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Last Rights: International Forensic Investigations and the Claims of the Dead

“It might even be argued that the attributes of a particular political philosophy, its generosities and its failures, are most apparent in those places where it intersects with, agrees to touch or not to touch, the human body...” –Elaine Scarry

“Hope there’s someone who’ll take care of me when I die.” –Antony & the Johnsons

Abstract: In the past few decades, it has come to be an expectation, rather than an exception, that international teams of forensic experts will be among those responding to large-scale human rights violations. These teams exhume mass graves in order to collect evidence and/or identify the bodies of victims. The legal and political justifications for their work have focused on the needs of courts and international tribunals as well as, more recently, the rights of living family members to know the fate of disappeared loved ones. Neither of these justifications directly addresses the question of whether the dead themselves have rights or make political claims. This paper surveys the liberal political philosophy, early and contemporary, that has helped to form the human rights framework in order to explain why the dead are rarely conceived of as ethical subjects. It argues for an understanding of international forensic work that does not close the door on the claims of the dead, but rather remains open to important commonalities between cultures regarding the treatment of dead bodies, as well as the ethics of care that forensic experts bring to their work.

The story of human rights has specific locations that stand out in the imagination, in the same way a play, though it creates a whole world, may have a set of only one or two rooms. Along with the concentration camp, the setting at the heart of human rights is the mass grave, whether we find it in Poland or Cambodia, Afghanistan or Sudan. After the wars, tortures, and genocides are over, we look to these graves to tell us the story of what happened and to whom, who was responsible, and how the world failed to make it stop. More and more, the people helping us to find that story are forensic scientists, often working in international teams organized by NGOs and sponsored by the United Nations, international tribunals, or transitional governments. Forensic investigators (most prominently anthropologists, who work mainly with skeletal remains, but also pathologists, archeologists, database technicians, and others) have collected evidence from graves and the bodies that lie within them after some of the highest-profile episodes of armed violence in the past few decades, including genocides and “ethnic cleansings” in the former Yugoslavia and Rwanda.

But what desires and what political claims really motivate the work of these investigators? Are they, like the scientists in domestic forensic laboratories, principally an arm of the law, now working on an international scale? Do they serve global society, helping to create an accurate history of “crimes against humanity,” the label we use for genocide and other widespread atrocities? Or do they respond, above all, to the needs of the survivors whose loved ones lie in these graves? What about the dead bodies themselves? Are they the only the objects of the search, or also among its constituents?

Though concerned with all of these questions, this essay addresses the last one in particular. If the mass grave is a focal place in the story of human rights, the dead body—often tortured, raped, or made to “disappear” before dying—is a central character. No one

lies closer to the moral heart of human rights than those who have suffered the worst consequences of their violation. Yet it is far from clear what claim these people make, after death, on the people and institutions that embrace the human rights framework.

I. The Stories Bones Tell

In 2004 and 2005, I served as the Program Associate for the International Forensic Program of Physicians for Human Rights (PHR). Since 1987, PHR forensic teams have traveled to the former Yugoslavia, Rwanda, Guatemala, Afghanistan, Argentina, Honduras, South Korea, Iraqi Kurdistan, Israel and Palestine, Cyprus, and other places, reading the signs on bones and bodies to record genocide and other crimes against humanity. They have also used dental records, DNA testing and other techniques to identify the dead and return them to their family members for burial or other last rites.

Because of the work of PHR and other organizations,¹ forensic investigations in the wake of mass violence are now often an expectation rather than an exception, a large and growing part of the international response to human rights violations.² When I arrived at PHR, for example, the organization already had personnel in Iraq helping to plan for investigations at the graves of Kurdish and other victims of the Saddam Hussein regime, though Hussein himself had not yet been captured and the security situation in Iraq was (and continues to be) precarious. We were also having conversations about the seemingly

¹ Notably including the Argentine Forensic Anthropology Team, the Guatemalan Forensic Team, and the International Commission on Missing Persons.

² See Eric Stover and Rachel Shigeekane, "The missing in the aftermath of war: When do the needs of victims' families and international war crimes tribunals clash?" *International Review of the Red Cross* 84, no. 484 (2002), 845-866: 863. For convenience, I often use "forensic investigations" as shorthand in this essay to refer to the exhumations of graves, particularly mass graves, after war crimes and genocides. International forensic work comes in many other forms, however, not all of them dealing exclusively with the dead: for example, PHR has done extensive work investigating torture and beatings of Palestinian prisoners by Israeli security forces in the West Bank and Gaza.

inevitable day when forensic teams from PHR or another organization would be dispatched to the Darfur region of Sudan to document ethnic violence that had been declared genocidal, but that nevertheless was proceeding more or less unchecked.

In part because of the growth in international attention and resources focused on the prosecution of genocide and other crimes against humanity, usually the first priority for these investigations is collecting evidence for war crimes tribunals and other bodies sitting in judgment over the perpetrators of human rights violations. As historian Thomas W. Laqueur describes in his essay, “The Dead Body and Human Rights,” the main role for the dead body in these human rights investigations is as the “*corpus delicti*” or “body of the crime,” “the ‘material substance’ upon which a crime has been committed.”³ Where perpetrators have tried to cover up their crimes, these bodies become a text upon which we read the story of horror. The bodies are evidence, history—of central importance, but principally as things, not as persons.

However, this view of the dead body in human rights conflicts with others, both in theory and in the field where forensic teams carry out their work. In their article, “The missing in the aftermath of war: When do the needs of victims’ families and international war crimes tribunals clash?” Eric Stover (a former Executive Director of PHR and participant in many of its forensic investigations) and Rachel Shigekane discuss “a growing tension” between what they describe as “the humanitarian needs of the families of the missing” and the priority war crimes tribunals, with their limited resources, place on evidence collection.⁴ For charges of genocide, the attempted destruction of a “national, ethnic, racial or religious group,” “categorical definitions” of the bodies in a grave may serve as sufficient evidence. So

³ Thomas W. Laqueur, “The Dead Body and Human Rights.” In Sean T. Sweeney and Ian Hodder, eds., *The Body* (Cambridge University Press, 2002), 75-93: 75.

