

Transformative Justice Journal

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Building healing liberatory alternatives
to punitive and retributive justice.

A Project of Save the Kids.

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ABOUT TRANSFORMATIVE JUSTICE JOURNAL

The *Transformative Justice Journal (TJJ)*, founded in 2012, is an online, open-source, and peer-reviewed journal dedicated to promoting transformative justice. As an academic-activist journal, TJJ was developed out of scholarly and community dialogues around promoting a decolonizing critical criminology social justice punitive/penal justice abolition community-based alternatives to both the retributive, punitive justice and utilitarian punishment models used by criminal justice systems, which victimize offenders and re-victimize survivors of offenses, while promoting profits over people and corporate interests over community interests. The current punitive criminal justice system takes control, responsibility, healing, and accountability away from victims and offenders and instead gives them a powerless and victimizing experience. Transformative justice, a decolonizing and anti-oppression approach, however, views conflict not from the lens of the criminal justice system, but from the community; as such, those involved in the conflict are seen as individuals rather than victims or offenders. Moreover, transformative justice addresses oppression by systems of domination, such as racism, sexism, homophobia, ageism, elitism, classism, and ableism within all domestic, interpersonal, global, and community conflicts. In short, transformative justice is restorative justice plus social justice. Transformative justice expands the social justice model, which challenges and identifies injustices, in order to create organized processes of addressing and ending those injustices. Transformative justice and social justice work together in addressing this need. Transformative justice also builds off the principles of restorative justice in order to address experiences of oppression within mediation.

LOCATION

The Transformative Justice Journal is located at in the Institute for Public Safety at Salt Lake Community College.

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- The *Transformative Justice Journal* publishes rigorously peer-reviewed academic work of the highest quality.
- The *Transformative Justice Journal* provides the utmost respect and care during the review process.
- The *Transformative Justice Journal* is a free-to-access electronic journal.
- The *Transformative Justice Journal* charges no fees for publication.
- The *Transformative Justice Journal* supports and encourages submissions that are excluded from mainstream journals, including the use of photographic, videom MP3, and new media work.
- The *Transformative Justice Journal*, while an academic journal provides space and place for activists contributions.

We Seek

- **research articles and essays** – 2,000 to 10,000 words
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- **poems** – no more than 10,000 words

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- All submissions should have appropriate references and citations. Manuscripts should be single line spacing, 12-point font and conform to the American Psychological Association (APA) style format.
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- Authors should remove all self-identification from their submissions, but all submissions must be accompanied by a title page with author(s) name and affiliation, name of type of submission (e.g., article, review, conference summary, etc.), contact information including e-mail, postal address, and phone number.
- Authors must include an abstract of no more than 150 words that briefly describes the manuscript's contents.

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1. accept without revisions
2. accept with editorial revisions
3. revise and resubmit for peer review
4. reject

- Every effort will be made to inform authors of the editor's decision within 100 days of receipt of a manuscript. Authors, whose manuscripts are accepted for publication, will be asked to submit a brief biography that includes their institutional or organizational affiliations and their research interests. The Transformative Justice Journal only publishes original materials. Please do not submit manuscripts that are under review or previously published elsewhere.

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We are pleased to accept your submissions at any time and will move quickly through the review process to ensure timeliness.

For general submission, please submit to:

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ARTICLE

A Right to the City: Incarceration and Urban Neighborhoods

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Who belongs to a city? Who is Othered? Who is facing bodily harm, stigmatization, exclusion, separation? Are there others (e.g., refugees or parolees) who hold precarious rights to stay in a city? Importantly, what is the effect of jails and the criminal justice system on cities and their residents? In this article, I wish to address the effects of modern Enlightenment ideas of punishment and the materiality of the prison industrial complex in everyday city life. Furthermore, I ask those who teach political and public philosophy to consider how the legacy of slavery, the panopticon and carceral (in)visibility, and race has bearing on the abstract rights-bearing subject.

From the English enclosure of the commons, the English Poor laws, to US policy on vagrancy, loitering and other arbitrary and sometimes even racist enforcement mechanisms, modern city planning makes it abundantly clear of who can claim entitlement (or, stake out a claim) to public (deliberative) spaces, housing, work, and play (Linebaugh, 2006; Federici, 2005; Jacobs, 1961/1992; Davis, 2006); Lefebvre, 1996). While Plato proposes to expel devious poets or seductive flute players *The Republic* and a millennium later, disposable people were actually sent up the Rhine river on a “ship of fools,” mainstream philosophers, following Bentham’s idol of the panopticon, tacitly assume that the ideal of well-ordered cities

includes the carceral. It is to the credit of philosopher Michel Foucault for having started the conversation on prison institutions and the invention of the disciplines. As activist-scholar, Foucault immersed himself in a prisoners' rights and prison abolition movement in France and also visited US prisons. His groundbreaking work *Discipline and Punish* (1995) helped philosophers to become aware of the psychic and material effects of prison itself, not just of ideal theories of punishment.

