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Research Methods

The Evolution of the Modern Restorative Justice Movement, from indigenous cultures to grassroots movements to centralized and decentralized systems to other sectors of our society:

Introduction:

Many people who are not privy to the up-close workings of the criminal justice system, may have a notion that our current system operates like a drama trial that we may see on television or a Hollywood movie. At best, most people's exposures to what really happens behind the curtain of the court proceedings, is a bad reality television show. For years, and all over the world, every working day, most of our justice is played out in private settings, without the awareness of community involvement. Hollywood movies and evening television tend to overly dramatize the courtroom scenes as fast action with clever attorneys, carefully crafting their statements, and wise judges, perfectly and fairly rendering proper wisdom and advice. The Hollywood version makes it look like entertainment, as if a sports arena where the players are sparring together to try to get the win. The difference is, however, in the courtroom, someone's life or livelihood may be at stake.

As opposed to the exciting renditions of courtroom scenes throughout the last few decades, the boring reality is that legal professionals are swamped with numerous cases, studying hundreds of pages of motions, procedures and performing various mundane tasks, creating a very impersonal experience for all parties even before they step inside of the courtroom. As glamorous as it looks on tv, most of the legal work is paper shuffling, plea bargaining, procedural rules and often mistakes, and countless court extensions. The offenders

and victims are rarely heard, and it is often difficult for lay people to even understand what is going on. At the end the day, there is often political, economic and racial bias, arbitrary decisions are made; one person is deemed right, the other is deemed wrong. There are winners and there are losers. Someone loses money or even worse, their freedom. The professionals go home for the evening, then wake up, and do it all again.

In the scenario above, the criminal justice system, that is based on punitive measures, tends to be a vicious cycle of punishing criminal acts over and over based on rules made by politicians, who follow a legal recipe book void of any real human interaction. In this highly punitive, circus affair, the modern courtroom seems to dehumanize people, and support an adversarial setting where sentences are meted out by professionals and justice appears to be arbitrary and impersonal; healing no one.

This paper will attempt to offer a different view on how justice may be better served. There is a quiet movement that has been brewing behind the scenes, that reflects a more biblical, tribal viewpoint on community, where a restorative type of justice system is more valued and more healing for all. Though hardly a plot for the drama of a Hollywood movie, restorative justice takes us back to the core of our humanity, where community can be more involved in working out our idea of justice, and where people can be restored and all can be healed. This paper will first explore what restorative justice is, where the roots of restorative justice comes from, how restorative justice is currently being played out in the modern justice systems of our time, and how this movement is affecting other sectors of our society.

<u>What is restorative justice?</u>

Restorative justice, as opposed to punitive justice, is a way of viewing how the wrongdoings that are committed in a society can be repaired, and how all of the parties involved can be healed and transformed on a personal and communal level. Various practitioners of restorative justice have graced us with both concepts and practical approaches for contributing towards a more just and fair society using principles and various tried modules of restorative justice. Two very influential writers in the early modern restorative justice movement are John Braithwaite, a professor of law in Australia (see *Restorative Justice and Responsive Regulation* by John Braithwaite)[1] and Howard Zehr, known as the "grandfather of restorative justice." (See *The Little book of restorative justice* by Howard Zehr)[2]

In Braithwaite's book, "Restorative Justice and Responsive Regulation," he explains that it is difficult to give just one concrete definition of restorative justice, but a group was formed in 1997 by Paul McCold to establish a process to best way "define restorative justice…, soliciting "expert opinion" and Braithwaite claims that the best definition was "offered by Tony Marshall…"[3] Marshall's definition was, "Restorative Justice is a process whereby all the parties with a stake in particular offence come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future."[4] Braithwaite alludes that this definition, although accurate, is maybe not comprehensive enough for all the elements of restorative justice.[5] Braithwaite says, "Its main limitation is that it does not tell us who or what is to be restored. It does not define core values of restorative justice, which are about healing

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[1] John Braithwaite, *Restorative Justice and Responsive Regulation,* (New York: Oxford University Press, 2002)
[2] Howard Zehr, *The Little Book of Restorative Justice,* (New York: Good Books, 2015)
[3] Braithwaite, *Restorative Justice,* 11
[4] Braithwaite, *Restorative Justice,* 11
[5] Braithwaite, *Restorative Justice,* 11

rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility apology, and making amends…"[6] (citing Nicholl 1998)

I agree that restorative justice needs to include all of the additional elements that Braithwaite adds to the restorative justice definition, however, there is one point that Braithwaite makes in earlier writings, that do not seem congruent to this description. In Braithwaite's book, "Crime, shame, and reintegration," I was perplexed to find that "shame" was part of his theory of how justice should be allocated. (see *Crime, shame and reintegration* by John Braithwaite)[7] Seemingly inconsistent to his later work, described above, in *Crime, shame and reintegration,* Braithwaite seems to think that shaming, when done in a certain way, may act as a type of deterrent because it evokes a response of remorse from the offender, so is an important part of restoration.[8] He calls this process, "reintegrative shaming."[9]

In more detail, some observations of Braithwaite about "shaming" are, "Reintegrative shaming is shaming which is followed by efforts to reintegrate the offender back into the community of law-abiding or respectable citizens through words or gestures of forgiveness or ceremonies…It is shaming which labels the act…while striving to preserve the identity of the offender as essentially good…"[10] Connotes the "…Christian tradition of 'hate the sin and love the sinner.'"[11] Although, it is clear from his writings that Braithwaite is passionate about restoring people and communities back to wholeness by using restorative processes, the aspect of shaming seems a bit harsh, and could even have long term consequences that are not

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[6] Braithwaite, *Restorative Justice,* 11
[7] John Braithwaite, *Crime, Shame, and Reintegration,* (New York: Cambridge University Press, 1989)
[8] Braithwaite, *Crime, Shame, and Reintegration, 100*
[9] Braithwaite, *Crime, Shame, and Reintegration, 100*
[10] Braithwaite, *Crime, Shame, and Reintegration, 100-101*
[11] Braithwaite, *Crime, Shame, and Reintegration, 101*

addressed here. Braithwaite, even says, "Reintegrative shaming is not necessarily weak; it can be cruel, even vicious. It is not distinguished from stigmatization by its potency, but by (a) finite rather than open-ended duration which terminated by forgiveness; and by (b) efforts to maintain bonds of love or respect throughout the finite period of suffering shame."[12]

I would argue that although Braithwaite is a prolific writer on restorative justice, and believes in the basic tenets of restorative justice principles, I do not think it is necessary to include "shaming" as a component to the process. It seems like one of the key prominent scholars and restorative justice scholars, Howard Zehr, does not mention "shaming" at all in any of his restorative justice definitions or models. Instead, Zehr's focus, is one on "shalom," Zehr says, "the vision of living in a sense of 'all-rightness' with each other, with the creator, and with the environment."[13] For Zehr, restorative justice is much more than a set of new rules, but rather, "…restorative justice is in fact a way of life…"[14] calling it a "philosophy."[15] Comparing our current adversarial system as "largely negative,"[16] he says, "Restorative justice, on the other hand, provides an inherently positive value system, a vision of how we can live together in a life-giving way. It is based on the assumption---a reminder for those of us living in an individualistic world-that we are interconnected. It reminds us that we live in relationship, that our actions impact others, that when those actions are harmful we have responsibilities."[17]

Zehr's definition of restorative justice, without words of "shaming," in my opinion, resonate much more with moving towards a society of wholeness, as "shaming," in any form,

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[12] Braithwaite, *Crime, Shame, and Reintegration, 101*
[13] Zehr, *The Little Book of Restorative Justice, 29*
[14] Zehr, *The Little Book of Restorative Justice, 79*
[15] Zehr, *The Little Book of Restorative Justice, 79*
[16] Zehr, *The Little Book of Restorative Justice, 79*
[17] Zehr, *The Little Book of Restorative Justice, 79*

does not seem to be a congruent factor in overall healing. In fact, the contemporary day justice movement, views restorative justice as a healing movement. (see *Justice as Healing*, *indigenous Ways*, edited by Wanda D. McCaslin)[18] In the book, "Justice as Healing, Indigenous Ways," editor, Wanda D. Mc Caslin, compiles many writings on restorative justice compiled from the Native Law Centre.[19] This work put together and published in 2005, shows glimpses into different native cultures with their response to justice and crime.[20] In one particular excerpt, Chief Justice Robert Yazzie speaks about "Healing as Justice, The Navajo Response to Crime."[21] In explaining the Navajo tradition of justice, Yazzie describes how it is restorative.[22] He says, "Restorative is defined as 'the process for renewing damaged personal and community relationships."[23] He also includes the word, "reparative." "Reparative is defined as 'the process of making things right for those affected by the offender's behavior….We use only one word for both ideas: peacemaking."[24]

