

## TRANSITIONAL JUSTICE AND THE ARTS: REFLECTIONS ON THE FIELD

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Pre-publication draft.

To be published in *Theorizing Transitional Justice*, eds. Nir Eisikovits, Claudio Corradetti, Jack Volpe Rotondi (Ashgate/Routledge, 2014), pp. 153-66.

On September 19, 2006, the former Director of General Investigations for the Police of Buenos Aires Province, Miguel Osvaldo Etchecolatz, addressed his concluding remarks of the accused to the judges of the Oral Court in the First Federal Court of La Plata, Drs. Horacio Isaurralde, Carlos Rozanski, and Norberto Lorenzo. Standing still, defiant and unrepentant, Etchecolatz quoted his compatriot writer Jorge Luis Borges: “As Borges would say, you are not the judge. The Supreme Judge would judge us after death.” His voice resonated in the tense silence of the courtroom (*Who Am I? The Lost Children of Argentina*, dir. Estela Bravo, 2007) and it was these words that would be given prominence in the late evening and the next day editions of major Argentinean newspapers (e.g., *La Nacion*, September 19, 2006, online edition; *Página 12*, September 20, 2006, online edition).

Etchecolatz had already been tried for illegal arrest and torture in 1983, receiving a 23 year prison sentence, but was subsequently released under Argentina’s notorious amnesty laws. Triggered by the growing evidence of Etchecolatz’s direct involvement in the murder, torture, and illegal deprivation of freedom of a group of “disappeared” (*los desaparecidos*), his 2006 trial was the first public retrial of those amnestied since the repeal of the Full Stop Law (Ley de Punto Final) and Law of Due Obedience (Law of Obediencia Debida) by the Supreme Court of Argentina in June 2005, as well as the first in the series of penal causes

delivered by the Juicio por la Verdad (Trial for Truth, established in 1998).<sup>1</sup> Having heard his final remarks, the judges sojourned and returned to deliver an unprecedented sentence: Etchecolatz was imprisoned for life for what was legally defined, for the first time in Argentina, as crimes against humanity, committed under the framework of a systematic plan of extermination, or genocide.

Remarkably, Etchecolatz's literary remarks struck neither the judges nor the audience as extraordinary on that September day. And they were not. Etchecolatz was simply using, or rather blatantly misappropriating, that inspiring and unsettling proximity between literature and law of which recent critical discussions, including those within the field of transitional justice, are more than aware. In his discussion of testimony provided before the South African Truth and Reconciliation Commission (TRC), Mark Sanders (2007) described the relationship between literature and law as one of "interdependence"—where law, "in order to be law, [...] engages, and engages with, cultural explanation, linguistic idiom, and even literary form" (9). Yet Maria Aristedemou (2000) has insisted that this relationship is also oppositional: literature, she writes, presents a "site of struggle" where the discourse of law as it manifests itself at a specific historical moment may be contested or confronted (10). More specifically to this case, however, Etchecolatz also invoked a figure that had had a close, if complicated, relationship with the military regime whose governance between 1976 and 1983 and the use of clandestine state terrorism for the kidnapping, torture, and death of an estimated 30,000 people (Feitlowtiz 1998, ix) was under public and judicial scrutiny at this trial. Outspokenly "right-wing," Borges had been known as an acquaintance (of indeterminate intimacy) and supporter of Jorge Rafael Videla.

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<sup>1</sup> Etchecolatz was convicted for the first degree murder of Diana Esmeralda Teruggi, the illegal deprivation of freedom, application of torture and first degree murder of Nora Formiga, Elena Arce Sahores, and Margarita Delgado, and the illegal deprivation of freedom and torture of Jorge Julio López and Nilda Eloy. During the trial, the principal witness for the prosecution, a 77-year-old López disappeared on his way to the court hearing; he remains missing. Etchecolatz's was the second public conviction for forced disappearance since the annulment of amnesty laws (the first was that of Julio Héctor Simón, sentenced on August 4, 2006).

In stark contrast to these dubitable credentials, the aged Borges, then émigré, also attended as a witness the 1985 junta trials. He gave a humanely outraged interview to *Diario del Juicio*, the ephemeral newspaper dedicated exclusively to covering the trial, and memorably described the experience of the session in his characteristically punctilious language in an essay entitled “Monday 22 July 1985” (“Lunes, 22 de Julio de 1985”), published in *Clarín* on July 23, 1985. In this expressive account of the trial, read by a vast number of Argentines (assumedly also by Etchecolatz), an 85-year old Borges made clear the parameters of both his own unorthodox ethical philosophy and his ultimate conviction in some inalienable rights and concomitant responsibilities: “Personally, I do not believe in free will. Neither do I believe in punishments or rewards. I do not believe in hell or heaven [...] However, to not judge and not condemn this crime would mean to foster impunity and to become, in a sense, an accomplice” (Borges 2003, 315). This statement, deprived of the writer’s signature ironic tone, yet projecting a characteristically “Borgesian” vision of the world, amounted to both a personal recognition of accountability and a more general statement on historical obligations of workers in culture. In a conspicuous contrast to the way in which his words would be used by Etchecolatz more than 20 years later, Borges acknowledges and reinforces the credibility of the court and the proceedings.