⁴ Stover and Shigekane, 846.

long as investigators can prove that the victims had one of these features in common, that the people in the grave are Kurds or Muslims or Tutsis, they may not need to name or otherwise identify every body.⁵ To convict perpetrators of genocide and other war crimes, investigators must also establish patterns in the treatment of the victims, evidence of the “systematic and widespread” nature of the crimes that suggests a chain of command. Often, as in the large investigation into the crimes of Slobodan Milosevic, investigators can establish these patterns by identifying a “sample” of bodies from multiple different graves, leaving the other bodies unidentified.

In Kosovo, investigators working under time pressure for the International Criminal Tribunal for the former Yugoslavia (ICTY) autopsied bodies from a number of massacre sites, looking for these larger categories and patterns, and then left many of them behind, reburied and unidentified in a manner Stover and Shigekane call “haphazard.” When family members and other survivors in the communities around the graves began hunger strikes and other protests against the treatment of their dead, other organizations stepped in to do the “humanitarian” work of identifying the bodies by name and returning them, if possible, to their family members⁶—a massive undertaking that involves not only careful investigations of the graves themselves, but also significant work in the community interviewing relatives, searching for dental and other records, and counseling bereaved and often traumatized survivors. Stover and Shigekane set out, in their article, to respond to a history in which international forensic investigations have put the needs of courts and tribunals above these other activities on behalf of families and communities.

⁵ Ibid., 846-7.

⁶ Ibid., 857-9.

The archeologist and anthropologist Zoë Crossland tells a similar story about the exhumations of political prisoners disappeared by secret police in Argentina during that country's "dirty war." To the shock of many observers, some members of the Mothers de Plaza de Mayo, the group of women who famously brought Argentina's disappearances to the world's attention, took a stand against the Argentine Forensic Anthropology Team's exhumations of unmarked graves. According to Crossland, this objection arose in part because "[t]he description of people who had their identities taken away from them by the state, as 'data' or 'evidence', had the effect of re-inscribing this lack of identity, re-creating the disappeared again as objects rather than human subjects, divorcing their physical remains from their histories, homes and families."⁷ Some mothers of the disappeared would rather turn their back on the bones of a loved one than see its ghostly absences turned into a presence that is merely physical, a story that has reached its end.⁸

Laqueur connects these debates about exhumations to a larger question, in human rights practice, of the relationship between justice and remembering:

The first depends upon the fact that the body is indeed the body of a crime and not simply a dead body. The dirt is stripped away, extraneous details put to one side and the circumstances of death established in sufficient detail to point to a perpetrator. Identification is not necessary. The second depends crucially on naming. A person, with an identity and a place within a family and a community, is brought back from the anonymity of the grave and in some sense given back to his or her people.⁹

Laqueur's vocabulary has the unfortunate effect of putting justice and memory at opposite sides of a binary, when in reality the challenge for international forensics (and the broader

⁷ Zoë Crossland, "Buried Lives: Forensic Archeology and the disappeared in Argentina." *Archeological Dialogues* 7, no. 2 (Dec. 2000), 146-157: 153.

⁸ *Ibid.*, 155.

⁹ Laqueur, 82.

field of “transitional justice”) is the intimate connection between them, the fact that neither one is sufficient without the other. Nevertheless, he is right that some tribunals, in defining justice too narrowly as accountability for perpetrators, have ignored other aspects of what many communities would still call “justice”: returning identity to bodies from whom it has been stripped, and in so doing, restoring their relationship with the social world and the histories of which they are part.

In recognition of the claims coming from families in Kosovo and elsewhere, Stover and Shigekane call for “a new, more comprehensive strategy for identifying and treating the remains of the dead in the aftermath of war, a coordinated strategy that satisfies both the humanitarian needs of the families and the legal needs of international war crimes tribunals.”¹⁰ They advocate giving families “active participation” and more control over forensic investigations, letting them order the investigative priorities according to their needs and their culture. In some circumstances, the families may even come up with alternative solutions to identifying every body, such as building a commemorative memorial for all of the unidentified dead.¹¹ Crucially, in order to lend legitimacy to this new focus, they (as well as my colleagues at PHR) point to Additional Protocol I to the Geneva Conventions, added in 1977, which established “the right of families to know the fate of their relatives,” including those relatives who lie in graves after “armed conflict.”¹²

Despite the conflicts between them, both of these ways of imagining the dead—as objects of evidence, or objects of concern for family members—share an important common

¹⁰ Stover and Shigekane, 847.

¹¹ *Ibid.*, 860-2.

¹² International Committee for the Red Cross, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,” *International Humanitarian Law – Treaties & Documents*, <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (accessed February 21, 2007). See also Stover and Shigekane, 846.

thread. They always understand dead bodies with reference to their use or meaning to institutions of the living, courts or families, avoiding the question of any rights or claims of *the dead themselves*. Not every body flung into a mass grave in every corner of the earth has a family member clamoring for its identification and respectful treatment,¹³ nor is every body likely to add significant evidence to a criminal prosecution. Given how much the conversations surrounding human rights violations, and mass graves in particular, tend to appeal to respect for the victims, doing justice on their behalf, and enshrining them in historical memory, the apparent non-status of the dead in the legal and professional discourses surrounding international forensics seems to sit uneasily with the basic moral intuitions of human rights practice. My PHR colleagues and others spend long hours lavishing care and attention on dead bodies that, in law and in theory at least, make no direct ethical claim on them.

II. Our Bodies, Our Selves

This “ghosting” of the dead in the discourse surrounding international forensic investigations is not due merely to the recent development of the field, or some universal consensus that the dead are not subjects under the law (in the United States, for example, many states have laws protecting dead bodies from organ trafficking, necrophilia, and other “crimes against the dead”). Rather, if we look to the political philosophy that has informed and shaped human rights practice, we find paradoxes and silences that make it hard to address the dead directly.

¹³ I have used the somewhat vague term “respectful treatment” rather than the scientific term “disposal of remains,” which covers everything from entombment to cremation, since the latter seems to ignore precisely the sorts of attitudes towards dead bodies (which are usually celebrated, mourned and cared for rather than “disposed” of) that I describe in this essay.