Yazzie goes into detail to describe his Native culture's restorative way they approach justice in six steps: "prayer, expressing feelings, 'the lecture,' discussion, reconciliation, and consensus."[25] Finally, Yazzie claims, "Navajo justice is restorative justice. It restores people to good relationships with each other."[26] Restorative justice for the Navajo is all about "peacemaking" and "healing"[27] Finally, Yazzie concludes, "Peacemaking simply taps the wisdom

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[18] Wanda D. McCaslin, Editor*, Justice as Healing, Indigenous Ways*, (Minnesota: Living Justice Press 2005)
[19] McCaslin, Editor*, Justice as Healing, Indigenous Ways*
[20] McCaslin, Editor*, Justice as Healing, Indigenous Ways*
[21] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 121*
[22] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 123*
[23] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 123*
[24] McCaslin, Editor*, Justice as Healing, Indigenous Way, 123*
[25] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 125*
[26] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 127*
[27] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 132*

of our communities. It involves communities in the process and responds to their needs. It makes offenders look at themselves and at the consequences of their actions. Whereas many victim-assistance programs forget that victims have families, peacemaking engages the families as one of the best resources for help. That the Navajo response to crime in a nutshell: it gives justice by offering healing."[28]

In Yazzie's description of restorative justice principles, like Zehr and Braithwaite, there is a call to have offender look at their actions, the consequences it created, and to take responsibility for their actions to make things right, but there is no call for "shaming" in Zehr and Yazzie's view of restorative justice. As mentioned above, if the objective of justice in this context is to restore wholeness, there is no need for "shaming" which can have long term negative effects, and does not seem necessary to these other two prominent advocates of restorative justice. It is important to note, that Zehr was highly influenced by the indigenous culture methods and was inspired them, when he created his work on creating definitions and modules in his early work of restorative justice. (See *The Little book of restorative justice* by Howard Zehr)[29]

It is important to note, here, too, that other authors have criticized the use of shaming in restorative justice movements. In Gordon Bazemore and Mara Schiff book that measures in a deep analysis various aspects of restorative justice, and first published in 2001, called *Restorative Community Justice: Repairing Harm and Transforming Communities*, they say, "First, the temporal association between the rise of interest in restorative justice and that in

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[28] McCaslin, Editor*, Justice as Healing, Indigenous Ways, 132*
[29] Zehr, *The Little Book of Restorative Justice, 19*

'shaming' as an essentially retributive response…(citing Karp, 1998)..has created some confusion. Shaming, in this sense, has no grounding in the restorative justice tradition."[30] Though in further clarification, they do add, "Although 'reintegrative shaming' has been associated with a certain model of restorative justice conferencing (Braithwaite and Mugford, 1994), the strongest advocates of this model are clear about the lesser importance of shame in restorative sanctioning processes…"[31]

Origins of the modern Restorative Justice movement:

From my research from about the 1970s to present day, there are two traditions of restorative justice that intertwined to impact the establishment of the robust restorative justice system we see throughout the world today. It is important, here, that I mention both the Indigenous cultures (as briefly described above in the Navajo context as one example), but also the Christian influence as well. Furthermore, there were some cultures, like New Zealand, where both the indigenous cultures and the Christian religious leaders made a big impact in setting the parameters to the modern justice movement we see today. (see article: "Evaluating New Zealand's restorative promise: the impact of legislative design on the practice of restorative justice" by Sarah Mika Pfander)[32]

The modern restorative justice movement started around the 1970s in communities in North America. (See *The Little Book of Restorative Justice* by Howard Zehr).[33] Amazingly, it

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[30] Gordon Bazemore and Mara Schiff, *Restorative Community Justice, Repairing Harm and Transforming Communities,* (Ohio: Anderson Publishing Company, 2001), 103

[31] Bazemore and Schiff, *Restorative Community Justice*, 103

[32] Sarah Mikva Pfander, "Evaluation New Zealand's Restorative Promise: the Impact of Legislative Design on the Practice of Restorative Justice," (Kotuitui: New Zealand Journal of Social Sciences Online, Volume 15, 2020-Issue 1; (https://doi.org/10.1080/1177083X.2019.1678492)

started as a grassroots movement then, from mostly people of faith who "...experimented with victim-offender encounters that led to programs in these communities and later became models for programs throughout the world."[34] One of the leading scholars, teachers, authors, and practitioners in the world on Restorative Justice is Howard Zehr, and he demonstrates in his writings that it is important to understand the roots of where the restorative practices have come from.[35]

Communities that endorsed principles of Restorative Justice:

In an article by Christopher D. Marshall, published in 2007, titled, "Offending, Restoration, and the Law-Abiding Community: Restorative in the New Testament and in the New Zealand Experience," he does a good job explaining how the indigenous cultures and the religious practitioners in New Zealand came together to help form the modern day movement of restorative justice.[36] Here Marshall speaks about the indigenous culture, the Maori community as well as the Christian religious leaders like Howard Zehr in his article.[37] Making comparisons between the Christian religious communities and the indigenous communities in New Zealand, Marshall focuses on their common thread within the context of the importance of a justice system that reflects their core values.[38] Marshall says, "If it is to flourish, then, restorative justice must be anchored in alternative 'communities of value,; that is, in communities of people who accord the highest importance to the value of mutual care and

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[33] Zehr, *The Little Book of Restorative Justice, 18*
[34] Zehr, *The Little Book of Restorative Justice, 18*
[35] Zehr, *The Little Book of Restorative Justice, 19*
[36] Christopher D. Marshall, "Offending, Restoration, and the Law-Abiding Community: Restorative Justice in the New Testament and in the New Zealand Experience," (Philosophy Documentation Center, Journal of the Society of Chistian Ethics, Fall/Winter 2007, Vol 27, o. 2 (Fall/ Wintr 3007) 3-30, https://www.jstor.org/stable/2352728, 4-7
[37] . Marshall, "Offending, Restoration, and the Law-Abiding Community, 4-7
[38] . Marshall, "Offending, Restoration, and the Law-Abiding Community, 5

moral accountability, honesty and compassion, confessions, forgiveness, and reconciliation…one such community in which this ought to be the case is the church."[39]

Christian theology as it applies to restorative justice:

In Mark J Keown's article, "Philemon and Restorative Justice," published in 2018, he actually references Christopher D. Marshall as defining restorative justice within an understanding of Christianity.[40] Keown, "co-editor of Stimulus and New Testament Lecturer at Laidlaw College"[41] uses this article to examine the biblical story of Philemon, who is a prisoner, in one of the gospel stories.[42] After careful examination of the biblical texts, Keown concludes that Paul acts as an advocate of restorative justice in the story.[43] He says, "Paul working with the offender and urging the victim to forgive and restore relationships. He does so at great cost, changing his travel plans and prepared to pay any additional costs. We see him emulate Jesus who acts to restore human relationships to God…"[44]

In another article, "The Lord's Prayer as a paradigm for restorative justice in brokenness," by Amanda du Plessis published in 2016, she analyzes the movement of restorative justice as being within the very foundation and ideals of one of the most famous Christian prayers that is attributed to Jesus in the Gospels, "The Lord's Prayer."[45] She looks at the Lord's Prayer as a "…pastoral guidance process, which creates a paradigm for restored

