



# Volume 5, Issue 1

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## ABOUT TRANSFORMATIVE JUSTICE JOURNAL

The *Transformative Justice Journal (TJJ)*, founded in 2012, is an online, open-source, peer-reviewed scholar-activist, anti-authoritarian, subversive, and critical penal abolition journal dedicated to promoting transformative justice. TJJ is organized and edited by a radical critical grass-roots collective of activist-scholars, community organizers, and current and former prisoners from around the world. TJJ was influenced out of conversations at the International Conference on Penal Abolition ICOPA in 2010. As a scholar-activist journal, TJJ was developed out of scholarly and community dialogues around promoting a decolonizing and anarchist criminology social justice penal abolition community-based alternatives to both the retributive, punitive, and utilitarian justice models used by most colonial 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 works to dismantle oppression by systems of domination, such as racism, sexism, homophobia, ageism, elitism, statism, classism, transphobia, ecocide, speciesism, and ableism within all domestic, interpersonal, global, and community conflicts that foster theories such as, but not limited to eugenics, capitalism, and colonialism. 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 and providing space and place for marginalized voices. Transformative justice also builds off the principles of, anarchism, decolonizing, prison abolition, healing justice, Quakerism, liberation, revolutionary social justice resistance movements, First Nations in Canada, and restorative justice in order to dismantle oppression, repression, suppression, and domination.

## LOCATION

The Transformative Justice Journal is located in the Department of Criminal Justice at Salt Lake Community College.

Dr. Anthony J. Nocella II  
Managing Editor  
Department of Criminal Justice  
Salt Lake Community College  
Larry H. Miller Campus  
Public Safety Education and Training Center  
Office 270 D  
410 West 9800 South  
Sandy, Utah, USA 84070

## **Editorial Team**

### **Editor-in-Chief**

Dr. Lea Lani Kinikini  
Director, Institute for Research & Engaged Scholarship  
University of Hawai‘i–West O‘ahu  
transformativejusticejournal@gmail.com

### **Prisoner Liaison Editor**

Lucas Alan Dietsche, MA  
Adjunct Professor  
University of Wisconsin-Platteville  
transformativejusticejournal@gmail.com

### **Managing Editor**

Dr. Anthony J. Nocella II  
Salt Lake Community College

### **Associate Editors**

- |  |   |                                     |   |
|--|---|-------------------------------------|---|
| 1. Dr. Jason Campbell<br>Nova Southeastern<br>University | 2. Dr. Nancy Heitzeg<br>St. Catherine<br>University | 3. Dr. Mecke Nagel<br>SUNY Cortland | 4. Dr. Judah Schept<br>Eastern Kentucky<br>University |
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## **SUBMISSION GUIDELINES**

Please read these guidelines and then send your article, essay, review, research notes, interviews, reflections, poems, art, event summary, etc. to: [transformativejusticejournal@gmail.com](mailto:transformativejusticejournal@gmail.com)

### Value and Uniqueness of TJJ

1. The Transformative Justice Journal was influenced in 2010 by discussions at the International Conference on Penal Abolition (ICOPA).
2. The *Transformative Justice Journal* publishes rigorously peer-reviewed scholar-activist work of the highest quality.
3. The *Transformative Justice Journal* provides the utmost respect and care during the review process.
4. The *Transformative Justice Journal* is a free-to-access electronic journal.
5. The *Transformative Justice Journal* charges no fees for publication.
6. The *Transformative Justice Journal* supports and encourages submissions that are excluded from mainstream journals, such as, but not limited to use photographic, video, MP3, art, poems, raps, and new media work.
7. The *Transformative Justice Journal* is organized and edited by a radical critical grass-roots collective of activist-scholars, community organizers, and current and former prisoners from around the world.

### We Seek

1. **Incarcerated writings and art** – of any length
2. **Research articles and essays** – 2,000 to 10,000 words
3. **Student final papers** – no more than 10,000 words
4. **Course/class summaries** – no more than 2,000 words
5. **Research notes** – no more than 2,000 words
6. **Commentary** – no more than 2,000 words
7. **Tactic and strategy analysis** – no more than 10,000 words
8. **Academic development** – no more than 10,000 words
9. **Lecture/presentation summaries** – no more than 2,000 words
10. **Conference/panel summaries** – no more than 2,000 words
11. **Events/protests/resistances summaries** – no more than 2,000 words
12. **Action alert summaries** – no more than 2,000 words
13. **Film, book, art, and media reviews** – no more than 3,000 words
14. **Interviews and dialogues** – between 1,000 to 10,000 words
15. **Poems and rap** – no more than 10,000 words

### Style

1. 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.
2. Submissions must be sent in Microsoft Word format. Submissions in other software formats will not be reviewed.
3. 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.
4. Authors must include an abstract of no more than 150 words that briefly describes the manuscript's contents.

## **Review Process**

1. Upon acceptance for review, the Transformative Justice Journal editors will send manuscripts, under a double-peer reviewed process, to no less than two, and generally three reviewers. Reviewers provide their recommendations to the editor, who makes the final decision to accept the manuscript.
2. The Transformative Justice Journal holds to the utmost respect, love, and care when reviewing manuscripts. Each review we assure is constructive, positive, and hopefully useful to the author. We strongly welcome first time authors, students, nontraditional students, activists, youth, community organizers, prisoners, politicians, and teachers.

## **Submissions will be assigned to one of the four following categories:**

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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2. We are pleased to accept your submissions at any time and will move quickly through the review process to ensure timeliness.
3. For submission, please submit to: [transformativejusticejournal@gmail.com](mailto:transformativejusticejournal@gmail.com)



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### **Transforming Systems of Control through Ludic Ubuntu Justice**

Author: Mechthild Nagel

Title: Professor

Institute: SUNY Cortland

Address: Department of Philosophy

POB 2000, Cortland, NY 13045 USA

E-mail: [mecke.nagel@cortland.edu](mailto:mecke.nagel@cortland.edu)

**Biography:** Mechthild Nagel is professor of Philosophy and Africana Studies at the State University of New York, Cortland and a visiting professor at Fulda University of Applied Sciences, Germany. She is director of the Center for Ethics, Peace, and Social Justice (CEPS) and of Sophia's Garden. Her most recent co-authored monograph is *Reframing Diversity and Inclusive Leadership: Race, Gender, and Institutional Change* (SUNY Press, 2024). Dr. Nagel is founder and editor-in-chief of the online feminist journal *Wagadu: A Journal of Transnational Women's and Gender Studies* ([wagadu.org](http://wagadu.org)).

**Keywords:** Transformative Justice; Ludic Ubuntu Ethics; Reintegrative Shame; Nested Care

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### **Transforming Systems of Control through Ludic Ubuntu Justice**

Mechthild Nagel

First, I want to acknowledge the thoughtful contributions of a diverse panel of engaged and praxis-oriented theorists. I am honored that they have responded to the call for engaging with my book. I have such respect for their decades-long work with grassroots organizations on a variety of peace and conflict intervention issues and are deeply passionate about social justice.

**Margaret McLaren**, a global feminist philosopher who has studied women's cooperatives in India and thinks deeply about international solidarity movements, summarizes my abolitionist vision in the following way:

How do we move forward to a ludic ubuntu ethics? We rely on healing circles, not sentencing circles. We recognize and acknowledge our interdependence and promote belonging in a community by re-integrating people without punishing or shaming them. We endorse practices of unconditional

forgiveness. We redress structural and systemic violence and structural injustice. And, finally, we promote play and laughter in and as this transformational justice work.

This showcases beautifully what is at stake when penal abolitionists take seriously transformative justice practices. McLaren also notes that my work draws on ancient Roman and Egyptian deities. As a point of clarification, Lady Justice was never revered as a goddess by the Roman people but installed by the elites as an enforcer of positive law (not divine). It is remarkable that this tradition continues in the US as statutes in her likeness with blindfolds adorn courthouses. Ma'ath from Egypt was actually worshipped by the people, and Justitia is a faint, distorted imitation of Ma'ath, just as Roman and Anglo legal codices are much more about empire building and consolidation of social and political control than about serving the people and the common good.

Mohawk transformative justice practitioner and artist **Tawennihake Patrick Brown** shares an important insight of the accursed gift of settler colonial ideology of punishment, specifically associated with Lady Justice.

Even while they sought their own freedom from the restraints and weight of the Monarchy, the old, antiquated ideas and colonial mindset that they so eagerly left behind followed close on their heels ... They didn't stray far from the culture of social control, behavior modification, subjugation, and rule of man over man.

