JUDICIAL DOCUMENTARY, EVIDENCE, AND THE QUESTION OF TECHNOLOGY

Documentary filmmaking has experienced a resurgence (in film festivals, in critical theory, and to some extent in commercial film circuits) at a time when it has become common sense that the association between images’ technological reproduction and reality is shaky, when virtuality and simulation are inextricably enmeshed in everyday life.\(^1\) The genre has always been anchored on a claim to privileged access to reality, not only through indexical register (pertaining to film recording in general) of contingency and the unforeseen (that fictional film usually scripts away), but primarily because documentary “poses truth as a moral imperative” (Rabinowitz 121). I discuss documentaries that claim a certain ethical relation to truth, a truth identified with justice as it places itself in polemical dialogue with processes in the legal system. However, this association between judicial process and the cinematic documented real is neither circumstantial nor novel; it is assumed in some traditional documentary techniques (e.g., investigative process, interviews to witnesses and experts), and ultimately, ontologically founded in the notion of an evidence-based truth. “Evidence, derived from the Latin *videre* (“to see” or “to make visible”)” is usually “entailed in the verification or refutation of legal argument” (Moon 156); a logic to which the invention of the photo camera was slowly incorporated as “mechanical witnesses” (Schwartz) for detection and exposure beyond human fallibility. Complimentarily, as Brian Winston states in disputing the notion of scientific documentary (advanced by John Grierson, who is believed to have coined the term “documentary”): “The legal concept of evidence is important to the idea of documentary ‘actuality’ in two ways. Although documentary’s truth claim depends . . . on the fact that, because of the camera, scientific evidence is what is on the screen, scientific evidence itself is influenced by the concept of evidence in the law. After all, the law, as it were, came first. . . . So the law provides the general cultural concept of evidence into which science and
documentary’s truth claims in general both fit” (The Documentary Revisited 140).

Therefore, when documentary is thought and practiced as critical of power structures, as it commonly is, this critique is already grounded on a fundamental synergy between the genre and legal truth, sharing parallel evidentiary, argumentative, and epistemological assumptions. Postmodern constructivism, deconstruction, and critical theory of the past few decades have conceived the notion of truth in quotation marks as an all-too-human discursive institution, a historical articulation of power and knowledge that hides and reveals its own sutures, resisting but anticipating its breakdown. However, an ontological longing for unqualified truth has clearly made a comeback. The appeal to/of truth has returned not only in theoretical reflections but also in literature and the visual arts, as what is sometimes deemed a “new realism” resorts to a kind of research and documentation that used to belong only to documentary, raising the problem of how to incorporate a trace of the real within but beyond fiction. Whereas the fundamental position of postmodern art—that is, mainstream Euroamerican art since the 1970s—is that subject and society are symbolically overdetermined (Foster The Return of the Real), this “ontological turn,” under the guise of “the return of the real or the presence and agency of ‘things’” (Elsaesser, “World Cinema,” 5) attempts to overcome postmodern constructivism, eschewing by the same token any naive or rigid notion of realism (which, with respect to film, Thomas Elsaesser identifies with Bazin’s classic ontological or indexical characterization).

The ubiquitous presence of cameras has given way to a boom in the capture of moving images. The advent of digital technology, driven by a dream of immateriality (Doane “Indexicality and the Concept of Medium Specificity”), has potentially eroded blind faith in the immediacy of the images, as the stuff of images, no longer the unmediated imprint of light itself on a sensitive surface (which is the assumption of indexicality), are easily alterable algorithms. But, as Elsaesser writes, “our culture is evidently more than a little reluctant to leave the episteme of the trace and the imprint, that is to say, give up the concept of record and evidence, of truth and authenticity” (“Digital Cinema,” 206). Responding to and inoculating against this anxiety, the desire for the real is also capitalized, coopted, dramatized, and deepened in a spectacular display in all areas of entertainment and information, as if countering a culture of simulacra by paradoxically producing “reality.” Despite being surrounded by a digital flow of images, our trust in visual representation as trace doesn’t just vanish; it only becomes clear that
this trust depends (and always depended) on forms of social authority, or on some kind of contract with the addressee. Faith in the reality of images relies, maybe now more than ever, not on the immediacy of the capture but, rather, on modes of display and circulation as well as on institutional conventions and assumptions (as some photography theorists have argued well before the advent of the digital; see, e.g., Sekula; Sontag, *On Photography*; Tagg, *The Disciplinary Frame*). Therefore, a documentary cannot present evidence by its sheer claim to indexical power, since any notion of evidence depends on postulations of authority: “what Barthes calls “evidential force” is a complex historical outcome and it is exercised by photographs [and documentaries] only within certain institutional practices and within particular historical relations” (Tagg, *The Burden of Representation* 4). As anyone can now be not only a photographer or videographer but also a distributor, publisher, and archivist, “in the new ontology of realism any trust, faith, or belief needs to be contractually secured . . . this is both the lesson of constructivism and its overcoming, or Aufhebung. In other words, ontology mark two [that is, the new realisms against what he calls “photographic realisms”] would require a ‘new social contract’ that is itself not ontologically grounded” (Elsaesser, “World Cinema,” 12).

While invested in presenting evidentiary truth in the context of judicial processes and building their own authority in order to do so, the documentaries I discuss revise the social relations on which the interpellated judicial authority rests. The documentarian engagement with issues of justice achieves a seal of social legitimacy when the film devotes its critical perspective to judicial processes, an attention that is, as I argued, paradoxically based on a fundamental complicity. Indeed, the documentarian quasi-heroic attempt at setting a watermark that stirs public awareness and influences the course of history is nowhere more spectacularly accomplished than when it is legally sanctioned. When a legal decision confirms a documentary as being in the right side of history, the documentary asserts by the same token a legal system that is, if not altogether transformed, at least potentially on the side of justice. The courtroom drama is an established film genre (particularly prevalent in U.S. film), but in documentary film it is U.S. documentary filmmaker Errol Morris’s *The Thin Blue Line* (1988) that has arguably inaugurated a global era of judicial documentaries and has stood as the contemporary model of this subgenre in part because of its tangible impact outside of the film circuit (a retrial was granted, the film was used in the legal context as evidentiary material, and a conviction was overturned). The appeal of judicial documentary might be
explained by the fact that calling attention to and preferably overturning a “miscarriage of justice” is one of the only cases in which documentaries might have “an ameliorating effect in the world” (Winston, *The Documentary Revisited* 236), at least a traceable, documented one. To the courtroom’s visible, circumscribed drama of justice in which common meaning is restored, these films might offer the comfort of a tangible role for cultural production, sometimes subsumed under the heroic role for the documentarian.

Latin American social documentary in the 1960s and 1970s partook of the wave of radical social change, producing a corpus that has had a global impact (Patricio Guzmán’s *La Batalla de Chile* [*The Battle of Chile*; 1975, 1976, 1979] and Fernando Solanas and Octavio Getino’s *La Hora de los Hornos* [*The Hour of the Furnaces*; 1968], being the most well-known). 7 Needless to say, these documentaries remain a testimony to interrupted or unfulfilled revolutionary promises. While the mission of the social documentary was furthering changes in society, the judicial arena offers a ready-made process, short of social revolution, and categorical setting through which change is noticeably advanced and sanctioned, thus providing “visible evidence” of the potentiality of the genre. In polemical dialogue with a legal process (sometimes only postulated and desired), with the performance of justice that the trial dramatizes (the comfort of a clear-cut division between innocence and guilt, and a constrained setting in which the stakes are sorted out), the documentaries I examine belong indeed to the trend of judicialization of politics I discussed in chapter 3.

However, as the judicialization of politics is a factor of the crisis of representative democracy, the films also interrogate legal assumptions and the production of judicial truth. Considering the documentary reliance on previously secured sites of authority (from the anchoring place of voiceover, to the interview, to the talking-head expert) these films renegotiate their authority in regard to a judicial process whose own authority, legitimacy, capacity for and commitment to truth cannot be taken for granted either. When documentaries problematize the production and outcomes of judicial truth, they also revise the terms of the documentary social contract to reassert their own authority, paradoxically dependent on a judicial discourse the documentaries called into question. From this perspective it merits asking, what sustains documentary evidence when the law that “came first” recedes, in particular in films that are structured in dialogue with the law, legal institutions, and notions of justice? An image is still offered that, even in its combined virtualization, atomization, and spectacularization, stands as ev-
identiary truth; but only to encounter a situation in which the appeal to judicial authority has been delegitimized. In order to transcend this multiple erosion, the following question becomes relevant: Can the judicial documentary perhaps present evidence beyond its submission to a legal logic, to invite an experience of the real that, while advancing a critique of a legal apparatus, also hints at a different notion of justice, through but beyond the law, in relation to which the image might be presented as the vestige of its possibility? If evidentiary truth presupposes the power of the evidential to speak for what is not visible, to point beyond itself in order to make larger sense, the evidence I am interested in is one that doesn’t completely abandon its objectuality, persisting as truth of which legal justice cannot speak, as it recalls a sense of justice transcending institutionalized forums and that is not exhausted by judicial evidence detection and decoding.

The films I have selected for discussion are *Granito: How to Nail a Dictator* (Pamela Yates, Paco de Oní, and Peter Kinoy 2011), *La Isla: Archives of a Tragedy* (Uli Stelzner 2009), *Presunto culpable* (Roberto Hernandez and Geoffrey Smith 2008), *El Rati Horror Show* (Enrique Piñeyro 2009), and finally *Juizo* (Maria Augusta Ramos 2007). I must clarify from the outset that I don’t intend to make claims about the state of contemporary Latin American or national film production (a growing academic field), but rather only about a particular genre of films conceived as transnational. Different factors concur: the existence of international organizations as a source of financing documental projects, the global circuit of film festivals acting as sites of recognition and marketability, the work of activist-filmmakers counting on an international audience and circuit of distribution sensitive to global issues (as even movements of indigenous filmmaking and media-activism rely heavily on a network of international actors), and—related to all the factors above—the force of a human rights agenda, the network of institutions that support it, and the investment of this agenda in judicial processes. Indeed, “human rights documentary” is used commonly as a label in documentary circuits, a way of packaging together films that engage social struggles within a set of global expectations regarding their progressive political stance. Therefore, I read judicial documentaries as transnational in this very peculiar way that highlights the convergence of the conditions of circulation (market, festivals, noncommercial circuits) with a configuration of international legal reason that has influenced the debates locally. The seeming heterogeneity of my corpus implies an evolving judicial documentary concern that, departing from hardly settled issues of a
transitional justice that conformed more squarely to the international human rights agenda, develops into a more general concern with the rule of law vis-à-vis civil rights affected by the evolving narratives of security, growing criminality, and violence.

Now, allow me a detour through the construction of evidence in the development of human rights since World War II. It was the Eichmann trial that brought to the fore the testimony of the victim in the production of judicial truth, to make up for the silences and evasions of the accused. If the Nuremberg trials opened the possibility to put history, and consequently law itself, on trial, this effort relied on documentation; but the pathos of oral deposition of lived experience—that is, the victims’ writing their own history of victimization—wasn’t considered relevant legal material until the 1960s (Felman 12, 126). As I argue in chapter 3, while the Nuremberg trials are a landmark for international law in developing the charge of “crimes against humanity,” the Eichmann trial proved to have an impact on the collective imagination, without which the social theatrics mobilized for the sake of truth and reconciliation processes wouldn’t have been conceivable. As a corollary and a turning point in this history connecting the outcomes of World War II, the Cold War, and the renaissance of human rights in Latin America, the exhumation of the remains of Nazi officer Josef Mengele in Brazil in 1985 brought to center stage the science of forensic anthropology, allowing a rapid development of techniques that would be further advanced in identifying remains of Argentinean disappeared.9

While documents and then personal accounts were traditionally the authorized purveyors of the truth of history to be confirmed by legal judgment, now matter was elevated to the status of evidence against the effort to write history over its erasure and on top of the obliteration of victim’s body—the material world not just as a surface in which traces to be decoded are inscribed, but as itself being capable of legal standing. Forensic anthropology came to the rescue not only of the victim’s identity as the source both of its denied citizenship and its “dignity” allotted by the human rights narrative but also of the “evidentiary paradigm” itself (Guinzburg) by which peripheral, insignificant, accidental details could be rendered first into meaningful signs and then into purveyors of truth.

