

**JUDGMENT AND FORGIVENESS:**

**Restorative Justice Practice**

**and**

**the Recovery of Theological Memory**

by

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A thesis

presented to the University of Waterloo

in fulfillment of the

thesis requirement for the degree of

Master of Theological Studies

Waterloo, Ontario, Canada, 2007

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## AUTHOR'S DECLARATION

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

## ABSTRACT

This study explores the connections between justice understood biblically, and restorative justice. Restorative justice theory has argued that its foundational principles and its forms of practice draw directly from the taproot of biblical justice. This study argues that biblical justice as conceived by restorative justice is incomplete. More, the primary theological and biblical work in the field has not drawn the connections to the way restorative justice is practiced. This study argues that judgment and forgiveness are essential components of biblical justice that are missing from discussions of restorative justice. It concludes by drawing some of the implications of incorporating judgment and forgiveness for restorative justice practice by suggesting language that can be used by mediators.

Chapter 1 outlines the main principles of restorative justice and describes the ways in which these principles were initially grounded on a description of biblical justice. The ways in which recent writing about restorative justice has identified an apparent loss of vision are explored, a loss that flows from a theological grounding that has failed to adequately reflect the fulness of biblical justice.

Chapter 2 explores the main themes of biblical justice. Drawing connections between biblical understandings of peace, covenant, and justice, it discusses the ways in which restitution, vindication, vengeance, retribution, punishment, mercy, judgment, and forgiveness are all constitutive of a full understanding of biblical justice. Finally this understanding of justice is described as central to repentance and reconciliation.

Chapter 3 draws the connections between biblical justice and restorative justice. Arguing that biblical justice is a justice for the nations, that it is what justice ought to be, the role that judgment and forgiveness can play within restorative justice is described.

Chapter 4 connects the discussion to the work that mediators do in restorative justice. Offering potential language for restorative justice practitioners, it seeks to find ways for the biblical and theological discussion to influence their work with victims and offenders.

Chapter 5 draws the argument together, and identifies the necessity of restorative justice programmes remaining rooted in the church so as to retain the courage and creativity to continually experiment with new forms of practice.

## ACKNOWLEDGMENTS

No writing project is debt free, and this one is no exception. Participants in numerous training workshops have helped me refine both my conviction that restorative justice is the way justice ought to be and my thinking about what is missing in both the theory and the practice.

Connections with various community organizations committed to making healing justice normative, both in southern Africa and in North America, have convinced me that there must be mutual accountability between theorists and practitioners.

My advisor, Thomas Yoder Neufeld, has over the years been colleague, friend, teacher, and mentor. In the process of writing this thesis he has been all of these, and more. I am immensely grateful for his generosity with time, advice, and patience that enabled this project to see the light of day.

My family has lived with the seemingly endless process of completing my course work and writing this thesis with generosity and no small amount of laughter as self imposed deadlines came and went. The debt I owe to Arli Klassen, my wife, for the space to work at this project is incalculable. Over the years I have provided her with more than her share of opportunities to practice the discipline of forgiveness. Perhaps her willingness to do it right has been more of an impetus for this project than I fully appreciate. Our children, Alison and Jennifer, who have grown into accomplished young women during the years of my studies, have been a constant inspiration. What I want for them, more than anything, is a world in which *shalom* and *tsedeq* abound.

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## INTRODUCTION

### **1. Framing the Task**

The writing of the initial draft of this thesis began in the context of a public event and a liturgical date: the Pennsylvania Amish response to the shootings at Nickel Mines, and the Feast of St. Francis of Assisi.

On Monday October 2, 2006, a 32 year old milk truck driver entered an Amish school near Nickel Mines, PA, sent all except the female students outside, and barricaded the doors. He then shot each of the students, killing five and seriously injuring the other five, and then turned the gun on himself. On Wednesday, October 4, the Feast of St. Francis of Assisi, the news broadcasts began to carry stories of various acts of forgiveness by the Amish community toward the family of the shooter. It was a moment of remarkable witness and surprising connections.

The week brought television scenes of grieving Amish families gathered in front of the school, newspaper photographs of buggies on the way to funerals, the voices of leaders indicating that forgiveness would come, questions from Amish people wondering what God was telling them, the welcoming of financial assistance from the “English”, and the request that any mutual aid fund set up for the injured and their families include the family of Charles Roberts, the man who had shot the girls.

I watched a group hurt beyond words reaching out in love, compassion, and forgiveness to family members of the one who had caused the harm, and began to wonder: What might this witness mean outside the Amish community? What might this teach about the possibilities for the criminal justice system? I am grateful that the Amish community of Nickel Mines has

placed the question of forgiveness and reconciliation in the context of deep hurt on the public agenda.

On that October 4, the Feast of St. Francis, I attended a Eucharist service where I was reminded again of St. Francis' sustained call to care for the weak, the vulnerable, the hurt. I reflected on what it means to participate in the Eucharist, to receive the body and blood of the One of whom I claim to be a disciple, and who lived a life that embodied the vision of biblical justice, on the day that recalls a disciple who sought to embody that same vision. I began to wonder how that vision is, and might better be, embodied in the practices of the work I have been called to do.

## **2. Locating the Author**

For a number of years I have been working at the edges of the problems I address in this thesis as I have sought to find ways to think theologically about my own work as a conflict practitioner. I have not been actively engaged in a restorative justice mediation practice, though I have been active in training mediators for doing this type of work. Nevertheless my practice in other areas, primarily in working with separating couples, and conflicted congregations and workplaces, has raised a host of similar issues.

My first reflections on issues of restorative justice began in the context of my work in the late 1980's as a lawyer in the professional discipline department of the Law Society of Upper Canada. A number of investigations with which I was involved that led to disbarment caused me to wonder whether there might have been more restorative alternatives. More recently I have maintained an interest in restorative justice through training work and through close

association with organizations working in the field. I have observed a growing drift towards instrumental practice, and believe that my experience in mediation practice points towards some answers to the concerns I have with this drift. There is a strong need for a model that takes theological concerns seriously, frames a theologically grounded practice (even if implicit), and assists mediators in developing a reflective practice.

I come to this project, and to all my conflict work, as a committed Christian in the Mennonite tradition, who seeks to find ways to give expression in my work and my writing to a core belief that my calling is to follow in the way of biblical justice lived by Jesus.

### **3. Identifying the Audience**

Much of the writing on restorative justice that I will be surveying below operates within a Christian theological framework. Most of this theologically framed writing is less than clear about its intended audience. Documents such as the *MCC Occasional Papers* on criminal justice could arguably be assumed to be written for practitioners, and other interested people, rooted in Anabaptist theological commitments. Howard Zehr's *Changing Lenses* and Christopher Marshall's *Beyond Retribution*, both of which are published by Christian publishing houses, frame a theological argument. Marshall indicates that he is attempting to lay a theological foundation for Christians engaged in critique and reform of the criminal justice system.<sup>1</sup> Zehr begins his chapter on biblical justice with a statement that, for Christians, biblical justice is a more important model than that of community justice discussed

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<sup>1</sup> Marshall, Christopher, *Beyond Retribution: A New Testament Vision for Justice, Crime, and Punishment* (Grand Rapids: William B. Eerdmans Publishing Company, 2001), 33.

in the previous chapter.<sup>2</sup> Other than that, Zehr offers no further discussion about his intended audience.

The theological work in the field is often not clear how the theological grounding of restorative justice is actually relevant for a secular system. Is the grounding meant as a founding framework that is then to be ignored in practice? Is the grounding meant to be the basis on which Christian practitioners operate, or is the grounding meant also for practitioners who claim no allegiance to Christian faith? Is the grounding to be implicit or explicit in practice? Is it possible to speak of the foundational values of restorative justice without having them framed theologically? In other words, is restorative justice inherently and necessarily a theologically grounded enterprise?

Restorative justice is an important expression of biblical justice, and as such represents the way justice ought to be, whether or not one makes the case theologically. However, restorative justice that is not grounded in the biblical story loses the vitality of a specifically biblical understanding of justice.<sup>3</sup> Beyond the immediate academic audience for which this thesis is being written, I am interested in making a contribution to my own community of practice: those restorative justice practitioners who bring to their practice at least a nascent

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<sup>2</sup> Howard Zehr, *Changing Lenses: A New Focus for Crime and Punishment*, 3rd ed. (Scottsdale, PA and Waterloo, ON: Herald Press, 2005), 126.

<sup>3</sup> See Marshall, *Beyond Retribution*, 29-30 and Thomas Yoder Neufeld, 'In the Middle': *Biblical Reflections on Restorative Justice* (Unpublished Paper Presented to the MCC Restorative Justice Network, 2003), 14 ff. This does not mean that working out how to communicate this vitality is easy. "The dilemma Christians face, then, is not only deciding how Christian values derived from the eschatological experience of God's redemptive love and saving justice recorded in Scripture can be and should be applied in a mixed and fallen society, but also deciding how they are to be expressed in terms that are intelligible in the marketplace, yet faithfully and explicitly anchored in the distinctive claims of the Christian story." Marshall, *Beyond Retribution*, 30.

sense that their work is somehow connected to their Christian faith and who wish to draw the connections more clearly; and to those practitioners who, while not connecting their practice to a faith stance, are theologically literate and interested in the ways in which theological concepts might inform their practice.

#### **4. A Note on Language**

The language used to designate the parties to a criminal event is complex. Most writers use the customary language of “victim” and “offender”. However, “victim” and “offender” quickly become identities that shape people’s lives and locate them within the structures of the criminal justice system. People harmed by crime who see themselves as victims, and who are seen by others as victims, easily become trapped in a sense of their own weakness. People who commit crimes become offenders, and this identity follows them for much of their lives. Both “victims” and “offenders” play officially established roles within the system and these roles further contribute to the construction of identity.

Many who work with those harmed by crime prefer to speak of “survivors” rather than “victims.” Marie Fortune, who has written extensively on issues of sexual offending, argues that the word “victim” needs to be retained as it identifies an important truth—victims have no control over the harm that is done to them.<sup>4</sup>

There is some virtue in using language that is descriptive of the experiences of those harmed by the crime and those who have acted in harmful ways, instead of using language of

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<sup>4</sup> Marie M. Fortune, “The Conundrum of Sin, Sex, Violence, and Theodicy,” in *The Other Side of Sin: Woundedness from the Perspective of the Sinned-Against*, ed. Andrew Sung Park and Susan L. Nelson (Albany: State University of New York Press, 2001), 135.

identity. This begins to address several dynamics. First, the “harm” is an event that requires response: support and healing for those harmed, accountability and change on the part of those who act harmfully. Second, the identities shaped by crime are not fixed: those involved in, and affected by, the harmful act need not be locked into identities shaped by the event. This form of language also keeps those outside of the event from falling into the trap of identity creation.<sup>5</sup> Third, it recognizes that there are far more people and relationships affected than the single relationship between those directly involved in the event of harm.

I initially attempted to write using language that avoided the words “victim” and “offender,” but the resulting text was cumbersome. As a result I will continue, in most cases, to use the language of “victim” and “offender,” with the hope that the reader will keep in mind the issues of identity creation implicit in the language.

## **5. The Plan for the Project**

Restorative justice<sup>6</sup> in its mainstream, North American, and non-Aboriginal origins can be traced to the work of two Mennonites, Mark Yantzi and Dave Worth, connected to Mennonite Central Committee and to the Ontario parole/probation system. While RJ was initially rooted in the practicality of a Mennonite ethics-before-theology/theory style, there soon developed a body of reflection about RJ that grew out of the particularity of Mennonite peace theology. As

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<sup>5</sup> This question of identity is important in that identities such as “victim” and “offender” are in part constructed by the narrative of the event as told by the participants, by those with relationships to the participants, and by the CJS. Describing the events and the participants in different ways goes some way toward constructing the identities in different ways. It does not eliminate the harms caused by the events.

<sup>6</sup> From this point “restorative justice” will usually be abbreviated as “RJ.”

RJ has become accepted by the criminal justice system<sup>7</sup> it has largely become detached from its theological foundation, and even when it has not, there are significant gaps in the theological foundation.

This thesis will explore judgment and forgiveness, two theological themes that have been largely missing (at least as explicitly articulated), or inadequately developed, in RJ. Judgment and forgiveness are central to understanding biblical justice, and are central to the movement toward reconciliation, which lies at the heart of biblical justice. RJ that is grounded in biblical justice must therefore give central place to reconciliation, and thus to judgment and forgiveness. Using victim offender mediation as an example, connections between these themes and practice will be explored.

The biblical and theological work regarding RJ has, to date, been largely grounded in an understanding of biblical justice connected Old Testament understandings of peace (*shalom*<sup>8</sup>) and justice (*tsedeq* and *mishpat*<sup>9</sup>). As the theology of *shalom* and *tsedeq* has been developed in RJ, the discussion focuses around notions of wholeness, obligations created by crime, making things right, and healing. It is my argument that this is based on an inadequate understanding of biblical justice, as it leaves out concepts such as retribution, vindication, punishment, and judgment, all of which are part of a complete understanding of biblical justice. This truncation of the meaning of justice has been connected to a desire to describe RJ

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<sup>7</sup> From this point I will abbreviate “criminal justice system” as “CJS.” This abbreviation will be a reference to the current system as it exists.

<sup>8</sup> *Shalom* is usually translated as “peace.”

<sup>9</sup> *Tsedeq* is usually translated as “righteousness,” while *mishpat* is usually translated as “justice.”

as an alternative to the mainstream justice system, a system which RJ characterizes as being “retributive” and as having judgment as a central feature. This rejection of so-called “retributive justice” means that there has been little room for discussion of the retributive and punitive in biblical justice, and judgment has thus disappeared from understandings of RJ.

The ongoing development of RJ has seen a shift from a focus on reconciliation as goal to a focus on restitution as goal.<sup>10</sup> One of the consequences has been the disappearance of forgiveness as an explicitly articulated task in the process. Forgiveness was marginal in RJ theology from the beginning,<sup>11</sup> even though it is a crucial element in the process of reconciliation. Its occlusion virtually necessitates the absence of reconciliation as a goal, yet reconciliation is central to biblical justice. With the absence/loss of forgiveness from the RJ discussion, an important piece of biblical justice has gone missing.

My goal is to recover the theological memory of judgment and forgiveness as themes in biblical justice, with the aim of building the means to incorporate them into RJ practice. Chapter 1 will lay some of the foundation for this project by outlining the main themes of RJ, reviewing the primary theological documents that grounded RJ from its early days, and

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<sup>10</sup> Zehr, *Changing Lenses*, 286, notes that most programmes have shifted from calling themselves Victim Offender Reconciliation Programmes, to calling themselves Victim Offender Mediation Programmes.

<sup>11</sup> This is not to say that there is no literature on forgiveness. The primary foci of the RJ forgiveness literature are two-fold: processes of intra-personal change, and post-conflict societies and issues of transitional justice (of which South Africa’s Truth and Reconciliation Commission is the most common referent). The application of forgiveness as a relational process to situations of “ordinary” crime is rare. See the database of articles at Centre for Justice and Reconciliation, *Restorative Justice Online* [Website], Prison Fellowship International, 2007 [cited September 10, 2007], available from [http://www.restorativejustice.org/article\\_search\\_form](http://www.restorativejustice.org/article_search_form). See also the bibliography in *Handbook of Forgiveness*, ed. Everett Worthington, (New York: Routledge, 2005), 507-556. This bibliography lists approximately 750 items of which only 63 address the political and legal issues.

exploring the absences. Chapter 2 will explore the meaning of biblical justice, while Chapter 3 will articulate some of the ways that RJ gives expression to biblical justice. Chapter 4 will then draw the various themes together and put some practice flesh on the theological bones.

Keith Regehr  
The Feast of St. Francis of Assisi, 2007

## CHAPTER 1: LAYING THE FOUNDATIONS

### 1. What is Restorative Justice?

#### a. Key Principles

In the mid 1970's an experiment was launched in Kitchener, Ontario. At the request of Mark Yantzi, in a probation report submitted to Judge McConnell, two young men who had vandalized a large number of properties in Elmira, Ontario, had the opportunity to meet with those whom they had harmed.<sup>12</sup> For those outside the Aboriginal world, this story represents the beginning of RJ in North America. This case gave birth to Community Justice Initiatives of Waterloo Region, the first formal RJ organization in North America. Since then the movement has grown, so that the programmes in North America can be numbered in the hundreds.<sup>13</sup>

RJ as a response to criminal wrongdoing has several hallmarks that are usually framed in contrast to the mainstream justice system. These hallmarks were initially outlined by Howard

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<sup>12</sup> The story of “the Elmira Case” has been told numerous times. See, for example, Dean Peachey, “The Kitchener Experiment,” in *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. Martin Wright and Burt Galaway (London: Sage Publications, 1989), 14-26; *Satisfying Justice: A Compendium of Initiatives, Programs, and Legislative Measures* (Ottawa: Church Council on Justice and Corrections, 1996); Howard Zehr, *Changing Lenses*.

<sup>13</sup> Mark Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* (San Francisco: Jossey-Bass, 2001), xlv. As of 1999, Umbreit identified a total of 1,319 victim offender mediation programmes worldwide in addition to New Zealand which offers RJ in all jurisdictions. Of these, there are 26 programmes in Canada and 302 in the United States. There is a methodological problem with Umbreit’s list. He includes the New Zealand programme within the category of Victim-Offender Mediation (hereafter “VOM”). He is mixing categories, as New Zealand offers Family Group Conferencing, a form of practice that includes support people for the primary participants, with a focus on family members. A review of Umbreit’s sources for these numbers, all of which are his own previous work, do not reveal a definition of what he means by VOM. It is not clear whether he is using “VOM” as an alternative term that means the same as “RJ”, or whether he sees VOM as a subset of RJ. It remains unclear how many RJ programmes there are, how many VOM programmes there are, or how many programmes there are that use other forms of practice.

Zehr in *Changing Lenses*,<sup>14</sup> and since then have been referred to on so many occasions that they have achieved something of a consensus within the field.

i. Crime is a violation of people and relationships and creates obligations:<sup>15</sup>

In contrast to the CJS, which defines crime in terms of law breaking, RJ sees crime as first and foremost an act of harm against another person. It destroys people, disrupts relationships, and damages communities. The CJS operates from the premise that the debt owed by the offender is to the state, or to society more generally, a debt that is paid through the imposition of punishment.<sup>16</sup> RJ, on the other hand, is built on the premise that people who cause harm to other people have an obligation to repair the harm, so that the offender's primary obligation is a personal one to the victim.

The damage caused by crime extends well beyond the direct victim, to involve damage to extended networks of relationships and the broader community within which the participants live. One need only reflect on the cycles of damage to individuals, families, and congregations in the context of clergy sexual abuse to begin to have a sense of the extent of the damage that can be caused by crime. This wider damage exists even if there is no prior relationship between the victim and the offender, so that a series of break-ins within a community can

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<sup>14</sup> Zehr, *Changing Lenses*, 181 ff.

<sup>15</sup> The following outline of principles was developed from Zehr, *Changing Lenses*; Susan Sharpe, *Restorative Justice: A Vision for Healing and Change* (Edmonton: Edmonton Victim Offender Mediation Society, 1998); Daniel Van Ness and Karen Heetderks Strong, *Restoring Justice* (Cincinnati: Anderson, Publishing Company, 1997).

<sup>16</sup> There is a range of penalties available ranging from fines and incarceration to such alternative penalties as community service orders, and restitution payments. All of these can be seen as a variation on the themes of loss of freedom or financial penalties.

divide the community as it looks around for someone to blame. This damage must also be addressed.

ii. Justice meets the needs of those affected by crime

Restorative processes are focused on determining what needs and obligations have come into existence as a result of the offence. Once these have been identified, the task is to determine how the needs will be met and the obligations fulfilled, how things will be made right. RJ does not consider only the needs of the victim and the obligation of the offender, but also looks to the needs of the offender. The discussion of needs and obligations may focus on just the victim and the offender, or the process may address needs and obligations as they impact the broader network of relationships and the community.

iii. Justice seeks restoration and reconciliation

RJ seeks to reunite what has been divided. Victims and offenders are divided from each other, victims and offenders are each separated from their families, their network of relationships and their communities, and communities are divided against each other in the aftermath of crime. RJ seeks to undo these divisions by returning wholeness to the people involved, to their relationships, and to their communities. This focus on reuniting explains why many of the early programmes included “reconciliation” in their programme name.

b. The Genius of Restorative Justice

The CJS is in many ways a story of failure. It is a story of punishment that cannot achieve its

intended goal, of practices not in accord with the stated goals of the system, of offenders who recycle through the system repeatedly, of victims confused and ignored, of inability to respond to the mental health needs of many offenders, and of professionals who feel unable to respond creatively to the needs of those caught up in the system. RJ was a breath of fresh air that provided an opportunity to do justice in new ways. RJ recognizes the fundamental humanity of all those involved in the system, whether victims, offenders, advocates, or decision makers. It continues to offer a way to do justice that many people, both within and outside the system, immediately recognize intuitively as being somehow the right way.

RJ's focus on crime as violation of people, on making things right, and on reconciliation, are central to more ancient systems of responding to the harms of crime. The genius of RJ is that it taps into these ancient needs and responses, and finds structures, techniques, and methodologies that create opportunities to use these older practices inside the CJS. It does this by building connections between those one would expect would least want to have a connection—the victim and the offender.

## **2. Forms of Practice**

It would be easy to describe a linear history beginning with the Elmira case, through the numerous RJ programmes in North America, to the growth of practices elsewhere. This would, however, ignore the wide variety of other foundations for RJ, as well as the variety in the forms of implementing RJ. RJ in North America was first an Aboriginal practice that predated the arrival of non-Aboriginal people. RJ in Australia and New Zealand is similarly rooted in Aboriginal and Maori practice.

Victim Offender Mediation, the main form of practice that grew from the Elmira case, is only one form among many. A number of other practices are rooted in Aboriginal traditions, though many of these have been transformed over the years by non-Aboriginal engagement with the practices.<sup>17</sup> A large number of other practices have developed over the years.

Umbreit lists the following:

[...] community policing, family group conferencing, peacemaking circles, sentencing circles, community reparative boards that meet with offenders to determine appropriate sanctions, victim impact panels, restitution programs, offender competency development programs, victim empathy classes for offenders, victim directed and citizen-involved community service by the offender, community based support groups for crime victims, victim advocacy programs, and community-based support groups for offenders.<sup>18</sup>

While one might quibble about how restorative some of these practices actually are, this list makes clear that RJ is far more than VOM. Nevertheless, VOM is the most common form of RJ practice in mainstream urban Canadian society, and is often the first form of practice developed by a new programme.

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<sup>17</sup> The inter connections between aboriginal practices and mainstream practices are complex. Aboriginal RJ practices continued to operate to some extent after the coming of white people to North America, often flying under the radar of the mainstream Canadian legal system. This was similar to the ways in which traditional forms of governance survived in the shadows of the imposed governance structures of the Indian Act. With the rising interest in RJ outside Aboriginal communities, there has been increasing attention paid by non-Aboriginal people to these older Aboriginal methodologies. The complexity is that the justice systems in Aboriginal communities existed within a broader context of a relational society, but that society was deeply damaged by its interactions with dominant white society, the residential school system being one of the major sources of destruction.

Aboriginal justice practices suffered corresponding damage, often operating on the memory of the older relational social structures. When Aboriginal practices are abstracted out of their original context and used within the context of a dominant society without even the memory of the relational context needed to support these practices, the practices soon lose any semblance of their original significance. Dennis Sullivan and Larry Tifft, *Restorative Justice: Healing the Foundations of Our Everyday Lives* (Monsey, New York: Willow Tree Press, Inc, 2005), argue that RJ has to move out of its place within criminal justice to play a role in shaping a more relational society. It is only when RJ is rooted within this broader relational social context that it will fully be able to live out its promise.

<sup>18</sup> Umbreit, *Handbook*, xxxvii-xxxviii.

As Umbreit's list illustrates, RJ has become a significant force in the CJS as it moves into new jurisdictions, expands existing programming, and receives increasing support from mainstream actors.<sup>19</sup> Increasingly, programmes are willing to experiment with different models of practice, rather than being tied to VOM. Programmes in Boston and Minneapolis, for example, have been leaders in applying Aboriginal originated circle models to the urban context.<sup>20</sup>

### **3. Early Theological Reflections Regarding Restorative Justice**

The restorative justice experiment had, at the beginning, no explicitly worked out theological base, although early practitioners who were connected with Mennonite institutions saw their work partly in theological terms. The earliest development of a restorative model in Kitchener was rooted in the peacemaking of Mark Yantzi's Mennonite tradition.<sup>21</sup> For the early practitioners, RJ was connected to commitments to peace that were grounded in their theology. They saw God at work in the world, healing broken relationships, and they viewed RJ as one possible way in which this work of God could be extended. As Howard Zehr describes it, RJ became an "experimental plot" for testing the ideas about new conceptions of

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<sup>19</sup> A new RJ programme, for which I recently provided training services, is currently being developed in Windsor, Ontario. Despite grassroots efforts to establish a programme over the last decade, actual programming started when the Crown's office approached the local mediation centre asking if it could begin working at establishing a programme.

<sup>20</sup> Kay Pranis, Barry Stuart, and Mark Wedge, *Peacemaking Circles: From Crime to Community* (St. Paul: Living Justice Press, 2003).

<sup>21</sup> Peachey, "Kitchener Experiment," 15.

justice rooted in these theological affirmations.<sup>22</sup>

A series of monographs published by Mennonite Central Committee's Office on Criminal Justice opened up the earliest stages of theological reflection about RJ as a variety of individuals, primarily practitioners, began to look for ways to understand the biblical and theological premises for their work. In *Changing Lenses* Howard Zehr synthesizes much of the earlier work and articulates a biblical vision of covenant justice.

Several themes pervade the MCC monographs. First, there are very few references to New Testament theological strands in these writings. Wayne Northey does considerable work with New Testament materials in one of the monographs, picking up on themes such as Jesus' acts of forgiving wrongdoers and his refusal of retribution in parables such as the prodigal and the vineyard workers. Northey also reflects on the cross as the model for dealing with power, and on the atonement as a model for a non-retributive, non-retaliatory response to the wrongdoer.<sup>23</sup> Zehr, in *Changing Lenses*, speaks only briefly to justice in the New Testament with a discussion of the atonement, while his earlier MCC monographs overwhelmingly use the Old Testament to build an understanding of biblical justice.<sup>24</sup>

Vern Neufeld Redekop<sup>25</sup> uses Girard's theory of the scapegoating mechanism in sacrifice,

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<sup>22</sup> Zehr, *Changing Lenses*, 158 ff.

<sup>23</sup> Wayne Northey, *Justice Is Peacemaking: A Biblical Theology of Peacemaking in Response to Criminal Conflict* (Akron, PA: MCC US Office of Criminal Justice, 1992).

<sup>24</sup> Howard Zehr, *The Christian as Victim* (Akron, PA: MCC US Victim Offender Reconciliation Program, 1981); Howard Zehr, *Retributive Justice, Restorative Justice* (Akron, PA: MCC US Office of Criminal Justice, 1985); Howard Zehr, "Justice: Stumbling toward a Restorative Ideal," in *Justice: The Restorative Vision* (Akron, PA: MCC US Office of Criminal Justice, 1989), 1-14.

<sup>25</sup> Vern Neufeld Redekop, *Scapegoats, the Bible and Criminal Justice: Interacting with Rene Girard* (Akron, PA: MCC US Office of Criminal Justice, 1993).

and a reading of the New Testament through a Girardian lens that interprets the crucifixion as an act against sacrifice, to understand the way the CJS works. He uses Girard to describe the CJS as an example of a sacred scapegoating sacrificial system. This way of understanding the CJS leads him to a series of questions and observations about the system and the way it works. He identifies the violence of the CJS, the purpose of the CJS, the inordinate presence of minority groups caught up in the CJS, and the lack of support for victims, as issues that are opened for reflection by seeing the CJS through a Girardian interpretation of the New Testament. He does not, however, specifically address RJ.

Other than these examples, the biblical themes in these monographs are developed from the Old Testament. This may be because the supposed theological grounding for the mainstream approach to justice is found in Old Testament themes of retribution and the *lex talionis*. As a consequence these writers seek to correct what they see as a misreading of the Old Testament. It may also be that the Old Testament, with its significant emphasis on law, lends itself more easily to addressing the structures of justice systems. It is surprising that so few of these early writings would seek to frame the theological issues in specifically Christian, Christological, or Trinitarian terms.

