

## Troubling Justice: Towards a Ludic Ubuntu Ethic<sup>1</sup>

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The artistry of ethics is in the last analysis unanalyzable—it is a gift. This gift in its regenerative force offers an alternative to J.S. Mill's pity for the lower pleasures of the pig and the common fool who would never know the higher life of reason. Logos can only judge. Eros is a festival.

- *Interspecies Ethics*, Cynthia Willett

Everything is sacred . . . And at the seed of everything is relations. That anyone is really separate from anyone else or anything that is happening in the world is an illusion . . . This is true for all the kingdoms of nature, as well as for humanity. Every time a tree is felled in the Amazon, a tree in Africa responds.

-The International Council of Thirteen Indigenous Grandmothers (in Schaefer)

Ubuntu is very difficult to render into a Western language. It speaks to the very essence of being human. When you want to give high praise to someone we say, "*Yu, u Nobuntu*"; he or she has Ubuntu. This means that they are generous, hospitable, friendly, caring and compassionate. They share what they have. It also means that my humanity is caught up, is inextricably bound up, in theirs. We belong in a bundle of life. We say, "a person is a person through other people" (in Xhosa *Ubuntu ungamntu ngabanye abantu* and in Zulu *Umuntu ngumuntu ngabanye*). I am human because I belong, I participate, and I share.

- *No Future without Forgiveness*, Desmond Tutu

During the constitutional deliberations envisioning a democratic New South Africa, the concept Ubuntu emerged in order to celebrate a relational justice ideal. While short-lived as a constitutional promise—it disappeared from the final constitutional document—it has enjoyed a growing popularity thanks to Archbishop Desmond Tutu's prophetic appeal to Ubuntu during the Truth and Reconciliation Commission and even used as justification for the abolition of the death penalty. Ubuntu ethic refers to a Southern African concept of intersubjectivity: one is interpellated into the human community by recognizing others as human (Tutu, 1999). As such, it invites

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the acknowledgment that we are all interconnected. In the context of apartheid on trial, it means that perpetrators and victims' lives and fates are inextricably intertwined. It encourages us to move from vindictiveness to forgiveness. I want to add the element of play into this pan-African ethic, as I have come to realize that through playfulness (therapeutic play,<sup>2</sup> child's play, playing across cultures, cooperative play, trickster play), we develop an ethical capability toward a transformational relational justice mode. So with playfulness and inspired by the Lakota Circle of Courage, I want to trouble an agonistic justice paradigm. A ludic Ubuntu ethic encompasses the variations of justice at play. Ludically speaking, we move from conflict-laden, competitive encounters of agonism to those displaying a non-agonistic, cooperative spirit of *social* justice. In the field of *legal* justice, the question is how we move from win-lose propositions to cooperative win-win "verdicts"? Ubuntu stands in as a signifier for relational justice that is prevalent in many peaceful, indigenous societies, including those who are colonized in the global North. My model of ludic Ubuntu draws on Mogobe Ramose rheomodic pan-African Ubuntu conception, Pumla Gobodo-Madikizela's witnessing dance, Cynthia Willett's interspecies ethics, and it owes some inspiration to artist metaphysicians Nietzsche and Gadamer as well as psychologist Elizabeth Kübler-Ross. The "we" whom I appeal to is the community interested in troubling criminal justice as we know it—at least, troubling the system which has been based on the western carceral regime for over two hundred years.

### **Agonist Play in the Western Punishment Theater**

Vengefulness, disguised as retributive punishment, pervades the current criminal justice system. In fact, its warlike ethos has found legitimation by western philosophers who have also created other masks such as deterrence, reform, and incapacitation to deflect from the "eye for an eye" maxim of retribution (Honderich, 1970). More recently, during the era of mass incarceration, some have gone as far as defending torture (Kershner, 2012; Steinhoff, 2013) and less controversially, ethicists and political theorists have endorsed shame<sup>3</sup> (Deonna et al, 2012; Jacquet, 2015). Following Foucault (1977) who was one of the first philosophers critiquing the prison apparatus and its concomitant repressive punishment regimen, I argue that none of these theories hold much promise, except in justifying a logic of revenge (Nagel, 2007a). One might also suggest that they are the workings of "decorative justice" (Cheliotis, 2014), where those who take on the mantle of justice hide behind "just us." Using ironic play, Zarathustra mocks the virtuous who boast that they are "just" (*gerecht*) when they actually mean they are "revenged" (*gerächt*) (Nietzsche, 1993, p. 117). The western procedural justice system is also implicated in a colonial settler ideology (Smith, 2010; Agozino, 2003) as a deadly dance of victor's justice. How else does one comprehend the fact that people of color tend to be pre-selected for carceral punishment in the United States (or Canada, Australia)

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<sup>2</sup> E.g., using family constellations to address intergenerational trauma.

<sup>3</sup> In fact, it seems more controversial to argue against instrumentalizing shame!

at disproportional rates such that reform measures have to call for “racial impact” accounting beginning in schools?

Even the theory of incapacitation of a wrong doer demands a prison cell, which becomes the focal point of violence foisted upon the insolent body and its soul condemned to “do time.” As an imprisoned poet famously penned, prisons are hardly equipped to restore humanity:

For they starve the little frightened child  
Till it weeps both night and day:  
And they scourge the weak, and flog the fool,  
And gibe the old and gray,  
And some grow mad, and all grow bad,  
And none a word may say. (Wilde, 1896)

Oscar Wilde was severely punished for “indecent” to two years of hard labor at Reading Gaol and died shortly after surviving the dungeon of despair. His *Ballad on Reading Gaol* gives us a timeless glimpse into the gross inhumanity of jail, fostering more mental illness and deviant behavior in the vast majority of prisoners. Such are the collateral effects of incarceration, which has faced opposition by a growing multitude of people (from prison reform, to restorative justice advocates and penal abolitionists) to mount a strong critique against the behemoth of the Prison Industrial Complex worldwide. What I argue for is that it is time to bring a playful element into the abolitionist movement that is “working hard” to overthrow the shackles of the carceral system.

So here I take exception with the western philosophical tradition (see also Nagel, 2002) that assumes that *homo ludens’s* horizon of play is mostly agonistic and is to be celebrated as authentic play (Nagel, 1998). The traditional criminal law system rides on agonism and hierarchical order. In the courtyard of Lady Justice, lawyers for the perpetrator (the defense) face off with the lawyers for the victims (the prosecution, standing in for “the people” or “the crown”). Their fencing game is performed in front of a decorated judge (in robes, seated upon an elevated “throne”), who occasionally comments on the fairness of the game. Meanwhile, both parties who really need to talk with each other, defendant and victim and/or their families, get silenced in this show down of rhetorical bravado.

Rather than tarrying with the negative, I’d suggest another way out of agonism by taking us to indigenous justice practices of the Global South. I am joining a growing group of philosophers and others who are inspired by an Ubuntu ethic (Schutte, 2001; Metz, 2007; Praeg, 2014). However, few of them look at its promises in the field of criminal justice or critical justice studies.

### **Ubuntu—a forward-looking ethic**

The most promising aspect of Ubuntu is that it can serve as a powerful antidote to western punishment theories. Metz outlines that Africans tend to resort to forward-looking rationales for punishment, for spiritual and practical reasons (2007, p. 325). As part of the “forward-looking” justification, an Ubuntu ethic of punishment favors

restitution over revenge.<sup>4</sup> This is what Desmond Tutu strategically deployed in the Truth and Reconciliation Commission (TRC), when he admonished victims and survivors of apartheid violence to forgive as well as excoriated offenders to deliver genuine, credible apologies for their deeds of atrocity and crimes against humanity. It is worth quoting Archbishop Tutu's explanation of Ubuntu at length, because it shows how he Christianizes the concept to speak to a global audience that may not understand ancestor reverence (as explained in Louw, 1998) or the interrelatedness of all living beings. He makes the connection with Christian morality by appealing to *agape*, reciprocity, and shared suffering with the living in this famous passage:

[Ubuntu] is the essence of being human. It speaks of the fact that my humanity is caught up and is inextricably bound up in yours. I am human because I belong. It speaks about wholeness, it speaks about compassion. A person with ubuntu is welcoming, hospitable, warm and generous, willing to share. Such people are open and available to others, willing to be vulnerable, affirming of others, do not feel threatened that others are able and good, for they have a proper self-assurance that comes from knowing that they belong in a greater whole. They know that they are diminished when others are humiliated, diminished when others are oppressed, diminished when others are treated as if they were less than who they are. The quality of ubuntu gives people resilience, enabling them to survive and emerge still human despite all efforts to dehumanise them. (1999, pp. 34–35)

During the TRC hearings, Tutu forcefully guided victims towards a forgiving stance, which, according to some critics, was perhaps a bit too forceful. What I want to add is the following perspective: If it is the case that my humanity is connected to another person (for example, an offender), then I have a bit of cruelty, sadism, lack of love in me as well, and, as such, I can related to the action of the offender/oppressor.<sup>5</sup> Radically put, I (as a victim) am also responsible for the ghastly deed of the oppressor. As a fellow human, I am mindful of the shameful, shamed existence of those who are imprisoned and thus dehumanized, precisely, because they are committed to social death. Tutu's description of the importance of Ubuntu also powerfully speaks to the resilience of African peoples having suffered through hundreds of years of systematic dehumanization (trans Atlantic slavery, imperialism, (neo)colonialism). Tutu's sage words encourage us to remember the humanity of the white police officer such as the person who visited the home of the parents whose son he helped to "eliminate." He asked them for forgiveness. The parents told him that he came too late. They suffered too much, and their grandson became angry about the continued obfuscation of his guilt and threw impulsively a vase at his father's murderer, hitting his skull (on camera!), as shown in *Between Joyce and Remembrance* (Kaplan, 2003).

