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SPEAKING FOR THE VOICELESS
Linking Forensic Anthropology and Transitional Justice.

Tamara Hinan

ABSTRACT
Forensic anthropology and transitional justice are two diverse disciplines, inextricably linked by a common central theme of human rights, and by parallel goals of establishing concrete evidence for use in retributive justice proceedings, by enforcing human rights standards, and by facilitating the establishment of ‘truth.’ In spite of practical limitations to the effectiveness of post-conflict exhumations, the contributions of forensic anthropology are crucial to reconstruction and reconciliation processes in transitional justice. These significant contributions are evidenced by its use in Guatemala, and its absence following the Armenian Genocide.
In response to calls for truth and justice in Argentina following the end of a brutal military dictatorship, American forensic anthropologist Clyde Snow was commissioned with the task of creating a team of forensic scientists to interpret physical evidence following human rights violations. This was one of the first opportunities to link the related but distinct disciplines of forensic anthropology and transitional justice. With visible parallel goals between the disciplines, forensic anthropology facilitates transitional justice; however, despite the clear connection, the two processes have yet to be formally integrated. Nevertheless, forensic anthropology does indeed contribute to the transitional justice framework by establishing concrete evidence for use in retributive justice proceedings, by enforcing human rights standards, and by facilitating the establishment of ‘truth.’ In spite of limitations to the effectiveness of post-conflict exhumations, these contributions have been evident in the use of forensic anthropology in Guatemala, and its absence following the Armenian Genocide.

TRANSITIONAL JUSTICE

Transitional justice is defined as “the process by which societies move either from war to peace or from a repressive/authoritarian regime to democracy while dealing with resulting questions of justice and what to do with social, political, and economic institutions.” The United Nations’ cites the field as encompassing “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and

achieve reconciliation.”

Thus, there is an inherent link between transitional justice and the international human rights discourse. Transitional justice is essential in societies recovering from the most abhorrent violations of human rights, such as Crimes Against Humanity, War Crimes, and Genocide.

Transitional justice originally focused solely on questions of criminal justice in times of transition. Questions of how to prosecute perpetrators of atrocity arose in juxtaposition with the development of the modern incarnation of the international human rights regime following the Second World War and the Holocaust. The first mechanisms of transitional justice were the Nuremburg and Tokyo Trials, designed to determine accountability for high-ranking Nazi officials, and crimes against Americans by the Japanese during the Second World War. However, emphasizing criminal justice alone has a limited capacity to contribute to societal reconstruction and reconciliation. It was soon established that moving beyond the past in these conflicted societies required more than simply the accountability and punishment employed in the criminal justice system.

74 Ibid.
75 Ibid.
As a result, the contributions of alternative conceptions of justice began to be considered beneficial to the transitional process. These alternative conceptions of justice divide the discipline into three paradigms: retributive, restorative and reparative justice. Retributive justice provides the foundation for the Western legal system, and can be defined as “justice that involves punishment of the wrongdoer.” Logically, the typical mechanisms of retributive justice are trials and tribunals, ranging from the highly formalized International Criminal Court (ICC) to less formal, community-based court systems, such as the gacaca courts in Rwanda.

Conversely, restorative justice emphasizes the rebuilding of relationships within the affected community. Rather than emphasizing the need to punish guilty individuals, restorative processes are victim-centric, recognizing the need of the victim and the community to participate in the justice process. Mechanisms also vary between the formal and informal realms. The most common international application of restorative justice is the truth commission, which strives to establish a narrative of truth regarding what occurred within the society.

77 Ibid.
78 Ibid.
80 Lambourne, 30.
Finally, reparative justice refers to “the embodiment of a society's recognition, remorse and atonement for harms inflicted.” Reparations are moral or material “compensation, restitution or reparation for past violations or crimes.” Reparations can be given from individual perpetrators to their victims (in cases of return of property, or a judicial punishment requiring the perpetrator to repay the victim), or in a more collective sense (in cases of official compensation from governments to victims and their descendants for past crimes). Material reparations can include financial compensation, or return of stolen property, whereas moral reparations may involve official acknowledgement or apology from individuals or governments to the victims.