In processes of democratic transition, lifting the status of remains to a piece of evidence in judicial courts endowed evidence with symbolic powers to interrupt the repetition of archival, foundational violence, the iterative violence of political foundations. If documents postulate a texture of social reality and cast a symbolic net that produces an archival
order, the appearance of things might signal the displacement of documented truth, linking or disrupting the chain of signifiers, to produce a momentary albeit momentous opening in the currency of sanctioned discourse. Certainly documents—the relations they create, the precedent they set, the truth that they purvey—might also lose their spirit and, reduced back to the status of objects, might become sick, ghostly or demented reminders of what they’ve been written for, their binding force illegible or emptied out of meaning, speaking or being just rubbish. And things might, like human remains, be charged with immanent meaning or they can be placed at symbolic crossroads where they can occasionally speak too, as Claire Moon argues by quoting Clyde Snow, the forensic anthropologist who identified Mengele’s skull, asserted: “Science claims the power to make the dead speak again: ‘tradition has vested the profession with a solemn authority to speak for victims. The dead cannot perjure themselves’” (qtd. in Moon 157). However, whereas Snow’s ground-breaking evidentiary science’s relation to the legal apparatus is akin to a traditional construction of authority in Latin American letters based on prosopopoeia, as the intellectual (as professional, as artist, as politician), temporarily clothed in human rights discourse, advocates for and symbolically redeems the vanquished of history, the presentation of evidence might exceed this discursive terrain. According to Thomas Keenan and Eyal Weizman, the advent of things in the court of law, reaching beyond legal reason “inaugurated a new political sensibility, an ethics and a political aesthetics whose implications and influences quickly overflowed the boundaries of their initial forums and made their way from the juridical field to structure the way we understand and represent political conflicts, whether in media, in political debates, in literature, film, or the arts” (13–14)—an aesthetic, that is an order of the sensible activated in the presentation of the judicial evidence but that breaks through judicial conditions of enunciation to inform the production of truth in different spheres. This aesthetic also suggests a presence that cannot be subsumed to a regime of truth articulated in legal terms. A material presence, evidence names in my discussion an appearance whose effects stay on after its juridical significance has been exhausted—objects that are what always return because they cannot (let us) forget. These documentaries strive to make something visible beyond documentality; they present the nonhuman to disrupt the symbolic world in which a legally sanctioned state of affairs makes sense. The work of visual artists Rosângella Rennó from Brazil, working on archival photography, and Teresa Margolles from Mexico, who displays body parts extracted from the morgue, converge at the point in which corpses, documents, and
photographs become “things” in this way, still speaking a language of juridical evidence while pointing to a sense of justice that transcend it. Taking into consideration the problem of technology that all these documentaries mobilize, I follow the role of evidentiary proof as a filmic interest in the production and the irruption of the real—nonhuman or other-than-human elements that the documentaries make visible and that question, disrupt, or suspend the appearance of a legible and visible order that perpetuates injustice—its archival legitimacy, its common sense.

These problems take me to two judicial documentaries about Guatemala to which I now turn. The first one, Granito: How to Nail a Dictator, positions documentarian and documentary filmmaking at the center of a judicial case. The fact that the film is narrated by documentarian Pamela Yates is key, as she performs the role of the mature filmmaker who looks back at the filmic-political commitments of her youth, when she directed When Mountains Tremble (1983). This important film (winner of the 1984 first Sundance jury award) denounced the bloody and merciless war of extermination reliant on U.S. support (approved by Congress, under the Reagan administration), manifestly waged by the national army against a popular insurrection but massively targeting indigenous Mayans. When Mountains Tremble combines original and borrowed footage, reenactments of historical scenes dating back to a long history of U.S. antidemocratic interventions in the country, the narrative on-camera presence of Rigoberta Menchú, interviews with experts and historical actors, and remarkable shots of the war in which Yates, her youth passing as enthusiastic naïveté, was able to not only gain the trust of guerrillas with whom she sympathized and film some gatherings but also embed herself in army operations, which she would denounce in the film. Against that background, Granito is presented by Yates as a necessary, pending coda, one that twenty-five years later historical forces folded into legal reason, pushed to the fore. The forces of history are instigated by international lawyers in Madrid, Spain, who are preparing a dossier to present a genocide accusation against former Guatemalan military rulers before the Spanish court, which claims universal jurisdiction for prosecution of crimes against humanity. Spanish lawyer Almudenas Bernabeu’s request to Yates for footage she might have shot in Guatemala in the 1980s kicks off the narrative of this documentary structured to mirror the compilation of the legal file, moving between Guatemala, New York (where Pamela Yates is based), and Madrid. By introducing a European standpoint to the hemispheric time-space frame of her first documentary, Granito at-
tempts to make the legacy of the Cold War coalesce through a judicial act that would overcome the constrained actions of the Guatemalan transitional justice efforts. Strictly defined within the legal case, the film frames the hemispheric and transatlantic historical implications, recoiling from conjuring up the ghost of twentieth-century European history of genocide and its unacknowledged relation to five centuries old colonial violence.

The juridical intent repurposes not only archival footage but also the life of the filmmaker as a model for transnational activism. *Granito* doubles as a life record of a documentarian’s journey from young solo idealist traveling around in a team of two with precarious equipment (one camera, one voice recorder, the standard weapons of direct cinema) and exposing herself to be a target of the state terror apparatus, to mature filmmaker who is part of an international human rights team, with its legal and cultural branch. The young documentarian has been not only a privileged witness but also a partially unwitting one at that, as her camera registered a reality that surpassed her own political awareness. “I had no idea I was filming in the middle of a genocide,” Yates declares at the beginning of the film. She knew the full extent of the massacre, having shot horrific images of indigenous peasants’ victimization and incorporated testimonies and Menchú as her main narrator; but perhaps what she wasn’t fully aware of—at a time in which the narrative of the Cold War was still in effect, although receding—was the applicability of the term “genocide,” which resignified history within a legal frame. Demonstrating the existence of genocide was in fact the first step to establishing the plaintiffs’ case before the Spanish court, even when the 1994 UN-backed Guatemalan Commission for Historical Clarification had already instituted the “genocide” category for the army extermination of indigenous Quiché in the highlands. But the commission had been formed as part of peace accords and it was explicitly impeded from leading to prosecutions.

The film’s production follows the compilation of a judicial file to prove the case, so the documentary incorporates testimonies of witnesses, victims, and experts. Although not full-fledged reenactments, there is a certain performance of actuality in some dialogues, including victims’ depositions and Skype communications between Spanish and Guatemalan lawyers, intended to endow the film with the suspense of an ongoing, open-ended process. But testimonies are not sufficient to legally accuse a perpetrator; hard evidence is needed to build a case, as forensic archivist Kate Doyle explains (00:48). The burden of proof is on the side of the plaintiffs, and it needs to be a substantial one for the
charge of genocide to have legal validity: the prosecution must show the high commanders’ intention to target people as people, not because of their political activities. This is where film records fall right in the center of the legal case, as not only did Yates capture the aftermath of massacres by the army targeting indigenous, but she also managed to interview high military commanders, particularly former president General Ríos Montt, and these interviews might provide the missing link to prove genocide.

If “the camera produces a record, on the legalistic model, of the events filmed . . . [and] the legal tradition casts the documentarist as witness to the original scene” (Winston, “The Documentary Film as Scientific Inscription” 142), Yates had produced both an initial record (of the armed social movement of revolution and resistance, and of the massacres perpetrated by the state) and twenty-five years later, the record of the judicial uses of the record, which confirm the evidential value of the documentary enterprise. The documentary includes multiple reenactments of Yates—in the apparent solitude of her New York City office—searching through reels, looking at old footage, and finally finding some forgotten treasures in the outtakes. The dramatic peak of this effort of reconstruction comes when Yates, following the lawyer’s request, finds in her own filmic archive a forgotten reel from a 1982 interview with Ríos Montt, in which, confronted with Yates’s question about alleged massacres committed by the army, he denies first to subsequently affirm, reassuringly, that he is in control of the army and entirely aware of every operation. A statement that, reframed within the judicial prosecution, amounts to a confession thwarting the defense’s argument of the general’s ignorance of the troops’ actions on the ground, including the mass extermination of indigenous Quiché happening in remote highlands (mostly in the so-called Ixil triangle). Clearly this is not what the general intended to say, but nevertheless what he says is beyond his own intention when the documentary, having already demonstrated that the first clause of the statement is false, joins forces with judicial argument to retrospectively resignify leftovers, conjuring up ghosts contained in film to produce a confession without an acquiescent subject, and to illuminate what is in any case not visible—that is, the commander’s responsibility. The conversion of these old 16 mm reels to digital images that the judge watches in Madrid represents a past finally resignified and repurposed, for a legacy that the courts of law would have made possible. Further hard evidence is contributed by a file, slipped by an anonymous source into Doyle’s hands, in which the planning of a “scorched-earth campaign” (called operación Sofía) is authorized and reported back to high
commanders. But the film footage is an altogether different document, as it records not planned schemes that might be hidden and unveiled, a secret but consistent archival order, but contingency, which retrospectively becomes the evidence of history revealing itself in a legal case.

Thus, the film’s claim to truth cannot be based solely on the power of film to capture what is out there, because this truth is only revealed retrospectively. What is packed in the pending charge of genocide? Genocide was the post–World War II legal construction in response to the attempt to exterminate the Jews, a declaration of the new nomos of the earth by which no national state power will again be allowed to target a specific population within its borders. Abstracted as a legal figure crowning a declared stage of achieved Western civilization applied to the Guatemalan situation, genocide obscures in this case the history of European colonial expansion that was inaugurated in the Americas and introjected in the racist logic underlying the construction of Latin American states. The alleged “communism” of the mobilized indigenous is of course a way for the Guatemalan ruling class to jump on the wagon of the Cold War and secure global backing and strategic support from the Pentagon; but more deeply, the “ghost of communism” expresses a colonizer’s fear and frustration for the traces left over after a history of violent erasure of common life. In the background also lurks the fear of a common humanity that the massacres were deployed to negate, not only by destroying the physical integrity of the vanquished but also by forcing them to enact the barbarism that was projected onto them. The “scorched-earth campaign,” in reference to the military actions in the hinterlands, signals beyond a common parlance the need not only to destroy bodies and infrastructure but to wipe out the face of the earth—and not only to erase traces of physical memory, but to produce ecologic devastation (as it was later demonstrated by satellite images and incorporated as further proof of genocide) to bring about a version of empty, homogenous modernity.

But when the Spanish judge’s order for the arrest of Ríos Montt is blocked by Guatemalan constitutional court, the crescendo of the documentary deflates from its high stakes of active articulation of the judicial case to a diffuse recording of efforts intended to forge a historical memory. So, the documentary moves on to register present actions of human rights organizations and families of the disappeared, and their relationship to the resignified remainders: bones unearthed from the mass grave, transformed into evidence but overflowing legal meaning to become a place of commemoration; documents of the recently discovered police archive (the subject of documentary La Isla) reacti-
vated as tokens that connect to the lost loved ones. However, the film meanders and seems to have lost the existential intent expressed in its subtitle, *How to Nail a Dictator*, which betrays the humble diminutive of the title. Instead, the film goes on to register a present that is not too different from the past: indigenous Mayans confronting the same marginalization and impoverishment, continuing a long history of oppression, as the same ladino landowners still own the land from which they were forced out; all while the forensic team receives death threats and the judicial cases are still stuck in Guatemalan court—wreckage upon wreckage, to which the failed possibility of judicial retribution and recognition might be added. Another scene portrays Yates along with witness-survivor Antonio, screening *When Mountains Tremble* to an indigenous community as a didactic piece concerning their own history—the kids wide-eyed, some members of the audience crying, the whole scene resembling a *National Geographic* piece with Yates as a good-will ambassador—not from the U.S. left intelligentsia this time around, but from the land of good-hearted globalization modeled on human rights scale; and bearing not the scales of justice but video technology. All this comes across in the documentary as an afterthought, the indigenous people, who made the mountain tremble more than two decades ago, functioning as a soft level of validation for the original 1983 film, far from the hard truth of the judicial sentence expected from Madrid. “Granito” is the “granito de arena” (grain of sand) that, in the Spanish saying, one pinches in to produce major and enduring results. “My grain of sand is justice,” declares Antonio (1:37:00), leaving open the question whether justice is what he does every day, or that fleeting closure that can be only expected from the judicial act. The expression is further explained in the film by Rigoberta Menchú in the language of rights as “a humble phrase that expresses a concept of collective change . . . uniting individual and collective rights” (1:39:00). Even when the efforts to indict Ríos Montt before the Guatemalan court fail by the time the film shooting ends, *Granito* still attempts to give legal reason the last word, concluding with the scene of an actual judicial decision by a Guatemalan court, convicting two former policemen found guilty of disappearing militant Fernando García (whose daughter Alejandra is interviewed in the film), as if only a legal process can validate each grain of sand and signal that history is going in the right direction. After the film’s release, the charge of genocide would be leveled against Ríos Montt not in Madrid but in Guatemalan courts (positioning Guatemala as the first country charging a former head of state with genocide), ratified and then annulled in a long ongoing process in which the legal apparatus is reenact-
ing its internal divide: torn between condoning genocide and disarticulating the genocidal, colonial reason that founded it. Perhaps the visual trope of director Pamela Yates handling film cans and reels, recurrent throughout the film, points to the physicality of the record, both fragile and enduring, flammable yet retrievable, and embodying a dormant promise that its evidentiary power channels without ever exhausting.

