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John Hagan

DEATH IN DARFUR

The Science of Human Rights, War Crimes, and Humanitarian Emergencies

Since it began in 2003, the conflict in Darfur has dominated the news. The killing, rape and displacement of non-Arab tribal groups in this western region of Sudan by government forces and “Janjaweed” militias have drawn the attention of the international community and the media, yet consensus on the true nature and scope of the tragedy has not been reached. Yet, for those responsible to be held accountable, deaths and other crimes against humanity must be documented, a difficult undertaking. Information gathering in Darfur is hampered by many logistical and technical factors, but also by the volatile internal political situation and the intricacies of international relations. In the article “Death in Darfur,” which appeared in the Sept. 15, 2006 issue of *Science Magazine*, **Senior Research Fellow John Hagan** and co-author Alberto Palloni nevertheless worked with the available data to arrive at the first scientifically rigorous estimate of the death toll in Darfur.

Drawing on survey data compiled by the World Health Organization and Médecins Sans Frontières (Doctors Without Borders) and subjecting them to a detailed statistical analysis, the authors arrived at an estimate of deaths in the hundreds of thousands, a figure that dwarfed most press accounts of mortality in Darfur. Hagan and Palloni concluded that, in contrast to figures put forth by the United States Department of State and other sources, the death toll in Darfur

was at the least 200,000 and most likely amounted to a figure closer to 400,000. The *Science* article had an almost immediate effect on media reporting. Prior to its appearance, both the BBC and Reuters, following the lead of the Department of State, cited figures in the tens of thousands, while after the article was published these outlets reported deaths in the hundreds of thousands. Today, most news reports cite the 200,000 figure from the *Science* article.

Hagan’s *Science* article is one piece of a much larger project, a book-in-progress called *Darfur Dying: The Criminology of Genocide*, which seeks to establish the existence of genocide in Darfur, to explain how it is occurring, and to investigate its causes. In this project, Hagan draws on his long experience researching the sociology of crime, while at the same time placing his research within the framework of “public sociology.” Public sociology, an avenue that has developed most fully within the discipline within the last three years, aims to engage a wider audience for sociological research, outside the walls of the academy, by using sociological methods to contribute to debates over public policy and political activism. Though controversial in some quarters, public sociology seeks to revitalize the discipline to contribute to a normative rather than solely descriptive vision of society.

Darfur Dying will not appear in print until 2008, however, another

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recent article "The Science of Human Rights, War Crimes, and Humanitarian Emergencies" affords a glimpse of some of the methods, themes and issues the book addresses. In this article Hagan, joined again by Palloni as well as Heather Schoenfeld makes the case for a "synthesizing sociological study of what demographers call forced migration and mortality with what legal sociologists and criminologists increasingly understand as war crimes."

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Prior researchers have employed sociological methods in the study of population health, legal sociology, and criminology largely along separate lines, Hagan notes. Necessarily, the goals of population health studies have been different from those of legal sociology and criminology studies. However, it is only by synthesizing these areas of inquiry that a true picture can emerge of the relationship between some humanitarian crises and war crimes.

In this article Hagan and his co-authors argue that "sociology is a disciplinary bridge between these domains, which are too important to remain artificially divided." Drawing from the examples of the humanitarian emergency in Kosovo in the 1990s as well as the continuing tragedy in Darfur, Sudan, Hagan argues that social science analysis and survey techniques can be used to establish accurate numbers of casualties as well as patterns of geographical displacement. Such data are necessary for the investigation and prosecution of war crimes by the International Criminal Court.

A Social Science of "Hard Rights"

While "human rights" by its very nature encompasses an almost limitless range of human freedoms, Hagan narrows his focus in the current research to the "harder" human rights. These are the "negative" freedoms, including the freedom from coercion, in contrast to those "positive" freedoms such as "the physical, political, and economic security to facilitate personal and social well-being." Hagan draws on the work of the economist Amartya Sen, who argued that negative freedom is a prerequisite to positive freedom, and thus the defense of the "harder" negative right of freedom from coercion must be the first priority of those who research humanitarian emergencies and war crimes. As the field of international criminal law has grown over the last twenty-five years "hard rights" have increasingly occupied the attention of socio-legal researchers.