In conjunction with the development of these three diverse concepts of justice, two major trends have developed in the modern framework of transitional justice, contributing to a more broad conception of the discipline. First of all, modern mechanisms emphasize a holistic approach to transitional justice that combines the three paradigms of justice and considers links between “issues of development, democracy, the environment, the economy, human rights, politics, peace agreements and justice before, at the time of, and post-transition.” The broadening of the scope of transitional justice appears to be the

84 Lambourne, 41.
85 Roht-Arriaza, “Reparations in the aftermath of repression and mass violence,” 123.
89 Ibid.
next step in the discipline, but is not without criticism. One such critic, Naomi Roht-Arriaza, suggests this broadening makes “the effort so broad as to become meaningless.”  

However, since post-conflict reconstruction requires cooperation in many different aspects of society, perhaps this criticism is overly harsh. Secondly, there is recognition of the crucial importance of local ownership in the transitional process. Since there is often a lack of trust in the national and international judicial systems, mechanisms developed from the bottom-up often have more legitimacy within the community.

Transitional justice strives to make a positive contribution to the rebuilding of the society. Yet scholars disagree on the form this ‘positive contribution’ takes. The UN suggests that successful transitional justice processes result in the achievement of accountability, justice, and reconciliation for the society. In addition, Wendy Lambourne suggests that transitional justice contributes to “sustainable peacebuilding and conflict transformation.” Furthermore, Hugo van de Merwe, Victoria Baxter and Audrey Chapman identify truth and acknowledgement as a means of both “legitimating ... the stability of the new regime,” and “promoting reconciliation.” While a variety of

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91 Ibid.
93 Roht-Arriaza, “Chapter 1,” 2.
95 Lambourne, 34.
contributing factors exist, transitional justice scholars appear in agreement that the ultimate desire for conflicted societies is that they achieve reconciliation. Three common goals on this path include truth, acknowledgement, and accountability.

FORENSIC ANTHROPOLOGY

Forensic anthropology and transitional justice share similarities at their most basic levels: both make use of the past to impact the future. The American Board of Forensic Anthropology defines the discipline as “the analysis of skeletal, badly decomposed, or otherwise unidentified human remains ... in both legal and humanitarian contexts... apply[ing] standard scientific techniques developed in physical anthropology to analyze human remains, and to aid in the detection of crime.”

As with transitional justice, forensic anthropology in the context of international human rights was initially developed in response to crimes committed during the Second World War. During the Nuremberg trials, scientists presented information regarding the excavation of a mass grave in the Katyn forest in Poland. The scientists asserted that they had determined that the individuals had been systematically killed during a short time frame, by German weapons. Because of the new, inexact nature of the evidence presented, defence attorneys were able to highlight inconsistencies in the evidence, and as a result, prosecutors were unable to prove beyond a reasonable doubt that the Nazis were responsible for the massacre, and it was later determined that the Soviet Union was responsible.

97 Ibid.
responsible for the massacre. 100 Nevertheless, this was the first recognizable implementation of forensic anthropology in an international setting, and demonstrated the relationship between forensic anthropology and transitional justice from the earliest days of both disciplines. By 1999, this relationship had been solidified, with “ninety-seven forensic scientists from twenty countries having traveled to the former Yugoslavia, Rwanda, and thirty other [transitional] countries to investigate the whereabouts of the missing and … [to] unearth mass graves.” 101 The Argentine Forensic Anthropology Team (EAAF), established by forensic anthropologist Clyde Snow in 1984 in response to the 9,000 disappeared individuals in Argentina, is the most recognized organization responding to human rights violations, and has been employed worldwide by various international tribunals and organizations. 102

The role of forensic anthropology has since become crucial to the transitional process forensic anthropologists form an integral part [of the international human rights regime], contributing their skills in the search, recovery and identification of human remains, work that is often a result of civil war and international armed conflicts. These professionals deal with the results of the aftermath, with the ultimate goal being to help bring justice to the victims and enabling the surviving relatives to go through the rites of passage of grieving and finally laying their loved ones to rest. 103

100 Ibid., 222.
103 Ferllini, 223.
As occurs in other types of forensic science, forensic anthropologists are able to determine the identity of the victims, the timing of their death, and the cause of death.  Forensic anthropologists are also able to establish an osteological profile of each victim, determining the age, sex, ethnic background, stature, and skeletal abnormalities. This profile may eventually allow for the identification of the victim. The determinations are made using analysis of the skeletal remains, information from the historical record, and archaeological analysis of the context of the burial. The context is especially relevant for victims of War Crimes, Genocide, and other gross violations of human rights, which frequently involve unmarked, undocumented, haphazardly created mass graves.