Documents are at the center of Stelzner’s film _La Isla: Archivos de una tragedia_, as the serendipitous discovery, after an accidental blast in the police arms deposit, of an abandoned police archive revealed records of intelligence operations that had been denied by the state. Organized as a dirty-war machine against any initiative, thought, or movement that a powerful political and economic elite sensed would undermine its privileges, the state kept files registering secret police operations, some decades-old, including personalized surveillance files, reports of torture, assassinations, and disappearance of prominent politicians, political organizers, and common citizens. The process of conversion of a crumbling deposit into an archive of a secret war of the Guatemalan state against its population entails a massive reading and scanning task pursued by teams of human rights volunteers who were able to secure some foreign aid to convert musty, fading pages into usable, traceable, electronic files.

The documentary is a collage of elements of different extractions and affective tone, giving the impression of an open process: testimonials from family members of the disappeared narrating the arbitrariness and sheer horror of their suffering (including the case of two members of a family with sixteen disappeared); historical footage from different periods, projected onto the granular, harsh surface of a concrete wall, perhaps to express an anxiety regarding the power of the image to both illuminate and obscure; scenes depicting teams of archive personnel meticulously examining files with surgical care, latex gloves, head and mouthpieces; testimonies by people working at the archive, some of whom are family members of the disappeared; lyric segments featuring a man playing cello in a ruinous industrial landscape peripheral to the archive; sequences of policemen and -women marching, as the archive sits at the site of an active police training station and car deposit; silent panning that shows documents and rows of mug shots; the reenactment of the U.S. adviser typing letters warning Washington against its blind support of the Guatemalan security forces. Rather than resorting to a distinct thread to organize all these pieces, the film is an open interrogation about the Guatemalan state, in the face of this historical chance encounter with massive amount of incriminating documentation.
The film’s melancholic tone, which no doubt expresses the sadness for generations of socially minded Guatemalans mindlessly killed, is also a symptom of the documentary projecting an ambivalent light onto the future, as the future and objective of the repurposing of these documents is uncertain. The individualized documentation of decades of police surveillance and assassinations contrasts with the indiscriminate killings that the army carried out with “racist frenzy” (Grandin, “Five Hundred Years” 69) in the countryside. Contrary to Granito’s focus on circumscribed revelations of heads of state’s responsibility within the legal forum, neither the documentary nor any judicial process would be able to compile and digest the sheer historical excess of these pieces of evidence. Nor can they make up for their limitations, as legal and documentary productions might mobilize documents as evidence while missing the evidence of denial and erasure to which generations of state officials and other Guatemalan citizens collaborated.

Before the sheer massive accumulation of evidence the documentary appears paralyzed, confronting the question: What is to be done? What this documentary is displaying is the liminal status of these documents caught between the immateriality of the declassified archive of international human rights activism (of which this particular film by a German director partakes) and the ruinous, decayed, dumped putrefaction of the documents’ material existence, making the former into the impossible incorporation and transcendence of the latter, an attempt to dispel an evil that dwelled in the archive—but that might have withdrawn from the archival impetus and might be residing elsewhere, or everywhere. The massive memory conversion to the databases of international organizations is complemented by the transference of information to the private hands of victims’ relatives (particularly individualized files with pictures, signatures, records of the victims’ activities), achieving an auratic status for these relatives as an emanation of the missing. The families of the victims and the potential political opposition are invested in the recovery of documents as the source of a historical account that might give them evidential ground to rewrite national and personal history; by the same token, they renew an attachment to the archive of the state as an inscription of the truth, reinvesting in remains of the state’s machine at the very moment in which its truth is utterly discredited and its ruins are out in the open. As the same Creole elite still holds the strings of state power prolonging “five hundred years of repression” (Grandin, “Five Hundred Years” 70), no longer by mobilizing the state to produce a brutal Westernization but by dissolv-
ing it into a functional piece within a savage narco-capitals infused free market, the open archive of human rights abuses might be always promising justice-to-come, albeit without shaking power structures.  

What historian Kirsten Weld, who studied this archive extensively (not just as a source of information of past abuse but as the site of contemporary social battles) calls the “million dollar question”—that is, why the state kept such a self-incriminating record at a moment in history in which investigations and trials for human rights violation have worldwide visibility and acceptance—is key. The answer Weld ventures has to do with a perpetuated governing military class, whose continuous arrogance condemns it to political blindness. In my regard, another impasse is more pressing: whether the retro-conversion of the archive to digital memory fetishizes the remains of the past, congealing state secrets into the status of historical record, or allows for this evidence—these documents, this wreckage—to reignite the politics of the present. As the transference from archive to database might signal the moment when the power of state secrets is deflated, the poignant image, offered repeatedly by the documentary, of the ruined archive building surrounded by police force practicing drills and continuing its regular training, might be read as the portrait of the afterlife of the state surviving as façade and ritual after its soul has abandoned it. As the state deserts its infrastructure of centralized power and control, a chirurgical spirit illuminated by scanners and computer screens moves in, adding to the melancholic, septic atmosphere. Perhaps these documents come to see the light of the day and the scanners right after archival and surveillance techniques have been outmoded in the task of producing a population under siege, as the control of the state is no longer central in the operations of power.

When not encompassed within the global narrative of human rights and democratic transitions, judicial documentaries encounter the state networks of law and law enforcement institutions whose discredit they assume from the outset. The next two films I discuss, the U.S.-Mexican production of Presumed Guilty and the Argentinean El Rati Horror Show, are equally invested in weighing documented evidence against power abuse or neglect by the state, no longer in hopes of “transitioning” the state but in order to revert miscarriages of justice against individuals and consequently to address substantial failure of the state to bring about justice. But rather than just attempting the default documentary strategy of raising awareness in the public sphere, the films document their own process of producing evidence, which with the introduction
of cameras and other “mechanical witnesses” into the investigation and the judicial process, becomes not only judicial evidence but also evidence of the judicial effort to thwart evidentiary truth.

Presumed Guilty has been by far the single most commercially successful documentary in Mexico’s history, and subsequently became a pirate DVD sensation after it was retired from exhibition for a short period as a result of a judicial complaint filed by the witness and the police officers featured in the film. Multiply awarded at film festivals, the film is an exposé of the Mexican criminal judicial system, whose self-serving, corrupt, and inflexible process seems designed to transfer the burden of evidence to the accused party, while also furthering the wrong by procedurally preventing this party from having any chance at making a case. Roberto Hernández and Lydia Negrete, a married couple of young lawyers who also directed and produced the film, take up the case of an allegedly falsely accused and wrongfully convicted man, Antonio “Toño” Zúñiga. The crime is the murder of another man, and the accusation was based on a poorly sketched police report and the testimony of one far from neutral witness. The lawyers/filmmakers started by examining the multiple procedural flaws recorded in the transcript of the trial, to find that the public defendant who represented the accused forged his legal credentials. Based on this discovery, the lawyers/filmmakers’ request of a new trial, and incidentally of the permission to film it, was granted. The film focuses on this second trial, assigned to the same judge and prosecutor who produced the original sentence.

Neither the prosecution nor the police who apparently randomly picked up the accused from a city street, nor the only witness police and prosecution produced is under any pressure to prove their case, or to even make any coherent sense. Despite the fact that the defense shows the prosecution’s multiple inconsistencies, the conviction and twenty-year sentence is reaffirmed. To say that the film shows a mockery of justice is an understatement, as the judge seems determined to obstruct any reasonable argument that would reexamine the poorly concocted judicial decision. The fact that he does so by apparently sticking to regular procedure makes the outcome even more disturbing, or perhaps archetypical of a procedure designed to uphold a letter of the law that hinders the possibility of justice. The procedure entails a curious technique of recording by which each word uttered by the accused or witnesses has to be repeated verbatim by the judge, in a ritualized dictation that consecrates every word as part of the written record taken by the secretary. Hence, not only does this second trial reenact the first in order to confirm it, but repetition functions within the trial as a tech-
nique for securing the legitimacy of the first iteration, controlling and further sealing its significance. This double process of scripting that transforms document into hard evidence runs counter to the documentary fundamental trust in contingency, in the open outcome of what is being documented, which also assumes that it is precisely the intrinsic fallibility of the open-ended process that gives justice a chance. But the lawyers/filmmakers appeal, and as evidence for their case before the court of appeals they present footage of the second trial, which reopen contingency and the possibility of justice by exposing multiple procedural glitches. This court finds that, indeed, reasonable doubt about the accusation exists, after which Zuñiga is released, having spent more than two years in jail.

Different from fictional film—in which technology is concealed off-scene, a vanishing mediator for the production of an uninterrupted mimetic world—documentary filmmaking assumes the problem of technology as central, not only as a medium for capturing the real and conveying its truth but also as a mode of intervention. The court capitalizes on the apparent truth of “liveness,” on the moral mandate of the habeas corpus by which the judge has to hear the accused, while preempting the unforeseeable power of words left “off the record” that the camera would set itself up to recapture. That is, it is not only the record of the trial but primarily the recording technology displayed in situ that performs here to disrupt a legal codification that rendered words meaningless and transformed the continuity between the first and the second trial into iterations of sanctioned violence. If the judicial documentary seeks legal validation to filmic truth, it is not only the film’s accumulated evidence and demonstrative argument (which would mimic a legal brief) that might provoke the judicial institution, but something about the status of the image situating itself between the live performance favored by this court and the procedural tradition of pre-scripting the performance and stiffening it into a written record that this same court engages in. The camera doesn’t just expose or unveil—the tradition of documentary exposé—but it also implants a caesura in the technologies of legal encryption and transcoding, interrupting its perpetuating, continuous loop, and momentarily releasing the voice and body of the accused of its capture.

However, the documentary feeds into and plays along an underlying institutional anxiety by which high courts are now concerned with public perception and consequently invested in public relations, which might account for the fact that the appeal was granted. This is not the case with the criminal judge conducting his second iteration of the trial.
we witness, who tried everything at his disposal to render this trial a mere reenactment of the first, seemingly oblivious to his dishonorable role, or maybe so tied up in the image of his stature that he is unaware that the image produced by the camera would dispute. Is it possible he doesn’t suspect, or doesn’t care about, the poor impression he makes? It does seem strange that he is unconcerned by a public display of bad faith, but of course we have no idea what he really thinks; we only see his procedural pantomime. The same is true of the prosecutor, who is under no pressure to try to justify her accusation because she claims she has fulfilled her obligations by writing them down—and that’s that, as the letter legitimizes itself. Curious but revealing is the fact that this is not the case with the policemen who are summoned to testify and who are enraged that their evasive answers, blatant obstructionism, and manipulation of evidence, are being caught on camera. They proceed with their charade anyway, as this is what they are trained to do, but they know something is amiss by the sheer presence of the camera. This presence splits the interlocutor of the policemen’s deposition into two insurmountable sides; that of the court of law, where they know words become dead letter, and that of an unspecified public whose judgment they can anticipate will be unforgiving. That is, they understand the two faces of the judicial documentary, one turned to the inside the forum, one striving to project itself to the outside. Fully aware that the film as evidence will be used against them—if not in the courts, perhaps by the media—they counterattack in situ, issuing threats before the camera inside the court and denouncing being harassed by cameramen on the street. And it is they who, after the film is released, will end up suing the film producers on the grounds that the directors didn’t get their permission to film and get a judge to order the temporary withdrawal of the film from commercial exhibition, exponentially increasing its pirate movie market appeal and bad publicity for the already discredited institution they represent. The legal decision concurs with documentary ethics in this case, as it concludes that documentary record of a nonfictional performance in an official role cannot be the object of proprietary claims, so the need for actors’ acquiescence is unwarranted.