The Policy Sociology of Forced Migration and Mortality

Since the end of the Cold War, human rights emergencies have intensified in quality, often involving direct violence between religious and ethnic groups. These crises involve a range of situations "in which efforts to drastically restructure a state, society, or social

group lead to civil or international war, resulting in the violent death of large civilian populations and in their substantial displacement to detrimental living conditions that produce disease, dehydration, starvation, malnutrition, and other sources of extraviolent deaths." These "complex" humanitarian emergencies have also become more frequent. According to Hagan, between 1989 and 1999 the number of such emergencies in the world doubled from 14 to 30 and in the last 30 years the number of humanitarian refugees in the world has doubled. Civilians have accounted for an increasing proportion of all war casualties, rising from 14% in World War I to 90% by the year 2000. Nor have most of these casualties been unintentional or "collateral." "The criminal tactics of internally and externally warring states are major contributors to humanitarian casualties," the authors state.

The Legal Sociology and Criminology of War Crimes

The increasing representation of civilians as victims of war has prompted legal sociologists and criminologists to slowly develop a general theory of genocide, where victims of abuses of state power have taken a more prominent place. Most importantly, legal sociologists and criminologists have realized the importance of "evidentiary issues of juridical culpability and responsibility for these hard rights violations." The challenge for researchers is to uncover sufficient culpability "for crimes against humanity that can be hidden behind the doctrine of state authority." According to Hagan, "no body, no crime," a dictum of common law, also holds for international law. Thus, researchers must either uncover bodies from mass graves, as was done in Srebrenica in the 1990s, or the number of deaths must be convincingly established by other, less direct, means. This is what Hagan and Palloni achieved in their *Science* article through

sociological statistical analysis of health surveys. The need to establish evidence of war crimes against civilians is what makes the link between war crimes and human emergencies such a relevant field for “critically cognizant” sociological research, Hagan argues.

A Critical Sociology of Hard Rights Research

A critically informed sociology is necessary because of the role of politics in both the genesis of, as well as efforts to ameliorate, humanitarian emergencies. Only

Hagan...makes the case for a “synthesizing sociological study of what demographers call forced migration and mortality with what legal sociologists and criminologists increasingly understand as war crimes”

by simultaneously keeping in mind both the effects of violence and displacement, as well as the political origins of a humanitarian crisis can its real scope and significance be assessed. As the authors state, “from a critical sociological as well as methodological perspective, to concentrate on endogenous health consequences of these emergencies without simultaneously acknowledging the exogenous political causes is a misspecification, with its own potentially lethal consequences.”

If, for example, researchers rely solely on health demographics, understandably of most interest to relief workers, they can miss the cause of many deaths, distorting the significance of many humanitarian emergencies and obscuring important socio-legal issues. The usual treatment of missing persons in humanitarian emergencies is illustrative. “The focus in population health studies is typically on deaths that can be identified as resulting from specific disease and nutritional causes, and the missing are therefore omitted from consideration,” the authors state. While health workers sometimes document health problems stemming directly from violence and occasionally note disappearances, these are secondary concerns. “Rather than assessing criminal responsibility for these deaths,” the authors note, “the epidemiological focus is on saving the lives of those who survive long enough to get to the camps.” Often in health research the missing are treated literally as missing data, and thus do not figure in most quantitative assessments of humanitarian emergencies. Yet documentation of the missing is essential for assessing the scope of such emergencies and for prosecuting war crimes.

Other common measures of health are equally problematic for assessing the full meaning of humanitarian emergencies. Mortality rates in such emergencies are calculated by establishing an “expected” mortality rate, based on actuarial figures for a population living under “normal” circumstances, and then subtracting the expected rate of death from the actual rate of death. The resulting figure, the “excessive” mortality rate, is used to calculate the duration and scope of humanitarian emergencies. However, as the authors point out, many individuals who may have been “expected” to die from disease or age, may have in fact been killed by direct

criminal violence. The legal significance of these deaths, the fact that they are “criminal violation(s) of the human right to life” is not registered in such calculations.