Forensic anthropology strives to accomplish a series of objectives, though by far the most important is the identification of the victim. Positive identification can occur in three ways: visually, requiring recognition of the remains by an individual familiar to the victim; circumstantially, involving the linking of contextual information from the burial with knowledge about the victim; or objectively, requiring confirmation using DNA, or medical records. A positive identification requires confirmation using one of the aforementioned methods, but whenever possible multiple methods are employed to achieve certainty.

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105 Doretti and Snow, 304.
106 Blau and Skinner, 450.
107 Ibid.
108 Doretti and Snow, 304.
110 Ibid.
FORENSIC ANTHROPOLOGY: A NECESSARY COMPONENT OF TRANSITIONAL JUSTICE?

Forensic anthropology makes necessary contributions to the transitional justice framework by facilitating the achievement of goals necessary for societal reconciliation, including the re-establishment of human rights standards, accountability, and acknowledgement. Forensic anthropology facilitates the achievement of these goals in each of the three paradigms of justice.

The most obvious component to transitional justice addressed by forensic anthropology is the provision of evidence in the judicial process, by assisting with “the identification of perpetrators for possible prosecution.” This facilitates transitional justice’s goal of accountability and is most frequently accomplished through the retributive paradigm of justice. Retributive justice strives to create judicial accountability for the perpetrator of a crime. Soren Blau and Mark Skinner assert that forensic anthropology in a post-conflict setting is primarily used “to obtain evidence for prosecution of alleged persecutors.” A report from the UN Office of the High Commissioner for Human Rights released in 2002 suggests that the increasing frequency of human rights violations “has provided more impetus to the need to resort to forensic and related experts to identify the victims.” Thus the international community is beginning to recognize the connection between forensic investigations and human rights violations.

111 Ibid.
112 Luban, 371.
113 Blau and Skinner, 450.
In criminal cases, forensic anthropology is primarily used to identify individual victims, and determine the circumstances surrounding their death.\textsuperscript{115} This can lead to the identification of the time of death, the weapon used in the crime, and as a result, to the identification of the killer. Following mass violations of human rights, this type of analysis is also used, with some success; however, in such circumstances, it is difficult to establish individual guilt for mass crime.\textsuperscript{116}

Judicial cases that reach the international tribunals or the International Criminal Court are responsible for the prosecution of systematic international crimes such as Genocide, Crimes Against Humanity, and War Crimes.\textsuperscript{117} These crimes, especially charges of genocide, are much more difficult to prove beyond a reasonable doubt, as it becomes necessary not only to establish time and cause of death, but also to establish a systematic pattern of abuse.\textsuperscript{118} For example, at the trial of Slobodan Milosevic for crimes committed in Kosovo, the prosecution had to establish proof “beyond a reasonable doubt that the crimes the Yugoslav forces committed in villages and towns across Kosovo were not merely accidental, but had been planned and were widespread and systematic.”\textsuperscript{119} Similarly, the crime of genocide requires proof of the “intent to destroy, in whole or in part, a national, racial, ethnical, or religious group.”\textsuperscript{120} Although witnesses may report perception of ‘intent,’ their testimony is frequently insufficient proof to satisfy an impartial judicial mechanism.

\begin{footnotesize}
\begin{enumerate}
\item Doretti and Snow, 304.
\item Stover and Shigekane, 86.
\item Doretti and Snow, 319.
\item Stover and Shigekane, 92.
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\end{footnotesize}
Forensic anthropology provides this kind of physical proof, thus substantiating witness testimony. Instead of identifying individuals, forensic anthropologists can shift their focus to “categorical identification” of remains, thus creating a profile of the typical victim based on ethnicity or race, and manner of death.\textsuperscript{121} If the majority of victims are of the same ethnicity, and were systematically eliminated with similar or identical causes of death, forensic anthropologists can scientifically ascertain the intent to eliminate this portion of the population. The osteological profiles can then be used in the judicial process to substantiate claims of genocide, or other systematic human rights violations, such as torture. The presence of physical proof of such crimes results in the ability of judicial mechanisms to convict perpetrators of their crimes, which facilitates transitional justice’s goal of achieving accountability.