Lawyers advise the defendant’s family to enlist any available resource—not only legal tools but also, primarily, information outlets—to make the case known (before the lawyers/filmmakers depart for University of California at Berkeley to pursue doctoral studies). What option do they have, a family of no means and no recourse beyond exposing their sorrows to the camera, begging for empathy (or “tele-pathy”
as Louis Schwartz adequately calls these mediated sympathies [116]) as their last resort? So they follow the filmmakers’ advice: they plead for attention, lending their prayers and tears on camera; they make a spectacle. What the policemen and the family, though on opposing sides, both understand in thus displaying anger, frustration, or despair for the audiovisual record, is a regime of the image that is put into motion, parallel to the judicial process, and that carries social capital now by scrutinizing state institutions, now by soliciting identification and compassion.

There is a recurrent scene that functions as a motif throughout the film, suggesting an allegory of the letter and the image. It is a sequence shot traveling along corridors with stacks of files, presumably though not explicitly an archive of cases in limbo or being processed or both, among which Mr. Zuñiga’s must be placed. As the camera shows a beam of light shining through the vault of files, it suggests something rotten at the archival base of the legal system. The film makes clear that the major obstruction to proving Zuñiga’s innocence is the file itself, the written word that seals the process once and for all to archive the arbitrariness as a legal sanction, against which the tracking shot in the archival labyrinth places the viewer in the position of a captive seeking a way out. Indeed, recalling perhaps the often-quoted dictum “a tracking shot is a matter of morality” (attributed to both Moullet and Godard), the moving image provides a glimpse of a sense of justice (un)captured amongst all the weight of the accumulated, recorded discourse. Perhaps this camera is placed within the entrails of the law in order to bring about some hard evidence that, delinked by the camera’s force from the traumatic repetition of the dead letter, would be also cleansed of the theatrics that this same camera solicits.

This brings me to Cristina Vatulescu’s question—How does cinema follow the sense of justice?—that she formulates in reference to Abbas Kiarostami’s oddly “judicial” film Close-Up (1990): “Through a tracking shot? A camera placed inside a studio car in hot pursuit? Or—if justice is hovering high—maybe through a camera perched on top of a crane? Or maybe we are getting carried away by the moving image: If you agree with Kafka’s K that ‘Justice should be [represented] in repose, otherwise the scales will wobble and a just verdict will not be possible,’ then would it perhaps be more fitting to follow the sense of justice from a stationary camera, anchored firmly on its tripod?” (174).

The questions have no single answer, as justice has no presentation but as the opening question suggests, might be “followed.” However, not a stationary camera on a tripod but, rather, the shaky hand-held
camera echoing, sometimes superficially quoting, cinéma vérité or direct cinema, has been the lingua franca used to connote truth as unmediated reality. Vérité techniques have come back beyond movie screens (as even advertising banalizes and reifies the technological precariousness, incorporating raw footage, basic editing, direct sound, and handheld camera) to inhabit the impersonal visual language and assumptions of hypervisibility—the predicament by which everything might or must be mediatized and available for exhibition. If the choice between the patent presence of the camera on screen or its position as an “uninvolved bystander” (Chanan 180) was an important ethical divide for claiming documentary access to reality, the omnipresence of cameras in everyday life (all ready to turn into “security” cameras, thus making every user participate in the securitization of public and private space) seems to have emptied out the documentarian rationale for making their presence ostensible. Whereas this technological development has given way, on the one hand, to a contemporary artistic interest in found and archival footage that strives to denaturalize and examine the recording, circulation, and storage of images, on the other hand, images from crime scenes and arrests are rapidly taken at face value when circulating as info-spectacle (in referring to these videos, legal scholar Jessica Silbey has coined the expression “evidence vérité”).

These problems inform the discussion of my next two films as they acknowledge the erosion of direct cinema’s ethical standpoint. While the first one (El Rati Horror Show) consolidates its evidentiary presentation by showing off the technology of image-evidence gathering, the second one (Juízo) attempts to withdraw from this relentless production and circulation. Like Presumed Guilty and Granito, Argentinean director Enrique Piñeyro’s judicial cycle aspires to double as judicial record in order to build a legal case and thwart a miscarriage of justice. Behind the individual legal processes taken up by his documentaries, there is a deeper intent of addressing obscure schemes deeply institutionalized in established state and private Argentinean organizations, such as a private airline (Whisky Romeo Zulu [2004], a hybrid fiction-documentary film), the air force (Fuerza Aérea Sociedad Anónima [2006]), and the police (El Rati Horror Show [2009]). Placing himself at the center of the scene as an alternative prosecutor qua media producer and anchor, Piñeyro produces evidence to reveal the judicial decision as tainted by bias, inefficiency, and embedded interests. Thus the director mobilizes technology not only to generate new evidence but also to activate what legal theorist Esteban Rodriguez calls “mediatic justice,” thus meeting mass-media predicament, its assumption of judicial authority, on its
own terrain. To the instantaneous assumptions of guilt and innocence promoted by media scandal, to police and judicial submission to mass media rules of hypervisibility, the director musters a media machine of his own in order to reach a different result (I discuss hypervisibility in detail in the next chapter).

There is certainly nothing new, either for documentary filmmaking or for any symbolic intervention, in this gesture of addressing state power by embodying the voice of the judge, advocate, or prosecutor. Nothing new—but it doesn’t get old either. Piñeyro seeks to overturn an allegedly wrongful conviction by disputing mass media–incited outrage against the accused, disclosing the arbitrary violence used by the police, and pointing to the production of an identifiable culprit as motivated by a judicial submission to the spectacular indictments brought about by mediatic justice. The case, dubbed by television as “the Pompeya massacre” (Pompeya being the Buenos Aires neighborhood where the events took place) is a tragic one, in which a man driving his car (on 25 January 2005), believed to just have intercepted and robbed a city bus at gunpoint, is chased by police cars firing on busy city streets until he crashes against another car, loses control of his car, and runs over three people who die at the scene, including a deaf mother with her six-year-old child. Witnesses to the collision, outraged and asking for retaliation, are immediately placed in the television spotlight, voicing the recurring complaint about increasing insecurity of city streets. The accused, Fernando Carrera, was sentenced to an “exemplary” thirty years in prison based on the police version that the film will try to prove constitutes a cover up of the police’s own inefficacy and arbitrariness. Explicitly tracing a continuity right at the beginning of the film between this case and the victims of police violence during the social protests of the 2001 Argentinean political crisis, the film reconstructs the case within the human rights framework, one in which the actions of “trigger happy” (gatillo fácil) police are endorsed by the tribunals, concocting an incriminating narrative that obfuscates their own arbitrariness and mistakes. As such, the case was also taken up by human rights organizations as a miscarriage of justice.26 Piñeyro’s film was instrumental in convincing a judge to order the suspension of the sentence, after which the accused was released from jail. A second tribunal upheld the original decision but with a reduced sentence, after which the case moved up to the Supreme Court.27

The film doesn’t include authoritative talking heads but instead relies on the sole dexterity of the filmmaker and his assistant at the center of his own lab, displaying a technical proficiency that, while offered as
a spectacle in its own right, also opens the boundaries of documentary filmmaking to the protocols of forensic investigation applied toward disarming the evidence presented by police and prosecution. In order to break the alliance—which is arguably a measure of the state’s incapacity to define social conflicts—between public, television info-scandal, and discourse of security, the documentary displays a technical apparatus that makes use of forensic science as well as virtual and physical simulations and visualizations. But more telling of the displacement of the traditional constructions of authority is the fact that ocular witnesses are deemed unreliable, their testimony dismissed as echoing the distortions and snap judgments of television’s social melodrama that rapidly congeals a biased common sense. For the first ten minutes, the film compounds footage from the location, the indignation of the witnesses, and the occasional pedestrian voicing a desire for the alleged criminal to have been executed on the spot, given expression on television. After the golden age of human rights that promoted the testimony of long-silenced victims, victimization has arguably become a primary road for the construction of political claims, mobilized for the most varied political agendas. The discourse of security that promotes an adversarial notion of citizenship and condones police summary executions, is held together through empathy, affect, and identity—thus victims’ testimonies congeal a sense of vulnerability, expressed as the possibility of everyone becoming a victim of street violence, that seals this social articulation seemingly beyond any contestation.

Legal scholar Norman Spaulding argues that the persistent cultural imagination of the trial is based on a “desire for complete enclosure—desire for space in which the passionate, messy, and indeterminate elements of public trial may not only be contained, but eliminated” (318). However, all these films register what Spaulding signals as the “skepticism, persistent in theoretical literature and doubtless shared by the public, about whether justice actually occurs in the places where it is administered” (312). In every one of these films, the suspected enclosure of the courtroom is supplemented or replaced by a different enclosure where justice might be perhaps pursued. In Piñeyro’s film, the editing room itself performs that role. Illuminated by the alluring light of multiple computer screens, the documentarian appears in a gesture of “self staging of technology and manpower” (Elsaesser, “Digital Camera” 210) from which he elicits an authority not constrained by the figure of the investigative reporter but akin to a more glamorous anarchist hacker—a contemporary individualistic hero (reimagined by the entertainment industry) turning cool technology against opaque state powers.
The film, as the opening scenes at Piñeyro’s studio make clear (after the ten initial minutes of TV info footage) when several super-sized computer screens and other devices are turned on, is as much about the allure of digital media as it is the product of digital media. The documentary as a lab, I propose, projects a way to map out the present that caters to contemporary fantasies of personalized media as a model for networked citizenship. On the one hand, technology becomes a site for constructing and displaying alternative positions to fight the old, corrupt power structures and their discourses and techniques of social control. On the other hand, in opposition to the direct cinema rhetoric of a man with a video camera interviewing witnesses at the scene, opposite to the appeal to liveness adopted by TV info-entertainment, documenting reality is posited as an effort to pierce common sense with a production of evidence that, resorting to new technologies engaging the quantitative and the virtual, dispute any presumption of direct experience on which mediatic justice builds its claims.28

Brazilian filmmaker Maria Augusta Ramos’s filmic trilogy operates with a radically opposite ethical stance. Whereas Piñeyro’s reliance on his media persona might be comparable to U.S. documentarian Michael Moore, Ramos’s Justiça (Justice; 2004), Juízo (Judgment, released as Behave; 2007), and Morro dos Prazeres (Hill of Pleasures; 2013) are undoubtedly influenced by U.S. documentarian Fredric Wiseman’s institutional studies.30 These firmly observational films lack any explanatory voiceovers, and any other visible editorial guidance or contextualizing frame of reference. I focus on Juízo, which sets a fixed, neutral observational point inside the courtroom of the tribunal for juvenile delinquents in Rio de Janeiro, Brazil. Judicial hearings are the structural core of the film, occasionally punctuated by scenes of interiors and exteriors of the building where the tribunal functions, scenes portraying the daily life in different areas of a juvenile detention center, a few incursions into the legal professionals’ domestic lives, and finally a few scenes portraying the accusers’ and their families’ existence. A female judge dominates many of the scenes inside the court where the suspects are confronted with the police report of their mostly minor crimes (street muggings, robberies, drug trafficking, and one homicide), along with public defenders and prosecutors, and sometimes relatives (mainly mothers) of the accused attending the audiences.

The daily operation of the judiciary appears as a clean, somewhat dispassionate but nevertheless reliable meeting place of two clearly differentiated social sectors: on the one hand a dedicated bureaucracy; and on the other hand, the prosecuted youth and their families, clearly from
poor socio-economic backgrounds, at the point of having to account for their lives in front of state authorities. Without voiceovers or expert talking heads, the film withdraws from both traditional and testimonial authoritative viewpoints. Medium shots dominate, as if the film is as wary of panoramas as it is reluctant to approach the subject too personally. Instead of inclining the balance by lending representational space to subjects clearly underrepresented, instead of opening the frame to encounter the world that would give these cases a social level of explanation, the divide is as visible as it is understated, never commented upon, beneath the same uniform light that pours against everything as a blank slate. This relates to the viewpoint of the detached camera-eye that seems planted on a tripod to keep all the elements at the same safe distance, under the same institutional fluorescent light that permeates the texture of the film, perhaps expecting that the light could infuse the image with balanced neutrality.