The political tradition of liberalism, running from John Locke and Immanuel Kant to contemporary philosophers such as John Rawls and Ronald Dworkin, though fraught with its own major internal debates, generally establishes some connection between moral agency and the ability to have rights or make other political claims. Though people enter various agreements to live together in interdependence (the “social contract” is Rousseau’s famous formulation), voluntarily putting limits on some of their freedoms, their fundamental rights remain intact starting at birth and as long as they retain the capacity to reason. The flip side of the formulation, of course, is that without reason no basis exists for political claims; thus we can already see how the dead (as well as animals, children, women, and “savages,” all of whom either are now or have been considered unreasoning) begin to disappear from politics. Kant writes, in his *Metaphysics of Morals*, that we have no duties to “nonrational beings,” which “neither bind us nor can we be bound by them.”¹⁴ The preamble to the Universal Declaration of Human Rights follows suit, basing reciprocal duty in the shared capacity to reason: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”¹⁵

For early liberal thinkers like Locke, the story of universal freedoms begins in the Robinson Crusoe-like “state of nature,” “a state of perfect freedom [for men] to order their actions and dispose of their possessions and persons, as they think fit, within the bounds of the laws of nature; without asking leave, or depending upon the will of any other man.”¹⁶

¹⁴ Immanuel Kant, *Metaphysical Elements of Justice* (Part I of the *Metaphysics of Morals*). John Ladd, trans. (Indianapolis: Hackett, 1999): 26.

¹⁵ Universal Declaration of Human Rights (1948). “Universal Declaration of Human Rights” (1948). Reprinted in Jack Donnelly, *International Human Rights* (Cambridge: Westview Press, 2007), 233-6: 233. ¹⁵ For critiques of rights and agency as defined in liberalism, see for example Harry Englund and Francis B. Nyamnjoh, eds., *Rights and the Politics of Recognition in Africa* (London: Zed Books, 2004) and Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press, 2005).

¹⁶ John Locke, *Two Treatises of Government and a Letter Concerning Toleration*. Ian Shapiro, ed. (New Haven: Yale University Press, 2003): 101.

Crucially, for Locke and other liberals, “possessions” and “persons,” both of which we may dispose of as we see fit, are intimately connected in the constitution of the self. Our bodies are in fact our first, inalienable, piece of property: “every man has a property in his own person: this nobody has any right to but himself.”¹⁷ The model of ownership thus extends outwards from the body to the various goods gathered, improved on, or created through the labor of the body.

Just as the dead bodies in mass graves are both central to the story of human rights and outside its framework for making claims, the body in liberal thought is both fundamental and easily shed: our original property, but also sometimes cast off in order to formulate universal principles. In John Rawls’s thought experiment for a social contract, the “original position,” individuals put themselves behind a “veil of ignorance” that obscures the embodied facts of age, sex, social class and race, allowing them to reach agreement on the principles of just institutions through pure reason rather than self-interest: “[S]ince the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments.”¹⁸

In liberal thought, as in Christianity, the body is not exactly equivalent to the self but is rather the container for something—a soul, perhaps, or, in liberalism’s secular formulations, an individual mind—that is autonomous, rational, and “interested” in the world. At the moment of death, as in Rawls’ original position, this key ingredient of the self presumably leaves the body. Yet what remains behind seems still to hold some ethical

¹⁷ Ibid., 111.

¹⁸ John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Harvard University Press, 1999):120. For more on the veil of ignorance and the “original position,” see 102-68. For one representative (in this case, feminist) critique of the theoretical “universality” of these individuals behind the veil of ignorance, Carol Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (Stanford University Press, 1989): 46-7.

importance; it was, after all, our first and most beloved possession. So dead bodies become strange ethical materials, pieces of the self about which we have strong feelings, but not possessors of the rights that a liberal can grant only to the thinking subject, that a Christian can grant only to the soul.

III. Families and Fates

Stover and Shigekane, along with the other forensic and human rights experts, are shifting their focus from one that exclusively serves international tribunals to one that factors in the needs of families. This move is unquestionably generous, and puts the survivors of horrific violence and loss, rather than just the international institutions trying to represent their interests, at the center of forensic investigations. For better or for worse, however, the shift does little to challenge the philosophical framework guiding these missions. One level up from the individual, in liberalism, is the family. Locke viewed the family as both the “first society” and something with an autonomous existence outside of “political or civil society”; since the man is “master” in the “domestic rule” of the family, he can represent the interests of his wife and children, who are relegated to a walled-off private sphere.¹⁹ The Universal Declaration of Human Rights states, in Article 16, that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”²⁰ Rawls, similarly, imagines the political negotiators in his “original position” as “heads of families.”²¹ So in citing the Geneva Convention’s language about “the right of *families* to

¹⁹ Locke, 131-8.

²⁰ “Universal Declaration of Human Rights” (1948). Reprinted in Jack Donnelly, *International Human Rights* (Cambridge: Westview Press, 2007), 233-6: 235.

²¹ *A Theory of Justice*, 111.

know the fate of their *relatives*,”²² Stover and Shigekane essentially hop one step up from the vexing (or perhaps never even considered) question of whether dead bodies are still “individuals” or have rights, naming families instead as the stakeholders in this area of human rights practice.

The liberal idea of the family as the basic unit of society, however, is not necessarily universal, posing potential problems for a field like international forensics, which responds to similar types of violence in very different parts of the world. The famed sociologist and anthropologist Marcel Mauss’s essays on what he calls “the category of the self” describe societies where the basic unit is neither the family nor the autonomous self, but rather the supra-familial clan or the individual as a representative of his or her ancestors.²³ Stover and Shigekane frame their advocacy in terms of the “relatives” of the missing, but in their own case study of the mass grave at Srebrenica they write: “Bosnian Muslims... view bereavement as an experience to be shared, strengthening the bonds of family and *community*” (emphasis added). They describe how collective prayers of mourning, or *tehvids*, are recited by groups of “neighbors, friends, and relatives.” They also cite the anthropologist Katherine Verdery, who writes that in the context of the former Yugoslavia “[b]urials and reburials serve both to create and to reorder the community” by defining the links between mourners and bringing them together for funeral rites.²⁴ Verdery’s key point (as the title of her book, *The Political Lives of Dead Bodies*, suggests) is that the community of mourners is

²² International Committee for the Red Cross, “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,” *International Humanitarian Law – Treaties & Documents*, <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (accessed February 21, 2007). See also Stover and Shigekane 846.

²³ Marcel Mauss, “A Category of the Human Mind: The Notion of Person, The Notion of ‘Self’.” In *Sociology and Psychology: Essays*, trans. Ben Brewster (London: Routledge & Kegan Paul, 1979): 59-94.