Relief and health workers are not necessarily unaware of the criminal dimension of humanitarian emergencies, the authors imply. Rather, the politics of humanitarian relief work almost require them to look the other way. Frequently, because of state sponsored violence

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against civilians, those providing relief are forced into a “compromised strategic embrace with states that commit the human rights abuses and war crimes whose consequences they seek to alleviate.” To be most available to people in need, relief workers must use non-threatening nomenclature when describing the emergency, and adopt methods that are as unobtrusive as possible. “The same states that create these emergencies restrict access to their victims,” the authors state.

The veiled and indirect way NGOs, other states, and relief workers sometimes characterize these emergencies (often referring

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to them as “complex”), also can affect how funding is allocated: the lion’s share usually falls to food and medical aid, while a much smaller portion is given to human rights work. The authors cite Mukkesh Kapila, the former United Nations Resident and Humanitarian Coordinator for Sudan, who had previously served the UN in the Rwandan genocide, and who was removed from Sudan while the killing was at its peak, as saying,

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“we had \$100 million available for food aid, but we had only \$1 million for human rights.” As the authors conclude, “not only do humanitarian relief workers have different goals than human rights and war crimes investigators, but external and internal politics and uneven funding distribution make cooperation unlikely.”

The Public Sociology of Kosovo

By way of contrast, however, Hagan and his co-authors discuss the human rights and humanitarian emergency in Kosovo in the spring of 1999 as an instance in which population health, legal sociology and criminology complemented each other exceptionally well in serving the goal of public and legal accountability. Various governmental agencies and NGOs, including Physicians for Human Rights, the CDC, Human Rights Watch, the American Bar Association Central and East European Law Initiative (ABA-CEELI) and the American Academy for the Advancement of Science, extensively documented refugees in real time, using agreed upon sociological methods to arrive at a consensus on the nature and scope of the humanitarian emergency as it unfolded. In several cases these agencies shared data, combining their individual studies to arrive at estimates of the death toll. In one instance, timely data collection by Albanian border guards, the Office of the UN High Commissioner for Refugees and the Albanian Emergency Management Group enabled sociologist Patrick Ball to establish that refugee flows followed ethnic cleansing operations by Serbian forces, not NATO bombing raids, as had been claimed by Slobodan Milosovic during his trial at the International Criminal Tribunal for the Former Yugoslavia (ICTY).

There are several reasons why the documentation of human rights abuses worked very well in Kosovo. In many cases refugees were in relatively good health and were adequately nourished, allowing interviewers to focus on violence they had suffered. The events of the spring of 1999 comprised the third Balkan war, so outside agencies and governments were well prepared for humanitarian work. That the events unfolded on the doorstep of Europe meant

that NATO, the Organisation for Security and Cooperation in Europe, and the United States government were directly involved. Finally, the actions of outside parties, including the NATO bombing campaign and the indictment of Slobodan Milosovic by the ICTY during the humanitarian emergency encouraged interviewing of refugees in Macedonia and Albania; additional refugees were interviewed as they returned to Kosovo after the halt to the bombing and the entry of NATO troops, allowing for extensive documentation. These factors, as well as the relatively short time frame in which they played out allowed for what Louise Arbor, the chief prosecutor at the ICTY called,

“not only do humanitarian relief workers have different goals than human rights and war crimes investigators, but external and internal politics and uneven funding distribution make cooperation unlikely”

“real-time investigation and prosecution.”

The Public Sociology of Darfur

However, the circumstances that allowed for cooperation among relief agencies and governments, especially in the agreement on standard sociological methods, in

assessing the extent of human rights violations in Kosovo, were probably exceptional and are illustrative mostly by way of contrast, the authors state. The humanitarian emergency in Darfur is on a greater order of magnitude, and unfolds under circumstances that are more difficult and complex than those surrounding the emergency in Kosovo. Sudan is a weak state, which has suffered from ethnic and regional violence and conflict for over twenty years. The current conflict began in 2003, but other nations have been slow to respond: it was not until 2005 that the United States, China and Russia allowed the UN Security Council to ask the International Criminal Court to begin investigations. Efforts to protect civilians by the small African Union force have proved ineffectual.

