The photograph *Death of a Loyalist Militiaman*, popularly known as *The Falling Soldier*, was taken by Robert Capa during the Spanish Civil War. The photo depicts a combatant with a rifle in the hand of his outstretched right arm, his head tilted slightly toward his left, as he falls backward on a dry grassy slope near the hamlet of Cerro Muriano on September 5, 1936. The mortally wounded militiaman was recognized by a cousin in 1995 as twenty-four-year-old Federico Borrell García. His final resting place is unknown. This iconic image of warfare and human sacrifice has become the subject of several controversies in the last forty years that are indicative of the intricate process of detection, construction, and interpretation by which evidence is
collected, and multiple traces of diverse nature are transformed into competing evidential narratives.

Doubts about the soldier’s identity, the place of death, and the circumstances under which Capa took the photo have been raised through the decades. The suggestion was made in 1975 that the photograph had been staged by Capa during a pause in the fighting between Franco’s rebel forces and the Republican government troops, not at Cerro Muriano but about fifty kilometers away near the town of Espejo. An alternative hypothesis was that the show maneuvers attracted hostile fire, and caused the tragic death of Borrell García (Knightley 1975, 212; Barca 2008).

In 2007, the documentary The Shadow of the Iceberg appeared in which, as the Spanish filmmakers called it, “an autopsy of the mythical photograph” was made (Doménech and Riebenbauer 2007). A geodesist inferred from the landscape that the picture was not taken at Cerro Muriano, and an astrophysicist concluded from the soldier’s shadow that the photo was not taken at 5 PM, as Robert Capa had said in an interview, but at 9 AM. At this hour, however, there was no armed combat at Cerro Muriano. The forensic pathologist Fernando Verdú claimed that he could not ascertain a cause of death from the photo, and that the soldier’s backward fall could only have been produced by a high-caliber weapon, but that then there would have been a visible impact on the impeccable white shirt. Finally, a comparison between the facial features of The Falling Soldier and a photo of Federico Borrell García showed, according to Verdú, that the fingers, earlobes, and teeth of the two men were different, and that therefore the militiaman on Capa’s image was not Borrell García (Doménech and Riebenbauer 2007).

How credible is the documentary’s evidence, and what does it say about its construction? The puzzle of The Falling Soldier begins already with the unsure conditions under which the photograph had been taken. Capa remained vague in interviews, but war correspondent John Hersey remembered an informal meeting with Capa in which he explained how he had been crouching in a trench during heavy charges by Republican militias against a Nationalist machine-gun nest in Andalusia. Retold in Hersey’s words: “Finally as they charged, the photographer timidly raised his camera to the top of the parapet and, without looking, at the instant of the first machine gun burst, pressed the button” (Knightley 1975, 211).

There was also the suggestion that Capa’s lover Gerda Taro (née: Gerta Pohorylle) had taken the rectangular picture with her Leica camera because...
Robert Capa (née: Endre Ernö Friedmann) generally used a Rolleiflex with its typical square picture format. Furthermore, the two photographers often published their pictures under Capa’s name, as both used pseudonyms. Unfortunately, the couple could not be consulted when the photo’s authenticity was questioned. Taro had died in Spain in 1937 during a road accident involving a tank, and Capa was killed in Vietnam in 1954 when he stepped on a landmine. With the photo’s origin story lost and the evidence dispersed among municipal archives in Spain, the file cabinets of Magnum Photos in New York, the unknown burial grounds of Federico Borrell García and the dead militiaman, and perhaps the confidential testimony of a deceased eyewitness to a son or daughter, we are left with a heterogeneous reservoir of material remnants and inconclusive clues. Maybe Robert Capa’s brother Cornell and Richard Whelan, Capa’s official biographer, could have provided answers. Whelan (1985, 97) could have reassessed his earlier dismissal of the posed photo hypothesis, and Cornell Capa could have given full access to the series of photos made at Cerro Muriano. However, they refused an interview with the documentary filmmakers, suspecting them of a neofascist attempt to discredit the iconic image. Whelan died in 2007 and was buried next to Robert Capa. Cornell Capa passed away in 2008.

The process of interpreting bodies as evidence is further complicated when not only the precise circumstances are unknown but when forensic traces have been erased deliberately. The World War II mass graves in Russia’s Katyn Forest come to mind readily as an example of the manipulation and misrepresentation of material evidence. German troops invading the Soviet Union during Operation Barbarossa located a number of mass graves near the city of Smolensk that contained an estimated twenty thousand people, among whom four thousand were officers of the Polish Army. The German Army supervised in April 1943 an international team of medical and criminology experts to exhume the graves. The investigation established that the victims had all been shot at close range. The Soviet Union was held responsible for the massacre. Soviet troops retook the forest six months later, and a commission was set to work in January 1944 that accused the Germans of slaughtering the Polish officers and civilians. The commission’s report entered the Nuremberg Trials as proof of Nazi atrocities on the Eastern Front. Documentary evidence of the Soviet responsibility for the Katyn massacre had to wait till the early 1990s when Russia’s archives were finally opened (Paul 1991; Paperno 2001).

A second, much more recent, example concerns the massacre of around eight thousand Muslims in July 1995 near the town of Srebrenica in Bosnia-
Herzegovina. Serbian troops commanded by General Ratko Mladić had over-run a battalion of Dutch troops stationed in the UN enclave. The women and children were evacuated, and the men and boys were executed after the Dutch peacekeepers had left Srebrenica. The bodies were buried in mass graves that were opened several weeks later with heavy equipment to disturb the evidence of the massacre. The partially deteriorated bodies were disarticulated, and the remains commingled, before being buried at different sites for the second time. The first forensic exhumation was carried out under the auspices of the International Criminal Tribunal for the former Yugoslavia (ICTY) in July 1996, which was investigating war crimes and crimes against humanity in the Balkans. These exhumations revealed the difference between criminal evidence and forensic evidence, and showed that the interests of a court seeking the conviction of perpetrators may be at odds with the humanitarian aim to identify the victims for their religious reburial by the surviving family members (Crossland 2013; Wagner 2015).