Europeans came as outcasts and impoverished, yet wasted no time to continue the oppressive ideology they fled by making themselves overlords of peoples who treated their own children kindly, never spanking them. Instead of being inspired by such evolved childraising practices, they used their Manichean Christian ideas of sinfulness to subdue, castigate, and destroy Indigenous nested-care Ludic Ubuntu ethics (Narvaez, 2024). Children who face repeatedly corporal punishment grow up to repeat the cycle of neglect and terror.

**Lucien Lombardo** is a fervent advocate for the dignity and rights of children. He is active on the national committee of "No Hit Zone" and provided much impetus for thinking deeply about ludic Ubuntu in the positive. What does a society owe its children and what if they were indeed allowed to "work" and learn through play? Lombardo provides the missing link in prison studies that children's experiences of being shamed, belittled, disrespected in an adult-centered world has a profound impact on their social/emotional development. He introduced me to Dignity and Humiliation Studies, founded by Evelin Lindner and Linda Hartling. Such studies will need to play a bigger role in addressing large-scale conflicts as well as conflicts on playgrounds, school yards and the proverbial school-to-prison pipeline.

The German bestselling author and former prison warden Thomas Galli (2016; 2017) showcases composite vignettes of incarcerated with great compassion—his focus, echoing Lombardo's, showcases how dignity violations produce stress which explain, in part, their trajectory towards the carceral sanction.

Lombardo showcases that children's feelings of lack of freedom should be taken seriously, as much as a pivot to abolition of judicial punitive systems must be encouraged. His reflection on learning from college students who access their own childhood memories powerfully connects with the vision of SUNY Cortland's Sophia's Garden project:

Students, who have children or work with children, often report that when they start to connect dignity and children through exploring dignity experiences of their own childhoods, they start to focus on the development of children and the impacts of their interactions on children and not control of children. They start to build positive ubuntu with children and not negative ubuntu.

Indeed, once adults work with children, say, through our Sophia's Garden picture storybook dialogues, the 6- to 11-year-old students often marvel that they are not facing interrogation, but creative, open exploration



to worlds of their imagination, unicorns, and more. An 11-year-old Black student shared in his evaluation of my philosophical playwork: “She only asked us questions. She never provided answers!” It is high time that Western schools, training ground for colonizing and imprisoning mind-heart connections, need to be abolished to allow children’s true dignity-flourishing.

**Joshua Price**, a sociologist and scholar of structural violence against women and girls of color, brings up important set of vexing questions, really, dilemmas, which demand a lengthy response, and an invitation to others to explore in their praxis. First, I need to clarify the obscure example regarding a fetal response to conflict (Nagel, p. 51). Current draconian abortion laws after the U.S. Supreme Court’s overturn of *Roe v. Wade* have severely impacted over 80 percent of women on parole and probation regarding reproductive choice: “*Dobbs* not only made abortion care much less accessible for everyone who may become pregnant; it created new risks of criminalization as well “ (Sawyer, 2024). As Price shares with his terrific bibliography, much has been written about the afterlives of slavery and how they have curtailed Black women’s reproductive freedom. Natal alienation and pre-natal alienation are such ontological markers and persistent traumatization and premature death. Black feminist activist organizations such as one led by Ross have provided immense support in the struggle against policing Black women’s bodies. Insurrectionist justice (at phase 3) is a necessary tool to voice indignation against necrophilic and misogynoir politics. In the age of social media, it can have explosive consequences. As I write, Kenyan young people are protesting a tax law which passed today (June 20, 2024). As they find themselves maligned by politicians and physically harmed by police, the youth doxed them in return.

I have more to say about the MeToo Movement in my recent co-authored book *Reframing Diversity and Inclusive Leadership: Race, Gender and Institutional Change* (2024). Here I would just like to highlight that a robust critique of carceral feminism comes from a commitment to law abolitionism. This does not settle easily with activists who wish for legal mechanisms and statist ideology. Tarana Burke, founder of MeToo, walks a tightrope in defending survivors’ choices of justice instruments and at the same time favoring abolitionist goals such as elder parole:

Every survivor is entitled to the justice they seek and we as a movement to eradicate sexual violence support them on their healing journeys. ... We also know that mass incarceration, which perpetuates inequality and condemns people to facilities with rampant sexual violence and other abusive conditions, cannot be the answer. (Burke, cited in Reisman, 2023)

Price also highlights the need for those who harm to attending to reintegrative shame or bearing responsibility in some way. Emphatically, he writes: “If one doesn’t feel shame for having wronged another, or something like ‘shame’ (remorse, regret), then they, and we, have a problem.” Some neurodivergent folks with traumatic childhood experiences may indeed have trouble with perspective-taking and remorseful feelings, as the case of William Buntz highlights (Nagel, pp. 179-81). I respond to Braithwaite’s call for the need for reintegrative shame, which differs from humiliation practices (cf. Nagel, pp. 148-49). Might there be another way that is life-affirming for all involved? One of the reasons of writing critically about shaming practices is that I was deeply touched by a little book by prison psychiatrist Herbert Thomas, *The Shame Response to Rejection* (2006). With examples from a men’s prison he showcases how a public shaming event can cascade quickly into physical violence. It is a setting in a total institution where the violation of one’s honor matters deeply, and on occasion Thomas saved the day by using humor strategically, as a non-violent disruption of the emotional escalation. One case involved a senior administrator who cursed at an imprisoned white man whose face and neck turned red, retreated from the administrators’ table and asked by a third man, a steward, who demanded why he was standing around, the angry man took out his rage against this unsuspecting steward by putting his large arm around the steward’s neck and lifted him off the floor. Thomas recounts his response: “With all the energy I could muster, I grinned both of them as widely as I could, and both men grinned back at me. We knew and trusted one another. After what seemed like a very long time, the inmate lowered the steward to the floor, and the steward shook himself off and went about his business as if nothing had happened. The inmate also went about his work” (pp. 31-32).

Ludic Ubuntu at phase 5 tends to work only “on the ground,” and yet, it offers hope to those who act in a Zomnian way taking to the mountains or swamps, beyond the power of the state. Revolutions which tackle the power elite in a violent way have always been very costly to protestors. At the same time, political indignation may also be expressed at level 5, making use strategically of legal instruments, especially tort law, to demand material reparations for century-long settler colonial violence against oppressed peoples. Ludic Ubuntu ethics calls for robust accountability when the state and state actors, i.e. who do injustice under the color of law, are culpable. It is not good enough, as just recently declared by Pope Francis, to say “sorry” for the crimes committed under the Church’s “Doctrine of Discovery” (Dicasteries, 2023). ‘Defunding the Church!’ might be the next step demanded by Indigenous peoples harmed extensively by Catholic mission slave labor, residential “school” settings, and cultural genocide.

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**On Mechthild Nagel's *Ludic Ubuntu Ethics: Decolonizing Justice***

Author: Margaret A. McLaren

Title: George D. and Harriet W. Cornell Professor of Philosophy

Institution: Rollins College

Address: Department of Philosophy

Winter Park FL 32789 USA

E-mail: [mmclaren@rollins.edu](mailto:mmclaren@rollins.edu)

**Biography:** Margaret McLaren is a professor of Philosophy at Rollins College. She directs the Sexuality, Women's and Gender Studies program and the Ethics minor. Her books include: *Women's Activism, Feminism, and Social Justice* (OUP 2019), *Decolonizing Feminism: Transnational Feminism and Globalization* (RLI 2017), and *Feminism, Foucault, and Embodied Subjectivity* (SUNY 2002).

**Four Keywords:** Transformative Justice; Ubuntu; abolitionism; decolonizing justice

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**On Mechthild Nagel's *Ludic Ubuntu Ethics: Decolonizing Justice***

Margaret A. McLaren

In *Ludic Ubuntu Ethics: Decolonizing Justice* Mechthild Nagel offers a compelling framework for thinking about justice in the 21<sup>st</sup> century. Drawing on African, indigenous, and feminist work as well as anti-abolitionists Nagel proposes a novel approach to resolving conflict and mitigating violence. The title of this work brings together Nagel's earlier work on Hegel and play with her work on African philosophy. *Ludic Ubuntu Ethics* consists of five chapters, plus a Preface and Introduction.

Even in the Preface, Professor Nagel raises provocative questions: "What is the meaning of peace for those who fight the neocolonial state, heteropatriarchy, chattel slavery and penal democracy" (p. xiv) and "Can we imagine an unpoliced life?" Her book addresses these important questions, urging us to re-imagine both systems/institutions of justice and the concept of justice. Her reimagined conception of justice goes beyond former re-workings of it—insurrectionist, transitional, and transformative—by integrating Indigenous views and noting that even under duress there is space for laughter and play.