This constellation of events—of the 1970s, 1980s, and 2000s—in which mass violation of human rights, judiciary proceedings, and creative practice surprisingly converged, illuminates well the complex interaction of the arts and transitional justice and the multifaceted roles that art and art-related practices play in societies in transition. These roles, their meanings, and their heuristic values for the field of transitional justice are the subject of the present essay.

### **Charting the Field**

The label “transition” is generally attached to societies that transit from a totalitarian regime, or conflict (where mass atrocities and violations of human rights have taken place), to a more pluralistic type of governance, and peaceful and just society. The questions of justice figure prominently in transitional periods, and they are integrally linked to the society’s dual effort to bring justice to the past through redistribution and recognition, and ensure the continued practice of fairness in the future. This is the field of transitional justice, an interdisciplinary area that, while reliant on the discipline of law, rightfully combines insights from a range of other disciplines such as history, psychology, economics, philosophy, sociology, linguistics, and, as this essay argues, the investigation of the arts. The operating paradigm of transitional justice is that any state in transition should engage in judicial and non-judicial activities (e.g., reparation, truth, institutional reform, demobilization, national consultation processes, and others) that would deliver justice for past crimes and establish a rule of law. In that spirit, according to the United Nation Secretary-General’s report, transitional justice refers to “the full set of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuse, in order to secure accountability, serve justice and achieve reconciliation” (Annan 2004, 4). The UN has further highlighted that, in order to properly address the root-causes of conflict, or past political abuses in a society, it is necessary also to tackle violations of economic, social, and cultural rights (OHCHR 2009).

This view is reliant on an experientially supported assumption that culture—including art-practices and art heritage—vitaly contributes to building just societies.<sup>2</sup> Indeed, the arts (literature, film, visual art, music, theatre, dance, architecture, and other artforms) present both a crucial catalyst mechanism and an important information and reparation tool to

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<sup>2</sup> See, for example, the International Covenant on Economic, Social, and Cultural Rights. The importance of culture and cultural practices, including artistic practices, in the context of rehabilitation is specifically highlighted in the Article 14 of the UN Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Draft General Comment on Article 14.

support societies in transition. Their actual functioning in a transitional context is, however, multifaceted: as I shall proceed to argue, the works of art play a complex role as both a decisive contributor to and impediment of socio-political recalibration of society.

There is evidence of swiftly growing interest in investigation in this area. In the past decade, arts-based approaches to peace-building have gained the attention of scholars and policy-makers, and to recognize the importance of this inquiry the International Peace Research Association established an Arts and Peace Commission in 2004. An active research-artistic platform in this area is the Peacebuilding and the Arts Program of Brandeis University, USA, whose initiatives include, although not being focused on, those that deal with countries in transition (Search for Common Ground 2012). Recent academic publications reflect a more specific interest in the interaction of the arts and transitional justice, where area-based inquiries dominate the field (Bell and Di Paolantonio 2009; Lenta 2010; Lipscomb 2010). In addition, some aspects, or modes, of the operation of art in transition have received significant critical attention, albeit without explicitly being linked to transitional justice mechanisms. In particular, the essential role of visual art in community-based rehabilitation programs has been widely documented (e.g., Dokter 1998, Kalmanowitz and Lloyd 2005), and the successes of music and other performative arts in the realm of human and cultural rights have been extensively discussed (e.g., Cohen et al. 2010; Peddie 2011). On the other hand, memorial art and socially responsible place-based artistic practices in post-conflict societies have received renewed attention from scholars working in the interdisciplinary field of memory studies (e.g., Kwon 2004), and institutions like the International Coalition of Memorial Museums in Remembrance of Victims of State-perpetrated Crimes. These and other inquiries and initiatives usually revolve around three focal points, art practices, artworks, and artists; one could add to these the tools and the material and symbolic instruments of art-making. Following on these discussions, one may

also infer a few observable types of interaction between the arts and transitional justice: representational (representation of, and engagement with justice and injustice, trials, legal proceedings, punishments, and so on in art), memorial (the use of the arts to remember and commemorate), the intrinsic or adopted artistic underpinning of law and law-making practices in transitional societies, and regulation and protection of the arts by (international or domestic) law and law-enforcing practices in transitional societies.<sup>3</sup>