The primary emphasis in the discussion of the Old Testament is on the linkage of *shalom* and *tsedeq*.<sup>26</sup> Already in 1981, in the first of the monographs, *The Christian as Victim*,

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<sup>26</sup> Where appropriate, I will use the Hebrew terms “*shalom*,” “*mishpat*,” and “*tsedeq*” rather than the English “peace,” “justice,” and “righteousness.” (“*Tsedeq*” is the masculine form of the noun, the feminine form being “*tsedaqah*”). I am doing this as a way to emphasize the distinctively social and relational significance of these words, as well as to hold up to attention the connections between these concepts. The monographs under discussion tend to use the Hebrew “*shalom*” quite extensively (though not exclusively) as a general replacement for “peace” while repeatedly using “justice” instead of “*tsedeq*” or “*mishpat*.” This is surprising, given that these documents are struggling to shape a new

Howard Zehr<sup>27</sup> argued that *shalom* is a much more important concept in the Old Testament than a justice structured around retribution. He sees a direct connection between *shalom* and *tsedeq*. *Tsedeq* is not concerned with punishment, retribution, or separation of the offender from the community; rather, it is aimed at the creation of *shalom*. *Tsedeq*, and by implication, criminal justice, must be oriented toward the repairing of relationships and the (re)building of community. The roots of some of the core principles of RJ can be seen in this connection between *shalom* and *tsedeq*.

*Shalom* and *tsedeq* cannot be thought about, described, or participated in, apart from the fact that they are the form that God's saving action takes. Northey links the Old Testament understanding of retribution, which is aimed at restoration and repentance, with the atonement as an initiative grounded in the love of God for God's enemies, and with justification as God's saving action that creates a new world.<sup>28</sup> All of these acts of God (retribution, restoration, justification, atonement) are grounded in God's covenant love.

Zehr treats covenant justice extensively in *Changing Lenses*. *Tsedeq*, he argues, cannot be separated from God's unfailing love, God's decisive action in saving Israel in the Exodus, or the human response to this love in faithful imitation of God's compassion through living Torah.<sup>29</sup>

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understanding of justice. An exception is Herman Bianchi, *Justice as Sanctuary: Toward a New System of Crime Control* (Bloomington: Indiana University Press, 1994), who uses "*tsedeka* [sic]" or "*tsedeka*[sic]-justice" to distinguish the model he is developing from the mainstream justice system.

<sup>27</sup> Zehr, *Christian as Victim*, 15.

<sup>28</sup> Northey, *Justice Is Peacemaking*.

<sup>29</sup> Zehr, *Changing Lenses*, 133 ff.

A second recurring theme is that crime represents a breach in community, a breakdown in relationships, a damaging of *shalom*. If *shalom* is a picture of a community at rest, a community in which every member is able to live a full life contributing to the community, then crime represents an obvious rupture. There is a deep alienation of victims from their community and from themselves through the fear, the unanswered questions, and the wondering if they could have done anything to prevent the harm.<sup>30</sup> There is a parallel alienation of offenders from their communities as the communities seek to protect themselves from further criminal wrongdoing.<sup>31</sup> This urge to self-protection alienates the community from itself as the impact of the crime ripples out. In each case, the result is the death of *shalom*.

Third, RJ literature sees the current shifts toward RJ as a return to the older ways of dealing with crime which had disappeared with the rise of absolute monarchy in England and Europe.<sup>32</sup> Wayne Northey<sup>33</sup> speaks of a paradigm shift in Western notions of justice that produced the current system.<sup>34</sup> This shift is symbolized by a replacement of the original

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<sup>30</sup> See, for example Zehr *Changing Lenses*, 15-32, for descriptions of the many ways that victims experience the harms of crime.

<sup>31</sup> See, for example, Zehr *Changing Lenses*, 33-44, for a descriptions of the damage crime does to offenders.

<sup>32</sup> See Zehr, *Changing Lenses*; Van Ness and Strong, *Restoring Justice*; John Pendleton, *More Justice, Less Law* (Akron, PA: MCC US Office of Criminal Justice, 1987).

<sup>33</sup> Northey, *Justice is Peacemaking*, 1-3.

<sup>34</sup> This discussion of paradigm shift is based on Thomas Kuhn's *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962) which deals with epistemology and patterns in the development of scientific knowledge. Kuhn argues that the dominant narrative of incremental development and change does not reflect the reality of how science works. His was in large part an argument that personal commitments to existing theory played a significant role in the development of knowledge, as well as that shifts develop from seeing the old data in completely new and unexpected

goddess of justice, a “smiling young maid with a friendly look,”<sup>35</sup> with the currently familiar image of the goddess, blindfolded, holding scale and sword. While the shift in Roman law and practice related to this new image of the goddess took place much earlier, the shift in England and northern Europe commenced in the 12<sup>th</sup> century as the state took an increasingly important role in the prosecution and regulation of criminal behaviour.<sup>36</sup> The increasingly important role of state power, the increase of punitive responses to crime, and the rise of the prison, all functioned as part of a new way of seeing and addressing crime.

Zehr views the insertion of state power into the CJS as connected to a theology grounded in a supposed Old Testament focus on retribution and punishing wrath.<sup>37</sup> This is seen as a misreading of the Old Testament. Reading the Old Testament in a way that leaves retribution in its proper place opens the way to a different approach to crime. This removes the

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ways. It is not entirely clear that the model applies to the development of justice practices. However the notion of paradigm shift has moved into the broader culture to mean something akin to simple rejection of the old consensus for a new consensus built on different data.

<sup>35</sup> Wayne Northey, *Restorative Justice: Rebirth of an Ancient Practice* (Akron, PA: MCC US Office of Criminal Justice, 1994), 1.

<sup>36</sup> Zehr, *Retributive Justice, Restorative Justice*, p 9. See also Van Ness and Strong, *Restoring Justice*, on the growth of royal power and the colonizing of criminal justice for royal ends. Though see also Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd ed. (New York: Vintage Books, 1995), who argues that the rise of the prison represents not a rise in state power but a shift from inscribing the power of the monarch on the body of the condemned through torture, to inscribing that power on the mind of the condemned through the disciplinary structures of a wide range of carceral institutions, of which the prison is just one. Other such institutions include schools, hospitals, and the military.

<sup>37</sup> See for example, Timothy Gorringer, *God's Just Vengeance* (Cambridge: Cambridge University Press, 1996), who argues that 19<sup>th</sup> century modes of punishment are deeply rooted in particular readings of Old Testament sacrifice and expiation and a satisfaction theory of the atonement. He suggests that these ways of understanding both the Old Testament and the atonement shaped the “structures of affect” of European culture and were thus instrumental in the development of Western punitive modes of justice.

theological ground for retribution and suggests that the rise of retribution as the primary mode of justice is itself an aberration. This shift in understanding enables a return to the original forms of practicing *tsedeq*.

This view of history is not without its problems. Not least of these is that ancient forms of *tsedeq* developed in a particular social and cultural context, one in which connections of kinship, clan, and community functioned in ways that are virtually incomprehensible in the current urban context of North America. It is unlikely that the older forms of reparative *tsedeq* could have survived the rise of the monarchies and the absolutist states of Europe, much as these forms struggled to survive the monarchy in Israel. It is thus an open question as to whether a return to RJ on a broad basis is possible in the modern urbanized nation state.

Zehr does not just critique current ways of doing justice. He articulates the foundational principles of RJ, as well as giving a fuller expression to the theological foundations for a Christian understanding of RJ. Central to his vision is the interrelationship of *shalom*, *tsedeq*, and covenant.

*Shalom*, understood as a condition of material and physical rightness, as right social relationship including the economic and political, and as moral and ethical straightforwardness, constitutes a unifying theme in the Biblical narrative and represents God's intentions for the world.<sup>38</sup> *Shalom* is rooted in covenant, a binding relationship that carries with it mutual responsibilities and creates the conditions for *shalom*. God's repeated acts of deliverance throughout the Old Testament, as well as God's action in Jesus, are rooted

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<sup>38</sup> Zehr, *Changing Lenses*, 130-132.

in God's faithfulness to the covenant and are an expression of God's desire for *shalom*.<sup>39</sup> *Tsedeq* is oriented toward *shalom*, and is itself rooted in covenant and is an expression of God's faithfulness. *Tsedeq* is not an abstract moral order. It operates, instead, to create the possibility of *shalom*, and is thus oriented toward making things right, to responding to needs, and to repairing the breach in *shalom* that is created by wrongdoing.<sup>40</sup> The adequacy of *tsedeq* is tested then, not by the right application of the right rules, but by outcomes. Has *shalom* been restored? Have the oppressed been set free?<sup>41</sup>

Zehr does not reject punishment as inconsistent with *tsedeq*, though he does reorient punishment. There is a tendency to focus on punishment as an end in itself, or to assume that, if properly applied, it *is* justice. For Zehr, punishment must be understood in the context of *shalom* and covenant *tsedeq*. Punishment is oriented toward vindication for the one harmed, and is a means of restoring the one who caused the breach of *shalom*.<sup>42</sup>

This model of biblical *tsedeq* is closely related to Zehr's model of RJ. The restorative focus on needs, on healing, on strengthening the community, on crime as violation of people and relationships, are all rooted in this vision of biblical, covenantal, *shalom/tsedeq*.

The MCC monographs, together with Zehr's book, began the process of building a vision of RJ rooted in a reading of the Old Testament, with a particular focus on *shalom* and *tsedeq*. What has happened to that biblical/restorative vision? In the intervening years has this been a

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<sup>39</sup> Zehr, *Changing Lenses*, 133-135.

<sup>40</sup> Zehr, *Changing Lenses*, 136-139.

<sup>41</sup> Zehr, *Changing Lenses*, 140.

<sup>42</sup> Zehr, *Changing Lenses*, 142.

guiding vision? Has the founding vision of RJ survived the increased acceptance of RJ by the CJS?

#### **4. What is Missing From Restorative Justice?**

##### **a. Loss of Vision**

Much recent RJ literature leaves the reader with a sense that something is missing, in contrast to the clarity of the vision inherent in the earlier writings. Northey and Zehr inspire the reader with a vision of a new way of responding to crime rooted in a clear biblical vision of *shalom* and *tsedeq*, although Zehr also warns of the potential loss of vision as RJ becomes more integrated into the CJS.<sup>43</sup> More recent writings carry, in part, a lament for a loss. A few examples will illustrate this.

Over the years Mark Umbreit has made a significant contribution to the field. He has done a major study of the development of RJ programmes around the world,<sup>44</sup> developed an important model for addressing serious crime,<sup>45</sup> and conducted a major study of the effectiveness of RJ programmes.<sup>46</sup> In developing a model for working with people involved in and affected by violent crime, Umbreit identifies a number of points of dissonance between

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<sup>43</sup> In an appendix to *Changing Lenses* titled “The Subversion of Visions” Zehr expresses deep concern that the reforming vision of RJ may be diverted or subverted from its original intent as it becomes more fully integrated into the CJS. Zehr, *Changing Lenses*, 232-236.

<sup>44</sup> Umbreit, *Handbook*.

<sup>45</sup> Mark Umbreit, “Violent Offenders and Their Victims,” in *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. Martin Wright and Burt Galaway (London: Sage Publications, 1989), 99-112.

<sup>46</sup> Mark Umbreit, Betty Vos, Robert Coates, and Katherine Brown, *Facing Violence: The Path of Restorative Justice and Dialogue* (Monsey, NY: Criminal Justice Press, 2003).

the values and theory of RJ and the way RJ is being practiced:

If crime is viewed as conflict between people and the importance of addressing the emotional needs of both victims and offenders is so central to the model, why does VORP<sup>47</sup> focus so much on non-violent property offences in which the emotional trauma experienced by victims is probably not as great as in crimes of violence?

If the model operates from a restorative rather than a retributive paradigm of justice, why is VORP so closely linked to the concept of restitution, which many regard as merely another form of retribution and punishment? (The Reagan administration, for example, supports restitution as part of its commitment to get tough with criminals.)

Even with the nearly exclusive focus on non-violent property crimes, if the VORP model is committed to viewing crime as conflict between people and reconciliation as the primary goal of the process, why is only one meeting lasting an average of one hour, with rare exceptions, conducted between the victim and offender, rather than scheduling follow-up meetings? Is it realistic to think that “reconciliation” will occur in such a brief encounter?

To what extent is the very goal of the model, that of reconciliation, more an ideological and symbolic value statement of its originators, rather than a grounded and realistic goal that has a clear meaning to victims and offenders participating in VORP?<sup>48</sup>

Umbreit has here identified many of the themes found elsewhere in the literature that flow from the loss of vision: focus on non-violent property crime, restitution as retribution, little opportunity for actual reconciliation as a result of time constraints, and reconciliation as symbol rather than programme goal. Other writers identify increased professionalization of the field of RJ, and a consequent de-emphasis on the necessity of seeing RJ as a way of life deeply connected to the character of the people who give guidance to the process, as potential dangers.<sup>49</sup>

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<sup>47</sup> “VORP” is the acronym for “Victim Offender Reconciliation Program.” It is used both as a programme name, and as a noun that sometimes (as Umbreit is doing here) seems to be equivalent in meaning to “restorative justice.”

<sup>48</sup> Umbreit, “Violent Offenders,” 102.

<sup>49</sup> See, for example, Carsten Erbe, “What Is the Role of Professionals in Restorative Justice?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 293-302, and Dave Dyck, “Are We -- Practitioners, Advocates -- Practicing What We Preach?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey,

Dennis Sullivan and Larry Tifft argue that growing state involvement of necessity shifts the nature of RJ away from its founding values into something else altogether:

The qualities required for successful restorative programs are least likely to be found in social arrangements that are hierarchical, punitive, and non-needs-based. It is no surprise, therefore, that as the state has begun to adopt the language and practices of restorative justice, it has begun to redefine these practices and to vitiate the original intent of restorative justice, which is to foster forgiveness and reconciliation in the most human way possible for all involved; those harmed, those who have chosen to harm, and all of us as the quality of our lives is affected by these harms and our responses to them.<sup>50</sup>

They argue that RJ practice, by its nature, requires a particular way of being for its practitioners. Faced as they are by the trauma of those harmed, and the complex needs this engenders, as well as the complex and contradictory motivations of those who caused the harm, practitioners must engage in “self confrontation” as well as struggling to transform the “power based self.”<sup>51</sup> Working with the multiple identities, traumas, weaknesses, strengths, and denials of those involved in and affected by criminal offending cannot be done well from a social location of power that sees the one providing assistance as inherently superior to the parties to the event. Those assisting the parties need to recognize that they carry the same strengths, weaknesses, identities, and denials as the parties do.<sup>52</sup> This is difficult for those who

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NY: Criminal Justice Press, 2004), 277-92.

<sup>50</sup> Sullivan and Tifft, *Restorative Justice*, 55.

<sup>51</sup> Sullivan and Tifft, *Restorative Justice*, 154 ff.

<sup>52</sup> Sullivan and Tifft, *Restorative Justice*, 154 ff. While this may seem to be overstated, this idea that the practitioner is as wounded as the so called “clients” is common in some branches of the literature. See for example David Doerfler and Jon Wilson, *Facilitating Victim-Centered Offender-Sensitive Dialogues in Crimes of Severe Violence*. (Austin, TX: Concentric Journeys/Just Alternatives, 2005). Doerfler and Wilson describe the facilitator as “wounded healer.” They set aside a significant portion of both pre-training preparation and training time for participants to reflect on their own identities as victim and offender.

operate from a professional location, especially for those who function within the state apparatus. There is a deep incompatibility between technical expertise and emotional detachment on the one hand, and on the other, valuing the emotional connectedness needed between the person guiding the process and the participants in the process.<sup>53</sup>

Writing in the European context, Heinz Messmer and Hans-Uwe Otto identify the “reparation agreement” as the major outcome of the RJ process.<sup>54</sup> This emphasis on restitution or reparation raises difficulties as many offenders experience restitution as punishment,<sup>55</sup> a perspective exacerbated by the fact that courts at times use community service orders and restitutionary payments as sentences. Similarly, victims often connect retribution and the desire for revenge with their desire for compensation.<sup>56</sup> A system designed for healing focuses itself on restitution as the sign of healing and this sign of healing becomes caught up in the punishment model of the mainstream system, and restoration becomes that which it opposed from the beginning.

In a system that has shifted toward implementing some forms of restorative practice,

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<sup>53</sup> Carolyn Boyes-Watson, “What Are the Implications of the Growing State Involvement in Restorative Justice?” in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 221.

<sup>54</sup> Heinz Messmer and Hans-Uwe Otto, “Restorative Justice: Steps on the Way toward a Good Idea,” in *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Perspectives*, ed. Heinz Messmer and Hans-Uwe Otto (Dordrecht: Kluwer Academic Publishers, 1992), 2. The European and British RJ movements use the word reparation in a way that is parallel to the North American use if the word restitution.

<sup>55</sup> Dean Peachey, “Restitution, Reconciliation, Retribution: Identifying the Forms of Justice People Desire,” in *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Perspectives*, ed. Heinz Messmer and Hans-Uwe Otto, (Dordrecht: Kluwer Academic Publishers, 1992), 552.

<sup>56</sup> Peachey, “Restitution,” 553.

situations that would formerly not have been dealt with through the criminal law are now drawn into the system in a process that has come to be referred to as “net-widening.”<sup>57</sup> A situation that might formerly have been dealt with by a police lecture about the stupidity of the behaviour and about what might happen next time may now be given life within the system: notes are made, files are opened, and the parties are expected to participate in a more formal restorative process. RJ may have the effect of expanding the reach of the CJS, with a consequent expansion of state power over the lives of more people. This is in contrast to the limiting of state power that is implicit in the notion of RJ returning responsibility for crime to the community.

One of the most eloquent statements on the shifts that have occurred in the RJ field comes from Harry Mika:

There is a popular view of restorative justice, idyllic and soothing, full of synergy. It will not be betrayed by data. There is lovely visioning, creative modeling, the angst of implementing, and finally courageous evaluating. The evolution of the great good thing. Another version of its appearance is less eloquent and reveals decidedly darker images. Here, restorative justice, disembodied and wrenched from its historical antecedents, including the social forces that give it meaning and character ... justice as specter. Restorative justice becomes the grist of the new justice wars on all the continents, a deep seated contesting of ownership between state, community and self interests, of marking and defending territory ... justice as combat. In the name of restorative justice, obscured by the deafening regaling in its name, practice soon becomes alienated from immutable values, diluted and fading away ... justice as entropy. With numbing predictability, instantly recognizable by the long suffering advocates of withered incarnations of alternative justice schemes, restorative justice rolls headlong into retributive impulses, appetites and concessions ... justice in harm’s way.<sup>58</sup>

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<sup>57</sup> Northey, *Restorative Justice*, p.16. See also Boyes-Watson, “Implications,” 215, Guy Masters, “What Happens When Restorative Justice Is Encouraged, Enabled, and/or Guided by Legislation?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 230.

<sup>58</sup> Harry Mika, “Introduction” in Sullivan and Tifft, *Restorative Justice*, xxi.

While this may be a disturbing vision, it captures the sense of anxiety at the edges of the RJ community, an anxiety that wonders if the vision has been lost, if RJ has been co-opted so that nothing is left of what was born in such hope.

b. The Demise of the Theological

As RJ has grown in respectability, the primary concerns in the literature have become effectiveness, the role of the state in grass roots processes, and the appropriate roles of those affected by the crime. The discussion of these issues is divorced from the founding theological vision articulated by Zehr and others. A review of the table of contents of the recent *Critical Issues in Restorative Justice*, edited by Howard Zehr and Barb Toews, shows that of the thirty-one essays in the book, only three directly address issues related to religious tradition and of these, two deal with indigenous traditions. The third addresses, primarily, the question of spirituality, while offering a few theological comments on *shalom* and covenant.<sup>59</sup>

An appendix to the book offers almost a hundred critical questions in six categories.

Under the section on “Indigenous and Religious Traditions”<sup>60</sup> six issues are identified, four of which connect to the relationship between RJ and indigenous traditions, while the remaining

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<sup>59</sup> Mike Batley, “What Is the Appropriate Role of Spirituality in Restorative Justice?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 365-78.

<sup>60</sup> There is an important side bar connected to this title, given the way it brings together the religious and the indigenous. This suggests a particular white or mainstream construction of the Indigenous as inherently religious. The recent shifts from a grounding of RJ in the particularity of Christian theology to a grounding in the particularity of indigenous traditions (especially by people who are not indigenous and are working with clients who are not indigenous) raises questions of cultural appropriation and the construction of what it means to be indigenous.

two raise more general questions of religious traditions.<sup>61</sup> Once again the emphasis is on the indigenous and the spiritual, rather than the theological. In the context of secularization, it makes a certain amount of sense to keep away from theological particularity. It is telling that for a movement with so much affinity to so many faith traditions,<sup>62</sup> a book on critical issues in the field pays so little attention to what any of these traditions have to offer practitioners. It is as if these religious traditions, let alone the biblical tradition, have nothing to say to the critical issues of RJ.

Christopher Marshall's recent book, *Beyond Retribution*,<sup>63</sup> offers a sustained theological exploration of the meaning of retribution and reconciliation in the criminal justice context. Marshall is both a theologian and an RJ practitioner, yet it is not clear how his theological reflections on retribution connect with the practice of RJ. In an article on best practices, Marshall, with others, offers a discussion of values underlying RJ and how those values are to be lived in practice.<sup>64</sup> There is no hint of the theological. It increasingly appears that the

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<sup>61</sup> The two issues are:

- What roots or affinities does RJ have in various world religions?
- Is the spiritual dimension of RJ getting enough attention? Can and should it when the state sponsors it?

Howard Zehr and Barb Toews, "Appendix: Critical Issues in Restorative Justice," in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 412-413.

<sup>62</sup> See for example *The Spiritual Roots of Restorative Justice*, ed. Michael Hadley (Albany: State University of New York Press, 2001) which includes essays on the religious roots of RJ in eight different religious traditions.

<sup>63</sup> Marshall, *Beyond Retribution*.

<sup>64</sup> Helen Bowen, Jim Boyack, and Christopher Marshall, "How Does Restorative Justice Ensure Good Practice?", in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 265-76.

theologians and the practitioners operate in silos, even when the roles are to be found in the same person. This may be overstating the case, but it seems that the primary orientation for practitioners is what works and the primary orientation of the theologians is getting the theory/theology right without concern for what the theology means in practice.

Vern Neufeld Redekop, on the other hand, is careful to link theory and practice in his recent book, *From Violence to Blessing*.<sup>65</sup> While not primarily focused on RJ, Redekop uses Girardian theory to develop a model for engaging in analysis and intervention in deep seated conflict.<sup>66</sup> While having some relevance for developing a biblical and theological understanding of RJ and RJ practice there are two problems. Redekop develops less a biblical than a Girardian understanding of conflict. While Girard came to his theory from a reading of the New Testament, he employs it as a universal explanation for all human culture. As a consequence, the use of the theory to explain social phenomena too easily sets aside the biblical text. Second, Girard's theory is built less on a biblical understanding of justice than on a re-consideration of the sacrificial system in light of Jesus death, which is seen as representing the end of the sacrificial system. Girard is interested in using this new understanding of the atonement to shape a theory for understanding violence within society, rather than using the biblical text directly as a resource for thinking about the meaning of justice.

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<sup>65</sup> Vern Neufeld Redekop, *From Violence to Blessing: How an Understanding of Deep-Rooted Conflict Can Open Paths to Reconciliation* (Ottawa: Novalis, 2002).

<sup>66</sup> See footnote 25 and the discussion regarding Redekop's use of Girard to analyze the CJS.

## 5. Judgment and Restorative Justice

### a. The Absence of Judgment

RJ literature pays virtually no attention to judgment, focusing instead on punishment while making it clear that punishment is contrary to the principles of RJ. If the goal of *tsedeq* is healing, then imposing a parallel harm on the one who caused the original harm can hardly be expected to achieve *tsedeq*. John Gehm suggests that a dualism has recently developed that divides justice into two approaches—a soft RJ approach and a hard retributive system.<sup>67</sup> If he is right, then RJ has separated itself from the hard system in order to preserve its distinctive approach to criminal wrongdoing, resulting in the punitive being expunged from RJ for fear of becoming a handmaid to the retributive. This can be seen in the discussion in the literature about whether there is room for victims who are vengeful,<sup>68</sup> about the dangers of reparation being used punitively,<sup>69</sup> and about the ways offenders experience reparations as punitive.<sup>70</sup>

The absence of judgment from the RJ literature follows a pattern similar to the way punishment is kept from playing a role in RJ. The CJS (especially as construed by RJ practitioners) is built on the notion of just deserts. Given that RJ rejects just deserts, it is

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<sup>67</sup> John Gehm, “The Function of Forgiveness in the Criminal Justice System,” in *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Perspectives*, ed. Heinz Messmer and Hans-Uwe Otto (Dordrecht: Kluwer Academic Publishers, 1992), 548.

<sup>68</sup> Mary Achilles, “Will Restorative Justice Live up to Its Promise to Victims?,” in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 65-74.

<sup>69</sup> Martin Wright, “Victim-Offender Mediation as a Step Towards a Restorative System,” in *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Perspectives*, ed. Heinz Messmer and Hans-Uwe Otto (Dordrecht: Kluwer Academic Publishers, 1992), 525-40.

<sup>70</sup> Peachey, “Restitution.”

understandable that the language of judgment would be largely absent from the RJ literature. What one sees instead is language of accountability for the harms caused, of healing what has been broken, and of problem solving. This is language that aims to stay away from the hardness of a word like judgment. Even a word with the hard potential of accountability is softened in a way that defines it to mean the act of repairing the harms.

b. The Cost of the Absence

One of the most significant costs of the rejection of judgment connects to the harm/healing discourse within RJ. This discourse is important: victims have been harmed by crime, and healing does need to occur. Language of healing, however, becomes problematic when it is used with regards to offenders. Healing is an important part of addressing the needs of offenders, given the history of victimization that many have themselves experienced. There is, however, a danger of forgetting the importance of moral culpability. The guilt of offenders is an important pointer towards their humanity, and it enables them to re-learn the roots of this humanity.<sup>71</sup> Crime creates the obligation to undo, to the extent possible, the effects of the crime. A focus on harm/healing, while turning away from judgment, will contribute to losing sight of the offender as moral agent.

c. The Hidden Presence of Judgment

The absence of the language of judgment does not mean that judgment is not present. One

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<sup>71</sup> Thomas Neufeld (now Thomas Yoder Neufeld), *Guilt and Humanness: The Significance of Guilt for the Humanization of the Judicial-Correctional System* (Kingston, Ontario: Queen's Theological College, 1982), 22.

way that the impulse to pass judgment has entered is through the theory of re-integrative shame.<sup>72</sup> The theory of re-integrative shame argues that engaging people of significance to the offender contributes to the offender developing a desire to change behaviour in an effort to not disappoint these people. In an RJ meeting that uses re-integrative shaming, offenders are forced to face the fact that people of significance to them view their behaviour negatively, an experience that is similar to that of judgment. Re-integrative shame theory seems to be an attempt to rescue the idea of judgment, and it may be this character of the theory that contributes to the controversy it has engendered. However, the judgment that is implicit in re-integrative shame may be more accurately described as disapproval or rejection, which must be distinguished from a more robust definition of judgment that combines the ascription of moral culpability with the refusal to reject the offender as human.

A second way in which judgment is present in RJ is through the opportunity for victims to speak of their harm, to tell the offender the story of their experience of the crime. Invariably this process is one where offenders are forced to hear about the pain they have caused and to face the ugliness of their behaviour. This is a process of lament, where the victim is able to speak in terms that are not foreign to the Bible's imprecatory psalms. Ruth Duck, in her reflections on the ways that churches fail in their liturgical welcome of victims, offers helpful

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<sup>72</sup> The primary text is John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge: Cambridge University Press, 1989). See also Nathan Harris and Shadd Maruna "Shame, Shaming and Restorative Justice: A Critical Appraisal," in *Handbook of Restorative Justice*, ed. Dennis Sullivan and Larry Tifft (New York: Routledge, 2006), 452-62; Gabrielle Maxwell and Allison Morris, "The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People," in *Restorative Justice: Theoretical Foundations*, ed. Elmar G. M. Weitekamp and Hans-Jurgen Kerner (Portland, OR: Willan Publishing, 2002), 267-84; Gabrielle Maxwell, and Allison Morris, "What Is the Place of Shame in Restorative Justice?," in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 133-42

insights on this process of lament, arguing that in contrast to confession as the cry of the sinner, lament is the cry of the victim. There are at least three acts that she suggests are part of lament: naming what has happened, expressing emotion, and condemning the actions of the offender in the name of *tsedeq*.<sup>73</sup> In these terms lament can be seen as a process of judgment.

