

**CRIMINOLOGICAL AND CRIMINALISTIC RESEARCH OPPORTUNITIES IN SPAIN ON THE SUBJECT OF THE SPANISH CIVIL WAR**

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**ABSTRACT.**

Tens of thousands of Spanish and foreign non-combatants were illegally detained and executed during the Spanish Civil War and postwar repression. Their bodies are believed to lie in unmarked mass graves throughout the country. The need for criminological and criminalistic research is great. This article discusses different aspects of the work and suggests the involvement of Mexican academics and forensic practitioners. Justifications for such foreign involvement are outlined as are points of mutual Spanish-Mexican benefit.

**RESÚMEN.**

Decenas de miles de no-combatientes españoles y extranjeros fueron ilegalmente detenidos y ejecutados durante la guerra civil española y durante la represión de la posguerra. Muchos de los cuerpos yacen en fosas comunes no marcadas en todo el país. La necesidad de investigación criminológica y criminalística es grande en este contexto. Este artículo habla de aspectos diferentes del trabajo y sugiere la participación de académicos y forenses mexicanos. Se resumen las justificaciones para tal colaboración y los aspectos del beneficio mutuo Español-Mexicano.

**INTRODUCTION.**

As a bioarchaeologist, I study human remains from the past. From these remains, we understand not only the physical history of our ancestors, but social relations and adaptations as they manifest themselves on the human body. Researchers use what is learned to inform upon our present and project into the future. The division between the past and the present is a fleeting and artificial one and in many aspects of human behaviour, we see that over tens of thousands of years there has been little evolution for example, in patterns of interpersonal violence except perhaps in the technology employed (Guilaine & Zammit 2002; Komar 2008; Lund 1995; Walker 2001). Using information gained from this context, we can begin to better understand behaviour patterns in modern times with an aim to reduce, control and more effectively react to it. Although the timescale is different, this is also a goal shared with criminological and criminalistic research.

One context that has much potential for bioarchaeological, criminological and criminalistic study is that of the search for and identification in Spain of disappeared persons from the Spanish Civil War (1936-1939) and post war repression. Due to the Franco dictatorship and subsequent fragile democracy which followed, little work was done to recover and identify victims of Nationalist (i.e., rebel) violence until the year 2000 (Armengou & Belis 2004; Silva y Macías 2003). Since this time, however, clandestine graves of non-combatants (civilians or prisoners of war) are increasingly being sought, discovered, and excavated and the remains from them analyzed with the objective of identifying, repatriating and memorializing the victims. Restoring dignity and addressing appropriate reparations to families of the victims is also a primary motivation.

During the Civil War, while extrajudicial violence was prevalent on both sides Francoist forces became notorious for their brutal and systematic assassinations of captured prisoners of war and other noncombatants that would leave 30,000-140,000 victims lying in anonymous and/or clandestine, often mass graves throughout newly captured territory (Badcock 2005; Barcala 2008). The Nationalist victory in Spain unsurprisingly resulted in failure to investigate these deaths.

The combination of time elapsed since the events (potentially invoking statutes of limitations but including the deaths of perpetrators) in combination with the lack of political will has meant that virtually nothing has been done to provoke state-employed forensic practitioners to investigate past crimes. On the other hand, many archaeologists have considered the context of civil war victim burials as far too recent to be within their realm of expertise or interest (Gonzalez-Ruibal 2007). In December of 2007, however, the Spanish parliament passed a so-called "Law of Historical Memory" advocating an official investigation into events of the war, including acts of extrajudicial detention and killings. Private and public persons including judge Baltasar Garzón- famous for his legal pursuit of Pinochet and members of the former Argentine junta- have recently sought legal action to open archives and pursue civil reparations for victim families, even explore questions of genocide or crimes against humanity (Junquera 2008; Keeley 2008). What was historic in Spain suddenly appears forensic. With this shift and quickly increasing interest and attention, there is great opportunity for professional and academic research in the fields of bioarchaeology, criminology and criminalistics. This is especially true because of the nature of the past crimes now under scrutiny in Spain. Similar violations of crimes against humanity, the Geneva Conventions (1949) and genocide are under investigation in Rwanda, the former Yugoslavia, Cambodia, Sierra Leone, Guatemala, Argentina, Peru and Iraq. Actual crimes of this nature and scale are allegedly occurring today in places like Darfur. Spain presents a case study and body of data that can be used not only to discover trends and develop solutions for Spain but also for other countries with similar problems. Furthermore, research can help anticipate and deter such crimes before they occur. Such an endeavour would provide substance for the now cliché: Never Again/Nunca Más.