This chapter analyzes the complexity of collecting and interpreting forensic evidence about the victims assassinated during Argentina’s dictatorship from 1976 to 1983, Spain’s Civil War from 1936 to 1939, and the decades of authoritarian rule in Spain until Franco’s death in 1975. What makes the comparison of the Argentine and Spanish cases of exhumation presented here so interesting is how the transitional lives of the crimes against humanity developed in parallel or interactive ways, and how the combination of forensic exhumations, legal accountability, and political circumstances gave rise to different bodies of evidence. Political refugees fled Franco’s dictatorship to Argentina after 1939, and Argentines escaped from their country to Spain after the military coup d’état of 1976. Both regimes made great efforts during authoritarian rule to destroy the evidence of their crimes against humanity, and the two countries have collaborated and inspired one another since the mid-1980s to find disappeared citizens; exhume mass graves; and pursue memory, truth, and accountability.

The concealment and destruction of evidence were common practice in the authoritarian regimes of Spain and Argentina, and only scattered traces remained in secret documents, personal testimonies, and circumstantial evidence that, when placed in the proper context, could establish the crime. The crimes against humanity of both dictatorial regimes had therefore transitional lives during the time span between the classification and destruction of evidence and the piecemeal historical and forensic reconstruction decades later. This chapter compares and contrasts the concealment and disclosure of
the mass killings of Spanish and Argentine citizens, which share the systematic disappearance of the victims of repression and the tenacious attempts by relatives to find their missing loved ones. The assassinations were concealed and the identity of perpetrators blurred for complex strategic, legal, and cultural reasons. Anonymous burials instilled fear and uncertainty among the population, destroyed incriminating evidence, and denied the bereaved and the deceased culturally important funerary rites. Both cases reveal how evidence was accumulated during decades of intermittent examinations spurred by unexpected political, forensic, and judicial developments.

In March 1996 there were large street demonstrations in Argentina against the continued impunity of known perpetrators of the disappearances. Amnesty laws had been passed in the late-1980s, and convicted officers had been granted presidential pardons. The Spanish prosecutor Carlos Castresana was emotionally moved by when he saw the Argentine protests on television, and within days set a legal process in motion that eventually allowed Judge Baltasar Garzón to request in March 1997 the extradition of former Argentine dictator Leopoldo Galtieri in (Roht-Arriaza 2005, 2–3). The arrest of Chilean dictator Augusto Pinochet in October 1998 when he was visiting Great Britain for medical reasons became internationally Garzón’s most celebrated case, but the sentencing of Argentine Navy captain Scilingo in 2005 for his participation in two death flights was his most significant achievement, and the start of a growing legal collaboration between Spain and Argentina in pursuit of accountability. Spain asked Argentina to help establish the fate of Spanish citizens who had been disappeared during the Argentine dictatorship. Conversely, a number of Spanish memory associations and victims—including the case of the Valley of the Fallen in Spain discussed below—filed in 2010 in Argentina a lawsuit against the crimes against humanity committed during the civil war and Francoism on the grounds of international law (known as Querella Argentina). This successful lawsuit has resulted in legal actions in Spain by Argentine judge María Servini de Cubría, involving testimonies by victims, requests for exhumations and identifications, and a demand for the detention and extradition of more than twenty Francoist torturers and public officers. In other words, the two countries were prosecuting each other’s suspects who could not be indicted at home because of the reigning amnesty laws. The threat of extradition to Spain made the Argentine armed forces accept the derogation of the impunity laws in 2005 and, in effect, agree to their prosecution at home, while the extradition requests of Spanish suspects to Argentina helped at least raise the issue of impunity in Spain. So far, the
Spanish state has refused to extradite to Argentina the culprits identified by Servini de Cubría, alleging that their presumed crimes have expired under the 1977 Amnesty Law.

The detention of Pinochet and the legal attention of Spanish judges to Argentina’s perpetrators in the late 1990s influenced Spanish journalist Emilio Silva in the year 2000 to search for his grandfather who had been executed in 1936. The remains were located in a mass grave near the hamlet Priaranza del Bierzo. Subsequently, Silva published an article entitled “My Grandfather Was Also a Disappeared” that showed the direct impact of Argentina’s exhumation movement on Spain. Within years, mass graves throughout Spain were exhumed by a grassroots movement propelled by family members and activists. The prominent place of Argentine relatives in finding their disappeared, not just in the tireless search and protest but as well in the monitoring of the exhumations, was also inspirational for Spain. The Spanish children and especially grandchildren who searched for their relatives stood at the edge of opened mass graves as forensic team members interviewed them about the ante mortem characteristics of the exposed skeletons. This procedure had been developed by Argentine forensic anthropologists during the late 1980s and was now adopted in Spain: the trust of the searching relatives was cultivated, and they became active research participants amid close attention to the political and legal implications of the identification process and the exposure of crimes against humanity (Fondebrider 2015). Furthermore, Spanish and Argentine forensic anthropologists have collaborated in various exhumations and have exchanged information and expertise. In January 2016, the first exhumation in Spain ordered by Judge Servini de Cubría, oriented to find the body of Timoteo Mendieta, took place in the Cemetery of Guadalajara, a city close to Madrid, and the genetic samples were sent across the ocean to the Argentine Forensic Anthropology Team, or Equipo Argentino de Antropología Forense (eaaf), forensic anthropologists for identification. The DNA testing in Argentina was negative for Mr. Mendieta’s presumed body and a new exhumation in the same cemetery has been requested from the Argentinean Judge in early 2017, to the indifference and even feet-dragging of Spanish authorities. Exhumations and identifications have become transnational practices that are intertwined with human rights discourse and processes of transitional justice (Ferrándiz and Robben 2015).

Finally, the exhumation movements in Spain and Argentina and the pursuit of evidence of human rights violations transformed in the 2010s because of a shared cosmopolitan preoccupation with memory and commemoration,
where iconographies of human right violations travel back and forth. Starting around 2008, transnational imageries of the disappeared started to proliferate in public acts by the memorial movement in Spain. In 2010, Spanish activists and family members started to carry photos of the missing during weekly protests in the main square in Madrid (Ronda de la Dignidad de Sol) that are reminiscent of the weekly marches of the Mothers of the Plaza de Mayo in Buenos Aires; and echoes of the Holocaust are heard in the denunciation of the Argentine and Spanish disappearances as genocide (Baer and Sznaider 2015; Ferrándiz and Silva Barrera 2016). The meanings of the bodies of evidence have been changing under the ideological polarization in the two countries, and the growing globalization of memory and accountability have given rise to similar stakeholders, imageries, narratives, and discourses. Nevertheless, the relatives of disappeared citizens in Spain and Argentina have been struggling with the different political and legal consequences of the exhumations because of other historical circumstances, as will become clear in the ensuing analyses.

