

- Offe, Claus. 1992. Coming to Terms with Past Injustices. An Introduction to Legal Strategies Available in Post-Communist Societies. *Archives Européennes de Sociologie*, 33 (1): 195–201.
- . 1993. Disqualification, Retribution, Restitution: Dilemmas of Justice in Post-Communist Transitions. *The Journal of Political Philosophy*, 1 (1): 17–44
- Stan, Lavinia. ed. 2009. *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*. London: Routledge.

## Art and Transitional Justice

Art that arises in the context of transitional justice highlights the complex relationship between aesthetics and politics. Whether artistic interventions into memory politics are produced within official channels (as in the case of state-sponsored monuments and memorials) or outside of them (in galleries or on the streets), they inevitably raise questions as to the appropriateness and efficacy of creative expression in reckoning with past traumas. Also at issue is the extent to which art can affect transitional justice processes. Not only is such art often informed by formal processes (or the lack thereof); it can even exert an appreciable influence on those processes as well, helping advance the cause of justice when legal redress for victims is partial, unsatisfying, or absent.

### Transitional Justice and Its Relationship to Art

Institutional measures of transitional justice range from the more retributive or punitive (criminal trials, vetting) to the more restorative, aiming to reinstate dignity to victims and survivors (truth commissions, financial reparations, memorials, and monuments). Yet these mechanisms are constrained in at least two important ways. First, mandates dictated by political and practical concerns inevitably exclude some abuses and victims from consideration. Second, mechanisms such as prosecutions, truth commissions, and reparation funds use objective criteria to determine who is guilty, what happened, or who deserves recompense, thereby undervaluing victims' and survivors' complex subjective and emotional experiences.

Art has unique qualities that allow it to help fill the gaps where institutional transitional justice measures fall short, as scholars working in various national contexts have shown. Whereas institutional measures are beholden to mandates dictating what they can and cannot investigate, artists working independently of such projects are generally free to explore whatever aspect of the past they wish, no matter how sensitive. They are thus able to raise public awareness of difficult yet important issues that fall outside the purview of official initiatives. Moreover, the nonverbal language of art is especially well suited for conveying atrocity. Indeed, art can help the public bear witness to and work through traumatic experiences. Art dialogues with transitional justice at memorial sites and through other artistic forms. In what follows, examples are drawn mainly from Latin America, although the questions and debates transcend national and regional contexts.

### Monuments and Memorials

Monuments and memorials have traditionally been recognized as one form of transitional justice. Memorial sites fall into two broad categories: recovered sites and created memorial spaces. According to the International Center for Transitional Justice (ICTJ);

see separate entry), memorial projects can help accomplish the twin goals of redressing and preventing human rights abuses. First, they can offer symbolic justice for victims by publicly recognizing their experience and providing space for mourning and solace. Just as importantly, public memorials also can help prevent future atrocity by serving as “visible reminders on the landscape,” or by incorporating pedagogical programming designed to lessen the possibility of future crimes (International Center for Transitional Justice 2006–2010). Artists often participate actively in the design and content of these spaces, thus these works of public art wed the aesthetic and the political.

James Young (1993; 2000) provided a model for understanding the interplay between aesthetics and politics in his landmark studies of Holocaust memorials. He pointed out that memorials to a nation’s crimes against its own people do not fit conventional notions of art and proposed broadening the criteria to include not only the finished product, but also the often torturous process of how memorials come into being. Since debates over memorialization generate historical understanding, which in turn engenders further social and political action, Young (1993) initially suggested that the public debates produced in this fraught process may be more valuable than any finished monument precisely because they serve to keep questions regarding the past alive. Yet he modified this position in his later work (Young 2000), explaining that to advocate eternal debate is more suited to the academic sphere than the real world, where such memorials need to be constructed. Young has been criticized for overemphasizing the importance of debates at the expense of aesthetic appeal; nevertheless, his claims have had a profound influence on how scholars have subsequently approached the study of monuments and memorials in a variety of countries and transitional contexts. His approach is so easily adapted because memorial projects tend to generate debates over similar questions independent of local realities.