The modern penitentiary was designed to imposing fear and trembling in all city dwellers. Its prototype was conceived by reform-minded Quakers who engineered the birth of the modern prison in Philadelphia, PA, the city of brotherly love. The prison philosophy came to be known as the "separate system"—today's solitary confinement; Auburn, NY, prison advocated the factory system—convicts working in halls but were forbidden to talk to each other: the "silent system" (Rothman, 1995). Quakers were deeply committed to the political struggle against the institution of slavery. Their carceral philosophy of reform encouraged prisons *as* punishment, not *for* punishment. However, solitary confinement quickly acquired the taint of further punishment, even torture, within the prison walls. Critics would charge that there was no discernable difference between the punishment regime of chattel slavery, replete with chains, whips, and hanging, and that of the modern prison, with its promise of "doing time" instead of being brutalized in body and soul. The prison, too, promised social death *cum* chains, forced labor, torture, water boarding, and executions (Davis, 2003, pp. 22-28). The rule of law and judicial administration were not well delineated, and powerful aldermen served as judges, among other duties (Ignatiev, 1995). So very early on, we also note something peculiar about city demographics and the emergence of total institutions: the first person entering the jail is recorded as a light skinned Black man. Within the first decades of the modern penitentiary system, it is already the case that a Black man was incarcerated at four times the rate of whites (Ignatiev, 1995, p. 47). A generation later, women and girls were also starting to face jail time. In 1832, the first four women admitted were Black women to the first panopticon fortress of its kind, Eastern State Penitentiary in Philadelphia (Patrick, 2000). I submit that this is no coincidence.

From the African shores' slave forts of "no return" to the modern prison dungeon, Black bodies are preselected for captivity, torture and mental anguish, being experimented on long before the Nazis perfected such human experimentation on their victims (Kilomba, 2008). Even the death penalty was *not* abandoned despite the prison reforms of the Quakers. In fact, this ancient practice first was adopted into the Slave Codes; some seventy offenses were "death-eligible," while whites usually faced capital punishment only for murder. Even today to has not been meted out in a colorblind fashion as Black persons are disproportionately on death row (Davis, 2005, p. 37).

Cities such as Charleston, South Carolina, were built by enslaved Africans who were also treated to the Citadel, the jail workhouse, to another form of forced labor, when they resisted bondage. Forced labor continued in the Southern states after the abolition of chattel slavery through the convict lease system, building railroads, working in mines, or paving the streets of Atlanta (Lichtenstein, 1996). It is as if people of African descent had never been liberated, which is precisely the coded, masked message of the thirteenth amendment to the US constitution (1865): slavery is abolished, except wherever a person is duly convicted of a crime. The slavers' class ensured that the Slave Codes effortlessly migrated into the Black Codes (Davis, 2003; James, 2005). Even as freed women and men could nominally enjoy their abstract rights, they were not yet citizens. Black Codes and Jim Crow legislation disciplined the free population with sundown laws, punishing idleness; and any perceived uppity behavior, especially Black men consorting with white women was punished with lynch terror (Wells-Barnett, 1985/2005). The ensuing Black migration to Northern cities did not provide protection for Black laborers and families, as white supremacy is part and parcel of American capitalism, residential segregation, and all social institutions, except Black houses of worship. George Lipsitz poignantly states that due to Black people's spirit of resilience, segregation was turned into congregation during the era of Jim Crow, and this spirit of mutual self-help is enduring feature of Black communities in cities (2011, p. 51).

The ghosts of slavery and Jim Crow haunt all cities in the US today, not just the Southern ones, the facticity of mass incarceration in a racial penal democracy, the prison of slavery morphs into the slavery of prisons

(James, *ibid.*; Davis, 1998; Butler, 2014; Butler, 2017). Black women have also faced excessive punishment being ensnared in the draconian drug laws beginning with the Nixon administration's racist policy in search of a crime/criminal suspect and thus put into motion mass incarceration, the prime targets of this war being people of African descent residing in hyperpoliced ghettos (Drucker, 2010; Mauer, 2006; Parenti, 1999). The war on drugs that ushered in a New Jim Crow era and there are now more Black people incarcerated than were enslaved in the 1850s (Alexander, 2010). Also minimum sentencing schemes, draconian 'three strikes' laws, and status offenses (sex work, public order, truancy of youth) have ensured the steady increase in incarceration rates, the highest in the world. Some 100 million Americans have a criminal record and the moral panic with regards to undocumented immigrants of color speaks to a racial contract, where citizenship is reserved for whites (U.S. Department of Justice, 2014; U.S. Immigration and Customs Enforcement, 2017; Davis, 2000).