In a media landscape dominated by spectacular presentations of the life of the urban poor (Cidade de Deus [City of God; 2002]), and scandalous revelations of institutional corruption or brutality (Tropa de Elite saga [2007, 2011], Héctor Babenco’s Carandirú [2003]), Ramos presents comparable social actors albeit outside of recognizable cinematographic agendas—neither a display of colorful violence and social drama that could be easily marketed as “world cinema” nor a scandalized exposé of state institutions in need of reform. While the common exhibition of corruption and violence that has come to be expected from media info-spectacle calls up a dream of reform that reauthorizes the object of its critique albeit in purified, ideal form, Ramos’s films show judicial officers whose conduct is, within their limits, irreproachable. If “the term forensics belongs to, and simultaneously conjoins, two domains: the field and the forum” (Moon 155), the forum subsumes the field in these audiences, as the film brackets out the spectacular in order to invite a dialogue, committed perhaps to bringing meaningful speech back, to make words count. The tedious labyrinths of judicial deliberation showcased in the film might express an apparent apathy or just lack of illusions, but this visual equanimity attempts perhaps a sort of therapeutics, clearing a space for thinking. The judge’s rigorous, admonitory tone in addressing the suspects face to face, in communications delivered from the distance established by an ordinary table (in contrast to the heightened physical judicial vantage common in the Anglo-Saxon court film tradition), contains a hint of compassion, of careful attention, always leaning more toward building civility than toward exclusionary, disciplinary measures.
But is the film sticking to a reactive pragmatism, stating that this is the most we can hope for? Or perhaps, anchored on a tripod, the solid stance of the camera might stand for the absent transcendental reference? There is certainly a substantial divide that the film shows as if accepting without objection—between the conceptual grandeur of the titular “judgment” (or the titular “justice” of the first film of the trilogy) and the contingent, precarious, modest arrangements and circumstantial authority of institutions built to represent it, between the abstractions of justice and all the insignificant details where the camera dwells and that appear as what they are—as if proclaiming that justice is built out of this ordinary matter. It would be easy, in the Brazilian or in any other Latin American context, to level the charge that the facade of institutional study of the film conceals a cynical conformism that veils an abusive and structurally unjust reality behind apparently reasonably just legal arrangements, reasonably transparent procedures—an air of uniform professionalism and officialdom that goes from the black robe of the judge’s investiture to the clean and efficient office furniture of the tribunals, to the order and pace of the conversations, to the balanced measured force applied by detention guards, all the way to the detached camera-eye quietly framing the scenes. When the camera lingers inside corridors or waiting rooms, taking its time with all sorts of insignificant elements, it might be exploring the Western obsession with the insides of the law, to attest of its inner consistency or lack thereof. In response to which the film seemingly invites us to join a contemporary common skepticism about traditional places of authority as having “nothing essential” (as Benjamin [“Critique of Violence” 287] said of the police force), or to mourn the condition of laws without Law (as the narrator of Vallejo’s La vírgen states [see chapter 2]). This is paradoxically the evidence the film is exhibiting, nothing but the evidence of an absence, far from any hint of transcendental legitimation.

Among the petty criminals portrayed, the film introduces one case of a teenager who stabbed his abusive father to death, thus sparing his mother and himself from further drunken violence. The prosecutor suggests that a father represents the law, so that the young man’s actions are an attack on the law itself—an argument that, albeit intended to add more pathos to the crime, undermines its own premises by indirectly questioning the legitimacy, or perhaps the obscene underpinnings, of this patriarchal law now identified with intoxicated abuse. Perhaps because signifiers like state, nation, or religion or ideas such as the civilizing or pacifying mission of the legal order (following the republican tradition at the shore of every Latin American postcolonial
state) are no longer legible, the prosecutor anxiously supplements the absence of the Law of laws with this paradoxical reference to paternal law. The stabber is not just condemned to the juvenile detention center; instead, he is charged with a mixed regime of internment and family living, supervised by a social worker and with regular psychological support. I look at these courtroom images as a showcase for a legal system that must come to decisions amidst the deflation of the mystical foundation of authority, operating in the vacuum created by this authority’s withdrawal and without standing as its prosthesis, working instead in the awareness that the performatic reiteration of its authority reproduces the exclusionary logic of foundations. This I believe is what the film hints at, when showing a court of law unhinging justice from the punitive logic embedded in legal reason when this reason only makes legitimate the established distribution of punition and impunity.

The film opens with a legend where we read that, as minors’ identities are protected by law, the subjects who are taking the place of the accused are represented by actors coming from the same social background as the accused. Therefore, in the dialogue that takes place in these judicial audiences, shot and reverse shot divides documented reality from reenactment, in what might be called a seamless flow, as the film makes us forget that the flow is always an edited construction. The necessarily awkward sociological strategy points to a limit that the law imposes on documentary representation and that the documentary assumes without problematizing as the minor is indeed the “subject supposed to be protected” (to paraphrase the Lacanian definition of psychoanalytic authority as the “subject supposed to know”). Rather than a balance between coercion and consensus as the stuff of successful interpellation or the resort to plain coercion to supplement the state’s inability to renew its grounds for legitimacy, what seems more relevant here is tutelage, beyond its traditional role in family law, as a mandate for state authority not to stand as the source of emanation of rights but instead to contain and prevent rights violations. At the point in which subjects constitute themselves politically as subjects of rights, as they paradoxically acknowledge a state whose exercise of the monopoly of violence has historically abused, mechanisms of protection of these rights have found a new role in post–human rights legislation. Indeed, minors are privileged legal subjects, as their limited imputability is an expression of their vulnerability—which is itself a factor of a universal vulnerability and codependence going back to a lingering sense of community before and beyond individual sovereignty, as another possible, postfoundational principle of justice.
EPILOGUE

The narrative of human rights is neither temporarily closed nor formally self-enclosed. What the human rights corpus contains and the way different aspects of it might be mobilized to different aims has changed dramatically and will keep changing in ways that are impossible to predict. In a sense, my main premise regarding human rights was simple, but inhabited by an internal tension. If the phrase “after human rights” implies that the promise of human rights has passed, and that what has passed has left a mark, it also suggests that even when human rights alone might not present an obstacle to, and might even dovetail with, devastating legal and illegal forms of the rule of capital, their legacy and possible activation also offer models for thinking and operating that are open to the possibility of justice.

Human rights are internal to legal logic but at the same time radically at odds with it. Different from any other set of legal reasons, human rights’ power is predicated primarily on discursive legitimacy, which traverses vastly different symbolic fields well beyond those of national or international judicial institutions. Notwithstanding that human rights might be regarded as sharing philosophical grounds with colonial reasons, and that their later reintroduction follows the expansion of the logic of capital and the debacle of the revolutionary left, I have suggested that their appropriation is predicated on the particular historical situation of postcolonial states that have legally perpetuated violent exclusion—as human rights simultaneously interpellate and bypass the state legal apparatus. That is, the place that human rights have occupied in their paradoxical relation to the law is akin to the site of the unaccounted (the colonized, the displaced, the expelled), so that the force of human rights expands onto forms of new and historical violent exclusions not contained within their reinception, in the 1980s and 1990s, as a defense of individual life and human dignity against torture and disappearance.
While speaking of this expansion, I want to go back to some of the problems I presented in this book by way of looking closely at a film, Patricio Guzmán’s _Nostalgia de la luz_ (2010). My interpretation of this openly lyrical but historically grounded documentary touches on a few of the multiple threads that traversed this book, but rather than restating or summarizing my discussions, my intention here is to suggest a potential for human rights thinking attuned to the crisis of the present. The film collects the legacy of human rights struggles since the 1980s to resignify the colonial and national history in order to reflect on a present determined by a market consensus that defines the terms of the political (including the politics of memory), all the while hinting at the formation of a vastly different contemporary landscape where the key categories of modernity experience an exhaustion that yields its own hopes and horrors.

I start by recalling the artistic trajectory of Patricio Guzmán, a filmmaker for whom the 1973 military coup against Chile’s elected president Salvador Allende occupies a central, inaugural role, as does his concern with the social process in the aftermath of the dictatorship, when the official reluctance to address historical open wounds was manifested in the inability and unwillingness to foster a path for judicial action despite general knowledge and ample evidence of torture and disappearances in the context of a military state that had placed the population under siege. Indeed, the trilogy _La Batalla de Chile_ (1975, 1976, 1979) was followed by a seminal corpus of films (_Memoria obstinada_, 1997; _El caso Pinochet_, 2001; _Salvador Allende_, 2004) that attempted to intervene in Chilean history by making a case against the divisive brutality and murderous rationale of the dictatorship. To speak about these pivotal works would require a separate essay, but it merits mention that _La Batalla_ might be regarded retrospectively as manifesting both the power and the impotency of the social documentary, perhaps as a melancholic meditation on the genre as an urgent intervention that comes paradoxically too late. The opening scene—the bombardment of the Palacio de la Moneda that brutally concludes the cycle of historical changes advanced by Allende’s socialist government that the documentary sets out to depict—consists of public television footage that, far from broadcasted to denounce military brutality, was initially intended as part of a military media campaign of instilling terror and awe in the population. The first part of the trilogy ends with the chilling scene of a cameraman capturing his last take as a soldier shoots at him (a leitmotif that will structure the second part of the trilogy), thus interrupting the possibilities of witnessing.¹ Two decades later, _Memoria obstinada_ and _El
caso Pinochet, are grounded on the pivotal political strategies of the transition to democracy—the golden era of human rights discourse—as the films’ titles suggest. That is the reconstruction of collective memory and the advancement of judicial processes to restore the sense of a common national history, hence reinstalling both denunciation and witnessing within the process of judicialization of politics—the new waters where these documentaries tested their effectiveness.

_Nostalgia de la luz_ (which in Spanish means both nostalgia for and of the light) might appear as an intent to crown this trajectory with an act of poetic sublimation. Narrated in Guzmán’s own paused, reflective voice (a feature in some of his other documentaries as well), the film is conducted as an intensely lyrical, observational inquiry regarding the convergence, in the space of the Atacama Desert, of elements from different provenance and realms of signification: telescopes, astronomical observatories, a research facility, well-preserved pre-Columbian inscriptions and mummies, ruins of a concentration camp for anti-Pinochet prisoners that recycles barracks built for miners and salt workers (exploits that were Chile’s main entry into the world economy during much of its history). The desert is also the space where scattered bone fragments belonging to the disappeared can be found, as they have been buried there in mass graves that were later exhumed, the remains disseminated or further disappeared to yet again avoid incriminating evidence. _Las mujeres de Calama_, female relatives of the disappeared who have been searching and curating these fragments of bones, share the focus of the film not only with other relatives of disappeared and survivors of concentration camps, but also with astrophysicists and archeologists—each speaking for or about the object of his or her attention. Rather than juxtaposed or contrasted in hierarchies of backgrounds and foregrounds, or arranged neatly in succession of historical evolutions, the elements of this collage share intimate affinities, and the film exhibits objects, subjects, and disciplines as though tending to the mystery of a mutually dependent separation. We might say that the film adopts a multifocal or prismatic viewpoint, following the optical concern that is so pervasive in the film, or that it arranges its subjects in constellations, each part following its own trajectory and divergent speed and temporality, but sharing a common space or destiny. The documentary results in an intersection of lines of flight that intermittently illuminate each other, expanding each other’s hermeneutic horizon; but also reverberating with each other’s movements and upheavals.