The slowness of the international community in responding to the humanitarian crisis in Darfur has allowed the Sudanese government to obscure the extent of the human tragedy there as well the government's role in its genesis and continuation. "In the absence of real international pressure," the authors state, "the Sudanese government obstructed (or selectively allowed) research and humanitarian relief efforts in Darfur; in turn, Sudanese officials were able to disavow the occurrence of violent attacks on civilians." The opportunity for "real time" investigation and prosecution, which was crucial to the documentation of state-sponsored crimes against civilians in Kosovo, was lost in Darfur.

Refugees within Darfur and in neighboring Chad, face severe food shortages and a wide range of health problems, unlike refugees in Kosovo, the authors state. Humanitarian relief workers have strived to provide medical necessities and food, while human rights organizations have tried to assess the scale

of the violence in Darfur. However, action to effectively prevent deaths due to violence is hampered by a lack of consensus on the extent of the human rights crisis in Darfur. The authors attribute researchers' and advocates' inability to find consensus at least in part to "the fissure between humanitarian and human rights" approaches to documentation of the crisis.

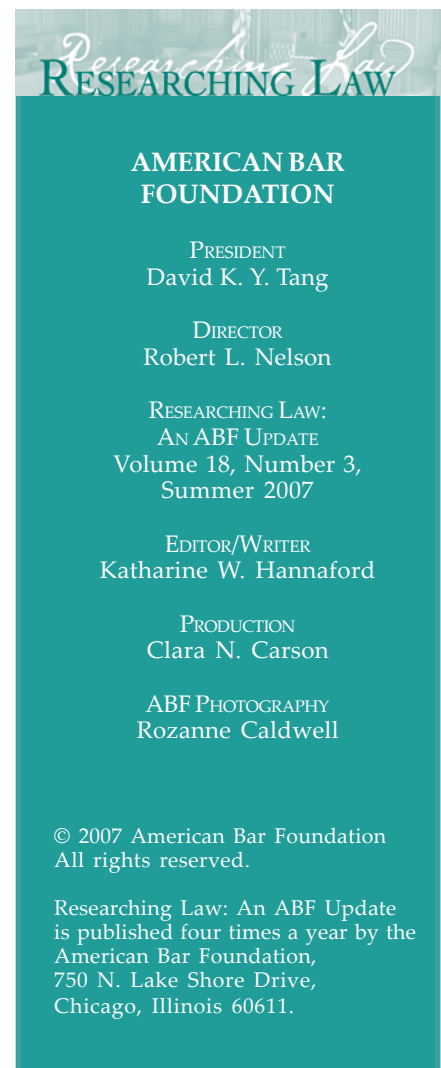
Much of the debate and lack of consensus dates from the summer of 2004, when the World Health Organization, in conjunction with the Sudanese Ministry of Health, conducted a survey that concluded that "up to 70,000 Darfurians had died in just seven months of 2004, at a rate of 10,000 per month, from malnutrition and disease." However, according to WHO spokesman David Nabarro, the survey estimate did not include deaths due to violent incidents within Darfur. CNN reported on Nabarro's press conference announcement of the estimate by stating, "the figure does not take into account deaths from direct violence in the conflict-torn region."

Also in 2004 US Secretary of State Colin Powell commissioned a survey by the Coalition for International Justice (CIJ) to be used in his testimony to Congress about killings in Darfur. Unlike the WHO, which had been granted access to Darfur, as it was working in conjunction with the Sudanese ministry of health, the CIJ was denied access to the country by its government, and thus interviewed refugees in Chad. There, CIJ asked refugees "to report deaths, injuries, and property losses experienced in attacks over the previous 17 months, prior to their arrival in the Chad camps. The interviews revealed that respondents had seen or heard of more than 12,000 deaths over the previous 17 months in Darfur. More than 60% of those interviewed reported that a family member was killed." In

response to these figures, Colin Powell concluded that genocide had occurred in Darfur.