We are introduced to the Zulu concept of ubuntu in the introduction (Nagel, pp. 1-24). Ubuntu is a forward-looking relational ethics in contrast to mainstream ethical frameworks, which are often punitive (backward-looking), and individualistic. When an individual is said to have ubuntu she is viewed as “generous, hospitable, friendly, caring and compassionate” (p. 2). Central to ubuntu is the idea that we are deeply interdependent, which is often characterized by this phrase: One is only human through other humans (p. 7), or alternatively the widely known phrase: “I am because we are.” Nagel notes that South African philosopher Mogobe Ramose claims that the concept of ubuntu is central not only to the Zulus, but also radiates throughout African philosophy. Ubuntu’s emphasis on our fundamental interconnectedness undergirds the shift from a conception of justice that is individual and punitive to one that is community-based and playful. Nagel sees playfulness as a fundamental human trait and one that offers a lightness even when situations seem dark and overwhelming.

Nagel characterizes ludic ubuntu ethics as having five stages (pp. 9-19); her book devotes one chapter to each stage: 1. Vengeful Justice, 2. Shaming Justice, 3. Insurrectionist Justice, 4. Restorative Justice, and 5. Transformational Justice. Although these different types of justice can be viewed as stages, they are neither developmental nor discrete. There is some overlap among the types of justice and movement among the various stages.

Vengeful justice, the first level of justice, is concerned with rage and retribution; the classic example is the courtroom where punishment is meted out to those convicted of committing crimes. Second, shaming justice takes place mainly through the ‘invisible prisons’ of regulatory systems, such as the family and the welfare system. This second type of justice operates through norms and emotions such as shame, guilt and *ressentiment*. Moreover, this second type of ‘justice’ often disproportionately impacts those who have been and are oppressed by formal systems ostensibly meant to help them. Nagel mentions that 50% of Black children face contact with the family policing system; another example mentioned is the legacy of Indian residential schools.

This trend of targeting Black and Indigenous peoples continues in the third level of justice, insurrectionist justice, which is a response to police violence and penal institutions that overwhelmingly harm Black, Indigenous and People of Color (BIPOC) folks. There are too many recent examples of fatal police violence against Black men and women in the United States to enumerate; notable cases are Eric Garner (2014), Michael Brown (2014), and George Floyd (2020). Insurrectionist justice is a justified moral outrage against both explicit violence and more subtle institutional violence. Insurrectionist justice resists and challenges the carceral structures that engage in the “looting of black bodies” (Harris as quoted in Nagel, p. 15).

The fourth stage, restorative justice, focuses on healing and forgiveness; examples include South Africa’s Truth and Reconciliation Commission and healing circles in Indigenous communities. Wronged and wrongdoer come together to resolve conflict or to consider the consequences of violent actions; the focus is on the perpetrator and how their actions have harmed the wronged party or parties. The next and final level, transformative justice, leaves behind the need to focus on the perpetrator and prioritizes the holistic healing of the community. As in oppression theory, those who harm are also viewed as being harmed by their actions and in order to restore harmonious relations, all must be considered to have dignity and be worthy of care in order for the damage to both individuals and the community to be repaired. Transformational justice is abolitionist; it exorcises the notion of punishment and centers practices of holistic community healing and care.

Ludic Ubuntu at Level five incorporates these aspects of transformational justice but also includes a strong sense of belonging, of intergenerational connection and responsibility and finally a dynamic sense of play. Drawing on several traditions, including Indigenous wisdom and ancient Roman and Egyptian goddesses, Nagel characterizes Ubuntu ethics as emphasizing belonging; it is a “heart-based justice which reverberates through all kinship and communal relations” extending beyond the scope of human community to

encompass an interspecies ecological ethics (p. 11). Ludic ubuntu is the dance among the different aspects of each stage of justice culminating in a hopeful and playful transformational justice. Calls for transformative justice emerge both from those demanding stronger, more egalitarian state institutions and those who advocate anti-statist, anti-imperialist solutions, such as mutual aid and programs focused on forgiveness and reconciliation (p. 23).

Chapter one delves more deeply into the first stage of justice, vengeful justice. This type of justice is most commonly seen in systems of law and carceral punishment administered by the state. Sometimes termed retributive justice, it often justifies punishment as the logical and inevitable consequence of violating the social contract by harming others. Arguing that vengeful justice operates on the logic of violence and terror (p. 27), Nagel demonstrates that the prison and legal system do more harm than good. Ostensibly aiming at 'correcting' behavior they instead do further harm by singling out and punishing the more vulnerable in society and in some cases causing an early death as in the case of Jon Marc Taylor who had a stroke in prison and later died from its complications while still incarcerated (p. 34). In response to those who wonder if prisons could be reformed to be gentle, even humane, Nagel replies with an unequivocal 'no'. She describes a women's prison in Mali where no one wears uniforms, the women have a garden and receive counseling for their infractions; additionally, their children are able to live with them while they are in prison. However, Nagel questions why we need to put people in prison to address their needs, such as mental health issues and rightly points out that prisons inhibit freedom and undermine dignity. Perhaps the biggest oversight of a vengeful ethics is that it is meted out by the powerful against the powerless.

In chapter two, Nagel examines the ways in which surveillance of, and policy surrounding, families results in forms of control and punishment. Too often overlooked by those active in prison abolitionism, policies and institutions governing families are often an extension of policing. For example, she points out how once a parent is on the radar of Child Protective Services (CPS) they live with the threat of the system taking away their children. Paternalistic and far-reaching, under the guise of protecting children, CPS can ensnare a family in the family court and foster system for a lifetime. In 1997 a new US policy, Adoption and Safe Family Act (ASFA) was passed with the intention of stopping the foster care to prison pipeline by limiting the time a child could spend in foster care. However, it also shortened the time that parents could achieve reunification with their children which presented special problems for those in prison, on parole or in rehabilitation programs. Thus, ASFA increased the state power over parents and children, particularly poor families. The surveillance and policing over families affects mostly poor families: "As it stands now, child welfare is practiced inconsistently and targets children of poor and minority families" (p. 79). In spite of the fact that family law in the U.S. was seen as a way to keep family matters out of criminal courts, it has become an extension of policing through its surveillance and constant threat of punishment of those who do not meet its requirements. Like vengeful justice, shaming justice cannot be adequately reformed but must be abolished.

Insurrectionist justice, explored in chapter three, is a response to a legal system that is and has been racist, imperialist and colonialist. Nagel sees two different ways that the law functions; she characterizes the difference this way: "the law which circumscribes the procedural system for those deemed citizens (white, colonial, straight cis men) and what I label as an outlaw criminal legal system reserved for subjects residing beyond the pale: subjugated, racialized as Other, disposable, Indigenous Peoples, in other words, those who live beyond the protection of the law" (p. 89). The US legal system is embroiled in a paradox because it creates a group of outsiders who do not have its protection and do not benefit from the law. This "outlaw nation building" (Ibid.) works to create and maintain an underclass of the permanently disenfranchised resulting in an outlaw nation-state. According to Leonard Harris, insurrectionist ethics calls for us to resist the outlaw nation-state "through uprisings and escapes" (Harris 2002 as quoted in Nagel, p. 89). Insurrectionist ethics challenges the state apparatus and its prima facie neutrality, exposing the political and legal system as imperialist, racist and heteropatriarchal. This stage of justice, like vengeful and shaming justice cannot merely be reformed but must be overcome through creating an abolition democracy. Nagel

describes it as: “nothing less than tearing down the entire criminalizing system and investing in healing praxis” (p. 108).