The titular nostalgia is no one’s to claim; or to quote poet Raúl Zurita (185) it is “as if the long trajectory that goes from archaic world-
views to the last astrophysical theories would respond to the same recollection of a memory.” A common nostalgia traverses and determines everyone as light itself (of the light) is the presence of an absence, because through the spectral lights of the stars we might be open to the understanding that there is strictly no present beyond the present that is no longer. Rather than confirming, with the light of extinct stars, the critical argument that shows the ghostly insubstantiality of photography and cinema, Guzmán’s film desubstantiates the assumption of presence in the first place by producing a double negation, as there is no present that is not always already past. However, this raises important questions regarding this film’s ethical stance: All those divergent elements expanding generously the texture of the present: Do they beautify the imposed limitations of our knowledge, or perhaps idealize a social resistance to understand, or the incapacity to confront a closed up, entrenched, painful past and its present echoes? Is Nostalgia a poetic reverie to work through, sublimate, and finally deny an unredeemable negativity, dismissing the incapacity of reaching a common sense? What are the implications of the filmic attempt to dwell on the dissolution of the human form, in a context in which the dictatorship pulverized human remains? Are we asked to find consolation in these layers of nonhuman history that further dissolve human remains into some kind of animistic stardust? When confronted with the immensity of the universe, is our self-assigned place as human agents of history regarded by the documentary with patronizing condescension, the pain of the survivor amidst the ruins of the modern projects dwarfed against the unthinkable visual representation of long extinct supernovas?

However, it is not the longue durée of astrophysical time coming to rescue, as a lyrical consolation in the absence of a celestial presence, human life from oblivion, fragmentation, decay, and ruin (old barracks, scattered bones, cemeteries). The desert, a place that has been long imagined without history, that very unbounded site (that páramo) civilization is built to domesticate, counter, or cast away, reveals astronomical, geological, and animal and human history as a continuum. Thus, the conditions of the desert are not purely climatic but also materialize a porous boundary between nature and history, as the preserving quality of extremely dry air renders present multiple layers of time—“the process of decay . . . at the same time a process of crystallization” (as Arendt [Walter Benjamin 51] characterized Benjamin’s historical method). Beyond the allegorical significance of these correspondences, beyond the search for astrological traces of events preceding human time by billions of years, beyond the search for material evidence of scattered human
remains, lies the physical, material identity between celestial bodies and bones, as biological and celestial bodies share the same matter.

That is how the documentary reframes all the recognizable expressive strategies usually mobilized to address the place of art after state terrorism: it integrates but then moves beyond issues of testimony, collective memory, legal or symbolic restitution and reparation, and monumental and epic construction. Bones are archived and memorialized, they are indeed valued and spoken for as historical and forensic evidence—the film encompasses these processes, pointing to both the insistence in the face of the political resistance to achieve completion, to produce an authorized account of the truth, and to a constitutive incompleteness of what is forever lost. But bones are also what most clearly collapse the divide between subject and object and, along with the light of the stars, fold the past into the present. The film features testimonies such as those of a body-therapist who practices her healing arts on victims and of an exiled architect who survived a Chilean concentration camp and was able to give an exact rendition of this secret detention center by resorting to his embodied experience. Thus suggesting a departure of memory from logos, *Nostalgia* produces a displacement from the abstractions of memory to the bodily existence where memory dwells. Whereas documentary filmmaking often demands aesthetic judgment to be subsumed to critical judgment (the “sobering” tradition of documentary, Bill Nichols dixit), *Nostalgia* interpellates the senses to expand reasons and senses beyond the anthropocentric limitations of this binary.

Other testimonies in the film (of the archeologist, of a sister of a disappeared) underline the fact that successive national projects have exterminated the indigenous and have subsequently silenced, marginalized, and discounted those who bear witness to the attempt to suppress dissident, dissonant voices. But beyond the testimonies, the film reveals the presence of objects emerging like a kernel of unconditional truth that cannot be totally dissolved, repressed, abstracted, universalized, or memorialized—it is what remains after these operations. These remains count not because we can trust the count to a master bookkeeper, but because there is no longer an outside where the waste product of a given order can be wished away—which doesn’t inspire hopes for the remains to be redeemed, but that deems them inescapable, impossible to let them go or to be left alone. Against the attempt to negate the traces, an engagement with this matter, which resists remaining in the past as it belongs equally to the future, is a necessary condition for justice to come. Clearly punctuated by the experience of surviving the Chilean

**Epilogue**
state-terror, these memories are also interwoven in an emerging planetary consciousness.

If the notion of documentary emerged from a crisis “of representation itself: of the means of making the sense we call social experience” (Tagg, *The Burden of Representation* 8), *Nostalgia* is an expression of a crisis that is ours and that expects no return and assumes no balance against which it is defined. The crisis is signaled within national space as the revelation of traces of the barbarism that modernity inscribed in the fundament of Chilean soil: the bones of extinct indigenous peoples share the ground with the remains of the disappeared, some of whom were imprisoned in the very ruins of the slave economy of the mines. It is not by chance that the system devised by the dictatorship of summary trials and executions that came to be known as the “caravan of death” (which I touched upon in chapter 3 in relation to its fictionalized account in the novel *El desierto*) was responsible for a large number of executions (no less than twenty-six) in the mining city of Calama in the Atacama Desert. The Atacama Desert has been a key site for the development of a southern republic of capital, its emptiness countered by a wealth of resources, the dispute over which was *casus belli* for the long war of the Pacific (1879–1884; Chile versus Peru and Bolivia). The management of territories, with populations being understood as “resources” secondary to the land, is the ancient form of what lately comes to be discussed as biopolitics, which emerges not in the concentration camp but in the slave/colonial system at the foundation of Latin American nation-states. The power thus accumulated was legitimized as property rights and as sovereignty, de jure or de facto.

At a different level, the crisis partakes of this emergence of a planetary consciousness that can only come too late, at the verge of ecological catastrophe—a disaster (literally: ill starred, as Jay [124] reminds us) that seems to be the looming, unnamed specter of the film. It signals the point when both the concept of biopolitics (in which man, following Agamben, might be “reduced” to pure natural life) and the ethics of intersubjectivity (à la Levinas) encounter their limitations, as they are both predicated on the centrality of the human and not on its living among species. This posthumanism is not another name for nihilism but a sense of the world grounded in a radical materiality—or as León Rozitchner (*Materialismo ensoñado*) has suggested, a historical materialism that rather than relying on paternal logos is open to a primordial mater/matter, thus upsetting, as this documentary constantly does, the divisions between spirit and matter, nature and culture, proper and alien, life and death, meaning and insignificance. Space, or nature as
empty space, the invisible background against which civilization could be written (the desert as resource, as blank page, as waste land), has come to the foreground in a dialogue between desert and sky as the shot and reverse shot of the film, to unsettle the order of things and reveal their radical coexistence. As sky and desert meet at the line of the horizon, the film strives to break the horizon’s framing and approach what lies beyond but also within, not in search of an abstract space of a higher dimension but to redefine the here and now, cancelling the narcissistic ideal of distance that was the vantage point claimed by “man” for observing “nature.”

Bruno Latour referred to the ontological division between subject/culture/politics and object/nature/sciences as the fundamental law of modernity, the pillar of what he calls (with a full significance of the legal connotations of the name) “the modern constitution.” The claim to universality of this modern constitution has been brought to task from the site of what is missing, from the viewpoint of what this universality has never ceased to disappear. Taking the legal implications of the constitution seriously, I want to point out how Nostalgia might be read as unfolding within the crisis of this constitution, but also pointing beyond it.

The desert as a space where bodies are violated and abandoned, unaccounted for or counted in the statistics of human rights organizations, is the nodal point of the current landscape of Latin American horrors. As the legal category of the disappeared emerged from the power abuse of Latin American states during the dirty Cold War, feminicide became a nomenclature referring to the systematic killing of young women around Juarez, Mexico; but both categories are universalized, globalized, and localized in the midst of human rights struggles to reveal unexpected explanatory power to name realities well outside their original place of enunciation. Huesos en el desierto (2002; Bones in the desert), the title of Sergio González Rodríguez’s groundbreaking investigation of feminicide, casts a difficult light on Nostalgia; but perhaps the film is closer than it first seems to say something about these other contemporary disappearances. Without explicitly stating so, the film suggests that the disappeared are also the indigenous as well as the salt plant workers, along with all those bodies that remain invisible and unaccounted for, discarded as part of a meaningful account, which along with their worldviews are sacrificed daily to a paradigm of global dominance.

Like disappearance, feminicide points backward toward the systemic state violence against women during the dirty wars and horizontally
toward other forms of violence (treated as domestic problems, or isolated as simply criminal incidents) against women, which had remained, if not always invisible, at least categorically quarantined. The lethal entanglement of drug cartels operating along the collapse of the Mexican state’s claim to represent any common good (to the point that the state officiates as the link between legal and illegal transnational investment, as Ileana Rodriguez [161] argues) is certainly a particularly extreme circumstance, but, like disappearance and feminicide, not so particular as not to reveal its systemic logic. This is what Italian philosopher Carlo Galli (173–175) has diagnosed as the emptying out of political space once the rules of capital have in most cases, if not in every case, erased separations and borders that sustained the political structure, or at least made them submit to the demands of capital expansion, which finds these borders obstructive. The new kinds of war, or the multiplication entailed by what Galli deems a “global war,” are not between political entities but between different factions interior to the same order of capital, as there is no exteriority when capital’s mobility is the source of its strength and growth.

Feminicide—the systematic Juarez type but also the more individualized, occasional, albeit regular violence occurring in places far from the U.S. border and therefore geographically removed from main drug routes, such as Argentina (Selva Almada’s chronicle Chicas muertas is an important, if isolated, literary contribution to this discussion)—might be explained in different ways, but in any case feminicide needs to be understood within the context of a global war that not only redistributes vulnerability but also targets vulnerable subjects. The fact that some expressions of systematic violence today do not hide their traces but instead relish in exhibiting life’s fragility—the victims’ impotency as subjects and as corpses to be dismembered, violated, manipulated at will—coheres, if that word applies in this context, with the fact that the war is aimed at demonstrating the collapse or fungibility of any system predicated on symbolic and physical boundaries (from citizenship to human rights, from family or community structures to moral and religious habits, etc.), or complementarily, the collapse of any authority that could offer categories to account for the meaning, purpose, and consequences of the violence, just as the modern state generated authorized categories to account for war and peace, legal conduct, and criminality.

Thus, vulnerability is the universal condition that this generalized war forcefully allots to subjects in different levels of quotidian exposure but infinitely more so to those already overexposed as a combination of
their geographical location and their social circumstance (women, indigenous, migrants, displaced, children, etc.). The spectacle of violence exerted on the vulnerable (no longer buried bones but dismembered cadavers in the desert for everyone to see) potentiates both exposure and vulnerability, which constitutes yet one more manifestation of hypervisibility—a regime that, rather than operating as the field where certain powers claim authority, legitimacy, or recognition, brings about and confirms in spectacular fashion the precarious overexposure of factors and actors whose mere existence might thwart these powers’ designs.

Nelly Richards argued that the year 2010 was a turning point in Chilean political discourse, when the newly elected right-wing president appropriated the term “disappeared” to name the death toll of a natural event, that of the earthquake and tsunami. The fact that the category of disappeared becomes available to appropriations by different political actors might be appalling, but it is not surprising, and Richards demonstrates how “memory” is also mobilized for different agendas. The same happens with the rhetoric of human rights or with the category of the victim, which is suddenly adopted by the most privileged in defense of their status as soon as they experience it as threatened. I want to augment and complicate Richard’s argument by referring it to a larger context from which the Chilean president’s statement might have drawn its affective charge, as this scandalous mixture of the violence of nature and the violence of the state is symptomatic of a larger collapse of explanatory categories. Adding to the fragility of the national political borders to global economic and other social forces, the climate crisis reveals “natural” catastrophes that often appear to be triggered by unrelated human decisions in regard to which national agency finds itself totally impotent. The Chilean president’s statement is symptomatic inasmuch as it simultaneously shows and negates this structural limitation.

The end of the 2000s witnessed an intersection of global crises of economic and political power, legal arrangements, and the organization of life and communities: on the one hand, the constitutionalization of rights of nature in the Ecuadorian and Bolivian constitutions (2008 and 2009, respectively), while, on the other hand, the emergence of a global financial trend in which the acquisition of land in what was known as the third world (primarily in Africa and Latin America) becomes a major investment for corporations and sovereign states alike (followed by destruction of the local smallholder economies and ways of life, population displacements, creation of slums, and rising level of toxicity both in the land and water supplies). As the ecological crisis
accelerates, corporations and governments, sometimes in conjunction, pay cheap prices for land in extra-jurisdictional territories, inaugurating a new order by which national sovereignty is also marketable commodity.