For all their insightfulness, discussions and initiatives in the field have often lacked closer engagement with the actual mechanisms and initiatives of transitional justice as they are being developed domestically and in international criminal law and as they impact the situation on the ground. In addition, because the meanings attached to art and art-based practices, resources, and vicissitudes of art production differ in each transitional setting, the researchers have mostly been forced to focus on a single region or a single mode of artistic expression. In effect, such studies sometimes miss a wider picture that would enable them to see the art of their consideration interacting with other types of artistic practices in the same transitional context, and similar practices at other global transitional sites; their restricted scope limits their audience. Finally, in concentrating on the reparative aspects of art production, the arts and transitional justice studies so far have tended to sideline the discussion of the ways in which artistic practices could also hinder or obstruct transitional processes. Due to all these practical and hermeneutic conundrums, the discussions of the interaction between the arts and transitional justice have rarely ventured into interdisciplinary theoretical assessment and hermeneutic correlation of artistic practices in various transitional contexts. Born out of an awareness of the inchoate nature of the inquiry, shortage of methodological frameworks, and the poor dissemination of research outcomes, the following presents an attempt to identify and systematize a few dynamics pertaining to the arts and

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<sup>3</sup> Here I partly paraphrase and expand Patrick Lenta's observations on literature and law (2010).

transitional justice, and to argue for the heightened relevance of their further investigation by both scholars and practitioners.

### **Operation of Art in Transitional Justice Context**

Any inquiry into the operation of art in transitional justice context should probably start with the recognition that symbolic practices like art production are a means to express the *nomos*—that set social narratives and interactions that, according to Robert Cover (1992), locates and constitutes any legal system—and to give observable, emotionally compelling form to its demands (144-45). The arts thus establish a particular rapport with law and justice-related practices in society, a relationship that, as we have seen, is one of both interdependence and opposition, or, rather, supplementarity—for art may “draw attention to inequities committed by law’s exclusions” (Thomas 1991, 537). A regular trial, and even a very comprehensively envisioned series of trials, can host only a limited number of victims, witnesses, and perpetrators, and thereby its findings and the truths it exposes are by necessity limited. In transitional contexts, art practices provide important unofficial counterparts for truth-finding, but also reconciliation, civic repair and psychological reparation, lustration, public apology, and other mechanisms of transitional justice, often enabling empowerment of underrepresented groups.

Peacebuilding and just-society building imply a particularly charged relationship with the past, and necessitate attempts at finding the “path between too much memory and too much forgetting” (Minow 1998, 4); it is in identifying and traversing that path that the function of the arts in transitional societies is most visible. Art-practices and artworks both assist recognition of past injustices, their memorialization, and psychological reparation, and testify to the social challenges of transition, measuring satisfaction and evaluating the transitional processes. Their operation tends critically to expose the commensurabilities and

disparities between the general reading of the rule of law and its local perception, and the external and the internal practices in place to promote legality in a given community. Yet the ameliorative function of engagement with the arts, and art-based therapies in particular, is also essential in the context that often involves forced displacement of people, the legacy of atrocities and injustice, division of communities, fear of cohabitation, and mistrust of both local and international governing bodies. Artworks furthermore document atrocities committed by abusive regimes in ways and with emotional impact that are unavailable to both governmental policy-makers and non-governmental organizations working in the field of transitional justice or human rights. As such, the arts can give voice to the victims to tell their story: past experiences can sometimes be more fully and more accurately represented via artistic performance (instead of, or in addition to, courtroom testimony) (Stepakoff 2008, 19). In fact, scholars and artists alike frequently insist on just such a function of the arts in a transitional setting: compulsively addressing themselves to the right to remember, the “transitional arts” often remind us of some surreptitious dangers of the practice and theory of transitional justice, for example, those presented by the diffusion of dialogue and memory of the past in an effort to focus solely on economic development. This insistence is informed by one shared structural property of all kinds of art: the production and reception of art affords one with a unique opportunity to engage historical traumata at the level of a cathartic public action, and under relatively protected circumstances of creative activity. A few days before she was scheduled to testify, a witness before the Special Court for Sierra Leone had asked the Witnesses and Victims Section and the Office of the Prosecutor for permission to perform, in front of the court staff, a play she had created together with other witnesses. In an interview after the court performance and the court testimony, she highlighted the similarities and differences between the two experiences: during their testimony the court was able to hear the experience, whereas the play enabled them also to see it, thus relaying some less



easily expressible, or inexpressible, content; in addition, while in the courtroom each witness would speak for himself or herself, in the context of a play participants were able to present their stories simultaneously and to show both to the court and to themselves how different elements of their respective experiences are linked (Stepakoff 2008, 23).