The next year, Hagan and co-researchers examined the CIJ data more intensively, and, using statistical methods, arrived at a crude mortality rate of "1.2 deaths per 10,000 people per day, or more than 98,000 persons presumed dead *from violence alone* for the first 18 months of the conflict." In April of 2005 Hagan, other researchers, and the CIJ issued a press release estimating that as many as "390,000 people were dead or missing or presumed dead" due to

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both violent attacks or for health reasons for the first 26 months of the conflict. However, Hagan reports, at that time, "international politics concerning Sudan", namely, its role as a source of information on terrorism, "led the State Department to equivocate" on its earlier charge of genocide, and the opportunity for a public consensus on the extent of the tragedy was deferred.

"The critical lessons for social scientists," Hagan notes, "are understanding the difference between legal and health oriented research, the reasons behind the difference, and how humanitarian emergencies can be used for political as well as humanitarian purposes." Hagan and his co-authors state that professional sociologists can use their expertise in measurement and statistical analysis to bring together different health and human rights surveys, such as those done by the World Health Organization/Sudanese Ministry of Health and the State Department/Coalition for International Justice, to extrapolate accurate numbers of deaths, as he and Alberto Palloni did in their *Science Magazine* article. Hagan and co-authors conclude that, "the scale and frequency of human rights violations, war crimes and complex humanitarian emergencies demand no less than what the concentrated attention of this sociological synthesis can provide."

Hagan and Alberto Palloni report on this research in "Death in Darfur" *Science Magazine*, September 2006, and are joined as well by Heather Schoenfeld in "The Science of Human Rights, War Crimes and Humanitarian Emergencies," *Annual Review of Sociology*, Vol. 32, 2006. Hagan's book, *Darfur Dying: the Criminology of Genocide* will be published in 2008.

ABF Summer Diversity Fellowship Program

In what has become an annual tradition at the Bar Foundation, research faculty and staff welcomed four undergraduate students in mid June, as they arrived for their eight week stints as Summer Diversity Fellows. Chosen from a competitive nation wide pool, the four students spend the summer learning how complex sociolegal research is conducted, as they assist ABF research fellows in the design and implementation of research projects.

For its financial support of the program, the ABF gratefully acknowledges the Chicago legal community, especially two firms whose contributions merited a naming opportunity: the **Kirkland & Ellis Summer Research Fellow** and the **Seyfarth Shaw Summer Research Fellow**. ABF acknowledges as well the contribution of Katten Muchin Rosenman at the Benefactor level and Sonnenschein Nath & Rosenthal at the Patron level. ABF is also grateful to receive funding from the Kenneth F. and Harle G. Montgomery Foundation, the Solon E. Summerfield Foundation, and National Science Foundation in support of the program.

The four Summer Diversity Fellows were:

Temi Adeniji, a native of Lagos, Nigeria, is a rising junior at Princeton University majoring in Political Economy, with a certificate in Germanic Languages and Literature. Primarily, she is interested in the interaction between economic concepts and political phenomena. For her junior paper, she plans to research the effects of the "Washington Consensus" on economic and political affairs in Nigeria. In addition, she is also interested in German literature circa 1920s, particularly the *Neue Sachlichkeit* (New Objectivity) movement. Temi is currently a director of the Mentoring and Internship Program, sponsored by

the Princeton Pre-Law Society. She is also a member of the Princeton Pre-Business Society and is a German Peer Tutor. After graduation, Temi plans to attend law school. During the course of her summer fellowship, she worked with Senior Research Fellow John Hagan.

Nadia Aziz, a native of Clemson, South Carolina is a rising junior at Clemson University. She is majoring in political science with a concentration in global politics and a minor in French. She is interested in racial representation, international relations, international law and human rights. Nadia presented a paper on Arab American representation in the U.S. Congress at the 2007 annual meeting of the Midwest Political Science Association in April. She has previously studied the French occupation of Vietnam, and won a research award for her paper on the psychological effects of military occupation on Palestinians in May of 2005. Additionally, Nadia has been an officer in Clemson University College Democrats since her freshman year. She works as a student assistant with Clemson University Public Affairs and News Services. She is also a concert pianist, and aspires to be a human rights lawyer. Nadia was mentored this summer by Senior Research Fellow Beth Mertz.