This healing praxis may be found in transitional justice, if executed correctly. In chapter four, Nagel presents two contrasting cases of transitional justice, Rwanda’s National Unity and Reconciliation Commission (NURC) and South Africa’s Truth and Reconciliation Commission (TRC). The former is a case of negative ubuntu and the latter an example of positive authentic ubuntu. After the Rwandan genocide in 1994 in which more than 800, 000 Tutsi and many moderate Hutu were killed Rwanda set up community courts, known as Gacaca courts. These courts were meant to avoid the punitive retribution and shaming that happen at earlier stages of justice; however, Nagel argues that they fell far short of that goal. Gacaca courts aimed to uncover the truth of what happened during the genocide; prosecute the genocide’s perpetrators, reconcile Rwandans; prove that Rwandans could settle their own problems through a justice system based on Rwandan culture (p. 113). Yet the community courts made no distinction between Hutu who massacred Tutsi and those who did not, eliding distinctions between bystanders and murderers as well as casting all Hutu as criminals and all Tutsi as victims. Moreover, Gacaca courts issued unfair sentences by punishing a defendant for celebrating his light sentence in a re-trial and by giving more severe punishment for theft than for murder (pp. 133-114). Nagel reveals that what was championed as a model of restorative and transitional justice was anything but in the Rwandan Gacaca courts. South Africa’s Truth and Reconciliation Commission comes closer to an authentic ubuntu justice with its focus on forgiveness and healing. Nagel notes that there is an affective difference between the NURC of Rwanda and the TRC of South Africa; NURC utilized feelings of shame (*ressentiment*) while TRC established guilt (resentment). One example of this is that those in the TRC proceedings were not required to show remorse (p. 123), while in the Gacaca context the emphasis was on “reintegrative shaming” (p. 113).

In her final chapter, “A Transformative Justice Paradigm: A Call for Ludic Ubuntu Justice,” Nagel lays out the features of a Ludic Ubuntu Justice (LUJ) interspersing several rich stories and examples to illustrate how it works. Ludic Ubuntu Justice is type of transformative justice currently the highest stage of justice conceived. Transformative justice has three major precepts: 1. It focuses on making amends, making whole; 2. It endorses healing practices for all; and 3. It advocates community accountability (pp. 136-7). The first precept is accomplished by advocating an unconditional forgiveness paving the way for restoring right relations among community members. The second precept relies on shifting from trauma informed care, which is backward-looking to healing-informed care, which is forward-looking. Healing-informed care is non-judgmental and compassionate; it provides a foundation for belonging and being in community (Nagel, p. 154). The third precept, community accountability, involves acknowledging responsibility for one’s actions and their impact on others, expressing genuine remorse, repairing the harm done and no longer committing similar harm. Nagel questions including accountability in a transformative justice model (it is associated with restorative justice), seeing it as backward-looking, individualistic and retributive. She offers three suggestions to improve accountability models: they should challenge structural injustice; acknowledging that abolishing harm at the individual level is not possible; and, using other modalities to achieve justice, such as healing circles, shamans and Indigenous practices (p. 151). But now that we have enumerated aspects of transformative justice, where is the ludic (i.e., play)?

The ludic can enter in through embodied practices, such as performance art and theater. It can be found in the Hawaiian ritual of Ho‘oponopono restoring right action and good character through role play and forgiveness. Contrasting the interdependence of Lakota Medicine Wheel to the Western box founded on a notion of abandonment, Nagel illustrates how the four directions of the Medicine Wheel—generosity, belonging, interdependence and mastery—resonate with an ideal of ludic ubuntu justice, while the four edges of the Western box—greed, fear, anger and ignorance—reinforce the very lowest stages of justice, punitive, individualistic and shaming.

How do we move forward to a ludic ubuntu ethics? We rely on healing circles, not sentencing circles. We recognize and acknowledge our interdependence and promote belonging in a community by re-integrating

people without punishing or shaming them. We endorse practices of unconditional forgiveness. We redress structural, systemic and institutional violence and injustice. And, finally, we promote play and laughter in and as this transformational justice work.

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### **Transformative Justice**

Author: Tawennihake (Patrick Brown)

Title: Executive Director

Program: Transformative Justice Initiative

Address: 21 Elm St, Suite 789

Potsdam, New York [13676]

E-mail: [newbeginningsministry9@gmail.com](mailto:newbeginningsministry9@gmail.com)

**Biography:** Tawennihake (Patrick Brown), is a member of the Saint Regis Mohawk Tribe of Mohawk Indians. He is a traditional storyteller, ceremony leader, and author of *Awakening the Eagle*, 2nd Edition (2024). He is the Executive Director of the Transformative Justice Initiative and White Birch Foundation.

**Keywords:** colonial justice, transformative justice, Mohawk world view

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### **Transformative Justice**

Tawennihake

My name is Tawennihake. I am a member of the Saint Regis Band of Mohawk Indians. I am the Executive Director of the Transformative Justice Initiative and have been involved with the restorative/transformative field of study for over 25 years. Our Mohawk world view is that we are all here by the wish and will of the Creator and as such no one is greater than another. Each member is an asset to the community, and all are relatives.

In my culture there is no word for prison, this being a European concept that was foreign to my people. Those responsible for the colonization of the American continent brought with them dreams of a new life and a new world. Even while they sought their own freedom from the restraints and weight of the Monarchy, the old, antiquated ideas and colonial mindset that they so eagerly left behind followed close on their heels; proving that no matter where you go, there you are. They didn't stray far from the culture of social control, behavior modification, subjugation, and rule of man over man. Today's modern 'correctional facilities' haven't strayed far from the roots and spirit of dungeons and paupers' prisons of their day. They have been renamed over the years; prison became penitentiary, penitentiaries have since been called



correctional facilities as if giving a new name to these instruments of torture and control can disguise their nature.

The idea of safer communities is not a new one. Unfortunately, our approach to creating these communities is not new either. When the first prison was built in the commonwealth of Pennsylvania, Eastern State Penitentiary was heralded as an 'enlightened alternative' to stocks, the whipping post, the pillory, dungeons, and the gallows. Ever since then we have been seeking a way to create a 'kinder, gentler' prison. Something more 'humane.' This exercise in futility is likened to creating a kinder, gentler more humane bullet. We can kill the criminal and save the man. We can now shoot someone in a way that won't kill him or her, making for a much more humane shooting experience!

I used to think we didn't have a crime problem as much as we had a prison problem. Now I have come to realize that we don't have a prison problem as much as we have a government problem. Prisons are the constructs of a colonial government. They operate in opposition to the very idea of a society. A society by its nature is inclusive, cohesive and doesn't exist without its members. So, when it is said that the effort is to create safer societies, the question I ask is, safer for who? If our approach is to only make it safer for a few, or a certain segment of society then we create subcultures that become more divided and less inclusive, feeding the notion of 'us versus them'. Does this not take us further away from healing and wholeness?

A mind that is steeped in punitive retribution, alienation, ostracism, vilifying and dehumanizing thinking cannot possibly achieve healing, wholeness, inclusion, dignity, well-being and safety.

I want to share a quote from D. H. Lawrence, *Lady Chatterley's Lover*: "We have hidden you from the sun, the moon, and the stars. We have plucked you from the stem on the tree of life and we expect you to bloom." You can't plant a carrot seed and hope to cultivate roses! Neither can you pull a flower from its stem and expect it to live much less bloom. We, by necessity, must face and accept the truth of this Colonialist view of dealing with aberrant behavior.

Those who are genuinely interested in true change must make a deliberate effort to first move away from the problematic language because as long as those words are a part of the dialogue, they become a part of the strategies.

A lot is said about 'accountability.' This conversation can't be successful unless we hold everyone accountable, especially those directly responsible for decision making on the behalf of other fellow human beings, their lives, the effect on their families' lives, friends, community, etc. In my culture we say, "Be careful where you place your feet because the faces of seven generations are looking up at you." Everything we do affects everyone else on this planet, directly or indirectly.

I don't feel like we need the wisdom of the Chiefs to let us know there is a problem. The prison system has had a 200-year proven track record of failure. It is a dismal failure in achieving its own goals of creating public safety and rehabilitation. With a 70%+ recidivism rate, any company that wasn't being carried on the backs of the public would have gone belly up in the first couple of years. The question in my mind is "why"? Why has this been allowed to persist?

The steam engine was quickly replaced as the engine of choice once the gasoline engine was created. Most of our technology is replaced by a better, more superior product once it is discovered, and yet here we are, still tolerating this antiquated justice model. Why?

It is the belief of this author that the Corrections System and the model that we perceive as a failure, is actually a glowing success to the profiteers who benefit from this. The rise in private prisons across the country is glaring evidence of this. If people could not profit from such businesses, they would not be in the portfolios of so many corporations.

In summation, I believe if we are ever to rid ourselves of Colonial Justice, we must rid ourselves of Colonialists! It is the right of the people! We can no longer pretend that we don't know what to do. The evidence is clear. We can return to dignity, inclusiveness and recognizing the divinity of each and every human being by removing the roadblocks to the success of this endeavor. The largest being the bureaucrats who cry for more prisons and longer sentences. We must start somewhere. Thank you to those who talk about it, be especially blessed those who are actually doing something about it! We can do this! Ask me how!