A third way that RJ gives expression to judgment is in restitution, through which the offender repays the victim for the actual costs associated with the crime. For crimes where the victim did not have any out of pocket costs, or where the offender cannot afford to pay the financial losses, restitution frequently takes a symbolic form, such as community service or work done by the offender for the victim. Asking for, and receiving, restitution is a way of affirming that the victim is not to blame, that the offender is responsible for the harms, and that the offender has obligations to the victim. The fact that many offenders experience restitution as punitive and many victims experience it as vindication points to its character as judgment.

## **6. Forgiveness and Restorative Justice**

### **a. The Absence of Forgiveness**

The connection between RJ and forgiveness is much more complex than the connection to judgment. Prison Fellowship International maintains a website that contains the abstracts of

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<sup>73</sup> Ruth C. Duck, "Hospitality to Victims: A Challenge for Christian Worship," in *The Other Side of Sin: Woundedness from the Perspective of the Sinned-Against*, ed. Andrew Sung Park and Susan L. Nelson (Albany: State University of New York Press, 2001), 169-170.

close to 8000 books and articles published since 1970 on issues related to RJ.<sup>74</sup> A recent search of the database for articles on forgiveness produced a list of about 290 items. Of those about 60 address forgiveness in the context of post-conflict societies such as South Africa, Chile, and Rwanda. Excluding words related to faith, religion, or national reconciliation produces a list of about 180 items almost all of which have been published in the last 10 years. The majority of the material abstracted in the database is addressing issues of forgiveness from a non-religious perspective. One focus of this literature, as presented in the abstracts, is a debate over the appropriateness of expecting or valuing forgiveness in the RJ process. Many of the writers who address RJ theory from a victim perspective argue that expectations of forgiveness are oppressive to victims, and that these expectations have the effect of re-victimizing. On the other hand, autobiographical materials, in many cases written by victims of serious violent crime (family members of murder victims, victims of sexual assault), speak of the crucial importance of forgiveness to their own process of learning to live after the crime.<sup>75</sup>

In addition there is a debate in the literature about the nature of forgiveness. The primary question is whether forgiveness is an act of victims for their own psychological health, or whether forgiveness is an act of the victim for the benefit of the offender.<sup>76</sup> Opposition to

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<sup>74</sup> Centre for Justice and Reconciliation, *Restorative Justice Online* [Website], Prison Fellowship International, 2007, [cited September 10, 2007], available from [http://www.restorativejustice.org/article\\_search\\_form](http://www.restorativejustice.org/article_search_form).

<sup>75</sup> See also Howard Zehr, *Transcending: Reflections of Crime Victims: Portraits and Interviews*. (Intercourse, PA: Good Books, 2001) and J. A. Fourie, "The Psychology of Perpetrators of 'Political' Violence in South Africa—a Personal Perspective," *Ethnicity and Health* 5, no. 3/4 (2000): 283-89.

<sup>76</sup> This is a false dualism: forgiveness plays both these roles. It is primarily oriented toward reconciliation, and it achieves healing effects for both victim and offender through this orientation

expecting forgiveness is assuaged somewhat when forgiveness is seen primarily in relation to the victim. In this view, victims forgive in order to relieve themselves of the damage of their own hatreds, or to free themselves from the control that the offender and the offence have over their lives.

This debate over both the nature and appropriateness of forgiveness has had practical consequences. A review of materials used for training mediators who will be working with those affected by crime indicates that forgiveness is rarely addressed. Umbreit speaks of the need to avoid talk of forgiveness in order to prevent the imposition of expectations on the victim.<sup>77</sup> At a practical level this means that mediators have not had the opportunity to reflect on the nature of forgiveness, its legitimate place in RJ practice, or on how to respond to parties who express interest in forgiveness. The result is that parties may be kept from the full possibilities that RJ could offer them.

There is one exception to this pattern. David Doerfler and Jon Wilson have developed a model for mediating dialogue between victims and offenders in crimes of severe violence. Their training manual includes extensive grief inventories for both victims and offenders, each consisting of over 100 questions. These inventories are to be completed early in the preparation process and both specifically address the question of forgiveness. For offenders,

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toward reconciliation.

<sup>77</sup> Mark Umbreit, *Victim Sensitive Victim Offender Mediation Training Manual* (Minneapolis: Center for Restorative Justice and Peacemaking, University of Minnesota, 1998). See also Alva Orlando, June Maresca, Shadell Permanand, and Michele Sauve, *Victim Offender Mediation Training, Participant's Manual* (Toronto: Conflict Mediation Services of Downsview, 2004) and Eric Gilman, Christie Bowler, and Eric Stutzman, *Inviting Dialogue: Restorative Justice and Victim Offender Mediation Training Manual, Fifth Edition* (Langley, BC: Fraser Region Community Justice Initiatives Association, 2004).

the inventory inquires into their need for forgiveness and how they will respond if it is not offered, while victims are asked to consider their ability to forgive.<sup>78</sup> The manual, however, does not explore the meaning of forgiveness, assuming that both victims and offenders understand what it is.

b. Forgiveness and the Language of Healing

The closest cognate to forgiveness that can be found in RJ is the language of healing, as seen in the core RJ principle of “healing what has been broken.” Crime breaks the relationship between the victim and the offender, and this relationship needs healing. A focus on healing can open the door to a discussion of forgiveness, reconciliation, and how former protagonists can live together. Umbreit, however, describes healing in terms of such benefits for victims as expressing anger, getting new information, seeing remorse, gaining greater closure, and gaining control of their lives. The benefits for offenders include: learning the impact of their actions, building self esteem by making things right, representing themselves, having input in the plan, and gaining control of their life.<sup>79</sup> Healing is not framed in relational terms, nor is it connected with forgiveness.

When forgiveness does appear it is usually in the form of intra-personal, or psychological, healing. The primary meaning has to do with the victim abandoning resentment,<sup>80</sup> or releasing

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<sup>78</sup> Doerfler and Wilson, *Facilitating*.

<sup>79</sup> Umbreit, *Training Manual*, 63 ff.

<sup>80</sup> Suzanne Freedman, Robert Enright, and Jeanette Knutson, “A Progress Report on the Process Model of Forgiveness,” in *Handbook of Forgiveness*, ed. Everett Worthington (New York: Routledge, 2005), 392-406, and Messmer and Otto, “Restorative Justice.”

the self from being bound by the aftermath of the offence. When framed in this way, forgiveness has little relational content. Forgiveness becomes not a precursor to reconciliation, but functions primarily to relieve the self from its pain.

There are significant losses that flow from a focus on healing. First, victims lose the possibility for full freedom from the burden of the harms they have experienced. The harms experienced by victims are more than psychological. The anger, the pain, and the turning inward fracture their networks of relationships. Crime separates victims from their communities. While intra-personal healing may contribute to the possibility of rebuilding the network of relationships, healing the full range of harms requires moving beyond the intra-personal to empathy and reconciliation.

A second loss is that forgiveness in this intra-personal form has the effect of reducing moral action to the realm of therapy. Forgiveness is necessarily related to living the moral life in the context of a network of relationships. Forgiveness as an intra-personal process steps back from reflection on the moral and relational to reflection on the self, so that the focus is on developing the self as healthy rather than on developing the self-with-others. Forgiveness as precursor to reconciliation opens the possibility of strengthening the self-with-others in a way that strengthens communities.

### c. Hidden Forms of Forgiveness

RJ's core activity is direct conversation, a dialogue between the victim and the offender. The simple fact that the dialogue takes place may be a symbolic act of forgiveness. The willingness of the victim to meet with the offender frequently indicates a willingness to engage in

understanding and to find a way to relate in new ways. This cannot be assumed, as it may also be that a victim wishes to meet with the offender for strictly vengeful and retributive reasons. Nevertheless, where the victim enters the process, engages meaningfully with the offender, and pays attention to and takes seriously the offender's remorse, forgiveness may happen even if the word never crosses anyone's lips. Similarly, such acts as agreeing to accept a particular form of restitution, agreement that the offender make restitution by performing services for the victim, or agreement on how the victim and offender will treat each other if they meet on the street, may be coded expressions of forgiveness.

Judgment and forgiveness continue to have a hidden presence within RJ. If RJ is to fully live up to its potential as a new way of doing justice, this presence needs to become public and become a more explicit part of RJ practice. In order to play this role, they require more careful attention and require theological and biblical underpinning. The next chapter will explore biblical understandings of *shalom* and *tsedeq* in order to make clear the ways that judgment and forgiveness function as essential components of peace and justice, understood biblically.

## CHAPTER 2: DEFINING BIBLICAL JUSTICE

Understanding biblical justice, and setting the context for a consideration of judgment and forgiveness within that understanding, requires an exploration of several words from both the Old Testament and the New Testament. *Tsedeq* is the Hebrew word most frequently translated as “righteousness.” *Mishpat* is usually translated as “justice,” while *shalom* comes into English as “peace.” In the New Testament, *eirene* is the Greek word for “peace,” while *dikaiousune* is usually translated as “righteousness,” though it can also be translated as “justice.” A cluster of words related to forgiveness must also be considered. In Hebrew *salach* is translated as “forgive,” while the primary Greek words are *aphiemi* (to forgive, especially a debt), *charis* (gift, grace), and *charizomai* (to grace, to forgive). In addition, *hesed*, best understood as “covenant faithfulness,” though usually translated as “mercy,” provides a large part of the context within which the other Hebrew words are to be understood, as well as shaping New Testament understanding of the Greek words.

Complicating the discussion is the fact that the Old Testament words, in particular, keep shading into one another. As Perry Yoder argues (and as is suggested in the title of his book) the word *shalom* encompasses much more than peace. His subtitle describes *shalom* as “The Bible’s Word for Salvation, Justice and Peace.”<sup>81</sup> On the other hand the translation of *mishpat* and *tsedeq* as “justice” and/or “righteousness” collide with the modern tendency to correlate “justice” with current notions of court administered justice. Further, the translation of *tsedeq* and *dikaiousune* as “righteousness” can also serve an ideological purpose that masks the social

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<sup>81</sup> Perry B. Yoder, *Shalom: The Bible’s Word for Salvation, Justice and Peace* (London: Spire, 1989).

relational aspects of the Greek and Hebrew words.

*Tsedeq* and *mishpat* tend toward a much larger set of concepts than the English “righteousness” and “justice,” including vindication of the oppressed, acting in accordance with God’s order and in response to God’s acts of justice, saving action, deliverance, vengeance, and the preservation of *shalom*. More, a re-pointing of the Hebrew root *sh-l-m* to produce *shalam* or *shalem* (transliterations vary) results in a word field that includes concepts such as making amends, restitution, recompense, requital and restoration.

In order to understand the biblical roots for what has developed as RJ, it is important to move well beyond a description that unproblematically links RJ directly to *tsedeq* and *mishpat*. RJ has typically contended that *shalom* means well-being, that *tsedeq* requires meeting the needs and responding to the harms caused by an absence of *shalom* so as to restore well-being, that RJ is an approach to crime that seeks to give offenders the opportunity to make good the harms that they have caused, and that the RJ process stands clearly in the tradition of biblical *tsedeq*.<sup>82</sup>

This chapter will explore each of these words so as to shape an understanding of biblical justice. This foundation will lead into a discussion of judgment and forgiveness as aspects of justice.<sup>83</sup>

The words under discussion constantly shade into each other and support each other in

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<sup>82</sup> This equating of biblical justice with restorative justice, with both being distinguished from retributive and “contemporary justice” can be seen in two charts outlining the models in Zehr, *Changing Lenses*, 151-152 and 184-185.

<sup>83</sup> I am not a biblical scholar, and I have no facility in either Hebrew or Greek. This means that the discussion that follows will depend heavily on biblical scholars who have explored the meaning of biblical justice, with a particular leaning on those with an understanding and sympathy for RJ.

complex ways. This can be seen in Psalm 85:10<sup>84</sup> which links mercy, truth, justice, and peace together in a relationship that warrants repeated exploration:

Steadfast love (*hesed*: mercy, covenant faithfulness, loving kindness) and faithfulness (*ehmet*: truth, stability, truthfulness) will meet; righteousness (*tsedeg*: justice) and peace (*shalom*: well-being, order) will kiss each other.

This interplay will become clear in the following sections as a full orbbed understanding of biblical justice is developed.

## 1. *Shalom*

At its core, *shalom* describes the experience of wholeness or completeness, often in the context of community.<sup>85</sup> Swartley defines *shalom* as everything that is needed for healthy living and for everything to be in order as it ought to be.<sup>86</sup> Nicholas Wolterstorff suggests that the essence of *shalom* is the fundamental condition of human flourishing. Where human life in all its fullness flourishes there is *shalom*.<sup>87</sup> Claus Westermann mirrors this definition of

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<sup>84</sup> All quotes from the Bible are *New Revised Standard Version* (Division of Christian Education of the National Council of the Churches of Christ in the United States of America, 1989)

<sup>85</sup> There is a debate in the literature that considerably nuances these definitions: Is *shalom* primarily a state or condition, or is it a relationship? Is *shalom* focused on intra-group or inter-group relationships? Is the order of *shalom* a creation of the king or is the king judged by the vision of *shalom*? The discussion here is not significantly affected by the way that these questions are answered. See Willard M. Swartley, *Covenant of Peace: The Missing Peace in New Testament Theology and Ethics* (Grand Rapids: William B. Eerdmans Publishing Company, 2006), 27 ff, and Perry B. Yoder, "Introductory Essay to the Old Testament Chapter: *Shalom* Revisited," in *The Meaning of Peace: Biblical Studies*, 2nd ed., ed. Perry B. Yoder and Willard M. Swartley (Elkhart, IN: Institute of Mennonite Studies, 2001), 3 ff.

<sup>86</sup> Swartley, *Covenant of Peace*, 28.

<sup>87</sup> Nicholas Wolterstorff, "The Contours of Justice: An Ancient Call," in *God and the Victim: Theological Reflections on Evil, Victimization, Justice, and Forgiveness*, ed. Lisa Barnes Lampman and Michelle D. Shattuck (Grand Rapids: William B. Eerdmans Publishing Company, 1999), 116.

*shalom* when he states that “*Shalom* as wellness, as being intact, to be in order, signifies the well-being of the human in all imaginable aspects.”<sup>88</sup>

As one example among many, Isa 32:14-20 offers a vision of *shalom*. The passage builds a series of images flowing from the current desolation to a future of *shalom*:

[T]he palace will be forsaken, the populous city deserted; the hill and the watchtower will become dens forever, the joy of wild asses, a pasture for flocks; [...] the wilderness becomes a fruitful field, and the fruitful field is deemed a forest; [...] my people will abide in a peaceful habitation, in secure dwelling places, and in quiet resting places; [...] happy will you be who sow beside every stream, who let the ox and the donkey range freely.

This picture of security is a future oriented vision of a time of *shalom* that is coming after the current time of desolation. The city and the watchtower have become places of desolation, but there is a time coming when the desolate places will flourish, when homes will be places of security, and when the blessing of planting and of caring for livestock will not be affected by that which would otherwise be disaster. Desolation is symbolized by formerly productive places becoming the haunt of wandering livestock, yet *shalom* is characterized by the freedom to let one’s livestock roam freely.

Walter Brueggemann notes two ways in which *shalom* is explicated in the Bible. It is both a lived historical reality and a future vision. This distinction reflects the difference in the experience of *shalom* by the haves and the experience of *shalom* by the have-nots, the difference between *shalom* that holds things together in the here-and-now, that celebrates the stability and durability of the world, and *shalom* that disrupts things as they are and assures those who suffer that things will not always be this way:

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<sup>88</sup> Claus Westermann, “Peace (*Shalom*) in the Old Testament,” in *The Meaning of Peace: Biblical Studies*, 2nd ed., ed. Perry B. Yoder and Willard M. Swartley (Elkhart, IN: Institute of Mennonite Studies, 2001), 54.

For the precarious, *shalom* can be understood as the assurance that there is a hearer for our cries, an intruder and intervener who comes to transform our lives. For the well-off, *shalom* can be understood as buoyant confidence that the world will hold together because there is a maintainer and embracer who abides and certifies our existence in the face of all its disintegration. *Shalom* is not what we have to do; it is a gift from the intruding transformer and the certifying maintainer. Israel can say both “He comes,” and “Underneath the everlasting arms.”<sup>89</sup>

Nevertheless, for both, *shalom* represents the possibility and the hope, if not the reality, of the fullness of human life.

In the New Testament, *eirene* picks up and expands on this Old Testament understanding.<sup>90</sup> Erich Dinkler argues that Paul uses the word in a variety of ways: as a virtue, as security, as the opposite to disorder, and as the saving element of the kingdom of God, but that *eirene* is primarily to be understood as the abolition of enmity:

Peace as the abolition of enmity carries two dimensions of meaning, though with no clear separation between them; the reconciliation affects the God-human relationship, giving the reconciled person free access to God; and it leads to the unity in the church of those separated, thus tearing down the walls of enmity. This joining together of peace as gift of God in Jesus Christ to believers, which grants them access to God, with peace as humanity’s unity of racially separated peoples in the body of Christ, is constitutive, that is, foundational to the understanding of *eirene*.<sup>91</sup>

Jacob Kremer argues that Jesus proclaimed the *shalom* promised by the prophets.<sup>92</sup> Thus, in the story of Jesus as given by Luke, Mary’s response to the Annunciation, in a song that has

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<sup>89</sup> Walter Brueggemann, *Peace* (St. Louis: Chalice Press, 2001), 35.

<sup>90</sup> William Klassen, “Peace (New Testament),” in *Anchor Bible Dictionary, Vol V*, ed. David Freedman (Toronto: Doubleday, 1992), 208; Erich Dinkler, “Eirene -- the Early Christian Concept of Peace,” in *The Meaning of Peace: Biblical Studies*, 2nd ed., ed. Perry B. Yoder and Willard M. Swartley (Elkhart, IN: Institute of Mennonite Studies, 2001), 72; Jacob Kremer, “Peace--God’s Gift: Biblical-Theological Considerations,” in *The Meaning of Peace: Biblical Studies*, 2nd ed., ed. Perry B. Yoder and Willard M. Swartley (Elkhart, IN: Institute of Mennonite Studies, 2001), 22.

<sup>91</sup> Dinkler, “Eirene,” 95.

<sup>92</sup> Dinkler, “Eirene,” 72, and Kremer, “Peace,” 30.

become known as the Magnificat (Luke 1:50ff), describes the humbling of the mighty and the gift of good things to the hungry. With these words, Mary links the promised child to the *shalom* vision of a God who intervenes on behalf of those who suffer. Similarly, in Luke 4:18-19, Jesus explicitly takes up the *shalom* vision of Isaiah 61, saying that he has been anointed “to bring good news to the poor [...] to proclaim release to the captives and recovery of sight to the blind, to let the oppressed go free, to proclaim the year of the Lord’s favor.” Jesus then announces the fulfillment of this scripture.

In Matthew 11, John the Baptist, who is in prison, sends his disciples to ask Jesus if he is “the one who is to come.” Jesus instructs them to report that “the blind receive their sight, the lame walk, the lepers are cleansed, the deaf hear, the dead are raised, and the poor have good news brought to them.”<sup>93</sup> In other words, John will know that Jesus is the expected one because he is producing *shalom*.

*Shalom* is virtually impossible to understand apart from *tsedeq* and *mishpat*. Isaiah 32:17 gives assurance that “The effect of righteousness (*tsedaqah*) will be peace (*shalom*); the result of righteousness (*tsedaqah*) will be quietness and trust forever.” Psalm 72 presents a vision which links *shalom* and *tsedeq* as the task of the king. God is asked to give the king *mishpat* and *tsedeq* so that he can dispense them to the people, particularly to those who suffer. Prosperity for the people comes when the king acts as dispenser of *tsedeq* and *mishpat*, vindicating the needy, and crushing the oppressor, and from this role flows the king’s own flourishing. The king, who is *tsaddiq*, creates the conditions for a peaceful and prosperous life, for the flourishing of the righteous. Other kings and peoples will serve the king, and this

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<sup>93</sup> Matthew 11:5.

too is *shalom*, since the bringing of tribute means that the people can continue to flourish without fear. Deliverance, compassion, and salvation from need, from death, from oppression, and from violence all flow from the righteous king. Prosperity and the flourishing of crops are connected with the righteous king, yet all this is from the hand of God. *Shalom*, *tsedeq* and *mishpat* each produce the conditions for the other, each reinforces the other, and all are the work of God done through the king who acts in accordance with *mishpat* and *tsedeq*.

Perry Yoder makes this point through the use of the term “*shalom*-justice.” Since justice is primarily oriented toward the oppressed, its purpose is creating *shalom* where it is absent:

Since material want, oppression, and lack of moral integrity are the opposites of *shalom*, God’s acts of justice reverse a non-*shalom* situation. God’s justice makes things right by transforming the status quo of need and oppression into a situation where things are as they should be. This transformation forms the basis of *shalom*. Given this connection between God’s justice and *shalom*, we shall call this *shalom* justice. And where *shalom* justice is missing, there *shalom* is missing. *Peacemaking means working for the realization of shalom justice which is necessary for the realization of shalom.*<sup>94</sup>

Nicholas Wolterstorff similarly argues that God’s love of *tsedeq* flows from God’s desire of *shalom* for everyone:

God’s love for justice is grounded in God’s love for each and every one of God’s human creatures. God’s love for a human being consists of God desiring *the good* of that being – the good for a human being in turn being understood as the *shalom*, the flourishing, of that human being. Justice consists of enjoying those goods – those components of one’s *shalom* – to which one has a legitimate claim. So of course God loves justice – and hates injustice [...]. God’s love of justice is grounded in God’s longing for the *shalom* of God’s creatures and in God’s sorrow over its absence.<sup>95</sup>

What follows from this understanding of the connection between *shalom*, *mishpat* and *tsedeq* is that an exploration of the meaning of *tsedeq* and *mishpat* must take place in the context of a

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<sup>94</sup> Yoder, *Shalom*, 33-34. Emphasis in the original.

<sup>95</sup> Wolterstorff, “Contours,” 118. Emphasis in the original.

deepening of the meaning of *shalom*.

## 2. *Tsedeq* / *Mishpat* / Justice

Justice in the Old Testament, like *shalom*, is a “thick” concept. It encompasses such a large set of ideas that at times it seems impossible to fully describe its meaning. *Tsedeq* is variously understood as acquittal, deliverance, judgment, justice, saving help, vindication, order in creation, and community loyalty, while *mishpat* is understood as vindication of the oppressed, requital, vengeance, or the retributive justice of God. If *tsedeq* is used in a possessive form (i.e., David’s *tsedeq* or Israel’s *tsedeq*) the word can be described as the response to God’s *tsedeq*, in the sense of acting according to God’s order in all areas of life.<sup>96</sup>

### a. Justice in Covenant Relationship

Covenant frames the basic relational nature of *tsedeq* and *shalom*.<sup>97</sup> *Tsedeq* and *shalom* operate in a relational context, rather than being abstract principles governing society. *Shalom*, instead of being an interior feeling of peace, is a way of structuring a community so that humans can flourish in the context of relationships structured by God’s commitment to uphold and protect the community. Similarly, *tsedeq*, rather than being a set of rules that govern behaviour, is rooted in the commitment of God to ensure that human life can flourish as *shalom* would have it. God’s action in support of *tsedeq*, *mishpat*, and *shalom* is partial in

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<sup>96</sup> J. Scullion, “Righteousness (Old Testament),” in *Anchor Bible Dictionary, Vol V*, ed. David Freedman (Toronto: Doubleday, 1992), 724-36.

<sup>97</sup> On covenant justice see Zehr, *Changing Lenses*, 126-157.

the sense of being on behalf of the oppressed who, as God's covenant partners, are the beneficiaries of *hesed*. More, *tsedeq* is not just rooted in *hesed*, *tsedeq* is *hesed*. The one who is *tsaddiq* is the one who acts to support relationships and the social order: "Generally, the righteous person in Israel is the one who preserves the peace and wholeness of the community by fulfilling the demands of communal living."<sup>98</sup>

This covenantal framing of justice is not restricted to the Old Testament. Jesus ministry involved the constant expression of *tsedeq* combined with an expansion of the scope of the covenant, such that God's *hesed* extended well beyond the confines of Israel. The parable of the good Samaritan<sup>99</sup> would have been shocking to its hearers because those characters in the parable who would have been expected to be *tsaddiq* were not, and the Samaritan, one clearly outside the covenant for the hearers, is the one person who is *tsaddiq*. The parable thus opens the way to reflection on who is *tsaddiq* and who is part of the covenant.

Mark's Gospel is in part structured around Jesus' movement between the Jewish and the Gentile sides of the Sea of Galilee in a way that could be described as Jesus stitching the two sides together.<sup>100</sup> The healing of the Gerasene demoniac, as well as other healings, take place on the Gentile side of the Sea.<sup>101</sup> Jesus feeds large crowds on both sides of the Sea, 5,000 on

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<sup>98</sup> John E. Toews, *Romans: Believers Church Bible Commentary* (Scottsdale, PA and Kitchener, ON: Herald Press, 2004), 401.

<sup>99</sup> Luke 10:25-37.

<sup>100</sup> See Ched Myers, *Binding the Strong Man: A Political Reading of Mark's Story of Jesus*, (Maryknoll: Orbis Books, 1988). The instances of Jesus calming storms in the crossing of the Sea occur when going from the Jewish to the Gentile side, suggesting that this stitching together was opposed by cosmic powers, and that Jesus had the power to overcome them.

<sup>101</sup> Mark 5:1-20, Mark 6: 53-56.

the Jewish side<sup>102</sup> and 4,000 on the Gentile side.<sup>103</sup> In each case these acts are signs that extend *tsedeq* as expressions of God's *hesed* to those thought to be outside the covenant.

Paul, in writing to the Romans, describes the righteousness of God as rooted in covenant, a covenant that is expanded to include the Gentiles. John Toews argues that Romans 1:16-18 is the thesis statement for the letter. For Paul salvation is available to all, Jew and Greek. The righteousness of God is revealed through the faithfulness of "the righteous one", that is, Jesus the messiah, which produces faithfulness of both Jew and Greek in response.<sup>104</sup> Paul makes a similar argument in Ephesians 2 about the stitching together of Jews and Gentiles in a new humanity, though there he uses the language of "peace" rather than "righteousness." Given the essential connection between *tsedeq*, the word behind Paul's use of *dikaiosune* in Romans, and *shalom*, the word behind his use of *eirene* in Ephesians, there is little difference in the fundamental point.

b. Justice as Restitution/Reparation/Recompense/Repayment

Repointing *sh-l-m* as *shalem* and *shillum*<sup>105</sup> produces a word field that encompasses concepts such as restitution, reparation and recompense. Exodus 22: 1, 3-7, 9, 11-15 contains a series of statements setting out a variety of ways in which an offender is to "make restitution" for a theft of, or damage to, another's property, or to "make good" the damage or loss, or to "make

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<sup>102</sup> Mark 6:30-44.

<sup>103</sup> Mark 8:1-10.

<sup>104</sup> Toews, *Romans*, 54 ff.

<sup>105</sup> *Shalem* is the verb form and *shillum* is the noun form.

amends.” In each case the word used is *shalem*.

Isaiah 59:17-18 offers a description of the linkage between *tsedeq* and *shalem*. The passage describes a situation where justice is absent. In response God comes armed: “He put on righteousness (*tsedaqah*) like a breastplate, and a helmet of salvation on his head; he put on garments of vengeance (*naqam*) for clothing, and wrapped himself in fury as in a mantle.” Once he arrives God repays (*shalem*) “wrath to his adversaries, requital to his enemies.” Repayment is in the form of recompense for one’s behaviour. Those who have undone *mishpat* will receive *shillum* of wrath and retribution at the hands of the divine warrior who comes wearing *tsedeq*, salvation, vengeance and fury. Here *shalem* wears a punitive cloak meant to inspire repentance.