This same displacement is portrayed in the Colombian novels I have analyzed in chapter 2, although in that context, the displacement is not undertaken by the state, but rather by actors (landowners, guerrillas, paramilitaries, drug cartels, and the contingent combinations of some or all of the above) who regard territory not as habitable space but as a token for increasing their competing power. What becomes clear now, with a clarity that sheds light back into different chapters of a history of colonization (such as the Cold War–backed massacres of indigenous in Central America), is that biopolitics was also and primarily management and destruction of environments, demoting any relationship to nature that is not mediated by a previous emptying of nature’s obstruction to power (capital) accumulation. In this context, the desert is the image of the space, any space that appears like a nonplace, its light overexposing and blinding: a place emptied of life, after the accumulated eco-culture that defines its uniqueness is materially and symbolically extracted. The image of mine and salt workers’ desert barracks and their cemetery projects the desert as a place where slavery and exploitation can be imposed not as a condition for life but as an enduring death outside of the official borders of life. The “scorched earth campaigns” of the military against indigenous villages in Guatemala did not merely target a different relation to territory and life but continue colonial campaigns of desertification. The full significance of this intent to create a manageable desert out of the forest is perhaps more visible today, when the extent of disappearance as ecological devastation is becoming apparent.

Disappearance today is not something horrible that happened in the past; rather, it keeps happening not only to people and bodies but to reality as well. In Nostalgia, paused conversations are intercut with observational scenes panning over the inanimate world of objects, tracing a continuum among telescopes, galaxies, the landscape of the desert, domestic interiors, cemeteries—all these time-images pausing the hypervisible media landscape, “the deserted layers of our time which bury our own phantoms” (Deleuze 234). The importance of evidentiary truth in research-based artistic projects is predicated on a quest for the real whose political force might be revolutionary, as it presents anew what is missing. Human rights can be comfortably kept at bay, its field of applicability relegated to punctual crisis, preferably far away or al-
ready overcome; or its force might be stretched to name this void, which swallows not only human bodies but also nature. Against this background, Guzmán shows the space of the desert not as already empty but as populated by different worldviews and historical experiences—life manifesting itself even after death, sending waves even when it appears invisible—that open up the possibility of different deserts, different natures not encapsulated within the unified Western category of “nature.”

Legal thought might respond by endowing rights to the nonhuman (not only “animals,” but the totality and particularity of the earth), but it remains to be seen whether this is another level of immunization that generates its own destruction, or whether it signals a destitution of the centrality of sovereignty embodied by juridical person (which, it is important to notice, was never exclusively the human subject); or, in other words, whether rights in their explosion and expansion can overcome their association with entitlements. Neoliberal governmentality has found new developmental reasons to continue land grabs (for oil pipes, mineral extractions, engineering destruction for power plants, etc.), displacing populations even in situations where new constitutions protected multinational, multicultural rights, or the rights of nature—another case showing an ambivalent legacy of human rights in which the abstraction of rights talk can be used to dematerialize forms of life. In any case, the endowment of rights to nature can be and has been ignored by governments, treated as mere ornaments to complement the renewed extractionist projects (contemporary versions of the “scorched earth campaign”) of these same states; but it represents an example of how a wave of social activism emerging in the hotspots where the association between climate change and late capitalism is flagrant (e.g., the Cochabamba water wars [(1999–2000)] can exert pressure on the arrangements of politics and business as usual and release unexpected, dormant critical and political potential.8

The development of nonhuman rights out of the human rights narrative and social movements points back to what was central to human rights all along: its planetary dimension, that finds (in the social and cultural aspects implied in the 1948 declaration, for example) the abstractions of universal humanism insufficient. At the point in which humans have become a geological agent (what has been called the “anthropocene”), the constitutionalization of these rights is the possibility for nonhuman entities to have representation (the right to have rights, as in Arendt’s formulation), thus to have a future, to be part of future imagined communities. Nature has entered into history in a way that
leaves none of these categories intact, not even the generic, empty category of “nature.” If on the one hand it is, paradoxically, a particular relationship and history of nature what grounds nature rights (for example, Pachamama in the Bolivian constitution), on the other hand, the blurred boundaries between history and nature offers new ground to make planetary claims (e.g., the criminal case leveled against British Petroleum for the 2010 oil rink leak in the Gulf of Mexico—not in defense of users but in defense of the environment; see Tavares). As any narrative of justice posits a totality (either to postulate justice as the preservation of its equilibrium or its disruption), but the totality of the national jurisdiction as justice’s natural ground has been revealed as insufficient and ineffective when not directly against justice’s very possibility, the totality of the planet emerges as a necessary horizon of any claim for justice.

William Connolly (406) describes the environmental crisis of late capitalism in terms of “an acceleration [that] might be triggered when one open system is touched or battered by another with which it is entangled, as when a regime intensifies suffering and discipline until a collective recoil emerges, or as when the reverberations between climate change and late capitalism suddenly secrete a series of social movements in several countries simultaneously. There is a possible event in the making.” Although these topics are not directly addressed in Nostalgia, the language of reverberations might be adequate to understand this film as an echo chamber or radar capturing different planetary waves, registering movements that are not immediately visible, striving to apprehend the coexistence of disciplinary regimes and environmental degradation. The question of technology, key to documentary self-reflection, is explicitly relevant here. Much as the invention of photography opened up an optical knowledge that Enlightenment epistemologies had repressed (the Benjaminian “optical unconscious”), Guzmán appropriates the telescope (which predates the photo camera by three centuries) and contemporary astrophysical inquiries in order to interrogate the idea of teleological time and colonization of space. The recurrent images of various telescopes—from older ones whose immense mechanism resembles an antique clock coming alive at the beginning of the film, to newer ones capturing radio waves invisible to the eye—are not evidence of the power of ocularcentrism but, rather, point to a craving for truth, constitutive of the documentary impulse, that exceeds instrumental reason by expanding what is known without destroying the mystery of the unknown and its beauty. This technology positions the human neither as the mirror of the universe nor as the
lamp illuminating it (using the classical M.H. Abrams’s metaphor) but ultimately bring us back to the “profound invisibility from where we contemplate” (Martín-Barbero 26; see also Renov). Against the background of technology that projects man’s dominance and the world as standing reserve (to use Heidegger’s parlance), technology here is not a disavowal and negation of death but, rather, a displacement of human mastery, a resignification of existence guided by “the already appreciated fact that the stars are that part of nature least amenable to human construction, domination, or intervention because of the distances involved was given added weight by the stunning realization that not only space but time would have to be conquered for humans to make a difference” (Jay 123). If the transformation of world into picture (Heidegger) is a key event of modernity, Nostalgia features technologies of spatial visualization to advance a project of undoing the frame and releasing the world from captivity. Certainly, this project pauses and questions the hypervisibility defined in our contemporary relation to image-capturing technologies, our networked gadgets that promise to map out every crevice of the real and placate our security anxieties by contributing to our own policing.

Light is of course the matter of cinema, like the air that fills the space of a scene for it to come alive. Nostalgia’s recurrent image of radar in the desert, collecting waves from an inconceivable past that is all around us, is an image of latency, of a present pregnant with traces of the past that make the present possible. The closing scene showing the astrophysicist guiding a group of the Calama women (whom we have seen throughout the film searching for scattered bones) in observing the sky on a telescope suggests an encounter of passions of unlikely commonality. But that is exactly the mission proposed for the arts of human inscription, for the attempt to present, record, vindicate, and preserve the evidence: not just to recognize and rescue the injured and the dead from oblivion but to allow their silenced and invisible traces to do justice to the present; to foster a memory that is inescapable and everywhere in the matter of what is present, as a way to heal the present from its insignificance.
CHAPTER 5. JUDICIAL DOCUMENTARY, EVIDENCE, AND THE QUESTION OF TECHNOLOGY

1. Michael Renov argues that documentary film wasn’t problematized theoretically before the late 1980s or early 1990s (Renov and Crowder-Taraborrelli). And Silbey writes, “Of the top thirty grossing documentaries of all time, twenty-five of them were made in the past decade” (1258).

2. There wasn’t an easy acceptance of film footage in the U.S. courtrooms until the 1950s, until it was conceived as a sequence of photographs. The inception of the videotape in the 1970s encountered less resistance as it skipped the mediation of the film development laboratory, so the images were considered a direct rendition of reality (Louis Schwartz 6–7). But the widened inclusion of video as evidence in U.S. courts was challenged in the 1990s, after the legal case of Los Angeles police beating of Rodney King (Louis Schwartz 120). Arguably, phone video-recordings of police “excessive” force opens a new era for the relationship between legal evidence and moving images.

3. “The ‘reality effect’ of [late] 20th and 21st century realisms is different [from 19th and early 20th century ones]. The deconstruction of distanced objectivity, the validity of subjectivity and the awareness of the mass-media constructed character of social experience stand apart from the idea of direct experience and the ideal of neutral scientific objectivity of previous forms of realism” (Jaguaribe 35; my translation).

4. Elsaesser (“Digital Cinema” 202) argues that the anxiety around the reality of the digital is a symptom of an epochal crisis in which the assumption of indexicality is being evaluated. This is an open debate that the advent of digital technology has reignited for both photography and film. Bill Nichols summarizes the indexical assumption for documentary as “the sound we hear and the image we behold seem to bear the trace of what produced them” (Nichols 2001, 35). Although not as literal, Barthes’s invention of the punctum assumes indexicality as the main force driving the power of photography. John Tagg, among others (e.g., Alan Sekula), places the entire “burden of representation” as the title of one of Tagg’s books put it, of the media (photography in his case) on discursive and institutional systems of power.

5. “Narratives on the Web provoke an overwhelming suspicion that things are not what they seem to be. If an image is presented as a record of the real, we tend to believe that it is probably manipulated; if a narrative is presented as a first-person testimony of an historical event, we automatically presume that it is a hoax. The existential signification of the trace, however, is not ruled out by this paranoid reading of the digital” (Wahlberg 119)

6. In her excellent dissertation, Kristen Fuhs argues: “miscarried justice is certainly the most prominent theme in the juridical documentary, but the legal trial is the most common subject, setting, and narrative framework” (14).
The U.S. trend of judicial documentary exponentially increased during the George W. Bush presidency and that “these films about flawed trials, wrongful convictions, exonerating DNA evidence, systemic racial biases, penal culture, policing, the death penalty, juvenile justice, unsolved crimes, justice policies, gang violence, mental illness, white collar crime, and civil rights have solved crimes, persuaded courts to reopen cases, influenced the direction of legal policy, and overturned convictions” (5). Musser, for his part, makes an analytical survey of a number of documentaries of the Iraq war, against the background of the evolution of U.S. documentary filmmaking in relation to its truth claims. He argues that the courtroom judicial documentary is a U.S. phenomenon linked to campaigns against the death penalty and the civil rights movement: “its more international counterpart is undoubtedly the Human Rights documentary” (10). Whereas this idea continues the gesture of dividing civil from human rights along an axis that separates here/there, postindustrial/underdeveloped, democracy,totalitarian regimes, blurring the geopolitical links between the two worlds, it is important to notice that “human rights documentary” is a recognizable label, with its own circuits of distribution and sections in international film festivals.

7. The articles collected in Burton’s *The Social Documentary in Latin America* provide an extensive overview of different trends throughout the twentieth century. While advancing antihegemonic perspectives on history and politics, the social documentary has been often concerned with contractual elements, as it advances its agenda not only through content and form but also by exploring alternative ways of producing, circulating, and exhibiting the film. Current trends of activist and indigenous filmmaking (see for example Freya Schiwy’s study) continue to address in practice contractual elements in matters of production and circulation, apart from content; but this is not the case, I must clarify from the outset, with my corpus of study, thus I limit my analysis to issues of visual representation.

8. The bibliography on Latin American film, both in English and in Spanish, has grown significantly in the last decade, accompanying the increasing number of films produced in many countries and the international projection of some of them.