Secondly, the re-establishment (or in some cases, initial establishment) of human rights standards is a crucial part of societal reconstruction, and thus also of transitional justice.\textsuperscript{122} Establishing human rights standards within a post-conflict state requires that past violations be addressed to facilitate the building of institutions that will prevent the occurrence of similar violations in the future.\textsuperscript{123} These reforms occur in institutions throughout the recovering society, such as the police, military and judicial systems,\textsuperscript{124} but are crucial at the level of national governmental reform. It is important to codify the language of international human rights into governmental doctrines such as the

\textsuperscript{121} Stover and Shigekane, 85.
\textsuperscript{123} Mark Malan, Sierra Leone: Building the road to recovery, Monograph 80, Institute of Security Studies, Pretoria. www.iss.co.za/Pubs/Monographs/No80/Contents.html, 40, (accessed April 1, 2010).
\textsuperscript{124} Malan, 40.
constitution to affirm the new administration’s commitment to upholding human rights, to the international community, as well as to the people of the state. This is a necessary step in regaining the trust of both international actors, and the domestic population,\textsuperscript{125} and has additional ramification on the international stage. For example, following the exhumation of mass graves in El Salvador, the American government was forced to reverse its previous position, that denied accusations that the Salvadoran army had committed a massacre.\textsuperscript{126} This type of international pressure can impact the state’s position in the international community.

Forensic anthropology upholds human rights standards by addressing past violations in a way that facilitates the upholding of human rights guarantees, such as those contained in the international conventions on the disappeared, and on torture. Not only does this support strengthen the human rights of the surviving members of a society by addressing past violations, but it also works to acknowledge violations that occurred against the human rights of the deceased. Yet, often, the information established during criminal proceedings is insufficient to satisfy the family’s right to know what happened to their relatives. However, since forensic anthropology contributes to fact finding in both legal and humanitarian contexts, it also is a key contributor to the upholding and re-establishment of the human rights regime within a post-conflict society.\textsuperscript{127} Finally, forensic anthropology makes significant contributions to restorative justice and social transformation. This is accomplished is by determining the truth. Truth is gained through the documentation of “crimes that were committed by entering the evidence into

\textsuperscript{126} Doretti and Snow, 308.
\textsuperscript{127} Doretti and Snow, 319.
Forensic anthropology is able to ascertain truth by creating a complete, unbiased historical record based upon scientific evidence. This evidence can be as simple as recording when crimes were committed, who the victims were, and what occurred during the time period in question. Such a timeline creates understanding within the society, and can facilitate dialogue. Since it establishes objective, scientific truth, rather than tying truth to historical memory or individual experiences, this can have a significant impact on the transitional justice processes within a community. The establishment of a mutually acceptable truth is the first step towards the creation of trust, or social capital within the society. An objective historical record also enables individuals to tell their own stories, thus fitting their own experiences into the collective experience of the society at large.

Secondly, forensic anthropology contributes to restorative justice by addressing the rights of families to recover the remains of their relatives. This process also relates to the establishment of truth, although it is different than the objective truth so important to the rebuilding of the community. Families suffer painful effects ranging from social, to psychological, to economic losses stemming from a lack of information regarding the fate of their missing loved ones. Due to this lack of knowledge, families often suffer from “ambiguous loss ... torn between hope and grief, unable to return to the past or plan for