In Spirit,

Tawennihake, Patrick Brown

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**Looking to Dignity and Experience: Reflections on Mechthild Nagel's *Ludic Ubuntu Ethics***

Author: Lucien X. Lombardo

Title: Professor Emeritus

Affiliation: Department of Sociology and Criminal Justice

Address: Old Dominion University

Email: [lombolunk@yahoo.com](mailto:lombolunk@yahoo.com)

**Biography:** Lucien Lombardo is professor emeritus and adjunct professor of Sociology and Criminal Justice at Old Dominion University. Dr. Lombardo is a Member of the Global Education Team of Human Dignity and Humiliation Studies Network. National NO HIT ZONE Committee of the American Professional Society on the Abuse of Children (APSAC) and National Policy Committee on Ending Corporal Punishment, and the Southern Cayuga Anne Frank Tree Project.

**Keywords:** Dignity; Alternatives to Punishment; Positive and Negative Ubuntu; Decolonizing Justice

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**Looking to Dignity and Experience:  
Reflections on Mechthild Nagel's *Ludic Ubuntu Ethics***

Lucien X. Lombardo

**Prelude**

In 1982 -1983 I was part of an interdisciplinary study group exploring ways to integrate non-Western perspectives into various general education classes across the curriculum. My focus was crime and criminal justice. We had returned from travelling for six weeks in Ivory Coast and Tanzania and I presented a paper "Lessons from the Third World for Understanding American Criminal Justice" at the American Society of Criminology (ASC) meetings. The paper was based on work completed for our study group and what I had observed and learned in our journeys. Many in the audience at the ASC presentation were from various countries in Africa. After the presentation they asked: "How can you say you learn from us. You are the U.S., we come here to learn from you." My reply – "With regard to criminal justice and punishment, we have failed miserably. Don't follow our path, follow your own!"

In 2001, my colleague Karen Polonko and I presented a paper on human dignity and children at the International Union of Anthropological and Ethnographical Sciences meeting. I was asked to serve on a panel summarizing discussions that had taken place during the day. My topic was the UN Convention on the Rights of the Child. After my presentation I was informed that while many in the audience agreed with me in theory; in practice, listening to children, considering, and valuing their perspectives was not practical. Children have not had the experience, children don't have the knowledge, children must learn first. As children, they are "not capable of participating." I looked around the room and as it had many people of color and many women, I asked, "Forty years ago how many people of color, from Africa, would have been in this room, discussing these lofty issues. How many women would have been here? You were not thought of as capable, as experienced, as having appropriate knowledge. You were excluded. What was said about and done to you then, you are now saying about and doing to children."

In 1985 I wrote the following in a commentary on criminal justice education's place in higher education: "By providing criminal justice as a field of study, a university provides an applied setting from which ethical, political and social issues emerge, and in which such issues can be explored, and creative tension can be generated" (Lombardo, 1985, p. 115). Little did I know in 1985 when I portrayed criminal justice education as a place to explore 'applied ethics,' that in 2023 I would be part of a panel discussing Professor Mechthild Nagel's book *Ludic Ubuntu Ethics: Decolonizing Justice* as part of a Transformative Justice and Abolition Criminology Conference. My discussion here will integrate what I have learned over the past 50 years as I studied and taught about prisons and violence in the world of children and how that learning is reflected in and enhanced by *Ludic Ubuntu Ethics*.

### **Prisons, Children, and the Punishment Nexus**

In *Ludic Ubuntu Ethics: Decolonizing Justice*, Mechthild Nagel bravely take us on a journey through the intellectual quagmire of punishment, criminal law, practice, and justifications that decouples criminal law and punishment. In the Introduction, drawing on Desmond Tutu's discussion, Nagel explains that ubuntu ethics is built on each person recognizing the humanness of others, and our interconnectedness in community. Indeed, Nagel's work exposes the human and community destruction implicit in the criminal law, prison-punishment nexus.

From my studies of violence, I believe this nexus is derived from the need for legal structures to have and provide "sanctions for evil"—that is, *legitimized support for doing harm to others* (Sanford and Comstock, 1972). These sanctions for evil (justifications for the harm criminal justice processes produce for offenders and society) result in what Sanford and Comstock call "social destructiveness" – breaking social bonds in a cruel relationship where members of one culture hold power, death or egregious harm over a people regarded as inferior and sometimes sub-human, as material to be acted upon. All of this is 'negative Ubuntu' applied to individuals and communities. Indeed, 'negative ubuntu' seems to be needed for the powerful to know they are superior (Lindner, 2006).

In linking 'ludic' and 'ubuntu' Nagel draws a connection between criminal law/punishment and the punishment of children whose life's work as children is manifested through play (Sipp, 2021), and where punishment, including corporal punishment and shaming, interrupts life with pain and coping that last a lifetime, just as imprisonment as punishment interrupts the lives of those in prison (Miller, 1990).

In my teaching about correctional institutions the metaphorical and behavioral connections between childhood and prisons often emerged. One of my teaching goals in all classes is to have students integrate their learning with their starting point (baseline) perceptions and understandings of the course topic. Since most students in the correctional institutions class had not been in an actual prison, I asked them: "Have you ever felt like you were imprisoned? What was the situation? What did it feel like?"

A common answer I received was: “When I was a child, my parents didn’t feel they needed to listen to me, they allowed me few choices and punished me (often physically) and belittled me whenever they thought I was doing something bad!! I was put in time-out, isolated, kept in my room, lost privileges. They could do whatever they wanted; they were in charge. I was a child; I had no options. That was my prison.”

Thus, without having been a ‘prisoner’ (as a criminal) their answer reveals that they equate prisoner status and many of the prison project’s internal processes with childhood status: not having a voice in matters that affect them, not having choices, being belittled, being isolated, being punished by those in charge. Thus, they experience in childhood many dimensions of imprisonment.

Punishment experienced in childhood normalizes the prison project. Alice Miller (1990) refers to this as “poisonous pedagogy”: “Once wickedness has been produced in a child by suppressing vitality, any measure taken to stamp it out is justified” (p. 31). The punisher believes that not punishing children creates the problem. So too, politically and culturally, the Western belief is that not punishing the criminal creates a problem.

Though imprisonment was justified as a humanitarian reform replacing more sanguinary forms of punishment in the early 1800’s, the idea of measuring punishment in units of time rather in a number of stripes did not challenge the idea of ‘punishment’ inherent in pre-and post-imprisonment project justifications, policy, and practice. Rather than replacing the public ‘sanguinary’ punishments, the carceral punishment experience moved them inside the prisons. Rather than being inflicted in public (as the punishment) and then having the person who broke the law back in the community (a little worse for wear but still a member of the community), the sanguinary punishments, could now be used to ‘maintain order’ and enforce prison rules behind the walls, out of public view. With punishment/imprisonment over time, the use of sanguinary punishments could be applied to individuals for years. In this way, imprisonment could hide what we no longer wanted to see, negative Ubuntu.

The shift to imprisonment as punishment also helped create the criminal class as an easily identifiable and kept apart ‘other.’ Criminals/prisoners were not part of the ‘community of good people’. Race, ethnicity, and social class quickly became signifiers of individual ‘criminal others’ and more generally ‘problem populations’ at both the individual and community level. Adultism, the idea that adults are the center and children the inferior periphery makes children and ‘childhood’ separate from the adult community, another ‘negative Ubuntu’ result.

There is another connection between imprisonment and punishment of children, *persistent failure*. Ever since those who were determined legally to have broken the law have been placed in a “state-government” authorized physical structure to live for a designated period of time, the imprisonment project has been deemed a failure on nearly all counts sometime in each generation. This has gone on for roughly 200 years in the United States and, as Nagel demonstrates, is a legacy of colonialism in many non-Western settings. Signaling shifts in political power, every generation swings the pendulum of prison reform and justifications. Doing so changes the balance of emphasis among the various goals and/or purposes of incarceration and internal processes the prison project uses to achieve these goals. And, as Professor Nagel shows, still, the imprisonment/punishment project persists in damaging people and communities with little progress even when it is softened. Likewise, the physical punishment of children has continued for generations and has been shown to be a failure on nearly all counts and at all times (Gershoff & Grogan-Kaylor, 2016). Another left over from colonialism, corporal punishment persists throughout the world even in places where it was not used before the colonial experience. However, there has been progress. With the ratification of the UN Convention on the Rights of the Child in 1989, removing legal support for hitting children is progressing (End Corporal Punishment of Children, 2023).