Not to be missed in this account, however, is another property of art-making in a transitional justice setting, in and beyond the court: art production can provide a public platform to restore the dignity of individuals and groups, offering acts of moral and symbolic reparation and enabling the participants to re-vision themselves and their role in both local and wider communities. This function is intrinsically related to the well-recorded power of the arts to shape personal and group identities, and create new identities (Mamdani 2007; Kwon 2004). In societies in transition, such processes involve reckoning with the issues of accountability, responsibility, reconciliation, and the sense of justice, as well as projective thinking about the destiny of a nation, and/or the artist as a member of that nation. Art-making assists creative thinking, which is crucial for negotiating these concerns and the construction of new, collectively-imagined future.

The uninhibited, uncensored art production is particularly relevant for what has recently become known as transformative reparations, or “reparative justice”—those judicial and non-judicial measures and practices of “repairing” society that aim at transforming or challenging the structures that brought about a conflict or violation of human rights in the first place (Uprimny and Saffon 2009). Typically for this type of operation, an artist would take up an issue in contemporary transitional society (and its legal provision) to reflect on a persistent pattern of structural injustice. The art intervention work *Identification* (*Identificación*, 2007) by the Guatemalan-Dominican artist David Pérez Karmadavis provides

an engaging exemplification of this model.<sup>4</sup> For this performance, Karmadavis contracted a tattoo artist to tattoo, free of charge, the name and identity number on the inner lower arms of those who were interested—so that, if they disappeared, there would be a record of their existence, and, should their features be rendered unrecognizable, or they be buried without being identified, there would be a means of identifying them. The result was a series of close-up photographs of tattooed inner arms, including one of Karmadavis’s own tattoo.

*Identification* bridges Body Art and participatory art interventions, and is an affiliate of a range of artistic practices using the insight that body may operate as “a nodal point or nexus for relations of juridical and productive power” (Butler 1989, 601). But Karmadavis’s intervention also has a site-specific target: collusion between state and non-state actors in a preposterous delay to identify the victims of murder/disappearance in transitional Guatemala City. The Guatemalan Policía Nacional Civil (PNC, National Civil Police) has long been facing the challenges of institutional corruption, explosion of organized crime, high murder and “disappearance” rates, and inexplicable delays in its procedures. The procedure which Karmadavis targets in *Identification* is a case in point. Most of the numerous murder victims in Guatemala City are found with no form of identification; if their bodies are not claimed within 72 hours, they are dispatched to the city cemetery and buried as “XX”. Ironically, Karmadavis highlights in his description of the piece, when a disappearance is reported to the PNC, the report prompts an investigation and search only precisely 72 hours later.

This absurd practice appears against a specific historical background: the aftermath of Guatemalan civil war (1962-1996) in which an estimated 200,000 people were killed and about 40,000 people disappeared, and where the state’s military operations against the Mayan populace have been judged genocide (CEH 1999). A more immediate context for Karmadavis’s intervention includes the lobbying for and preparation of the first domestic trial

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<sup>4</sup> The following analysis appears expanded in my curatorial research paper, written for the exhibition “Karmadavis: Art, Transition, Justice” at firstsite Gallery, Colchester, UK (November 10, 2012-March 10, 2013); see Bahun 2012.

in regard to enforced disappearances in the civil war, that of former military commissioner Felipe Cusanero.<sup>5</sup> What Karmadavis's photographs of "identificatory tattoos" intimate, then, is that a state which fails to provide a reasonable environment and efficient procedures for the identification of murder and kidnapping victims is just like the one that perpetrates and covers up forced disappearances. To further reinforce this comparison, Karmadavis's photographed tattoos feature both the serial number and the proper name, probing the semantic and political tension created by the interaction of anonymity and proper name/naming, and drawing attention to a continuing problem with name record and identification in Guatemala. While the latter problem involves all sectors of Guatemalan society, and all forms of record, it particularly affects indigenous Maya people who have not Latinized their names: it presents them with substantial difficulties in such mundane processes as being issued a national ID card—a card, incidentally, indispensable for the purpose of identification. And this is where continuities and collusions in Karmadavis's artwork peak: unidentified victims of gang/state-colluded violence nowadays more often than not belong to the same social group as unidentified victims of the civil war.

As this example has demonstrated, the operation of the arts in transitional societies is inextricably linked to our capacity to generate, mobilize, and develop creative vigilance and "moral imagination"; in turn, these could vitally help our efforts to build enduring peace (Lederach 2005). This important function of the arts stems from their inherent capacity to engage multiple temporalities and to comment on transitional processes in a manner unavailable to other civil and legal mechanisms and practices: at their best, artworks do not state, but invoke and envision. It is in this way that artworks like *Identification* can be jurisgenerative (cf. Bell and Di Paolantonio 2009, 153-54) and serve as potent "transformative agents" in a transitional society (Taylor 2003, xxviii).