Erika P. López, a native of Cuenca, Ecuador, migrated to the United States seven and a half years ago. She is a rising senior at The University of Wisconsin-Madison where she receives a full-tuition POSSE Leadership Scholarship. She is majoring in Economics, Political Science and International Studies. Erika wants to act as a catalyst for change in the policy making process, and has a deep interest in political and economic development of third world countries, with an emphasis on Latin America. Due to her interest in economic develop-

ment, she is curious about the role law and the government play in shaping domestic and global institutions that either hinder or promote economic growth. She has conducted previous research on the International Monetary Fund, and is currently researching corruption as a factor that prevents economic development in Ecuador.

Erika was recently selected as one out of fifteen students in her university to go to China to study the economic development of this growing world economy. Furthermore, her commitment to social justice has led her to become a prominent leader on her campus. She founded a chapter of a community-service-based Latina Sorority, and is currently the President of her chapter. She also started a Mock Trial Team for the Students for Equal Access to Law Schools, a Pre-Law organization for underrepresented students. Erika anticipates acquiring a joint Masters in Public Affairs and a J.D. after her undergraduate career. Erika worked with Senior Research Fellows Joanne Martin and Steve Daniels.

Brionni “Bri” McGriff, a native of Atlanta, Georgia, is a rising senior at Iowa State University. She has received an International Baccalaureate diploma, is a National Achievement Scholar, a George Washington Carver Scholar and recipient of a full academic scholarship from Iowa State. Bri is an Honors student majoring in political science, public service and administration in agriculture, and international studies. She currently works on campus as the Clerk of Court for the government of the student body and as a lab assistant, and has also worked with the campus admissions department. While at Iowa State, Bri has worked on various research projects, including tracking the voting records of Congress and the President, and also researching inequality within the educational system.



From left: Brionni McGriff, Temi Adeniji, Erika López, Nadia Ariz

Bri was a participant in the Ralph E. Bunche Summer International Affairs Program at Howard University and the University of Nebraska Pre-Law Institute in 2006. She recently helped organize the first black women’s conference at Iowa State and also mentors young girls of color from the community. After graduation, Bri plans to attend law school and graduate school. She eventually wants to work abroad to help rural communities in South America and Africa. Brionni worked with Research Fellows Bob Nelson and Laura Beth Nielsen.

Instituted in 1988, the Summer Diversity Fellowship Program seeks to interest undergraduate students in graduate study in the social sciences and to increase the presence of individuals who will add diversity to the law and social science community. The summer sessions are designed to introduce students to the rewards and demands of a research-oriented career in the field of law and social science. The students are in residence for eight weeks, and each student is assigned to an ABF Research Fellow who involves the student in the design and implementation of the Fellow’s research project and who acts as mentor during the student’s tenure. While the students work primarily as research assistants, they also attend a series of seminars conducted by ABF Research Fellows who acquaint the students with their diverse research projects.

In addition to their ABF research involvement, the students are exposed to various legal career options and observe the justice system in action. A series of field trips provides them the opportunity to talk with legal actors in the real-world environments that are the focus of the ABF’s empirical research. Each year the students visit, among others, the offices of Cook County’s Public Defender, Public Guardian, and State’s Attorney, the Illinois Solicitor General, the juvenile and criminal courts and meet with individual private practitioners and judges.

The ABF’s experience with the undergraduate fellows over the past nineteen years indicates that the combination of intensive participation in a single project, combined with exposure to the wide range of other types of research being conducted at the ABF, provides those in the program with a strong sense of how socio-legal research is conducted. In 2001 the program’s alumni to date were contacted. Twenty-four responded, and their accomplishments are impressive. Of the 24 students, 12 obtained J.D. degrees and are practicing law; 5 received or were pursuing joint J.D./Ph.D. degrees; 4 received or were pursuing Ph.D.s; and one held an M.B.A. In more recent years, this pattern has continued: almost all former Summer Fellows are in law school or graduate school.

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