Death Flights in Argentina

The first reference to death flights in Argentina was made on March 24, 1977, in an open letter to the military junta by the journalist Rodolfo Walsh. Walsh was a prominent member of the Montoneros guerrilla organization, and he denounced the Argentine military on the first anniversary of the coup d’état of 1976, for “carpeting the bottom of the River Plate with dead bodies or throwing prisoners into the sea from cargo planes of the First Air Brigade” (Walsh 1995, 419). Walsh was killed the next day in an exchange of gunfire with a naval task group that tried to abduct him.

In hindsight, we know that Walsh was right, but what was the source of his information? Walsh was a Montonero intelligence officer, and probably received the information from Montoneros who did their military service at the Buenos Aires city airport Jorge Newbery or at the secret detention centers of the Campo de Mayo Army Base and the Navy Mechanics School, or Escuela de Mecánica de la Armada (esma). One of them was the conscript Sergio Tarnopolsky, who was stationed at the esma and was passing information to Walsh. He and four family members were abducted by esma officers in July 1976 and assassinated (CIDH 1984, 85; Baschetti 2001, 38).

Next to presenting the direct evidence of testimonies, Walsh referred to
material evidence that we can now link to the death flights. Walsh described in his open letter how between March and October 1976 twenty-five mutilated bodies that he assumed had been thrown in the River Plate from Argentine naval vessels had washed ashore on the Uruguayan coast. He also mentioned that dozens of bodies had appeared on the Argentine shore (Walsh 1995, 419). The information came from local newspapers that reported on the gruesome discoveries and from how the unidentified bodies were buried in local cemeteries.

The first detailed public testimonies about death flights were given by three Montoneros who had been held captive at the esma for more than one year and were sent into exile to Europe. Their eyewitness accounts were presented at the French National Assembly in Paris on October 12, 1979. The three explained that inmates were transported on Wednesdays, and occasionally Thursdays. They were told by naval officers that they were going to other secret detention centers or to work camps near the Patagonian town of Rawson. All captives were placed under lockdown on these days, and they only heard the case numbers of the transferees being called out at 5 PM. The three exiled Montoneros described the atmosphere at the esma when a group of captives was destined for a death flight as follows: “A very tense climate reigned on the day of the transfers. We, the abducted, did not know whether or not it would be our turn that day. The guards took many more severe measures than usual. We couldn’t go to the bathroom. Every one of us had to remain strictly in his place, hooded and shackled, without making any attempt to see what was going on” (Martí, Pirles, and Osatinsky 1995, 40). Placed in a single file, the selected inmates were ordered to walk down the stairs to the building’s basement.

Where were the captives taken? The three Montonero witnesses discovered their fate in February 1977, when Emilio Carlos Assales Bonazzola reappeared in the esma after having been put on transport earlier that day. He slept through the night and the following day, and then told them how he and twenty other captives had been taken to the infirmary in the basement and were supposedly vaccinated to prevent any contamination at their place of destination. Within minutes he was unable to move his limbs. Others began to vomit or fell unconscious. The group was loaded onto a truck and driven to Jorge Newbery Airport. When he was boarded into a Fokker aircraft, the guard asked for his name. Assales Bonazzola responded with his nickname: Tincho. “You have saved your life, kid,” the guard responded as he was taken from the plane and driven back to the esma (Martí, Pirles, and Osatinsky
1995, 42). Apparently, a secret detention center in Mendoza had requested to interrogate him, and he was taken there in March 1977. The testimony of 1977 was confirmed in 1982 and 1988 by other ESMA captives (Daleo and Castillo 1982, 33–34; Gasparini 1988, 106; Anguita and Caparrós 1998, 384; Robben 2005, 267–69). The three ex-disappeared could now explain the rubber marks on the basement floor the day after a transport. The streaks had been made by the shoes of sedated captives hauled to the trucks waiting outside. When Coast Guard officer Gonzalo Sánchez commented once that the transferees would be thrown from planes flying above the ocean, they suddenly understood why the clothes of transported captives were found in the storage room (Martí, Pirles, and Osatinsky 1995, 41–43).

How reliable were the testimonies of former disappeared captives who told about lengthy torture sessions, constant humiliation, and prolonged incarceration in small cells—including cubicles of only 2 × 0.7 × 0.7 meters—while being handcuffed, shackled, and hooded? Were they not too traumatized to give reliable accounts of their experiences? Traumatic experiences create a mental overload that impedes a comprehensive cognitive encoding (McNally 2003, 190). As Ana Douglass and Thomas Vogler (2003, 2) have explained, “it is by definition in the nature of a mental trauma to exceed and violate our normal mental processing ability and frames of reference. The more massive the traumatic impact, the more it will affect our ability to register it.”

The epistemological issue of testimony, truth, and trauma has been analyzed by Ruth Leys (2000, 298–307) in terms of a mimetic and an antiminimetic position. The mimetic position maintains that people cannot describe traumatic experiences, because these never enter ordinary memory but are impressed straight on the brain. The experiences exist in sense memory as smells and sounds, or in dreams and flashbacks, but were not mediated cognitively. Echoing Charlotte Delbo about her experience in Auschwitz, Lawrence Langer (1991, 6) distinguishes between mimetic deep memory and antiminimetic common memory: “Deep memory tries to recall the Auschwitz self as it was then; common memory has a dual function: it restores the self to its normal pre- and postcamp routines but also offers detached portraits, from the vantage point of today, of what it must have been like then. Deep memory thus suspects and depends on common memory, knowing what common memory cannot know but tries nonetheless to express.” The antiminimetic position claims that traumatic events do not restructure the psyche, and can therefore be expressed in a narrative account after enough emotional distance has been taken (Agger and Jensen 1996, 90–93). The ex-disappeared
could provide thus both sensorial and verifiable evidence, but, in the political circumstances of 1979 when the Argentine military were still in power, they focused on a detailed documentation of the spatial layout of the ESMA building, the chain of command of the naval task force, the repressive operations, and the maternity ward where pregnant disappeared women were held. The personal experiences of the three eyewitnesses were downplayed. Verifiable knowledge was more important to convince foreign governments to take action against the Argentine junta than emotional displays of sensorial evidence.