As Professor Nagel shows throughout the book the punishment/prison project (and all forms of justice) and corporal punishment rest in *a decision maker* (the individual or group that judges) who has power (social

support for that judgment) and divides individuals and communities into good and bad, worthy and unworthy as a result of the judgment (social destructiveness). Whether it is police, prosecutors, judges, family court judges, social service personnel, child welfare/family court workers, schoolteachers or parents, someone decides which standards of justice apply, what actions to take to achieve some meaning of justice and applies those standards. This is the essence of colonized justice that Professor Nagel analyzes.

Indeed, in my view, and in Nagel's, all justice projects depend on someone with power to 'say what justice is' in a specific case. In addition, government processes – for example determining agency over what form justice processes will take (i.e. retributive, reformative, restorative, transformative) – when applied, most often are applied to those without power. *This is why I believe searching for justice as an outcome within legal/criminal / punishment framework will always fail.*

This discussion of the 'imprisonment/punishment project' brought to mind a personal experience from many years ago that reflects how colonized justice had permeated the academic mission and how an applied ethics approach to understanding criminal justice had lost ground in the 1980s and 1990s (at least in one academic program). In 1993 I attended the 25th anniversary of the School of Criminal Justice at SUNY Albany where I studied in the early 1970s. After listening to presentations about current research (in 1980's and early 1990's) I couldn't help myself. I had an observation, and I had to say it: "After listening to these presentations, I am impressed by the narrowness of the scope. I think it's time to change the name of the school from the School of Criminal Justice to the School of Criminal Sentencing! It seems to me that justice linking law and human experience in its many complicated iterations is no longer part of the school's mission." After this a number of faculty who were my instructors 20 years earlier congratulated me on my frankness and agreed with my sentiments wishing they had the courage to say the same! From the perspective of Ludic Ubuntu ethics, the research efforts of students and faculty in the 1980's were supporting 'negative ubuntu.' They were studying how to improve the making of judgments about the infliction of pain (sentencing) inherent in the sentencing process, helping make it more efficient/effective and sellable to a gullible public.

While the application of colonized justice rests in a decision-making process, it is its substance that reflects the human dimension, a central theme of *Ludic Ubuntu Ethics*. As Memmi (1965) observes:

What does count is the present reality of colonization and the colonized. We have no idea what the colonized would have been without colonization, but we certainly see what has happened as a result of it. To subdue and exploit, the colonizer pushed the colonized out of the historical and social, cultural, and technical current. What is real and verifiable is that the colonized's culture, society and technology are seriously damaged. (pp. 114-115)

This is the historical colonized place of children, women, African Americans, Hispanics, prisoners. This is a place where the experiences and authentic selves of the colonized have no place in the community.

### **Look to Dignity to Decolonize Justice: Focusing on Experience**

Is it possible to decolonize justice? How can we develop and promote an understanding that all people are part of the body of society? Dr. Nagel (2023) writes:

I argue for a complete re-evaluation of the judgmental gaze: what colonial judicial discourse consider backwards and uncivilized is in fact highly advanced and demonstrates social intelligence that may in the end bury the Western carceral box all together. (p. 4)

Nagel's call is similar to the efforts to 'decolonize child discipline' in response to the treatment of indigenous children in Canada (Michaelson and Durant, 2020). There are so many counter-productive facets

of life in which moving beyond judgment could benefit from applying the Ludic Ubuntu perspective. Justice within the law/criminal/punishment nexus needs to divide.

In one of the most fascinating reviews of literature dealing with the history of the concept of dangerous criminals, historian (not criminologist) Ysabel Rennie (1978) observed:

As for our brother, Criminal Man, whom we have long regarded – and treated—as a pariah, it might be well to remember the words of the nineteenth century criminologist, Armand Corre. ‘Criminals’, he said, ‘must not be regarded as the refuse of society. They are part of it – as a wound is part of the body.’

*Criminals have ubuntu.*

In my discussion of children at the ethnographic meetings described above, I would now say, *children have ubuntu!* In decolonizing justice, we are leaving justice behind, because justice rests in decision-makers and power in the ‘criminal justice’ process reflects colonial relationships and social destructiveness.

*What can we substitute for justice?*

In teaching about violence in the world of children as a course in prevention of harm to children, prevention is sought by changing college students’ perceptions of their relationships to children and to their own childhoods. Students are provided with learning that provides an opportunity to move from their adult-centered colonial perspective to a decolonized child-centered one. *A key component in doing this is having students explore the relationship of children and human dignity!* Human dignity in the contexts of childhood builds ‘ubuntu’ for adults and children and childhood and community! Through reflecting on their own experiences where their dignity was supported and violated as children these adult students are re-experiencing the meaning of their interactions with positive and negative ubuntu.

*Dignity is something that is defined through experience, not through power and law.* Dignity is reflected in how we are treated and how we treat others. Dignity is felt as personal – inherent in the individual but developed in the contexts of interactions with others. We have all supported and violated the dignity of others. We have all had our own dignity supported and violated by others. While we are supporting the dignity of others, others are supporting our dignity as well. It is through these experiences that we experience ubuntu and ludic ubuntu.

There are several key principles of interacting with dignity to put the above into practice in our experiences (Hicks, 2011; Gomes de Matos, 2013): acceptance of differences; freedom to express authentic selves; respect personhood, belonging, safety, non-humiliation, freedom to speak and be acknowledged; recognize and value others’ experiences even if different from one’s own.

Students, who have children or work with children, often report that when they start to connect dignity and children through exploring dignity experiences of their own childhoods, they start to focus on the development of children and the impacts of their interactions on children and not control of children. They start to build positive ubuntu with children and not negative ubuntu. They understand children’s experiences and the meaning experiences have in the children’s lives. They focus not on judging and punishing but on positively supporting children’s dignity. They find the level of conflict is substantially reduced. They find that positive communication and connection is substantially enhanced.

Can a dignity discourse help us understand the criminal/ prison/punishment nexus rests in the reciprocal and mutual violations of dignity, social destructiveness and negative ubuntu that continually reproduce themselves? Is it possible that a dignity discourse that is grounded in the meaning of life experience and not

in judgments of those experiences can provide a substitute for colonial judicial discourse and judgmental gaze?

After reading Nagel's *Ludic Ubuntu Ethics*, I am more convinced than ever of the need to move from punishment/justice to supporting dignity as a way to decolonize justice. Can we build a culture of ubuntu by pursuing and supporting dignity of all? Unlike justice, dignity experiences do not depend on a decision maker with power making judgments about others. Dignity is grounded in experience. Dignity is inherent in us all. Though it can be supported and violated, it cannot be removed. Dignity is supported through social connection where supporting others dignity supports one's own. There is no benefit in 'socially destructive' relationships.

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### **Ubuntu Ethics**

Author: Joshua M. Price

Title: Professor

Affiliation: Toronto Metropolitan University

Address: Department of Criminology

Toronto Metropolitan University

350 Victoria Street

Toronto, ON M5B 2K3

Email: [joshua.price@torontomu.ca](mailto:joshua.price@torontomu.ca)

**Biography:** Josh is Professor of Criminology at Toronto Metropolitan University. He engages in participatory research on the harms of incarceration. He is the author of *Prison and Social Death* and several other books on intersectional violence, colonization, and state violence. He also translates Latin American philosophy.

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### **Ubuntu Ethics**

Joshua M. Price

*Ludic Ubuntu Ethics: Decolonizing Justice* (2023) is an inspired, sophisticated, and creative book that provides a host of practical alternatives to the contemporary transnational police-prison-colonial behemoth. Published through *Routledge Studies in Penal Abolition and Transformative Justice*,<sup>1</sup> this book is a welcome addition to the current literature on prison abolition. Drawing on everyday people's experiences as well as decolonial scholarship, activism, philosophy, feminist critique, and critical criminology throughout the world, author Mechthild Nagel's praxis-oriented set of proposals provides important signposts to a post-

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<sup>1</sup> Series edited by Michael J. Coyle and David Scott.

carceral future. It will serve as a valuable resource for advocates, activists, and anyone concerned with criminal justice and imprisonment.

Nagel is a feminist philosopher, scholar, and activist who has been prominent in the international abolition movement over the past several decades. One of her book's many gifts is its wealth of options beyond the current vindictive and retributive criminal justice systems that serve as the dominant paradigm of justice in most countries. In each example, she provides a clear and thorough analysis. Another gift is its strong bibliography.