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[39] . Marshall, "Offending, Restoration, and the Law-Abiding Community, 5
[40] Mark J. Keown, "Philemon and Restorative Justice," (Stimulus: The New Zealand Journal of Christian Thought and Practice 2018); Laidlaw College; www.hail.to; 12
[41] Keown, "Philemon and Restorative Justice," 16
[42] Keown, "Philemon and Restorative Justice," 13
[43] Keown, "Philemon and Restorative Justice,"16
[44] Keown, "Philemon and Restorative Justice," 16
[45] Amanda Du Plessis, "The Lord's Prayer as a Paradigm for Restorative justice in Brokenness, (in die Skriflig 50(4) a2089 httP://dx.dooi.org/104102/ids.v50i42089 2016

justice in society."[46] She says about The Lord's Prayer, "The main themes were related to the love commandment, which in itself aims to guide the believer to the realization of a wider responsibility towards society in respect of merciful, sacrificing, restored justice that heal brokenness."[47]

Turning back to Marshall's article, he says, "After all, Christians boast a religion that centers on repentance, forgiveness, and new life---convictions that also lie at the heart of restorative justice."[48] Important to note is that Marshall says this is not always seen in Christian societies, but there are exceptions.[49] While I agree that Christians can do even more to support the theology behind restorative justice, I will say that in much of my research, many of the starters of the early movement for restorative justice do come from the Christian faith. Though this is beyond the scope of this paper, it is important to note that Zehr was a Mennonite as well as many of his supporters were also part of a religious platform of some kind. (see *Changing Lenses, Restorative Justice for Our Times* by Howard Zehr)[50]

Other Mennonites have also been guided by their Christian faith to formulate restorative justice practice in their communities. In an article by Thomas Noakes-Duncan, "The Emergence of Restorative Justice in Ecclesial Practice," he talks about how in the 1970s there were two teenagers who were intoxicated who committed vandalism, and charged with "…22 counts of willful damage."[51] The author tells us that the Mennonite Christians in the area got

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[46] Du Plessis, "The Lord's Prayer," 6
[47] Du Plessis, "The Lord's Prayer," 6
[48] Marshall, "Offending, Restoration, and the Law-Abiding Community," 5
[49] Marshall, "Offending, Restoration, and the Law-Abiding Community, 5
[50] Howard Zehr, *Changing Lenses, Restorative Justice for Our Times.* (Virginia: Herald Press, 1990, 1995, 2005, 2015)

together to see if they could "…develop practices in the criminal justice system more in line with their Christan peacemaking tradition."[52] They gathered a group together, and "…From this initiative sprung the beginnings of the Victim-Offender-Reconciliation-Project (VORP) which is widely heralded as the beginning of the modern restorative justice movement."[53]

In Zehr's capstone work, *Changing Lenses, Restorative Justice for Our Times*, written first in 1990, and then reprinted, until its' final 25th addition reprinted in 2015, Zehr offers a reflection on his famous work.[54] He says, "I wanted to write: a book that would encourage us to identify and rethink some of the assumptions we rarely examine and that would help us begin to dream of other possibilities."[55] As a Mennonite, writing from "…a Christian perspective…"[56] Zehr explains that he wanted to write a work that would be used by man, even outside of his own faith, and says, "…I had hoped to write it in such a way that it would resonate and be used much more widely."[57] and confirms that he had achieved this goal.[58] He explains how his Buddhist friend sujatha baliga wrote the forward to his esteemed 25th addition.[59] baliga explains that she first met Zehr in the year 2007 while he was a guest speaker at Stanford law School's Criminal Justice Center.[60] baliga, who had been both a public defender and a victim advocate in various stages of her career, said, Zehr's "*Changing Lenses* offered the sole, true paradigm shift I had encountered in the realm of criminal justice reform." [61] So influenced by Zehr's work,

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[51] Thomas Noakes-Duncan, "The Emergence of Restorative Justice in Ecclesial Practice," (Journal of Moral Theology: Vol. 5, No. 2 (2016): 1-21 www.atla.com, 3
[52] Thomas Noakes-Duncan, "The Emergence of Restorative Justice," 3
[53] Thomas Noakes-Duncan, "The Emergence of Restorative Justice," 3
[54] Zehr, *Changing Lenses*
[55] Zehr, *Changing Lenses 13*
[56] Zehr, *Changing Lenses 15*
[57] Zehr, *Changing Lenses 15*
[58] Zehr, *Changing Lenses 15*
[59] Zehr, *Changing Lenses 15*
[60] Zehr, *Changing Lenses 9*

baliga actually changed careers from being a lawyer to try to implement Zehr's work into being "…operationalized in Oakland, California."[62] Zehr's influence on the modern restorative justice movement has been very grassroots, as indicated in the above scenario, as Zehr has worked with small groups of people doing this work all around the country.[63] Baliga says of Zehr, "In the years since the original publication of this book, he has personally facilitated dialogues between crime victims and those who harmed them and has sat in countless restorative circles with communities across this country."[64] Further encompassing this notion as a grassroots movement, Zehr explains:

> By the early 1980s, the small victim-offender reconciliation programs In Kitchener, Ontario, and Elkhart, Indiana, had some years of experience, and the idea had spread to many other communities even beyond North America. The concerns for victims, offenders, and communities that had led to the approach in the first place remained central, but we had no real integrating conceptual framework for what we were doing. During this time, I began to put together the components of a framework, presenting this first to a national group of Catholic priests and nuns who were engaged in prison ministry."[65]

In an article by Douglas Mansill, an Emeritus Minister in a Presbyterian Church in New Zealand and a co-founder of the Ortenga Restorative Justice Group, (See "Prophecy and Social Justice: Christian Influences and the Development of Restorative Justice in New Zealand's Adult Systems of Social Regulation, Control and Punishment by Douglas Mansill)[66], he wrote about Restorative Justice in New Zealand, it's development, and referenced how influential Howard

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[61] Zehr, *Changing Lenses9*
[62] Zehr, *Changing Lenses 10*
[63] Zehr, *Changing Lenses 10*
[64] Zehr, *Changing Lenses 10*
[65] Zehr, *Changing Lenses 14*
[66] Douglas Mansill, "Prophecy and Social Justice: Christian Influences and the Development of Restorative Justice in New Zealand's Adult Systems of Social Regulation, Control and Punishment," (Laidlaw College, Stimulus: Volume 22 Issue 2-Jul 2015, www.laidlaw.ac.mz; www.atla.com , 11

Zehr and his book, *Changing Lenses* had been to developing their own local restorative justice movement.[67]

But even prior to Howard Zehr and other Christian practitioners who joined together to form a new restorative justice movement in New Zealand in the 90s, there was also much evidence of influence by the indigenous cultures of the area, as also serving as role models for New Zealand's budding restorative justice movement in the 1990s.[68]

Indigenous communities:

Returning to Christopher D. Marshall's exploration on communities that inherently encompass the principles of a restorative justice practice, Marshall's criticism on the Christian communities may have been a bit too harsh, yet the overall clarion call for restorative justice for all Christians to be in true alignment with their faith, with the adoption of these principles seems valid. [69] Despite Marshall's criticism towards the church to their response towards restorative justice, Marshall gives a lot of credit to indigenous cultures in New Zealand to the impact it had on forming the modern restorative justice movement.[70] Marshall boldly states, "Restorative Justice in New Zealand arose in the 1980s out of dissatisfaction in the Maori community with the way its young people were being treated by the criminal justice system."[71] Furthermore, he says, "The basic social unit in Maori society is the whanau or extended family, and Maori had become increasingly troubled at the way the justice system functioned to remove young offenders from ay positive influence from their whanau by dumping them into

[67] Mansill, "Prophecy and Social Justice," 7-8
[68] Mansill, "Prophecy and Social Justice," 5-7
[69] Marshall, "Offending, Restoration, and the Law-Abiding Community"
[70] Marshall, "Offending, Restoration, and the Law-Abiding Community," 5-6
[71] Marshall, "Offending, Restoration, and the Law-Abiding Community, 5

prisons or other punitive facilities."[72] What's important to note here, is that the Maori's voice was heard. The community, at large, worked together, listened to the Maori and the wisdom of its' culture to enact change. Other writers have talked about the Maori's influence on restorative justice as well. In the article, "Law Religion, and Restorative Justice in New Zealand," written in 2012-2013 by Donald W. Shriver Jr. and Peggy L. Shriver, they say, "Historians in NZ debate how much debt the practices of RJ owe to the traditions of the indigenous Maori. Their traditions are profoundly communal, and a NZ youth court counts on those traditions when it diverts a young Maori offender to a rangatahi, family group conference that may assemble dozens of folk in the Marae traditional place of meeting, all of who see themselves as members of that youth's extended family."[73]

The inspiring part of these stories is that the Christian practitioners, the Maori culture and the New Zealand law makers all came together as an extended community to honor one another, and create a system that could work for everyone, adhering to their cultural mores. This is the beauty in this story, although, as all stories of transformation, it was not, and still is not a linear road to ultimate transcendence of the frailties of the present justice system, and although improvements have been made and foundations created, there is still a long way to go.