Perpetual Surveillance and Containment — the City as Invisible Prison Fortress

White, cismale philosophers may take peripatetic philosophy to heart, i.e., walking the city while exchanging an intriguing argument. They will not notice their privilege of occupying white public space. On the other hand, Black (young) men who dialogue with one another on the streets seem to pose a constant threat to the white order of things. Vagrancy and loitering laws are today's version of the Slave Codes or Black Codes. A police officer's inquiry "Where are you going?" basically is equivalent to apartheid and Jim Crow pass laws—a reference letter signed off by a white owner (aka employer) that one is indeed in the right neighborhood, serving the needs of whites. Millions of Brown and Black residents of Manhattan might scoff at "I heart NY" branding campaign, since they have felt acutely not loved and welcomed in the city thanks to the infamous search-and-frisk law enforcement techniques, sometimes facing such invasive infringement on the right to bodily integrity and privacy multiple times a day. White mayors such as Giuliani and Bloomberg made such policy the corner stone of their "clean-up" the city campaign, so that international tourists and white investment bankers could feel safe on the streets (NYCLU, 2018). This policy has been declared unconstitutional in *Floyd v. City of New York* (2013), yet racial profiling of Black and Latinx residents continues. We might ask in when colonized peoples will ever feel safe in the presence of the colonizer? Two examples might serve to explain fragility of Black life in a racialized polity. Tulsa, Oklahoma 1921 and West Philadelphia, Pennsylvania, 1985. In 1921, it was a white mob that torched the community, known as Black Wall Street, and killed many Black residents. Nobody was brought to justice. In 1985, the state dropped a bomb (C-4) on a house occupied by the MOVE family and a whole city block of over 60 houses went up in flames, while the fire department was forbidden to intervene in this inferno. The only criminal charges filed were against Ramona Africa of MOVE, who fled the burning house and was sentenced to seven years. Eleven people, including children and founder John Africa, perished in the fire (Abu-Jamal, 2000 pp.288-89). Political violence, murder, and arson are condoned when the state sees no crime being committed.

The activists who belong to Young, Gifted, and Black Coalition discovered with GPS technology that Wisconsin's peculiar housing pattern showcases that Black residents are more likely to be "found" as a cluster population in a state prison than in a residential area (Blank, 2016). Lew Blank, a GIS specialist with the Young, Gifted and Black Coalition, reviewed recent census figures to reveal the stark apartheid system of Wisconsin. His coalition calls for shifting priorities: civilian oversight of rogue policing, economic investment into Black neighborhoods, housing, drug rehabilitation, schools, which resonates with other BLM platforms around the country. The racial apartheid of the Rust Belt region shows for the first time in US history that the ghetto is located within prison walls, proving my point that prisons have become diasporic sites (Nagel, 2008). As cities have become gentrified, redlining city zones, the racist inheritance of the New Deal (i.e., codifying a white racial compact), no longer makes sense to ambitious city planners and their police commissioners. Guaranteeing safe access to upscale housing projects and protecting the wealth of its taxpaying inhabitants means a commitment to racial transplantation, shuttling Black inhabitants to prisons in the rural landscapes, the diaspora (cf. Gilmore, 2007).

The Civil Rights legislation of the 1960s was supposed to effectively end the Black Codes enshrined in Jim Crow law. It was accompanied by public presidential messaging about a War on poverty, which was supposedly a reparative measure towards Black America. In 1965, Senator Moynihan authored a *report on the Black Family* (1965), which had a lasting impact (Geary, 2015). In its essence, it blames the victim, Black families, especially Black mothers, for being out of lockstep of white society's values. The key "policy" recommendation was a banal "benign neglect." The opposite ended up being the case. Billions of dollars were poured into the martial transformation of ghettos, leaving no street corner behind (installing public cameras is an expensive affair), with white police officers patrolling streets just as slave patrols did for hundreds of years—the logic of "law enforcement." In the white suburbs and rural areas, police do not patrol for surveillance; they are called for emergencies, to assist and protect—the logic of "policing" for the public good. It is no coincidence then that one in three Black men will find themselves incarcerated in their lifespan; and Black women also face the worst incarceration rate in the world. Beginning with the "punitive turn" in the 1970s, Black women's incarceration rate has been even higher than white men's rate (Davis, 2003, p. 65). I submit such racist targeting and criminalization of a minoritized population owes much of its practice to the patriarchal ideology of the Moynihan report and, of course, to the enduring presence of the material reality of slavery. The report can be considered as setting the tone for the myth of the young Black superpredator of the 1980s and 1990s, the decades of the crack epidemic. Of course, there were multiple causal factors for the "second round of crime repression" policies such as deindustrialization of the cities, rise in unemployment. By contrast, the first round of repression was a response to popular uprisings and the Black Panthers' organizing efforts. "In a broad sense the social breakdown, disorder, and floating populations created by neoliberal economic restructuring had to be managed with something other than social democratic reform" (Parenti, 1999, p. 167). The prison construction boom was an answer to halting the depopulation of rural white residents, some of whom would find well-paying jobs as prison guards (Nagel, 2008; Gilmore, 2007). White politicians, academics and the media resort to moral panic and demonization of "welfare queens" who are raising young men who are undisciplined, with poor impulse control and destined for a gangster life and drug dealing (Feder, 2007).

Where else do we see the legacy of slavery and settler colonialism? Schools have effectively been remodeled as prisons. Long before the Columbine school shooting, "ghetto" schools were furnished with metal detectors and armed police, called resource officers. Such signs of social control signal to Black and Latinx students that they prepare themselves for a life spent in adult prisons, giving meaning to the school-to-prison pipeline (Sojoyner, 2016). In Southern states, teachers are encouraged to use corporal punishment as discipline of young minds. Some nineteen states still allow "paddling" in public schools (Fitz-Gibbon, 2017). Black feminist activists such as Stacy Patton are speaking out against such barbarism of child abuse and remind school officials that it is again a continuation of Slave Codes, of beating enslaved adults and children into submission (Patton, 2017). It is also part and parcel of a settler colonial mindset, as Native survivors of the infamous residential school system can attest to. They knew that brutalization always meant beating the Indian culture out of the child. A grim motto guided each "school": "Kill the Indian, save the child." Too often, children were literally killed and cemeteries on school grounds attest to the atrocities by government officials in this odious and haunting experiment of colonial "assimilation" in the U.S. and Canada until the 1980s (Child, 1998; Lomawaima, 1995).