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<sup>5</sup> The case of Felipe Cusanero was opened in 2003, when the relatives of six Kaqchikel Maya farmers filed a complaint against him. On August 30, 2009 Cusanero was sentenced by the Criminal Court of Chimaltenango to 150 years in prison for ordering the kidnapping and forced "disappearance" of at least six people.

Like Borges earlier, Karmadavis now lives in Diaspora, though, and his art practice reflects as much his concerns with transitional processes in his new domicile as his continuing labors to support the establishment of an honest, equity-based political dialogue between Haiti and the Dominican Republic. Artists working in exile, or Diaspora, often emphatically engage with the transitional processes in their home region. Yet their position and symbolic status are ambiguous and their artistic efforts to assist the work of transition are frequently greeted with animosity by the artists and public in the transitioning country itself: they are accused of “escape,” and/or of losing touch with the realities on the ground, as well as of perpetuating the calls for remembrance at the expense of a focus on economic and social development. At the same time, and precisely because of the ambivalence of their status, the Diasporic artists’ voices resonate forcefully in transitional settings. Such has been the case of, for example, writers Dubravka Ugrešić and Slavenka Drakulić, two of “Croatian witches,”<sup>6</sup> and Serbian-Montenegrin artist Marina Abramovich. In the context which includes reckoning with the legacy of ethnic cleansing, heightened visibility of certain types of crime such as war rape, and need for structural changes, especially in the domain of gender relations, their unsettling fictional, essayistic, and artistic encounters with the past mass atrocities and transitional realities in the region of former Yugoslavia (e.g., Drakulić’s *S: The Novel about the Balkans* [2000], Ugrešić’s *The Ministry of Pain* [2005], Abramovich’s video installation *Balkan Erotic Epic: Banging the Skull* [2005]) provoked heated debates “at home”—not the least because the public allegations of these female artists, both during and after the conflict, included the charge of insensitivity to war rape. Surfacing the persisting patterns of gender stereotyping, media and sometimes art community itself would pitch these artists against female artists that remained in the region, for example, the Croatian writer Ivana Simić

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<sup>6</sup> Five Croatian female intellectuals (Slavenka Drakulić, Rada Iveković, Vesna Kesić, Jelena Lovrić, and Dubravka Ugrešić) came under an orchestrated media attack in Croatia in 1992, because they drew attention to the lack of freedom of speech in the country—and additionally insisted that wartime rapes should be analysed in terms of gender relations in a misogynist society rather than in terms of ethnicity; they were labelled “conspirators” and “witches” (Tax 1993).

Bodrožić and Serbian playwright Biljana Srbljanović, or those that live between the home-space and Diaspora like Bosnian artist Šejla Kamarić, presumably in an impossible task to identify the more authentic voice of transition and justice. As this case-study suggests, the opposition between the artists who have gone into (voluntary or involuntary) exile and those who have remained in the country during and in the aftermath of gross violations of human rights presents researchers in the field with a substantial amount of heuristic difficulties, including the question of whose voice should be isolated for investigation. Such conundrums could be productive, though, insofar as they reveal that our interrogation of the arts and transitional justice must be a) comparative and b) attentive to a wider international socio-symbolic network established as a result of transitional processes.

The last example also exemplifies that, far from having an unequivocally positive function, the arts are amenable to both use and abuse in transitional context. In post-genocide Rwanda, for example, theatre has been widely used to re-imagine national identity, through government-sanctioned theatre companies and projects of rewriting history as well as grassroots theatrical associations often affiliated with the gacaca courts. Here the role of community-based theatre is particularly fraught with difficulties. As Ananda Breed has found, whereas Rwandese grassroots theatre associations like “The Poetry of Rwanda” (Umuhanzi w’u Rwanda) successfully bring together and reconcile perpetrators and survivors, they also “perform nationalism” through a strategic use of slogans promoting the government’s concept of Rwanda as one unified culture with the same language. Such a situation bifurcates the operation of theatre/art in a transitional society: “Although the use of theatre contributes to individual cases of reconciliation, it can also create dilemmas that impede large-scale or general reconciliation” (Breed 2008, 33).

This dual potential is ostensible in the treatment of artworks and art tools, products which, due to their determinable economic and symbolic value, are strongly operative in

transitional settings. In particular, the art-making tools are frequently endowed with strategic cultural resonance that intersects closely with the concerns of transitional justice. In Peru, for example, the recent recognition of the *cajón*, an idiophone from Peruvian coast, as “Cultural Patrimony of the Nation,” may be seen as an outstanding recognition of Afro-Peruvian community in a country where disenfranchisement of ethnic minorities is embedded in the texture of society. But it could also be seen as a state-validation of the greater Peruvian identity without tangible impact on the Afro-Peruvian community itself (León 2009). Similarly, the artworks themselves have capacity to figure as highly ambivalent tokens of restitution in litigation, as witnessed in the proliferation of cases dealing with looted artworks in the Holocaust, but also in Argentina, former Yugoslavia, and South Africa.