Could such failed conciliation have been averted? Psychologist Pumla Gobodo-Madikizela (2008) describes the careful process she chose to bring together victims' families, meeting with them an entire week prior to their scheduled meeting

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<sup>4</sup> Arguably, restorative justice as reparative justice is actually both: forward and backward-looking, focusing on the victim's harm in moral and material terms (Roth-Arriaza, 2004). On a rights-based reparative justice, see Spelman, 2002.

<sup>5</sup> This insight resonates with the Hawai'ian spiritual healing practice of Ho'oponopono <http://www.huna.com/process-of-hooponopono/>.

with a Black policeman who acknowledged killing their beloved kin. She also counseled the policeman for a few hours. She calls this encounter “making public spaces intimate” and supports research claiming that remorse paradoxically triggers woundedness (feelings of pain) in the perpetrator, which leads towards ethical recognition of the other (the victim) in a “witnessing dance”:

This responsibility towards the other invites victims and villains to share in the common idiom of humanity. It also provides an opportunity for reflection on the historical circumstances which dangle like the sword of Damocles, threatening to divide groups and individuals within the larger society in its efforts to heal after a violent and hateful past.

This woundedness, and the remorse that animates it, draws the perpetrator into a *relationship* with the victim. It is the recognition of the victim’s pain that awakens remorse in the perpetrator, and it is remorse that lays the ground for the emergence of empathic sensibilities expressed on the part of the victim towards the perpetrator. (2008, p. 177)

There is no command here given to the perpetrator that “you must become accountable” or to the victim: “you must forgive.” A witnessing dance follows its own dynamics rather than being scripted from outside experts or a community that demands certain behavior.

By contrast, restorative justice expert John Braithwaite notes that asking victims to forgive or offenders to apologize is wrong, if not cruel. Forgiveness and apology “are gifts that have no power as gifts when they are demanded” and they only play a role in restorative justice as “emerging values” that might arise out of the process (2011, p. 349). Tutu’s overreach then consists in making these values into “constraining values” that have to be part of any successful restorative process. Braithwaite, on the other hand, claims that constraining values deal with respectful listening, non-domination, empowerment, equal concern for all stakeholders, and freedom from racist and sexist oppression, appealability, and accountability (2011, p. 348). Yet, what does “accountability” mean and who gets to appeal a verdict? My concern is that this traditional (western) practice of taking stock of debt is still steeped in practices of shaming and in fact, Braithwaite quite forcefully argues for the “reintegrative power of shaming.” And the neutral language of “stakeholders” masks that restorative justice ideology carries the torch for victims-rights. Such retributive-focused humanism is seductive because its intention is so well disguised, exemplified in the well-meaning language of Mozart’s Enlightenment opera *Magic Flute*. Sarastro’s consoling words to the daughter of his nemesis, the Queen of the Night, sings that “[i]n these holy chambers, one does not not know of hate, and if a human has fallen, love drives him/her to duty... *Those who don’t enjoy such lessons [of love and forgiveness], don’t deserve to be human.*”<sup>6</sup> (translation, mine) Quite a feat of lovingly discarding those who are not deserving of recognition as humans, if they somehow fail to absorb the lesson! So I wonder what happens to those who do not appreciate the stern (Apollonian) guidance of reintegrative shaming?

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<sup>6</sup> Sarastro’s aria: “In diesen heil’gen Hallen kennt man die Rache nicht. Und ist ein Mensch gefallen, fährt Liebe ihn zur Pflicht. Dann wandelt er an Freundes Hand vergnügt und froh ins rechte Land. (2x) In diesen heil’gen Auen, wo Mensch den Menschen liebt, kann kein Verräter lauern, weil man dem Feind vergibt. *Wen solche Lehren nicht erfreu’n verdient nicht, ein Mensch zu sein.* (2x)” (emphasis, MN, <https://www.youtube.com/watch?v=Ffs4KdxkoBM>)

## Musings about a Ludic Ubuntu – or: what does play have to do with it?

What if the virtuous were indeed motivated by relational justice or just compassion, according to an Ubuntu ethic? Nietzsche's Zarathustra paves the way for a reevaluation of all values when he toys with the values of those who deem themselves virtuous:

... Zarathustra came not to say to all those liars and fools: "What do you know of virtue! What *could* you know of virtue!" —  
 But that you, my friends, might become weary of the old words which you have learned from the fools and liars:  
 That you might become weary of the words "reward," "retribution," "punishment," "righteous vengeance." —  
 ...  
 Ah! my friends! That *your* very self be in your action, as the mother is in the child: let that be your formula of virtue!  
 Surely, I have taken from you a hundred formulas and your virtue's favorite playthings; and now you upbraid me, as children upbraid.  
 They played by the sea—then there came a wave and swept their playthings into the deep: and now do they cry.  
 But the same wave shall bring them new playthings, and spread before them new speckled shells!  
 Then, they will be comforted; and like them you shall also, my friends, have your comforting—and new speckled shells!—  
 Thus spake Zarathustra. (Nietzsche, 1993, pp. 118-119)

Thus speaks the artist metaphysician rolling out new toys for the friends of ludic Ubuntu. Indeed, he extolls us to move from the lowest level of seeking vengeance (*Rache*) to the highest level of child's play that we may listen to the play of the wave that moves beyond base, exacting, rationalist games of shaming to the life-affirming interplay of care and comforting the wounded child (in us).

Ludic or playful Ubuntu promises to be such a perspectival ethic, which makes coherent and legible the level of engagement with conflict (or resolution) at each of the five phases. It is a dynamic model which is inspired by Elizabeth Kübler-Ross's (1969) five stages of grieving: denial, anger, bargaining, depression, and acceptance. It is also a playful attempt of making sense of different justice models and even validating these models as appropriate expressions for their assigned level:

1. Rage and retribution; denial of being one (vengeful justice)
2. Facing shame, *ressentiment*, guilt (debtor's justice)
3. Expressing moral outrage (plea/bargaining or HipHop justice)
4. Transforming rage into forgiveness (restorative justice)
5. Loving what is; laughter, comic relief; being interconnected (transformative justice)

At one level, the five phases/faces of ludic Ubuntu imitate Nietzsche's (1993)

metamorphoses of spirit, from the spirit of gravity, the camel, burdened with the ghosts of the past, of the graveness of the crime and its thirst for revenge. The second transformation is the emergence of the free spirited lion: one questions tradition and customs and is ready to break out of the cage of convention—with furor. Finally, the third, as mentioned, is that of the (Heraclitean) child, content with playing at draughts—or colorful shells, forgetting blissfully the burden of the past and letting go of any judgment. There are no villains or heroes in the play-space (*Spielraum*) of child's play except for those who emerge as imaginary ones. Hans-Georg Gadamer famously states: “The player belongs to the play” (1986, p. 26).

At another level, the five phases model goes decisively beyond Nietzsche's naturalist and individualist (agonistic) claims of justice (cf. Sedgwick, 2013). Ubuntu ethic is concerned with transformative justice. (1) It is about making amends and making whole; having compassion and focusing on healing forces; prizing harmony by participating in good will practices in the community, especially working with those who are socially displaced. As a dignitarian ethic, it also is concerned with (2) a politics of recognition and solidarity, that is, challenging racism, sexism, and state violence (neoliberalism, settler colonialism, etc.). Simply put, it draws our collective attention to certain harmful practices, which deny personhood and bodily, emotional, and spiritual integrity. An ethic of solidarity bolsters a being-in harmony, which promotes and is supported by “transparency, voluntariness, trust, and mutual aid” (Metz, 2012, p. 268).

As a ludic Ubuntu ethic, it is represented by the four human values (as spokes) of the Lakota Circle of Courage: generosity, belonging, mastery, and independence.<sup>7</sup> Such a circle generates being-in abundance, being-in relation, being-in capacity building, and being-in freedom and responsibility; with an added center of being-in love and play, from which all four “spokes” draw energy. Playfulness is in motion, as the wheel represents movement, dynamism, becoming.

There may be humble beginnings of practicing inter-relationships or playful recognition of others as fellow-players. I am talking about the playground. In her film, *Reject*, Ruth Thomas-Suh (2013) chronicles the lives of kindergarten children who navigate beyond social rejection using this mantra, inspired from Vivian Paley's book: “You can't say, 'you can't play!'” Of course, we witness repeated exclusion of a Latino boy, Justin, and notice the negative effects of such behavior in his physical demeanor. Yet, when the mantra is taught and practiced daily, we see a beautiful transformation of the bullies, who previously excluded him, and in the boy Justin who changes his posture and communicative style into peaceful and boisterous jumps. He exudes one anchor of the Lakota *Circle of Courage* “I belong! I am loved!” What is remarkable is that the children are quick to imagine another mantra: “You can't say 'You can't sit!'” when a child is about to be excluded from a lunch table. Clearly, they learned quickly to internalize the lesson of inclusion and peaceful integration without adults having to intervene. Post-tests also show that likeability among the cohorts go up which have used Paley's exercise in contrast to other cohorts who did not make use of this play.

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<sup>7</sup> It is intriguing that the American Indian Circle of Courage model is utilized as a strength-based, holistic best practice by the South African child and youth care system as well as the educational system (Coetzee, 2005).