²⁴ Stover and Shigekane, 860.

not a static group, like families or survivors, but rather a political community created in part by the burial:

A (re)burial creates an audience of ‘mourners,’ all of whom think they have some relation to the dead person. The question is, *Which* aggregation of people is brought together (directly or indirectly) for this event? Whom does the gathering of mourners leave out who might have been present a year or two ago? For political reburials, this becomes, Who is to be included in or excluded from the new national society that is being made?²⁵

Stover and Shigekane present all these complex processes under the heading “the humanitarian needs of families” without taking the time to explain how family comes to transcend all the other forms of membership and exclusion we find in the conflicted zones that hold mass graves.

Along with neighbors, friends, and mourners, the Srebrenica case study seems to describe the formation, or at least activation, of political communities. For “relatives of the missing” to coordinate protests and hunger strikes indicates precisely that these families organized with each other on a level *beyond* blood ties to articulate their outrage. Likewise, Stover and Shigekane write, “Many of the Srebrenica survivors... believe that the construction of a memorial and a collective burial site for the anonymous dead should take precedence over individual identifications... In 2002, these survivors lobbied successfully for a commemorative site to be built at a location near where the massacres took place.”²⁶ The very idea of a collective memorial asks each family to give up the family-centric claim to a particular name and body, the body-as-memory idea explained by Laqueur, in order to find

²⁵ Katherine Verdery, *The Political Lives of Dead Bodies: Reburial and Postsocialist Change* (New York: Columbia University Press, 1999): 108. Verdery points out that the conflict in Yugoslavia both began and ended amidst contentious exhumations and reburials: in the former case, the televised exhumations of people massacred by Croatian fascists, Serbian royalists, and others during World War II (98-102).

²⁶ Stover and Shigekane, 862.

an acceptable community solution. The words “many” and “these” (not “all”) in the quotation above seem to indicate not only the existence of supra-family groups making claims about the dead, but also a contest between different groups. So in these cases from the former Yugoslavia we see a complex architecture of families, mourners, strikers, survivors and even “lobbyists.”²⁷

Given that forensic evidence so often works its way into truth commission reports and other documents of “*national reconciliation*,” the focus on families in Stover and Shigekane’s article seems to establish a new tension. On the one hand, truth commissions project the idea of memory, history, truth-telling and community on a national level; on the other hand, the new forensic dialogue speaks only of the right *relatives* have to know the fate of the missing. Without in any way ignoring the losses of family members, we might reasonably ask whether friends, political associates (especially in countries where people are killed for their political activism), or the nation itself do not have some “right” to know what happened to the missing people in their lives. On the other hand, Laqueur’s frequent use of an undefined “we” or “us” (“It is not clear that the named bodies of the dead will serve us as both a *corpus delecti*... and as the balm of closure”)²⁸ seems just as problematic. “Humanity” or “the international community” surely has some stake in holding perpetrators accountable and identifying bodies, but a weaker, more distant, and certainly less emotionally vivid claim than families, neighbors, lovers or political comrades.

²⁷ My own experiences in Chile, where Augusto Pinochet’s military dictatorship forcibly disappeared those it suspected of political dissent, confirm various elements of the picture painted here: that friends and political *compañeros* often feel the same forms of trauma, grief, and claims against the government as family members do. The political organizations in which these stakeholders make their claims are neither simple nor free of major disagreements, both intra- and inter-organizational.

²⁸ Laqueur, 92.

This great mixture of generosity and confusion in the new philosophy of forensics is evident in the mission statement on the web page of PHR's international forensic program:

PHR advocates health, dignity, and justice for all and that victims of violations of human rights and/or humanitarian law have a right to justice, the right to know the truth, and to have history recorded accurately in order to establish a historic record grounded in science and resistant to revisionism.²⁹

The fugitive definition here is who the "victims" are. Forensic workers unearth dead bodies, bodies whose human rights have been violated and who have certainly been deprived of the "right to justice," though probably not of "the right to know the truth," since they were the ones who faced the guns and tortures. But the "right" to a "historic record... resistant to revisionism" seems as much about future generations of schoolchildren as it does about the dead and disappeared or their families.

It might be perfectly reasonable to ask whether all this theoretical attention to the language of family and of victims is beside the point, so long as the consequences seem positive for everyone who might care about a gravesite: families, political communities, nations, and the international community. Thanks to the language of humanitarianism, forensic teams now generally treat graves and bodies with more respect, and do everything they can to identify the bodies within them,³⁰ so why does it matter whether they do so with reference to the Geneva Conventions, the claims of the dead, or any other framework?

One answer is that, as Elaine Scarry writes in *The Body in Pain: The Making and Unmaking of the World*, "misdescribing... any event whose central content is bodily pain or

²⁹ Physicians for Human Rights, "International Forensic Program: About the Program." <http://physiciansforhumanrights.org/forensic/about> (accessed December 14, 2007).

³⁰ One exception may be the U.S. military's forensic exhumations of the graves of the Hussein regime's victims in Iraq. To the great concern of some of my PHR colleagues, the military forensic teams appeared much more interested in collecting evidence against Hussein and his government than in identifying bodies and returning them to their communities.

injury” always has practical consequences, even if those consequences are entirely unintentional.³¹ In her chapter on “The Structure of Torture,” Scarry shows how even those of us who oppose torture often speak of victims who were made to “betray” themselves or their comrades during interrogation; the “covert disdain for confession” in this language makes it look as if the main variable in torture were the willpower of the person being tortured, not the amount of pain the torturers apply.³² The language shifts our focus from the torturing regime’s betrayal of its people to fictional “betrayals” by the regime’s victims. In “The Structure of War,” Scarry describes how even anti-war activists and “just war” theorists sometimes speak of injury as the “by-product” of war rather than (accurately) as its central activity, a tendency that serves war’s propagation more than its elimination or its becoming more “just.”³³

What might be the practical consequences of focusing exclusively on the rights of relatives to know the fate of the missing? One consequence might be that the language de-politicizes violence as well as its victims. Pinochet’s secret police are unlikely to have murdered a 19-year-old university student because her family name was Gonzales or Tapia. Rather, they killed her because she rode the train south with her schoolmates to do health work in indigenous villages, or because she ran for class president on the Socialist ticket at her university. To *over*-politicize her death, to say that she died “for socialism,” would be wrong: the label may or may not have meant anything to her, “socialism” may have been a hat she was just trying on to see how it fit, or simply a name attached to the peers she found intellectually, artistically, or romantically interesting. But at some point she put herself, and

³¹ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985): 13.

³² *Ibid.*, 29.