The military regime fell quickly from power after losing a war with a British expeditionary force over the Falklands/Malvinas Islands in June 1982. Elections were held in October 1983, and Raúl Alfonsín became Argentina’s new president in December 1983. He installed the National Commission on the Disappeared, or Comisión Nacional sobre la Desaparición de Personas (CONADEP). The commission gathered thousands of depositions, including some about death flights, but doubted their veracity. “This is scarcely credible, but is mentioned by many witnesses: some because they had heard about it, others because of direct references made by their captors. Then there were the bodies washed up by currents on the shore. It is indeed difficult to believe, but in the general context of this savage repression one can imagine that for those who practiced it” (CONADEP 1986, 221). The CONADEP report of 1984 included the testimony of the three ESMA survivors from 1979 quoted above, as well as two depositions. One witness said about the ESMA: “As far as we know from the comments of some Task Force officers, the ‘transfer’ prisoners were given an injection of pentothal, loaded asleep into the plane and thrown into the sea” (CONADEP 1986, 222).

Did the depositions provide reliable evidence? The truth commission created a trusting environment for witnesses to acknowledge their suffering, allowing them to share the harrowing experiences in their own way. The commission pursued testimonial evidence through personal depositions, and forensic evidence through exhumations. The poor quality of the forensic evidence gave therefore precedence to emotional narratives that were persuasive because people empathized with the stories of enforced disappearance and were moved by the accounts of torture.

The death flights were also examined during the trial in April–December 1985 against the nine junta commanders who had ruled Argentina between March 1976 and June 1982. The former captive Carlos Muñoz testified that ESMA officers had explained that transferees were injected with a sedative
and thrown from helicopters at sea (Muñoz 1985, 455). Others survivors gave similar testimonies, aware that they could be subjected to cross-examination by the defense lawyers. The public truth finding in Argentina’s inquisitional criminal law system was therefore fundamentally different from making a confidential deposition at the Conadep. The judges questioned the witnesses, and would then allow prosecutors and defense lawyers to continue the oral examination. The difficulty with substantiating the allegations with documents, signed orders, confessions by officers, and forensic evidence explains why the testimonies about death flights were not pursued in the trial against the junta commanders.

The Argentine military maintained silence about the nature and extent of their repressive practices, let alone confessing to such an unforgiving crime as throwing people alive from planes and helicopters. Nevertheless, the retired police-inspector Rodolfo Peregrino Fernández told a human rights commission in March 1983 that planes of the Argentine Coast Guard were employed to launch abducted political prisoners into the sea. One officer told him that one time, “a prisoner had dragged the NCO entrusted with his elimination in his fall into the sky” (Fernández 1983, 71). Somehow, this circumstantial evidence did not receive much attention, other than confirming what former ESMA captives had been saying since 1979. The self-incriminatory account of retired Navy captain Adolfo Francisco Scilingo in March 1995, made at a time when the Argentine military were immune from prosecution because of sweeping amnesty laws, did finally call the death flights to national attention.

Captain Scilingo approached the prominent journalist Horacio Verbitsky in late 1994 to express his chagrin about the treatment of veterans of the so-called war against subversion. He himself had been refused promotion and had resigned in 1986. Scilingo told Verbitsky that he had flown two missions in June and July 1977 with thirteen and seventeen ESMA captives, respectively (Verbitsky 1995, 180). He explained that the sedated captives were put on the plane, given an additional tranquilizer, and then prepared for their fall to death by multiple injuries or drowning:

They were undressed while being unconscious and when the flight commander gave the order, dependent on the location of the plane, the hatch was opened and they were thrown out naked, one by one. This is the story. A macabre but real story that no one can deny. They did it with Skyvan planes of the Coast Guard and Electra planes from the Navy. In the Skyvan through the rear hatch that opens from top to bottom. It’s a large hatch
without intermediate positions. It’s closed or open, and therefore maintained in open position. The NCO stepped on the hatch, a sort of swivel hatch, so that there would be an opening of forty centimeters towards the void. Next, we began lowering the subversives that way. (Verbitsky 1995, 58)

Eighteen years after Rodolfo Walsh first mentioned the death flights, Scilingo’s confession finally completed a picture of the entire procedure from taking captives from their cells to their fall to death. The detailed account provided many new leads, and corroborated the veracity of testimonies that had been doubted, such as Police-Inspector Fernández’s hearsay about an officer almost falling to death. This officer was Captain Scilingo, and it happened on his first flight after the captives had been undressed: “Next, we began lowering the subversives that way. As I was quite nervous about the situation, I almost fell and tumbled into the abyss. . . . I slipped and they grabbed me” (Verbitsky 1995, 58). Luis Moreno Ocampo, the assistant prosecutor at the trial of the commanders in 1985, remembered hearing a different version from Scilingo, namely that Scilingo did not slip but that he was almost dragged into the sky by an awakening captive: “Despite the injection, this prisoner woke up, and half-conscious resisted being thrown out and almost dragged him into the abyss” (Verbitsky 1995, 149). These different versions show that even self-incriminating evidence must be treated with suspicion because it may serve ulterior motives. Captain Scilingo turned himself into a victim who was ordered to carry out a gruesome task, almost died in the duty, and ended up being traumatized and expelled from the navy.

Scilingo was protected from prosecution by Argentina’s amnesty laws, but he was not safe from revenge by his former comrades. They abducted him, and carved the initials of three journalists with whom he had spoken into his face. He fled to Spain to testify in a trial, and was accused himself. He was convicted in 2007 to 1,084 years in prison for crimes against humanity, which translated into an effective term of twenty-five years. Furthermore, Scilingo’s impunity strengthened the resolve of the human rights movement to pursue the derogation of the amnesty laws.

Scilingo’s testimony about the death flights had convinced the Spanish judges and the Argentine human rights movement, but there was no documentary or forensic proof. An important break came in 2005. The Argentine Forensic Anthropology Team, or Equipo Argentina de Antropología Forense (EAAF), had gained access to the Judicial Archive in Buenos Aires, and discovered that around sixty bodies had washed ashore on the beach of Mar
del Plata between 1976 and 1978. Some bodies were fingerprinted and buried anonymously at General Lavalle Cemetery (Río Negro 2005). A number of sets of fingerprints matched with the records of the National Identity Document, or Documento Nacional de Identidad (dni), and the eaaF requested that the judge exhume the anonymous bodies at the cemetery. There were no bullet impacts that could explain the cause of death. The autopsy reports made by the police at the time listed polytraumatism as the cause of death (interview with Luis Fondevrider on July 3, 2015). Positive identifications were made in 2005 of five persons who had been disappeared in December 1977 and were seen alive at the esma (conadeF 1986, 343). They were members of the Mothers of the Plaza de Mayo, including its founder, Azucena Villaflor de De Vicenti, and the French nun Léonie Duquet, who had been assisting the human rights organization.