Elizabeth Jelin (2007) continued the discussion of memorialization in her work on Latin America. Regarding the value of debates surrounding the construction of memorial spaces, she pointed out that controversies and conflict over interpretations do not necessarily diminish once a memorial, museum, or monument is constructed. She also criticized literature on transitional justice that created what she termed a “false distinction” between “institutional” and “symbolic” measures, arguing that whereas putative institutional measures such as trials have symbolic meaning, memorials and other forms of commemoration “involve state-level actions” (Jelin 2007, p. 156). The latter point is evident, for example, in legislation that provides for the transfer of sites of repression into the public domain or for the establishment of created spaces of memory.

Vikki Bell and Mario Di Paolantonio (2009) foregrounded the aesthetic in their discussion of the relationship between art and transitional justice in the Argentine context. Responding to analyses that viewed transitional justice efforts in that country as limited to negotiations between elite actors in the executive realm, they suggested that justice work extends beyond the political, ultimately claiming that the aesthetic cannot be separated from the judicial. In their analysis of sites of memory and the work of activist-artists they argued that, because it is impossible to attain justice in the Argentine legal sphere, the aesthetic realm can produce a sensibility that somehow seeks to experience this impossible justice. They defined the aesthetic as “a register that does not (wish to) articulate its demands on law in the latter’s terms,” yet which “critiques and calls on law” because it makes apparent the impossibility of attaining justice in the legal sense

(Bell and Di Paolantonio 2009, p. 150). By calling attention to a lack of justice, art consequently “haunts” the public and keeps alive the possibility for future accountability.

Given the importance of aesthetic issues, a key question that memorial designers must resolve from the outset is what *kind* of artistic approach is most appropriate. Young (1993) observed that these discussions often pit collaborators into two camps. On one side, some survivors demand literal forms of expression; on the other, artists and critics prefer more abstract designs. Both approaches have their merits and drawbacks, as Young (1993) showed. “Documentary” or figurative art preferred by survivors is most likely to serve as a departure for political performances because human forms engage viewers in a way that evokes an “empathic link.” At the same time, this kind of art tends to discourage multiple meanings. More abstract designs accommodate multiple meanings and also offer artists the widest possible variety of expression. Nonetheless, abstraction also invites personal visions in viewers, thus potentially undermining the collective aims of memorial art. Moreover, some abstract designs may actually alienate the public they are trying to reach. The Torture Never Again monument in Rio de Janeiro, Brazil, never got off the ground because its design – a long, pointed arc piercing a human figure – was deemed visually unappealing, even by people who supported the idea of a monument in principle.

Young (1993) has written that the most appropriate manner to memorialize past horror is with the “countermonument,” which he defined as “brazen, painfully self-conscious memorial spaces conceived to challenge the very premises of their being” (p. 27). Unlike traditional memorials that can easily become forgotten or invisible, countermonuments seek to negate the traditional monumental form, thus returning the “burden of memory” to the viewer. Design proposals for monuments at memory sites often feature an anti- or counter-monument rhetoric. Many artists and critics believe that a monument to past atrocity must challenge traditional modes of representation in order to encourage viewers to move from passive spectators to active witnesses. The Monumento Tortura Nunca Mais (Torture Never Again Monument) in Recife, capital of the northeastern state of Pernambuco, Brazil, is a prime example: the designers, seeking a radical break from the cliché “statue on a pedestal,” opted to suspend a sculpture of a naked human form with an enormous concrete frame.

The discussion over approach acquires particular significance when it comes to historical sites of repression and resistance that have been recovered for memory. In these cases, the question is whether art should play a role at all. Di Paolantonio (2008) examined the intense debate over this question in the case of the Navy Mechanics School (Escuela de Mecánica de la Armada or ESMA), a clandestine torture center in Buenos Aires, Argentina, which was slated to be transformed into a memorial. Once attention turned to what kind of memorial to create, some survivors and human rights groups adamantly opposed the introduction of art onto the premises, preferring that only documentary evidence be incorporated, or that the site be restored its original state. Those who embraced this position viewed the site as proof of their suffering and wanted a memorial that would preserve and present the material evidence. Artists involved in the debate, on the other hand, fell into two groups. Some advocated leaving the building completely empty, advocating an “aesthetic of nothingness” that would encourage visitors to reflect on the absence of the dead and the disappeared. Others championed the inclusion of artwork as the most effective means of prompting people to meditate on past atrocity.