Besides evidence in New Zealand that the indigenous cultures influenced the restorative justice movement, there are also many other places in the world that demonstrate how their

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[72] Marshall, "Offending, Restoration, and the Law-Abiding Community," 5

[73] Shriver Jr., Donald W. and Shriver, Peggy L., "Law, Religion, and Restorative Justice in New Zealand," (Cambridge University Press, Journal of Law and Religion, 2012-2013, Vol. 28. No. 1 (2012-13), pp. 143-177, https:///www jstor.org/stable/23645229, 158-159

local indigenous culture may have shaped their RJ movement, but not all of them are in alignment with each other. For example, in an article written by Reza Barmaki, published in 2021, called, "On the Incompatibility of 'Western' and Aboriginal views of Restorative Justice in Canada: a claim based on an understanding of Cree justice," she examines the indigenous culture of the Cree people in Canada, and here concludes that the western policies on restorative justice are actually not in alignment at all with the indigenous peoples.[74] She urges that Canadian law makers should reform their RJ practices to be more congruent to "…methods that are culturally suitable to particular participants…."[75] It is important to note how although restorative justice programs may have evolved from indigenous cultures, western practitioners are being called now to be more sensitive to creating modules that restore the very society that influenced this model in the first place.[76]

The New Zealand Restorative Justice System:

Mansill gives real concrete cases regarding victim/offender situations that happened in New Zealand in the 90s, demonstrating the kind of ethos of reform that was brewing in the area with regard to criminal justice at the time.[77] One particular example in 1994, was a story about a 20 year old boy, Filipo Tato who accidentally killed two (5 year old) Tongan boys while he was driving without a license.[78] Initiated by the Tongan Methodist Minister, Tato met with members of the bereaved families.[79] The Reverend Tavake Tupou set this meeting up to "apply

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[74] Reza Barmaki, "On the Incompatibility of 'Western' an Aboriginal Views of Restorative Justice in Canada: a Claim Based on an Understanding of the Cree Justice," (Toronto, Ontario: Routledge Taylor and Francis Group contemporary Justice Review; 2022, Vol. 25, No. 1, 24-55 https://doi.org./10.1-80/10282580.2021.2018654, 24-25; 43-44

[75] Barmaki, "On the Incompatibility of 'Western' an Aboriginal Views," 43

[76] Barmaki, "On the Incompatibility of 'Western' an Aboriginal Views;" 43

[77] Mansill, "Prophecy and Social Justice," 6-8

[78] Mansill, "Prophecy and Social Justice," 6-7

the principles of the Christian Faith' and 'the practical principles of what we've always believed by not blaming anyone' but 'bringing forgiveness and encouragement' to the two bereaved families.'"[80] (citing F. MacDonald, "When Forgiveness is not Enough, " listener, (26 March, 1994) 22. This event was then followed up by Tato apologizing, going to church with the families at the Tongan Methodist Church where Tato sat between the two bereaved mothers at a meal.[81] When it came time for Tato to be sentenced in court in New Zealand, the judge, was presented with two different world views. [82] The bereaved families wanted Tato to be free and start his new life.[83] However, there were no legal enactments at the time for such lenience, so the judge tried to come up with a compromise of the two world views, and Tato was sentenced to 15 months in prison and an order to pay the families a total of $26,000. [84] There was much media attention surrounding the case and Mansill argued that this is one of the cases that,"…helped to shift consideration of restorative justice use in adult regulatory jurisdictions from theoretical assumption to a demonstration of practical reality."[85] Furthermore, Mansill argued that this case showed, "…evidence that albeit unofficially, restorative justice processes were already being employed in the New Zealand context."[86] Furthermore, Mansill acknowledged, "This awareness added weight to Zehr's promotion of restorative justice…" [87] (at the various conferences going on at the time in the area (Teschemaker's and Making Crime Pay Conferences)[88]

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[79] Mansill, "Prophecy and Social Justice," 7
[80] Mansill, "Prophecy and Social Justice," 7
[81] Mansill, "Prophecy and Social Justice," 7
[82] Mansill, "Prophecy and Social Justice," 7
[83] Mansill, "Prophecy and Social Justice," 7
[84] Mansill, "Prophecy and Social Justice," 7
[85] Mansill, "Prophecy and Social Justice," 7
[86] Mansill, "Prophecy and Social Justice," 7
[87] Mansill, "Prophecy and Social Justice," 7

In the 1990s, Howard Zehr came to New Zealand twice to speak and attend conferences on restorative justice around the same time that his book, *Changing Lenses* was published.[89] Mansill said about Zehr, "His presence at the Teschemaker's and Making Crime Pay conferences represented an authoritative international voice which challenged New Zealand's regulatory administrators and reformers alike to consider restorative justice as an alternative framework for addressing criminal offending."[90] Putting ideas into practice, Judge McElrea who was influenced by Zehr's work, held the opinion that ,"…justice design of family group conferences was consistent with restorative justice principles and these processes should be trialled within adult regulatory jurisdictions. (citing Judge F W M McElrea, 'Restorative Justice The New Zealand Youth Court a Model for Development in other Courts " 33-54)[91] Mansill then explained that Judge McElrea asked him "…facilitate the first court-referred community group conference for adults to be trialled in New Zealand."[92] In his article, Mansill gives details about a very influential case in the restorative justice movement at the time, giving us further insight to the players involved in the early restorative justice movement that was brewing in New Zealand in the early 1990s. As written in the article, there was a case about an 18 year old who stole a hand bag, and the victim, an elderly woman who was a Quaker, did not want the offender to go to prison.[93] For this case, Judge McElrea endorsed a "community group conference." [94] Subsequently, many of the players involved in the case, gathered at the police station,

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[88] Mansill, "Prophecy and Social Justice," 7
[89] Mansill, "Prophecy and Social Justice," 8
[90] Mansill, "Prophecy and Social Justice," 8
[91] Mansill, "Prophecy and Social Justice," 8
[92] Mansill, "Prophecy and Social Justice," 8
[93] Mansill, "Prophecy and Social Justice," 8
[94] Mansill, "Prophecy and Social Justice," 8

including, "…a victim representative, family members, and the arresting police officer…" who had the opportunity to tell the offender how his actions affected them and had consequences, and then they were able to hear the offender's contrition.[95] In this process, a plan was put together for the offender consisting of "…apology letters, imposition of a curfew, reparation payments for damage and counselling to address offending behavior."[96] The offender had six months to do the recommendations, and even the victim met with the offender to encourage him to do his program of rehabilitation." (citing: For a more detailed account of these events see Douglas Mansill "Community Empowerment or Institutional Capture and Control. The Development of Restorative justice in New Zealand's Adult Systems of Social Regulation Control and Punishment' Unpublished PhD Thesis AUT Auckland 2013 175-181)[97]

In the above cases cited in Mansill's article, the reader gets a glimpse of the ethos of the community in New Zealand with regards to how a new sense of justice can be played out utilizing the brilliant work of early practitioners of restorative justice in the 1990s like Zehr, Mansill, and Judge McElrea, the communities which were a mix of indigenous and Christian cultures, the young adult offenders who were involved in the above cases, the victims (or victims' families) in these cases, the police officers and the community at large.[98] It is important to note, here, that bringing this network of various players together in New Zealand to implement justice, at the heart of the overall restorative justice movement, was the concept of "shalom" which is a "biblical concept."[99] Mansill says, "Shalom referred to a condition of peace