The forensic examination of the five skeletons reached the following conclusion: “During the laboratory study the team established that the fractures on the bodies were consistent with those of people who had fallen from a great height onto a hard surface (even though water is not a ‘hard’ surface, when a body falls from a great height, it acts as a hard surface). This case is important because it is the first forensic investigation providing evidence indicating that kidnapped people who had been seen alive in esma and remained disappeared were actually dropped into the ocean” (eaaF 2006, 18). The skeletal fractures resembled those of suicide victims who had jumped from high bridges (Abel and Ramsey 2013). The forensic evidence of death flights served multiple purposes: searching relatives whose disappeared loved ones were seen at the esma of Campo de Mayo military base realized that they would probably never find any remains; testimonies that had been doubted acquired truth-value; the history of the military regime could be rewritten; and when perpetrators and victims could be tied to particular flights, convictions could follow. The total number of dead from death flights has been estimated at 2,000–3,500 captives (Somigiliana and Olmo 2002, 27).

The derogation of the amnesty laws in 2005 resulted in the resumption of the criminal trials against the Argentine military in 2006, but the forensic evidence about disappeared captives who had fallen to their death did not provide enough ground for legal action because the perpetrators could not be identified. Important new evidence arose in September 2009, when a witness declared that navy helicopter pilot Emir Sisul Hess had told him about his participation in the death flights at which captives had begged for their lives and fallen like ants into the sky (Martínez 2009). In November 2012, the
coast guard pilots Mario Arru, Alejandro D’Agostino, and Enrique De Saint Georges, the navy pilots Emir Hess and Julio Poch, and the naval mechanic Rubén Ormello were accused of their roles in the flights. Their identification allowed the prosecution to find documentary evidence in the flight records at Buenos Aires city airport Jorge Newbery. The logbooks from 1976 to 1978 were analyzed in terms of four variables:

1. duration (flights of more than 2.5 hours)
2. destination (flights that departed from or arrived at Jorge Newbery Airport)
3. nocturnal flights (flights between 6 PM and 6 AM)
4. purpose (e.g., training mission or transporting personnel)

Eleven flights were marked as suspicious, including one flight in which a Skyvan PA-51 aircraft departed at 9:30 PM on Wednesday December 14, 1977. The flight was operated by the coast guard pilots Arru, D’Agostino, and De Saint Georges, with the ESMA captives Azucena Villaflor de De Vicenti and Léonie Duquet probably on board—the two captives whose bodies washed ashore about one week later and were identified in 2005. The three pilots denied having carried any passengers on this particular flight and stated that it had been a nocturnal training mission (Martínez 2011). The verdict was passed on November 29, 2017. Poch and Hess were found not guilty. Arru and D’Agostino were handed life sentences, and De Saint Georges died in February 2017.

The crimes against humanity in Argentina were of such complexity that the repressive structure became visible only gradually through the different types and instruments of evidential regimes employed during thirty years of democracy. The case of Argentina’s death flights demonstrates how a processual intertwining of different types of evidence produced under changing political and technical circumstances forged complex personal, political, legal, and historical truths. The following case from Spain shows a different manifestation of this processual intertwining of accountability, politics, and truth through an analysis of the politicization of the skeletal remains of Valerico Canales, a socialist militant executed and buried in a mass grave in 1936 and then exhumed thirty years later and reburied anonymously in a labyrinth of crypts.
Impenetrable Ossuaries:
Vanishing Evidence in the Valley of the Fallen

On October 11, 2003, a team of archaeologists located a lost mass grave in Al-
deaseca, a municipality in the province of Ávila, Spain. There, seven civilians
from the neighboring village of Pajares de Adaja reportedly had been buried
after having been executed by Franco’s paramilitary on August, 20, 1936, in
the midst of the early, “hot terror” phase of the Spanish Civil War (1936–39),
when a furious stream of blood crossed the country. This initial burst of vio-
lence gave way to what historians have labeled the phase of “legal terror,” in
which killings of civilians continued at a slower pace and were preceded by
administrative and legal procedures. While the Republican government tried
to inhibit extrajudicial killings in the areas under their control, in the rebel
(Nationalist) areas military justice took over, and mock war tribunals (con-
sejos de guerra) became responsible for the systematic repression of civilians
(Casanova 1999). According to current historiography, around 55,000 civil-
ians were executed in the Republican rearguard during the war, and at least
150,000 by militias working in parallel to the rebel, or “Nationalist,” army,
including some 20,000 after the war (Rodrigo 2008; Preston 2012).

The end of the war and the advent of Franco’s thirty-six-year-long dic-
tatorship brought about the emergence of two radically dissimilar “spaces
of death” (Taussig 1987), resulting in what Emilio Silva has called a long-
lasting “funerary apartheid” (personal communication), one space of death
constituted by the bodies of the winners and another containing the bodies
of those considered loyal to the Republic and declared traitors to the coun-
try, despite their fidelity to a democratically elected government. The latter
bodies were mostly erased from public memory and administrative or legal
inscription, but were opened right after the war. Specific funerary legisla-
tion was passed to protect them, and instructions were distributed by the
central government to organize the unburials and reburials, as well as the
gathering of evidence of the so-called “red terror” committed by “Marxist
hordes.” A large countrywide judicial case was opened, known as Causa Gen-
eral, where all rearguard crimes attributed to Republicans and their alleged
perpetrators were listed. Many of them were executed or sent to jail. Forensic
physicians were recruited to participate in the exhumations of Nationalists
and help with building evidence of crimes and identifying the corpses. The
emerging politicoreligious ideology of the new regime, National Catholicism,
rooted its legitimacy in the sacrifice and martyrdom of those “fallen for God
and Spain” that were being exhumed. Most villages in the country listed the names of the fallen in preferential locations on the church’s outside walls for everyone to see, presided over by the name of the “martyr of martyrs,” José Antonio Primo de Rivera. Primo de Rivera was the founder in 1933 of the Spanish fascist party, Falange, executed in jail in the early months of the war, and reburied in 1939 in the basilica right above the Royal Pantheon in the Monastery of El Escorial, Spain’s ultimate imperial monument (Ferrándiz 2014, 145–74). By doing so, the dictatorial state symbolized its connection with Spain’s “most glorious times.”