Depicting young Black men as stereotypical monsters also lead to another devastating impact on educational and job opportunities. Educational deprivation occurred through the GW Bush era's "Race to the Top" high-stakes testing, which disadvantages schools that do not have the kind of endowment of wealthy neighborhoods. (The US is an aberration in the Global North by not having a centralized mechanism to avoid the uneven funding formula of rich neighborhoods generating property taxes that attracts the best teachers, etc., while poor tenant communities have high drop-out rates of students and very high turnover rate of staff.) The Race-to-the-Top educational policy is also wedded to a "zero tolerance" approach of deviant behavior, leading to a high drop-out rate of Black and Latinx students, because these students face less discretion than white or Asian American students do for similar behavior. Black girls, gender non-conforming, queer students and Black disabled students suffer disproportionately from harsh treatment and suspension for subjective misconduct such as profanity and insubordination, leading critics to charge the

state with creating a school-to-prison pipeline (Morris, 2011, 8). Thus, Zero Tolerance policies in schools have had quite devastating effects for racialized communities. Zero empathy and zero second chances for Black children seems to be a continuation of chattel slavery by other means, especially since enforced illiteracy was also the slavers' tool of repression. Children of color have suffered the effects of mass incarceration by being victims of the foster care system, the New Jane Crow (cf. Jones & Seabrook, 2017, Nagel, 2018; Rise, 2017). Even a "cradle-to-prison" pipeline rings true for children who are wards of the state, unable to bond with their birth parents who may be in prison themselves or deemed unfit for parenting.

The forms of social control and containment are multiple for people with dual diagnosis of mental disability and addiction in modern day's asylum. They find themselves in 1) locked psychiatric units on hospitals, being injected with tranquilizers without consent and kept in such a unit at the mercy of police and medical doctors; 2) in "the bubble" – a cage being under complete, open surveillance in a jail while detoxing and being given no medication for terrifying side effects; or 3) hidden away, in solitary confinement cells. County jails across the U.S. have turned into unlicensed hospitals, and deaths in custody is an all too common occurrence. The majority of the prisoners are remand prisoners, who are too poor to pay bail. They have not yet been found guilty and may languish in jail cells, even solitary, for years before their case is thrown out. Kalief Browder fought his charges while locked up for three years in Rikers Island, one of the largest prisons or jails in the world, and after the charges were dismissed, he committed suicide due to the severe traumatization of the jailing experience. His jail "sentence" and suicide prompted a state-wide movement to ban youth incarceration in New York state.

Engaging Philosophers

In this paper, I argue that there is an opportunity and role for philosophers to join city planners, urban geographers, sociologists, and others to pursue justice for the dispossessed. This work may require that we philosophers exit the safety of our silos, our hilltop college campuses, our coffee shops in gentrified neighborhoods, or our bucolic domiciles in the suburbs. Which gainfully employed philosopher experiences the fumes from a nearby toxic highway, the cries emanating from a city jail, the constant police sirens and nightly gunshots, inhaling the fumes of an incinerator or garbage dump. How many spend a day in court, mentor a person on parole or get training on solving conflicts effectively with neighbors who consume meth, heroine, or suffer from intimate partner violence? Angela Y Davis, a one-time fugitive of justice and political prisoner, explains that "[p]hilosophy provides a vantage point from which to ask questions that cannot be posed within social scientific discourse that presumes to furnish overarching frameworks for understanding of our social world. ... How do we imagine a better world and raise the questions that permit us to see beyond the given?" Davis is also mindful that our inquiry needs to be in conversation with other disciplines for fruitful results (2005, p. 23). Undoubtedly, part of her praxis philosophy commitment stems from personal experience with the violence of racism. As she writes in her autobiography, Black families who bought houses in white areas of Birmingham were treated to arson with such frequency that Black people renamed the city Bombingham. Miraculously, her family home was one of the few which were spared vicious attacks (Davis, 1988/1974). The practice of residential (and educational) integration during the Civil Rights Movement era came at a steep price, and the law offered no protection nor reparation for Black middle-class families. In fact, Lipsitz goes so far to argue that "Black renters can inhabit less segregated and more affluent neighborhoods than Black homeowners. ... Blacks are the only group who find themselves economically *penalized* for homeownership" (211, p. 58, his emphasis). This formative experience with visceral violent oppression also gives Davis an acute understanding of the meaning of (civil) rights, as I explain below.