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[95] Mansill, "Prophecy and Social Justice," 8
[96] Mansill, "Prophecy and Social Justice," 8
[97] Mansill, "Prophecy and Social Justice," 8
[98] Mansill, "Prophecy and Social Justice," 6-8
[99] Mansill, "Prophecy and Social Justice," 8

or all-rightness, honesty and moral integrity required or health, personal prosperity necessary for people to live in right relationships with each other."[100] Moreover, Howard Zehr, explains in his Little Book of Restorative Justice in his chapter on Restorative Principles, "…we are all interconnected. In the Hebrew scriptures, this is embedded in the concepts of shalom, the vision of living in a sense of 'all-rightness' with each other, with the creator, and with the environment."[101] Moreover, Zehr explains that this concept of shalom is spread across various cultures.[102] He says, "Many cultures have a word that represents this notion of the centrality of relationships."[103] He then cites specific words for shalom in a cross-cultural context.[104] For one of the indigenous cultures of New Zealand, the Maori, the word "whakapapa" is used, "…for the Navajo,' hozho'; for many Africans, the Bantu word' Ubuntu'; for Tibetan Buddhists,' tendrel.'"[105] Zehr argues that all of these concepts in various cultures, though all different, have in common, "…a similar message; 'all things are connected to each other in a web of relationships.'"[106]

From a restorative justice perspective, and according to Zehr's viewpoint, in order to seek shalom and honor our connectivity, then justice needs to reflect that web of interconnectedness.[107] Zehr says, "…the problem of crime---and wrong-doing in general---is that it represents a wound in the community, a tear in the web of relationships…Many traditions have a saying that 'a harm to one is a harm to all.'"[108]

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[100] Mansill, "Prophecy and Social Justice," 8
[101] Zehr, *The Little Book of Restorative Justice, 29*
[102] Zehr, *The Little Book of Restorative Justice 29*
[103] Zehr, *The Little Book of Restorative Justice29*
[104] Zehr, *The Little Book of Restorative Justice 29*
[105] Zehr, *The Little Book of Restorative Justice 29*
[106] Zehr, *The Little Book of Restorative Justice 29*
[107] Zehr, *The Little Book of Restorative Justice 29*

In order to address crime as a systematic wound affecting a whole community, as valued in various indigenous cultures and some Christian cultures, Zehr beautifully integrates all of these concepts together in his watershed book, mentioned above, "Changing Lenses."[109] He says, "I have found restorative justice to resonate widely with people from various indigenous traditions whom I have encountered in my own classes and travels…I have come to view restorative justice as a way to legitimate and reclaim the restorative elements in our traditions---traditions that were often discounted and repressed by Western colonial powers."[110] About the Maori indigenous influence on restorative justice in New Zealand, Zehr says, " …Maori youth court judge in New Zealand once commented to me that my approach to restorative justice was a way to articulate key elements of his own tradition in a way that Westerners could understand and accept."[111] Serving as a kind of prophetic bridge connecting the core values of the indigenous cultures of New Zealand, along with his own Christian principles from his devout Mennonite background, and being in alignment with Western principles of structure, Zehr puts forth the principle factors that must be addressed in order to have a healthy, viable, restorative justice program.[112] Zehr argues what must be present in a successful restorative justice program are that the needs and harms of all parties must be addressed, including victims, offenders and communities, obligations to repair these harms to the victim as well as community must be addressed, processes should be inclusive, all the people at stake (victims, offenders and community) should be involved in the process, and 'wrongs' need to be 'put right.'"[113]

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[108] Zehr, *The Little Book of Restorative Justice 29*
[109] Zehr, *Changing Lenses, 235*
[110] Zehr, *Changing Lenses, 234-235*
[111] Zehr, *Changing Lenses, 235*
[112] Zehr, *Changing Lenses, 234-235*

As mentioned earlier in the paper, Zehr's approach and formula to modern restorative justice, his writings, speaking engagements and teachings inspired many people who have influence in their local justice systems to make changes in their own communities. (see the forward by baliga in *Changing Lenses*)[114] After the conferences and cases mentioned above in Mansill's article that spurred a movement of change in the justice system of New Zealand, this grass roots movement by a bunch of idealistic practitioners took hold in their communities, restorative justice programs were tried (see "Prophecy and Social Justice" by Mansill)[115] and New Zealand's legislature actually enacted laws that reflected this dramatic transformation within their community. (See article by Sarah Mikva Pfander,"Evaluating New Zealand's restorative promise: the impact of legislative design on the practice of restorative justice,"by Sara Mikva Pfander p. 174)[116]

In this fairly recent article put together pursuant to a Master of Arts degree at the University of Otago,in New Zealand, written by Sarah Mikva Pfander and published online on October 27, 2019,[117] the author describes, "The development of adult pre-sentencing conferences in New Zealand."[118] (p. 179)

1. The history of RJ in New Zealand did not start with Parliamentary action; rather, RJ was championed by local activists as a potential, modern justice response (Fox 2015). Ultimately, policymakers took up the cause of youth justice reform and overhauled New Zealand's youth justice processes in the 1980s using some restorative approaches. When

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[113] Zehr, *Changing Lenses 235-236*
[114] Zehr, *Changing Lenses, 10*
[115] Mansill, "Prophecy and Social Justice,
[116] Pfander, "Evaluation New Zealand's Restorative Promise," 174
[117] Pfander, "Evaluation New Zealand's Restorative Promise:" 173
[118] Pfander, "Evaluation New Zealand's Restorative Promise:" 179

> Parliament passed the Children, Youth Persons, and their Families Act 1989 (now known as the Oranga Tamariki Act), it represented a new status quo for the treatment of young offenders. Chief among those innovative justice processes was the institutionalization of her restorative Family Group Conference (FGC)(Watt 2003). The FGC was quickly touted as a justice reform success. As new value of accountability, harm repair, victim participation, and community involvement took root in the system, pioneers of RJ like Judge Fred McElrea advocated for restorative processes to be extended to adult offenders as well (Mansill 2013, p. 112)[119]

Having received funding through scholarship to work on this research project,[120] Pfander dives into the modern restorative justice system as it reached a level of development in 2019 to dissect some of the strengths and weaknesses.[121] She says, "New Zealand has become a leader in implementing legislative mandated restorative procedures. This reputation is due in part to a handful of supportive statutes: the Sentencing Act 2002, The Victims' Rights Act 2002, The Parole Act 2002, The Corrections Act 2004 and subsequent amendments to those acts."[122] Taking both a "qualitative' and "quantitative" approach ("surveying existing evaluations," "collecting longitudinal statistics" and "conducting interviews with restorative justice practitioners'), were some of the research tools that Pfander used in her study in New Zealand.[123] " Moreover, Pfander also used these research approaches to evaluate another thriving restorative justice system in Vermont in the United States, and then finally, used the research she compiled, to compare the two justice systems.[124] She compares these two systems, arguing that Vermont, like New Zealand, is a "…state similarly regarded for its restorative policies."[125] Part of Pfander's research methods is that she relies on data from "Bazemore and

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[119] Pfander, "Evaluation New Zealand's Restorative Promise:" 179
[120] Pfander, "Evaluation New Zealand's Restorative Promise:" 192
[121] Pfander, "Evaluation New Zealand's Restorative Promise:" 170-191
[122] Pfander, "Evaluation New Zealand's Restorative Promise:" 170
[123] Pfander, "Evaluation New Zealand's Restorative Promise" 171
[124] Pfander, "Evaluation New Zealand's Restorative Promise:" 170-191

Schiff (2005, Juvenile justice reform and restorative justice: building theory and policy from practice. Cullompton: Willian Publishing)"[126]

In Pfander's research, she relies on some of the same principles of restorative justice as we have noted above in Zehr's writings.[127] In helping her to assess the overall success of the restorative justice programs, she evaluates by using some of the data from "Bazemore ad Schiff' mentioned above.[128] In alignment with Zehr's original principles as seen above, below is a list of a couple of principles that Pfander dissects in her research:

Repairing Harm:[129]