³³ *Ibid.*, 60-157.

here “herself” equals or at least includes her body, in the service of a political conviction, and for that dream she had of a different Chile the secret police killed her. If, in the language used as she is taken out of her anonymous grave and identified, she is seen exclusively as a Gonzales or a Tapia, we risk ceasing to ask ourselves what conviction she had, what country she dreamed she might live in, as well as what exact sickness it is for a country to murder its young for the dreams they have.

Framing people’s claim to or desire for information about the dead as a “right” raises another set of questions about practical consequences. Forensic experts are the first to admit that their work has no perfect endpoint: not every grave can be located and investigated, and even the most carefully exhumed graves may be filled with a confusion of body parts, not all of which can be pieced together and identified. The intersection of forensic science and international human rights began, in most accounts,³⁴ when members of what would become the Argentine Forensic Anthropology Team, along with prominent U.S. forensic anthropologist Clyde Snow, began identifying bodies in the unmarked graves of Argentina’s cemeteries.³⁵ These investigations, however, occurred in a country where the program of political disappearance meant that some bodies had been dumped into the ocean, mutilated, or encased in cement.³⁶ The security forces had erased birth certificates, taken children from soon-to-be-executed parents and given them to the care of military families, and generally destroyed not only the lives of their victims but any possibility of creating a coherent narrative about their past or present, as well as the future their children might have embodied.

³⁴ Laqueur, alternatively, presents startling evidence that the “first major forensic inquiry to establish human rights abuse was undertaken by the Nazis in an effort to demonstrate that the Soviet Union had carried out egregious violations of the ‘laws of war’ against the soldiers of its erstwhile ally, Poland.” For his full account of the Katyn Forest exhumation of Polish soldiers, see Laqueur 82-4.

³⁵ See Christopher Joyce and Eric Stover, *Witnesses from the Grave* (Ballantine, 1992).

³⁶ Donnelly 62.

Hannah Arendt, pondering the attempts of the totalitarian state to “let... its opponents disappear in silent anonymity,” writes: “The holes of oblivion do not exist. Nothing human is that perfect, and there are simply too many people in the world to make oblivion possible. One man will always be alive to tell the story.”³⁷ The sad counterpoint, however, is that the only thing as impossible as oblivion is perfect history. The man who *lived* to tell the tale, in Arendt’s formulation, of necessity did not go into the gas chamber, did not enter the places of totalitarianism from which no one returns. A gulf of experience separates him from the dead. Under these conditions of knowledge that can only ever be fragmentary, what does it mean to grant families or anyone a “right” to know the fate of the missing? And what happens to the human rights framework as a whole when we describe rights for people that no one can ever fully grant? We can and absolutely should imagine a world where no one is ever tortured, and thus we can and absolutely should believe in the right not to be tortured. But as the poets and artists of post-atrocity have shown us, to imagine a world where we know the exact fate of everyone who vanished into the Nazi gas chambers, or of the large portion of a generation that disappeared from their homes into the Argentine secret police’s Ford Falcons, is to risk crossing over from grief into madness.

We might ask, furthermore, what exactly constitutes the “fate” of a missing person. Even if we find and identify a body, we may never know what exact tortures the person suffered (some regimes have become experts in tortures that forensic science *cannot* detect), what was said to her, how her children were threatened, how many cruelties—insults, bad food, wet clothing, loud noises, and perhaps worst of all loneliness—went along with forensic facts of her “cause of death,” such as the bullet that entered her skull. In its optimistic proclamation of the “right” to know a “fate,” the Additional Protocol and its new

³⁷ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1992): 232.

advocates in forensics seem inadvertently to forget the magnitude of the crimes they are addressing as well as the limitations of their own field of activity. The Protocol's language, written for combat between armies, may even unintentionally grant some comfort to the killers and torturers. Brought to the scene of the mass grave or the torture chamber, this language seems to imply that "fate" had a hand in rape, torture, and killing. But one of the central claims of human rights, it seems, is that no one is ever fated to be treated in these ways, which is why anyone who kills, rapes and tortures is directly responsible for his or her actions.

Even the new, much more generous framework experts now propose for forensic investigations turns away from the most obvious victims of human rights abuses, the bodies lying in mass graves, to the living institutions around them, specifically families. In doing so, it raises as many questions as it resolves: questions about who holds a stake in piecing together the histories of bones, as well as about the limits of knowledge and history, the limits of rights.

III. Liberalism, Death, Harm and Interests

Human rights practice owes most of its philosophical premises to the liberal tradition described above. A basic premise of contemporary liberal political philosophy is that, as Rawls says, its principles of justice and individual rights are "political, not metaphysical."³⁸ As liberalism and human rights have gained global influence and popularity, the explicit Biblical references of a thinker like Locke (as well as his role as a spokesperson for the colonizing of the Americas) have become problematic. Instead, contemporary liberals

³⁸ John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14, no. 3 (1985): 233-51, <http://www.jstor.com> (accessed March 7, 2007).

pragmatically try to find areas of agreement on what they see as purely political questions, such as how free and equal individuals can shape fair institutions, while remaining neutral on more metaphysical questions about the purpose or meaning of life. People and cultures, however, differ not only in their views of the purpose or meaning of life, but also in what the category “life” means to them—notably, when it begins and ends. Even where traditionally liberal ideas about rights and freedoms have wide acceptance, as in the United States, abortion (especially) and euthanasia plague politics with religious and metaphysical debates that seem intractable within political discourse.

Many liberal thinkers deal with these problems of life’s messy boundaries by limiting the scope of persons, for the sake of political conversations, to those who have some identifiable interests. Dworkin, for example, uses the concept of interests to defend the U.S. Supreme Court’s decision in *Roe v. Wade*: In the first and second trimester, Dworkin argues, a fetus has no identifiable interests. The third trimester of pregnancy, which corresponds roughly to the point at which a fetus can live outside the womb, is a different story: “First,” Dworkin writes, “at about the point of viability, but not much before, fetal brain development may be sufficient to allow pain. So at the point of viability, but not much before, a fetus can sensibly be said to have interests of its own.”³⁹ In keeping with liberalism’s tradition of starting with so-called “negative rights”—the right not to be tortured, not to be imprisoned—Dworkin sees our human “interests” beginning at the moment we can feel pain.