The mass graves of the defeated were radically excluded from this unburial and reburial process that marked a high-profile celebration of the birth of the New Spain (Box 2010). By contrast, as a crucial ingredient of Franco’s National security policy—based on widespread repression of the defeated (jails, concentration camps, fines, mistreatment of women) in the frame of an admonitory blood pedagogy—they continued to multiply in the early postwar years in order to consolidate a topography of terror affecting almost every village: a safety network activated to inhibit any potential political dissidence. As places of exemplary memory, or fear memorials, the presence of the mass graves of defeat on the national landscape contributed not only physically, but also politically, symbolically, and socially, to the shoring up of the postwar dictatorial regime under the rule of General Francisco Franco. The investment in terror expressed in thousands of mass graves across the country undoubtedly bore fruit in the dictatorship (Rodrigo 2008), though its bitter legacy evolved and transformed with the Francoist regime, their original efficacy declining as the broad, heterogeneous social body of the defeated absorbed the impact. Even so, the unexpected twenty-first-century reappearance of these graves in the national and international debate on the civil war, Francoism, and political repression shows that the wounds left in the social and political fabric by Franco’s military rebellion (1936–39) and dictatorship (1939–75) were very deep and affected several generations.

The year 2000 marked a major turning point in Spain’s funerary apartheid, when a mass grave containing the remains of thirteen people killed by Nationalists was opened in Priaranza del Bierzo (province of León) under the initiative of sociologist and journalist Emilio Silva, the grandson of one of the slain. The principal Spanish memorial association, Asociación para la Recuperación de la Memoria Histórica (ARMH), over which Silva has since presided, was soon created. A wave of exhumations followed. In 2017, this process has reached at least 450 mass graves, including the recovery of more
the 8,500 bodies (Ferrándiz 2013, 2014). These contemporary unburials of Republican civilians have three main characteristics:

1. They take place in a globalized information society that guarantees high media exposure. (Castells 1996)

2. Although initially advanced by civil society—the grandchildren of the defeated—they eventually attracted some institutional involvement, notably a Historical Memory Law (2007) passed by the Socialist government and around twenty million euros in public funding from 2005–2012.

3. The unburials are carried out through technical archaeological and forensic protocols allowing for a scientific evidentiary reinscription of the executions and the bodies. (Etxeberria 2012)

This production of knowledge about human rights violations is based on a rigorous methodology, evidentiary logic—scientific, but not legal because of a statute of limitations and Spain’s refusal to honor international human rights laws—forms of technical and digital imaging, scientific custody, electronic archive building, and the growing yet intermittent use of DNA identification and its associated rationale of genetic kinship and statistical certainty (Baeta et al. 2015). Beyond these technical considerations, the scientific approach to opening and interpreting mass graves has gained considerable social prestige, within the broader impact of what some researchers call the CSI effect, namely the contemporary popularity of forensic serials in the mainstream media (Kruse 2010; Ferrándiz 2013). Many memory activists and victims’ relatives started to consider that next to the exhumations, the largest price of the political agreements leading to democracy in Spain was the impunity of the crimes of Francoism for the sake of reconciliation—the Amnesty Law and the failure to reverse the institutional abandonment of the tens of thousands of Republicans executed and improperly buried in mass graves. Through this scientific evidentiary inscription (Crossland 2013), the penumbra which these dead bodies had inhabited for decades, defying oblivion not only during the dictatorship but also in the interstices of democracy and modernization, has given way to a regime of public presence and visibility unthinkable a few years ago. A transition has occurred from fugitive ghosts (Steedly 1993; Gordon 1997) into openly visible civil war skeletons widely circulating in the public space and challenging solid legal and political pacts, such as the Amnesty Law of 1977 or the formerly exemplary Spanish transition to democracy.
The exhumation in 2003 in Aldeaseca was an early case in this high-profile wave of unburials of Republican civilians mostly led by the generation of the grandchildren of defeat, though many sons and daughters, and later great-grandchildren, also joined in as the diggings picked up momentum. The Aldeaseca exhumation was promoted by Fausto Canales—a retired engineer whose murdered father was a leader of the Socialist trade union (UGT) in Pajares de Adaja—with the support of archaeologists from a local memory association. While the excavation was largely unsuccessful, it provided one major evidentiary surprise that was to transform Spain’s perception of its most controversial monument: the Valley of the Fallen, built by Franco as the main memorial place of his victory in 1939. To the technical team’s astonishment, only a few small, left-behind human bones were found during the digging, as well as pieces of a broken skull. Enough evidence to prove that the mass grave had been there but . . . where had the bones gone? Who had visited the abandoned grave before the relatives and why? Fausto and his collaborators were at a loss to explain this unexpected development. The families made the joint decision to bury these remains together on August 28, 2004, in a monument-grave erected in the Pajares de Adaja Cemetery. Since then, an annual tribute is paid there to mark the date. Fausto and the other relatives placed the scattered remains in a small urn to represent all those who were in the grave, in a fragmentary reproduction of the community of death—if they died together, they should be reburied together—and initially renounced any identification process of individual remains, including DNA tests.

The archival investigations undertaken by Fausto Canales after the exhumation fiasco indicated that the bodies had been moved to the Valley of the Fallen in 1959, without the families’ knowledge. He found diverse documentation about the tasks of locating, excavating, and transferring the remains found in the grave. The documents included definitive proof that their suspicions were correct: the exhumations had been carried out by an expedition organized by the Avila Office of the Civil Governor, signed March 6, 1959. The report indicated that on March 1 of the same year, the Aldeaseca Grave had been dug for about two hours and that the grave was not easy to find because the people who knew of the existence of the remains had disappeared owing to the time elapsed. Further research on the case also permitted the localization in the valley memorial of a box (Columbarium No. 198) containing six unknown corpses from Aldeaseca and six others from another grave in the same area. These discoveries turned Fausto Canales into one of the key figures in bringing the monument into the spotlight in the search for people
who were disappeared during the civil war and Franco’s subsequent rule. The fact that an unknown number of Republican dead had been surreptitiously transported to the memorial during late Francoism came as a shock to many. Canales’s story perfectly reflects the astonishment experienced by relatives of Franco’s victims, who gradually discovered the fate of their next-of-kin, whom they now considered trapped in an exceptional and complex ossuary born of a religious, political, and symbolic delirium and offensively riveted to the graves of Falange founder Primo de Rivera and Franco himself, buried there in 1975. Since the evidence of the reburial of the corpses from Aldeaseca in the Valley of the Fallen became public, Canales has sought every possible legal means to retrieve his father’s body from what he considered a “cavern of horror,” including appeals to different Spanish judicial entities and even to the Strasbourg European Human Rights Court, so far to no avail (Ferrándiz 2014). In what follows, I will briefly outline some crucial facts in the history of the monument and the mounting evidence that many Republican bodies were transferred to a place soaked in Francoist iconography and symbolism as part of a dubious reconciliatory gesture in the late dictatorship, and explore the difficulties in unmaking Francoism’s last stronghold.