In the case of the ESMA, the discussion was influenced by the fact that the buildings remain intact. In Chile, a similar debate over the Villa Grimaldi torture center was shaped by the fact the buildings had been razed and very little material evidence remained. Designers had three options: rebuild an exact replica, leave the site as it was, or create something new. Partly in deference to the pro-reconciliation government that was to fund the site, they decided on the third option, which involved the aesthetic creation of landscaping and sculptures. The case of Villa Grimaldi suggests that artistic interventions into recovered spaces do not always encourage multiple meanings. Scholars, such as Michael Lazzara (2006), have critiqued the aesthetic layout of the site as promoting the government's message of reconciliation and even discouraging the continued pursuit of transitional justice.

The aesthetic plays an important role in other types of memorial spaces. In his discussion of "memoryscapes," Louis Bickford (2005) described "reconfigured memorials" (conventional memorials that have been transformed in order to tell an alternative version of the truth), "folk memorials" (spontaneous sites that spring up without state sponsorship), and "reconstituted spaces of public memory" (unmarked sites of tragedy, or public spaces that have been appropriated by resistance groups). All of these memorials contain an important aesthetic element that dialogues with the current political climate. Reconfigured memorials may involve covering statues with graffiti or moving them to a different location; folk memorials can include roadside shrines or sites of repression that have been marked with paintings or poetry; finally, reconstituted spaces "provide sites for graffiti, performances, and public art installations that contest official versions of the past" (Bickford 2005, p. 102). Although the aesthetic aspect of public monuments and memorials is not always prioritized in scholars' analyses of memory sites, the artistic sensibility of any site affects its relationship to transitional justice processes.

### Other Forms of Art

The interdependence of art and transitional justice extends beyond sites of memory to other forms of art. State-sponsored initiatives, and social perceptions that such initiatives are partial or lacking, serve as a catalyst for artistic production. Works of art, in turn, can prompt new transitional justice projects in addition to complementing and furthering those that already exist. In such cases, art itself becomes a vehicle for restorative and even retributive justice. Transitional justice projects often furnish raw material for artistic projects. For instance, truth commissions commonly generate lists or estimated numbers of victims, data that subsequently features prominently in artwork produced in the wake of transition. Writing about the South African case, Erin Mosely (2007) showed that art produced in the wake of that country's Truth and Reconciliation Commission (TRC; see separate entry) questioned the goals and methodologies of the process, gave vent to public disappointment and frustration, and raised awareness of continued obstacles to genuine reconciliation. Furthermore, she found that the work of many South African artists served not only to question the official discourse of apartheid, but to critique the "official" memory created by the TRC. In other words, art in the context of transitional justice can call attention to the failing of both the old regime and the mechanisms of transitional justice itself.

In other cases, states incorporate art as part of the transitional justice process, as Cynthia Milton (2009) found in the case of Peru. The Truth Commission in Peru

(see separate entry) hired a theatre troupe to encourage witnesses to come forward and record their testimony, sponsored a photography exhibit, and presented its final report on a stage shaped like a giant *retablo* (a form of Andean folk art containing three-dimensional scenes). It also collaborated with human rights groups to sponsor a series of art contests through which Peruvians could depict their experiences and express their hopes for the future. Milton (2009) argued that this artwork constituted an integral part of Peru's quest for transitional justice and should be considered alongside state-sponsored written reports as part of the archival record.

In countries where transitional justice projects are less robust, nontraditional artistic expressions are particularly suited for justice work, for they respond to and sometimes even shape judicial response. Diana Taylor (2003) argued that performance protests such as the *escraches* in Argentina – acts that constituted the public “outing” of perpetrators of past violence – demanded a presence and involvement from the spectator that helped transmit traumatic memory. These protests had a compelling aesthetic component: during an *escrache*, the Grupo de Arte Callejero (Street Art Group, known as GAC) posted modified street signs calling for trial and punishment of perpetrators. Such art happenings can be viewed as a stand-in for retributive justice, as encapsulated by the slogan of these protests: “If there is no justice, there are *escraches*.” Indeed, their insistent presence in the late 1990s contributed to repeal of earlier amnesty laws and the opening of new trials. Thus, in cases where formal justice mechanisms are partial or unsatisfying, guerrilla and performance art can serve as a continued call for trials and punishment. The lack of comparable artistic interventions in Brazil (which has one of the weakest records of implementing restorative or retributive measures in the region) implies that artistic production and transitional justice are tightly linked.