In a Ludic Ubuntu ethic, *belonging* is also a key constitutive part. To recognize the other as human, is to say “you belong to us, and we will have no part in excluding you from our ways.” I hold that belonging is actually more foundational than the other three values (mastery, independence, generosity). As Brendtro et al. (2009) note about belonging: “I belong, I am loved.” Thus, to say “you no longer belong to our group” used to be regarded the ultimate (extreme) form of punishment—being sent into exile, which brought certain “biological” death due to the unimaginable experience of social exclusion, or social death.<sup>8</sup>

To clarify, this Circle of Courage does not have to be anthropocentric. A post-humanistic Ubuntu ethic encompasses an ecological horizon—the Web of Life. As the Cherokee note that animals and humans are part of one family and thus part of one eco-system (Mooney, 1902/2014). Ramose (2003) argues that Ubuntu is really a “be-ing becoming.” Being and change are enfolded into one, not representing a contradiction or “chaos” (p. 231). On the contrary, it symbolizes harmony (of all relations including with one’s environment) and thus represents an ecological ethic, or interspecies ethic (Willett, 2014). This Ubuntu dance of interrelatedness that Ramose (1999, p. 233) calls a rheomode (from the Greek *rheo* = to flow) is illustrated in the model of ludic Ubuntu.

### **Spiral Modes of Ludic Ubuntu**

Circles, such as the Circle of Courage, are powerful (energetically speaking), and I claim that the figure of the spiral also holds much promise. I present the image of a double helix to illustrate that the real and illusionary aspects of justice unfolding (figure 1). Drawing on the Greek deities of Apollo (order, logos) and Dionysus (God of wine, licentiousness, drama), emotions, values and ideas about justice cascade up and down or sideways:

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<sup>8</sup> Aboriginal peoples of North America and in other settler colonial nation-states such as Australia and New Zealand, rightfully charge these governments with genocide for their policies of forced removal of children for the purpose of “education.” In North America, the Spanish colonial, genocidal missionization of West Coast Indian people began in 1769 (Fairbanks, 2014). A century later, Anglo governments continued the practice through the residential system of indigenous children. A message of hate adorned each “school”: “Kill the Indian, save the man.” In fact, half of the children kidnapped and imprisoned in residential schools in Canada did not survive the treatment of torture and neglect (Churchill, 2004; Ritchie, 2008; Brant Castellano et al., 2008). Setter colonialism has always adapted its forms of social control, surveillance, and incessant preoccupation with (spirit)murder. Today’s juridical death-dance involves punishing a human outcast to “the box” treatment: solitary confinement with complete sensory deprivation. Being subjected to such isolation has devastating consequences. After his second bout of being sent to the box, Albie Sachs shares that he has never fully recovered his joyfulness. This trauma of being buried alive stays with the formerly incarcerated (and now a retired Constitutional Court judge of South Africa) for the rest of his life (Ginzberg, 2014).

## The Double Helix of Ludic Ubuntu: Dionysian and Apollonian Dynamics

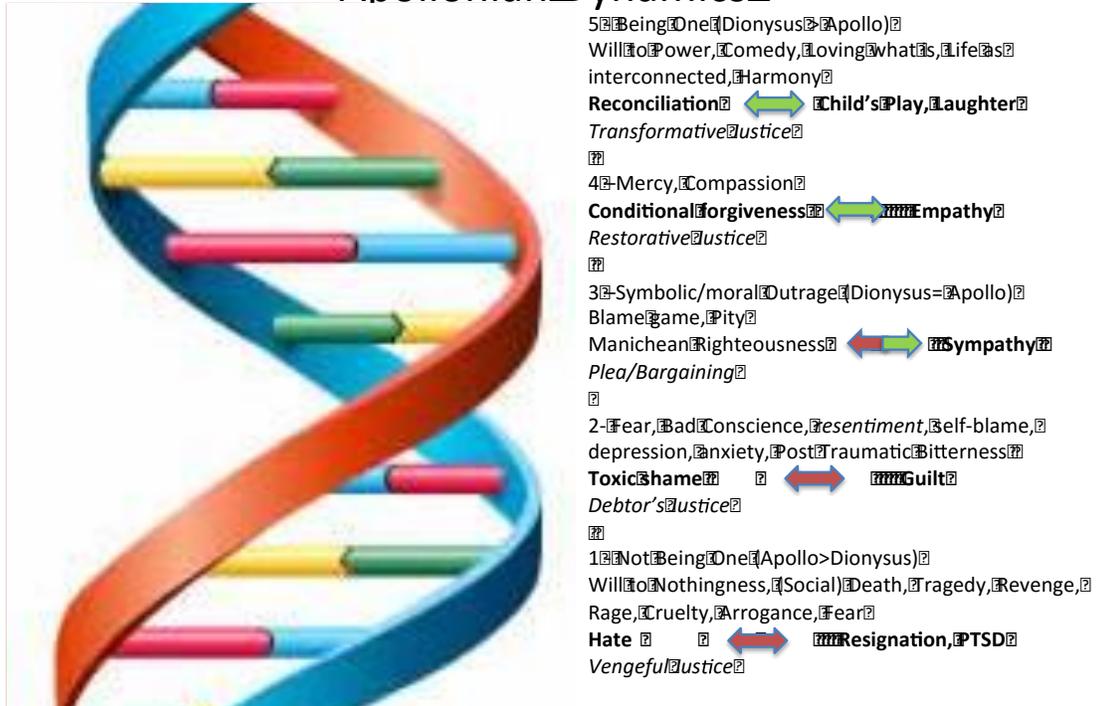


Figure 1

Apollo dominates at base level the specter of exacting justice, according to a reasonable “man’s” standard. I am using Apollonian in the sense of Derrida’s notion of logocentrism—a rational order at all cost. Apollonian concerns dominate also the negative emotions at the next level, guilt, shame, depression, which are used to justify the rationalizing of revenge. At level three, the aspect turns slightly towards the Dionysian, as if to hold it in balance; in this equilibrium dance (Apollo with Dionysus; or, with Cynthia Willett (2014), Logos with Eros), moral outrage transmutes rage/revenge while still holding on to feelings of sympathy for the victimized. A decisive shift towards the Dionysian, by which I mean life-affirming sensibilities, occurs at level four where a victimized person may begin to identify with the oppressor or victimizer (in us), as outwardly represented by persons or institutions of social control (the police, courts, etc.). Forgiveness remains aspirational (perhaps as a “forgifting,” Scott, 2009) in the difficult dialogue with the Other, who may or may not apologize for their actions and for “words that wound.” Perhaps it is a process that endures over years, or in a matter of days or moments<sup>9</sup>.

<sup>9</sup> A confounding example of a sudden emotional shift is the following: In Iran, April 2014, a young man was about to be hanged in a public space for killing his friend. The mother of the victim dreamed that her son asked her to

The aspect of the Dionysian comes to the fore in stage 5, where the “unhappy consciousness” has evolved to a stage of reconciliation: “I love you even if you don’t apologize. I don’t need your approval to see that you are suffering (from the violent ruse of separation such as white supremacy, neocolonialism, (hetero)sexism, etc.)” The Apollonian recedes to the background supporting the e-motion (i.e. energy-in-motion) of love; Zarathustra’s child playing at draughts or releasing herself in the cosmic dance of attunement that we are all interrelated; the trauma (of the offense) becomes a distant memory, and the embrace transmutes all raw feelings (injustice, blame). “I thank you for who I am (now), the spirited, light-hearted play of transformational justice seeking to harmonize, not to divide.”

The Double Helix image is helpful because it also allows for interaction between the two strands, which are connected at various intervals. These are ties that bind and resemble a back-and-forth swaying between the major energies. There is a lot of oscillation in the grieving process: the person who commits an offense sways between sorrow of the deed in the unthinking heat of the moment and justifying the action “the Other deserved it; had it coming; etc.” It gives us a glimpse into the traumatized person whether it’s an offender or victim or both. Often, prisoners see themselves as victims of the carceral system, the unfreedom experienced in the streets, the schoolhouse, violence at the (foster) home, etc., and therefore, they turn to rage or justification of their actions given the constraints they have suffered. Likewise, as if skipping up or down a ladder, caught up in the drama of life, we can move vertically to different levels of e-motions (energies in motion) or thought-patterns, from rage to embrace. And then again, within each of the five levels, there is a slight incline in the vertical movement akin to another spiraling of emotions. Moving from hate (the extreme form of feeling abandoned and separated from the whole) towards a toxic mix of horror and terror (akin to a Posttraumatic Stress Disorder<sup>10</sup>). Spiraling “up” to the next level (2), encountering toxic shame on one extreme and guilt at another. Shame here signifies the feeling of physical pain and existential despair, prompting suicidal tendencies. At the other spectrum of the continuum (still at level 2) is guilt, feeling badly about one’s behavior. At level 3, emotions oscillate between Manichean righteousness and sympathy (the expression of pity). At level 4, we enter the realm of non-violence, with conditional forgiveness on the lower end and beginnings of empathy at the higher end of the continuum. At level 5, reconciliation (with lingering hurt) gives way to a child’s wisdom: A child that asks incredulously “how can I hate another human, when I am also human?”<sup>11</sup>

Seen at another level, these changing aspects in this spiral dance turn out to be an illusion. Both Dionysian and Apollonian synchronize their dance, and one isn’t leading the other. Put in another way, this spiral model is a didactic one, echoing

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spare the friend. His mother resisted at first the message, slapped the condemned man’s face (symbolizing public shaming) and then released the rope from his neck while the uniformed executioner looked on. The young man’s mother rushed up to the other mother and embraced, shedding tears. Desert-based justice is trumped by relational justice. Procedural, exacting justice gives way to “divine” justice and unconditional forgiveness. <http://www.nydailynews.com/news/world/iranian-killer-spared-execution-victim-mom-article-1.1759696>

<sup>10</sup> Cf. Brandon Hamber, 2015 for a critique of PTSD diagnosis.