It took Franco twenty years to build this huge mausoleum, barely thirteen kilometers away from the Monastery of El Escorial, where the Royal Pantheon is located. To do so, a mountain was drilled to build Christianity’s second largest basilica after Saint Peter’s, topped by a conspicuous 150-meter-high cross. In 1958, a few months before its inauguration on the twentieth anniversary of the civil war “victory” (April 1, 1959), there was a nationwide call for the bodies of Caídos por Dios y por España (Those fallen for God and Spain), including Republicans as long as they were proven Catholics. According to the register kept by the Benedictines in charge of the monument, 33,833 bodies entered the crypts, mostly between 1959 and 1971. A total of 12,410 are “unknown,” though at the current stage of research it is impossible to trace how many of them are Republicans. The Spanish people were unaware of this transfer of bodies, and the scale and details of the crypts until the Canales case erupted in the media.

The fact that twenty years had passed since the war had finished, with many Fallen for God and for Spain consolidated in family or municipal pantheons, conditioned this massive body-transfer operation. Resistance in Nationalist quarters to the pressure from the central government to produce bodies promoted the semiclandestine, yet official, digging of Republican mass graves. The remains of Fascist leader Primo de Rivera were moved from El
Escorial to the Valley of the Fallen to preside over the altar at the inauguration in 1959. In 1975, a major state funeral took place in the valley when Franco was buried behind the altar. With this latest burial, an unmistakably Francoist funerary hierarchy was consolidated in the monument. During the transition to democracy and the subsequent decades, the valley was beyond dispute and remained a major tourist attraction. Until the passing of the Law of Historical Memory in 2007, every November 20, the date of both Primo de Rivera’s and Franco’s death in 1936 and 1975, neofascist political ceremonies took place there with official acquiescence. With the most recent wave of exhumations starting in 2000, all of this changed, as claims for the recovery, identification and dignification of the Republican bodies reached its subterranean crypts, threatening for the first time the integrity of the monument.

The Historical Memory Law passed in Parliament in 2007 put an end to any political display at the monument but did not include any special provision to rescue the bodies and only established an outsourcing model for other mass graves (Ferrándiz 2013). Relatives of the Republicans buried in the valley then filed complaints before the Spanish High Court (Audiencia Nacional) and thus were part of a short-lived attempt in 2008 by internationally known judge Baltasar Garzón to apply International Human Rights Law to the crimes of Francoism using the penal concept of forced disappearances. The initiative was derailed by the Spanish Supreme Court. Its ruling acquitted Garzón but foreclosed every possibility of prosecuting the crimes of Francoism. On the legislative front, a major development took place in 2010 regarding the scientific study of the crypts. The Socialist vice-president Teresa Fernández de la Vega asked the Ministry of Justice to assess the state of the crypts and the human remains and to evaluate the feasibility of exhumations and identifications. Forensic physician José Luis Bedate produced a very significant but discouraging report. Bodies had been distributed in twenty-eight different burial levels, behind eight chapels. The lateral chapels in the central nave had three levels of burials each, while the chapels on both sides of the transept had five burial levels each, the most complex of them containing more than ten thousand bodies. Due to technical limitations and legal uncertainties about the status of the cemetery, Bedate could only open one hole in each chapel and superficially explore the state of the burials. His team took some pictures, though these were not included in the official report. His assessment was that exhumations posed a “high technical risk” and that the individual identifications were of “extreme complexity” due to the collapse of the different stories and the consequent intermingling of bones (Bedate 2011).
Associations of Republicans buried in the valley, some of which were allowed to be present during the forensic study, were shocked. At this point, DNA technology had become a more widespread practice in the identification of bodies exhumed in mass graves throughout the country, and the official forensic report all but shattered the associations’ hopes of legally authorized operations to rescue their relatives from the cemetery’s depths. For their part, the Benedictine custodians were struggling to keep the ossuary intact and retain full control over it. In the midst of heated public debate, the then abbot, Anselmo Álvarez, drafted a double strategy to prove the intractability of the crypts: one numerical, the other both physical and symbolic. First, he cast doubt on the number of people buried there, suggesting that the total may be double the number of those formally registered by his own religious order: a numerical mess. Second, as a sort of mystical counterevidence, sources close to him publicly disseminated the idea that many of the bones had actually dissolved into the bedrock, melting into the very monument for eternity. The tens of thousands of skeletal remains had become an integral part of the structural foundations of the valley—a physical impossibility. Supporting the Benedictines’ evidentiary lockout are the Neo-Francoist associations for the defense of the valley, with yet another shot in the barrel: legal complaints against tomb profanation in the name of those families that agreed to the reburial were any forensic action to take place in the valley.

In 2011, I was appointed by the Socialist government as a member of a Commission of Experts to democratize and resignify the valley. My task was mostly oriented toward providing solutions for funerary aspects. The main proposal, which created a public outcry, was to undo the dictatorship’s funerary hierarchy by removing the bodies of Franco and Primo de Rivera from priority burial on both sides of the altar. Furthermore, any attempt at transforming the meaning of the monument demanded that the dictator Francisco Franco abandon its premises. What was more difficult was to provide solutions for the Republicans unexpectedly surfacing in the crypts in the last decade. In coordination with memorial associations, we proposed a thorough re-evaluation of the ossuaries by bringing in an internationally recognized forensic committee, including the International Red Cross. The proposal was turned down but, as a trade-off, three forensic physicians, including leading expert Francisco Etxeberria, were called to a commission meeting to reassess Bedate’s report in the light of the photographs taken during the exploration. A senior Ministry of Justice official brought the pictures on a memory stick, allowed us to see and discuss them for a few minutes and then left with the
memory stick in her pocket. The panorama was certainly grim, and at that moment we realized why these pictures had become a state secret and were not displayed in the forensic report. Were they to be made public, an outcry was certainly guaranteed, even among those families of Franco supporters who had allowed the reburial of their relatives in El Valle a few decades ago. The Commission of Experts report also reflected the “extreme difficulty” of exhumations. Yet, the possibilities of a more thorough forensic assessment, and of advanced DNA identification techniques, can still offer a minimal hope that keeps many relatives fighting, despite the odds.