In assessing "amends-making" (this includes "…outcomes like the creation of reparative agreements, the acceptance of responsibility by an offender, and the opportunity for victims to describe their experiences and voice their needs (citing Bazemore and Schiff 2005, p. 53.)"[130] Also, assessed in this category are "outcomes that build relationships, such as the provision of support opportunities for both the victim and offender." (citing Bazemore and Schiff, p. 56)[131] Finally, another important principle in this category would be to include, "…all participants in the completion of the reparative agreement." (citing Bazemore an Schiff, p. 56)[132]

In using her research methodology, Pfander does make a disclaimer, and explains that the research and evaluations around restorative justice are far from perfect.[133] Regarding her

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[125] Pfander, "Evaluation New Zealand's Restorative Promise:" 173
[126] Pfander, "Evaluation New Zealand's Restorative Promise:" 174
[127] Pfander, "Evaluation New Zealand's Restorative Promise:" 174
[128] Pfander, "Evaluation New Zealand's Restorative Promise:" 174
[129] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[130] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[131] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[132] Pfander, "Evaluation New Zealand's Restorative Promise:" 175

research tools, she says, "…it is worth noting that these variables are imperfect measures of Rj success. Scholars acknowledge the ongoing challenge in Rj research to find empirical measures…"[134] In assessing these principles of restorative justice models, Pfander hones in on the practice of "adult conferences."[135] She says, "I have little insight into how effectively adult conferences repair harms…" citing potential reasoning, "…there are few available measures for understanding how well these conferences make amends or build relationships."[136] Here, Pfander makes a valuable suggestion to make this data more understandable.[137] She calls for restorative justice programmes to "…do a better job of consistently recording and publishing more nuanced accounts of their procedural output."[138]

Stakeholder Involvement:

The second principle that Pfander identifies in her article is the assessment of the various parties (called stakeholders) involvement in the RJ models.[139] Pfander explains that, here, researchers can assess, "…restorative opportunities for victim-offender exchange and reintegrative shaming (citing Bazemore and Schiff 2005, p. 89)[140] Here, Pfander lays out the two pronged approach for assessing stakeholder's involvement. One, is that the victim in the case finds an outcome of "…reducing the fear experienced by a victim, fostering a sense of relief, vindicating a victim's experience…" (citing Bazemore and Schiff 2005, p. 89)[141] But here, it is

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[133] Pfander, "Evaluation New Zealand's Restorative Promise:" 176
[134] Pfander, "Evaluation New Zealand's Restorative Promise:" 176
[135] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[136] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[137] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[138] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[139] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[140] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[141] Pfander, "Evaluation New Zealand's Restorative Promise:" 175

also important to assess the offender's outcomes.[142] This outcome would assess if the RJ practice was "…encouraging an offender's sense of remorse and inducing empathy in both parties." (citing Bazemore and Schiff 2005, p. 60)[143] Pfander says, "reintegrative shaming is a practice strategy advanced by John Braithwaite that explains and contributes to the transformative power of restoration." (citing Bazemore and Schiff 2005, p. 61)[144] "It promotes feeling of shame as potentially powerful motivators for behavioral change among offenders."[145] The belief behind reintegrative shaming is "…it can convince offenders to denounce criminal behavior and of fear the disgrace engendered by reoffending. (citing Bazemore and Schiff 2005, p. 61)[146] Again, important to note, here, is that reintegrative shaming is being used here, as a tool of assessment for the efficacy of restorative justice. As I mentioned before, I do not condone this type of value as a true component of restorative justice, because I view restoration as a healing as described earlier in this paper. I believe, shaming in any form can have long term detriments, and so I am surprised that it is still being used here as an assessment. However, I do think Pfander's basic research is still a useful tool to give us some metrics to ponder about.

According to Pfander's research on assessing Stakeholder's involvement in restorative justice models, she determined that, "…there is data available to indicate that adult conferences facilitate effective victim-offender exchange…The Ministry report found that 84% of victims were satisfied with their conferencing experience, 93% felt well prepared for the

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[142] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[143] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[144] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[145] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[146] Pfander, "Evaluation New Zealand's Restorative Promise:" 175

meeting, 60% had more positive views of the criminal justice system following their participation, and 80% would recommend the process to others (citing New Zealand Ministry of justice 2016)[147] Important to note, Pfander explains "...the participation of either a victim or a victim representative is mandatory in an adult conference, and the increased victim engagement is therefore inherent in the structure of this justice mechanism."[148]

Community Role Transformation:

The third principle assessed by Pfander is "…community role transformation."[149] Pfander explains in the research report that there are three areas that are observed while assessing "community role transformation," and these are "professional role change," "norm affirmation," and "skill building." (citing Bazemore and Schiff 2005, p. 89)[150]

Professional Role Change:

The professionals and facilitators in the restorative justice movement must, "…shift their focus from providing 'expert' justice services to maximizing community involvement…increasing 'community participation.'" (citing Bazemore and Schiff 2005, p. 73)[151]

Norm Affirmation:

Community members can teach "offenders" about the value and norms in the community, helping them to feel greater safety. (citing Bazemore and Schiff 2005, p. 80)[152]

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[147] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[148] Pfander, "Evaluation New Zealand's Restorative Promise:" 185
[149] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[150] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[151] Pfander, "Evaluation New Zealand's Restorative Promise:" 175
[152] Pfander, "Evaluation New Zealand's Restorative Promise:" 175-176

Skill Building:

Participants in the restorative justice programme learn about "restoration" and "conflict resolution." (citing Bazemore and Schiff 2005, p. 88)[153] The more the participants in the RJ system learn and have more experience with these learned skillsets, there will be more use of the RJ systems overall. (citing Bazemore and Schiff 2005, p. 88)[154]

On the subject of overall "community role transformation," Pfander was able to interview conference facilitators.[155] Here, she found that the facilitators observe that they do not always have support from important members of the community like the police.[156] Yet, upon interviewing police, she actually found them to have favorable opinions on restorative justice.[157] Again, this data shows the inconsistencies and imperfections of the research when based on subjective opinions, but never the less, does provide insight into the variable of the individual assessments on restorative justice, and also, how much more sophisticated we can develop to truly comprehend the overall success of these RJ systems.

Finally, Pfander considers the "robustness" of the "adult conferencing" used in restorative justice, showing growth of "…2252 cases being referred in 2011 and 12, 867 cases being referred in 2017…[158] showing an obvious 'upward trend,' [159] however, in reality the actual number of "conferences' only increased 1360 in 2011 to 2401 in 2017."[160] As seen in this research, there is a significant disparity between cases referred for RJ conferences, and cases

[153] Pfander, "Evaluation New Zealand's Restorative Promise:" 176
[154] Pfander, "Evaluation New Zealand's Restorative Promise:" 176
[155]Pfander, "Evaluation New Zealand's Restorative Promise: " 185-186
[156] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[157] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[158] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[159]Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[160] Pfander, "Evaluation New Zealand's Restorative Promise:" 186

are actually put through the restorative justice program of conferences. Pfander attributes this research dichotomy between cases "referred' and "conferences' held to legislative acts.[161] She says, "The spike in referrals dates to the Sentencing Act amendments in 2014 that required eligible cases to be adjourned for RJ prior to sentencing."[162] Unfortunately, even though the New Zealand law was created to have more restorative justice practices, the reality does not always reflect that.[163] Pfander explains that practitioners of RJ, "…find that a shortage of willing victim participants prevents them from converting more referrals to conferences." [164] Importantly, Pfander states, This means that further increase in the robustness of this RJ mechanism would rely on cultural changes and shifts in the attitudes of crime victims rather than legislative or programmatic adjustments."[165]

Vermont Restorative Justice System:

In Pfander's research study, she also used these research approaches to evaluate another thriving restorative justice system in Vermont in the United States. Pfander notes that Vermont, like New Zealand, is a "…state similarly regarded for its restorative policies."[166] In examining her research in Vermont, Pfander explains that she based her research on a study by DR Karp, written in 2002, that asses "four dimensions of desired programme goals and assessed, along each restoration and offender accountability – relate to how well RJ panels were able to repair harm." (citing Karp et al. 2002)[167]

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[161] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[162] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[163] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[164] Pfander, "Evaluation New Zealand's Restorative Promise:"186
[165] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[166] Pfander, "Evaluation New Zealand's Restorative Promise:" 171
[167] Pfander, "Evaluation New Zealand's Restorative Promise:" 186-187