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128 Ibid.
129 Doretti and Snow, 306.
131 Ibid.
132 Minow, 118.
133 Doretti and Snow, 312.
134 Crettol and La Rosa, 356.
the future.” In other words, families are stuck in limbo; unable to grieve for their loved ones because they lack of concrete proof of their deaths. They are also unable to carry out important rituals crucial to the healing process. Forensic anthropology can provide definitive answers for families, to facilitate the healing process. Moreover, permitting families to participate in the exhumation process, which has been prevalent in many Latin American forensic exhumations, can unite the community. Community participation turns the exhumations from a purely scientific venture into one of reflection and remembrance, acting as a commemorative, collaborative process of acknowledgement. Mercedes Dorretti states that although “recovering the remains is not enough to erase the pain of the past, it is a huge part of healing and a crucial form of reparations.” Thus, the establishment of a collective narrative not only contributes to restorative justice, and social transformation, but is also itself a mechanism of reparative justice. Reparations represent moral or material “compensation, restitution or reparation for past violations or crimes.” The return of remains to the deceased victim’s families for proper burial is a form of both material, and moral restitution. The physical return of the remains constitutes physical restitution. Similarly, the symbolic nature of this type of return, if employed in conjunction with an official acknowledgement or apology on the part of the perpetrators or government, may have a powerful effect upon the reconciliation process.

135 Stover and Shigekane, 95.
136 Ibid.
137 Ibid.
139 Lambourne, 41.
as it signifies an admission of the wrong committed, and potentially an acknowledgement on the part of those responsible.  

Some mechanisms of transitional justice, such as truth commissions, are designed to pursue the truth. Others, such as the ICTR and the ICTY are designed to achieve retributive justice. Martha Minow outlines the difficulty that arises in balancing the demands of truth and vengeance. As a result of this difficulty, many mechanisms only address one aspect necessary for reconstruction and reconciliation of a post-conflict society, thus limiting its effectiveness. As has been previously illustrated, forensic anthropology is in the unique position of being able to contribute to both truth and accountability. Thus, the integration of forensic anthropology into a state’s transitional process is highly desirable, and its role should be considered a necessary part of the transitional justice framework, and the reconciliation process.

CONTRASTING CASES: GUATEMALA AND THE ARMENIAN GENOCIDE

A brief analysis of the impact of forensic anthropology on the post-conflict cases of La Violencia in Guatemala and the Armenian Genocide illustrates the important link between forensic anthropology and transitional justice. This connection occurs because of the contribution of forensic anthropology to processes of acknowledgement, accountability, truth and reconciliation.

Guatemala

To provide a brief historical summary, the Guatemalan military committed a slow genocide against the country’s indigenous Maya population over the course of three

\[ \text{\footnotesize{141 Muñoz, 4.}} \]
\[ \text{\footnotesize{142 Minow, 53.}} \]
\[ \text{\footnotesize{143 Ibid., 25.}} \]
\[ \text{\footnotesize{144 Ibid., 91.}} \]
decades, between 1962 and 1996. Following decolonisation, a socio-economic gap developed between white, upper-class Guatemalans, and the impoverished Maya population, creating racial tension between the two groups. As racial and socio-economic divisions rose, radical Maya developed their own armed insurgency movement to counter the repression to which they were being subjected by the government and the military. As a result, the military began systematically targeting Mayan villages, under the guise of attempting to quell the insurgency. The Guatemalan Truth Commission (CEH) report estimates that “the number of persons killed or disappeared as a result of the fratricidal confrontation reached a total of 200,000,” with another 1.5 million displaced, internally, or to Mexico.

The Guatemalan Forensic Anthropology Foundation (FAFG) was founded in 1992 by Clyde Snow, founder of the EAAF. Despite persistent death threats to its staff, the FAFG began work prior to the official signing of the peace agreement in 1996, and the organization’s mandate stated that: “the FAFG helps the Guatemalan society in the reconstruction of its recent history and in the dignification of the victims.” The FAFG has continued to perform exhumations in Guatemala since the organization’s

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147 Ibid.
148 Ibid.
150 Ibid.
inception, and has repeatedly been assisted by other forensic anthropology teams. By 2006, reports indicated that approximately 5,000 victims had been positively identified, and their remains returned to their families.\textsuperscript{153}

Crucial to the reconciliation process in Guatemala is the ability for survivors to “discover what happened to their ‘disappeared’ loved ones in order to complete the grieving process.”\textsuperscript{154} This is directly stated as requiring the exhumation and identification of victims, so that they can be returned to their communities for traditional Maya funerary ceremonies.\textsuperscript{155} In cases where this has been possible, the return of victims to their families has made a positive contribution to the reconciliation process.\textsuperscript{156} However, Guatemala has also had unique experiences regarding the role communities have played in the exhumation process itself. During an exhumation in the 1990s in the village of Panzos, twenty-seven skeletons were exhumed from a mass grave, from which scientists were only able to positively identify two individuals.\textsuperscript{157} During the subsequent funerary ritual, families who had not been able to identify their missing members selected an unidentified individual, stating, “if this coffin doesn’t have an owner, it is ours.”\textsuperscript{158} This afforded families the opportunity to participate in the burial rituals, and to begin the