All of Fausto Canales’s judicial appeals in Spain have been turned down in the last decade, as if he were hitting an indestructible impunity wall blocking any access to evidence. His claim was also dismissed in the European Court of Human Rights in Strasbourg. A claimant in the Querella Argentina since 2010, he was able legally to testify in 2014 to the Argentinean judge Servini de Cubría by videoconference from the Argentinean Consulate in Madrid—after being twice blocked by the Spanish government—to no avail so far. Yet on March 10, 2016, a judge in El Escorial ordered the exhumation of two Republicans executed during the war in the town of Calatayud (Zaragoza Province), opening a new judicial channel for other valley exhumation claims. The State Heritage Department, which owns the monument, responded to the judicial order imposing conditions unacceptable to the relatives. After their lawyer filed a new lawsuit for noncompliance in late July 2016, the case appeared before the Supreme Court, where, in turn, it was sent back to the local judge. Meanwhile, both the Benedictines and the central right-wing government are actively prohibiting any new entry into the crypts, despite the legal mandate. All attempts to unbury Franco from the valley and turn him in to his family have been systematically blocked, as the monument increasingly armors itself against what its supporters—Benedictines, Franco nostalgics, and the very political party in power in Spain—consider vengeful assaults from those who lost the war and now want to win it by other means.

Conclusion

The Spanish and Argentine cases demonstrate that crimes against humanity committed in the framework of military coups and dictatorships were concealed for reasons of state security and authoritarian domination, and that the complex processes of gathering evidence and managing forensic in-
vestigations are more often elucidated and driven by family protests, media exposure, and the political arena than by courts and tribunals. In one case, evidence of crimes appears to be dissolving into the bedrock, and even minimal access is being blocked powerful reactionary forces, to the desperation of relatives. In the other, some bodies washed ashore on the beach provide proof attesting to a daunting criminal practice and may serve to incriminate perpetrators. In both cases, evidence is hard to reach and comes in discontinuous, multiple, interlocking, and competing narratives and truth regimes.

The fate of corpses resulting from human rights violations provides an extraordinary roadmap to understand the inner workings of repressive apparatuses. That concealment and denial are an integral part in the establishment of regimes of fear goes without saying. Yet, the multiple evidential regimes emerging around such dead bodies after dictatorial control of history, memory, and criminal evidence start to diagram the depth of the damage that was intended, express the regimes of visibility and invisibility underlying structures of terror, and are tragically inscribed by traces of exclusionary nationhood and belonging.

Since the mid-1980s, with the identification of Mengele’s skull in Brazil by Clyde Snow and his forensic team, and the foundation of the Argentine Forensic Anthropology Team (eAAF), the exhumation of corpses from episodes of mass violence and genocide has become a major tool in the search for “truth, justice and reparation” of victims in transitional processes around the world. The consolidation of increasingly prestigious technologies established around wounded bodies implies the emergence of a novel and transformative necropolitical regime associated with the management of human rights violations—part of a broader forensic turn in the understanding of human experience and suffering (Anstett and Dreyfus 2015). Mass graves and unburials become a ground zero, where mass assassinations, disappearances, and tortures can be deciphered in different degrees of elaboration.

This regime of knowledge and reparation of the violent past is both promising and contradictory. For one thing, the amount and quality of information and evidence that a dead body can provide is enormous, from visible fractures to minuscule traces of torture and killing, as in the case of the death flights in Argentina. In parallel, a new corporeal epistemology is emerging, where, as Klinenberg states, dead bodies become “the site and surface of essential but otherwise obscured social truths” (2002, 121). Also, the forensic and archaeological protocols leading the search, unburial, interpretation, and
identifications of such bodies produce different kinds of evidence: judicial, scientific or genetic (Crossland 2013). The increasing availability and constant technical improvement of these new modalities of evidence building are deeply transforming the nature of the relationship with the violent past and, very importantly, cast a threatening shadow on present and future would-be perpetrators, who are forced to develop new and more sophisticated techniques for concealing evidence.

But, as in Spain and Argentina, political, social and cultural contexts are diverse, and the limitations are plenty. Despite their prestige as the silver bullet of international criminal justice and the fight against impunity—partially an aftereffect of the infallible CSI effect—the new human rights technologies of evidence building can also prove very problematic as they create false, even imaginary, expectations for victims. This is the case of the Valley of the Fallen, where the possibility of DNA identification, if almost impossible technically, keeps alive the flame of hope in relatives but may create long-term frustration as evidence melts into the bedrock and gets lost in political, judicial, and religious labyrinths.

Also, as these evidence-based technologies for deciphering the violent past become hegemonic and naturalized, they have the potential to displace or even contradict alternative forms of historical, political, and emotional connections with both kin and the violent past. Both in Argentina and Spain, sections of the associative movement are resisting these increasingly hegemonic, almost commonsensical, technologies for truth and justice and their associated evidentiary regimes. In Argentina, because exhumations and identifications may provide a false closure and short-circuit deeply embedded political ideals rooted in claims for the disappeared to return: “vivos los llevaron, vivos los queremos” (they took them alive, we want them back alive). In Spain, because the lack of a legal umbrella for the exhumations amounts—for some associations—to an erasure of genocide, where media, spectacle, flashy forensic evidence, and bogus mourning reign, gravely disturbing the political continuity between those assassinated in the civil war and its aftermath and contemporary social struggle. Also in this context, the availability of genetic identification is interpreted as fostering a neoliberal individualization of memory of what is interpreted as a mass, collective crime. In both cases, these resistances coincide in a deep fear that the new empire of technical and scientific evidence bulldozes alternative forms of mourning, memory politics, and truth making.
References


Doménech, Hugo, and Raúl M. Riebenbauer. 2007. *La sombra del iceberg: Una au-