Vermont Study:

Repairing Harm: (p. 187):

Relaying her research, she states, "…65% of offenders were assigned community service and of those service assignment, 92% of them took place in the town where the crime took place." (citing Karp et al. 2002)[168] Moreover, "…78% of offenders felt that their participation in reparative probation increased their sense of membership in the community." (citing Karp et al. 2002)[169]

Stakeholder's Involvement: (p. 187):

Relying on Karp's study, Pfander says, "…9 % of panels featured victim participation." (citing Karp et al.'s study 2002)[170]

Community Role Transformation: (p. 187-188):

Pfander's research on RJ panels in Vermont in helping to transform community was very positive.[171] She states, "Rj panels are operated by community volunteers and Karp et al. (2002) found that these panels have a high level of decision-making authority and increasing numbers of volunteers."[172] Very importantly, Pfander argues, this leads to '…the transference of control of the RJ mechanism from the criminal justice system to community members."[173] Delving deeper into Karp's research in 2004, "Researchers also conducted interviews with active panel members to determining the role and attitudes of the programme's practitioners (citing Karp

[168] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[169] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[170] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[171] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[172] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[173] Pfander, "Evaluation New Zealand's Restorative Promise:" 187

et al. 2004).[174] In determination of a model for success, Pfander states, "These interviewees reported that they feel more connected to their community because of their involvement in the process, find that citizen involvement produces a more democratic approach to criminal justice, and experience the RJ panels as significant opportunities for offenders to rebuild a community's trust (citing Karp et al. 2004)[175]

In determining the overall robustness of Vermont's Rj system, Pfander notes that Vermont receives about 1300-1800 referral for "reparative probation" a year.[176] And, she explains that there are many other practices of "restorative work" that goes on in CJCs.[177] With regard to these justice centers doing restorative justice work, Pfander explains that there are about twenty different centers in the state, with "…about fifty new cases every month."[178] Pfander states, "…one CJC may be handling as many as 600 cases per year and restorative practices are likely being applied to more than the 1800 individuals who qualify for reparative probation."[179] *It is important to note, here, that this article was published in 2019, and statistics from 2019 to present are beyond the scope of the research of this literature review. Further research on the data from 2019-2023 would be required to continual, successful assessment on these restorative justice principles.

<u>Comparing Vermont and New Zealand's restorative justice program</u>

[174] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[175] Pfander, "Evaluation New Zealand's Restorative Promise:" 187
[176] Pfander, "Evaluation New Zealand's Restorative Promise:" 188
[177] Pfander, "Evaluation New Zealand's Restorative Promise:" 188
[178] Pfander, "Evaluation New Zealand's Restorative Promise:" 188
[179] Pfander, "Evaluation New Zealand's Restorative Promise:" 188

Finally, in Pfander's research, she compares New Zealand's restorative justice system to Vermont's restorative justice system…[180] and finds "…there are moments of both analogous and contrasting success."[181] Below, are some of the components that Pfander assesses for her evaluation in comparing the two modules:

Centralization verses decentralization:

The last point to reflect upon is how the model of restorative justice from centralization in New Zealand to decentralization in Vermont shaped the successes of these modern restorative justice systems.[182] Pfander claims, that there are a few main differences between these systems that balance the success rate towards Vermont.[183] Pfander argues, "…the institutionalization of Rj in New Zealand uphold some restorative

objectives but undermines others to maintain the regulatory interests of the justice sector."[184] According to Pfander, this dichotomy between centralization and the principles of Rj are highlighted in two primary issues:[185]

Conventional System Authority:

Pfander claims, here, that one of the main problems of New Zealand's Restorative Justice programmes is that "…locates its adult conferencing mechanism within the conventional justice stream, making it easier to retain control of the final disposition but more difficult to achieve fully restorative outcomes."[186] Further delving into NZ's centralized process,

[180] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[181] Pfander, "Evaluation New Zealand's Restorative Promise:" 186
[182] Pfander, "Evaluation New Zealand's Restorative Promise:" 188-191
[183] Pfander, "Evaluation New Zealand's Restorative Promise:" 189-190
[184] Pfander, "Evaluation New Zealand's Restorative Promise:" 189
[185] Pfander, "Evaluation New Zealand's Restorative Promise:" 189

Pfander states, “New Zealand demonstrates its inclination toward consistency by maintaining centralized control of the Rj mechanisms and by establishing a more uniformly trained corps of Rj practitioners. This control is exerted by retaining judicial discretion over final sentences and by using ministerial guidelines to direct facilitator behavior.” [187] Vermont’s decentralized module does the opposite.[188] Vermont’s CJC’s “…are empowered to innovate in their provision of restorative services and are granted real autonomy… “[189] According to Pfander, “…Vermont demonstrates a greater willingness to allow Rj to move out of the formal, professionalized context of conventional criminal justice.”[190]

Prioritizing Victim Participation:

Pfander explains that in New Zealand’s system of restorative justice, it is necessary for victim participation.[191] However, in Vermont, “…RJ panels allow the restorative justice mechanism to proceed without victim input.”[192] Pfander’s conclusion on this very important point is that, “…prioritizing victim participation comes at the cost of the applicability of the Rj mechanism.”[193] Finally, Pfander explains that the focus on victim participation in New Zealand may be responsible for its’ overall “plateau” in growth…,[194] claiming, “…which may mean that the mechanism cannot grow into a primary justice response without substantial cultural changes in how victims view their role in the justice process.”[195]

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[186] Pfander, “Evaluation New Zealand’s Restorative Promise:” 189
[187] Pfander, “Evaluation New Zealand’s Restorative Promise:” 189
[188] Pfander, “Evaluation New Zealand’s Restorative Promise:” 189
[189] Pfander, “Evaluation New Zealand’s Restorative Promise:” 189
[190] Pfander, “Evaluation New Zealand’s Restorative Promise:” 189
[191] Pfander, “Evaluation New Zealand’s Restorative Promise:” 190
[192] Pfander, “Evaluation New Zealand’s Restorative Promise:” 190
[193] Pfander, “Evaluation New Zealand’s Restorative Promise:”190
[194] Pfander, “Evaluation New Zealand’s Restorative Promise:” 190

The Future of Restorative Justice:

Moving towards the future of restorative justice, while honoring the early pioneers, there is much work to be done to lay the groundwork for a more efficient, robust, and affective restorative justice system that represents a world and a vision of Shalom. However, it is important to note, that these restorative systems have taken such a hold in the modern day justice system all around the world, in various modalities, and appear to now be embedded within our society. There is much evidence to show that these restorative practices have now extended beyond just the criminal justice realm, such as seen in manuals refining restorative justice techniques to be culturally sensitive, educational conferences, prison reform and even a call for prison abolishment.

Restorative Justice Techniques:

In *The Little Book of Restorative Teaching Tools*, authors Lindsey Pointer, Kathleen McGoey, and Haley Farrar," put together a manual for teaching people how to better facilitate and teach others how to implement and participate in restorative justice programs.[196] Written in 2020, the book gives us a glimpse on how restorative justice principles have been infiltrated into our society, reflecting modern cultural sensitivities.[197] The practitioners, here, call for a change in outlook for restorative justice facilitators to incorporate an awareness of societal

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[195] Pfander, "Evaluation New Zealand's Restorative Promise:" 190
[196] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools, Games, Activities and Simulations for Understanding Restorative Justice Practices,* (New York: Good Books, 2020)
[197] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools*

differences among different cultures when teaching these methods, and to include them in their teachings, as well as making it interactive and fun.[198]

With regards to restorative justice, the author in the introduction of this book explains that though restorative justice is a "…liberatory experience...More need to be done, however, as restorative justice in its current form is often criticized for failing to challenge these systems of domination and for privileging the voices of some over others."[199] The author, here, argues that games and interactive activities are the best way to teach restorative justice principles because it allows all the parties to have a voice, be heard, interact and be part of the experience.[200] The author says, "When the voices, stories, and perspectives of each student are valued and heard equally alongside the teacher, the systems of power and privilege that impact every aspect of our social lives can be revealed…Games and activities create the opportunity, structure, and trust that support the equal voice necessary for this to take place." [201] The authors then move throughout the chapters, teaching several games and interactive activities to be used as teaching modalities in facilitating restorative justice programs.[202]