For all its value as a transformative agent in society, therefore, art can also—and without cancelling its opposite—obstruct transitional processes, or impart ambivalent meanings to them. One of the aims of the following survey is to make this paradoxical operation of the arts more understandable to the reader.

### *Ars transienti*

As previous examples have intimated, a remarkable variety of the arts overtly engage with transitional justice processes. At the same time, while all the arts contribute to transitional justice discourse, there is also a culture-specific preference, in each transitional site, for an artform best suited to convey complex socio-political messages. In relation to their operation in societies in transition, the arts could be provisionally divided into those that function in the “open” (popular music, certain types of performance, theatre, and public space intervention, architecture, monumental art) and those whose reception tends to unfold in the “enclosed,” or “intimate,” public spheres (literature, occasionally film and visual arts). In addition, works of

art can have an impact which unfolds over lengthy periods of time (e.g., literature, architecture, film) or can operate most forcefully in limited time spans (drama and performance). So far the scholarly discussions of the interaction between the arts and transitional justice have dominantly concerned themselves with open, limited-time, and place-based practices such as art therapy, drama, music and performance, as well as the long-span, site-specific monumental art and architecture.

The role of performative arts in achieving rights such as freedom of expression, equal treatment before the law, rights of assembly and franchise, and the cultural rights of remembering and forging collective identities and histories, especially in the transitional context where public space for debate and outreach is still limited, has rightly been praised (Weintraub and Yung 2009; Cohen et al. 2011). Richard Schechner's (1985) famous definition of performance as "twice-behaved behavior" (36) gives a good indication why performative arts may be particularly relevant as vehicles for transitional justice. Community-based theater that deploys participatory exercises and games—where members of the affected community assume protagonist roles, discuss problems and propose solutions without having solutions imposed on them by experts—has provided unique opportunities for sharing the conflict-, or state abuse-related experiences in a number of transitional settings, including Afghanistan, Burundi, Peru, South Africa, countries of former Yugoslavia, and others (Siddiqui 2010; Stepakoff 2008; Simić 2010). Moreover, the operation of many transitional justice mechanisms is in itself performative. The South African TRC's live public hearings self-consciously presented themselves as an important public ritual and national (that is, nation-building) theatre (Cole 2010). Some other transitional justice proceedings have similarly suffered the influx of theatricality, even when they did not desire it (e.g., the International Criminal Tribunal for Former Yugoslavia). Such blending of law and an affect-ridden medium has been criticized for impeding due process and resulting in unfair trials

(Minow 1998). This critique is not surprising: as we have seen in the case of affiliations between law and literature, the normativity of law depends on the repression of its artistic underpinning, be it its literariness or its performativity. Nevertheless, when introduced with purpose and caution, the practices that purposely activate the artistic element of legal practice seem to be singularly effective in transitional justice precisely because they enable the introduction of emotive and creative components (e.g., the work of the South African and Peruvian TRCs).

Such investigations have fruitfully been extended to the form that embodies “restored behavior” in a less direct way—music. This art may operate as a powerful lever of social transformation wherever ethical and social concerns have traditionally been relayed via singing and music-making. In one such context, contemporary or past pieces of music, voices (and personalities behind them), and even instruments can become fetishized tokens in social changes. Through its capacity to speak to wide audiences and disseminate message both via live performances and mass media, popular music gains prominence under these circumstances. Insightfully writing about the complementary roles and discourses of the Peruvian Truth Commission and the *canción social Ayacuchana* (“Ayacuchan social song”),<sup>7</sup> Jonathan Ritter (2006) has pointed out that the discourses of the law (“informative”) and popular song (“commemorative”) can fruitfully complemented each other in the work of remembering and collecting testimonies. Yet, the actual role of popular music in such situations is never simple. When, on the occasion of the presentation of the final report of the Peruvian TRC to the public on August 29, 2003, Carlos Falconí, one of the pioneers of the *canciones testimoniales*, performed his 1983 song on the plaza of Huamanga (city of Ayacucho), the audience’s response was equivocal: while for hundreds of elated fans the event provided a bittersweet sense of closure of an important chapter in transitional history,

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<sup>7</sup> *Canciones testimoniales* (“testimonial songs”), or the *canción social ayacuchana* (“Ayacuchan social song”), is a genre of protest guitar-based song, often written in Quechua, that has been performed in Peru since the 1980s, as an explicit response to the country’s “Dirty War”.



for a not insignificant group of demonstrators that had marched against the Commission on that very plaza the whole afternoon, this performance marked a beginning: prompted by a media smear campaign, some protesters contested the conclusions of the Commission; others demanded attention to occluded concerns (Ritter 2006, 2-3). All these affects poured out and intermingled before the stage where Falconí performed.