9. See Keenan and Weizman for an analytical account of the Mengele’s affair and an intriguing thesis regarding the development of a “forensic aesthetics.” A more straightforward evaluation of the history and the epistemic of forensic anthropology can be found in Claire Moon’s useful article. Quoting Moon:

The emergent power of forensic knowledge in the politics of the past has been consequent upon the acceleration of human rights and hu-
humanitarian law in the post-1945 period, and a distinctive set of political conditions have formed the background for attempts to establish responsibility for state and war crimes since the early 1980s. As a consequence, the last 30 years has witnessed a dramatic increase in the deployment of forensic techniques in the investigation of the consequences of political violence, or what have come to be known as “gross violations of human rights.” Family and victim groups, humanitarian organisations, states, ad hoc investigations and criminal courts now regularly call upon forensic anthropologists to assist with the recovery and identification of human remains in order to verify and confirm the commission of forced disappearances, war crimes, crimes against humanity and genocide. The story about the incorporation of forensic knowledge into the administration of human rights is a recent one that entails, as all such stories do, a convergence of history, politics, new institutions, social groups and particular individuals. (151–152)

10. This notion of prosopopeia is directly influenced by Alberto Moreiras’s seminal work, *The Exhaustion of Difference*. Identifying prosopopeia as a central figure in Neruda’s “Alturas de Macchu Picchu” poem, Moreiras offered a powerful critique of the centrality of identity-based, representational tradition in Latin American literature and cultural critique. However, it is by focusing on the silent matter that, like nature and the stones in Neruda’s poem, always remains to be fully spoken even when the testimony is presented—evidence of history, remains of violence, traces of injustice—that I find an epochal shift or an emerging sensibility that, aware of a colonial and capitalistic erasure of place and matter, also moves away from redemptory grand narratives.

11. The label of “genocide” was assigned by the Guatemalan Commission for Historical Clarification in 1998. As part of the peace accords, the commission was forbidden from naming names, but the “genocide” category was the basis on which the crimes were given universal jurisdiction, which led to the 1999 case before the Spanish National Court in Madrid presented by Nobel laureate Rigoberta Menchú Tum and others. For an account of the genocides, on how the category of “genocide” came to be applied, and on the consequences of that application, see Oglesby and Ross.

12. Forensic anthropologist Fredy Peccerelli (exhuming a mass grave at La Verbena cemetery), forensic archivist Kate Doyle, Spanish lawyer Bernabeu, former guerrilla now human rights activist Gustavo Meoño, Guatemalan human rights lawyer Francisco Soto, and the survivor and witnesses Antonio Caba Caba (who was a child when the massacres occurred, now a leader of a victims’ rights group), among others. Also, around thirty survivors of dif-
ferent massacres are flown to Spain to be interviewed by the judge, and the film shows the team of lawyers and Ms. Yates in a Madrid office, interviewing Guatemalan women in traditional attire, some of them giving their testimony in *quiché*.

13. That is, footage that wasn’t included in the final film.

14. This dynamic is superbly explained by Jean Franco.

15. See Russell Schimmer’s impressive article available at the site of the Yale Genocide Studies program. His work has been portrayed on U.S. television, see http://video.pbs.org/video/2365008934.

16. A version of this tension exists at the very constitution of the genre: “Realist documentaries ever since [Grierson] have existed in free fall between the general and the particular. Documentary titles often in themselves reinforce this synecdoche. . . . On the screen, every last Inuit, industrial worker, and deep-sea fisherman comes to stand both for themselves and for a class of persons of their type. . . . Parts need to stand for whole classes if a claim of social relevance is to be sustained” (Winston, The Documentary Revisited 134).

17. In this context, the word “ladino” was used in colonial society to refer to priests, Latin speakers, who officiated as mediators between Spanish and the indigenous peoples. It has long been used to designate any nonindigenous, or even indigenous identified as Westerners.

18. Grandin describes the current structure of power in Guatemala as a “‘captive state,’ controlled by organized crime, comprising competing factions of the established oligarchy and nouveau-riche military officers and corrupt politicians, involved in car thefts, bus robberies, illegal logging, and arms and drug running, along with more above board enterprises, such as mining and large scale planting of African palm for biofuel production” (“Five Hundred Years” 70).

19. The website of the U.S. Public Broadcasting Services’ (where the film was shown) states: “In September 2008, award-winning director Geoffrey Smith was asked to recut the film with Hernandez” (see http://www.pbs.org/pov/presumedguilty/film_update.php). For information about the film and its aftermath, see also http://www.cpj.org/blog/2014/02/mexican-documentary-presumed-guilty-finds-justice.php.

20. Phillip Auslander offers a groundbreaking analysis of the importance of liveness in the court of law (in the U.S. tradition), which was always reaffirmed despite attempts to restructure courts by introducing media technology. I understand the Mexican tradition as torn between liveness and the letter. Of course, the very premise that “liveness equals truth” is “highly questionable” (129). Also, Auslander’s reflection on copyright in the context of live performance has been central to my comments on the lawsuit against the film producers.

22. Here is a succinct definition:

The term _cinéma-vérité_ was first used by Jean Rouch in his influential 1961 film _Chronicle of a Summer_, about ordinary Parisians and their assessments of their lives . . . These films have principles. They eschew commentary from outside the world of the film, using the natural words and sound that go with the images, often seeming to welcome accidental or confusing sounds (though some of them do have some voiceover commentary). The films try for long-lasting shots, the camera usually handheld, staying with the subject, moving to follow events or to reveal nuances of the scene. Cutting is held to a minimum. . . . These films seem to bring viewers closer than ever to everyday, even sordid, reality (the Americans liked to call it “direct cinema”). (Warren 13).

Brian Winston’s book (1995) is perhaps the most complete survey and critique of realist film, including vérité and direct cinema. See also his article in _Renov_ ed. 1993.

23. A similar language is mobilized by the television crew when the “anchorman” stands in for the spectator, thus countering the mobility of a camera that can be anywhere and nowhere, constructing evidence through empathy and testimony. Films identified with the ethical stance of cinéma vérité and direct cinema sometimes exhibited their own mistrust regarding representation by locating the filmmaker or the camera amongst the represented, embedded within the situation, thus abandoning a claim to neutrality that had become suspicious (Bernini). See also Rosen (71).

24. Chanan summarizes the differences between cinéma vérité and direct cinema, following Barnouw in the following fashion: while “direct cinema aspired to the camera invisibility, cinéma vérité considered it a participant. . . . Direct cinema found its truth in events available to the camera. Cinéma vérité was committed to a paradox: that artificial circumstances could bring hidden truths to the surface” (180).

25. A groundbreaking case in the U.S. jurisprudence that had worldwide repercussions was the Rodney King police beating in Los Angeles in 1992. Derrida discusses the use of the images in the judicial process to argue about the prevalence of the witness’s word over the technological evidence (_Fuerza de ley_ 90–95). Derrida centers his discussion on the faith of this evidence at the court, without taking into consideration that the arguments at the court were able to undermine what for everyone else, like the people who rioted on the streets of Los Angeles, was self-evident.
26. See http://www.elratihorrorshow.com/2011/05/19/cable-de-la-agencia-telam/.

27. As of December 5, 2015, the case lingers in legal limbo.

28. I am evaluating the filmic production of authority and its effective presentation as judicial evidence. Although the film has impacted the legal process in Carrera’s defense, the case remains contested and the points raised by the film have been considered far from conclusive. The fact that he unmistakably did run over and kill three pedestrians, albeit allegedly in an unconscious state, gives this case a high emotional charge.

29. The Latin American political documentary tradition has been quite interventionist. The 1978 Colombian parodic documentary (or “mockumentary,” as we would call it today) Agarrando Pueblo (by Luis Ospina y Carlos Mayolo), from which the label “pornomiseria” emerged (see chapter 4), set an antecedent by deploying vérité techniques to reveal them as a form of exploitation.

30. Wiseman 1973 Juvenile Court was followed by Law and Order (1994; which is, like Ramos’s Morro dos Prazeres, about the police institution) and by State Legislature (2006).

31. Ismail Xavier calls “micro-realism” those “medium specific devices to collect small details . . . [such as] cross cutting and slow motion,” in contrast with the “classical realism” strategies also mobilized to explain the main character within its social context, typifying it to a certain extent (220). The author concludes “There is surely a tension between macro and micro-realisms, because the former points toward social determination and the latter towards the importance of the accidental and the contingent to the drama’s final result” (222).

CHAPTER 6. AFTER INTERPELLATION I

1. See Tobias Hecht for a discussion of how the label “street children” started to be applied because it seemed less judgmental than other names. Also, Hecht clarifies how the relation between house and street is often much more fluid in the Brazilian case; thus, the consideration of who is and who isn’t a “street child” is not exactly parallel to whether these children spend their nights at home or on the streets.

2. See Martin Hopenheyn’s ¿Integrarse o subordinarse? and Jesus Martin-Barbero for a compelling description of how visibility and perfomativity play an increasing role in the configuration of the common.

3. I don’t have any way of knowing which part of this footage was originally shown on live coverage, but it is clear that many of the shots included in the documentary were broadcasted. But it is important to notice this distinction, which points to the news channel’s power to frame the event by filtering it

28. As she states in the interview available at the Tate Modern website, http://channel.tate.org.uk/media/26514914001.

29. “Unlike law, which acknowledges in the ‘decision’ determined by place and time a metaphysical category that gives it a claim to critical evaluation, a consideration of the police institution encounters nothing essential at all. Its power is formless, like its nowhere tangible, all-pervasive, ghostly presence in the life of civilized states” (Benjamin, “Critique of Violence” 287).

30. In her provocative piece “Is a Museum a Factory?” Hito Steyerl proposes the museum as a factory for contemporary subjectivity by tracing the history of the intersection between factory and museum—from Workers leaving the factory ([1895] one of the first motion pictures ever made, shot by Louis Lumière at the front of his factory in Lyonn), to the place of the factory as a site for display of critical filmmaking (as for example in Solanas and Gettinos’s La hora de los hornos [1968]), to the contemporary conversion of factory space for artistic endeavors.

31. The contextual information was provided by the artist in a personal email to the author.

32. From the artist’s statement:

_A Map of Latin American Dreams_ explores the desires and hopes of individuals throughout Latin America. The project consists of many trips, beginning in 1992 and continuing through 2007, to Argentina, Cuba, Mexico, Peru, Nicaragua, Guatemala, Brazil, and Colombia . . . I photographed families, groups, and individuals who are represented and acknowledged via collaborative portraits, including texts that anchor their history and personal stories. Their voices are expressed on a hand held blackboard with chalk writing responding to the request, “Can you write down a wish or a dream that you have?” I asked those assembled before my camera to be personal and specific in their own words. (http://www.webermartin.com/work/a-map/)

**EPILOGUE**

1. His name was Leonardo Henrichsen. The history of the recovery of this footage is recounted in _Imagen Final_ (Final image), a 2008 documentary by Andrés Habegger that follows the gathering of evidence that led to the investigation and judicial prosecution for the murder.

2. _Memoria obstinada_ has been criticized for relinquishing the forms of political participation and subject formation that _The Battle of Chile_ foregrounds,
and for doing so in favor of other forms of political subjectivity more akin to the neoliberal reorganization that was the task of the dictatorship to inaugurate. See Klubock.

3. Spira pointed out this fact in her review of the film.

4. The title was inspired by a book by poet-astronomer Michel Cassé, *Nostalgie de la Lumiere. Monts et merveilles de l’astrophysique*, as acknowledged in the film’s closing credits.

5. According to the Guatemalan Human Rights Commission website, the number of feminicides has grown exponentially in the 2000s, predominantly around Guatemala City. The Commission affirms that “The atrocities committed against women now in Guatemala stem from the violence committed during the 36-year civil war that officially ended in 1996. During the internal armed conflict, paramilitary groups and government soldiers committed widespread human rights violations against women, including using routine rape as a counterrevolutionary tactic. Certain Guatemalan social and cultural norms that endorse the inferiority and domination of women continue this pattern of violence” (http://www.ghrc-usa.org/Programs/ForWomensRighttoLive/FAQs.htm).

6. The Chilean president was Sebastián Piñera.

7. See Sassen (*Expulsions* ch. 2). These lands are kept as a secure investment in the wake of the 2008 financial crisis, or used for agro-business, or access to water and minerals.

8. The Atacama is also an important precedent to the Bolivian water crisis. In 1981 the Pinochet government decreed the Water Code privatizing water source in order to promote foreign mining investment; a political decision that drains water resources from the only water source in the Atacama desert, canceling out the possibility of survival of the indigenous communities inhabiting the area. See Pereira (596).