the other hand in the former Yugoslavia, initial forensic investigations into genocide in the 1990s were sponsored by the International Criminal Tribunal for the former Yugoslavia, which gave priority to prosecutors' need for evidence of war crimes. The situation was nearly the reverse of the one in Latin America, with many families of the missing and some forensic experts viewing the investigations as too focused on legal outcomes and not enough on the needs of families and other mourners.

A number of experts from the forensic field have proposed that this perceived tension between evidence-collection and identification be described as a difference between human rights and humanitarian priorities. In this view, collecting evidence for trials constitutes "human rights work," while the identification and repatriation of individual bodies is a matter of "humanitarian" concern for the families of the missing. A human rights/humanitarianism distinction that is itself hotly contested in other areas of international activism and intellectual discourse is thus altered and imported into the context of international forensic investigations.

Drawing on years of interdisciplinary research into international forensic investigations, this paper argues that the distinction exacerbates, rather than ameliorates, the perceived power disparity between international institutions and families of the missing. By using a purely legalistic definition of human rights that associates human rights investigations with war crimes trials, it ignores the many human rights claims that families of the missing have traditionally made in other venues—including some rights, such as the right to know the fate of the missing and the right to mourn, that are directly related to identification and repatriation efforts. At the same time, by associating the needs of families of the missing solely with the humanitarian tradition of political neutrality (as embodied by the International Committee of the Red Cross), it also minimizes the stake that families often feel in trials—which has even motivated some family members, such as members of Argentina's Mothers of the Plaza de Mayo, to forgo efforts at exhumation or identification until they are assured that all perpetrators will be held accountable. The association of human rights with court cases and humanitarian concern with identification thus proves to be too simplistic for the complex reality of post-conflict forensics.

The paper concludes by suggesting that evidence-collection and identification are both bound up with human rights as well as a number of other political projects and moral values, even when they are applied unevenly or at different times. Planning for their implementation in any given post-conflict context can only occur by drawing on experience in previous locations, understanding the specific limitations of the new context, and working directly with families of the missing to understand their priorities.

Human Rights, Post-Conflict, Missing Persons Identification