This is distinguished from the use of *shalem* in Joel 2:23-25. Following a description of a return of prosperity, the passage quotes God as saying “I will repay (*shalem*) you for the years that the swarming locust has eaten [...] my great army, which I sent against you.” With the return of prosperity and *tsedeq* that follows from repentance, God promises repayment for the lost years, years that were lost because of God’s prior punishing action. *Shalem* then, means the undoing of the harm of punishment. In an act of mercy for the offender, peace (*shalom*) is the repayment (*shillum*) that God offers.

In Psalm 62:12 *shalem* implies repayment for behaviour whether good or evil: “For you repay (*shalem*) to all according to their work.” The broader context of the Psalm is dependence on God for salvation, on God as a refuge. Because of God’s strength and covenant loyalty (*hesed*), people receive *shillum* for what they have done. This repayment is an expression of mercy, of God’s faithfulness to the covenant. Contrast this with Jesus’

statement at the end of the parable of the labourers in the vineyard in Matthew 20:14-15. The vineyard owner pays each of the workers the same whether they started work at dawn or near the end of the day. The owner's response to those who complained is "I choose to give to this last the same as I give to you. Am I not allowed to do what I choose with what belongs to me?" Jesus' commentary is "So the last will be first, and the first will be last." Here the payment is one of generosity, not premised on what was done but on the generosity of the giver.

c. Justice as Vindication/Vengeance

Addressing the ways that biblical justice incorporates themes of vengeance and vindication requires attention to *naqam*, the Hebrew word for "revenge." Wayne Pitard argues that *naqam* has a generally positive connotation when it is used in legal contexts,<sup>106</sup> where it often carries the sense of punishment. Thus Exodus 21:20 says "When a slaveowner strikes a male or female slave with a rod and the slave dies immediately, the owner shall be punished (*naqam*)."<sup>107</sup> George Mendenhall notes that in the earlier sources *naqam* refers to the legitimate exercise of sovereignty. This use in Exodus is a case where the legal system would generally fail to respond adequately, there being no one likely to speak for a dead slave, so the law provides for community response as a legitimate exercise of sovereignty in the absence of any other source of vindication.<sup>107</sup>

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<sup>106</sup> Wayne Pitard, "Vengeance," in *Anchor Bible Dictionary Vol VI*, ed. David Freedman, (Toronto: Doubleday, 1992), 786.

<sup>107</sup> George Mendenhall, "The 'Vengeance' of Yahweh," in *The Tenth Generation: The Origins of the Biblical Tradition* (Baltimore: Johns Hopkins University Press, 1973), 90-91.

Sometimes *naqam* has the connotation of just recompense. In Jeremiah 15:15 the writer calls on God to “remember me and visit me, and bring down retribution (*naqam*) for me on my persecutors.” God’s messenger is threatened because of obedience, so *naqam* is the act of God to punish those who would endanger him.<sup>108</sup> In Jeremiah 11:20, the writer calls on God to execute *naqam* against his enemies: “But you, O LORD of hosts, who judge (*shophet*) righteously (*tsedeq*), who try the heart and the mind, let me see your retribution (*naqamah*) upon them, for to you I have committed my cause.” God’s retribution against the enemies of the writer is an act of righteous judgment, a usage that is very similar to vindication. *Naqam* is here rooted in God’s sovereignty and in the covenant to ensure that God is not merely a symbol and support of those with power and wealth.<sup>109</sup>

*Tsedeq* is justice on the side of those who are oppressed. One of the ways that *tsedeq* plays itself out is as vindication, a form of saving action. When God acted to redeem Israel from Egypt this was an act of vindication, a turning of the tables. This is especially important as the oppression of Israel would normally have been seen as proof of their sinfulness, as the oppressed often see themselves as oppressed for some wrong they have committed. When God acts to save, this signifies, among other things, that the suffering has been unwarranted.

*Mishpat* is built from the same root as *shophet*, which, in its verb form, carries such connotations as decide, judge, rule, govern, vindicate, and deliver, though it is generally

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<sup>108</sup> Mendenhall, “Vengeance,” 97.

<sup>109</sup> Mendenhall, “Vengeance,” 98.

translated as “judge.”<sup>110</sup> Psalm 7:8 provides an example of the use of *shophet* as vindication: “The LORD judges the peoples; judge (*shophet*) me, O LORD, according to my righteousness (*tsedeq*), according to the integrity that is in me.” The verses that follow include images of God being indignant every day, of whetting a sword and preparing deadly weapons for use against the unrepentant, and of those who conceive evil falling into their own pit and having their violence descending on their own heads. God acts against the enemies of the writer in an act of justice, and in doing so, God judges according to the righteousness of the writer. Judging in this sense, built as it is on God’s decree of justice, acts on behalf of the one calling for God to act. Further, judging carries here the connotation of vindication in the sense of clearing of blame so that in the act of *shophet* the one who is judged is assured that he/she is in fact *tsaddiq*.

Such a use of *shophet* leaves the impression of a simple dualism of those who are evil and those who are *tsaddiq*. Walter Brueggemann argues that the Old Testament does not recognize this kind of dualism, using the Israel/Egypt story to disrupt this vision of simple moral coherence. In the early part of the story it would be easy to see that Egypt is the victor by virtue of being right, while Israel is oppressed by virtue of having sinned. This view, however, fails to take into account God who says that Israel has been sinned against and who vindicates Israel:

Everything depends, in this narrative, upon having three parties to the plot. And everything for Israel depends upon Yahweh demonstrating that he is stronger than Pharaoh [...]. And when there are only two characters, it is simple enough to imagine, with ideological deftness, that Pharaoh is in the right, and that Israel gets what it has

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<sup>110</sup> Temba Mafico, “Judge, Judging,” in *Anchor Bible Dictionary, Vol III*, ed. David Freedman, (Toronto: Doubleday, 1992), 1104.

coming to it [...]. Everything depends upon the third character, in order for the Exodus event to be dramatically visible. The Exodus narrative exists in order to assure that Yahweh will be a palpable and available third party in the life and imagination of Israel. It is this third party that makes it possible to see Israel not as sinner, but as sinned-against by Pharaoh. What Israel requires as sinned-against, is not guilt, punishment, and repentance, but an intervening advocate who can and will work justice, and extricate Israel from this unwarranted suffering.<sup>111</sup>

There are, however, two issues raised by *mishpat* as vindication: the reversal of the pattern of moral coherence, and the question of vengeance. God, having acted on behalf of Israel, can be seen to be reversing the moral coherence implicit in the original arrangement of oppressor and oppressed. At the beginning of the story it seemed that Egypt was right, and Israel had sinned, while at the end of the story it has become obvious that this is reversed: Israel is in the right and Egypt has sinned. God is on the side of Israel, and God can be counted on to defend Israel from its enemies, yet it is this reversal of moral coherence that the prophets railed against.

Jeremiah 29:15-19 illustrates the rejection of this reversal. Chapter 29 reports the words of the “prophet” Hananiah, who had prophesied the early return from exile in Babylon, including the return of the items stolen from the temple, and the return of the king. Hananiah is predicting the return to things as they were before the exile, with the temple and monarchy returned to their places in the life of Judah. He is predicting that God will again vindicate. The response of God through Jeremiah is that Judah will not be vindicated; instead, the scourging will continue.

Simple moral coherence in either direction does not determine God’s action; vindication

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<sup>111</sup> Walter Brueggemann, “The Shrill Voice of the Wounded Party,” in *The Other Side of Sin: Woundedness from the Perspective of the Sinned-Against*, ed. Andrew Sung Park and Susan L. Nelson (Albany: State University of New York Press, 2001), 30.

cannot be counted on. God's people cannot just say: "We are oppressed, we are in need, and we can count on God to show up and rescue us." On the other hand, there is a clear assertion in the Bible that God will act in accord with covenant faithfulness, as God's *hesed* can never be counted out. However, *hesed* comes from a God who decides to exercise mercy as God chooses. God's act of vindication in freeing Israel from bondage in Egypt was also an act of mercy and unwarranted favour flowing from God's free choice to bestow that mercy.

*Tsedeq* as vindication is not the same as vengeance or vindictiveness. If vindication is an act of judgment that assures the victim that the oppressor is in the wrong, then revenge is a form of justice that both assures the victim that the oppressor is in the wrong, and causes harm to the offender. This harm is for the sake of justice; it is an act of punishment that seeks to create the possibility of change. Vindictiveness, on the other hand, is the desire to cause harm for the sake of harm, rather than for the sake of justice.

Vindication and vengeance are also present in the New Testament. In Romans 12:17-19 Paul tells his readers, "Do not repay anyone evil for evil, but take thought for what is noble in the sight of all. [...] Beloved, never avenge yourselves, but leave room for the wrath of God; for it is written, 'Vengeance is mine, I will repay, says the Lord.'" As this passage suggests the New Testament pattern calls on God's people to practice forgiveness,<sup>112</sup> and to leave vengeance/vindication/punishment to God. 2 Thessalonians 1:5-10 places this vindication in the context of persecution endured and the coming day of glorification when trouble is payed back to those who trouble the readers: "For it is indeed just of God to repay with affliction those who afflict you, and to give relief to the afflicted as well as to us, when the Lord Jesus is

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<sup>112</sup> See for example Matthew 5:38-48 and Luke 17:3-4 both of which call for repeated forgiveness.

revealed from heaven with his mighty angels in flaming fire, inflicting vengeance on those who do not know God [...].<sup>113</sup>

In Romans, Paul links the *dikaiosune* of God, the faithfulness of God, and the wrath of God. Paul's description of the righteousness of God revealed through the faithfulness of the righteous one is followed by a reference to the wrath of God revealed against ungodliness. Romans 1:16-18 places the description of the righteousness of God revealed through faithfulness between a description of the gospel as "the power of God for salvation to everyone who is faithful,"<sup>114</sup> and a description of the wrath of God "against all ungodliness and wickedness of those who by their wickedness suppress the truth." Both salvation and judgment here are expressions of covenant faithfulness and of *dikaiosune/tsedeq*.

Revelation 18 and 19 recount a vision of the fall of Babylon. An angel announces, "Fallen, fallen is Babylon the great! It has become a dwelling place of demons, a haunt of every foul spirit [...]." God's people are called to leave Babylon "so that you do not share in her plagues; for her sins are heaped high as heaven [...]." Then judgment is announced: "Render to her as she herself has rendered, and repay her double for her deeds; mix a double draught for her in the cup she mixed." The fall of Babylon is repayment for her evil deeds. While those who became wealthy trading with Babylon mourn her fall, there is rejoicing in heaven, as a great multitude exults over Babylon's fall: "Hallelujah! Salvation and glory and power to our God, for his judgments are true and just; he has judged the great whore who

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<sup>113</sup> 2 Thessalonians 1:6-8.

<sup>114</sup> Most translations read "everyone who has faith", but see Toews, *Romans*, 54-57, who uses "faithfulness" in his translation.

corrupted the earth with her fornication, and he has avenged on her the blood of his saints. [...] Hallelujah! The smoke goes up from her forever and ever.” God’s just judgment vindicates God’s saints and wreaks vengeance on Babylon.

d. Justice as Retribution/Punishment

Vengeance is rooted in the desire that offenders experience their “just deserts,” to get what is owed to them. Frequently this takes the form of a simple reciprocation of harms. This desire for just deserts can be seen in the attraction of “eye for an eye” calculations, calculations that are rooted in the *lex talionis* from which is derived “retaliation.” The *lex talionis* is given expression in such texts as Exodus 21:23-25. The context is a series of rules establishing punishment for various offences. Where a pregnant woman has been seriously injured by men who are fighting, “you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.” The law of retaliation establishes the principle that the offender is to suffer the same injury as the victim.

This desire for just deserts can be seen as rooted in the need for moral balance as offenders pay a moral debt. Vengeance and justice are clearly related in the desire for the world to be made right by achieving this balance.<sup>115</sup> There is an important connection between vengeance and punishment. Vengeance is vulnerable to returning harm out of all proportion to the harm suffered. It is this at which the *lex talionis* is aimed, ensuring the balance of the moral universe through reciprocal harms, but no more than reciprocity: only an eye for an eye,

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<sup>115</sup> This is illustrated in the title of Susan Jacoby, *Wild Justice: The Evolution of Revenge* (New York: Harper and Row, 1983).

not two eyes for an eye. Vengeance as the balancing of harms is one aspect of justice. What distinguishes retributive punishment in the CJS from vengeance is that it operates through carefully structured institutions that separate the calculus of the balance from the raw emotion of the victim.

It is this balancing of harms in order to balance the moral universe that is rejected by RJ practitioners and theorists. For that reason they also reject the punitive and retributive in the Bible. This is necessitated by the very construction of the paradigms: RJ is defined in contradiction to retributive justice; RJ is defined as equivalent to biblical justice; therefore, biblical justice cannot be retributive. In most of the writing that links RJ to biblical justice the retributive elements in the biblical text are ignored. Christopher Marshall is the notable exception.<sup>116</sup> In order to seriously connect RJ to biblical ground, this retributive material needs to be addressed, and allowed to shape RJ.

Recompense, requital, vengeance, and vindication point to this punitive and retributive function of *tsedeq*. Returning to Isaiah 59, it is significant that repayment to God's enemies comes with God wearing righteousness, salvation, vengeance, and fury. As Yoder Neufeld describes it, *mishpat* and *tsedeq*, as God's messengers, had been abused, and now they return as the armour of the divine warrior, as victims active in their own vindication.<sup>117</sup> The repayment described here is not an act of undoing harm by the offender. Harm has been done, and those causing the harm must receive their due. Similarly, in Jeremiah 11:19-20 the writer

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<sup>116</sup> Marshall, *Beyond Retribution*, 162 ff.

<sup>117</sup> Thomas Yoder Neufeld, *'Put on the Armour of God': The Divine Warrior from Isaiah to Ephesians* (Sheffield: Sheffield Academic Press, 1997), 37.

asks God to wreak vengeance on those who plotted against him. This is a primal desire for retribution that seeks a moral balancing. Note also that in both these passages God's retributive acts are partial as God takes up the cause of the one who has suffered, and rebalances the moral universe.

In Revelation 6:9-11 the martyrs call on God for this rebalancing: "Sovereign Lord, holy and true, how long will it be before you judge and avenge our blood on the inhabitants of the earth?" The martyrs are promised that the retribution they have called for is coming.<sup>118</sup> However, they must exercise patience, as the time is not yet ready. This requirement of patient waiting for God to bring judgment and retribution is reflected in 2 Thessalonians 1:5-10, referred to previously. The readers are told that the repayment that is coming has to wait for the day "the Lord Jesus is revealed from heaven with his mighty angels in flaming fire." In Romans 2 Paul speaks of the judgment of God on both Jew and Greek, referring to Psalm 62:12, where repayment according to deeds is a function of *hesed*, where each will receive repayment according to their deeds.

e. Justice as Judgment

"Judgment" is one of the possible translations of *mishpat*, a word that is also often translated as "justice." Justice and judgment are thus closely related. Justice is partial to the oppressed as it is an expression of the need of the oppressed for *shalom*. Similarly judgment is an act of God for the oppressed and against those who oppress. God executes judgment in order to call

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<sup>118</sup> Mendenhall ("Vengeance," 103), connects this usage to the OT use of *naqam* as the legitimate exercise of God's sovereignty.

Israel to return, so that *mishpat* as judgment is the precursor to repentance (*shub*). In this sense, judgment is also an act of hope.

Isaiah 19 illustrates this pattern. The passage opens with judgment against Egypt. In response the idols of Egypt tremble, and the hearts of the Egyptians melt at the prospect of God's coming. The plans of the Egyptians are confused, the Nile dries up, the crops fail, and the economy collapses. In a disturbing image Egypt is described as staggering "in all its doings as a drunkard staggers around in vomit," shuddering "with fear at the uplifted hand that the LORD Almighty raises against them." In response Egypt will cry and God will rescue them: "The Lord will make himself known to the Egyptians, and the Egyptians will know the Lord on that day, and will worship with sacrifice and burnt offering, and they will make vows to the Lord and perform them. The Lord will strike Egypt, striking and healing; they will return to the Lord, and he will listen to their supplications and heal them."

God both strikes and heals, and strikes in order to heal. Note the pattern in the text: judgment is for some past act; judgment creates the possibility for change; in the absence of judgment, Egypt would have continued as before, not knowing it was confused; and, now that judgment has come, Egypt has a choice. In response Egypt, rather than staggering aimlessly, turns and acknowledges God, and God turns, rescues, and heals.

Judgment presumes a prior act of wrongdoing to which the judgment is applied. God's judgment of Israel is a response to the choices that Israel has made. For example, in Isaiah 59:18, God is said to repay wrath and retribution to God's enemies "according to their deeds." In this act of repayment and recompense, as judgment for past action, God's action is in response to particular actions by those who are God's enemies.

The call to repentance, the call to turn, implies that both the original turning away and the ability to turn back are choices. In this sense then judgment and the subsequent call to repentance imply a moral agency on the part of those who are judged. Doing what is subject to judgment, as well as the ability to choose to do what is right, are under the control of the one being judged. This does not mean that choices are completely unconstrained. Choices are subject to a wide variety of social, economic, and psychological constraints, as well as the constraint of divine will. This constraint on choice can be seen in the story of Israel's liberation from Egypt. In the early part of the plague narratives Pharaoh's heart becomes hard after his magicians repeat Moses' actions by "their secret arts" (Exodus 7:13, 22). In Exodus 8:15, Pharaoh is said to harden his heart when there is relief from the plague of frogs. By the time the plague of locusts arrives Pharaoh is ready to let Israel leave, but God hardens Pharaoh's heart. This is repeated in Exodus 11:10 after Moses warns Pharaoh of the final plague, and again in Exodus 14 after Israel departs from Egypt.

This divine constraint on choice is not arbitrary. In Romans 9:17 Paul uses this story as part of an extended discussion of God's freedom to show mercy as God chooses. Paul is arguing that God can be trusted to be merciful. Mercy is the other side of the coin from judgment, and God's use of, and judgment of, Pharaoh show that God can be trusted to be merciful to God's covenant partner. God's desire to be merciful to Israel required judgment of Pharaoh.

2 Samuel 24 provides another example. God provokes David to count the people and David conducts a census. God then offers him the choice of three punishments (one against himself and two against the people) for the sin of conducting the census. David, refusing to

choose, throws himself into the hand of God who is merciful, rather than into the hands of humans. A pestilence strikes the people, killing 70,000, and David finally takes responsibility, saying, “I alone have sinned and I alone have done wickedly; but these sheep, what have they done? Let your hand, I pray, be against me and against my father’s house.” The passage suggests that the punishment/judgment of God falls despite the fact that David’s act is said to be done at God’s provocation.<sup>119</sup> David’s original decision to fall on the mercy of God is disingenuous, for he fails to acknowledge his sin in conducting the census. It is as if he had shrugged his shoulders, and in a failure of moral clarity about his own behaviour, said to God, “You are merciful, you choose.” It is finally the judgment causing the deaths of the innocent that inspires David to acknowledge that he had sinned.

Responsibility in the context of constrained choice reappears in Romans 6:19, where Paul highlights the interplay of choice and slavery: “For just as you once presented your members as slaves to impurity and to greater and greater iniquity, so now present your members as slaves to righteousness for sanctification.” While acknowledging the reality of slavery—either to sin or to righteousness (*dikaioisune*: justice)—Paul affirms that people have choice regarding which master controls them, but having chosen the master, the way is constrained, leading to either greater wickedness or to holiness.

Judgment then, points to responsibility within the context of constrained choice. Despite the constraints that prevent a full living of *shalom* and *tsedeq* this life is a matter of choice within the constraints. The one who chooses a life of wickedness is subject to judgment and is

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<sup>119</sup> See the other telling of the story in 1 Chronicles 21 where Satan is said to provoke David to conduct the census. The alternative source to the provocation doesn’t change the consequences for David or Israel. Neither does it change David’s choices about taking responsibility.

therefore faced with a new choice—to continue the old way of life or to enter a new life of *shalom* and *tsedeq*.

Judgment is implicit in the love of *tsedeq*. To love *tsedeq* is to hate injustice, and to speak judgment is to speak a word of truth regarding sin and injustice. Such *tsedeq* is on the side of the weak, the harmed, the dispossessed, and the traumatized. When God liberated Israel from Egypt, God's act of salvation for Israel was not experienced by the Egyptian army at the Reed Sea as liberation. It was experienced as judgment that led to death. When God freed Israel, God judged Egypt and found it wanting.

The corollary of this act of judgment/liberation, however, is in the way the story was remembered in Israel. God uses the fact that Israel had been in bondage in Egypt, and that God had freed them, to remind them that they are to treat the alien, the poor, the widow, and the orphan with *tsedeq*.<sup>120</sup> In Deuteronomy 9 God reminds Israel that they are receiving the land not because they are righteous, but because the nations in the land are wicked. There was however, a further obligation that flowed from the command to remember God's act of judgment/liberation. That was the obligation to struggle against injustice:

The memory of the Exodus contains two related lessons. The first is that of *deliverance*: Act in favor of the weak and oppressed just as God acted in your favor when you were weak and oppressed. The second is the lesson of unbending retributive *justice*: Oppose oppressors and punish them as God opposed and punished those who have oppressed you. The two lessons are closely linked: the second is portrayed as the consequent obligation of the first. In an unjust and violent world, deliverance of the downtrodden requires uncompromising struggle against their oppressors – or so the memory of the Exodus

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<sup>120</sup> The formula calling Israel to remember that they had been slaves in Egypt and that God had redeemed them appears in Deuteronomy 5:15, 15:15, and 24:18.

suggests.<sup>121</sup>

This suggests not only that Israel had the obligation to act justly, but that they also had the obligation of acting in judgment.<sup>122</sup> The memory of the Passion affirms and modifies the memory of the Exodus, so that forgiveness stands “between the complete disregard of justice and the relentless pursuit of justice.”<sup>123</sup>

The fact of judgment could have led Egypt to rightly remember its acts of injustice. The fact that the judgment of the plagues contributed to the hardening of the heart of Pharaoh, and that the judgment of the final plague on the first born led not to repentance, but ultimately to the Reed Sea, indicates that judgment may not always have that effect.

The Joseph narrative points to another way of understanding judgment. When Joseph’s brothers go to Egypt to buy food, Joseph engages in a series of acts that raise for them their memories of what they had done to Joseph. The brother’s responses are recorded in Gen 42:21: this is happening because we killed Joseph. The act of judgment enabled proper remembrance.

In Matthew 25, Jesus tells three parables of judgment in the kingdom of God, the parable of the ten virgins, the parable of the talents, and the parable of the sheep and the goats. In each of these parables there is a division between those who are prepared for the coming of the kingdom and those who are not. In the parable of the sheep and goats the issue that is subject

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<sup>121</sup> Miroslav Volf, *The End of Memory: Remembering Rightly in a Violent World* (Grand Rapids: William B. Eerdmans Publishing Company, 2006), 107.

<sup>122</sup> Volf, *End of Memory*, 111.

<sup>123</sup> Volf, *End of Memory*, 111.

to judgment is whether *tsedeq*, has been practiced and *shalom* created. This judgment is described as a final eschatological event in which those who are *tsaddiq* are welcomed into the kingdom, while those who are not are cast out.

Understood biblically, judgment entails a constellation of characteristics. Judgment is an essential aspect of *tsedeq* and it is essential to building *shalom*. Judgment responds to a past act, but is oriented toward future change. Judgment presumes that doing wrong is a choice, but also recognizes that choice is constrained. Judgment speaks truth regarding the past and is to that extent partial to the one who is harmed. Judgment enables the event to be remembered rightly and calls the one judged to act against injustice. Judgment distinguishes between those who are *tsaddiq*, and those who are not.

f. Justice as Mercy

If *tsedeq* is nothing more than retribution, vengeance, and recompense, even if in service of covenant and *shalom*, then there is nothing particularly new in the description offered so far. However, Psalm 85:10 is an important signpost: “Steadfast love (mercy, covenant faithfulness, loving kindness) and faithfulness (truth, stability, truthfulness) will meet; righteousness (justice) and peace (well-being, order) will kiss each other.” *Hesed*, understood as mercy, is intimately connected to *shalom* and *tsedeq*. Psalm 33:5 is another such signpost. *Tsedeq*, *mishpat*, and *hesed* are linked: “He loves righteousness (*tsedaqah*) and justice (*mishpat*); the earth is full of the steadfast love (*hesed*) of the Lord.”

Katherine Sakenfeld suggests that *hesed* communicates that God is “[...] committed to the community in covenant relationship as the One who provided for all needs, yet One also free

and uncoercible.”<sup>124</sup> In Exodus 34:6-7 *hesed* and forgiveness are linked with God’s nature as God is self-described as “The LORD, the LORD, a God merciful and gracious, slow to anger, and abounding in steadfast love (*hesed*) and faithfulness (*emeth*), keeping steadfast love (*hesed*) for the thousandth generation, forgiving iniquity and transgression and sin, yet by no means clearing the guilty, but visiting the iniquity of the parents upon children and the children’s children to the third and the fourth generation.” The context for this statement is the worshiping of the golden calf at Sinai, the remaking of the stone tablets, and the making of the covenant. In this context, one that might have seemed right for retribution, God proclaims God’s nature as compassionate, faithful, and forgiving.<sup>125</sup> Yet this mercy does not exclude punishment for the guilty. As Donald Gowan frames it, this formula for describing God defines the difference between mercy and indulgence or impunity:

[...] God does not declare the guilty innocent or the innocent guilty, or say it really doesn’t matter. There is no such thing as mercy unless right is right and wrong is wrong. This brings us squarely up against the mystery of forgiveness [...]. As a God of justice, Yahweh maintains standards that are never compromised. Guilt is guilt, without apology, and guilt of the kind we have encountered in this passage, rejection of the source of life himself, leads to death. That defines the nature of genuine mercy. Mercy is not indulgence, saying, well, you shouldn’t really do that but if you do I probably won’t do anything about it. Mercy is not something that can be claimed, as if the standards were faulty or impossibly high, and God really owes us leniency. Mercy finds us condemned, and then for some reason we do not know, set free.<sup>126</sup>

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<sup>124</sup> Katherine Doob Sakenfeld, “Love (Old Testament),” in *Anchor Bible Dictionary Vol IV*, edited by David Freedman (Toronto: Doubleday, 1992), 378.

<sup>125</sup> Note the difference from Exodus 20:5-6: “for I, the LORD your God, am a jealous God, punishing the children for the sin of the fathers to the third and fourth generation of those who hate me, but showing love to a thousand generations of those who love me and keep my commandments.” The promise of love to a thousand generations is here conditional on obedience, unlike Exodus 34.

<sup>126</sup> Donald E. Gowan, *Theology in Exodus: Biblical Theology in the Form of a Commentary*, (Louisville: Westminster John Knox Press, 1994), 237.

This statement by God of the connection between guilt and mercy is made in the midst of a process of remaking the covenant. *Hesed* is central to the fact that guilt condemns and yet mercy sets free.

The formula from Exodus 34 is repeated in Jonah 4:2 where Jonah uses the fact that God is gracious and compassionate as his reason for fleeing from God's instruction that he preach repentance in Nineveh. Here *hesed* as commitment, response to need, and freedom drives God's response to the people of Nineveh. While Jonah claims that he headed the other way so as to avoid giving an opportunity for God's *hesed*, this passage also highlights that God's response is unexpected. In the broader context of God's loyalty to Israel this act of compassion for Nineveh would be unexpected. One aspect of *hesed* is that it encompasses God's freedom, since God is not bound by *hesed* to act in a way or at the time that God's covenant partner expects.<sup>127</sup>

The parable of the prodigal in Luke 15 offers a profound description of divine justice as merciful. The younger son's request for his inheritance was a deep insult to the father, an insult that can be described as a complete breach of *tsedeq*, a fundamental breakdown of the relationships within the family. Later the younger son in his distress decides to return to the father, rehearses a speech that repudiates any right to be called "son," and asks only to be taken back as a hired servant. While the son may be presuming on a certain level of compassion that will at least take him in this role, he does not presume to be a son. The father's response is extravagant. Not only does he welcome his younger son as son, he holds a celebration to honour his return. The son, perhaps expecting a punitive justice, a justice of

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<sup>127</sup> Sakenfeld, "Love," 379.

just deserts, receives instead a justice that is an expression of *hesed*, a justice that returns the son to the covenant community of the family, an extravagant justice that comes as surprise, and yet is completely in keeping with the character of the father who is clearly awaiting the return of his son.