<sup>11</sup> Actual question posed by my 7-year old niece Mareike (Fulda, April 14, 2015).

Plato's cave: moving from unconscious (implicit) bias and the illusion of separation to a place of understanding all hurt and hate and finding ourselves in the embrace of the rhythmically aligning of our breaths (for example, the play of contact improvisation) and reading each other's thoughts (divine justice). At this level of loving-attuned cognition, it is possible to practice the Hawai'ian indigenous mediation of Ho'oponopono and attune to a "postmoral ethics" as aesthetics (Willett, 2014, p. 89). "Primitive" aesthetic ideas focus on reestablishing harmony where there has been discord and suffering. Moving from nihilism (skepticism, depression) and the spirit of gravity to a freed lion to the ultimate goal of attuning to child's play, being absorbed by the comic wheel of life, being detached from the drama of life and suffering.

In a way, with his cave parable, Plato imagined the ultimate prison break. I now understand in a new light, why my students who are jailed love discussing this parable. It opens up for them a whole new level of understanding "reality," moving from the darkness of shadows to the light—and back down the ladder. Being taken in by Plato's seductive game of idealism, they realize they are pawns in a game, rudderless, and now imagine: "what would it mean to take the other pill?" (from the film *The Matrix*, which has many Cave allusions).<sup>12</sup> My double helix image is not wedded to a light metaphysics, and the back-and-forth movement between the different phases indicates a greater oscillation than Plato's fixation on "will to truth." There will be lapses and missteps along the way of human drama (and trauma) because emotions still play freely. Plato's dark horse cannot just be tamed once and for all, and there is no need to repress emotions or tendencies to addictions either. Perhaps the following examples clarify some of the nuances of the path of ludic Ubuntu.

### **Illustrations of the five levels of ludic Ubuntu**

My main interest here is to show individual or organized group interaction with state power. At most of the levels, the focus is on dealing with the state's impunity. At level 5, it will be difficult to give examples of notable state actions. Perhaps former President Nelson Mandela stands out for assuming a quasi-messianic stature (Nixon, 1991) being credited for averting civil war in South Africa, and also for giving blanket amnesty to women prisoners who are mothers. But there are other ludic moments of dis-arming state actors. Here I want to introduce Pumla Gobodo-Madikizela's (2009) "witnessing dance" of a cast of characters to whom the Māori refer to as victims and victimizers (Vieille, 2011).

At level 1, cruel games of a coercive non-dialogue prevail. From the bench, the judge bellows at the defendant that he ought to show remorse, or else.

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<sup>12</sup> Whether they understand objective idealism or not, Plato opens up new philosophical and spiritual possibilities, that prisoners rarely dreamt about, so to speak, before taking the philosophy class.

Condemnation is certain, and harsh judgment is assured. Whether the judgment is politically motivated but legal or extra-legal as lynchings of Black people during the brutal Jim Crow era, revenge is the *modus operandi*. “Jim Crow,” the American version of apartheid law, had its sinister roots in a Jim Crow dance in the 1820s, originally performed by a white Irish man imitating a disabled Black enslaved man dancing. This “blackface” dance routine became wildly popular across the Northern states of the union, who came to see slavery as a happy and necessary institution to keep Black people subjugated as chattel on the plantation (*sic!*) (Riggs, 1986). Today’s death-dance in the era of the New Jim Crow (Alexander, 2010) is the ongoing American fascination with the racist (and capitalist) death penalty. As people on death row muse, “You ain’t got the capital, you do the punishment!” The elites are not condemned to death row. European pharmaceutical companies have been shamed into refusing to sell drug combinations used as “cocktail” in the American execution chamber. Here, we see a “productive” use of shame tactics which seems to be effective when targeting multinational corporations and health professionals including pharmacists are taking note, such that the retentionist states will have to give up their necrophilia or resort to shootings, hangings, and other spectacles of horror (*cf.* Culp-Ressler, 2015).

A ludic opposite to the necrophilic revenge game is, historically speaking, Capoeira, which I call resistant play: going beyond *Ohn-macht* (power-lessness), created by enslaved Afro-Brazilians who birthed a dance and martial arts form from various West African traditions. Capoeiristas consist of singers and instrumentalists who form a protective circle around two sparring persons, and depending on whether they deemed their fight is safely executed or in jeopardy due to an approaching slave-master, they changed their rhythms accordingly. This ludic ruse challenged the violent system of slavery in Bahia and elsewhere in South America.

At level 2, we see the violent game played out as what Nietzsche (1996) calls “debtor’s justice.” The recent Justice Department report on Ferguson, Missouri’s police department’s racist practices (2015) might very well implicate cities across the country which not only engaging in racial profiling, but also in containing poor people of color with endless fines for trivial offenses (or new Black Codes). The newly scrutinized city of North Charleston, South Carolina, even jailed bicyclists for failing to have a horn, according to the bondswoman who secured bond for them (Blinder et al., 2015). The defendant pays a debt to society and is shamed publicly. It is a fear-based “justice” system which in the United States is deeply embedded in anti-Black racism and settler colonialism. Those of African descent and American Indian people are criminalized and stigmatized at levels that are even beyond incarceration rates in South Africa under apartheid. One in three Black males will face arrest in his lifetime. There are more Black men in prison than in the university system nationwide (Nagel, 2014; Smith, 2010). The psychic life of power over marked subjects embroiled in the imprisonment game also weighs heavily on their families, e.g., on children who are accustomed to weekend or holiday visits in America’s dungeons. Furthermore, this agonism is intrinsic to the military/militarized and carceral regimes and their puppeteers who demand crushing penalties from those who lose the lottery (*cf.* Garcia, 2007).

Extra-legal agonistic practices are exemplified in the popular pursuit of shamed persons. Vigilante neighbors publicize widely those marked as sex offenders, sometimes they are driven out of town or have their windows broken. Some even meet violent death or commit suicide (i.e. bullycide, Thomas-Suh, 2014). These stigmatized persons have served “time,” yet they lack privacy and continue to be under life-long scrutiny (cf. Megan’s Law in the U.S.). Another example comes from *cause célèbres* such as former Black Panther Mumia Abu-Jamal who has written several books from death row and is accused of killing a white police officer. So at Sting’s rock concert in Pennsylvania, a phalanx of uniformed white police officers show up to signal their protest over the rock star’s unflinching support for Abu-Jamal.<sup>13</sup>

Some theorists of restorative justice (following John Braithwaite) consider reintegrative shaming as a productive, non-violent approach. However, since shame triggers feelings of rejection, which often leads to a pain response in the body (Thomas, 2006), how is it possible to label shaming ever as reintegrative, i.e. healing? Perhaps his philosophy endorses the Rwanda’s Gacaca village court system having been heralded as a peaceful way to harmonize relationships in the aftermath of a genocidal conflict. Its detractors claim that it has led to vigilante justice against innocent Hutus and has also been used for political retaliation (Amnesty International 2002; Amnesty International 2007).

At level 3, since the Ferguson, Missouri uprising during Black August,<sup>14</sup> 2014, there have been many illustrations of the public’s expression of symbolic outrage. It has spiked with two high profile cases absolving white police officers of any criminal responsibility for killing unarmed Black men. Thus, witness an explosion of creative protest in major United States cities, defying helicopters and other conventional surveillance tactics, by becoming a non-violent wave of protesters who pop up in different critical arteries around the city. Some of the protest at times could no longer be “managed.” It is guerilla warfare without weapons of destruction. (Of course, the state gets very nervous about its failure to appear in charge.)

Another contemporary example of ludic Ubuntu is drawn from a contemporary example and growing movement against legally sanctioned Afrophobia. During the first week of uprising in Ferguson, Missouri and across Black America (August 2014), witness these social media images: “Hands up, Don’t Shoot!”—twitter photos from the incoming class of Howard University, echoed by another photo of somber looking women from the first year class of Spelman College: reminding police across America, whites across the nation, that Black life matters. From Eric Garner’s murder to the killing of Mike Brown, Black people marooned in the United States, living beyond the pale, are not (yet) citizens that codified racist law and its enforcers need to respect (Nagel, 2014).

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<sup>13</sup> As of March 2015, supporters and family members of Abu-Jamal are charging the state with attempted medical execution, given the willful medical neglect of attending to his diabetic condition (<http://peoplespowerassemblies.org/urgent-stop-medical-execution-of-mumia/>).

<sup>14</sup> Mumia Abu-Jamal has written about the history of Black suffering and redemption during the month of August: “Black August is a month of great significance for Africans throughout the diaspora, but particularly here in the U.S. where it originated. ‘August,’ as Mumia Abu-Jamal noted, ‘is a month of meaning, of repression and radical resistance, of injustice and divine justice; of repression and righteous rebellion; of individual and collective efforts to free the slaves and break the chains that bind us’” (Nyasha, 2003).