\textsuperscript{155} Ibid.
\textsuperscript{156} Ibid.
\textsuperscript{157} Stover and Shigekane, 97.
\textsuperscript{158} Ibid., 98.
healing process, despite not yet having discovered the fate of their ‘disappeared’ family members.\textsuperscript{159}

Forensic anthropology has made a series of positive contributions to the transition of Guatemalan society, allowing the identification of victims for some families, and the participation in healing rituals for others. This has facilitated acknowledgement, and the creation of both an individual and collective narrative of truth for Guatemalans. Furthermore, the close relationship between the FAFG and the CEH truth commission aided the contribution of forensic anthropology to transitional justice in Guatemala.

\textit{The Armenian Genocide}

The Armenian Genocide, which began in 1915, marked the beginning of a century of brutal genocides and human rights violations.\textsuperscript{160} For centuries the Armenians had been a part of the Ottoman Empire; however, following the political and economic collapse of the empire, the Turkish government, which perceived the Armenians as a threat to the political stability of the new territory, developed a systematic plan of genocide to eliminate the Armenian population,\textsuperscript{161} using a threefold approach: deportation, execution, and starvation.\textsuperscript{162} The Armenian people were deported from Turkey and either executed, placed in concentration camps, or forced to march across the Syrian desert, with the hope

\begin{thebibliography}{16}
\bibitem{159} Ibid.
\bibitem{162} Alayarian, 55.
\end{thebibliography}
that they would perish on the journey.163 By the end of the genocide in 1923, an estimated one million Armenians had been killed.164

Although the genocide occurred at the beginning of the 20th century, political factors have continuously prevented any exhumations from occurring. In 2006, following the discovery of human remains, suspected to be victims of the genocide, during an unrelated archaeological excavation, forensic anthropologists were permitted to exhume two individuals from a grave at the archaeological site of Tell Fakhriya in northern Syria.165 It was suspected that the grave was connected to the nearby concentration camp of Ras al-Ain, where reports suggest, “torture, rape, massacres, and further deportations took place on a large scale.”166

Because of the absence of documentation linking prisoners from the concentration camp to the grave, forensic anthropologists were not able to positively identify the remains found at Tell Fakhriya; instead only establishing a basic biological profile for each of the two individuals, confirming their Armenian origins.167 Although no direct descendants were able to participate in the subsequent burial ritual, the local Armenian community expressed a “deep feeling of relief on behalf of the victims as they were finally receiving a proper ceremony and place of rest.”168 Even though the individuals remained unidentified, and their families were not able to participate, the positive impact of the exhumation upon the larger community is clear. The process created a dialogue

163 Ibid., 59.
165 Fellini and Croft, 229.
166 Ibid.
167 Fellini and Croft, 244.
168 Ibid.
between academics and the Syrian-Armenian community, and allowed the community to grieve, even decades removed from the crimes.\textsuperscript{169} However, for the vast majority of Armenians, this type of closure has remained unattainable. Instead of having their suffering acknowledged, and the perpetrators held accountable for their actions, the Turkish government has continued to deny that the events of the early 1900s constitute genocide. Ultimately, they deny that genocide ever occurred.\textsuperscript{170} With approximately one million Armenian lives lost during the genocide, exhumations of victims could occur. Not only would this provide legitimacy and acknowledgement for Armenian victims and their descendants, but it would also establish physical evidence that would preclude Turkey from denying the occurrence of the genocide.

The conclusion from a very brief comparison of these two diametrically opposing cases is very clear: forensic exhumations conducted by anthropologists in a post-conflict setting have significant potential to facilitate societal healing and reconciliation. In spite of the lack of prosecutions in Guatemala to date, the society has acknowledged the truth regarding atrocities committed, has established a sense of collective accountability for the perpetrators, and is working towards rebuilding the society.\textsuperscript{171} Guatemalan society is by no means perfectly reconciled; however, the positive impact of forensic anthropology on the reconciliation process is undeniable. In contrast, the lack of physical evidence to corroborate accounts from eyewitnesses and victims about the Armenian genocide has allowed the Turkish government to continue denying the genocide for nearly a century.