Paul describes a similar justice. For Paul *dikaiosune* is made manifest in the faithfulness of Christ that incorporates gentiles into the covenant community. This faithfulness is fully expressed in Christ's death as an act of justice making that brings near those who were once far off:

[U]nderlying Paul's interpretation of the Christ-event and the Gospel writers' presentation of the life and teaching of Jesus is an understanding of God's justice as a redemptive power that breaks into situations of oppression or need in order to put right what is wrong and restore relationships to their proper condition. Paul speaks of God's act of eschatological deliverance in the death and resurrection of Christ as a comprehensive work of justice-making that liberates oppressed humanity from the power of sin and death and from guilt of actual transgression, and brings peace with God and reconciliation between former enemies. Jesus speaks of the inbreaking of divine justice as the coming of God's kingdom, which starts to put right what is wrong on earth, establishes a relationship of new intimacy between God and humanity, and calls into being a new community to live a transformed way of life in the midst of the old order.<sup>128</sup>

Mercy does not function contra justice, as it is often seen to do in the western world. In western conceptions, justice functions primarily in terms of just deserts, while mercy represents a subversion of justice. Biblically, mercy is integral to justice in the same way that judgment is. Judgment serves to bring the sinner to a place of repentance, mercy, and full return to the covenant community.

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<sup>128</sup> Marshall, *Beyond Retribution*, 93.

g. Justice as Forgiveness

There are two Hebrew verbs that are translated as “forgive,” and in only a few instances is God not the subject of the verb. In addition, the verb “forgive” is used in parallel with several other verbs. *Nasa* has the general meaning of “to lift,” in both a literal and figurative sense. In the figurative sense it is translated as “forgive” or “pardon.” In this sense, to forgive would have the sense of “bearing sin away,” though John Kselman suggests that in some cases it may have the sense of “bearing iniquity” as a form of temporary forbearance.<sup>129</sup> In Genesis 50:17 Joseph’s brothers report that Jacob had asked that Joseph forgive (*nasa*) the crime the brothers committed against Joseph. In Exodus 34:7, God is self described as forgiving (*nasa*) sin. Psalm 85:2 has a parallelism, “You forgave (*nasa*) the iniquity of your people; you pardoned (*kasah*, to cover) all their sin.”

The more common word for “forgive” is *salach*. In Exodus 34:9, Moses responds to God’s self description as one who bears sin away by asking that God forgive (*salach*) Israel’s sin in worshipping the golden calf, and “take us for your inheritance.” By implication, the act of forgiveness by God returns Israel to its status as God’s inheritance, as God’s covenant partner. In a repeating pattern Leviticus<sup>130</sup> says “The priest shall make atonement (*kaphar*) for them and they shall be forgiven (*salach*).” *Kaphar*, the word translated here as atonement, means literally “to cover.”

Psalm 103:3 describes God as one “who forgives (*salach*) all your iniquities, who heals

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<sup>129</sup> John Kselman, “Forgiveness (Old Testament),” in *Anchor Bible Dictionary, Vol. II*, ed. David Freedman (Toronto: Doubleday, 1992), 832.

<sup>130</sup> See, for example, Leviticus 4:20, 26, 31, 35; 5:10, 13, 16, 18.

all your diseases,” linking forgiveness with healing. Jeremiah 33:8 links forgiveness and cleansing: “I will cleanse them from all the guilt of their sin against me, and I will forgive all the guilt of their sin and rebellion against me.” In Jeremiah 31:33-34 forgiveness is linked with not remembering sin. In verse 33 is a description of the covenant God will make: “I will put my law within them, and I will write it on their hearts [...]. No longer shall they teach one another, or say to each other, ‘Know the Lord,’ for they shall all know me [...] for I will forgive their iniquity, and remember their sin no more.” The new covenant will be one in which God’s people will remember the law, for it will be written on their hearts, and God will not remember their sin.

Isaiah 55:7 links forgiveness and mercy. The wicked are urged to seek the Lord and forsake their ways: “Let them return to the Lord, that he may have mercy on them, and to our God, for he will abundantly pardon (*salach*).”

Forgiveness functions within the framework of God’s covenant loyalty. Recall God’s self description as merciful and forgiving in Exodus 34. God’s willingness to forgive is connected to God’s character: God is gracious and compassionate, full of *hesed*, and as a consequence, God forgives sin. Yet this compassion does not exclude punishment. If God’s self description is reduced to its core, it might read, “God maintains covenant faithfulness and as a result God forgives sin and God punishes sin.” Both punishment and forgiveness are thus part of God’s character and are expressions of *hesed*.

Isaiah 33 presents a vision of *shalom*, describing the ways in which God is present in Zion, and offering a variety of metaphors for the way *shalom* is present. At the end of the passage there is an assurance that illness is ended and the sins of all who live in Zion will be

forgiven. Through this assurance of the forgiveness of sin, within the context of a vision of *shalom*, the passage points to forgiveness as an essential part of *shalom*. Given the linkage between *shalom* and *tsedeq*, it can also be said that forgiveness is an essential component of *tsedeq*.

In the New Testament there are two words translated as “forgive,” *aphiemi* and *charizomai*. *Aphesis/aphiemi* (the noun and verb forms respectively) are generally used in the sense of the forgiving a debt. Forgiveness in this sense represents a cancellation of the debt.<sup>131</sup> In Matthew 18:23-35 Jesus tells the parable of the ungrateful slave who, having had a huge debt forgiven by the king, refuses to forgive the relatively minuscule debt of a fellow slave. In response, the first slave is sent to be tortured until he pays his original debt to the king. The parable connects forgiveness as the cancellation of financial obligation, divine forgiveness, and the obligations of human forgiveness. In doing so, Jesus reframes the Old Testament understanding that God is the primary subject of forgiveness. At the same time he builds a structure that links divine forgiveness to the obligation of humans to forgive that parallels Old Testament structures related to divine justice and the obligation of humans to justly.

The other New Testament word for “forgive” is *charizomai*, which generally has the meaning of “giving freely.” *Charizomai* comes from the root *charis*, meaning grace or gift. Grace is frequently associated with divine help and salvation.<sup>132</sup> Thus, in 2 Cor 8:1-2 the grace of God enabled the Macedonian churches to give generously, since, “during a severe ordeal of

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<sup>131</sup> Gary Shogren, "Forgiveness (New Testament)," in *Anchor Bible Dictionary, Vol II*, ed. David Freedman (Toronto: Doubleday, 1992), 835.

<sup>132</sup> Shogren, "Forgiveness (New Testament)," 835.

affliction, their abundant joy and their extreme poverty have overflowed in a wealth of generosity on their part.”

Eph 2:4-7 is a complex sentence<sup>133</sup> that in the middle asserts “by grace you have been saved.” This assertion is framed by a description of God “who is rich in mercy, [and who] out of the great love with which he loved us even when we were dead through our trespasses, made us alive together with Christ,” and who “raised us up with him and seated us with him in the heavenly places in Christ Jesus.” It is this extravagant gift that is the grace that saves.

*Charizomai* as a verb reflects this sense of gift or grace in its use as “forgive,” a use that is unique to the New Testament, and that may have been a Pauline invention.<sup>134</sup> Luke 7:36-50 is a recounting of Jesus’ dinner with Simon, a Pharisee, during which a woman, described in the passage as a sinner, washes Jesus feet with her tears, dries them with her hair, and anoints his feet with ointment. When Simon objects, Jesus tells a short parable about two debtors whose debts are cancelled (*charizomai*). This cancellation of debt (the KJV translates this as “forgiven”) is presented here as a gift freely given, a grace, an undeserved favour. Cancellation of debt has this character since payment of a debt is an obligation, and there is no compulsion on the one owed the debt to do other than require payment. To cancel the debt is to freely offer a gift that there was no obligation to offer.

Ephesians 4:31-32 ties together God’s forgiveness as freely given gift, and human forgiveness of others as freely given gift. Having admonished his readers to set aside sinful

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<sup>133</sup> This passage is a single sentence in the NRSV, though in the Greek it is the conclusion of a sentence that began in 2:1.

<sup>134</sup> Shogren, “Forgiveness (New Testament),” 835.

treatment of each other, such as bitterness, anger, and malice, Paul then encourages them to “be kind to one another, tenderhearted, forgiving (*charizomai*) one another other, just as God in Christ has forgiven (*charizomai*) you.” The use of *charizomai* clearly highlights the nature of divine forgiveness as a gift that calls out a corresponding gifting or gracing as an act flowing from gratitude for God’s prior grace.

If forgiveness is a grace, a gift, an insertion into daily life that arrives unannounced and unexpected, the Gospels are also clear that forgiveness is commanded. Whether it is in Jesus’ comment in the Sermon on the Mount following what has become known as the Lord’s prayer: “For if you forgive others their trespasses, your heavenly father will also forgive you; but if you do not forgive others, neither will your Father forgive your trespasses,”<sup>135</sup> or Jesus’ instruction in response to being questioned on the frequency of forgiveness: 70 times 7,<sup>136</sup> it is clear that for the Christian there is no choice in the matter of forgiveness. If forgiveness is a central part of reconciliation, then the command to forgive is connected to the central place of reconciliation in the Bible.

Understood biblically forgiveness is an essential aspect of *tsedeq*, and is crucial to the creation of *shalom*. It can be described using a variety of metaphors such as carrying away the wrongdoing, cancelling debt, covering the wrongdoing, non-remembrance, and healing. Forgiveness connects remembrance of the covenant with not remembering the wrongdoing. Forgiveness is an act of mercy rooted in covenant faithfulness. It is a freely given divine gift that inspires the giving of the gift of forgiveness in human relationships.

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<sup>135</sup> Matthew 6:14-15.

<sup>136</sup> Matthew 18:22.

#### h. Justice as Reconciliation

One cannot speak of the biblical story of God's actions without speaking of reconciliation. In the Old Testament reconciliation appears as the ending of punishment and the restoration of Israel to living in conditions of *shalom*, the restoration of the covenant. Thus in Isaiah 58, turning toward practicing *tsedeq* results in God once again being present and in a restoration of *shalom*. "If you offer your food to the hungry and satisfy the needs of the afflicted" (v. 10), "if you refrain from trampling the sabbath, from pursuing your own interests on my holy day" (v. 13), then "the Lord will guide you continually, and satisfy your needs in parched places" (v. 11), "then you shall take delight in the Lord, and I will make you ride upon the heights of the earth" (v. 14). This motif returns at the end of Isaiah 59. Here God as the divine warrior has come with retributive vengeance against God's own people for their turning against *tsedeq* and *mishpat* (vv. 17-18). In response to "those in Jacob who turn from transgression," God offers a covenant: "my spirit that is upon you, and my words that I have put in your mouth, shall not depart out of your mouth, or out of the mouths of your children [...] from now on and forever" (v. 21). Reconciliation appears here as renewed covenant.

Hosea presents a narrative of Israel's sin, describing the announcement of judgment, calls to repentance, punishment, and finally, assurance of a return to *shalom*. The closing images of Hosea present a picture of God's people as a fragrant garden, a blossoming vine, living in the shadow of God. This picture is framed with an assurance that God "will heal their disloyalty [and] will love them freely [...]" (11:4), and that Israel's own faithfulness comes from God (11:8). Reconciliation comes as a flourishing that flows from God's act of healing that which had separated Israel from God and that had been the cause of judgment and punishment.

Reconciliation is at the heart of Christian theology: “[I]n Christ God was reconciling the world to himself.”<sup>137</sup> It is at the heart of Christian thinking about human relationships: “[I]n his flesh he has made both groups into one and has broken down the dividing wall, that is, the hostility between us.”<sup>138</sup> The church then becomes both a reconciled and reconciling community.<sup>139</sup> Reconciliation is the sum total of God’s saving work and is equivalent to redemption, salvation and atonement.<sup>140</sup> Reconciliation restores *tsedeq* as signified in the renewal of interpersonal relations and the transformation of society.<sup>141</sup>

Ephesians 2 presents a compelling vision of reconciliation achieved through the peace of God. Yoder Neufeld notes the connection between Paul’s description of the Gentiles as those who were far off and have now been brought near, and the use of this description in Isaiah 57 to describe the return of the exiles to Jerusalem.<sup>142</sup> The entry of the Gentiles into the covenant community is a return from exile, a homecoming, made possible by the cross. This homecoming is not just a reconciliation between Jews and Gentiles but is centrally a reconciliation of both Jews and Gentiles to God. The church is both a result, and an agent, of this reconciliation.<sup>143</sup>

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<sup>137</sup> 2 Corinthians 5:19.

<sup>138</sup> Ephesians 2:14.

<sup>139</sup> John W. de Gruchy, *Reconciliation: Restoring Justice* (Minneapolis: Fortress Press, 2002), p 55.

<sup>140</sup> de Gruchy, *Reconciliation*, 45.

<sup>141</sup> de Gruchy, *Reconciliation*, 2.

<sup>142</sup> Thomas Yoder Neufeld, *Ephesians: Believers Church Bible Commentary* (Scottsdale, PA, and Kitchener, ON: Herald Press, 2002), 111.

<sup>143</sup> Yoder Neufeld, *Ephesians*, 120.

Reconciliation is never an easy task. It calls for a depth of transformation on the part of both parties that invariably comes as a surprise, as grace, as a gift, whenever it arrives. This is most apparent when moments of reconciliation happen in the context of crimes of serious violence. As Marshall frames it, this is the only way that the power of evil can be defeated:

[...] the way in which Jesus places relationships and the restoration of relationships above dictates of strict legal justice, and his recognition that evil can never be overcome by more evil but can be defeated only by reversing the violent payback mechanism of evil, [...] are a reminder that genuine justice, the justice that makes things better, is never satisfied merely by following rules, however equitable they are, or by asserting legal rights, however fair that may be. It is satisfied only when relationships are restored and the destructive power of evil is defeated, and this requires a freely chosen relinquishment of the logic of -- and legal right to -- an eye for an eye and a tooth for a tooth.<sup>144</sup>

### 3. Repentance

The foundational way that repentance is presented in the Old Testament is as turning (*shub*). Walking in the way of God is a common biblical metaphor, thus making the idea of “returning to the way” a natural way of thinking about repentance.<sup>145</sup> This sense of returning is captured in Lawrence Boadt’s translation of Jeremiah 3:12 “Turn back (*shub*) O turned away (*meshubah*) Israel.”<sup>146</sup>

Jeremiah 3:19-25 provides a picture of what the turning away and the return look like. The passage opens with a statement steeped in pathos as God speaks of being a father spurned by his son, and of being a husband spurned by his wife: “I thought you would call me, My

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<sup>144</sup> Marshall, *Beyond Retribution*, 92.

<sup>145</sup> Joseph Healey, “Repentance (Old Testament),” in *Anchor Bible Dictionary, Vol V*, ed. David Freedman (Toronto: Doubleday, 1992), 671.

<sup>146</sup> Lawrence Boadt, *Jeremiah 1-25* (Wilmington: Michael Glazier, Inc, 1982), 33.

Father, and would not turn from following me. Instead, as a faithless wife leaves her husband, so you have been faithless to me [...].” God faces the fact that God’s desire to give the inheritance of the land broke on the fickleness of Israel,<sup>147</sup> that God’s desire to care for his wife disintegrated in her unfaithfulness. Israel in its unfaithfulness spurned both God and the inheritance. It turned and walked away from its faithful husband:

The father wants to give the child this inheritance even more than the child wants to receive it. But the moment of gift never comes, because the child neither knows nor cares. The wounded father is left with the shambles of hard work and broken dreams and knows the bitter combination of deep hurt and heavy resentment.<sup>148</sup>

But this fickleness results not in anger and rejection, but a “relentless yearning for restored relationship.”<sup>149</sup>

In response to the yearning of God for restoration, Israel too cries out: “A voice on the bare heights is heard, the plaintive weeping of Israel’s children [...].” Israel weeps on the heights, recognizing that it has forgotten God, that it has in fact been a faithless wife, that it has turned away. In response God again invites the faithless, the turned away ones, to return, and to redirect themselves toward God. Israel responds, and expresses a desire to return, but is also deeply conscious of its own choice to turn away: “Let us lie down in our shame, and let our dishonor cover us, for we have sinned against the LORD our God, we and our ancestors; from our youth even to this day; and we have not obeyed the voice of the LORD our God.” The consequence of Israel’s unfaithfulness to God is its rejection by God and subsequent

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<sup>147</sup> Walter Brueggemann, *A Commentary on Jeremiah: Exile and Homecoming*, (Grand Rapids: William B. Eerdmans Publishing Company, 1998), 47.

<sup>148</sup> Brueggemann, *Jeremiah*, 46.

<sup>149</sup> Brueggemann, *Jeremiah*, 47.

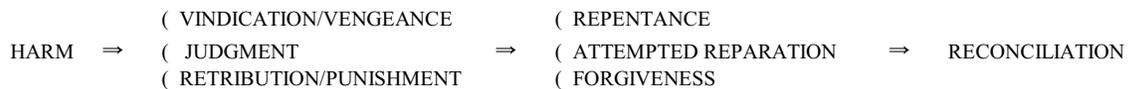
rejection by its other lovers. This leaves Israel, after having turned away, with nowhere to turn, so in the midst of its disgrace Israel recognizes that only in God can it find its salvation.

Implicit throughout this call for turning to God is the question of what Israel is turning from and what it is turning to. As has been made clear in the discussion of *tsedeq*, *shalom*, and *mishpat* above, a significant aspect of God’s doing of justice is the bringing of punishment on Israel for its failure to practice *tsedeq*, to live *shalom*. By implication, the turning to God would mean a new practice of living *tsedeq* and *shalom*.

In the New Testament, “repentance” translates the Greek *metanoia*, which itself translates what in Hebrew would have been *shub*. It means literally “to change one’s mind,” though it is a change of mind that carries an expectation of a change in behaviour.<sup>150</sup> The preaching of John in Luke 3 provides an example of this. The crowds are coming to John for baptism, and he announces judgment: the tree that does not produce good fruit, that is, fruit “in keeping with repentance,” will be destroyed. In light of the coming judgment, the people are called to a repentance that will produce good fruit in lives that are consistent with repentance. In response to questions asked by his hearers, John articulates what behaviour would meet these criteria: behaviour that is consistent with *tsedeq* and *shalom*.

#### 4. Summary

The following model summarizes the description of *tsedeq* to this point:




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<sup>150</sup> Boyd Luter, “Repentance (New Testament),” in *Anchor Bible Dictionary, Vol V*, ed. David Freedman (Toronto: Doubleday, 1992), 672.

Once a harm has been done, *tsedeq* calls for movement between each of the steps identified in the model. Vindication/vengeance and retribution/punishment are set outside the linear process as their function is to support the role of judgment in inviting repentance. In that sense they are not strictly necessary as repentance may be offered without the extra push created by vindication/vengeance and retribution/punishment. Some of these steps may be truncated: judgment may play a minimal role if repentance is offered early. Repentance and forgiveness are placed above and below attempted reparation because they do not always occur in a linear order. One would expect a move from repentance to attempted reparation to forgiveness. However, forgiveness does not depend on prior repentance. It can be, and has been, offered in the absence of repentance. Repentance may follow after an act of forgiveness, in a reversal of the usual gift exchange. Forgiveness/repentance as a paired step opens the door to reconciliation.

## CHAPTER 3: RESTORATIVE JUSTICE AND BIBLICAL JUSTICE

### 1. Offering *Tsedeq* to the World

Zehr describes RJ as it first developed in Kitchener, Ontario and Elkhart, Indiana as an experimental plot that was planted by the church, and as a catalyst through which the church sought to effect a transformation of the way justice is done in the CJS.<sup>151</sup> Zehr's characterization of RJ as experimental plot and as catalyst builds on John Howard Yoder's discussion of the role of the church in *The Christian Witness to the State*.<sup>152</sup> Yoder sought to describe the ways in which the church can speak to "the social order at large or to the state criticisms and suggestions concerning the way in which the state fulfills its responsibility for the maintenance of order."<sup>153</sup> He goes on to describe how church engagement in education and health care ultimately led to the secular authorities taking responsibility for them and offering them on a universal basis. The church, he says, has been "the 'pilot' creating experimentally new ways of meeting social needs which, once their utility has been proved, can be institutionalized and generalized under the authority of the secular powers."<sup>154</sup> In this way, the church, through the development of RJ, has given shape to a vision and has offered to the wider community a new way of doing justice.

A difficult question remains: should the founding theological strands that shaped the experiment in its early stages continue to play a role once the crop has moved from experiment

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<sup>151</sup> Zehr, *Changing Lenses*, 172.

<sup>152</sup> Yoder, John Howard, *The Christian Witness to the State*, 2nd ed. (Scottsdale PA, and Waterloo ON: Herald Press, 2002).

<sup>153</sup> Yoder, *Christian Witness*, 5.

<sup>154</sup> Yoder, *Christian Witness*, 19.

to widespread planting in a secular society? Following are some preliminary reflections connecting the biblical work above and RJ theory. These are not the first reflections on this issue in the context of RJ,<sup>155</sup> but they are central to the discussion in Chapter 4 on RJ practice.

Batley explores the connection between spirituality and RJ practice, arguing that RJ is inherently spiritual work.<sup>156</sup> He argues for “anchored expression,”<sup>157</sup> by which he means practice rooted in a framework of principles and values taken from the particular religious tradition of the practitioner. This does not mean that practitioners become overt spokespersons for their tradition, nor do practitioners use ritual grounded in their tradition. The tradition provides the basis to name, explore, and describe the values driving the practice. As an example of this kind of anchored expression, Batley suggests that Archbishop Desmond Tutu, in his role as chair of South Africa’s Truth and Reconciliation Commission, rooted his work in his Christian understanding of the role of repentance and forgiveness in creating the possibility of transformation.<sup>158</sup>

This kind of “anchored expression” requires the preservation of the tradition within which practice is anchored, a difficult task for a biblically rooted RJ operating within the CJS, a

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<sup>155</sup> See Marshall, *Beyond Retribution*; Yoder Neufeld, *In the Middle*; Millard C. Lind, *Transformation of Justice: Moses to Jesus*, (Unpublished Paper Presented to MCC Canada Victim Offender Ministries Office Lawbreaking and Peacemaking Workshop, May 3, 1980).

<sup>156</sup> Batley, “Spirituality,” 371. Batley confuses categories as he seems to slip between the theological (RJ rooted in shalom) and the spiritual (RJ as focused on the emotional and spiritual transformation of the parties) with little definitional care.

<sup>157</sup> Batley, “Spirituality,” 374.

<sup>158</sup> Batley, “Spirituality,” 373.

system that is itself rooted in the need for control.<sup>159</sup> At the very least there is a mis-match between state needs related to social control and the biblical imperatives of *shalom* and *tsedeq*. While Bianchi and Daniel Van Ness are of the view that the creation of a CJS rooted in the imperatives of *tsedeq* is possible, there is a very real danger that the creation of such a system would subvert the vision of *tsedeq* and *shalom*.<sup>160</sup>

Care must be taken to protect the theological and value base of RJ. Writing about the recent implementation of Maori rooted processes in state mandated RJ in New Zealand, Matt Hakiaha suggests that there is a risk that words, concepts, and processes may move into the mainstream system without the worldview that grounded these within Maori culture.<sup>161</sup> A similar danger is present in North America, as RJ practices rooted in biblical conceptions of *shalom* and *tsedeq* are implemented by the state, and thus lose their connections to a biblical worldview.

*Tsedeq* as described by Amos is normative for the nations: repeatedly in the first two chapters of Amos the prophet announces that God will punish the surrounding nations for their

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<sup>159</sup> Foucault, *Discipline and Punish*.

<sup>160</sup> Bianchi, *Justice as Sanctuary*; Daniel Van Ness, "Pursuing a Restorative Vision of Justice," in *Justice: The Restorative Vision* (Akron, PA: MCC US Office of Criminal Justice, 1989), 15-27. But see also Zehr, *Changing Lenses*, especially Appendix 2, "The Subversion of Visions," and M. Kay Harris, "Alternative Visions in the Context of Contemporary Realities," in *Justice: The Restorative Vision* (Akron, PA: MCC US Office of Criminal Justice, 1989), 29-38 which is a response to Van Ness' model.

<sup>161</sup> Matt Hakiaha, "What Is the State's Role in Indigenous Justice Processes?," in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 358.

failure to adhere to *tsedeq*.<sup>162</sup> For example, in Amos 1:11 the prophet reports that God's wrath will be directed against Edom "[...] because he pursued his brother with a sword, and cast off all pity; he maintained his anger perpetually, and kept his wrath forever." The punishment of Edom parallels that of Israel described in Amos 2:6-8 which outlines Israel's punishment for its failure to be *tsaddiq*. Israel's failure is that it has ceased to be an example to the surrounding nations. As Grimsrud says,

[...] Israel's failure to practice justice destroys the hope of the nations. Israel's faithfulness is for the sake of the nations, that they might see the light of God's justice and love. When Israel is unfaithful, there is no light to be seen.<sup>163</sup>

If RJ is rooted in biblical *tsedeq*, then *tsedeq* is not something to be practiced in a corner, it is to find its flowering in a general application.

Millard Lind also argues that the establishment of *tsedeq* in Israel was meant as a start to the process of establishing *tsedeq* among the nations. The suffering servant in Isaiah 53 (whom the church has identified with Jesus) suffers because he attempts to replace the justice of the nations with the *tsedeq* and Torah of YHWH.<sup>164</sup> This means, then, that the church has an obligation to seek the establishment of biblical *tsedeq* and the replacement of justice as normally done. As Lind argues,

The message of the Bible in regard to justice is not the established church point of view that the church should accept Roman-English law as its justice, but that society as a whole should receive blessing from the justice of God as revealed in Jesus of Nazareth and as

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<sup>162</sup> Ted Grimsrud, "Healing Justice: The Prophet Amos and a 'New' Theology of Justice," in *Peace and Justice Shall Embrace: Power and Theopolitics in the Bible*, ed. Ted Grimsrud and Loren Johns (Telford, PA: Pandora Press, 1999), 64-85.

<sup>163</sup> Grimsrud, "Healing Justice," 76.

<sup>164</sup> Lind, *Transformation of Justice*, 12.

mediated through the community of faith.<sup>165</sup>

That blessing comes neither in the form of new theories of punishment, nor in a carefully worked out programme for implementing justice, but in a practice offered to the world by the church.<sup>166</sup> This offering of a practice evokes Zehr's description of RJ as an experimental plot. As Peachey suggests, however, experiments are risky,<sup>167</sup> since the experimenter cannot be sure of the outcome. Nevertheless, the experiment is conducted, in the hope of new information that will be able to point towards further experiments.

If *tsedeq* is a *tsedeq* for the nations, then the church must be willing to offer the practice of forms of RJ that are fully informed by *tsedeq*,<sup>168</sup> while at the same time being aware of the dangers of subversion. This approach values the principles of RJ that have already been developed by Zehr and others, while also welcoming the presence of judgment, repentance and forgiveness. As discussed in Chapter 1, judgment and forgiveness already play a hidden role within RJ. The task then is to make these hidden forms of judgment and forgiveness fully present, while ensuring that their functioning is more fully formed by biblical understandings.

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<sup>165</sup> Lind, *Transformation of Justice*, 23.

<sup>166</sup> Stanley Hauerwas, "Punishing Christians," in *Performing the Faith: Bonhoeffer and the Practice of Nonviolence* (Grand Rapids, Michigan: Brazos Press, 2004), 200. Hauerwas insists that the church must offer the world a way of punishing that is different, rather than a theory of punishment that is different. The practice of punishment within the church must be a practice that reconciles. "To be punished as a Christian is to be called home so that we may be reunited with the community of forgiven sinners called church and, thus, reconciled with our own life" (199). Arguably the same can be said more broadly about *tsedeq*.

<sup>167</sup> Peachey, "Kitchener Experiment," 24.

<sup>168</sup> I say part of the offering is RJ, since *tsedeq* is far more than a way of dealing with crime. RJ is a response to crime rooted in *tsedeq*. *Tsedeq* is not RJ, though RJ can be, and should be, an expression of *tsedeq*. Building a response to an economic system that leaves many without the necessities for *shalom* is also a form of *tsedeq*.