The subjugated voices' talkback is telling. Using powerful lyrics musicians return the (racist) gaze exemplified in the powerful requiem for Eric Garner ("I Can't Breathe," a poem by Broadway Stars,<sup>15</sup> 2014). To the background humming and rhythmic clapping (actually, drumming with a hand on their chests) of the choir, the unarmed Black soloist begins with this warning to police across the United States: "This is how we shoot back," emphasizing that "we aspire to provoke not riot but conversation." With a sobering poetic comment on illegal police chokeholds, he speaks truth to power: "It's your job to bear arms, not to wrap your bare arms around folks like boa constrictors" and ending his lyrics with: "this is how we shoot back, this is how we shoot back, this is how we shoot back, this is how we shoot back." The trailer records Eric Garner's last cries for help "I can't breathe." The poet likens today's police executions of unarmed Black "suspects" to yesterday's Jim Crow lynchings of Black persons. The griot of Broadway Stars takes up Martin Luther King's lyrical command from his sermon "The American Dream" (1965): "We will meet your physical force with soul force." *Satyagraha* is a force that is more powerful than brute violence.

Sometimes, the example of one will inspire a movement. Emma Sulkowicz, a visual arts senior at Columbia University in New York City, created a stir on campus (and nationally) by carrying her mattress to all her classes during the fall semester 2014. Her performance project (for her senior thesis) is titled "Mattress Performance: Carry That Weight," and it has inspired similar (and collective) actions around colleges around the United States to highlight the endemic problem of rape and sexual assault on campus that is not addressed by judicial boards and the administration. After Sulkowicz reported being raped, she endured humiliation by the judicial board. An art critic deemed it the best art show of 2014 and noted:

Art is born of many things, among them righteous indignation, messianic rage, and the drive for justice. Emma Sulkowicz's powerful performance piece *Carry That Weight* comes from all these places and from great activist art as well, highlighting not just her trauma but the way Columbia turned a blind eye to it. Sulkowicz's gesture is clear, to the point, insistent, adamant. Since September, she's simply carried around campus, alone or with the offered help of others, a 50-pound mattress identical to the one on which she says she was raped. Enough said. ... *Carry That Weight* may not result in justice, but it may make universities think twice before looking past the plight of women. This work is pure radical vulnerability. (Saltz, 2014)<sup>16</sup>

What this artistic outrage appeals to is more stringent laws. Critics such as Angela Y Davis have noted the boomerang effect of hate crime legislation effecting disproportionately Black people (calling whites "crackers"). Similarly, Laura Kipnis

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<sup>15</sup> "Over 100 Broadway stars, directors, producers, musicians, choreographers, designers and technicians from some of the most prominent productions gathered in front of the police station in Times Square on Tuesday. They wanted to send a message about police violence and the killing of Eric Garner." [#itstopstoday #blukluxklan](https://www.facebook.com/video.php?v=10152524845531928); <https://www.facebook.com/video.php?v=10152524845531928> (Broadway Stars, "I can't breathe," 2014).

<sup>16</sup> [http://www.vulture.com/2014/12/19-best-art-shows-of-2014.html?fb\\_action\\_ids=10152905808554267&fb\\_action\\_types=og.recommends](http://www.vulture.com/2014/12/19-best-art-shows-of-2014.html?fb_action_ids=10152905808554267&fb_action_types=og.recommends)

(5/29/2015) boldly discussed Northwestern University's Title IX investigation of her. A tenured media studies professor, Kipnis was charged with creating a hostile environment for two graduate students by publishing an article about the university's prohibition of sexual relationships between undergraduate students and professors creating a new sexual paranoia on campuses. In a previous article, she had complained:

In the post-Title IX landscape, sexual panic rules. Slippery slopes abound. Gropers become rapists and accusers become survivors, opening the door for another panicky conflation: teacher-student sex and incest. Recall that it was incest victims who earlier popularized the use of the term "survivor," previously reserved for those who'd survived the Holocaust. The migration of the term itself is telling, exposing the core anxiety about teacher-student romances: that there's a whiff of perversity about such couples, notwithstanding all the venerable married ones. (Kipnis, 2/27/15. <http://chronicle.com/article/Sexual-Paranoia-Strikes/190351/>)

In her new now defiant article, she calls these students who charged Kipnis with creating a chilly climate somewhat endearingly as feminism's "evil spawn." All too often, performative outrage appeals to stricter law (enforcement) rather than to non-punitive measures or restorative practices.

It remains to be seen whether the Black Lives Matter movement will inspire a new approach to justice, especially in the aftermath of two grand juries for refusing to indict white police officers who killed unarmed Black men. Agents of the state upholding the rule of law hardly face charges for perpetrating hate crimes. Perhaps the movement will find inspiration from former federal prosecutor Paul Butler (2009) who suggests a protest theory of HipHop justice. After all, while mostly white police officers and other law enforcement agents get the benefit of absolution with the tag of "justifiable homicide," most Black civilians plead guilty to bogus charges even when they "stand their ground"—as in the case of Marissa Alexander.<sup>17</sup> Butler's solution to the racist deployment of the war on drugs includes the refusal for Black defendants to take the plea (in turn for a lighter punishment) and instead force a trial, which rarely occurs anymore. Juries need to be instructed of their right to speak back to an unjust law and engage in "jury nullification." Such concerted protest has indeed occurred in cities such as Washington, DC to the dismay of prosecutors who respond by dropping charges against non-violent drug offenders. Butler calls on other prosecutors to drop out of the agonist game:

My conclusion is that prosecutors are more part of the problem than the solution. The adversarial nature of the justice system, the culture of the prosecutor's office, and the

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<sup>17</sup> Alexander is alleged to have shot at the house of her former partner who abused her. She did not cause harm to anybody inside, but facing two life-sentences, she opted for a plea of two years in 2014. Her case highlights that an African-American woman is not seen as "standing her ground" against abusers in sharp contrast to George Zimmerman who was acquitted in 2013 for killing an unarmed Black teenager Trayvon Martin for employing a self-defense statute of "standing one's ground" (sic).

politics of crime pose insurmountable obstacles for prosecutors who are concerned with economic and racial justice. . . . [I]t seems an odd job for a humanitarian. (2009, pp. 101-02)

A pursuit of social justice requires a humanitarian to opt out of the legal apparatus altogether—except, of course, for serving on the jury and nullify the unjust (i.e. racist) application of the law.

At the next level (four), we see a conceptual shift from expressing righteous rage to reflective, more holistic ways of understanding violence, offense, in justice in a larger context, which begins to avoid an “us versus them” approach. The pioneer of restorative justice, John Braithwaite, famously argues for the reintegrative power of shaming (which I have located at level 2). His book *Crime, Shame and Reintegration* (1989), makes a case for denouncing the offense but not the offender.<sup>18</sup> He differentiates coercive shame practices, which draw on stigmatization and clearly harm the offender, from those culturally embedded practices, which avoid stigmatization but still demand that the offender apologizes and make amends before being offered reintegration into the community. I do not consider Braithwaite’s approach as genuine restorative justice. By contrast, South Africa’s Truth and Reconciliation Commission has been described as issuing symbolic judgment without punishment (Loick, 2012). The TRC did not require amnesty applicants to be remorseful. Neither were they required to pay restitution. Among American Indians and First Peoples, the healing circles have been noted as successful alternatives to incarceration. However, there is a catch. The way it has been instituted in North America, especially in Canada, is that there is still a possibility of prosecutors to appeal a community sentence, if it is considered to lenient. Arguably, a non-agonistic way of pursuing such justice may still be possible through indigenous healing or peacemakers’ circles, even if they are not yet decoupled from neo-colonial oversight (Ross, 1996). Alternatives to Violence Programs (AVP) in United States prisons, established by Quakers, also focus on mending offenders’ ways. Thus the focus of these practices are still on the errant ways of the offender, rather than on a holistic approach that shows how all, including those affected and harmed, contribute to repairing relationships and the community at large. At this level, peacemakers may use creative means to stop the violence and bring warring parties to a peace table as shown in *Pray the Devil back to Hell* (Reticker, 2008). Nobel laureate Leymah Gbowee began her non-violent resistance by first heeding the call of her recurrent dream “Go to the churches!” Her daring, peaceful actions along with other brave Liberian women eventually brought down the regime of Charles Taylor and earned her the peace prize.

Finally, at level 5, the highest level so far conceived (there could be other levels), the necessity for punishment fades away and the focus on healing becomes all important, as a non-aboriginal Crown prosecutor was told by an elder who dismisses the western procedural way as meting out “terror” (Ross, 2014). While the example of a non-violent revolution may not fit, especially given the usual aftermath (consolidation of power, state repression, take-over of industries, mass

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<sup>18</sup> Strangely, this is a similar gesture that the Catholic church has chosen by condemning homosexuality as sin, but not the sinner behind the act: the homosexual is still redeemable...

unemployment, xenophobia, etc.), the in-the-moment ludic street encounters of the Velvet Revolution gave us the illusion of harmony. On celluloid, we saw images of civilians hugging soldiers and police during the pro-democracy rallies in East German cities in 1989. Numerous peaceful examples of female protesters giving roses to uniformed men: the invitation to drop the masquerade of defending state power (in riot gear no less) and join the people. In other words, dis-arming police by embracing them –with love, not fear. The fall of the GDR possibly is credited to a ludic mistake, the stuff of comedy. A question by an Italian reporter “when will the borders open?” was hastily responded to by a government spokesperson Günther Schabowski, who misinterpreted a note in hand, and said “right now” (*Die Welt*, Jan.2, 2014).