In *The Soul Knows No Bars: Inmates Reflect on Life, Death, and Hope*, Drew Leder's (2000) co-authored book with his students from Maryland Penitentiary showcases a phenomenological account of intellectual life emanating from a state prison, built in the early 1800s. Leder is one of the first philosophers who teaches in a city prison, since newer prisons have been exclusively built in rural America. Leder was transformed by the experience of dialoging with the brilliant African American students, few of whom had formal education degrees (such as a high school diploma) before entering prison (Leder, 2004; Leder, 2016). Leder's foray

into prison studies mirrors that of philosopher Lisa Guenther (2013), who also had a long-term teaching project and penned a phenomenological account of solitary confinement. Guenther was featured as scholar-activist in *The Chronicle of Higher Education* for her work teaching philosophy to death row prisoners at Tennessee State Penitentiary. She co-founded the REACH Coalition (Reciprocal Education and Community Healing on Tennessee's Death Row), which has built bridges beyond the prison walls focusing on creative projects, and advocacy work (Schimke, 2015). Their work culminated in the anthology *Death and Other Penalties: Philosophy in the Time of Mass Incarceration* (Adelsberg et al., 2015), featuring chapters by several political prisoners on the continuation of slavery in the current prison system, maroon philosophy and other ways of critiquing criminal injustice and border policing. Guenther, like other philosophers was inspired to turn to critical prison studies and praxis philosophy through Angela Y Davis' inspirational example as prison abolitionist activist. Another recent anthology, titled *Philosophy Imprisoned: The Love of Wisdom in the Age of Mass Incarceration*, is devoted to teaching philosophy in prison and is attentive to diverse voices, including imprisoned intellectuals (Tyson and Hall, 2014). Prisoners are acutely aware of the meaning of freedom in a carceral state and philosophers (in the teaching machine) have much to learn from them. In a classroom of Cayuga prison in New York State, a Black prisoner shared with me his appreciation for the biographies of philosophers such as Hobbes, Rousseau, Socrates, and others, because he understood that they propagated dangerous thought, and thus were executed, exiled, or driven by paranoia. Up to this point, I had never thought about social contract philosophers as being a threat to the status quo, quasi-imprisoned by their own thinking, since much of their ideologies support racial, gendered social contract theory and state violence.

Who Has a Right to the City?

In the classic essay "The Five Faces of Oppression," philosopher Iris M Young (1990/2011) gives us a careful calibration of facets of oppression: violence, cultural imperialism, exploitation, marginalization, and powerlessness. Her framework has been applied to different realms, including non-human animals (Gruen, 2009) and ableist discrimination (Purcell, 2014), and one can easily make a case for imprisoned persons and returning citizens, as well. Here, I want to highlight the empirical investigations regarding geographic spatial mismatch regarding work-related traveling patterns by geographer Ibipo Johnston-Anumonwo (2009). Young's model helps frame justice considerations that have haunted the U.S. American city most acutely since the 1960s presidential policies of war on crime (replacing the war on poverty) and the ongoing war on drugs. As it turns out, Young's model finds application in her own theory of non-oppressive city life. In her socialist critique of the (U.S. American) city, the social theorist mentions explicitly enduring oppressive conditions, applying the faces of oppression model.

Many social injustices exist in today's cities. Cities and the people in them are relatively powerless before the domination of corporate capital and state bureaucracy. Privatized decision-making processes in cities and towns reproduce and exacerbate inequalities and oppressions. They also produce or reinforce segregations and exclusions within cities and between cities and towns, which contribute to exploitation, marginalization, and cultural imperialism. (Young, 2011, p. 227)

Here Young gives us a sweeping indictment of structural inequalities stemming from actors of large-scale corporations wielding influence over politicians who in turn enact oppressive social and economic policies over its inhabitants. Interestingly, there is no mention of violence, including state violence, a fifth face of oppression. She refers to violence while critiquing the myth of community which produces white exclusionary practices; Black youth are targets of hate and beaten if they trespass into whites-only zoned neighborhoods. However, the passive voice elides the fact that police officers also protect white values. What is missing in her analysis is the identification of state violence targeting Black people of all ages and poor people in general. The exposure to constant police harassment and brutality which puts Black families of all classes on the defensive; young boys are recipients of "the talk" and told as teenagers how to behave in a vehicle when stopped by the police in order to survive the encounter. (Phil Castille thought he did the right thing when telling the police officer that he had a licensed gun in the car; he was wrong; Castille was immediately shot to death while his partner and their toddler were in the car.) Eric Garner was tired of being

a target of police, who accused him of selling loose cigarettes. He was on the block, breaking up a fight, when he was tackled to the ground by several police officers who choked him to death, while he articulated “I can’t breathe” eleven times. It is cynical that the only person arrested was the videorecorder who continues to face his own harassment by police after the murder of Garner. As Paul Butler (2017), a former federal prosecutor notes, police violence and extra-legal execution has been the main reason for propelling Black cities to erupt. The politics of containment of white capitalist supremacy meets blind rage—or what looks like blind rage to horrified whites. The key lesson (of the 1960s urban uprisings and 1991 East Los Angeles) is that riots will no longer spill over to areas that belong to (white) capital. Property values of the affluent and multinational corporations need to be protected and a containment architecture assists in realizing this goal. The modern police force is also militarized, which showed its awesome power of destruction in Seattle, 1999, the seat of organizing against the almighty WTO. The anti-globalization coalition was able to keep delegates from meeting in the summit venue, some delegates were tear-gassed inadvertently. However, many protesters were jailed and suffer permanent damage. “Teamsters and Turtles united” was the ludic motto of this impressive coalition, broken up with pellet guns, tanks, and riot police.