In a similar format, *The Little Book of Restorative Justice in Education*, written in 2016, by authors, Katherine Evans and Dorothy Vaandering, they provide a little manual for introducing restorative justice principles in an educational setting.[203] In describing restorative justice in schools, the authors explain how the practice was derived from the restorative justice

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[198] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools, 2-7*
[199] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools, 3*
[200] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools, 6*
[201] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools, 6*
[202] Lindsey Pointer, Kathleen McGoey, Haley Farrar, *The Little Book of Restorative Teaching Tools*
[203] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education,* (New York: Good Books, 2016)

system in the "judicial settings."[204] Just as restorative justice in the criminal system was difficult to define due to the variety of principles being introduced and the way they were implemented and administered across various cultures over the years, it appears that the definition of restorative justice system in education is also difficult to pin down. The author states, "Restorative justice in education encompasses a variety of terms and approaches."[205] However, on page 7, she states, "Restorative, as an adjective for both primary and secondary justice, describes how an individual's or group's dignity, worth, and interconnectedness will be nurtured, protected, or reestablished in ways that will allow people to be fully contributing members of their communities."[206] It is important to note, here, the concept of "interconnectedness" that has run as a continual theme throughout this paper with regards to various RJ models reflecting concepts of shalom. Throughout the book, there are diagrams and restorative justice principles introduced to explain how they can be implemented in educational pedagogy.[207] The author states, "RJE acknowledges the learning needs of students and the importance of instruction that that promotes the active engagement of all learners. Drawing on Paulo Freire's work, restorative educators resist the 'banking model of education, in which students are passive recipients of the teacher's knowledge; instead, the prior knowledge and experiences of al learners are considered valuable for learning. (citing, Zehr, H. 2002 Journey Belonging, in Restorative justice: Theoretical foundations, Eds. E. G. M. Weitekamp and H. J. Kerner, 23-25. Cullompton, Uk: Willan Publishing)[208] It is interesting to note, here, how Howard

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[204] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education, 6*
[205] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education, 6*
[206] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education, 7*
[207] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education, 53*
[208] Kathy Evans, Dorothy Vaandering, *The Little Book of Restorative Justic in Education, 53*

Zehr, an original pioneer of Rj, continues to uphold his voice in the more current day restorative justice movement and even in how it has expanded to include educational practices.

Prison Reform versus prison abolition:

Another area that we may now see restorative justice techniques being used is in prison reform. Currently, there are advocates for both prison reform measures to take place immediately, and even some have called for the abolishment of prisons, altogether. In Bill Keller's book, *What's Prison For? Punishment and Rehabilitation in the Age of Mass Incarceration*, written in 2022, Keller talks about different arguments among movements that call for making prisons more humane, implementing restorative justice practices in prisons, or total abolition of the prison system.[209] Though this paper is beyond the scope of these arguments, it is important to note, here, where these restorative practices have led in more modern day discussions on how we deal with crime. A quick example is how Keller describes an exercise where students were called to re-imagine prisons,[210] "…Virtually every student incorporated classrooms, open space and fresh air, and inviting places for family visits and therapy."[211] However, instead of prisons that are more humane, Keller says, "Some newly galvanized critics rejected the very idea of humane prisons in favor of more radical alternatives to incarceration…One is 'restorative justice,'…" [212]

Important to note here, briefly, is there is a whole movement brewing with people who call themselves "abolitionists," and are calling for elimination of prisons altogether.[213] Keller

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[209] Bill Keller, *What's Prison For?* (New York: Columbia Global Reports, 2022) 29-31
[210] Keller, *What's Prison For?, 29*
[211] Keller, *What's Prison For? 30*
[212] Keller, *What's Prison For? 30*

says, “People who follow criminal justice policy for a living say the fastest growing subset of the burgeoning anti-mass incarceration movement consists of self-described abolitionists who contend a system that is inherently racist and based on retribution should be pulled up by the roots.”[214] Other recent books describing the “abolitionist’ movement against prisons are Angela Y. Davis book, *Are Prisons Obsolete?*[215] written in 2003 and Tommie Shelby’s book, mostly argument for prison reform *The Idea of Prison Abolition*[216] written more recently in 2022, shows the unfolding trends and arguments towards this movement. About abolishing prisons, Davis proposes, “…positing decarceration as our overarching strategy, we would try to envision a continuum of alternative to imprisonment---demilitarization of schools, revitalization of education at all levels, a health system that provides free physical and mental care to all, and a justice system based on reparation and reconciliation rather than retribution and vengeance.”[217] Arguing against this vision, Shelby argues against Davis explaining that while he endorses Davis’ measures of abolition, he thinks they would be better suited for in prison reform.[218] Shelby says about Davis’ proposal, “I strongly endorse all four measures. Using them, particularly in combination, would significantly reduce the problem of crime. Yet I would argue that we should use these measures, not instead of prisons, but, at least sometimes, in conjunction with incarceration.” [219] Although, I agree with Davis on her ideal notion to abolish prisons based on her proposed measures, I believe it would take another group of activists to begin to push harder for this movement, as we have seen Zehr and other religious leaders, as well as the

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[213] Keller, *What’s Prison For? 31*
[214] Keller, *What’s Prison For? 31*
[215] Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003)
[216] Tommie Shelby, *The Idea of Prison Abolition,* (New Jersey: Princeton University Press, 2022)
[217] Davis, *Are Prisons Obsolete? 107*
[218] Shelby, *The Idea of Prison Abolition, 166*
[219] Shelby, *The Idea of Prison Abolition 166*

indigenous cultures and the legal systems holding it all together. Based on a quick glimpse of research on a movement known as "transformative Justice," though beyond the scope of this paper, it gives us a glimpse into how people active in these movements, are starting to push back against mass incarceration. (see article "Restorative and Transformative Justice in a Land of Mass Incarceration " by Amy Levad).[220] In this article, written in 2016, Amy Levad says, "There are alternatives to prisons! they work! They can help everyone do better by ensuring that everyone does better!) in the United States, we must confront the challenges presented by mass incarceration and its collateral consequences."[221] Together, with these modern voices, emulating the movers and shakers of the beginnings of the restorative justice movement, starting back in the 1970s, I believe we can learn from all of these pioneers who believe in their cause, dare to make a change, and have impacted the world, forever. I believe that with some effort and connectivity, this new dream of transformative justice and perhaps, even the total abolition of the prison system can be realized as well.

Conclusion:

In conclusion, the evolution from the grass roots movement of small groups of practitioners (both affiliated in a religious context and/or indigenous roots) to making a historical impact on how our modern justice system has been impacted by these restorative practices is a remarkable journey on how a small group of people can affect systems. From the start of circles based on indigenous and/or religious practices incorporating principles of "shalom," a new movement had sparked, it took hold, and affected the legislature of various

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[220] Amy Shelby, *The Idea of Prison Abolition* in a Land of Mass Incarceration," (Journal of Moral Theology: Vol 5, No 2 (2-16): 22-43 (www.jmt.scholasticahq.com), 43

[221] Shelby, *The Idea of Prison Abolition, 43*

places around the world. In this paper, the research has reflected two models of present day restorative justice systems and have compared them in the ways they have utilized both centralized and decentralized versions of modalities. While these research tools and assessments are far from perfect, it does seem that these measures and systems, should continue to be assessed and analyzed, as this is an important way to continue to improve on the modern practices of today. The story of how a bunch of cultures, collided on a common ground of viewing people as "Interconnected" was the huge factor in propelling this movement forward. Based on this example and model, it is encouraging that the modern restorative justice movement that has positively infiltrated other aspects of our society will continue to inspire and help people to envision more creative ways of bringing us to a whole and more just society. Finally, based on the manner in which restorative justice has become embedded into the fabric of our criminal justice systems, as well as many other social systems, I can positively state that restorative justice is here to stay, and I believe, it will continue to refine and evolve as our culture reflects that positive and desired growth, moving towards a society of Shalom.