With respect to criminal justice concerns, the short-lived Paris Commune experiment may be a case of ludic Ubuntu at level 5. Prisoners were released and policing was suspended during the popular occupation of the city and crime apparently disappeared, at least, according to the popular anarchist imagination (Abidor, 2010). After the armed insurrection in Chiapas in 1994, the Zapatistas aimed to establish an egalitarian society and taking up a politics of poetic resistance (Huntington, 2000). There are many examples of ludic Ubuntu at this level among (Zomnia)<sup>19</sup> peoples not wedded to the nation-state. In some peaceful societies such as the Inuit, conflict has to be carried out in a singing duel or trance dance, as a way to overcome the dispute and reestablish harmony within the group (e.g., Pim, 2013). Peacemaking criminology also endorses transformative justice and goes beyond the individualist focus of restorative justice approaches between offender and victim. Such a transformative model provides a macroscopic analysis of injustice and how it contributes to further harm at the community and family level (Pepinsky, 2006; Morris, 2000).

At the interpersonal level, the Biehl family’s way of reconciliation is exemplary in global transformative justice and peacemaking (Davis, 2003). Amy Biehl, a white United States Fulbright scholar, visited South Africa in 1990. She traveled with her Black friends to a township where she was mis-recognized as a Boer and brutally murdered by a group of young men. Several of them were later convicted and sent to prison. They appealed for amnesty to the Truth and Reconciliation Commission for having committed a political murder. The TRC heard their case and granted amnesty. And there’s more. Two of the men approached the Biehl parents and asked them to adopt them as their sons. Amy Biehl’s parents by then had met with the young men and their families and started the long road of healing and forgiveness. At every step, they asked themselves “what would Amy want?” They actively participated in the economic and cultural life of the township. Linda and Peter Biehl recognized the violence of poverty and racism, which contributed to the death of their only daughter Amy. With the Amy Biehl Foundation they set up bakeries, a floral business, and an after-school program, which today caters to some 1,800 children. In a way, they did adopt the two men as sons, by giving them a plot of land to build homes and provided them with leadership positions. And they traveled together around the world, teaching about

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<sup>19</sup> This is James C. Scott’s (2010) ludic affirmation of peoples who escape conflict with the nation-state.

reconciliation and forgiveness. In one of the photos (from American newspapers) taken on the occasion of commemorating the twentieth anniversary of Amy's death, Linda Biehl shares a laugh with one of her "sons" and caressing his daughter, who calls Linda her grandmother.<sup>20</sup> I consider this a precious moment of ludic Ubuntu: transforming grief, rage, sorrow into laughter and love of all that is. Not only is Amy Biehl's family modeling the possibility of bypassing the victim's family natural (naturalized?) desire for revenge, but they go above and beyond to facilitate a transatlantic community justice program, investing their own assets and reaching out to other (donors and partners, as well as murder victim families) to follow their magnanimous example (cf. amybiehlfoundation.org).

South Africa's high court judge Albie Sachs, who as a white anti-racist activist lawyer survived a bombing, planted by the apartheid regime, alludes to a Dionysian-inflected ludic Ubuntu in this way:

Hopefully, we will one day see the word "ubuntu" also taken up by the international community, the term in our new Constitution that represents respect for the intrinsic dignity that each individual possesses simply by virtue of living with other persons in a community; trying to explain the concept to non-South Africans, I always suggest that if one could harmonize faith, hope, and charity with liberty, equality, and fraternity, and give it to an African choir or a mixed African-Afrikaner choir to hum, then you would have ubuntu (1990/2014, p. 242).

Sachs not only refers to the metaphorical healing power of shared musical performance for a post-racial South African society, but also suggests that democratic individualist values could easily be folded into a communitarian ethos, even or especially granted through the rule of law, echoing Louw's reading of Ubuntu of "individuality *à la* community" (1998). Sachs' example gestures at a postmoral aesthetics in the way Willett frames it as "unbound experiences where ethical valences occur as acts of moral beauty in generosity toward loved ones or as sublime compassion toward an orphan or stranger" (Willett, 2014, p. 133).

Why might we want to compel or persuade judges like Sachs to give up the idea of exacting justice, which I label vengeful justice? This outmoded justice model that I have cast at the lowest level (in rank and in value) is typically cast into "forward-looking" (deterrence) and "backward-looking" (retribution), to name two key cherished western philosophically buttressed justifications. I argue that in reality, as corrections is practiced in the U.S. and in most nation states, we deal with a *mixed* model, which takes retribution or just desert sentiments as a cornerstone of adjudicating the culpable subject, while hoping that harsh sentences will deter other young people (under 25 years of age) from the life of socially disapproved activities. So, the messy (non-ideal) reality of criminal justice is one that takes a tapas-sampling approach: a little retribution and a lot of deterrence, and voilà, we have a sane policy that prides itself following the rule of law. However, a plea-bargaining system which adjudicates over ninety percent of cases has little to do with justice.

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Linda Biehl considers Easy Nofemela and Ntobeko Peni close friends and says that "she has a lot of love for them" (<http://www.oeregister.com/articles/biehl-522733-amy-linda.html?page=3>).

Furthermore, this little experiment that uses the jail cell as its centerpiece has been quite unsuccessful, actually catastrophically so. Or, it could be said cynically, this experiment of the prison industrial complex has been fantastically successful in managing a large class of people, using a monthly quota system of rounding up an unruly multitude of criminalized and criminalizable, mentally ill people who disappear into “alternative social services” in order to shrink artificially national unemployment and avoid focusing on neoliberal ravages across the world, heteronormativity, white public patriarchy and other social injustices.

Relational justice is a complex idea. One helpful way that presents a certain dialectical dynamic, a Janus face of Lady Justice, is put in the following way: “[t]he justice of loving nonviolence is ‘blind’ because it seeks fairness impartially, but at the same time it is clear-sighted and is open to see the faults and imperfections of others, but refuses to judge them” (Fitz-Gibbon & Fitz-Gibbon, 2015, forthcoming). It is a perfect response to Sarastro’s ill-conceived notion that those who do not absorb lessons (of love) still deserve to be punished—and worse: being exiled from the human community! Indeed, ludic Ubuntu at level five (or higher) does dispense with “desert” and “punishment” altogether. If justice is indeed transformative (and non-judgmental), it makes no longer sense of talking about positive aspects of shaming practices (*pace* Braithwaite), even if playful ceremonies are tempering the coercive aspects of demanding appropriate apologies and gestures of remorse from those who have harmed others. Friends of transformative ludic Ubuntu justice would rather see the spirit of gravity, the camel, transform into the playful child, freed from the trauma of history and memory that binds us to a past that no longer serves us in its weightiness. Intersubjective, affective attunement, as displayed by the loving ties that bind the Biehl family and their adopted sons, are powerful reminders that great tragedy can be transmuted into playful laughter—a hopeful interplay where the boundaries between victim and offender have vanished.

## Bibliography

- Abidor, Mitchell. (2010). *Communards: The story of the Paris Commune of 1871*, As told by those who fought for it. Texts selected, edited, and translated by Mitchell Abidor. Pacifica, CA: Marxists Internet Archive Publications, 2010.
- Achebe, Chinua. (1958). *Things fall apart*. Oxford: Heinemann.
- Alexander, Michelle. (2010). *The new Jim Crow: Mass incarceration in the era of colorblindness*. New York: The New Press.
- Amnesty International (2007). Rwanda: Fear for safety/Legal concern: François-Xavier Byuma. Accessed 15 April 2015 from: <https://www.amnesty.org/en/documents/afr47/007/2007/en/>
- Amnesty International (2002). Rwanda: Gacaca: A question of justice. Accessed 15 April 2015 from: <https://www.amnesty.org/en/documents/afr47/007/2002/en/>
- Appiah, Anthony Kwame. (2006). *Cosmopolitanism: Ethics in a world of strangers*. New York: Norton.
- Appiah, Anthony Kwame. (1993). Beyond race: Fallacies of reactive Afrocentrism. In *The Skeptic*, 2(4): 104-7.

- Beccaria, Cesare. (1764/1995). *On crimes and punishments and other writings*, R. Bellamy (ed.). Cambridge.
- Ben-Moshe, Liat. (2013). The tension between abolition and reform. In *The End of Prisons: Voices from the Decarceration Movement* (M. Nagel & A. Nocella, eds.). Amsterdam: Rodopi.
- Bernasconi, Robert. (2002). Kant as an unfamiliar source of racism. *Philosophers on race* (T. L. Lott & J. K. Ward, Eds.). Oxford: Wiley-Blackwell.
- Blinder, Alan and Manny Fernandez. (9 April 2015). South Carolina police shooting seen as crime strategy gone awry. *The New York Times*. Accessed 15 April 2015 from:  
<http://www.nytimes.com/2015/04/10/us/south-carolina-police-shooting-seen-as-crime-fighting-gone-awry.html?ref=topics>
- Braithwaite, John. (2011). In search of restorative jurisprudence. In M. Tonry (Ed.) *Why punish? How much? A reader on punishment* (pp. 337-352). New York: Oxford University Press.
- Braithwaite, John. (1989). *Crime, shame and reintegration*. Cambridge: Cambridge University Press.
- Brant Castellano, Marlene, Linda Archibald, & Mike DeGagné. (2009). *From truth to reconciliation: Transforming the legacy of residential schools*. Ottawa: Aboriginal Healing Foundation. Retrieved 4/10/15 from:  
<http://www.ahf.ca/publications/research-series>
- Brendtro, Larry, Brokenleg, Martin, & Steve van Bockern. (2009). *Reclaiming our youth: Our hope for the future*, revised edition. Bloomington, IN: Solution Tree.
- Broadway Stars (2014). "I Can't Breathe" – a poem. Accessed 9/2/2014 from:  
<https://www.facebook.com/photo.php?v=10152524845531928&set=vb.18493706927&type=2&theater>
- Buck-Morss, Susan. (Summer, 2000). Hegel and Haiti. *Critical Inquiry*, 26(4), 821-865.
- Butler, Paul. (2009). *Let's get free: A hip-hop theory of justice*. New York: The New Press.
- Campanella, Tommaso. (1602/2009). *The city of God*. Project Gutenberg. Accessed 9/3/14 from: <http://www.gutenberg.org/files/2816/2816-h/2816-h.htm>
- Chapman, Audrey R. & Patrick Ball (2001). The truth of truth commissions: Comparative lessons from Haiti, South Africa, and Guatemala. *Human Rights Quarterly* 23, 1-43.
- Cheliotis, Leonidas K. (2014). Decorative justice: Deconstructing the relationship between the arts and imprisonment. *International Journal for Crime, Justice and Social Democracy* 3(1), 16-34.
- Chodorow, Nancy. (1978). *The Reproduction of mothering: Psychoanalysis and the sociology of gender*. Berkeley & Los Angeles: The University of California Press.
- Churchill, Ward. (2004). *Kill the Indian, save the man: The genocidal impact of American Indian residential schools*. San Francisco: City Lights.
- Coetzee, Charles. (2005). The circle of courage: Restorative approaches in South African schools. *Reclaiming Children and Youth*, 14(3), Fall, 184-187
- Culp-Ressler, Tara. (3/31/2015). Is this the beginning of the end of the death penalty. ThinkProgress. Accessed 4/12/15 from:

<http://thinkprogress.org/health/2015/03/31/3640968/american-pharmacists-lethal-injection-policy/>

Davis, Angela Y. (2005). *Abolition democracy: Beyond empire, prisons, and torture*. New York: Seven Stories Press.

Davis, Angela Y. (2003). *Are prisons obsolete?* New York: Seven Stories Press.

Davis, Angela Y. (1981) *Women, race, and class*. New York: Random House.

Deonna, Julien A., Raffaele Rodogno, & Fabrice Teroni. (2012). *In defense of shame: The faces of an emotion*. Oxford: Oxford University Press.

Eckert, Penelope & Russell Newmark. (1980). Central Eskimo song duels: A contextual analysis of ritual ambiguity, *Ethnology* 19(Jan.), pp. 191-211

Eze, Emmanuel Chukwudi. (2001). *Achieving our humanity: The idea of the postracial future*. New York: Routledge.

Fairbanks, Corine. (April, 6, 2014). Burn the mission down. *Unsettling America: Decolonization in Theory & Practice*. Accessed 4/19/15 from:

<https://unsettlingamerica.wordpress.com/tag/american-indian-movement/>

Fitz-Gibbon, Andrew & Jane Hall Fitz-Gibbon. (2015). *Welcoming strangers: The loving nonviolent (re)parenting of children in foster care*. (forthcoming)

Foucault, Michel. (1975). *Surveiller et punir: Naissance de la prison*. Paris: Editions Gallimard.

Foucault, Michel. (1978). *The history of sexuality. Volume 1: An Introduction*. New York: Pantheon.

Foucault, Michel. (1977). *Discipline and punish*. New York: Pantheon.

Gadamer, Hans-Georg. (1986). *The relevance of the beautiful and other essays*. New York: Cambridge University Press.

Gade, Christian B.N. (2011). The historical development of the written discourses on *ubuntu*. *South African Journal of Philosophy*, 30(3): 303-329.

Garcia, Michael. (2007). Jorge Luis Borges's "The lottery of Babylon" as allegory for the criminal justice system. In M. Nagel and S. Asumah (Eds.), *Prisons and punishment: Reconsidering global penalty* (pp. 125-135). Trenton, NJ: Africa World Press.

Gilligan, Carol. (1982). *In a different voice: Psychological theory and women's development*. Cambridge, Mass.: Harvard University Press.

Gilligan, Carol. (1977). In a different voice: Women's conceptions of self and morality. *Harvard Educational Review* 47(4), 481-517.

Ginzberg, Abby (dir.). (2014). *Soft vengeance: Albie Sachs and the new South Africa*. Ginzberg Productions.

Gobodo-Madikizela, Pumla. (2008). Working through the past: Some thoughts on forgiveness in cultural context. In P. Gobodo-Madikizela & C. Van Der Merwe (eds.), *Memory, narrative and forgiveness: Perspectives on the unfinished journeys of the past*. Newcastle upon Tyne: Cambridge Scholars Press.

Gobodo-Madikizela, Pumla. (2003). *A human being died that night: A South African story of forgiveness*. Boston: Houghton-Mifflin.

Guenther, Lisa. (2013). *Solitary confinement: Social death and its afterlives*. Minneapolis: University of Minnesota Press.

- Hamber, Brandon. (2015). *Dealing with painful memories and violent pasts: Towards a framework for contextual understanding*. Berghof Foundation. Accessed 4/10/15 from [www.berghof-foundation.org/handbook](http://www.berghof-foundation.org/handbook)
- Hegel, G.W.F. (1976). *The phenomenology of spirit*. Oxford: Oxford University Press.
- Honderich, Ted. (1970). *Punishment: The supposed justifications*. New York: Harcourt Brace Jovanovich.
- Howe, Adrian. (1994). *Punish and critique: Towards a feminist analysis of penalty*. New York: Routledge.
- Huntington, Patricia. (2000). Challenging the colonial contract: The Zapatistas' insurgent imagination. *Rethinking Marxism*, 12(3), 58-80.
- Jacquet, Jennifer. (2015). *Is shame necessary? New uses for an old tool*. New York: Pantheon.
- Jaggar, Alison. (2009). *L'imagination au pouvoir: Comparing John Rawls's method of ideal theory with Iris Marion Young's method of critical theory*. In A. Ferguson & M. Nagel (eds.), *Dancing with Iris: The philosophy of Iris Marion Young* (pp. 95-101). New York: Oxford University Press.
- James, Joy. (2005). Introduction: Democracy and captivity. In J. James (ed.) *The new abolitionists: (Neo)slave narratives and contemporary prison writings*. Albany: SUNY Press.
- James, Joy. (1996). *Resisting state violence: Radicalism, gender and race in U.S. Culture*. Minneapolis: University of Minnesota Press.
- Kaplan, Mark J. (2003). *Between Joyce and Remembrance*. Oley, PA: Bullfrog Films
- Katz, Richard. (1982). *Boiling energy: Community healing among the Kalahari Kung*. Cambridge, MA: Harvard University Press.
- Kershner, Stephen. (2012). *For torture: A rights-based defense*. Lanham, Md.: Lexington Books.
- King, Martin Luther. (1965). *The American dream*. Sermon delivered at Ebenezer Baptist Church in Atlanta, Georgia.
- Kipnis, Laura. (May 29, 2015). My Title IX investigation. *The Chronicle of Higher Education*. Retrieved 5/29/15 from: [http://chronicle.com/article/My-Title-IX-Inquisition/230489/?cid=at&utm\\_source=at&utm\\_medium=en](http://chronicle.com/article/My-Title-IX-Inquisition/230489/?cid=at&utm_source=at&utm_medium=en)
- Kipnis, Laura. (February 27, 2015). Paranoia strikes academe. *The Chronicle of Higher Education*. Retrieved 5/29/15 from: <http://chronicle.com/article/Sexual-Paranoia-Strikes/190351/>
- Kübler-Ross, Elizabeth. (1969). *On death and dying*. New York: Simon & Schuster.
- Leder, Drew with Charles Baxter, Wayne Brown, Tony Chatman-Bey, Jack Cowan, Michael Green, Gary Huffman, H.B. Johnson Jr., O'Donald Johnson, Arlando Jones III, Mark Medley, "Q", Donald Thompson, Selvyn Tillett, & John Woodland. (2000). *The soul knows no bars: Inmates reflect on life, death, and hope*. Lanham, MD, Rowman and Littlefield.
- Loick, Daniel. (2012). Strafe muss nicht sein. Zur Kritik des Strafrechts auf nationaler and internationaler Ebene. *Zeitschrift für Menschenrechte*, 1, 30-43.
- Louw, Dirk J. (2002). Power sharing and the challenge of ubuntu ethics. [uir.unisa.ac.za](http://uir.unisa.ac.za)
- Louw, Dirk J. (1998). Ubuntu: An African assessment of the religious other. *Paideia*. <http://www.bu.edu/wcp/Papers/Afri/AfriLouw.htm>