After the 2014 Ferguson, Missouri, uprising, the media began to question the police term “justifiable homicide”—the bland FBI term for police killings of civilians, even in those cases where civilians wield knives, toy guns, wooden sticks, or just hold up their hands. Only when the British newspaper *The Guardian* started publishing an inventory of police killings replete with pictures of the murdered civilians that the FBI encouraged (but did not mandate) all police departments to keep such lists themselves. Prior to Michael Brown’s murder in August 2014 in Ferguson, only a small fraction of police departments around the nation kept such voluntary statistics. His murder and the subsequent irreverence shown by police officials—a lifeless body, being kept in the street for over four hours—sparked moral outrage and engendered the Black Lives Matter movement, originating with three radical Black women activists, Alicia Garza, Patrisse Cullors, and Opal Tometi (BLM, n.d.).

In her autobiography, Assata Shakur makes a poignant observation that in her entire life as a Black girl and young woman, she has never tasted the realm of freedom. She considers herself a marooned slave living for over forty years in the safe haven of Cuba. Shakur was liberated from prison in the 1980s and writes that the city streets are a form of minimum security prison, while her stay at a men’s prison was maximum security imprisonment (Shakur, 1987; Nagel, 2015). As Angela Y Davis has argued throughout her work, the legal construct of the abstract equal rights-bearing subject—a major victory of the Civil Rights Movement (CRM) somehow rings hollow for marginalized, powerless residents who may sporadically rise up inside or outside prison walls. In 2018, a nationwide strike to protest prison slavery was coordinated by prisoners and their supporters, between August 21 (observing the anniversary of the execution of George Jackson, Soledad Brother, in the prison yard of San Quentin, 1971) and September 9 (the day of the Attica prison uprising in 1971) (cf. Janos Marton, 2018). The CRM’s movement’s clear achievement was to deracialize the law and ensuring its neutrality and colorblindness. However, the racializing of criminality is a *fait accompli*. Davis notes that it a Black man is always already criminalized before he belabors his actual innocence, referencing Frederick Douglass’ famous dictum that there is a habit to impute crime to color (Davis, 2003; Davis, 2000). Katheryn Russell’s (1998) trope of the criminalblackman comes to mind. To date, transwomen of African descent are experiencing an alarming murder rate and police departments. Black women and Black trans women who walk the streets are especially vulnerable for status crimes, for being profiled as prostitutes and promptly arrested. In response, Black Trans Lives Matter has been a new rallying cry in queer communities of color—one such organization is the SafeOUTside the System collective of the Audre Lorde project in Brooklyn, New York (SOS, n.d.).

... and Liberty for All?

Drawing on Henri Lefebvre’s concepts of space, Eduardo Mendieta gives us the following insight:

Philosophy thinks the city, as the city imagines philosophy. Philosophy, in other words, emerges from a spatial practice that conditions and is conditioned by particular representations of space and

representational space. Philosophy is always the work of an image of the city, the imagination of the city, and the social imaginary of a demos. Conversely, the city is produced by philosophy insofar as philosophy offers an imagine of the city, calls for a particular urban imagination, and determines the frontiers of a social imaginary that either excludes or includes the city as its locus (Mendieta, 2001, p. 208).

Jeremy Bentham's 18th century imaginary of the panopticon and "inspector's lantern," a one-way mirror that does not reveal the inspector, mapped out a surveillance philosophy for the city. His Enlightenment conception has been adapted to postmodern disciplinary dimensions, including electronic "bracelets" (e-chaining of a criminalized population), and a new proliferation of face-recognition devices that Bentham could not have dreamed of (Bentham, 1995; Foucault, 1995; William G. Staples, 2014). The policing agencies of the Republic of China is updating the inspector's lantern in police officer's "sunglasses" with built-in facial recognition capacity, capturing motorists or pedestrians who travel under false identities or have outstanding criminal charges (Vincent, 2018). Drone warfare has found its utility in civilian surveillance as well in addition to the ubiquitous video surveillance on every street corner and university campus, even in small towns of the US. Bodily intrusions, from chip implants to chemical castration of persons with sex offender status, are all too common to face any protestation by civil society, and anybody can download the addresses of convicted sex offenders, who often get housing on a street far away from a school building. If they are on parole, their movement can be limited with the simple tool of e-chains. A utilitarian defense of surveillance mechanisms might play on the citizenry's faith in safety and security, just as we are trained to abide by body scans in airports, prisons, courthouses, and schools. However, we might like to turn back to Foucault's dictum about docile bodies and the modern phenomenon that all institutions look a lot like the carceral (1995, p. 228). However, it is not the case that the informed philosopher could simply turn the gaze on state power; even the simple act of taking notes in a courtroom is forbidden by the controlling gaze of the bailiff. The only person arrested in the police murder of Eric Garner was the videorecorder, who continued to face harassment from the Staten Island police, being fed rat poison while awaiting trial in Rikers Island jail (Goodman, 2016). Cop Watch and Court Watch activists are heavily surveilled by state actors, thus sharing the experience of the Black Panthers, who gained notoriety for being armed and following police who harassed and arrested Black residents. Panther members committed to community organizing, breakfast programs, and other successful anti-poverty, mutual aid projects in cities across the U.S. and early on, they faced heavy scrutiny from the state that propped up COINTELPRO, a counterintelligence program, which targeted cultural nationalist movements of people of color, anti-war groups, various socialist college student groups, and the FBI directed by Hoover insisted to wipe out the Black Panther Party by any means necessary. Surveillance, disinformation, and blackmail were the more benign tools, but outright assassination of charismatic leaders such as Fred Hampton of Chicago was also used to achieve this goal (James, 1996).