The central contribution of *Ludic Ubuntu Ethics* is a typology of justice. The classification Nagel provides is both descriptive and normative. It is descriptive insofar as Nagel takes an inventory of systems and practices of justice around the world (especially from North America, Europe and Africa, including Indigenous traditions in Africa and the Americas). But she also offers an evaluative take on each of them from an explicitly abolitionist standpoint. The catalogue she offers, in this latter evaluative sense, is arranged in a hierarchy from least to most just – from logics of justice that should be avoided, and that rely on legal and emotional frameworks that she thinks are not useful and even morally reprehensible to, at the top, ethical systems and emotional and political motivations Nagel embraces and endorses. In this typology, one sees not just different procedures and jurisprudences, but also different affective structures – posing the question of ‘are participants motivated by guilt, resentment, and vengeance?’ ‘Or by love, fellow-feeling, and playfulness?’

The inventory includes five levels of justice:

1. rage, vengeance, and retribution
2. shame, *ressentiment*, guilt
3. moral outrage (insurrectionist justice)
4. restorative justice
5. playfulness, ubuntu, and transformative justice (2023, pp. 12-19)

Of the eponymous fifth level, Nagel theorizes ubuntu, or how one becomes human in community with others, drawing on Yvonne Mokgoro (1998), Mogobe Ramose (2022), and especially Archbishop Desmond Tutu (1999). Ubuntu, Nagel writes, paraphrasing Tutu, is a Southern African concept of intersubjectivity: one is interpellated into the human community by recognizing others as human. Or, as the Xhosa and Zulu sayings have it, “a person is a person through other people” (p.3). Yet Nagel finds that the institutionalized application of ubuntu has often fallen short of its potential, especially in attempts at large-scale implementation of ubuntu ethics in the post-Apartheid period in South Africa and post-genocide Rwanda. In a key chapter, she compares the South African Truth and Reconciliation Commission's process (which she characterizes as “positive” ubuntu) to the Rwandan Gacaca courts (“negative” ubuntu) and draws important lessons on the coercive nature of some aspects of the Rwandan procedure, as well as some of the limitations of the process in South Africa.<sup>2</sup>

This chapter illustrates Nagel's method. Methodologically, Nagel tacks between a steely analysis of real-world examples (such as the experiences in South Africa and Rwanda, but usually at a much smaller scale) and her ideal of ludic ubuntu. Her work is thus hard-nosed anti-utopian without surrendering a utopian vision. The book's tone also tends to be non-utopian in how she sees examples of ubuntu and playfulness

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<sup>2</sup> From Canada, I read this part with interest, as we have had our own Truth and Reconciliation Commission process, which was published along with a set of 94 recommendations that do not nearly bring us to the terrain that Nagel would like to in terms of a more radical reconsideration of justice; in any case Canada's TRC recommendations, for the most part have remained unfulfilled (Jewell and Mosby 2023).

abound in the everyday. She draws on real examples to thematize an anti-carceral future in a way that parallels efforts by *Incite!*, an organization of women of color, as well as by Mariame Kaba and others to describe concrete and clear alternatives to the police, the prison system, the criminal justice system and what John Pratt has termed penal populism (though Nagel and the others do not use this term) (Hayes and Kaba 2023, Kaba 2021, Kaba and Richie 2022, Pratt 2006).

One of the most subtle, important, and original aspects of this book Nagel offers is a critique of the affective and emotional motivational structure of the criminal justice system, of justice as vengeance, *ressentiment* and other related animating affective states. Nagel does not simply condemn the lower-level systems of justice; to the contrary, she admits that she sometimes finds she has her own impulses toward rage, desire for revenge, and *schadenfreude*, but she also thinks these are toxic and ultimately not helpful motivating structures. Nagel provides a Nietzschean analysis of *ressentiment* and how it wends its way through our own, and many others' cultural demands for justice. Nagel also perceptively describes the emotional seesaw one is on in hegemonic modalities of justice – internalizing the pain of the victim, longing for the intensity of belonging, desiring revenge, acting out of fear, craving safety – and how these emotions can lead to what she might characterize as injustice or, more accurately perhaps, lesser forms of justice. Nagel's treatment brings to mind what Raymond Williams called a "structure of feeling" (1977) and how Ruth Wilson Gilmore has framed its importance in social movements such as the Black Freedom movement, as ways of mindful action "constantly renewed and refreshed over time" (2022, 364). For Gilmore, like Nagel, "the selection and reselection of ancestors is itself part of the radical process of finding anywhere—if not everywhere—in political practice and analytical habit, lived expressions (including opacities) of unbounded participatory openness" (*ibid.*).

Throughout her analysis, in the sections of Nagel's book devoted to critique of existing structures, she places prisons in the context of other institutions with which policing and the courts work in tandem, including, for example, child protective services (CPS) within the context of U.S. child welfare practice and family law. This is an important direction in recent abolitionist work – from denouncing the prison as an isolated institution to seeing it as nested within other institutions, practices and infrastructures of sentiment. Indeed, this focus on *prisons* has produced to my mind a common misperception of the movement's goals. Abolitionists tend to refer to themselves as prison abolitionists, or, in a related branch of advocacy, as part of a movement to abolish the police (see Vitale, 2017; Kaba & Richie, 2022). But really, in essence, they (we) are calling for a revolution in everyday life – in the way life is organized in economic, material, symbolic, and even sexual spheres, such that prisons and the police are rendered obsolete, in Angela Davis' famous phrase (2003). In other words, calls for the abolition of prison or the police has led to the misperception or incorrect inference that the abolition of these institutions would be in isolation. But really, I see the aim (and I believe other abolitionists do, too) as a complete overhaul of the education system, the government, capitalism itself, the gender binary, the way urban and rural space is organized, the private/public split, and the racialized state. Abolitionists, in short, are revolutionaries committed to a revolution in every domain of life, private and intimate as well as public.

Ludic ubuntu points in this direction. In this spirit of everyday revolution, Nagel's work is refreshingly non-Eurocentric as she draws on theories and understandings of the links between heteropatriarchy, colonization, and the police state, as well as healthier options drawn from Xhosa, Zulu, and other Southern African concepts, philosophies and traditions as well as from Indigenous groups. She does not presuppose the logic and culture of incarceration in the United States.

Her emphasis on constructing alternatives may indicate a feminist influence, as well as the influence of anarchist thought. Feminist philosophers often draw together different fields of philosophy in interesting and original ways. This is due in part to feminist critiques of ontological dualisms (mind/body, nature/culture, reason/emotion). From these critiques have emerged amazing work at the conjunction of epistemology and ethics as well as philosophy of language and political philosophy. Ubuntu brings together ethics, aesthetics, play, justice, epistemology and political philosophy with the analysis of power.

Her work bears the influence of anarchist thought in another way. From Bakunin on, anarchists have held that the dismantling of oppressive institutions is creative, not just destructive. Abolition, to paraphrase Ruth Gilmore and Angela Davis, is not about destruction, it is about construction. Nagel contributes building blocks for an ethics of abolition, but in terms that would contribute to formalize and build on alternative ethics that would obviate the need for prisons.

She contributes, moreover, to a long anarchist tradition of writing approvingly of play as an approach to engaging with other people in practical activities, including work, politics and dispute resolution. Nagel clarifies that this sense of play is non-agonistic and thus differs from Johan Huizinga's *Homo Ludens* (1955). Although she does not cite María Lugones, Nagel's work complements Lugones' work on play as a feminist practice informed by an ethic of collaboration rather than agonistic competition (2003).

Nagel's book leaves me with several questions, many of which I could group together in the following way: In the pursuit of reconciliation and healing, how do you deal with structural injustice? Settler colonialism, poverty, institutionalized violence against women in all its forms, and the problems more generally of state violence, would, it seems to me, pose a challenge to the capacity of ludic ubuntu. I refer not just to institutionalized violence such as the prison itself but also to ethnic cleansing undertaken by the nation state; or the grinding bureaucracy combined with governmental and popular xenophobia that results in clear injustice – the interminable waiting by African and Afghan migrants at Europe's various borders, for example. How can one confront that with ludic ubuntu alone? Let me turn to several of these strands in turn, since each poses its own challenges.

The Land Back movement, led by people Indigenous to North America (especially in what is now known as Canada), proposes returning colonized land and sovereignty to Indigenous peoples and otherwise offering them compensation and reparation. Leanne Betasamosake Simpson (2020), Hayden King (King and Pasternak 2019), and other Indigenous intellectuals and activists lead me to a question I could pose to Nagel: how does a ludic ubuntu ethics respond to the challenge of giving land back? As a white man in "Canada," my mere presence in these lands can itself signal injustice, or serve as a signpost of a history of injustice, a metonym for settler colonialism. How does a ludic ubuntu respond critically to the ethical, existential and political problems my presence signals as part of the settler project of injustice? Nagel speaks at several points of the importance of a politics of mutual recognition. There have been critiques of the politics of recognition from Audra Simpson (2014) and Glen Coulthard (Ross & Coulthard, 2015) and other Indigenous scholars who advocate for "refusing" recognition, especially by the state. This is not necessarily opposed to Nagel's call for a politics of recognition since it seems that Nagel is referring to recognition in the sense that we recognize one another, akin to Emmanuel Levinas' call for acknowledging the face of the Other (Nagel does not refer explicitly on Levinas).