Not all artists are willing or able to participate in official transitional justice projects. Some artists who were prominent in protesting repressive regimes eschew making overtly political art after transition. Others find a diminished interest in their protest art after the return to democracy, such as the Chilean women who produced *arpilleras*, small woven scenes that called attention to atrocities committed under the Pinochet dictatorship.

Some artists who operate outside traditional channels resist being co-opted by official transitional justice projects as a matter of principle and are equally wary of any outside influence that might compromise their vision. Writing about Argentina, Ana Longoni (2008) investigated how young artists' collectives such as GAC negotiated the increased international visibility they received during the late 1990s and early 2000s. GAC's experience highlighted the tension that arises when their subversive art becomes more mainstream or “institutional,” either through participating in locally sponsored acts of commemoration or by entering the international art world. In the same vein, Nancy Gates-Madsen (2011) examined how GAC's decision to put up a “Signs of Memory” installation in the officially sponsored Memory Park in Buenos Aires possibly diminishes the impact of their work. Given that GAC's work derives its subversive power from forcing viewers to engage with past atrocity, Gates-Madsen (2011) argued that placing the signs in an official space creates a distance between viewer and installation, for it encourages the public to enter “museum mode,” potentially preventing the move from passive observer to engaged witness. Certain types of art may move forward the goals of transitional justice most successfully by remaining outside the institutional realm.

### Conclusion

Monuments, memorials, and the many other forms of artistic expression that emerge in transitional contexts make a significant contribution to public debates over justice and memory politics, helping post-conflict societies reckon with their traumatic pasts. In the early years of transition, art often focuses on denouncing the “old regime,” at least until the latter loses mainstream credibility; when that happens, aesthetic production enters into dialogue with state-sponsored transitional justice measures (or the lack thereof).

Official transitional justice projects inform, and in turn are informed by, artistic production. Moreover, these two realms complement each other in important ways. In their efforts to punish perpetrators and compensate victims, state-sponsored mechanisms such as prosecutions and truth commissions pore over the past and seek to provide answers – and with them, a measure of closure. Art, on the other hand, is experienced in the present and tends to be more forward-looking. It poses questions and resists closure. It is by acting in combination, rather than alone, that art and institutional measures have the best chance of accomplishing the lofty goals of transitional justice.

Rebecca J. Atencio and Nancy Gates-Madsen

Cross-references: Argentina; Backward-Looking Justice; Brazil; Chile; International Center for Transitional Justice; Judicial versus Nonjudicial Methods; Peru; Reparations; South Africa; Truth (Truth Seeking and Truth Telling); Truth and Reconciliation Commission, Peru; Truth and Reconciliation Commission, South Africa; Unofficial Truth Projects.