Such a contradictory response to the use of the arts in transitional justice is not limited to performance. Ever since the rise to prominence of “counter-monument” (*Gegendenkmal*) theory and practice in response to TJ issues pertinent to the Holocaust,<sup>8</sup> artistic interventions in monumental art and memorial art projects have regularly (and, one may add, intentionally) sparked controversy. A good example here is the reopening of The Navy Petty-Officers School of Mechanics (Escuela de Suboficiales de Mecánica de la Armada), the largest detention centre in Argentina from 1976 to 1983, as a human rights museum and cultural centre, which was greeted at once with jubilation, apprehension, and repulsion (see Bell and Di Paolantonio 2009). But, perhaps controversy, or the invitation to pose unsettling questions in the public sphere, is exactly what the transitional justice art needs to do: to encourage, prompt, even force, the culture of dialogue.

Researchers in the field have frequently shunned the consideration of the arts that may enable social rehabilitation, memory-work, and capacity-building in less site-specific ways, and over lengthy periods of time, e.g., film and literature beyond testimonial texts. But the arts operating over long spans, and with the possibility of recurring interaction, have their intrinsic values, for they allow time for gradual semantic unveiling and prolonged reflection. Much could be gained, for instance, by simply observing the prominence or sudden resurgence of a genre (e.g., the rise of two opposite but related genres in South African

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<sup>8</sup> “Counter-monument” movement is associated with artists such as Jochen Gerz, Esther Shalev-Gerz, and Hors Hoheisel. According to James E. Young (1992), “counter-monuments” do not console or heal, but “torment” and perpetuate the loss they memorize. Precisely because of such functioning, they are socially proactive: they combat petrification of memories.

literature: crime fiction and judicial autobiography) or by heeding the changes in literary style and rhetoric of legal decisions in transitional period (Lenta 2010, 3-4). Additional insights could be culled through a perusal of oral literature and its translation into judiciary proceedings (see my previous comments on the work of post-apartheid South African courts). More directly, Leigh-Ashley Lipscomb (2010) has argued that transitional poetry produced by a generation of post-independence Timor-Leste's authors, writing in Tetum, Indonesian, and Portuguese, exercises "a hidden, informal kind of accountability, or an 'aesthetics of accountability', that is entwined with the formal pursuits of the transitional justice sector" (168). Such "aesthetics of accountability" indeed operates best in artforms like literature which allow us time for reflection, and thereby the critical positioning of ourselves towards the theories and practices we espouse, a meta-stance that is necessary for their improvement. As Goodrich has commented, and writings of Abe Baretto Soares (Timor), Nadine Gordimer (South Africa), Tununa Mercado (Argentina) and many others confirm, literature not only provides alternative testimonies and ways of memorizing but also "deconstructs law," suggesting "other possibilities for law, other means of expression of law and, more profoundly, conceptions of value and justice that draw upon a wider variety of gender, sexuality, ethnicity and lifestyle" (Goodrich 1996, 6).

A similar claim could be made with respect to film, one of the main levers of dissemination of messages and meanings in modern society. Film (documentary, commercial, "art house", amateur, professional) establishes particularly strong rapport with transitional justice processes due to its specific status in contemporary world: the circumstances that digital movies can now be made relatively inexpensively and that the global distribution and reception of films, through both legal and illegal channels, and in both private and public venues, is thriving. Films often commemorate past events and describe contemporary realities from an underrepresented point of view, and thereby give transitional justice experts an

insight into cultural groups and opinions they may not access otherwise. Two films made within few years in an interrelated transitional space can serve as evocative examples here: Bosnian film *Grbavica* (2006, dir. Jasmila Žbanić) describes the struggles of a single mother-rape victim of Bosnian war and her daughter in transitional Sarajevo through performances that are both poignant and poetic; in contrast, Serbian subtle and unpretentious film *Tilva Roš* (2010, dir. Nikola Lezaić) employs amateur teenage skaters to depict growing up in economically deprived city of Bor—using skateboarding as both a metaphor and a real lever of forging a more positive vision of the future. As these two examples, and the resurgence of cinema in Argentina, Chile, Peru and other transitional sites, indicate, film art, through its characteristic conjugation of the visual (recording the world), the auditory (listening to the world) and narrative (imagining the world), its drive for documenting, and its often deliberate address to the unrepresentable, is vital for understanding and fostering civil society's active engagement with transitional justice: the film opens the eyes of viewers, both the general audience and those working in TJ sector, to novel ways of understanding, and acting upon, justice.