More specifically, there are many pragmatic and symbolic reasons for Mexican researchers to be involved in Spanish Civil War investigations of forced disappearances. The most obvious of these is a common mother tongue. Few North American and non-Spanish European researchers in Spain who are investigating war-era crimes are truly fluent in Spanish, Basque and/or Catalan. Nuance in language can be a critical aspect in documenting and understanding witness testimony, but also in deciphering the bureaucratic linguistic maze of government and military archives from the war and dictatorship. Understanding subtleties and meanings of verbal expression- particularly ubiquitous colloquialisms for and against the Church- are necessary for properly interpreting language used and recorded.

## **HISTORICAL MEXICAN CONTRIBUTIONS TO THE SPANISH REPUBLIC.**

When the Spanish Republicans came to power in 1936, Mexico under president Lázaro Cárdenas, was quick to acknowledge and support them (Ojeda Revah 2004; Powell 1981). The coup was announced five months later. In many instances, foreign volunteers went to Spain despite efforts by their own governments to prevent them from doing so. Mexico made assistance to Loyalist Spain "a central feature of its foreign policy" (Powell 1981:96). Mexico was not a party to the Non-Intervention Agreement that governed the behaviour of many other states including Britain, the U.S., France and- on paper- Germany, Italy and Russia. Of foreign governments Mexico alone

openly sent arms to the republic including 20,000 Mauser rifles, 20 million rounds of ammunition and 8 batteries with some trucks, and aircraft (Ojeda Revah 2004:109; Thomas 2003:378, 943; Powell 1981:71; Beevor 2006:140). Thanks only to Mexican support U.S. and other foreign war material reached republican Spain via Mexico as non-intervention prevented direct sale or transfer of arms or other materials- this despite the U.S. permitting the sale of \$20 million worth of U.S. oil and other supplies by private companies to the Nationalists (Ojeda Revah 2004:142-145; Thomas 2003:557,936; Beevor 2006:132, 138). In non-military terms, Beevor (2006) claims that it was only Mexican shipments of chickpeas that kept the Basques, under Nationalist embargo, from starvation (p.226).

Only Mexico and Russia supported the Spanish government before the League of Nations (Beevor 2006:291; Thomas 2003:721, Wollny 1991) and Mexico lobbied in Latin America and Europe for support for the republic (Ojeda Revah 2004:115; Thomas 2003:721). In 1937 Mexico asked the League of Nations to support the republic by providing it military aid (Powell 1981:65). By the end of the war tens of thousands of Spanish refugees, including many orphans, found exile in Mexico where a republican government in exile was permitted to establish themselves (Beevor 2006:412, 423; Ojeda Revah 2004:114; Wollny 1991). Despite the international diplomatic criticism Mexico received at this time for overtly supporting the republican government, it is probably generally agreed today that this was the most appropriate course of action especially in light of the later alliance of Franco's Spain to the Axis powers during WWII.

## **ACADEMIC OPPORTUNITY AND CHALLENGE.**

For the past three summers, the author of this paper has been involved in the investigation of missing persons in Spain from the civil war, specifically grave excavations and anthropological analyses. The number of excavation projects is increasingly dramatically, yet petitions for further help follow apace and Spaniards- now more than ever before- recognize the importance of investigating the past to bring closure to the present and perspective for the future. Criminologists and criminalists have a major role to play in Spain. Questions in this context relate directly to issues of human rights, victim rights, victim and perpetrator behaviour. Other topics of relevance to criminological researchers include penology and international criminal law.

The use and value of oral testimony- especially 70 years after the events- must be explored. The concordance or contradiction between physical evidence and verbal testimony is a constant challenge facing archaeologists, who must weigh an often incomplete sample of material objects (e.g., stone, wood or bone tools) against oral tradition, the record that has been passed down generations within groups as a form of historical "fact". Questions about the validity and reliability of testimony in criminal research abound. The availability and reliability of contemporary data presents a unique problem for those accustomed to being able to draw exclusively upon current, primary data sources. Many of those who witnessed or participated in crimes from the war era have since died. This is one of the reasons why the search for the missing has gained momentum so quickly. Efforts are being made to video record the oral testimony of eye-witnesses, even if exhumation of presumed victims is not immediately feasible and official archives from the time cannot be accessed or do not exist to check the reliability of such testimony. The civil war context in Spain best approximates a criminal, but historical investigation and what has been seen so far is that after 70 years witness testimonies can often be contradictory. Such testimony must be considered in association with the material evidence (e.g., remains of victims, ballistics), which itself may be quite

degraded. Furthermore, memory related even to very recent traumatic events is a complicated subject matter requiring interpretation with respect to the accuracy and detail of remembered events (e.g., Dalgleish et al. 2008; Porter et al. 2003). The passage of time compounds problems associated with testimony from potentially traumatized witnesses. Thus temporal and psychological filters affect oral accounts and data reliability.