- Mackenzie, Mary Margaret. (1981). *Plato on punishment*. Berkeley & Los Angeles: University of California Press.
- Mangena, Fainos. (2009). The search for an African feminist ethic: A Zimbabwean perspective. *Journal of International Women's Studies*, 11(2), 18-30.
- Metz, Thaddeus. (2014): Harmonizing global ethics in the future: A proposal to add South and East to West, *Journal of Global Ethics*: 1-10.
- Metz, Thaddeus. (2010). "The reach of amnesty for political crimes: Which burdens on the guilty does national reconciliation permit? *Constitutional Court Review* 3, 243-270.
- Metz, Thaddeus. (2007). Toward an African moral theory. *The Journal of Political Philosophy*, 15(3), 321-341.
- Mooney, James. (1902/2014). *Myths of the Cherokee*. Project Gutenberg EBook
- Morris, Ruth. (2000). *Stories of Transformative Justice*. Toronto: Canadian Scholars Press.
- Murithi, Timothy. (June, 2006). Practical peacemaking wisdom from Africa: Reflections on ubuntu. *The Journal of Pan African Studies*, 1(4).  
[http://www.jpanafrican.com/archive\\_issues/june2006vol1no4.htm](http://www.jpanafrican.com/archive_issues/june2006vol1no4.htm)
- Nagel, Mechthild. (2014). Beyond the pale: Reflections on the vulnerability of black life in the U.S. In S. Asumah & M. Nagel (eds.) *Diversity, social justice, and inclusive excellence*. Albany: SUNY Press.
- Nagel, Mechthild. (2008). Prisons as diasporic sites: Liberatory Voices from the Diaspora of Confinement. *Journal of Social Advocacy and Systems Change*, 1 (March), pp. 1–31.
- Nagel, Mechthild. (2008). Women's rights behind walls. In V. Saleh-Hanna (ed.), *Colonial systems of control: Criminal justice in Nigeria* (pp. 223–244). Ottawa: University of Ottawa Press.
- Nagel, Mechthild. (2007a). The Role of Prisons in a Socialist Future, or: The Incurable Ethos of Incarceration. In A. Anton & R. Schmitt (eds.). *The Future of Socialism* (pp. 325-45). Lanham, MD: Lexington Books.
- Nagel, Mechthild (2007). Gender, incarceration and peacemaking: Lessons from Germany and Mali. In M. Nagel & S. Asumah (eds.) *Prisons and punishment. Reconsidering Global Penalty*. Trenton, N.J.: Africa World Press.
- Nagel, Mechthild. (2002). *Masking the object: A genealogy of play*. Lanham: Lexington Books.
- Nagel, Mechthild. (1998). Play in culture and the jargon of primordiality: A critique of Huizinga's *Homo ludens*. In M. Duncan, G. Chick, & A. Aycock (eds.). *Play and culture studies: Diversions and divergences in fields of play*, Vol. 1 (pp. 19-30). London: Ablex.
- Narayan, Uma. (1997). *Dislocating cultures: Identities, traditions, and third world feminism*. New York: Routledge.
- Nietzsche, Friedrich. (1966). The birth of tragedy. In *Basic writings of Nietzsche* (W. Kaufmann, trans. & ed.). New York: Random House.
- Nietzsche, Friedrich. (1993). *Thus spake Zarathustra* (Thomas Common, trans.). Amherst, NY: Prometheus Press.
- Nietzsche, Friedrich. (1996). *On the genealogy of morals*. (Douglas Smith, trans.). Oxford: Oxford University Press.

- Nixon, Rob. (1991). Mandela, messianism, and the media. *Transition* 51: 42-55.
- Nyasha, Kiilu. (2003). Black August international: A history of African freedom fighters. Retrieved 9/2/14 from:  
<http://www.hugopinell.org/Black-August-Intl-2003.htm>
- Onyango, Peter Ogola. (2002). A continuing study on sage philosophy: Emphasis on Jaramogi Oginga Odinga (pp. 239-244). *Thought and practice in African philosophy*. Nairobi: Konrad Adenauer Stiftung.
- Outwater, Anne, Naeema Abrahams & Jacquelyn C. Campbell. (2005). Women in South Africa: Intentional violence and HIV/AIDS: Intersections and prevention. *Journal of Black Studies*, 35,135-154.
- Patterson, Orlando. (1982). *Slavery and social death: A comparative study*. Cambridge, Mass.: Harvard University Press.
- Pepinsky, Hal. (2006). *Peacemaking: Reflections of a radical criminologist*. Ottawa: Ottawa University Press.
- Piché, Justin & Mike Larsen. (2010). The moving targets of penal abolitionism: ICOPA, Past, Present, and Future. *Contemporary Justice Review*, 13(4), December, 391-410.
- Pim, John Evans. (2013). Man the singer: Song duels as an aggression restraint mechanism for nonkilling conflict management. In Douglas P. Fry (ed.) *War, Peace, and Human Nature: The Convergence of Evolutionary and Cultural Views* (pp. 514-540). Oxford: Oxford University Press.
- Plato, *Phaedo*. In G.M.A. Grube (ed. and trans.) *Five dialogues*. Indianapolis: Hackett.
- Posel, D. & G. Simpson. (2002). *Commissioning the past: Understanding South Africa's Truth and Reconciliation Commission*. Johannesburg: Witwatersrand University Press.
- Praeg, Leonard. (2014). *A report on Ubuntu*. Scottsville: University of KwaZulu-Natal Press.
- Presbey, Gail. (1998). Who counts as a sage? Problems in the further implementation of sage philosophy. *Paideia*.  
<http://www.bu.edu/wcp/Papers/Afri/AfriPres.htm>
- Ramose, Mogobe B. (2003). The philosophy of ubuntu and ubuntu as a philosophy. In P.H. Coetzee & A.P.J. Roux (eds.), *The African philosophy reader: A text with readings, 2<sup>nd</sup> ed.* (pp. 230-238). New York: Routledge.
- Reticker, Gini (dir.). (2008). *Pray the devil back to hell*. Passion River Films.
- Riggs, Marlon (dir.). (1986). *Ethnic notions: Black people in white minds*. California newsreel.
- Ritchie, Chip. (2008). *Our spirits don't speak English: Indian boarding school experience*. Rich-Heape Films.
- Robinson, Paul H. (2011). The virtues of restorative processes, the vices of "restorative justice." In M. Tonry (ed.), *Why punish? How much? A reader on punishment* (pp. 353-366). New York: Oxford University Press.
- Ross, Rupert. (2014). *Indigenous healing: Exploring traditional paths*. New York: Penguin.
- Ross, Rupert. (1996). *Returning to the teachings: Exploring aboriginal justice*. New York: Penguin.
- Roth-Arriaza, (2004). Reparations in the aftermath of repression and mass violence.

- In Eric Stover & Harvey Weinstein (eds.), *My neighbor, my enemy: Justice and community in the aftermath of mass atrocity*. Cambridge: Cambridge University Press.
- Sachs, Albie. (1990/2014). *The soft vengeance of a freedom fighter*. Oakland: University of California Press.
- Saltz, Jerry. (2014). Best art shows of 2014. *Vulture*. Accessed 12/17/14 from: [http://www.vulture.com/2014/12/19-best-art-shows-of-2014.html?fb\\_action\\_ids=10152905808554267&fb\\_action\\_types=og.recommends](http://www.vulture.com/2014/12/19-best-art-shows-of-2014.html?fb_action_ids=10152905808554267&fb_action_types=og.recommends)
- Saunders, Trevor J. (1991). *Plato's penal code: Tradition, controversy, and reform in Greek penology*. Oxford: Clarendon Press.
- Schaefer, Carol. (2006). *Grandmothers counsel the world: Women elders offer their vision for our planet*. Boston: Shambhala.
- Scott, James C. (2010). *The art of not being governed*. New Haven, Ct.: Yale University Press.
- Scott, Jill, *Forgifting: Poetic and performative forgiveness in the South African Truth and Reconciliation Commission*. In P. Gobodo-Madikizela & C. Van Der Merwe (eds.), *Memory, narrative and forgiveness: Perspectives on the unfinished journeys of the past* (pp. 213-236). Newcastle upon Tyne: Cambridge Scholars Press.
- Sedgwick, Peter. (2013). *Nietzsche's justice: Naturalism in search of an ethics*. Montreal & Kingston: McGill-Queen's University Press.
- Shutte, Augustine. (2001). *Ubuntu: An ethic for a new South Africa*. Pietermaritzburg, South Africa: Cluster Publications.
- Smith, Andrea. (Summer/Autumn 2010). Indigeneity, settler colonialism, white supremacy. *Global Dialogue* 12(2). Accessed 12/17/14 from: <http://www.worlddialogue.org/content.php?id=488>
- Spelman, Elizabeth V. (2002). *Repair: The impulse to restore in a fragile world*. Boston: Beacon Press.
- Steinhoff, Uwe. (2013). *On the ethics of torture*. Albany, NY: SUNY Press.
- Sudbury, Julia. Ed. (2005) *Global lockdown: Race, gender, and the prison-industrial complex*. New York: Routledge.
- Thomas, Herbert. (2006) *The shame response to rejection*, 2<sup>nd</sup>. Ed. New York: Albabel.
- Thomas-Suh, Ruth (dir.). (2012). *Reject*. A Golden Rule Film.
- Tutu, Desmond. (1999). *No future without forgiveness*. New York: Doubleday.
- United States Department of Justice Civil Rights Division (2015). Investigation of the Ferguson police department. Department of Justice. Accessed 15 April 2015 from: [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)
- Vieille, Stephanie. (2011). Rethinking justice in transitional justice: An examination of the Māori conception and customary mechanism of justice" (2011). *University of Western Ontario - Electronic Thesis and Dissertation Repository*. Paper 340. <http://ir.lib.uwo.ca/etd/340>
- Villa-Vicencio, C. & Verwoerd, W. (Eds.). (2000). *Looking back, reaching forward: Reflections on the Truth and Reconciliation Commission of South Africa*. Cape Town: University of Cape Town Press.
- Die Welt* (Editorial). (Jan. 2, 2014). Der Mann, der versehentlich die Mauer öffnete. *Die Welt*. Accessed 12/23/14:

<http://www.welt.de/geschichte/article123464220/Der-Mann-der-versehentlich-die-Mauer-oeffnete.html>

Wilde, Oscar, July 7, 1896, *The ballad of Reading Gaol*. Accessed 10/31/14:

<http://www.gutenberg.org/files/301/301-h/301-h.htm>

Willet, Cynthia. (2014). *Interspecies Ethics*. New York: Columbia University Press.