## 2. The Role of Judgment in Restorative Justice

Oliver O'Donovan provides a working definition of judgment that reflects many of the characteristics described in the earlier biblical discussion:

[Judgment is] an act of moral discrimination that pronounces upon a preceding act or existing state of affairs to establish a new public context.<sup>169</sup>

There are three significant aspects to this definition: judgment is an act of moral discrimination that divides right from wrong; judgment is reactive in that it speaks to a past act or existing state of affairs, rather than taking initiative; and judgment creates a context for future action.<sup>170</sup> This definition can be expanded to take into account the conclusion of the biblical study above. As an act of moral discrimination, judgment presumes that doing wrong is a choice, but also recognizes the constraints under which choice is exercised. In pronouncing on a preceding act or state of affairs, judgment speaks truth regarding those acts in a way that is partial to the one harmed, and in so doing enables right remembrance of the act. In establishing a new public context judgment is oriented toward future change in a way that calls on the one who is judged to act against injustice. If RJ is to take judgment seriously, all three of these aspects of the definition, as expanded, must be present.

Judgment as an act of moral discrimination makes it clear that what the offender has done is wrong, that the offender has committed an offence. In this sense, judgment contributes to right remembrance of the offence by both the victim and the offender. Volf identifies three guiding characteristics of harm remembered rightly: remember truthfully, remember so as to

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<sup>169</sup> Oliver O'Donovan, *The Ways of Judgment* (Grand Rapids: William B. Eerdmans Publishing Company, 2005), 7.

<sup>170</sup> O'Donovan, *Ways of Judgment*, 8-10.

heal, and remember so as to learn from the past.<sup>171</sup> While Volf is clear about the ways in which memory is subject to loss over time, and to distortion so as to protect the innocence of the one remembering, there is nevertheless an obligation to remember as truthfully as possible. A major blockage in the process of healing for victims is denial by offenders, either about having committed the act, or about the extent of the harm. Truthful memory of the offence as offence circumvents this denial and so contributes to victim recovery. Denial also keeps offenders from learning from the offence, and cuts them off from the full import of their action. Truthful memory brings offenders face to face with the consequences of their behaviour, and creates the opportunity to learn from the experience so as to change.

The offender is a moral agent. While noting that guilt<sup>172</sup> is shared more broadly than just the offender,<sup>173</sup> Neufeld also notes that guilt is deeply personal and is known in the context of relationships.<sup>174</sup> Through this relational guilt criminals rediscover the roots of their humanity,

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<sup>171</sup> Volf, *End of Memory*, 96.

<sup>172</sup> Guilt is a word like judgment, in that it does not inspire great attraction in the current cultural context. In particular, guilt is often associated with a form of the shame of disgrace that may exist in the absence of any morally culpable act. I am using guilt in the sense of moral culpability for previous acts. In other words guilt is the moral location of an offender in the face of judgment as an act of moral discrimination. This is different from guilt awareness, which may accompany guilt. Guilt awareness may or may not be accompanied by feelings that look like the shame of disgrace. See Neufeld (*Guilt and Humanness*, 6-8), who identifies the ways that guilt is understood by various actors in the CJS. Of particular note is his discussion of guilt feelings as feelings of “badness” and “unworthiness.” Guilt feelings can be distinguished from guilt as “legal entity,” something that exists apart from the feelings of the individual.

<sup>173</sup> According to Neufeld (*Guilt and Humanness*, p 19), guilt belongs not only to the offender, but also to the rest of society which laid the foundation for the offence.

<sup>174</sup> Contrary to what happens in the CJS where guilt is ascertained outside of any network of relationships.

and in seeing the evil of their action, the way to repentance and forgiveness is opened.<sup>175</sup>

Judgment plays a similar role, and is a step that comes before knowledge of guilt. Judgment opens the way to humanness and human connectedness by enabling offenders to see the consequences of their behaviour in relationship and to consider what other options are open to them in responding to those they have harmed.

The offender is, however, also embedded in a matrix of sin and social forces and this embeddedness must be highlighted if judgment is to play its proper role in the RJ process. Judgment has to be clear about what is judged and what is not, so that offenders take responsibility for the choices they make, while not being held responsible for the social forces that played a role in these choices. Issues of social class, family of origin, education, mental health, racist social structures, and much more play a role in the choices offenders make. Judgment must be clear about the constraints faced by offenders, while still ensuring that offenders take responsibility for the choices they have made and the consequence that flow from those choices.

Judgment is reactive in that it speaks to the past. It describes what has happened and describes it truthfully, noting who has done what, and where moral culpability lies. In doing this, judgment takes the victim's experience seriously, and is to that extent partial to victims. The invasions of the self, the traumas, and the uncertainties created by criminal wrongdoing are not easily dealt with, given that crime separates victims from their humanity and from the fundamental connectedness of human life. Judgment aids in the process of reconnecting victims to their humanity by asserting that victims are not what the crime says they are.

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<sup>175</sup> Neufeld, *Guilt and Humanness*, 22.

Victims are not to blame for the harms they have experienced. Judgment says that offenders are responsible for the harms and for undoing the harms, and in doing so judgment vindicates the victim.

Volf, however, speaks of the non-innocence of victims.<sup>176</sup> This is potentially true in four senses. The roles of victim and offender are fluid, so that, in an ongoing relationship, the members often take turns being offender and victim. In some crimes the choice of whom to charge is not always clear. For example, where two people engage in a physical confrontation, only one may be charged, even though the assault may be a response to repeated bullying that falls short of being criminal. To the extent that the person who is in law the victim of an offence has offended against the offender, that victim cannot be said to be innocent. Volf, though, has in mind a more complex, and counter-intuitive idea. He argues that even where victims are legally innocent there are two ways in which they are not finally innocent. He speaks of the hatreds, desires for revenge, and the rage that victims experience after an offence, and the ways these taint the memory of the offence, and damage any possibility of reconciliation. However, in a deeper sense, no one is innocent and this non-innocence corrupts every attempt at judgment:

[I]n the name of the one truly innocent victim and what he stood for, the crucified Messiah of God, we should demask as inescapably sinful the world constructed around exclusive moral polarities--here, on our side, 'the just,' 'the pure,' 'the innocent,' 'the true,' 'the good,' and there, the other side, 'the unjust,' 'the corrupt,' 'the guilty,' 'the liars,' 'the evil' --and then seek to transform the worlds in which justice and injustice, goodness and evil, innocence and guilt, purity and corruption, truth and deception crisscross and intersect, guided by the recognition that the economy of undeserved grace has primacy over the economy of moral deserts. Under the conditions of pervasive

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<sup>176</sup> Miroslav Volf, *Exclusion and Embrace: A Theological Exploration of Identity, Otherness and Reconciliation* (Nashville: Abingdon Press, 1996), 79 ff.

noninnocence [sic], the work of reconciliation should proceed under the assumption that, though the behavior of a person may be judged as deplorable, even demonic, no one should ever be excluded from the will to embrace, because, at the deepest level, the relationship to others does not rest on their moral performance and therefore cannot be undone by the lack of it.<sup>177</sup>

Volf is correct to assert both the non-innocence of the reaction of many victims after the offence and the ultimate non-innocence associated with the human condition, as well as the ways that this non-innocence prevents reconciliation. However, the way this is read into the original criminal event has consequences for both victims and offenders, and the ways in which they recover from the incident. Too strong an emphasis on the non-innocence of victims can contribute to offender denial and victim rejection of RJ, while no such reflection can leave victims convinced of a strong victim/offender dualism, in which victims are nothing but good and offenders are nothing but evil. These questions of non-innocence, at least initially, need to be explored by victims apart from offenders, while at the same time being framed in terms of judgment of the offenders' actions. Discussing the non-innocence of victims in this way helps to preserve the partiality and vindicating function of judgment, while at the same time preserving the insight that any human judgment is itself tainted by non-innocence.<sup>178</sup>

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<sup>177</sup> Volf, *Exclusion and Embrace*, 84.

<sup>178</sup> Volf is writing out of his experience with the multiple hatreds of the former Yugoslavia which erupted into the horrors of ethnic cleansing and the Balkan wars at the end of the 20<sup>th</sup> century, an experience that makes claims to innocence particularly specious. While I think Volf is ultimately correct on this point of non-innocence, I make the point with great trepidation. As one who has never been victimized in any traumatic way, I hear and see in my mind a person who has been, looking at me with rage, saying, "How dare you?!" All my qualifications around this point mean nothing to one who has suffered great harm. What comfort I take comes from reading reflections from survivors who speak of their own struggles to move beyond the rage and hatred to forgiveness, but even this is cold comfort. See Howard Zehr, *Transcending*. See also Doerfler and Wilson, *Facilitating*, who invite victims to reflect on what guilt and responsibility they have for their losses and what role that plays in

Judgment is a preliminary step to repentance: “Rebuking (calling to account) the one who causes harm to the vulnerable is necessary in order for repentance to be possible. And repentance, meaning real change [...] is much more than the tears of remorse.”<sup>179</sup> This is not to say that tears of remorse are unnecessary or inappropriate. It is to say that in the absence of change, tears of remorse are inadequate. This is especially so in crimes such as domestic violence, where tears of remorse are often a step in the repetition of the cycle of violence. Judgment provides the foundation for change, for repentance as a turning away from what was before, and for the doing of *tsedeq* in the form of repair or undoing of harms. But judgment also creates the possibility for the offender to learn to act against injustice. The experience of judgment that produces change in the offender enables the offender to participate in the task of helping others to make the same change, to assist in the undoing of harms caused by others in similar circumstances.

Shame, it was suggested earlier in Chapter 1, sometimes operates as a stand in for judgment. What has become known as “re-integrative shame” is focused around behaviour rather than character, and can provide a powerful incentive for personal change as offenders seek to ensure that they do not re-experience shame. On its surface this sounds like judgment, with its focus on moral discrimination and creation of a new public context. The language of shame has been controversial, with much debate about whether shame can be anything other than debilitating and harmful.

Andrew Sung Park argues that shame is ordinarily the response of a victim, whereas the

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their recovery and healing.

<sup>179</sup> Fortune, “Conundrum,” 138.

appropriate response of an offender is guilt,<sup>180</sup> though he seems to mean by this “guilt-consciousness.” Shame is the emotional response to the vulnerability that flows from having one’s boundaries transgressed. The experience of guilt on the other hand is a function of transgressing internalized moral values. Shame is not the experience of an offender, though Park does identify the shame of disgrace as an offender experience that is tied to guilt:

The shame of disgrace springs from losing one’s self-esteem and sense of self-value. Its foundation is the fear of ruining one’s reputation, relationships, status, and positions. The fear of losing the respect of others is connected with the potential promise of life. With a bad or ruined reputation, one cannot play a normal role in the family and community, and accordingly cannot succeed in one’s business and career. Thus, the offender develops the fear that their shameful shadow—be it sin, error, misconduct, or crime—might become evident in the light of day. [...] When their secret comes to light, their guilt-consciousness turns into disgrace shame.<sup>181</sup>

Susan Nelson frames the dynamic of victims reproducing victimization in terms of this kind of shame: the experience of being shamed leads to a defensive and protective posture that contributes to a shaming of others so as to prevent the possibility of re-experiencing shame:

To know shame is to experience ourselves as deficient and ultimately rejectable. The posture of alienation that is toxic shame is the process of internalizing that shame and developing protective strategies to defend ourselves from ever being shamed again. In this process, what was an experience of shame becomes core to our experience of who we are. If sin is to refuse our human condition and to seek to secure ourselves and protect our future, then shame is born of being refused and is reflected in the sense of being ‘defective,’ in the corresponding dread that there is no future for ‘me’ (at least as ‘I’ am) and in strategies and postures that seek to defend the self against further shaming incidents.<sup>182</sup>

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<sup>180</sup> Andrew Sung Park, *From Hurt to Healing: A Theology of the Wounded*, (Nashville: Abingdon Press, 2004), 35.

<sup>181</sup> Sung Park, *From Hurt to Healing*, 43.

<sup>182</sup> Susan L Nelson, “For Shame, for Shame, the Shame of It All: Postures of Refusal and the Broken Heart,” in *The Other Side of Sin: Woundedness from the Perspective of the Sinned-Against*, ed. Andrew Sung Park and Susan L. Nelson (Albany: State University of New York Press, 2001), 77.

Shame, on this basis, cannot play a re-integrative role. Rather, it drives the offender farther from the possibility of rebuilding a healthy connection with the community or a repaired relationship to the victim. It is also clear that shame is not the same as judgment. Judgment creates the possibility of a new future, while shame reinforces defensive structures of relationship.<sup>183</sup>

Restitution, reparation and repayment are a central part of RJ. However, the uses of this constellation of concepts in RJ are significantly different from the way the Bible understands them. In RJ, restitution, reparation and repayment are seen as ways for offenders to undo the harms caused by their crimes. They are products of the RJ process, products shaped through the conversation between victim and offender. There are two places of tension between the biblical concept of *shalem/shillum* and the way restitution and repayment are used in RJ. First, the idea of recompense is missing in RJ. More importantly, other than the way it is used in Exodus, *shalem* operates in a much different way than restitution in RJ. As discussed above (48 ff) *shalem* is generally conceived as the repayment of evil to those who do evil. There is no correlative in RJ for the statement in Isaiah 59:18: “According to what they have done, so will he repay (*shalem*) wrath to his enemies and retribution to his foes [...]” Repayment is conceived in RJ as undoing harm. In Isaiah and elsewhere in the Bible repayment is

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<sup>183</sup> Shame may operate differently in so-called “shame based cultures.” In Japan (a society often described as “shame based”) the CJS operates in large part through acknowledgment of guilt, expression of remorse, and victim-offender negotiation of restitution. John Haley (“Confession, Repentance and Absolution,” in *Mediation and Criminal Justice: Victims, Offenders and Community*, ed. Martin Wright and Burt Galaway (London: Sage Publications, 1989), 195-211), argues that this, rather than culture, explains the relatively low prison population and lenient sentences. It may be, however, that this approach to criminal justice is rooted in the relative cultural importance of broader social networks that reinforce socially acceptable behaviour.

conceived in terms of “just deserts,” a concept that RJ seeks to expunge from the structures and systems of justice.

RJ has specifically framed itself in a way that excludes vindication, vengeance, retribution and punishment. As a result it becomes difficult for RJ to take into account the ways in which *tsedeq* incorporates these concepts. It does not follow from this however, that the mainstream CJS gives expression to these impulses in unproblematic ways,<sup>184</sup> nor does it mean that the CJS has found a way to rebalance the moral universe in a way that is not loaded with internal contradictions. The seemingly simple act of determining the right number of years in prison that balances the harm caused by armed robbery, or sexual assault or sexual assault with a weapon, or manslaughter, a calculus that happens every week in a court somewhere in Canada, is in reality remarkably complex and subject to no precise gradation or tabulation.

It is not surprising that many scholars in the field of RJ are at great pains to sever biblical *tsedeq* from retributive impulses. Herman Bianchi,<sup>185</sup> for example, is concerned to build an approach to criminal justice rooted in *tsedeq* and abstracted from any retributive structures. To that end he argues that *tsedeq* has no space for the retributive. Rather, *tsedeq* can be seen in the process of the offender turning around, repenting and doing penance, all ultimately

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<sup>184</sup> Many works on RJ address the philosophical and theoretical underpinnings of the way the CJS punishes, in part to note the difficulties in achieving the goals set by the various theories of punishment. My point here is not to identify the theory that best explains what it is that the CJS does, but to note that the moral rebalancing that drives punishment and vengeance is integral to *tsedeq*, and that this impulse must find expression. On theories of punishment see, for example, Marshall, *Beyond Retribution*; Hauerwas, “Punishing Christians;” Gorringer, *God's Just Vengeance*; Conrad Brunk, “Restorative Justice and the Philosophical Theories of Criminal Punishment,” in *The Spiritual Roots of Restorative Justice*, ed. Michael Hadley (Albany: State University of New York Press, 2001), 31-56.

<sup>185</sup> Bianchi, *Justice as Sanctuary*.

leading to reconciliation. Zehr similarly builds a notion of *tsedeq* structured around healing for victims and offenders meeting their obligations to victims, in a way that severely limits any role for punishment and is contrasted with a system labeled as retributive. As do other writers, he makes reference to notions that God both punishes and is faithful, while punishment remains subordinate to faithfulness and to *shalom*. Despite this acknowledgment, there is no room in his restorative paradigm for punishment/retribution as he argues, on the basis of Romans 12:19, that punishment is “God’s business, not ours.”<sup>186</sup>

Marshall is more nuanced on this point. He argues that Latin concepts of justice are based on an abstract notion of moral order built on maintaining a balance and receiving what is due. This splits justice into two sets of practices--social justice and criminal justice framed retributively. This in turn leads to the idea that justice and mercy are in tension and that a choice must be made between just deserts and setting justice aside. In this reading, God’s *tsedeq* is focused on punishing transgressions and upholding the moral order, and is identified with vindictiveness in the CJS.<sup>187</sup> Yet, when Marshall turns to the question of punishment, he acknowledges that there is a punitive dimension to biblical *tsedeq*. This punitive element is not central, however. Its orientation is restorative: “Yahweh’s justice is saving justice where punishment of the sinner is an integral part of restoration. [...] God’s justice is a restorative or reconstructive justice before it is a punitive or destructive justice.”<sup>188</sup> He acknowledges that

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<sup>186</sup> Zehr, *Changing Lenses*, 148. See also Northey (*Justice is Peacemaking*), who, while acknowledging more strongly the role of retribution and punishment in the Old Testament, still argues against any role for punishment in RJ.

<sup>187</sup> Marshall, *Beyond Retribution*, 43 - 45.

<sup>188</sup> Marshall, *Beyond Retribution*, 52.

there are retributive elements in the biblical texts, though he argues that there is not a fully developed retributive theory of punishment.

Marshall insists that the connection between punishment and *tsedeq* cannot be ignored. He pursues the possibility of restorative punishment, arguing that particularly in cases where restoration/restitution is not possible, punishment can play an important role, primarily symbolizing the corrupting effect of the crime on the offender and the possibility of reversing the wrongdoing.<sup>189</sup>

The retributive aspect of *tsedeq* (rooted in *sh-l-m*), then, is a means of effecting repentance and restoration.<sup>190</sup> Rightly conceived, punishment is exhortation,<sup>191</sup> and the telos of punishment is forgiveness and reconciliation.<sup>192</sup> It is important that RJ take account of the punitive and retributive aspects of *tsedeq*, but in doing this, the task of exhortation and the goal of forgiveness and reconciliation must be kept constantly in mind if punishment is not to exist only for its own sake.<sup>193</sup>

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<sup>189</sup> Marshall, *Beyond Retribution*, 137.

<sup>190</sup> Northey, *Justice is Peacemaking*, 13.

<sup>191</sup> Stephen Travis, *Christ and the Judgment of God: Divine Retribution in the New Testament*, (Hants: Marshall Pickering, 1986).

<sup>192</sup> Hauerwas, "Punishing Christians," 189.

<sup>193</sup> The history of the penitentiary is instructive. As originally conceived by its Quaker inventors, the penitentiary was an "exhortative" institution, a place where those incarcerated might find the opportunity to reflect on their sinful ways and repent. Once the penitentiary became a core method of punishment in the CJS, it became little more than punitive warehousing, or, worse, a potent means for the creation of a criminal underclass. See Foucault, *Discipline and Punish*.

### 3. The Role of Forgiveness in Restorative Justice

If facing the pain of judgment is the task of the offender, then facing the pain of forgiveness is the task of the victim. RJ practitioners have, with good reason, been loath to impose a “forgiveness agenda” on victims, since a strong emphasis on forgiveness can be experienced by victims as judgment, if they do not forgive. Further, such an emphasis can be experienced by victims as a way of minimizing the significance of the offence. In a culture that values the rights of the individual as much as North America does, forgiveness sounds too much like self denial:

To forgive a real injury requires a conscious suppression of the instinct to make others suffer as we have suffered; to accept such forgiveness is to incur the guilt of having, in the most obvious sense, escaped our ‘just deserts.’ The pain incurred on both sides means that true forgiveness is rare. In the course of long and intimate association, in which injuries are inevitably inflicted and sustained, men and women are repeatedly asked to forgive; in the absence of forgiveness, the only alternatives are vindictive hatred and indifference. The fact that many people prefer the latter alternative confirms the difficulty of attaining true forgiveness.<sup>194</sup>

Part of the counter cultural character of forgiveness is rooted in the reality that it is frequently seen as a sign of weakness: only those without the courage to confront evil with power, force, and violence, as it ought to be confronted, are the ones who forgive. In this telling, forgiveness is the last resort of the weak, the refuge of those who have no resources to do anything else. Forgiveness, in the popular mind, comes from a place of weakness, or from people, like the Amish, who are strange. At the same time, there is little patience for those who remain caught in the pain that they have experienced through crime or other trauma. Whether it is the oft expressed desire for “closure,” or the disdain expressed for those unable

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<sup>194</sup> Jacoby, *Wild Justice*, 333.

to “move on,” there is an expectation that the traumatized will get up and carry on as if nothing has happened. Even those who express a willingness to forgive are not always clear what it means.

There is a tendency to think of forgiveness in subjectivist terms, as the decision of the forgiver to attempt a change in attitude. Thus John Gehm suggests that forgiveness is the act of the victim to cease to feel resentment.<sup>195</sup> This form of forgiveness is inadequate in biblical terms. While ceasing to feel resentment can be an important step in the healing of a victim, and may have an impact on the victim’s treatment of the offender, it does not adequately support reconciliation in that a relational process is not necessary to subjectivist forgiveness.<sup>196</sup>

In response to this subjectivist account, Suzanne Freedman, Robert Enright, and Jeanette Knutson define forgiveness in a way that moves beyond release from resentment to the ascription of worth to the offender:

People, upon rationally determining that they have been unfairly treated, forgive when they willfully abandon resentment and related responses (to which they have a right) and endeavor to respond to the wrongdoer based on the moral principle of beneficence, which may include compassion, unconditional worth, generosity, and moral love (to which the wrongdoer, by nature of the hurtful act or acts, has no right).

This definition begins to move beyond the subjectivist trap, by asserting that the focus is on unfair treatment, the determination of which rests not on subjectivity but on a “rational determination,” and moves from abandoning negative views of the offender to a more positive

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<sup>195</sup> Gehm, “Function of Forgiveness,” 541.

<sup>196</sup> In those cases where the offender is unknown, where the offender refuses participation in a reconciliatory process, or the victim would not feel safe meeting with the offender (as in a sexual assault), a subjectivist forgiveness may be the only kind available for the victim, and can be a powerful force for personal healing. There are RJ models, such as victims meeting with representative offenders, for addressing these situations.

view. The definition, however, remains individualistic. It is possible for the victim to engage in the ascription of positive characteristics to the offender without moving toward the (re)building of a positive relationship with the offender.

Donald Shriver highlights the relational aspect of forgiveness, seeing forgiveness as tied to repentance and leading to new relational patterns:

Forgiveness simultaneously presupposes the commission of an *evil* act by one agent against another and the effort of the victim to repair the relationship fractured by the evil. [...] Forgiveness has as its match the willingness of offenders to acknowledge their offences and to receive the offer of forgiveness. This is the *repentance* side of the transaction. Forgiveness without repentance hangs, abstract and unconsummated, in limbo. Repentance without forgiveness cuts the nerve of the parties for moving on toward a reconciliation, which is the fulfillment of a process in which forgiveness is the beginning. Forgiveness itself begins *not* with a forgetting but with a remembering, a refusal to buy the repair of the relation at the cost of not mentioning the cause of the fracture. Moral forgiveness begins with the memory of immorality, with *moral judgment*. To forgive [...] is to value the *hope of relation repair* above the bare moral claim that one has inflicted evil and another has suffered it. Forgiveness is a future-oriented social transaction. It aims at a new bond for a relation now broken. As such, forgiveness always involves a certain *forbearance*, a step back from revenge. The refusal of vengeance does not mean refusal of all punishment for evildoing, but forgiveness does refuse punishment-in-kind. It aims at breaking the cycle of evil and counterevil in endless repetition. It likewise involves some degree of *empathy* with the one who has committed the wrong. Forgiveness is a kind of stooping, an acknowledgment of the humanity of another and the salvageability of the victims' relation to that other.<sup>197</sup>

As noted at the end of the biblical material above, forgiveness in the Bible is described in a variety of metaphors: carrying away the wrongdoing, cancelling debt, covering the wrongdoing, non-remembrance, gift, and healing. Forgiveness functions covenantally, and therefore includes both mercy and punishment. Foundational to this description is that forgiveness is an essential aspect of *tsedeq*, and is crucial to the creation of *shalom*. Shriver's

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<sup>197</sup> Donald W. Shriver, "Is There Forgiveness in Politics?: Germany, Vietnam, and America," in *Exploring Forgiveness*, ed. Robert Enright and Joanna North (Madison: University of Wisconsin Press, 1998), 133-134.

description captures this relational character of forgiveness, orients it toward reconciliation as the goal of *tsedeq*, and provides important clues to the ways in which it can function in RJ. What follows will use both the biblical metaphors and Shriver's expansion on the biblical themes to build an understanding of how forgiveness can operate in RJ.

For repentance to occur there must be something from which to repent, as repentance is a response to wrong doing. In order for a person to repent there must be knowledge of the offence. To the extent that judgment is an act of moral discrimination it is a prior condition for repentance, and judgment and repentance are prior conditions for forgiveness. To expect forgiveness without repentance is to expect that the victim take responsibility for undoing the harm.<sup>198</sup>

Forgiveness steps back from the cycle of vengeance where each act of harm triggers the need for reciprocal harm. The Bible affirms that forgiveness sets aside the demand for punishment, while at the same time asserting that God's forgiving nature does not preclude punishment. The forgiveness metaphors of debt cancellation, carrying away or covering the wrongdoing, non-remembrance, gifting, and healing point to the setting aside of punishment. Biblically, punishment plays its role prior to repentance, and once the turn of repentance has been made, punishment can be set aside.

There are situations where forgiveness and punishment can sit next to each other in the RJ context. RJ processes that address serious crimes usually begin after sentencing, and the outcome of RJ does not generally have an impact on the length of the sentence or the success

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<sup>198</sup> Fortune, "Conundrum," 138. This is not to imply that forgiveness without prior repentance is impossible or improper, if freely offered by the victim. It is important that victims who have not seen repentance from the offender not be pressured to forgive in these circumstances.

of a parole application. In those cases any forgiveness that occurs during RJ does not change the progress of the punishment. Forgiveness, however, sets aside the expectation that offenders must completely undo the harms, given that many of the harms are irreparable.

Forgiveness and mercy are not impunity. Forgiveness does not say that nothing has happened, as Volf's comments make clear:

But the extension of unconditional grace does not disregard the demands of justice; rather, grace recognizes those demands as valid and precisely as such sets them aside. This tension-filled verdict, which both honors and transcends the claims of justice, is only possible because the Lamb of God took on himself the sin of the world. In doing so, he sanctioned both the affirmation of justice and the extension of unconditional grace.<sup>199</sup>

Volf's use of the word justice to describe what is set aside obscures the point, given the argument to this point that forgiveness and unconditional grace are the fulfillment of justice understood biblically. Volf appears to have in mind a punitive form of justice, and to that extent his use of the word points to the way that forgiveness sets punishment aside.

Forgiveness, or unconditional grace, acknowledges the validity of punishment, sets it aside, and in so doing fulfills the demands of justice understood biblically.

Harms create burdens and debts. Repairing the relationship requires that the burdens and debts be addressed. For offenders, the burdens and debts include guilt and obligations to undo the damage. For victims, the burdens and debts include the fear, anger and other emotional responses, the actual financial and physical costs incurred, the damage to physical and mental health, the damage to other relationships, and the obligations created by the harm they do in response to the harm suffered. Victims of harm caused by others frequently feel trapped in a world of suffering not of their choosing.

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<sup>199</sup> Volf, *End of Memory*, 121.

At one level forgiveness is an act that releases victims from their own world of suffering. But caution is required on this point. Jones argues that forgiveness that focuses only on the release of victims from their own pain is a truncated forgiveness that exchanges reconciliation for a therapeutic stance disconnected from the reality of relationship.<sup>200</sup> Forgiveness does not function only as the release of victims from their hurts, though it does do this. Forgiveness also functions through victims releasing their need for vengeance and committing to the restoration of relationship.