Both criminology and particularly victimology are well-developed in Mexico (Rodríguez Manzanera 2004). According to Basque Professor of Forensic Medicine and Forensic Anthropology who conducts civil war exhumations it is the field of victimology that is underdeveloped in Spain (pers. comm. 2008). Victimology is of particular interest given the unique nature of civil war investigations in Spain. Unlike work by the United Nations tribunals in the former Yugoslavia and Rwanda, where formal prosecution of political and military leaders was the primary and almost exclusive focus, work in Spain began as and continues to be a grass roots operation led by family members of victims. In this instance, it is a victim-led process and their interests are taken as a priority. The absence of the state in the work, however, means that public funding and recourse to judicial options have been severely limited. Family and community-inspired investigations has a history in Latin America, where several states were often uninterested (or actively opposed) to investigations of crimes committed by past or current government officials. Accusations have been made of corrupt, unsympathetic and even violent officials in Mexico with reference to kidnappings and murders in, for example, Ciudad Juárez and Ciudad Chihuahua (Amnistía Internacional 2006; see also Human Rights Watch 2007).

Investigations in Spain have only recently started, much work remains. In many cases, data collection protocols must still be established and employed. The general lack of formal criminal procedures being demanded result in conditions favourable to research in many ways. Concerns of confidentiality and the preservation of chain of custody that govern forensic investigations are diminished in the civil war context. Naturally given the sensitive nature of the work sympathy towards families of victims remains critical. This is not a foreign concept to criminological researchers and routine procedures such as obtaining informed consent from witnesses and protecting the identities of sensitive information sources will not present unusual challenges. One difficulty for forensic practitioners who are also academics is the pressure and simultaneous inability to research and publish (Steele 2008). The lack of judicial authority over investigations in Spain absolves the necessity of keeping data confidential until all pertinent trials and appeals have taken place, something that can often take many years. Recently passed legislation by the Spanish federal government accommodates and to a degree encourages the search for missing persons and investigation of their deaths and this gives research tacit government support.

The events under examination in Spain are not rare. The oft-repeated, seldom heeded 'never again' did not stop after the Spanish Civil War. It did not take effect after the Nuremberg trials, nor after Korea, Cambodia, Guatemala, Argentina, Chile, Peru, Iraq, Rwanda, Bosnia, Kosovo, East Timor, or Darfur. It will continue to happen. Investigation in Spain offer researchers an opportunity to engage themselves with a local, affected population with government permission and in a time of peace. Work can proceed without the necessary restrictions of criminal investigations and trials prohibiting the open collection and analysis of data, publication of results and multi-disciplinary consultation on what has been seen, what can be sought elsewhere, what can be understood to deter such events in the future.

## TECHNICAL VALUE.

With direct relation to victim location and identification there is tremendous opportunity to develop the application of genetic and DNA studies, taphonomy, grave prospection via geophysical, geochemical, spectral and spatial analysis. Developing and refining technologies for locating graves- from remote sensing via satellites to ground based methods such as electrical resistivity or ground penetrating radar- will help accelerate the search for victims and provide methodological alternatives for investigations in other countries and contexts. Questions of DNA contamination in mass burials have not yet been adequately addressed by professional and academic research (e.g., Zehner 2007). The taphonomic state of preservation of civil war remains can help establish baselines for distinguishing historic from forensic remains in contemporary Spain and similar environments (see also Prieto *et al.* 2004). Population-specific standards in anthropology that are necessary for unique identification are being developed that hold particular relevance not only for the civil war context but also for modern attempts at victim identification of terrorist attacks and transportation disasters (Congram & Steadman 2008; Ferlini 2006). Given the genetic component in Mexico, Spanish standards hold a degree of relevance for a Mexican forensic anthropological context.