Liberals who take on the question of the dead, similarly, tend to frame their questions in terms of whether the dead can be harmed, using the question of harm (and only secondarily of benefit) to identify ongoing “interests.” If the dead possess these interests, they might become workable political and/or ethical subjects. Indeed, in a phrase we may

³⁹ Ronald Dworkin. *Freedom’s Law* (Cambridge: Harvard University Press, 1997): 113.

hope never makes its way into a eulogy, the philosopher Joel Feinberg calls death itself “an important event within the life of one’s future-oriented interests.”⁴⁰

In a short but influential article called “The Misfortunes of the Dead,” philosopher George Pitcher attempts to prove that the dead can be harmed. His argument builds (strangely, without citation) on a short sketch about “The legacy of a good name after death” in Kant’s *Metaphysics of Morals*.⁴¹ Pitcher wants his argument to apply even when we operate under an assumption that “death means the permanent end not only of one’s physical life, but also of one’s conscious life.”⁴² With this pre-condition, he presumably intends to place the argument outside the realm of religious and cultural beliefs and into the sphere of what he calls “unfettered intuition,”⁴³ which seems to be a variation on Kant’s “practical reason.” Pitcher claims that the dead can indeed be harmed: if we break promises made to them while living, allow their important life projects (Pitcher gives the example of a small business) to crumble or fall into neglect after their deaths, or attack their reputations. He posits a distinction, however, between harm to the “ante-mortem person”—the person who existed, and had interests, before she died—and the “post-mortem person,” the body itself. Whereas Kant emphasizes the ways in which the dead are still “intelligible beings” and, more importantly, human,⁴⁴ Pitcher resolutely refers to the dead body as “just so much dust.”⁴⁵

Pitcher’s thesis is that the dead can indeed be harmed, but the damage is only to the *ante-mortem* person, not to any personhood we might see in the body itself. Thus, to take the example of Pitcher’s that is most relevant to the forensics context, “when young Brown sells

⁴⁰ Feinberg, 86.

⁴¹ Kant, 100-2.

⁴² George Pitcher, “The Misfortunes of the Dead,” *American Philosophical Quarterly* 21, no. 2 (April 1984), 183-8: 183.

⁴³ *Ibid.*

⁴⁴ Kant, footnote, 101.

⁴⁵ Pitcher, 184.

his father's corpse to the medical school, he breaks a promise made to his father before the old man died: so it is the living Mr. Brown who is betrayed by his son's action."⁴⁶ Following Pitcher's argument, then, someone whose body lies unidentified in a mass grave may indeed be "harmed" in comparison to someone who receives the last rites of her family and/or culture. This harm, however, affects *the person who existed before death*, because it offends her interests or expectations, and not the body or whatever quality of personhood it still retains. Again, if we think of the liberal tendency to view the body as the personal property of a disembodied self, we see the rough analogy between a living person's desire to have her goods distributed in a certain way after her death, expressed in a will, and her desire to have her body buried at a certain kind of funeral or in a particular casket. The body is another possession to be handled in the way the living person would have preferred.

Pitcher defends his formulation against the accusation of "backward causation," the retroactive harm his argument, at first glance, seems to imply: that when a thief steals my car in 2007, for example, he reaches back in time to harm me in 2006 when I bought the car, since with the benefit of hindsight we might say that I was not bound to get my money's worth from the purchase. Feinberg, who embraces Pitcher's thesis, summarizes the case against the backwards causation objection as follows:

The occurrence of the harmful posthumous event, in Pitcher's language, *makes it true* that the antemortem person is harmed, and that occurrence is in a sense *responsible* for the antemortem harm. But Pitcher quickly points out that the relevant senses of "make true" and "responsible" neither imply retroactivity nor are they in any way mysterious. The antemortem person was harmed in being the subject of interests that were going to be defeated whether he knew it or not. It does not become

⁴⁶ Ibid.

“retroactively true” that as the subject of doomed interests he is in a harmed state; rather it was true all along.⁴⁷

As Kant puts it, more simply, “He who after a hundred years says something evil about me that is false already insults me now.”⁴⁸ I was not harmed in 2006 by the thief stealing my car in 2007; rather, I was already experiencing the harm (albeit without knowing it) in 2006 because my car was doomed, my interests already thwarted.

Kant and Pitcher’s argument points towards something we do not find in Stover and Shigekane, namely the acknowledgment that people themselves, not just their relatives or other members of their communities, can be harmed by things that happen after their deaths. We seem to have the beginnings of a philosophical claim that the dead suffer injustices, and thus may be entitled, or at least worthy, of efforts to set those injustices to rights. But the claim is then carefully narrowed to identify no self other than the living one as an ethical subject: a Bosnian Muslim shot and thrown in a mass grave at Srebrenica was harmed only *while alive* by the fact that his body was going to wind up in such horrible circumstances. The body itself is as good as dust, and thus can make no claim aside from its status in liberalism as the former “property” of a living person.

This view, as well liberalism’s general approach to the dead, has met with challenges from within political philosophy. Tim Mulgan, in his article “The Place of the Dead in Liberal Political Philosophy,” asks whether the “pluralistic, liberal democracy” of New Zealand has lived up to its promise, made in the 1840 Treaty of Waitangi, to “protect” the customs of the indigenous Maori. Mulgan argues that in New Zealand’s political institutions “[t]he status of the dead is largely ignored,” meaning that basic Maori beliefs about “the

⁴⁷ Joel Feinberg, *The Moral Limits of the Criminal Law, Vol. 1: Harm to Others* (New York: Oxford University Press, 1984): 91.

⁴⁸ Kant, footnote, 101.

ongoing relationship between departed ancestors and living descendents” receive no respect or protection from the state.⁴⁹

Mulgan’s essay illustrates how, to achieve the Rawlsian ideal of metaphysical neutrality, those beliefs deemed to be metaphysical must be exiled from the sphere of “public reason.” But defining the “metaphysical” is a subjective process itself, and writing someone’s basic beliefs out of public discourse in order to mold it on one model of reason turns out to be far from neutral. Many non-Western societies, Mulgan points out, believe that their dead ancestors remain “in an ongoing relationship” with the living and have “a morally relevant interest” in politics and other questions affecting the life of the people.⁵⁰

These observations lead Mulgan to divide the world into cultures that operate based on a “*Dead-Are-Gone Assumption*,” presumably mainly secularist liberal democracies, and those that have a “*Dead-Are-With-Us Counter-Assumption*.” Adherents to variations on the Dead-Are-Gone Assumption, Mulgan says, “always cast the dead as *passive*. The dead should be honored, and can be affected by the living; but they do not initiate actions in the terrestrial realm... By contrast, non-Western religions often view the dead as *actors* as well as *patients*.”⁵¹ This rather crude grouping of complex beliefs into Western and Non-Western, Dead-Are-Gone and Dead-Are-With-Us, serves Mulgan’s purpose in exposing the impossibility of a neutral position. Liberalism considers rational, living individuals the only legitimate political actors, and thus rejects basic principles that, to the people who hold them, are not just religious but *political*.⁵²

⁴⁹ Tim Mulgan, “The Place of the Dead in Liberal Political Philosophy,” *The Journal of Political Philosophy* 7, No. 1 (1999), 52-70: 52.