Forgiveness as a discipline leading to the restoration of relationship releases offenders from their burdens and obligations. If harm creates debts, then forgiveness releases from the debt. The language of financial obligations is instructive: to cancel an obligation to repay money is to forgive the debt. It is precisely this dynamic that is at work in forgiveness of harms. As Herman Bianchi puts it, “Forgiveness means the victim “gives away,” remits, those parts of the debts which the culprit, in spite of willingness, is unable to achieve.”<sup>201</sup> Bianchi, however, is also clear that this remitting of debts takes place when the offender, having repented and having attempted to repair the damage, has found the burden of repair too great to bear. Again, in the context of financial obligations, the forgiveness of the debt does not come immediately after the granting of the loan; it comes after the debtor has attempted to repay, but was unable to.

In the act of releasing the perpetrator of the obligation to repay the debt, the one forgiving is actually assuming part of the burden. To use the financial analogy, the one who forgives the

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<sup>200</sup> Jones, *Embodying Forgiveness*, 35 ff.

<sup>201</sup> Bianchi, *Justice as Sanctuary*, 47.

debt sustains a financial loss. When offenders are relieved of part of their burden through forgiveness, that burden is transferred to the victim. Victims who forgive sustain a loss as some of the harms they have experienced go unaddressed by the offender, but this loss parallels a release from the trap of resentment and anger against the offender.

There is another transfer that is at work here, as being relieved of the obligation to pay the debt produces mixed emotions in the offender. Once judgment and repentance have taken place, remorse induces a desire to undo the harm. The inability to undo the harm can be experienced as a deep regret. Being told, through forgiveness, that the debt has been cancelled involves both a relief that the struggle to repay is over, combined with the regret that the harm cannot be undone. Forgiveness results in a process of cancelling, recreating, and redistributing debts and obligations so that victims and offenders become dependent on each other in ways that can contribute to the repair of the relationship.

Empathy for the offender and the commitment to repair a fractured human relationship are central to forgiveness.<sup>202</sup> Forgiveness cannot flow where the victim views the offender as other than human, yet forgiveness is a step in the process of re-humanizing the offender. For this re-humanizing to be fully present requires a step further: to commit to repairing the relationship despite the fractures and the pain.

A therapeutic approach to forgiveness tends to speak of forgiving those who cause hurt, despite their best intentions.<sup>203</sup> Many times hurts are not in spite of, but because of, the intentions of the other. This is particularly the case in RJ where the criminal offence, by

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<sup>202</sup> Shriver, *An Ethic for Enemies*, 9.

<sup>203</sup> Jones, *Embodying Forgiveness*, 48-49.

definition, involves some level of intent. When hurt is rooted in the conscious decision of the other, repair of the relationship becomes much more difficult. Hurts in spite of best intentions do not actually call for forgiveness. It is intended hurts that call for forgiveness.<sup>204</sup> The intentional nature of hurts makes it more difficult to empathize with the offender, and can be a significant barrier to repair of the relationship.

For forgiveness to be effective in repairing the relationship, the offender must also act. An offer of forgiveness that is rejected or forgiveness offered in the absence of repentance cannot move the relationship to the point of repair. A relationship is not one sided, but requires some level of reciprocity. Forgiveness requires the active engagement of both victim and offender to be effective in the (re)building of the relationship:

Forgivers forgo the punishment of persons who deserve it and release them from the bonds of their guilt. Of course, to obtain this release wrongdoers must receive forgiveness of their misdeeds as just that – *forgiveness* – just as any person must accept a gift for the gift to be given, not simply offered. Wrongdoers must acknowledge their actions as wrongdoing, distance themselves from their misdeeds, and where possible restore to their victims what the original violation took away. Failure to do so would not result in the withdrawal of forgiveness; that gift is unconditional. But it *would* result in the suspension of forgiveness between its generous giver and the intended but untaking recipient.<sup>205</sup>

The offer of forgiveness has a future orientation and is thus an act of hope. There are no guarantees that forgiveness will repair the relationship, and there is no way to know what will come from the act of forgiveness. Victims who forgive do so knowing this unpredictability, yet are willing to take the risk in hope of the possibility of such (re)building.

The biblical images for forgiveness, especially the carrying away or covering of

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<sup>204</sup> Jones, *Embodying Forgiveness*, 48-49.

<sup>205</sup> Volf, *End of Memory*, 121.

wrongdoing, non-remembrance, and debt cancellation, all raise the complexity of the relationship between memory and forgiveness. One of the most common exhortations heard by those who have been harmed by another person is that they are to “forgive and forget.” Yet as Dan Allender notes, that cannot be done, except at great cost. Referring to a conversation with a man who claimed to have forgiven his very dysfunctional parents by moving forward and not looking back he comments that

forgiveness meant cutting his losses, ignoring the pain of the past, and keeping busy enough to outpace the sadness. Yet this kind of detachment dulls the senses and distorts perspective. His zeal to forget blinded him to the baggage he carried from the past and strengthened his determination to remain emotionally distant, rigid, and dogmatic. His family paid a terrible price for his ‘forgetting.’<sup>206</sup>

Forgetting prevents healing, for in forgetting a deep wound is produced that will continue to haunt, and the wound is more painful the deeper it is.<sup>207</sup> However, ongoing remembrance that continually replicates the pre-forgiveness memory only serves to erase reconciliation, and memory that continues unchanged reproduces judgment as if no forgiveness had taken place. The choice then is not between remembrance and forgetting, but between different kinds of remembering.

Rather than forgetting, forgiveness involves a new way of remembering. As Hauerwas points out, memory is redeemed by forgiveness.<sup>208</sup> Jones speaks of coming to a place where

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<sup>206</sup> Dan B. Allender, “‘Forgive and Forget’ and Other Myths of Forgiveness,” in *God and the Victim: Theological Reflections on Evil, Victimization, Justice, and Forgiveness*, ed. Lisa Barnes Lampman and Michelle D. Shattuck (Grand Rapids: William B. Eerdmans Publishing Company, 1999), 202.

<sup>207</sup> Stanley Hauerwas, “Why Time Cannot and Should Not Heal the Wounds of History, but Time Has Been and Can Be Redeemed,” in *A Better Hope: Resources for a Church Confronting Capitalism, Democracy, and Postmodernity* (Grand Rapids, Michigan: Brazos Press, 2000), 142.

<sup>208</sup> Hauerwas, “Time,” 150.

the harm is no longer remembered as sin.<sup>209</sup> It is important, though, that the memory is retained. If forgiveness means the end of the memory of harm, then the one forgiving remains open to repetition of the harm. Memory must remain, but be made new.

This transformed memory is intimately connected to the recognition by those forgiving that they are also in need of forgiveness. Jones argues that the ability to practice forgiveness comes from the status of being forgiven.<sup>210</sup> Ultimately, this process of remembering is a process of (re)membering. It is a process in which victims relearn that the enemy, the offender, shares humanity with them.

Volf also argues for a redemption of memory, a remembering in a new way, which he describes as a non-remembering that is not quite a forgetting:

If the victims remember rightly, the memories of inhumanities past will shield both them and all of us against future inhumanities; if the perpetrators remember rightly, the memory of their wrongdoing will help restore their guilty past and transform it into the soil on which a more hopeful future can grow. Yet if we must remember wrongdoings in order to be safe in an unsafe world, we must also let go of their memory in order to be finally redeemed [...]. [O]nly those who are willing ultimately to forget will be able to remember rightly.<sup>211</sup>

He goes on to speak of dropping the shield of memory in order to embrace. But as Volf notes, this step of forgetting is the final step in reconciliation, and it assumes that truth of the harm has been spoken, that *tsedeq* governs the relationship, that the perpetrators have been named, judged, and transformed, and that the victims rage and wounds have been healed. Only then

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<sup>209</sup> L. Gregory Jones, "Behold I Make All Things New," in *God and the Victim: Theological Reflections on Evil, Victimization, Justice, and Forgiveness*, ed. Lisa Barnes Lampman and Michelle D. Shattuck (Grand Rapids: William B. Eerdmans Publishing Company, 1999), 178.

<sup>210</sup> Jones, *Embodying Forgiveness*, 148.

<sup>211</sup> Volf, *Exclusion and Embrace*, 131.

can forgetting be a part of making all things new.<sup>212</sup>

#### 4. Judgment of Grace

The significance of the judgment/repentance/forgiveness nexus is captured by Gregory Jones' phrase, "judgment of grace," a term also used by Marshall and Volf. Both Marshall and Volf speak of God's judgment of grace in the context of what he calls the final reconciliation.<sup>213</sup>

For Marshall, the judgment of grace is part of a final eschatological judgment that is already present. But even this judgment is a judgment of grace, "a judgment in that it confronts and condemns, rather than ignores or excuses, the destructiveness of present human conduct, and a work of grace in that it aims at repentance, transformation and restored communion."<sup>214</sup> For Volf, the Last Judgment is judgment of grace,

[...] for it is a judgment executed by the same Christ who died for the world's salvation. For grace to be enacted in judgment, two elements are essential: people's sins against God and neighbor must be brought to light in their full magnitude, and sinners must be freed from their guilt and transformed. [...] The Last Judgment will reach its goal when all the wronged standing at the threshold of the world to come receive their rightful vindication, and when wrongdoers eschew attempts at misplaced self-justification, acknowledge their wrongdoing, and are freed from the hold of evil on their lives.<sup>215</sup>

While Jones also speaks of God's judgment of grace as eschatological, he is ultimately interested in how this judgment of grace is embodied in the practices of repentance and

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<sup>212</sup> Volf, *Exclusion and Embrace*, 131.

<sup>213</sup> Volf, *End of Memory*, p 179. Volf uses this term to designate the cultural side (as opposed to the physical side, which is usually called the resurrection from the dead) of the eschatological transition from this world to the next. The Last Judgment is one aspect of the cultural side of the transition, the other being the mutual embrace of former enemies.

<sup>214</sup> Marshall, *Beyond Retribution*, pp 167-168.

<sup>215</sup> Volf, *End of Memory*, 179-180.

forgiveness in the particularity of human life,<sup>216</sup> asserting that “Through God’s eschatological judgment of grace, human brokenness is overcome and communion restored.”<sup>217</sup>

Making possible the intersection of judgment, repentance, and forgiveness within RJ enables both victims and offenders to experience this judgment of grace that overcomes human brokenness and restores communion. Ultimately judgment and forgiveness, operating together as a judgment of grace, make possible the reconciliatory goal that lay at the heart of the early formulations of RJ. The question that remains is that of practice. The following chapter explores how it is that RJ can give expression to judgment and forgiveness in the process of working with offenders and victims.

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<sup>216</sup> Jones, *Embodying Forgiveness*, 147.

<sup>217</sup> Jones, *Embodying Forgiveness*, 15.

## CHAPTER 4: RESHAPING PRACTICE

### 1. The Risks

A practice rooted more deeply in a fuller understanding of *tsedeq* is not without risks, although these are also risks that apply generally to RJ: the problem of vengeful and judgmental victims, imposing an obligation to forgive, placing responsibility for offender rehabilitation on victims, and the avoidance of structural issues that contribute to crime. These risks can have an increased negative impact when the door is opened to a practice built more intentionally on reconciliation rooted in judgment, repentance, and forgiveness.

#### a. Vengeful Victims

Mary Achilles asks with some pointedness whether RJ can fulfill its promise when dealing with victims who say things that practitioners do not want to hear,<sup>218</sup> or who enter RJ with the desire to cause as much pain as possible for the offender. Moving RJ in a more committed way to the values of judgment, forgiveness and reconciliation may make it more difficult to make space for victims who carry a strong desire for revenge. It is easy for practitioners to fall into the trap of seeing vengeful victims as “bad” victims, and focus their work on “good” victims. But “good” victims may be the unusual victims who have suffered less harm,<sup>219</sup> or have a weaker sense of moral outrage.<sup>220</sup> To focus RJ on those victims who are willing to act

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<sup>218</sup> Achilles, “Promise,” 69.

<sup>219</sup> Heather Strang, “Is Restorative Justice Imposing Its Agenda on Victims?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews, (Monsey, NY: Criminal Justice Press, 2004), 103.

<sup>220</sup> Hauerwas, (“Time,” 145), notes that “[...] morally substantive people want revenge.” He goes on to suggest that the conflicts in Northern Ireland may not be the result of morally defective people, but

politely may be to cut out those victims most in need of what RJ has to offer.

Zehr's earliest work tended to be more offender focused and he has sought to shift toward an approach that more adequately responds to victim needs.<sup>221</sup> In his training materials, Umbreit describes his approach as "victim sensitive victim-offender mediation,"<sup>222</sup> whereas Doerfler and Wilson describe their approach as "victim-centered offender sensitive dialogue."<sup>223</sup> These authors are responding appropriately to concerns that RJ has tended to an excessively strong focus on offenders and their needs. This focus is understandable given that RJ functions in the context of a system that is primarily oriented to the offender. There is a danger that the approach being proposed may return RJ to an offender orientation, with victims only being present so as to contribute to the healing of the offender.

#### b. Forgiveness

Forgiveness opens a space of vulnerability for victims: are they able to take the risks of forgiveness? Can they find the strength with which to offer forgiveness? Can they consider offering forgiveness without feeling coerced? Despite its essential role in RJ, care must be taken not to impose a requirement of forgiveness on victims. Particularly where the harm has been great and where there was a pre-existing relationship with the offender, being pressured to forgive can mean the end of the RJ process. In such cases helping victims build trust in RJ

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the opposite, morally strong people seeking to honour the deaths of their forebears.

<sup>221</sup> Zehr, *Transcending*, 195-196.

<sup>222</sup> Umbreit, *Training Manual*.

<sup>223</sup> Doerfler, and Wilson, *Facilitating*.

needs to focus on what the victim can gain from engagement. Too strong a focus on the possibilities for reconciliation and forgiveness can drive victims away from a willingness to be involved.<sup>224</sup>

c. Responsibility and Accountability

There is a risk that the RJ process will confuse who is responsible for what (in the sense of having it under their control), and who is accountable for what (in the sense of having to account for what they did). Achilles has identified the importance of not expecting the victim to assume responsibility for the rehabilitation of the offender.<sup>225</sup> This is crucial, for if the victim takes on responsibility for the offender's rehabilitation, and the offender fails, there is the potential of deepening the victimization. It must be clear that offenders are responsible for their own rehabilitation. Nevertheless, in a reconciliatory process, the offender and the victim have a mutual interdependence as they have been tied together by the reality of the criminal event. While offenders have primary responsibility for their own transformation, such transformation cannot happen without a community of support. The victim can be part of that community of support, and to that extent does play a role in supporting the offender's transformation. Victims need to be prepared for this role.

The victim's healing is primarily the responsibility of the victim, while also being dependent on offender responses. Through remorse, restitution and providing information, the

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<sup>224</sup> Doerfler and Wilson invite both victim and offender reflection on forgiveness as well as for them both to consider how the dialogue may assist the other in recovery from the crime.

<sup>225</sup> Achilles, "Promise," 71.

offender plays a significant role in undoing the harm of the crime and thus contributing to the healing of the victim. If the offender declines involvement in RJ, is insufficiently remorseful, offers insufficient explanation, or offers insufficient restitution, this may negatively impact the victim's healing. Training materials emphasize the importance of preparing the victim for the possibility that the offender will not be as remorseful as the victim may wish.<sup>226</sup> This is an expression of the fact that victims are not completely in control of their own healing and that they require engagement from the offender to continue the process of healing. Reconciliation requires engagement from both parties in a setting of mutual interdependence. Healing also requires a community of care, and offenders can be part of that community to the extent that they are willing to engage in their own transformation and give victims what assistance they can. Just as there must be care that both victim and offender are prepared for the victim's role in assisting the offender, they must be prepared for the offender's role in assisting the victim.

The world of offenders is one of numerous people telling them what to do: defence lawyers tell them how to behave; if they are incarcerated, the system inside controls all aspects of their lives; if they are not incarcerated, then parole and probation officers tell them what they need to do to stay out of trouble; judges tell them what their future holds, often accompanied by a lecture about what is wrong with them; and finally, in victim impact statements, victims tell them what horrible people they are. RJ has the potential to shape different ways for the system to function so as to empower offenders to make the choices they need to make in order to change their ways. The risk, however, is that RJ becomes just another way of stripping the offender of their dignity and their humanity as victim centred

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<sup>226</sup> Gilman, Bowler, and Stutzman, *Inviting Dialogue*, 66.

processes add more opportunities for victims to tell offenders about their failings in a setting of personal intimacy.

Harris addresses this question in a response to a comprehensive RJ system model developed by Van Ness.<sup>227</sup> In creating formal roles for community and victim, the model has added to the burden faced by the offender by adding more participants to the system. Adding to the complexity of the system has the potential to further strip offenders of their ability to make choices for themselves.

Even in a process specifically structured for offenders to respond to the harms they have caused victims, there will be some needs that the offender cannot meet. There is always the risk that the victim will have exaggerated expectations of what the process can do. This may be at the level of needs that cannot be met, or it may be at the level of an expectation that once RJ has been completed the victim's life will return to what it was before the crime. Even if reconciliation takes place, even if the opportunities to express judgment, hear remorse, receive restitution, and to offer forgiveness are all present and taken, the fact remains that the victim will still be less than whole. This is especially so if the harm has been significant, such as a death, a sexual assault, or an assault with long term physical effects. There must be care that expectations are kept realistic while at the same time ensuring that the parties have the opportunity to move toward reconciliation.

#### d. Judgment

Judgment opens a space of vulnerability for offenders: Can they hear the judgment without

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<sup>227</sup> Harris, "Alternative Visions."

loss of self-esteem? Can they find the strength to respond with repentance? If, as Nelson has argued, sin can be a product of “broken-heartedness,”<sup>228</sup> or, as Cynthia Crysdale puts it, a product of a “beleaguered sense of self,”<sup>229</sup> then judgment has the potential to add to that broken-heartedness. Judgment can drive the offender deeper into defensiveness, denial, and more of the behaviour that occasioned the judgment. Judgment in RJ may be more difficult for offenders to face than judgment in the CJS, given that it comes directly from victims in an intense face-to-face interaction. The judgment in this face-to-face context cannot be deflected in the same way as that experienced in a court room or from a police officer.

In the same way that too much emphasis on forgiveness too early in the process can drive the victim away from RJ, so too, an emphasis on judgment can push the offender away from RJ. This prevents the offender from fully engaging in a process that offers potential for healing. If judgment is a judgment of grace, a judgment that opens the door for the offender to repent, then this would indeed be a great loss.

RJ processes that are built around developing restitution agreements may exacerbate the potentially negative role of judgment. Restitution is often experienced by offenders as a form of punishment,<sup>230</sup> while victims have a tendency to merge restitution and retribution.<sup>231</sup> This suggests that RJ that is structured primarily around restitution may be experienced by offenders as punitive. Offenders may then end up experiencing judgment as the absence of

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<sup>228</sup> Nelson, “For Shame,” 73.

<sup>229</sup> Cynthia Crysdale, *Embracing Travail: Retrieving the Cross Today* (New York: The Continuum Publishing Company, 1999), 7.

<sup>230</sup> Peachey, (“Restitution,” 553), identifies the current usage of “reparative sanctions.”

<sup>231</sup> Peachey, “Restitution,” 554.

grace.

Punishment functions, biblically, to move the offender toward repentance, since turning around involves recognition of moral culpability. As such, punishment plays a role in encouraging accountability. It can play a role in drawing the offender home as in the parable of the lost son in Luke 15. While the parable does not explicitly use the word punishment, the son's experience of famine would fit with the structures of punishment seen in the Old Testament:

<sup>17</sup> When he came to his senses, he said, "how many of my father's hired men have food to spare, and here I am starving to death! <sup>18</sup> I will set out and go back to my father and say to him: Father I have sinned against heaven and against you. <sup>19</sup> I am no longer worthy to be called your son; make me like one of your hired men." <sup>20</sup> So he got up and went to his father.

The son's response to the punishment was to return home after "he came to his senses." This coming to his senses illustrates the function of punishment, enabling the one who is punished to see in a new way. From this new vision comes the ability to turn around and return home. RJ, then, should not reject restitution because it may be punitive, but recognize that it may play an important role in the ongoing transformation of both victim and offender. At the same time the potential for seeing restitution as punitive calls for care in building an RJ process so that offenders have a clear sense of its goal and purpose.

#### e. Astructural Bias

RJ has an "astructural bias,"<sup>232</sup> though its grounding in biblical conceptions of *shalom* and

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<sup>232</sup> Harry Mika, "Mediation Interventions and Restorative Justice: Responding to the Astructural Bias," in *Restorative Justice on Trial: Pitfalls and Potentials of Victim-Offender Mediation: International Perspectives*, ed. Heinz Messmer and Hans-Uwe Otto (Dordrecht: Kluwer Academic

*tsedeq* suggest that this is not inevitable. *Shalom* and *tsedeq* as covenantal concepts are oriented to the maintenance and/or rebuilding of community, and as such are concerned with both individual life and life within social structures. Nevertheless, RJ practice as it has developed is almost exclusively concerned with the meeting of the victim and the offender in the context of undoing the individual harm and responding to the moral failings of the offender as an individual. The broader community is involved only as an entity harmed by the crime. One of the principles of RJ asserts that crime damages the community. RJ does not question the definition of crime as an act between individuals, and it forgets that crime is often the product of damaged communities.<sup>233</sup> To this extent, then, RJ fails to challenge mainstream notions of crime and the causes of crime, focusing instead on the individuals, and forgetting the “rootedness of [...] conflict in human relationships expressed in social organization and structure.”<sup>234</sup> RJ expects that the individuals involved have the tools to transcend these social structural sources of the conflict.<sup>235</sup> This is to expect too much of the parties. The fact that RJ processes are successful suggests significant effort on their part. The risk in the direction being proposed is the possible continuation and strengthening of this structural bias. To focus RJ on judgment, forgiveness and reconciliation may exacerbate the avoidance of the structural embeddedness of crime and prevent the directing of resources to addressing these

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Publishers, 1992), 559-68.

<sup>233</sup> Bonnie Price Lofton, "Does Restorative Justice Challenge Systemic Injustices?", in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 385.

<sup>234</sup> Mika, "Mediation Interventions," 559.

<sup>235</sup> Mika, "Mediation Interventions," 561.

causes. In other words, accepting the dominant understanding of crime, and individualizing a social problem, may prevent meeting one of the goals of RJ: strengthening the community in order to prevent future harms.

Any practice that focuses so closely on the interpersonal relationship between victim and offender that the structural aspects of the crime are ignored is inadequate. This does not mean that the structural context of the crime needs to be specifically addressed in the meeting between the parties, or that mediation needs to be avoided because of its astructural nature. It does mean that practitioners and programmes need to be prepared to work at the structural issues knowing that crime is also a deeply personal and painful event.

f. An Ethic of Risk

Any conflict resolution process is fraught with unexpected changes in direction as participants engage in an ongoing process of interaction with the mediator and the other party. That interaction involves reflecting on and speaking from the party's own experience, and responding to what the other party adds to the conversation. This radical contingency can be frightening for the mediator, who ultimately influences, but has no control over, the process. But it is this very contingency that makes possible the turning of the parties toward reconciliation. As a consequence, the mediator in an RJ process must cultivate a willingness to take risks.

Sharon Welch contrasts an ethic of responsible action and an ethic of risk. The former is rooted in a belief that contingency can be contained and controlled, that it is possible to view a situation, determine what needs to be done to solve the problem, complete the task and have

the solution work. Rejecting the possibility of such control in a world of contingency, she argues that an ethic of risk involves experimentation, imagining possible futures, never knowing what will work, and making choices in the context of a supportive community.<sup>236</sup>

As argued above, both judgment and forgiveness are essential to a biblically rooted RJ, yet both entail risk. They contribute to an atmosphere of vulnerability for both victims and offenders, and thus have the potential to drive both offenders and victims from the process. If judgment and forgiveness are to be present and play their proper role as judgment of grace, this courage to risk in the midst of radical contingency needs to be embraced by RJ practitioner.<sup>237</sup>

## **2. Creating Space in the Process**

As noted in Chapter 1, there is a wide diversity in forms of RJ practice. Victim offender mediation, however, remains the dominant model, and it is the model with which I am most familiar through my own work. As a consequence it will be the primary focus in the following discussion on practice implications.

Mediators are necessarily a part of the conflict interaction and have an impact on the way the parties to the conflict relate to each other. This may be relatively benign, since the parties want mediators to be present for their influence on what happens. There is a danger, however, that the mediator will have a more profound impact on the interaction. The way mediators

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<sup>236</sup> Sharon Welch, *A Feminist Ethic of Risk* (Minneapolis: Fortress Press, 1990).

<sup>237</sup> It is this courage that the offenders, the victims, Mark Yantzi, and Dave Worth displayed in 1974 in the Elmira case.

define the issues in a conflict has significant impact. The way the mediators describe the process influences what happens and what outcomes are possible. A mediator can frame the same conflict as being about relational matters or about financial issues and this framing can affect whether the parties talk about their relationship or about how to deal with finances.

Mediators will also affect the way judgment, repentance, and forgiveness are present in the RJ process. By avoiding any discussion of judgment, repentance, and forgiveness, mediators can influence parties away from engaging in them. Likewise, by directly inquiring about their importance to the parties, mediators invite their presence in the mediation.

In what follows I will explore what needs to be considered if judgment and forgiveness are to play the role envisioned, all within a style of practice that seeks to ensure maximum participant control.

#### a. Preparing for Judgment and Forgiveness

The engagement of a mediator in an RJ process usually begins with meeting the parties individually. In the language of practice, this is case preparation. It has several purposes, the main ones being: meeting and building a relationship of trust between the mediator(s) and the participants, gaining a clear understanding of the process, gaining an understanding of the costs and benefits of engagement in the process, asking questions, and being invited to participate in the process. As this is the first contact of significance between the parties and the mediators, apart from a more formal contact to invite participation in this case preparation meeting, it plays a significant role. It is in these meetings that the tone of interaction is set, and the parties gain a sense of what RJ is and what it can do.

The way the mediators frame the process is crucial to what can happen. For example, framing the process as being aimed at restitution will have the effect of directing the conversation toward restitution, how it is to be calculated, and how it is to be paid. Framing the process as being aimed at reconciliation or transformed relationships will have the effect of focusing the conversation in that direction. The question thus becomes how the mediators should frame the mediation and its purpose.

What follows is a review of a number of issues that arise during case preparation. In each case, there will be some discussion of the issue as it connects to supporting judgment and forgiveness, as well as ideas for how the mediator might encourage the victim or offender to operate within the framework of judgment/repentance/forgiveness. The questions and responses suggested are starting places. The questions will inspire responses, to which the mediator will have to consider a response that supports movements toward judgment, repentance, and forgiveness.

The reader will no doubt notice that the suggested questions and responses presume a particular social location of the mediator as educated and articulate. These suggestions will not work with all RJ participants exactly as presented, depending on their own social location. In addition, the participants may have a religious or theological orientation different from that of the mediator. In either case, the suggestions that follow will require translation.

#### b. Inviting Offender Reflection

While granting that crime is not abstracted from social causation or social consequences, it was argued above that the offender is a moral agent. Offenders made choices when

committing the offence, and they are capable of making choices about how they respond to the crime.<sup>238</sup> It is important that, from the beginning, mediators frame the mediation in terms of the offender's ability to engage this task:

*One purpose of the mediation is to help you think about the effect of the crime and what choices you have available to you. It might be helpful to think in advance about what outcomes you would like to see and what you can do to help reach those outcomes. I would invite you to think about this more later, but what initial thoughts do you have now?*

It is also important to frame the initial interaction between the parties in the criminal event in terms of moral agency. In other words, the offender is not just a moral agent in terms of future options and choices, but the offender was also a moral agent in the previous interaction with the victim; offenders are themselves sinners. At the same time, offenders act within a larger set of constraints that shape the choices available, constraints that in the language of the New Testament may be thought of as principalities and powers. In other words, offenders are fallen, and live within a fallen world. It would thus be important to invite reflection on both their freedom to act and the constraints that they experienced:

*Mediation offers an opportunity to talk about what happened during the crime, and what choices you made during that event. It will also offer you a chance to talk about why committed the offence. As you think about that now, what strikes you as important about what you did and why you did it?*

For offenders this will give space for a discussion of their reasons for committing the offence, of the choices they made about their behaviour during the commission of the offence, what other choices might have been available to them, and what constraints they experienced. This discussion of the reasons for the offence can also open up discussion of the social

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<sup>238</sup> This does not mean that they may not need help, support, or advice to enable their choices and their ability to live out these choices.

structural issues face by the offender, though great care will be needed to ensure that this does not become an opportunity for denial or making excuses.