### Further Readings

- Bell, Vikki, and Mario Di Paolantonio. 2009. The Haunted Nomos: Activist-Artists and the (Im)possible Politics of Memory in Transitional Argentina. *Cultural Politics*, 5(2): 149–178.
- Bickford, Louis. 2005. Memoryscapes. In *The Art of Truth-Telling about Authoritarian Rule*. Eds. Ksenija Bilbija, Jo Ellen Fair, Cynthia Milton, and Leigh A. Payne. Madison: University of Wisconsin Press, pp. 96–102.
- Di Paolantonio, Mario. 2008. A Site of Struggle, a Site of Conflicting Pedagogical Proposals: The Debates over Suitable Commemorative Form and Content for ESMA. *Journal of the Canadian Association for Curriculum Studies*, 6(2): 25–42.
- Gates-Madsen, Nancy. 2011. Marketing and Sacred Space: The *Parque de la Memoria* in Buenos Aires. In *The Memory Market in Latin America*. Eds. Ksenija Bilbija and Leigh Payne. Durham: Duke University Press, pp. 151–178.
- International Center for Transitional Justice. 2006–2010. *Memory and Justice*. Available at: [memoryandjustice.org](http://memoryandjustice.org) (accessed December 31, 2010).
- Jelin, Elizabeth. 2007. Public Memorialization in Perspective: Truth, Justice, and Memory of Past Repression in the Southern Cone of South America. *International Journal of Transitional Justice*, 1: 138–156.
- Lazzara, Michael. 2006. *Chile in Transition: The Poetics and Politics of Memory*. Gainesville: University Press of Florida.
- Longoni, Ana. 2008. Crossroads for Activist Art in Argentina. *Third Text*, 22(5): 575–587.
- Milton, Cynthia. 2009. Images of Truth: Art as a Medium for Recounting Peru's Internal War. *Contra Corriente*, 6(2): 64–103.
- Mosely, Erin. 2007. “Visualizing” Apartheid: Contemporary Art and Collective Memory during South Africa's Transition to Democracy. *Antipoda*, 5: 97–119.
- Taylor, Diana. 2003. *The Archive and the Repertoire: Performing Cultural Memory in the Americas*. Durham: Duke University Press.
- Young, James. 2000. *At Memory's Edge: After-Images of the Holocaust in Contemporary Art and Architecture*. New Haven: Yale University Press.

———. 1993. *The Texture of Memory: Holocaust Memorials and Meaning*. New Haven: Yale University Press.

## Causes of Failure of Transitional Justice

To find the causes for the failure of transitional justice, we must first clarify what we mean by failure. Programs seeking to reckon with the repressive past can be judged by the degree to which they fulfill: 1) their declared goals (as specified in their founding documents by the government or nongovernment actors that launched them); 2) the expectations of the general public (as outlined in opinion surveys or public statements delivered by civil society leaders, journalists, academics, and victims' groups); or 3) some ideal standards of justice, truth, and reconciliation that scholars have identified based on the experience to date of countries around the world. For example, a truth commission (see separate entry) might be deemed to fail if unable to submit its final report to the president, as stipulated in its founding document. Beside failing to fulfill its declared goal, the commission might also fail to meet the public's expectation for uncovering the truth about the past, if the report includes no names of victims and victimizers (see entry on Naming or Not Naming Perpetrators). In addition, that commission might fail to meet the larger objectives of helping the country to reckon and break with its atrocious past, and of strengthening the rule of law and the democratization process, if the report is too academic in nature.

Transitional justice programs can fail at the stage of formulation, adoption, or implementation. Failure at the formulation stage occurred in the former Soviet Central Asian republics, for example, where lustration proposals could not even be formulated. At issue were the categories of people to be lustrated, with Communist Party successors arguing for a narrow definition of these categories and their political rivals supporting the ban of a larger number of former communist-era decision makers. Fiji illustrates failure at the adoption stage. In that country, parliament debated the need to create a truth commission for close to two years, but ultimately was unable to adopt the law that would have permitted such a commission to exist (see entry on Fiji). Even when the legislative framework for launching transitional justice programs is formulated and adopted, it can fail to be implemented. For instance, Governmental Ordinance 16/2006 of the Romanian government allowed for mild lustration – that is, the removal of those public servants and state dignitaries who had lied about their past collaboration with the communist political police, the Securitate (see entry on Romania). According to the Ordinance, those proven to have lied were removed from their public posts. However, none of them lost their positions, because the courts failed to hear their cases and order their removal. Barely one year after its adoption, the Constitutional Court deemed the Ordinance unconstitutional.

Some might also consider the absence of transitional justice programs in countries where they could reasonably have been expected to improve the situation to represent failure of transitional justice. By this standard, postcommunist Albania failed to meet expectations for opening the secret files of its communist political police, the Sigurimi, while Spain provides the classic example of a country that has chosen to “forgive and forget.” A similar situation has unfolded in Russia, where postcommunist authorities have systematically refused to offer ordinary citizens access to the files compiled on them by the KGB or to marginalize former Communist Party leaders and KGB secret agents

# Encyclopedia of Transitional Justice

VOLUME 1

*Edited by*

**Lavinia Stan**

St. Francis Xavier University

**Nadya Nedelsky**

Macalester College

 **CAMBRIDGE**  
UNIVERSITY PRESS