The above report is not, and cannot aspire to be, comprehensive: most significantly, it limits itself to the most commonly and prominently utilized artforms and does not provide a sufficient account of a great number of hybrid and related artforms. Nevertheless, it can serve as a useful overview, on the basis of which we can now extrapolate a few summary methodological questions and concerns.

## **Methodologies and Questions**

In order to give justice to the complexity and significance of the relationship between the arts and transitional justice, one needs to engage the entirety of types and modes of

operation of the arts, and the diverse and variable roles an artwork can play in a transitional context, at the same time focusing this investigation through the specific lens of legality. Hermeneutic frameworks developed by sociolegal scholars (Cover 1992) and experts who work across the divide between the arts and law studies (Felman 2002; Sanders 2007; Cornell and Panfilio 2010) can be of marked use in such an investigation, especially when combined with in-depth knowledge of regional culture. The latter aspect of the equation implies valuable foregrounding of the role of local cultures, means of expression, and visions of development, which directly contributes to the debate about the challenges and limitations of externally driven processes in peace-building and delivering justice (on the need to refocus on the local culture and development, see De Greiff and Duthie 2009). But it appears to be even more beneficial to expand such an inquiry by comparing two or more transitional justice settings, and at various levels. The discipline of comparative literature, and its affiliate, the discipline of comparative arts, thus emerge as well positioned to contribute with methodological correctives to the field of transitional justice itself. In practice, transitional justice initiatives sometimes appear as divisive, top-bottom, institutionalized, externally imposed, and failing to properly understand and address the varied meanings of transitional justice, or justice as such (Nagy 2008). The introduction of frameworks of comparative inquiry that insist on both irreducible specificity of geocultural sites and their simultaneous amenability to comparative discussion may fruitfully expand the existing hermeneutic practices in the field of transitional justice. In terms of altitudinal scope, whereas transitional justice, as traditionally conceived, deals with the legislative frameworks and social dynamics at the level of nation-state, an inquiry focalized through the lens of comparative arts addresses transitional processes as they operate also at the subnational (ethnic minority or secluded community) and international levels; and treats as equal in heuristic value

governmentally funded, NGO-funded and grass-roots transitional justice initiatives in the arts sector, as well as international and domestic policies impacting them.

Perhaps by necessity, the methodological framework and scope of such inquiries can never be exhaustive or completely precise. One could even argue that there might not be a need for one such over-arching framework, as the irreverent multiplicity of contexts would always question it. But there are also other ways to think about the methodology of investigating the arts and transitional justice, namely, as reliant on a weak paradigm, or as generative of an advisory toolkit that is to be readjusted in each particular situation. In fact, such re-constellated hermeneutic thinking is befitting the field of transitional justice that, insofar as the tidiness of tools, practices, outcomes, and theoretical conclusions is concerned, will always be “incomplete and messy” (Franke 2006, 813).

Such a perspective liberates us not only to appreciate various types of interaction between the arts and transitional justice but also to postulate and systematize three sets of questions relevant to the inquiry:

- *Questions concerning the operation of the arts:* What recognized and unrecognized functions do the arts have in transitional societies? What are “engaged” arts? Can the arts be understood as significant unofficial agents in ensuring “meaningful public participation” in transitional processes (Ki-Moon 2010, 9) or even jurisgenerative? How does the fact that the context-based transitional justice mechanisms are also subject to the universalizing human rights discourse impact local artistic practices and their recipients?
- *Representation, or making sense of, justice:* How are the notions of legality and justice represented, in a variety of art practices, produced by “transitional” artists on site and in Diaspora? What formal means art uses to “foster a culture of respect for the rule of law” (Ki-Moon 2010, 9)? How do artists envision and represent justice when

their interests intersect with those of indigenous justice pressure groups like the environmental justice movement, or when they engage in public debates surrounding transitional justice?

- *Who Creates Art (and What Art)*: How do existing legal provisions in transitional societies protect and promote, or impede, the diversity and freedom of artistic expression, both in terms of contemporary practice and use of cultural heritage? How are the arts censored or auto-censored in transitional societies? How is transitional cultural identity “practiced” independently from, or in defiance of, what the law guarantees or allows? How artists traverse the unstable, transitional justice mechanism-ridden, trajectory between the local and the global: how they negotiate the need to homologate a certain accepted international style, but also to assert their regional artistic identity, themes and traditions?

It is of essence to address these questions because the arts work with and develop symbolic forms crucial for our understanding of who we are, what our place in society is, who we might be, and what society could be (see Cornell and Panfilio 2010). The consideration of how humans as symbolizing creatures both shape development of and give form to justice is one of the key inquiries for the twenty-first century, and, as this essay has argued, one of the vital issues for transitional justice itself.

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