Judgment presumes moral agency. Offender reflection on moral agency can begin to open the offender to engagement with moral discrimination. Recognition of past choices made and future choices that are available begin to open the offender to the possibility that other choices were available, and that future choices may create the possibility of a different relationship with the victim. This reflection can also begin to open the offender to thinking about repentance, though this may require the offender to hear more about the harms. Reflection on constraints can begin to open the offender to consider what larger life changes are required to prevent future offences.

Offenders often play down the importance of the harm experienced by victims.<sup>239</sup> This is particularly true in nonviolent crimes. For example, the anxieties created for a victim who comes home to find the aftermath of a break-in may be incomprehensible to an offender: “It was just stuff, no one was there, and no one was hurt, and besides, insurance will pay the loss.” It is important for an offender to begin reflection on the harms and how a victim might have experienced them. This reflection helps the offender be ready to understand the emotion of the victim during the joint meeting, as well as preparing the offender to hear expressions of judgment. This requires some care as beginning this conversation may give the offender another opportunity for denial.

One approach involves inviting the offender to give a detailed account of the criminal event. This detail may open the offender to seeing the consequences of the actions taken.

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<sup>239</sup> Umbreit, *Training Manual*, 112.

Inviting the offender to reflect on how he/she might have responded to being on the receiving end of these actions may also aid in achieving some clarity about the nature of the harms experienced by the victim.

Again, some caution is appropriate. If the offender has been victimized in the past this reflection may re-open the wounds of that previous victimization. If this is the case the offender will need significant support. This conversation may also create the opportunity for real empathy on the part of the offender for the victim, an empathy that may open the door for repentance.

Issues of guilt and forgiveness cannot be ignored. The offender needs to be prepared for discussions around these concepts:

*In what ways has guilt played a role in your response to the crime? How might you want to communicate about this with the victim?*

*In what ways is forgiveness important to you? What do you want to do to request it? What will be your response if the victim refuses forgiveness?*

These questions will help offenders think about their own sense of responsibility as well as considering their own needs around recovering from the offence.

Judgment will appear in the RJ process, whether in the form of shame, of naming the truth of the criminal event, of expectations of restitution, or of expectations that RJ be on the side of the victim. Offenders may experience the presence of judgment, especially if it is accompanied by strong emotions, as rejection of their humanity. There may also explicit expressions that victim views the offender as a bad human. The offender needs to be prepared for this:

*During the RJ meeting there will likely be discussion of your actions as being wrong. How will you experience that? What would you want to say about that?*

*The victim will likely express strong feelings about what you did during the commission of the crime. How do you think that will affect you? What might you want to say to the victim in response?*

*The victim may have some negative things to say about you. How do you think that will affect you? What might you want to say to the victim in response? What would you like me to do to assist you if this happens? What can you do now to prepare for this possibility?*

If the crime did flow from a “beleaguered sense of self” the offender may need significant support in hearing what the victim has to say. This may also require significant intervention during the mediation, so that the victim’s expressions can be focused toward judgment regarding the actions of the offender.

If judgment is to operate as judgment of grace, the offender will also need support for that to happen. Starting with case preparation the mediator will need to focus on assisting the offender in thinking about how judgment can enable movement toward repentance and a new way of living.

The offence binds offenders to an identity as “offender” from which they need to be released so that identity can be restructured. Paradoxically, judgment is the first step. In judgment as judgment of grace the offender is enabled to step away from “offender” as identity. In stepping away from this identity, the offender is freed to take the step of repentance. Offenders who can only see themselves as offenders cannot make the move to repentance, for this step would require that they see themselves as capable of change. During case preparation the mediator can begin to help the offender with this shift in identity. This can be done through affirmation of the offender’s humanity. The mediator can refuse to see the offender only as an offender, choosing instead to see the offender as a person with complex story, who is trapped by sin and whose choices may have made sense at the time.

Through practices of respect and honouring the dignity of the offender, the mediator can give the offender an experience that is different from what often happens in the CJS. Through such practices as careful listening, use of the offender's name when addressing the offender, postures that communicate attentiveness and care, and respecting meeting times, the mediator acknowledges that the offender is a person worthy of such respect, and that the offender is much more than the offence.

The ability to engage in what Volf refers to as double vision,<sup>240</sup> to see from one's own perspective as well as the perspective of the other, is difficult to achieve in the best of circumstances. For the offender, the ability to see from the victim's side is crucial to the ability to enter into repentance. In the absence of such perspective taking offenders remain trapped in a view of the crime that serves only their perception of their own interests. Enabling such double vision for the offender is difficult, and cannot be fully achieved until the victim and the offender meet and speak to each other. Some steps in this direction can be taken during case preparation. Destabilizing the offender's view of the crime is one part of this:

*During the joint meeting you will have an opportunity to describe the events from your perspective. The victim will also describe the events from his/her perspective. It is my experience that these two descriptions can be quite different. What do you think some of the differences might be? What do you think the victim might have to say about your description of the event?*

Care must be taken not to invite the offender to evaluate the possible alternate views of events, since the goal here is to help the offender to begin to see the possibility of multiple perspectives. This discussion has the potential to open the way to a new public context. By

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<sup>240</sup> Volf, *Exclusion and Embrace*, 250-253.

helping the offender recognize that there are multiple viewpoints, the offender may be able to accept the validity of the victim's perspective, a perspective that includes judgment of the offender's actions, thus opening the way to repentance.

The disciplines of confession and repentance are not widely practiced, nor do they have wide acceptance. In the absence of such acceptance, few have the skills needed for repenting. It may be necessary for the mediator to assist the offender in giving expression to repentance, though this should not be done unless the mediator is sure that the offender wishes to do so. With careful attention to what the offender is saying, the mediator can provide opportunities to help the offender think about how to communicate repentance:

*You seem to be clear that you regret what you did to the victim, and you regret that the victim experienced harm at your hands. Are you interested in saying that to the victim? How might you express that so that the victim hears and understands?*

(Offender makes an attempt at expressing repentance.)

*As I listened to you I was a little confused when you said: "x". What were you trying to communicate? What might be a better way to say this?*

By inviting the offender to practice, and by communicating confusion without putting words in the offender's mouth, the mediator has helped the offender clarify the message, and has ensured that it is communicated in the offender's words.

Sitting behind each of the suggestions above is the possibility that the offence is rooted in an offender's previous experience of being harmed. There is a significant risk that taking up this approach with the offender may cause further harm. The mediator will need to be very conscious of supporting the offender in the conversation so that the offender can begin to act on the basis of strength, so that the past is acknowledged, but no longer defines the self. The central protection is the importance of the offender only taking those steps he/she is capable of

taking. The mediator may also need to take an active role in supporting the offender in making the courageous steps that are called for. The offender has to be able to make carefully thought out decisions about how to function in the mediation, and how to respond to the victim.

The gains for the offender who begins the process of hearing and accepting judgment, and who is able to move to repentance, are significant. By entering into the change called for by judgment, offenders make possible both their own healing and the healing of the victim.

#### c. Inviting Victim Reflection

The task of the mediator with regard to the offender is creating an opening for hearing judgment, and moving to repentance, so as to create the possibility for reconciliation. With the victim the mediator's task is helping clarify what is to be communicated in judgment, what response is to be made in the event of repentance, and whether forgiveness is one of the possible responses.

The conversation about moral agency will lead in different directions depending on the nature of the offence. The most significant difference will depend on whether the victim was present or absent during the offence. Discovering a break in after the fact is different from a direct and violent, or potentially violent, confrontation. In a direct confrontation the victim was engaged in interaction and made responses to the offender that may have had an impact on the course of the criminal event. If there was interaction the victim will need to reflect on the nature of the choices and deal with possible feelings of guilt if the responses contributed in a negative way to the course of events. The victim will need to reflect on the nature of moral

agency in situations of significant stress. Great care will be needed so that the victim is not re-victimized by an interaction that implies that they are at fault for what happened to them. The focus of this conversation will need to be around what choices the victim had available, given that in moments of violent confrontation, the victim operates in a climate of constrained choice. The victim will reflect on what choices were made, what choices were available after the event and how the victim responded, and what ongoing choices the victim is making in responding to the harm, including the choice to engage in an RJ process. The focus here is on both the constraints within which the victim operates, and previous choices that are signs of strength.<sup>241</sup>

Questions such as the following may be helpful:

*When you chose to keep silent when the offender first threatened you, what other choices might you have made?*

*What were the consequences of this choice?*

*What might have been the consequences of those other choices?*

*In what ways was your choice based on careful thought and in what ways was it an instinctual response?*

*In what ways was your choice rooted in a sense of your own strength?*

*What choices do you see that you have now, in responding to the crime and the offender?*

*What choices have you made about dealing with the experience since the crime?*

*In what ways are these choices rooted in a sense of your strength?*

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<sup>241</sup> Victims often see crime and their responses to it as experiences of disempowerment. It can be difficult for them to see that they had choices, that they made choices that prevented the crime from being worse, and that they are capable of recovering from the experience. For many victims this is framed as moving from seeing themselves as “victims” to seeing themselves as “survivors.” It is the potential strength of self identification as survivors that I am seeking to identify.

*Where are you finding support that enables you to make choices based in your strength?*

Care in the use of these questions must be taken, particularly if the mediator senses that the victim remains locked in their own sense of weakness.

Given the wide range of emotional responses to victimization, there are some victims whose primary desire will be for retribution, to see the offender suffer harm that is at least equivalent to the harm suffered by the victim. While retribution is one aspect of *tsedeq*, it is a retribution aimed at repentance, and it carries the hope that through the imposition of punishment, the offender will turn and seek reconciliation. Rather than focus on vengeful victims as a problem for RJ, it would be better to see the opportunity the desire for retribution represents. Retribution as a motivation is grounded in a moral clarity about the offender and the offence. This presents the mediator with the opportunity to help the victim use this moral clarity in a new way, to frame it in terms of judgment. The challenge is that the victim may not be able to do this in a way that focuses on the offence while continuing to respect the offender as a human being.

The mediator may need to be intentional about creating opportunities for the victim to reframe their desire for retribution as judgment:

*You have expressed a great deal of anger about the offender, as well as expressing a desire that the offender also experience a similar kind of pain to what you have experienced.*

*I am wondering how you want to express that anger when we have the joint meeting.*

*How might you want to communicate to the offender the wrongness of what he/she did?*

*What do you want the offender to know about your experience during the crime?*

*What do you want the offender to know about how the crime affected you?*

In asking these questions it would be important to focus on the behaviour of the offender and how that behaviour affected the victim. The goal with these questions is to focus the victim on what the offender has done, and not on the character of the offender.

When meeting with the victim, the mediator may not know whether the offender is feeling remorseful or desires to make the turning away from a previous way of life that is a product of repentance. This may be because the mediator has not yet met with the offender, or it may be because the offender still needs more time to think, or because remorse and repentance may be dependent on the offender meeting the victim. In any event, it is important that the mediator assist the victim in thinking through responses to the absence of, clear expressions of, or ambivalence about remorse and repentance. The way the offender expresses remorse and a desire for repentance can play a significant role in victim expressions of forgiveness.

*Offenders frequently take the opportunity of an RJ meeting to express remorse to the victim. I am wondering how you would feel about a clear expression of sincere remorse from the offender for what he/she did to you.*

*What might you want to say to the offender in response?*

*What might you want to say to the offender that would encourage him/her to express remorse?*

*While many offenders take the opportunity of an RJ meeting to express remorse, there are a few times when offenders, for a variety of reasons are unwilling or unable to express remorse.*

*I am wondering how you would feel about that.*

*If the offender does not express remorse, what might you want to say?*

*Offenders sometimes are quite confused about their own feelings about the crime and may give mixed messages about whether they are remorseful, shifting between expressions of remorse and not caring.*

*I am wondering how you would feel about this.*

*How might you want to respond?*

*Some offenders see RJ as an opportunity for repentance and to make significant life changes*

*How might you respond if this happens?*

*Are there any ways that you might want to support the offender in doing this, either with words or in actions?*

*How might you feel/respond if the offender doesn't speak about this?*

In each case these questions are framed so as to assist the victim in thinking about remorse and repentance and what would be an appropriate response.

The victimization experience binds the victim to the offence and to the offender in powerful ways. Victims speak of the offender and the offence as a constant presence well after the offence, and in many cases the victims have a variety of factual questions related to the crime itself. These questions speak of an underlying need to have an accurate description of the offence, combined with a need to hear about the offender's state of mind at the time of the offence. This is often described in terms of curiosity, and in terms of assuaging fear. A common question that victims bring to RJ is whether they were random victims, whether they were specifically stalked and targeted, and whether they need to fear further victimization.

Victims need accurate information in order to properly engage in judgment. They need to know what it is that is they are judging. If they decide to move past judgment toward forgiveness they need to know what it is that they are forgiving. The questions that victims bring to the RJ process lay important groundwork for the later tasks of judgment and forgiveness.

Just as offenders need to see the offence from both their own perspective and from the perspective of the victim, so do victims need to see from their perspective and from that of the offender. One of the challenges of supporting victims in the step of seeing from the offenders' perspective is that the experience of harm can make it very hard for victims to want to see in any way other than their own. Encouraging perspective-taking calls for great care. Some of

the following questions might be helpful:

*What would you like to know about the offender?*

*The offender will likely tell you something about his/her background in response to questions about why he/she committed the offence. It is my experience that offenders often have their own story of having been victimized. How might you feel about such a story from the offender?*

*It is my experience that offenders frequently experience the offence in the context of various social pressures, ranging from their own poverty to the reality of racial prejudice. What would you like to know about these factors in the offender's actions? How might you respond?*

*What would you like to know about the why the offender made certain choices regarding the offence?*

The ability to see both from their own perspective, as well as beginning to see from the perspective of the other is central to forgiveness as the penultimate act of reconciliation. The ability of victims to move from a strictly inward focus on their own pain to recognition of the humanity of the other is crucial to the desire to forgive and to the release of offenders from the debt that is owed to victims. In addition these questions help the victim begin to see the offender within a larger world of pressures that contributed to the choices that the offender made.

Victims may bring exaggerated views of a dualism between themselves and offenders. While maintaining respect for victims and the harms they have experienced, it may be necessary to disrupt this dualism. This may take two forms—helping victims to see the humanity of the offender, or helping victims to reflect on the moral complexity of their responses to the crime. The latter response is risky. There is the danger of backlash against the mediator for suggesting that the victim is in any way other than innocent. There is the possibility that the offender is caught in the backlash and experiences significant harm.

Nevertheless, it is important that the mediator encourage reflection on the quality of victim responses, whether they represent the victim as they want to be seen by others, and how they want the offender to see them. The goal with these questions is to encourage victims to reflect on the affinity between themselves and the offender.

As discussed above in Chapter 3, Volf identifies a deeper non-innocence of victims, the non-innocence of the human condition that taints any human judgment, and relativizes any supposed victim/offender dualism. Entry into this discussion is particularly risky, and not all victims will be capable of engaging this issue.

Describing RJ to victims in terms of the opportunity to forgive has the effect of limiting victim interest in participation. However, taking the opportunity to forgive is a significant part of victim satisfaction with RJ. This encapsulates the risk and the gain. Mediators need to be careful not to oversell RJ in terms of forgiveness, while still engaging victims in case preparation in such a way as to prepare them for the possibility of the move from judgment to forgiveness. The corresponding gain is the possibility of reconciliation. Asking about forgiveness directly may be helpful.

*In what ways have you thought about forgiveness?*

*How might forgiveness be helpful for you?*

*How might forgiveness be helpful for the offender?*

In addition it is important to help victims reflect on the ways in which their healing is linked to the healing of the offender. Direct questioning on this point may also be helpful.

*In what ways do you think a meeting with the offender may be helpful to you?*

*In what ways do you think a meeting with you would be helpful to the offender?*

Opening the door to judgment carries two risks. First there is the risk that victims will remain focused on judging character, refusing to see the possibility of repentance, or to allow the offender to become human. The corresponding risk is that this will add to the inability or unwillingness of the offender to carry through with the RJ process for fear of being harmed by the victim.

#### d. The Restorative Justice Process

Once case preparation has been completed and the victim and the offender agree to a joint meeting, there is a shift in the mediators' task. In a joint meeting mediators need to be attentive to judgment/repentance/forgiveness patterns while assisting the parties in speaking to each other. This is much more difficult than the case preparation process, given the deepening of the emotional content of the conversation as the parties seek to communicate with each other.

Mediation is a dynamic process. Despite any plans the mediator may have for where the mediation should go, the parties will say what they want to say. Moments of judgment, moments of repentance, and moments of forgiveness drift in and out of the discussion, often unheralded, usually unnamed, and frequently unrecognized. One of the tasks of the mediator is to recognize those moments and hold them up for participant response. These mediator responses do not necessarily require labels. Just as participants offer forgiveness without labeling their act as forgiveness, so the mediator does not need to say, "Folks, I just noticed that the victim forgave the offender," as the parties may reject the label even if they accept the act. Responses such as the following are more appropriate:

*I just noticed that victim expressed concern in response to the offender's last statement [a statement of remorse or repentance]. What do each of you think that means?*

*I just noticed that the offender expressed a great deal of anxiety about what happens if you meet on the street in the future. Offender, can you talk more about that anxiety, and victim, what are your thoughts on that question?*

What I am suggesting is that as the mediator identifies moments of significant insight, vulnerability, or expression of making new choices, the participants be invited to notice these and comment on them. These moments, identified and responded to, will slowly begin to lay the foundation for transformed ways of relating into the future.

Accurately naming the criminal event is important to both victim and offender. Offenders may use a range of euphemisms that have the effect of minimizing the significance of the crime. To say "I raped her" rather than to say "I had my way with her," is significant as the latter phrase is a way of deflecting the full significance of the behaviour. By naming the behaviour with a word as freighted with moral and legal significance as the word "rape", the offender takes on a new level of moral culpability. It is this ownership of the crime at which judgment is aimed, and which the mediators will need to actively support throughout the mediation.

This naming is also important for victims, as the ability to name the crime as crime, using the strongest appropriate language, enables victims to recognize themselves as victims, to see that the crime was something done to them through no fault of their own, especially where the crime is particularly traumatizing. This is an important function of judgment. Van Ness recounts a story of a rape victim who continued to be distraught as the judge sentenced the man who raped her. The judge spoke to the victim after the proceedings were over, telling her "You understand that what I have done here demonstrates conclusively that what happened

was not your fault.”<sup>242</sup> Van Ness reports this as a significant moment in the victim’s healing. It was in the act of judging the offender that the system was attempting to tell the victim that she was truly someone who had been victimized. Recognition of the location of responsibility through the act of judgment plays an important part in supporting the vindication that the victim requires for their healing. While this story comes from the CJS, it points to the important role of judgment for the victim, and highlights the loss to RJ if it is left by the wayside.

Focusing the introductory parts of the RJ process on language of restitution has the potential to limit the process to a discussion of restitution and thus avoid the reconciliatory potential of RJ. This means that, while restitution needs to be part of the discussion early in the process, it cannot be set up as the main purpose of the process. The mediators have to let the participants know that the process will give them opportunities to describe the event in its fullness. The corollary is that the process will give them the opportunity to hear about the experience of the other in its fullness. This interaction of the participants in the shared experience of pain opens the door to new possibilities. First each is humanized in the eyes of the other. In this humanization rests the possibility for hearing judgment as the judgment of grace, the possibility for change in response to the judgment, and the possibility of forgiveness.

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<sup>242</sup> Van Ness, *Restoring Justice*, 3.

## CHAPTER 5: CONCLUSIONS, CHALLENGES, PROSPECTS

At its core, in this thesis, I am arguing for a recovery of the initial impulses of the RJ movement that saw itself as seeking reconciliation. Reconciliation needs to be built on clear-eyed recognition of the role of judgment and forgiveness. I have identified some specific practices that mediators can use in the process to open the door to full reconciliation. More, the structure of RJ needs to be scrutinized in light of judgment and forgiveness.

Recall the critique of RJ suggested by Umbreit:

If crime is viewed as conflict between people and the importance of addressing the emotional needs of both victims and offenders is so central to the model, why does VORP focus so much on non-violent property offences in which the emotional trauma experienced by victims is probably not as great as in crimes of violence?

If the model operates from a restorative rather than a retributive paradigm of justice, why is VORP so closely linked to the concept of restitution, which many regard as merely another form of retribution and punishment? (The Reagan administration, for example, supports restitution as part of its commitment to get tough with criminals.)

Even with the nearly exclusive focus on non-violent property crimes, if the VORP model is committed to viewing crime as conflict between people and reconciliation as the primary goal of the process, why is only one meeting lasting an average of one hour, with rare exceptions, conducted between the victim and offender, rather than scheduling follow-up meetings? Is it realistic to think that ‘reconciliation’ will occur in such a brief encounter?

To what extent is the very goal of the model, that of reconciliation, more an ideological and symbolic value statement of its originators, rather than a grounded and realistic goal that has a clear meaning to victims and offenders participating in VORP?<sup>243</sup>

Umbreit is correct in identifying the absence of so-called serious crime in the practice of most RJ programmes. In Canada there are only a few programmes that use mediation to address crimes of serious violence. If the full reconciliatory possibilities of RJ are to be met, the programmatic focus on relatively minor non-violent property crimes needs to expand to

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<sup>243</sup> Umbreit, *Violent Offenders and their Victims*, 102. See also David Gustafson, “Is Restorative Justice Taking Too Few, or Too Many Risks?”, in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 305.

include serious crime.

Reconciliation is not achieved in one hour. A one hour mediation allows for little more than the participants spending a bit of time talking about the crime itself, dealing with some of the basic questions of the victim about the crime, and negotiating restitution. Full exploration of the meaning of the event, careful consideration of the needs of both participants, working through judgment to the possibilities of repentance, exploring the possibilities for forgiveness and achieving some expression of it, all take considerable time. This has programmatic implications, as increased time spent with participants means more money and mediators, or fewer cases.

Zehr argued that RJ is an experimental plot that attempted to offer to the CJS an example of what is possible. No one knew at the start how it would develop. There was an implicit expectation that the CJS would pick up on the experiment and begin to give RJ some kind of larger institutional life. Van Ness went so far as to suggest a model of what RJ might look like if fully implemented as part of the CJS.<sup>244</sup> Bianchi clearly argued that the CJS should be rebuilt using an approach modeled more concretely and directly on *tsedeq*.

Various critiques of RJ have been rooted in the recognition that as RJ becomes more widespread, and is increasingly integrated into the mainstream system, something is lost.<sup>245</sup> That something is the core of what RJ was intended to be, an opportunity for the people caught

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<sup>244</sup> Van Ness, "Pursuing a Restorative Vision of Justice."

<sup>245</sup> See, for example, Bowen, Boyack, and Marshall, "How Does Restorative Justice Ensure Good Practice?"; 265-76; Boyes-Watson, "What Are the Implications of the Growing State Involvement in Restorative Justice?"; Erbe, "What Is the Role of Professionals in Restorative Justice?"; Hakiha, "What Is the State's Role in Indigenous Justice Processes?"

up in a painful incident to find some new ways of seeing each other and to begin the long process of reconciliation. Vulnerability to being co-opted and the attending loss suggest that RJ may not be able to be a widely implemented and fully integrated, part of the CJS.

Wonshe, writing as an aboriginal person about her experience of RJ as implemented in the CJS, notes:

The more I witnessed, the more I felt like Dorothy in the Land of Oz journeying to find restorative justice. Like her, I was surprised to discover the man behind the curtain maintaining the grand projection. I wanted to click my heels and go home, back to the nurturing, loving and respectful community in which I had been living, where restorative justice is modeled as a way of life.<sup>246</sup>

There are several insights here that I would highlight. In the full sense that I am proposing, RJ is rooted in a community of care and compassion. Abstracted from a community and implemented as part of a system, RJ cannot function in the same way as it does in a community. RJ is a way of life. It is not primarily a practice, a process, or a system. Rather, it is a way of being in the world.<sup>247</sup> Wonshe recognizes that for this reason RJ can never be an alternative to the system.<sup>248</sup> It can however, function as a bridge between the community and the system. The system will be the system. RJ provides ways for the community to take ownership of its conflicts, to enable the healing of the relationships of those harmed by crime, whether victim or offender, to bring both offender and victim back into the circle of the community. It is here where the full potential of a RJ practice grounded in a theology of

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<sup>246</sup> Wonshe, "How Does the 'Who, What, Where and How' Affect the Practice of Restorative Justice?", in *Critical Issues in Restorative Justice*, ed. Howard Zehr and Barb Toews (Monsey, NY: Criminal Justice Press, 2004), 253.

<sup>247</sup> See also Dyck, "Practicing What We Preach."

<sup>248</sup> Wonshe, "Who, What, Where and How," 255.

judgment and forgiveness can function.

This is not to say that RJ should abandon engagement with the CJS. While RJ in its mainstream manifestation is over 30 years old, it remains an experimental plot. New ideas are being generated, new models for doing RJ are being developed, and faith based organizations continue to play a large part in the ongoing development of RJ. One example will suffice. Circles of Support and Accountability (CoSA), is now a national programme that works with sex offenders after their release to assist in their reintegration into the community and to provide support so that they do not re-offend. The programme started in 1994 when Harry Nigh, a pastor in Hamilton, formed a circle to support an offender that he knew. One volunteer describes his reasons for working in the programme in the following words:

I used to be like everyone else. I hated these guys. Then I met one. I realized pretty quickly that he's just like me. He's a human being just like I am. Once I understood that, I could not turn my back on him. I hate what he's done but if he's willing to do his part, I'm willing to be there to help him. I don't want there to be any more victims.<sup>249</sup>

Themes of judgment, repentance, and forgiveness thread through this description. CoSA is an example of programming that is clearly rooted in a profound understanding that *tsedeq* is a gift that the church offers the world. The fact that Correctional Services of Canada supports as innovative and risky a programme as Circles of Support and Accountability suggests that RJ experiments deeply rooted in the ground of *tsedeq* and *shalom* continue to be valued and can continue to play a role in the way society responds to crime, including serious crime. At the same time, it is important that new programmes as they develop retain independence from the

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<sup>249</sup> Bill Rankin, "Circles of Support and Accountability: What Works," *Let's Talk*, Vol. 31, No. 3 [Website]. Correctional Services of Canada, 2007 [cited November 18, 2007], Available from [http://198.103.98.138/text/pblct/letstalk/2006/31-3/7\\_e.shtml](http://198.103.98.138/text/pblct/letstalk/2006/31-3/7_e.shtml).

CJS and that those born in the church continue to be rooted in the church.

It is this programmatic connection to the church, as well as ongoing lively debate about the reasons why the church is active in such programmes, that will allow RJ to continue to be nourished by its biblical taproot, and enable it to protect itself from the loss of vision that worried Zehr twenty years ago.

As I completed this thesis I returned to reading two books by Howard Zehr, *Transcending*,<sup>250</sup> which is a collection of photographs and interviews with people victimized by serious crime, and *Doing Life*,<sup>251</sup> a collection of photographs and interviews with people serving life sentences. As I read and reflected on the stories and the photographs that captured the strength of each person, I recognized again the unfairness of the labels “victim” and “offender.”

I also saw themes running through the interviews: stories of survival against great odds, people who had caused great harm gaining some empathy for those they harmed, people who had been harmed deeply moving from desires for revenge to some understanding of the person who had harmed them, people, in both books, who could be said to be serving life sentences, recognizing their needs to change if they were going to survive, and who were, ever so slowly, moving to recognize their common humanity.

It is this shift that I would want the proposals in this thesis to support.

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<sup>250</sup> Howard Zehr, *Transcending*.

<sup>251</sup> Howard Zehr, *Doing Life: Reflections of Men and Women Serving Live Sentences: Portraits and Interviews*, (Intercourse, PA: Good Books, 1996).

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