In addition to the above mentioned Mauser rifles and ammunition that was given to the Republic by Mexico, President Cárdenas authorized Mexican officials to purchase arms for the Republic in Europe (Powell 1981:71). Taphonomic effects of the soil and flora over 70 years are likely to obscure or destroy stamps on the casings of ammunition that would otherwise indicate the country of manufacture. Mexican archives may help answer questions related to ballistic evidence recovered at execution and burial sites in Spain. Of the ammunition donated by Mexico, Ojeda Revah quotes President Cárdenas as recording that the rifles were "*siete milímetros... de fabrica nacional*" (2004:109). This author has seen reports on civil war exhumations in Spain citing the presence of Mauser ammunition/shell casings as evidence of Nationalist killings, presumably based on the fact that the ammunition is German. In 1943, mass grave excavations in Poland by the Nazis and members of an international commission revealed German ammunition. This evidence was claimed by the Soviets to show that the crimes were committed by the Germans. In fact, the ammunition had been manufactured in Germany but sold and made available to the Soviet NKVD, who was ultimately deemed responsible for the killings (Raszeja & Chroszcielowski 1994). Clearly the presence of certain types of ammunition at crime sites warrants further study before declarations about probable offenders can be made with confidence.

## SOCIO-POLITICAL VALUE.

Not only is there simply opportunity to engage with and research in Spain, but to do so can reassert the conviction of governments and private citizens who opposed the illegal military rebellion and subsequent dictatorship. Investigations of all killings though particularly Nationalist killings are a reaffirmation of democratic governance, support for the rule of law and acknowledgement of the suffering and oppression that inevitably accompany military rebellion and rule.

Mexico was practically alone amongst countries in formally defending the right of the Republican government to resist the military coup. Most other nations, including the home of this author, Canada, chose the easier path- to remain neutral. Nevertheless, in proportion to population, only France surpassed Canada in terms of the numbers of volunteers who travelled to Spain to defend

the republic (Petrou 2008). Retrospectively the Canadian government has acknowledged the sacrifice of these volunteers and a monument was erected to honour them in the nation's capitol in 2000.

A conservative estimate of about 300 Mexican volunteers went to assist the Spanish republic during the war although Ojeda Revah (2004) notes that the numbers vary significantly according to source (p.194). A socio-political reaffirmation of Mexico's decision to defend the government would be to support the location, recovery, repatriation and memorialisation of those who died in Spain. According to Powell (1981:105), only about 20% of the Mexican volunteers survived the Spanish carnage to return to Mexico. That means that the remains of about 240 Mexican volunteers may still lie in unmarked graves in Spain. Citing Castells (1974), Ojeda Revah (2004:198) lists 74 Mexicans as having died in combat, 42 disappeared or arrested and 19 unrecoverable at the time of the war. Despite the passage of time, the possibility of victim recovery exists today.

## **CONCLUSIONS.**

The question of foreign participation in Spain is a primary consideration. Why would Spaniards want Mexican aid now when democracy is well established and Spanish experts exist who are capable of conducting investigations of the missing themselves? A primary justification is the scale of the problem. Foreign academic, technical, political and social support should always be welcomed in these circumstances. Congram & Steadman (in press) address the past role of foreigners not only in Spain but other countries with respect to forensic and humanitarian exhumations. Argentines have conducted similar work in Mexico, specifically with the victims of Ciudad Juárez, and there are good arguments for their participation, particularly when there may be concern over improper influence or security risk to local/Mexican analysts (EAAF 2006; EAAF 2007). The text above addresses many areas in which there is mutual Mexican and Spanish justification and benefit such as the developments in fields of archival studies, victimology, DNA identification, anthropological analysis, grave prospection, ballistic analysis and witness testimony.

Conclusions that result from studying the context of illegal detention and assassination of non-combatant victims in Spain will have resonance and application in Mexico. Common contemporary problems resulting in large part from human and narcotrafficking have resulted in a very high rate of homicide and kidnapping in Mexico (United Nations 2002, Duarte 2008). There is a potential parallel between the events that took place in Spain where large-scale and illegal detention and murder was committed out of a range of motives including political gain and personal vengeance.

Thirty years ago, Powell (1981) commented about the Spanish Civil War that:

Mexicans could relish their country's admirable diplomatic stand at a time when ignoble cowardice and appeasement were the prevailing norms. Especially in their regard to their rescue of the Loyalist refugees stranded in France, Mexicans can forever point with pride to what they did when the rest of the world remained indifferent to human suffering. In reality Mexico's defence of the often exasperating Spanish Republic cast little glory on the country but it has come to have great importance today (p.177, 178).

With contemporary Mexican research into the missing such sentiments would have even greater resonance. Mexicans today can proudly serve the cause of productive academic research as well

as social justice- not only for Spaniards but for their fellow citizens who went to serve in Spain and continue to lie in unmarked graves.

The point of the work in Spain, as with bioarchaeological studies in general, is not just about discovering the past and bringing historical knowledge to a certain community. No people or country is immune from the type of violence and suffering that has been experienced in Spain. Much can be learned that has relevance in a criminological context in Mexico and also applied in Latin America and abroad where investigations of widespread violence and violation of Human Rights are necessary.

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