⁵⁰ *Ibid.*, 52-55.

⁵¹ *Ibid.*, 55.

⁵² For more on liberal neutrality and the dead, see Michael Ridge, “Giving the Dead their Due,” *Ethics* 114 (October 2003), 38-59: 50-1.

Unfortunately, however, Mulgan seems to imply that cultural views of the dead can fit into a binary, one that (despite the essay's obvious sympathy for the Maori) bears unintentional echoes of primitive/civilized, rational/magical, and other problematic dualisms. A more nuanced anthropological perspective testifies to the existence of many beliefs between and even outside of a "Dead-Are-Gone" versus "Dead-Are-With-Us" binary, some of which challenge the conception of a living "self" existing separately from the dead. In other words, previous to the question of whether the dead are with us or gone is the question of where different cultures draw the line between life and death.

In Mauss' wide-ranging study of the concept of the self, he finds that among the Kwakiutl Indians of the American Northwest, ancestors "return to life in the bodies of those who bear their names." In war, killing another person or seizing his goods means you "inherit his name, his responsibilities, his ancestors, his person—in the full sense of the term."⁵³ Personhood, then, cannot exist in the liberal sense of an isolated individual exercising practical reason to advance his interests; rather, the self is an extension and re-articulation of dead ancestors, and also a complex set of goods, material and spiritual, that can be lost or acquired. The assumption here is not that the "Dead-Are-With-Us"; for the Kwakiutl, the dead are *in* us.

Lest we fall into the trap of overdrawing Mulgan's same indigenous/non-indigenous or Western/non-Western distinctions, we should note Mauss' explanation that the Roman Senate, one of the forerunners to liberal democracy, "saw itself as made up of a determinate number of *patres* representing the persons, the images of their ancestors." A slave was distinguished from a free man, from a legitimate political subject, in part by having "no

⁵³ Mauss, 69.

ancestors.”⁵⁴ So the form, if not the content, of liberal-looking institutions may have existed even where a completely different concept of the “person” was at play. The way contemporary liberalism defines the self may be useful, democratic, and compelling. But it should stand on that ground, not on the grounds of a false universality outside of history and culture—grounds that may actually mobilize criticism and resentment counterproductive to the establishment of human rights mechanisms.

IV. Another Universalism

As Talal Asad argues in his essay, “What Do Human Rights Do? An Anthropological Enquiry,” human rights and the liberal ideas that motivate them (individual autonomy, for example) are themselves religious, metaphysical, or whatever other word we might use to indicate their cultural formation and narrative qualities.⁵⁵ Asad’s doubts about human rights’ universal legitimacy are not meant as an excuse to dismiss them from further conversation, an easy move already repeated by too many critics. Rather, he asks the practical question of what they *do* as they form the basis of institutions, becoming the language in which even people in non-liberal states find it best, or most advantageous, to frame their claims. I ask, similarly, what the metaphysics of the dead lying just underneath the surface of human rights *do* in the context of international forensic investigations.

Pitcher and Feinberg attempt to avoid the ontological questions of the soul, its permanence, and its relationship to the body, all of which have been exiled in advance to the

⁵⁴ *Ibid.*, 81.

⁵⁵ *Theory & Event* 4, No.4 (200).

realm of the metaphysical.⁵⁶ Despite taking “backwards causation” into account, however, they replace ontological metaphysics with *chronological* metaphysics, which Kant calls an “abstraction... from all physical conditions (of time).”⁵⁷ A living “ante-mortem” individual with all of his “interests” is harmed, without knowing it, in the *present tense* by what *will happen* after his death. In other words, and more simply: fate exists, and it hurts us. In fact, the liberal notion of fate we find here is both more definitive and more undeniably metaphysical than the “the fate of the missing” identified in the Geneva Conventions. Whatever the merits of Pitcher’s argument, it only avoids metaphysics if we define metaphysics in such a way that the afterlife is metaphysical, but injuries based on destiny are not.⁵⁸

What does this liberal metaphysics do to the dead? Though Pitcher and Feinberg frame their discussion in terms of harm to the dead, they actually pull off a sleight of hand: as Joan C. Callahan points out, “the Pitcher-Feinberg account turns out not to be a theory showing how the dead can be harmed but one which supports the view that only the living can be harmed.”⁵⁹ The argument, in fact, ultimately gives the lie to Pitcher’s designation of “post-mortem persons”: he clearly writes out the possibility that there *is* any personhood post-mortem, relegating what is left after death to a “mere thing,” in Feinberg’s phrase. Here we might recall how the Argentine exhumations, in Crossland’s analysis, lost the support of

⁵⁶ We should note that Kant, though employing similar logic, is more comfortable using transcendent terms like the “metaphysics” of morals and “a priori legislating reason... whose commands and prohibitions [for example, against defamation] also stretch beyond the boundary of life.” Kant, 101.

⁵⁷ *Ibid.*, footnote.

⁵⁸ Nor is the Pitcher-Feinberg thesis the only place where we see liberalism turning towards chronological metaphysics. In Rawls’ original position, one of the basic facts the “parties” who negotiate the new social contract must ignore is what generation they belong to, an idea that puts them not only outside of their bodies but outside of history (*A Theory of Justice*, 118).