\textsuperscript{169} Ibid.
\textsuperscript{170} Alayrian, 20.
This lack of resolution in itself has solidified the divide between Turkish and Armenian communities and has prevented reconciliation from occurring.\textsuperscript{172} Although forensic anthropology has not been further employed in the case of the Armenian Genocide, its absence speaks volumes.

LIMITATIONS TO THE EFFECTIVENESS OF FORENSIC ANTHROPOLOGY

With the numerous positive contributions made by forensic anthropology to the transitional justice framework, and the clear difficulties in cases of its absence, why has the integration of the disciplines yet to truly occur? Limits to the effectiveness of forensic anthropology can be classified into three categories: practical limitations of forensic anthropology, theoretical barriers within both disciplines, and the issue of balance. These three areas have continued to be contributing factors to the absence of forensic anthropology from traditional transitional justice discourse.

There are several practical limitations preventing the effectiveness of forensic anthropology. First of all, forensic anthropology is subject to the limitations of the discipline itself, as a scientific field of study. In some situations, local organizations have attempted to complete exhumations themselves without considering international standards for processing evidence, or for conducting exhumations.\textsuperscript{173} This was prevalent in Iraq to establish proof of atrocities committed under the leadership of Saddam Hussein following the First Gulf War. Eric Stover, William Haglund and Margaret Samuels describe an excavation in Iraq that occurred in 2002: “villagers used a backhoe to dig up more than 2000 sets of remains, gouging and comingling [sic] countless skeletons in the process, while some families used their hands to dig for bones and shards of clothing and

\textsuperscript{172} Alayrian, 67.
\textsuperscript{173} Doretti and Snow, 312.
carted them away in wheelbarrows and buckets."\textsuperscript{174} The manner in which the excavation was conducted meant that the evidence discovered could not be used in future legal proceedings, since standards of processing of evidence were not respected.\textsuperscript{175} Moreover, the haphazard procedure, the destruction of archaeological context, and the co-mingling of remains will have resulted in greater difficulty with identification of the remains, suggesting that the majority will never be positively identified.\textsuperscript{176} Although this difficulty could be rectified with the creation of international standards of exhumation, it remains a challenge to the effectiveness of the use of forensic anthropology in transitional situations.\textsuperscript{177}

Furthermore, many of the limitations to the effectiveness of forensic anthropology bear distinct similarities to practical limitations to other processes of transitional justice. These include a lack of resources,\textsuperscript{178} and a lack of political will.\textsuperscript{179} Transitional justice mechanisms are often constrained by a lack of resources.\textsuperscript{180} These resources may be financial, or physical. When resources are limited, other aspects of the reconstruction process may be prioritized over and above the importance of forensic exhumations, which in turn impacts the success reconciliation process.\textsuperscript{181} Forensic anthropology teams are subject to similar limitations. The EAAF, the foremost forensic anthropology team

\textsuperscript{175} Ibid.
\textsuperscript{176} Ibid.
\textsuperscript{177} Cordner and McKelvie, 875.
\textsuperscript{178} Crettol and La Rosa, 358.
\textsuperscript{179} Blau and Skinner, 450.
addressing issues of human rights, has been commissioned to work in over twenty different situations. However, members of the EAAF team are often not compensated for their work with the organization, and thus have other positions in countries around the world. Physical resources are also costly to purchase, and teams must rely upon donations, or members bringing their own equipment. This detracts from the effectiveness of such teams. Similarly, many states wish for the past to stay buried, both figuratively and literally. States frequently cover up discoveries of mass graves, to prevent investigations into the causes of death of those buried. The EAAF’s work has been repeatedly constrained by this lack of political will to participate in the process, and even to permit their work. For example, excavations of mass graves from the El Mozote massacre in El Salvador were delayed for several years, as the EAAF was unable to obtain permission from judicial officials to enter the country. These practical limitations have been a significant constraint to the complete integration of forensic anthropology and transitional justice.