I argue that a focus on gendered, racialized state violence is necessary to address a serious blind spot in Foucault's theory of surveillance and docile bodies. Foucault suggests that the modern era is devoid of the spectacle and sovereign power. Joy James contests this claim powerfully in a chapter titled "Erasing the Spectacle of Racialized State Violence" (1996, pp. 24-43.). In Foucault's text, *Discipline and Punish* (1995), bodily specificity is erased and thus becomes universalized as white, propertied male. The parochial gaze of the philosopher (i.e., Foucault) masks the body by determining that deviant behavior is punishable in exacting ways, never considering that racialized bodies are disciplined in dramatically different ways. "The resulting veneer of bourgeois respectability painted over state repression elides racist violence against black and brown and red bodies" (James, p. 25). In the 20th century lynchings of African Americans were a common public spectacle, as was torture and dismemberment of Senegalese and enslaved Martinicans in the French colonies (p. 29). The Movement for Black Lives, along with INCITE! and Critical Resistance, have demanded an end to police brutality and are working on penal abolitionist ways that do not privilege the rights-bearing subject under the "rule of law." But the temptations of invoking the "rule of law" and distributive justice ideals pervade all sections of society, and as long as abolitionist philosophy tarries with the negative (i.e., abolish the carceral system and policing), rather than envision new spaces of contestation, it will remain a fringe idea. Imprisoned intellectual Tiyo Salah-El's call for turning prisons into healing and

caring places is a bold proposal in the right direction (Salah-El, 2007). Monique Morris' (2016) steadfast commitment championing Black girls, who are considered disposable beings and criminalized, is another approach of responding to state violence with a dignitarian approach. Morris rallies for a healing-centered approach that empowers and centers Black girls' needs and honors their cultural expressiveness. Indigenous approaches favor a "circle-approach" to conflict transformation, which have also influenced Black diasporic communities such as the SafeOUTside the System collective (SOS, n.d.). It is indeed "safe" to divest ourselves from the illogic of "procedural" justice, which has so far only favored those who are powerfully connected to those who administer the rule of law. It behooves privileged philosophers teaching in the city's elite academic spaces to start listening to the voices of the voiceless and practicing a privileging their epistemic standpoint (cf. Alcoff, 1991/2009).

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OPINION

Lessons of Border Imperialism and Penal Abolition: Democracy, the Rule of Law, and Other Utopias

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Global powers, or what Stanley Aronowitz (2004) calls power relations, have used the imperial “gifts” of *democracy* and *the rule of law* to create, manage, and maintain the greatest economic, political and cultural inequities our planet has known.

While the colonizers of yesterday used geographical borders to enslave, displace, dispossess, and racialize entire continents for the sake of capitalist profiteering, they and their modern inheritors, maintained and maintain these borders through the institutions of supposed “democracy,” and the institutions of “the rule of law,” i.e., the writing of law and its enforcement by police, courts and prisons. While neocolonialism functions imperially, i.e. from afar, the instruments of the oppressor have been adopted by the colonized as their own: institutions of supposed democracy, law, police, courts, and prisons.

Decolonization can only come via abolition of both borders and the penal system. Whether we identify as abolitionists of border imperialism, or whether we identify as abolitionists of the penal system, we share a common problem: that which we have been sold as *democracy* and *the rule of law*.

The origin of borders and the penal project is the same: they are both artificial constructions. Their purpose is the same: prepare territories for racial capitalism, dominance, hierarchical governance, and discipline (especially targeting Black, Brown, and Indigenous people). Their work is the same: oppression of persons othered, subjugation of populations for control and use, and transforming liberty into a privilege. Thus, abolishing border imperialism and abolishing the penal system must come by interfering with the same

narrative that gives rise to both: that borders and the “criminal system” exist for the sake of sustaining *democracy* and the common good via *the rule of law*.

The narratives and institutions of *democracy* and *the rule of law* not only fail to sustain us and protect us, but they actually form the largest problem we face. Thus penal abolition and border abolition share the same problem and must work toward the same solution: the abolition of *democracy* and *the rule of law*.

George Orwell (1946) once said, “To see what is in front of one’s nose needs a constant struggle.” If this sounds strange, consider that our times are more absurd than anyone imagined they would become.

We are sequestered daily by a rhetoric claiming we live in a democracy, that we exist in a well-ordered society, and that we have, but for the occasional temporary crisis, constructed a community where all but a few live in relative prosperity.

However, reality, the one in front of our noses, is quite different.

We now live in a constant state of war—with the widely accepted logic of killing for peace (not unlike a “fucking for chastity” rationale). International “democratic” agreement is constructed as an occasional short pause for United Nations bullying, and then becomes a discussion of which war we can “afford” to be in next.

And though the world changes, the substance stays the same. So, in the first half of the 20th century, global powers were forced to “surrender” most occupations of foreign lands (politely called colonies). In the second half, as well as today, they continue their almost complete hegemony in the guise of two proudly proclaimed “gifts”: the “spread of democracy” and the so-called “rule of law.”