⁵⁹ Joan C. Callahan, “On Harming the Dead,” *Ethics* 97, No. 2 (January 1987), 341-52: 351.

some mothers of the disappeared by treating bodies as pure physicality without acknowledging the complexity that “humans both *have* and *are* bodies.”⁶⁰

“How could one break a promise to a corpse...?”⁶¹ Feinberg asks. But classics even of the “Western” tradition, such as Homer’s *Iliad* and Sophocles’ *Antigone*, are full of promises made and broken to corpses, injuries done them, and bargains made on their behalf. Antigone defies the edict of the new Theban king Creon by giving burial rites to her treasonous brother Polyneices. Hegel thus reads her as representing the claims of the “law of a substantiality”—in other words, a law of particular bodies, bound in this case by kinship—against the universal “public law” of Creon.⁶² But surprisingly little attention has been paid to what exactly is represented by Polyneices’ body. Creon’s dream is not the totalitarian one described by Arendt; he has no intention of making Polyneices “disappear.” Rather, in cursing Polyneices’ body to be “chewed up by birds and dogs and violated,”⁶³ Creon paradoxically elevates it, giving it significance as an example to the Theban populace, the subject of Antigone’s rebellion, a public test of his authority, and the recipient of two burials. Just as in human rights, then, dead bodies in *Antigone* come to occupy a central place in politics even as they are written out of or exiled from the political community.

One of the strangest features about liberal views of the dead, in fact, is that in an attempt to rely solely on universal principles of *logic*, they seem to discard one of the few true *cultural* universals. Though cultures (and religious groups, families, and subcultures) may vary nearly infinitely in how they treat the dead body, we may find it equally significant that nearly all of them do have some code for the relationship with it. Verdery writes:

⁶⁰ Crossland, 153.

⁶¹ Feinberg, 90.

⁶² Hegel’s *Philosophy of Right*. T.M. Knox, trans (London: Oxford University Press, 1967).

⁶³ Sophocles, *Antigone*. In David Greene and Richmond Lattimore, eds., *Sophocles I*, trans. David Greene, 158-212: 168.

All human groups have ideas and practices concerning what constitutes a ‘good death,’ how people should be treated, and what will happen if they are not properly cared for... Proper burials have myriad rules and requirements, and these are of great moment, for they affect the relations of both living and dead to the universe they inhabit.⁶⁴

Often respect and membership, as well as their opposites, are expressed in the handling of the dead, and not only among the indigenous or the “primitive.” Moral horror in the West when the Nazis turned concentration camp victims into soap and lampshades surely had to do with recognition, membership in the human community, the place of the body in capitalism, and many other things beyond the “interests” of living or formerly living persons. Given liberalism’s interest in universal principles, what stops it from recognizing the seemingly universal existence of practices that treat dead bodies as something other than just “dust,” even if those practices differ?

Perhaps the issue lies precisely in the two key words, aside from “universal” and “differ(ent),” in the sentence above: “principles” and “practices.” Liberal theory starts with the premise that a rationale, justification, or first principle must precede every action; thus Pitcher and others first observe that we care what happens to the dead (whether their organs are sold, their books burned, etc.) and then look back to first principles for an explanation. As Uday Mehta writes, “Principles must... be abstract. They must be disembodied. They, and not the person, must be the source of the implications that follow. In the familiar liberal rendering, principles or laws, and not men, must rule.”⁶⁵ This strict discipline demands a

⁶⁴ Verdery, 42. I should note here that elephants have been found to touch and care for the bones of their dead. Like Asad, I am skeptical about what human rights and other ethical discourses have at stake in cordoning off the “human” from the “animal,” and see no reason why respect for the dead could be “cultural” only if it was uniquely human. See Rosella Lorenzi, “Elephants mourn their dead.” *News in Science*, Nov. 4, 2005, <http://www.abc.net.au/science/news/stories/s1497634.htm> (accessed June 5, 2007).

⁶⁵ Uday Mehta, “The Language of Peace and the Practice of Non-Violence.” Unpublished manuscript: 14.

disembodied principle behind one of our most embodied concerns, the care we show for corpses. So we wind up with a theory and a legal regime in we have, for the first time, large-scale international endeavors on behalf of the dead, even as we fail to acknowledge that the dead, rather than courts, families, or previously living individuals, might be the principle beneficiaries of all this work and might even, in that way, have some share in personhood. In the context of international human rights, what we miss is the opportunity for forensic work to be a re-recognition or returning of personhood to bodies who, because of the violence perpetrated against them, have been treated like trash, dust, mere things.

Though one could go back to philosophy and theory for an alternative account of ethics and the claims of the dead, I suggest a different starting place: with forensic workers themselves. After all, attitudes towards the dead are not the exclusive province of culture or religion in the broadest sense. A forensic team has its own practices, perhaps its own culture, in its unusually close contact with dead bodies. Though keenly aware of the importance of forensic work to the living, in her memoir *The Bone Woman* forensic anthropologist Clea Koff (who worked on PHR teams in Rwanda and the former Yugoslavia) writes, “we didn’t just interact with the dead on a superficial level—we weren’t exhuming bodies and then, say, counting them; we listened to them, studied them, knew them.”⁶⁶ Bill Haglund, the former director of PHR’s forensic program, wears a tie every day that he spends at a gravesite, no matter how hot the climate, or how much mud and decaying flesh he has to wade through. Survivors are not always present at these exhumations, so the tie is not exclusively for their benefit, and it certainly does not seem to be in Haglund’s own “interests.” Rather, the audience for Haglund’s tie is the dead themselves, and is a small sign that he sees *them* at the center of his work as he lays careful hands on their bones and flesh.

⁶⁶ Clea Koff, *The Bone Woman* (London: Atlantic Books, 2004): 307.

Haglund and others like him work in places most of us can hardly bear to see in pictures. They do so out of care for the dead as well as hope for the living. Though Stover and Shigekane can point to bad experiences in Kosovo and elsewhere, forensic teams have responded with cultural and historical sensitivity to local needs in Nigeria, Cyprus, in many other parts of the world. Their work proves that as long as violence continues to be directed at both the living and the dead, from the torture chamber to the mass grave into which bodies are tossed, forensic investigations will remain an important step towards redress, justice, or reclamation for the living and the dead. But when we write the dead out of personhood and out of politics, as human rights discourse has done thus far, we cannot accurately describe either the real violence done to bodies or the good works people do to address that violence. The dead deserve a place in our descriptive framework for what happens in response to atrocity, whether our duties to them become laws or rights, or not. The practices families, communities, friends, and lovers engage in with the dead should be relevant to our political philosophy, as should the ways in which the investigators who try to reclaim bodies from their anonymous graves agree to touch them. It is not the “fate” of the dead to be so far removed from our own claims to justice. They are, after all, as close as the ground beneath our feet.