Theoretical limitations, which have contributed to a lack of integration of the two disciplines, also exist. In its traditional incarnation, transitional justice was limited to the judicial processes that could contribute to the prosecution of violations of international laws. In such a narrow conception of the field, the role of forensic anthropology within that process would be entirely limited to the provision of physical proof of human rights violations, to facilitate prosecution.

182 Doretti and Snow, 305.
183 Ibid.
184 Doretti and Snow, 307.
185 Ibid.
186 Luban, 371.
With the subsequent broadening of the scope of transitional justice to a more comprehensive, holistic field, the role forensic anthropology has to play within processes of transitional justice should seemingly have broadened with it. However, with the continued emphasis on the judiciary and the creation of political institutions, this has not been the case. Literature connecting the disciplines is limited to the location and identification of the disappeared, and the subsequent evidence those identifications contribute to the judicial process.\textsuperscript{187} Although crucial, this completely underemphasizes forensic anthropology’s possible contributions to the field of transitional justice, including cultural, social and psychological impacts. Further research, both qualitative and quantitative, should be undertaken to understand the scope of the link between the two disciplines.

Finally, the question of balance is a significant impediment to both forensic anthropology and transitional justice, and thus to the combination of the two frameworks. As individuals trained in a cross-disciplinary field that combines the principles of forensic science and cultural anthropology,\textsuperscript{188} forensic anthropologists have an obligation to both the legal system, and to the humanitarian needs of families and other victims within the society.\textsuperscript{189} As a result, the diverse needs of a post-conflict society create unique concerns as to how to “keep the primacy of international law from supplanting the [forensic anthropologist’s] obligations to the living.”\textsuperscript{190} In situations where there is no chance of legal prosecution (for example, when blanket amnesties have been granted), forensic anthropologists can tailor their process to the needs of the families and the

\textsuperscript{187} Doretti and Snow, 319.
\textsuperscript{188} Ibid.
\textsuperscript{189} Stover and Shigekane, 85.
\textsuperscript{190} Ibid.
communities. However, these needs conflict with each other. Families and communities seek answers regarding what happened to their individual members first, and concern themselves with a society-wide narrative later. Frequently, criminal proceedings focus first on the systematic harm to the collective first, and to individuals later, leaving forensic anthropologists to address the needs of the family by setting expectations and limitations as to what the process can accomplish. Furthermore, a community’s participation in the exhumation process can compromise standards of evidence. Thus, the forensic anthropology team must attempt to balance the often-incompatible needs of the judicial process with the needs of the community. This appearance of incompatibility is perhaps the greatest challenge for the integration of the two disciplines.

Although this brief overview outlines the limitations to the integration of forensic anthropology and transitional justice, it is important that these constraints do not supersede the importance of integrating forensic anthropology into the transitional justice framework. The potential benefits of integration of the two disciplines clearly outweigh the drawbacks, and these limitations do not detract from that fact. Instead, they highlight concrete areas in which progress can be made to strengthen the transitional justice process. Moreover, every exhumation undertaken in each community poses unique challenges to both forensic anthropology and to transitional justice.

191 Doretti and Snow, 319.
192 Keough, Simmons and Samuels, 272.
193 Stover and Shigekane, 99.
CONCLUSIONS

Forensic anthropology and transitional justice are two diverse disciplines, inextricably linked by a common central theme of human rights, and parallel goals of establishing accountability, and facilitating truth. Results of the successes of forensic anthropology in post-conflict Guatemala, and contrasting results from its conspicuous absence in the case of the Armenian genocide further support this interdisciplinary connection. These case studies also highlight the necessity of the connection, despite inherent limitations to the effectiveness of the integration of the disciplines.

Forensic anthropologists often view their role as speaking for the dead. This is in direct alignment with the international human rights regime, an advocacy tool that provides a voice for those who cannot advocate for their own rights. In a similar parallel, both forensic anthropology and transitional justice recognize the need to look to the past in order to move forward. However, the strength of these correlations between forensic anthropology and transitional justice remains virtually unexplored. With the broadening of the scope of transitional justice, and the increasingly important role of forensic anthropology in it, this link should no longer be ignored.
Bibliography


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