In advocacy for abolishing the criminal justice system, activists often give insufficient attention to alternative solutions to the problems of violence against women and other forms of gender violence. The prison abolition movement recognizes institutional collusion with gender violence (whether from police, religious figures, or the criminal justice system), but this is mostly to offer important critique of existing structures, though less attention is given to build viable alternatives. To be sure, this problem has not gone unacknowledged. Beth Richie (1996, 2012, Davis et.al., 2022) Incite! and other prison abolitionists have outlined preventive measures and alternative means of handling gender violence, at least on a small, local scale, within a particular community of place or in radical organizations. However, since most societies are organically and deeply organized around violent misogyny, and individual acts of violence are often undertaken with complicity, even if a complicity of silence, by not just police and the criminal justice system, but also by social mores, and the violence is rooted in the gender binary and the sexual division of labor, how can abolitionist feminists, critical of what has been termed carceral feminism, respond to the deep structures and institutionalized forms of misogyny?

Nagel gives short shrift to the #MeToo movement, relying, as it did, on public shaming (which would be her Level 2); Nagel argues that this movement aided primarily the well-connected. I am not so sure – I think the #MeToo movement shifted the ground and discussion of sexual assault, sexual harassment, street harassment, and workplace environment in ways that continue to reverberate throughout the United States and beyond.

Other shaming campaigns, such as the *escratches* in Argentina, might or might not be condemned by Nagel. In general, she does not tarry too long in analyzing or discussing the positive value of shaming campaigns. Whenever Nagel refers to shame, she tends to give it a negative valuation.

Some theorists of restorative justice consider reintegrative shaming as a productive, nonviolent approach. However, shame triggers feelings of rejection, which often leads to a pain response in the body (Thomas, 2006). How then is it possible to label shaming ever as reintegrative or healing? (p.15)

Her aspiration for a different social order guides her to offer criticism to contemporary movements or measures that do use shame in just ways. I would argue in contrast that shame is not always a bad thing: If someone has wronged you, they *should* feel a sense of shame. This strikes me as consistent with having an admirable moral profile. If one doesn't feel shame for having wronged another, or something like "shame" (remorse, regret), then they, and we, have a problem. In anti-prison advocacy, I have worked in activist environments along with people who have been convicted of sex crimes and who have been treated badly by the criminal justice system (the parole office, in prison, and so on). In my personal experience, people convicted of sex crimes often minimize their culpability or refuse to take responsibility for the harm they have inflicted on others. This is a real problem, especially for solidarity and coalition work. In some cases, or in some communities, abolitionists may be among the *only* people to advocate openly for people convicted of sex crimes. I have often felt that there is a lack of reciprocity – when will those convicted of sex crimes come out to stop violence against women, girls, boys, and gender nonbinary people? When will they own up to what they have done and try and provide for some restitution? I have felt that I and others have devoted too little time and energy to this problem. I have sometimes wondered if we have focused too much on oppressive institutions victimizing criminalized communities to the exclusion of urging people to take responsibility for what they have done and repair harm (of course, not all people who are criminalized have caused harm to others, but many surely have).

John Braithwaite has argued for the value of "reintegrative shaming."<sup>3</sup>

...Shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies to decertify the offender as deviant. (1989, pp. 100-101)

Reintegrative shaming aims at an alternative to simply stigmatizing a person, sending them to Coventry, or going easy on them. Instead:

shaming criminal behavior is complemented by ongoing social rewarding of alternative behavior patterns. Reintegrative shaming is not necessarily weak; it can be cruel, even vicious. It is not distinguished from stigmatization by its potency, but by (a) a finite, rather than open-ended, duration which is terminated by forgiveness; and by (b) efforts to maintain bonds of love or respect throughout the finite period of suffering shame. (Ibid., p. 101)

In this context, I would like to distinguish shame from humiliation. The academic literature in criminology, philosophy and psychology define shame, guilt, remorse, humiliation, and regret in various, contradictory

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<sup>3</sup> I thank Michael Coyle for this reference.

ways. Some psychologists and criminologists distinguish among them while others use these terms interchangeably. Rather than get into a discussion of semantics, I will argue for the present that humiliation involves stripping people of dignity, honor, or pride, rendering them helpless, and making them the object of contempt. To be humiliated is to be demeaned and ridiculed. Humiliation differs fundamentally from shame. It is an exercise of domination. Shame, on the other hand, revolves around taking responsibility for one's actions. Shame involves "a reflection upon the self by the self," as psychologist Susan B. Miller put it (1988, pp. 44–45). We feel shame when we perceive in ourselves a moral failing or a lapse in judgment. Humiliation, on the other hand, is forced on us (Mendible, 2005, p. 7). The distinction between shame and humiliation is crucial, even if they sometimes coincide (in other words, one can both be humiliated for bad reasons and feel a sense of shame justifiably).

To bring this argument full circle, I could propose that guilt, remorse, or shame (call it what you will) can be the first step toward a decolonial imagination in the colonizer. Glen Coulthard:

Guilt, in the philosophical sense, is often seen as a passive emotion, a reactive stance, it doesn't create action. It doesn't create anything, you just kind of get saddled with it. I think that is a possibility of guilt-like emotional exchange, but I also see it as something that can be worked with, because when you are arguing with the colonizer and they experience no remorse, it's really hard to get anywhere with that. So I think that guilt has to be transformed into something more active. (Ross & Coulthard 2015, p. 191)

Coulthard points out how, for the colonizer or perpetrator of some harm, shame or guilt can be the first step to a reckoning with one's own culpability. Correspondingly, Coulthard continues, resentment, usually seen as negative affect from Nietzsche on, can be a rational and useful emotion for the colonized to have as part of consciousness-raising.

In terms of Indigenous peoples, reactive emotions like anger and, in particular, resentment, is usually cast, following Nietzsche and others, as a passive emotion, as something that doesn't create action. It is reactive. But if you look at the actual meaning of resentment, it's a bitter indignation about being treated unfairly. So it's a really political emotion that I think really fuels a lot of Indigenous peoples' justice struggles. Why wouldn't we resent being colonized? And in so far as that's not a historical thing, like whatever happened 200 years ago, but structures that are present, then we should be resentful and angry about that ongoing symbolic and structural violence that is present in our lives. So I think that guilt and shame on the settler/colonizer's side can also serve as that kind of mobilizing outlet if it's directed correctly and towards transformative ends. (Ross & Coulthard 2015, p. 191)

Nagel is against "backward-facing" logic since she thinks it tends to engender resentment and fear. But I think it's too much to ask of people not to be backward-looking, especially people from groups that have been historically oppressed; in addition to the argument for taking stock of history that Coulthard makes, an oppressed person might have to be careful about what is to come and cautious. A history of oppression, and a collective memory of that oppression, can equip the oppressed with a vigilance that is in tension with playfulness. (This vigilance is a legacy in my life, for example, and many other Jews of my generation). Memory engenders a watchful posture vis-à-vis members of the dominant class.

This implies a second-order challenge for ludic ubuntu: how to theorize moments of contact between varied paradigms of justice. What happens when an actor wholly within a paradigm of ludic ubuntu, say a person of a settler tradition, encounters on Indigenous land an Indigenous person who resents the settler's predations – their very presence? What meta-system of justice arbitrates? Why should ludic ubuntu be a higher form to aspire to in that case?

A different example: at one point in the text, we read, “A primordial relationship is experienced by the fetus whose fate is varied: facing death through miscarriage or abortion or facing uncertain life through the birthing trauma” (p. 51). This sentence stopped me short. As a supporter of abortion rights, I read this claim as contentious, even tendentious. A question emerges: how do we adjudicate through ludic ubuntu the thorny politics of abortion between someone who believes that an abortion is “death” and someone within an ontology where abortion is not so conceived, but rather is an exercise of liberating a woman’s body of unwanted tissue?

These kinds of questions emerge at the intersection of colonialism and structural violence, whether sexism or racial capitalism, at the point of adjudicating dispute, oppression, and genocide. Nagel’s work gives us a set of terms that are good to think with in the ongoing (interminable) struggle to decolonize justice.

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