These two forces of colonization—democracy and law—are so bent to the flow of capital that they have overseen the creation, management, and maintenance of some of the greatest economic inequities our planet has ever known. Thus, most of the world struggles to survive in what we call “struggling democracies” to which a capitalist oligarchy of nations happily sells weapons (commonly the biggest part of their budgets), and loans (such as the years of loans to Greece whose interest alone entails more than 100% of the annual gross domestic product). As Paul Street writes in *Capitalism: The Nightmare*:

The neoliberal, arch-capitalist era we inhabit is chock-full of statistics and stories that ought to send chills down the spines of any caring, morally sentient human. Nearly three-fourths (71%) of the world’s population is poor, living on \$10 a day or less, and 11% (767 million people, including 385 million children) live in what the World Bank calls “extreme poverty” (less than a \$1.90 a day). Meanwhile, Oxfam reliably reports that, surreal as it sounds, the world’s eight richest people possess among themselves as much wealth as the poorest half of the entire human race. (Street, 2017)

In the U.S., these realities have been just as powerful. The makers of “the richest nation on earth” continue their historically unprecedented hoarding, and they do so not only with and through the tools of democracy and law, but in the face of widespread poverty that if properly counted may very well bypass that of the Great Depression. For example, *The California Educator* (Posnick-Goodwin, 2011) recently reported one in four students in California is now living below the poverty line and is frequently going hungry.

At the same time, somehow, the notion of justice—whether local or global—is divorced from any definition of equity, no matter how corrupted. A close examination shows that we have even stopped pretending it is otherwise. Nobody *really* thinks otherwise. We would just rather not talk about it. For example, it is now widely believed that talk of wars for the promotion of “global democracies” or “peace” is double-speak for the capitalist oligarchy to construct and maintain privilege and advantage. Accompanied by rhetoric of “global assistance,” politically and economically advantageous dictators are openly supported, while democratically-elected governments are openly opposed and occasionally subverted (even militarily).

We understand now that without question borders are about racial capitalism, exploitation of people and natural resources, and the preservation of the right of a tiny over-privileged class to manipulate it.

We also now understand that the so called “rule of law” exists, not to maintain some balanced and well-ordered society where all but a few live in relative prosperity, but to maintain the same racialized privilege and racialized advantage that so-called “democracy” does.

For example, on a recent trip that took me across California I observed two—seemingly incompatible—realities. In a Los Angeles airport I saw a large billboard advertisement from a law firm which portrayed an image of the well-known statue of Justice, a blindfolded woman grasping scales in one hand, with an accompanying text proclaiming that “Justice may be blind, but she still sees it our way 88% of the time.” The message here is: “if you have enough money to hire us as your lawyers, irrespective of culpability or justice, we almost always win the case. In fact, we do so 88% of the time.”

Only twenty-four hours later I was watching late night television in San Francisco and witnessed the political advertisement of a district attorney candidate, whose closing slogan was that as prosecutor she had achieved a “90% conviction rate.” The message is again the same, just from the other side. It implies that “irrespective of culpability or justice, if you elect me into office, I will almost always win the case.” Apparently, only the truly foolish think of law and its application as having something to do with inquiry or justice—sorting out innocent from guilty, right from wrong, and the like. As Supreme Court Justice Oliver Wendell Holmes, Jr. once told an apparently naïve lawyer, “This is a court of law, young man, not a court of justice.”

Unsurprisingly, while power relations, such as government and private corporations (with their wars, toxins, labor practices, and disregard for worker safety) each year kill and seriously harm far more individuals than person-to-person assaults ever do, few of their representatives ever come to the attention of the rule of law, much less are fully processed through it. Meanwhile, the people we irrationally fear more than governments and private corporations, and those we imprison the most, are those of color and of the economic underclass.

The US “criminal system,” the third most expensive government program in the history of the planet, is daily proof that the law, its enforcement, and its products (courts, prisons, and the like) are neither the result of clever argument nor an expression of justice. Rather, these are the tools through which local, national, and international suppression takes place every day.

Anyone who even finds something odd in them is labeled “unpatriotic,” a “socialist,” politically naïve, and just plain stupid – deaf and blind to our wonderful “democratic” society.

These realities challenge the meaning of “democracy” and “rule of law.” While democratic ideals and notions of well-ordered societies are still of the highest value, the single greatest delusion of our time is what we have been sold as “democracy” and “the rule of law.” It is really just a scam, as there’s nothing much democratic or just about it. And it is the source of the argument that keeps the vast majority of the racist and white supremacist world in place, and blind to how the very first thing we must do to improve our lot is to abolish the borders that “democracies” keep in place and the penal system.

A rejection of so-called “democracy” and “rule of law,” both of which have failed to deliver their promises and have in fact profoundly oppressed and enslaved most, seems to me the only way forward. As Chris Hedges (2015) argues, “There are only a few ways left to deal” with what we face: “sustained civil disobedience that disrupts the machinery of exploitation.”

As the African proverb goes, “Corn cannot expect justice from a court composed of chickens.” These things will never be handed to us. We must make them for ourselves, as we cannot expect basic fairness or the

basest of humanity from a culture that has long stopped pretending it is organized for such. If not the streets, then what? Probably what Larry McMurtry said: “If you wait, all that happens is that you get older.”

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