

The Closure Factor: An Autoethnographical Analysis  
of the Justness of Restorative Justice after Murder

by

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## DEDICATION

*In memory of Adam Lecours*

## ABSTRACT

Restorative Justice—the face-to-face encounter in particular—is increasingly being used in cases of homicide. The studies conducted on this process have reported victim satisfaction and claims of having been able to attain closure. Victim-Offender Dialogue (VOD) is now provided through the victim services branch of Justice in spite of a limited understanding of the process itself. This thesis sought to investigate this concept of closure and provide a deeper understanding of the dynamics operating beneath these unique conversations, by approaching the phenomenon from a different direction. Previous studies have focused on the *restorativeness* or therapeutic value of VOD. The author instead adopts a justice lens, situating VOD within the historical record of justice practices after murder. The focus shifts away from the psychological symptomology of the individual to the social interaction itself. Through historical research, autoethnography and content analysis, the author has developed a *justice duality* framework unique to the crime of murder which conceptualizes VOD as a moral justice ritual fulfilling the duality, thus achieving justice and therefore closure.

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## **Introduction**

Restorative Justice (RJ), specifically the face-to-face encounters between victim and offender, has been increasingly utilized in cases of homicide in the 21<sup>st</sup> century, with overwhelmingly positive results being reported by victims. In fact, common responses range from statements of the life-changing experience itself to claims of having attained the ever-elusive “closure” so often sought by the families of homicide victims.

Based on the success being attributed to the healing qualities of these meetings, Victim-Offender Dialogue (VOD) has become a legitimate branch of victim services departments throughout provincial and federal justice and corrections programs across Canada and spanning the larger Western legal justice system. What is stunning, particularly for such government programs, is the speed with which RJ was accepted and implemented with little concrete evidence of what, empirically, is actually taking place. Anyone with knowledge of justice reform or government bureaucracy knows how extremely long change takes, which leads to an uneasy sense of scepticism here.

As will be seen in this thesis, researchers are both baffled and concerned by a limited understanding of VOD, citing the lack of access to these very private meetings as a key limitation to further research. Having personally participated in VOD I have a privileged insider perspective from which to add to the current body of research. By using autoethnography, and offering myself as a research subject, I additionally have the rare ability to ask difficult and probing questions of a so-called ‘victim’—something that would likely never pass an Research Ethics Board (REB) application in any other instance. I investigate how such an unlikely program was adopted in homicide cases and where we might look to better understand the face-to-face experience itself. From my own personal experience having participated in VOD with

two of the three individuals that killed my life-partner, I can attest to the same life-changing declarations made by others throughout the literature. However, as I will show throughout this study, to reduce such a complex situation to a therapeutic intervention is short-sighted and damaging to any possibility for substantive research or theoretical foundation in this area.



## Chapter One – Restorative Justice

### Background

Restorative Justice (RJ) encounters, most often including the victim and offender of a criminal offense along with a facilitator, have become a legitimate part of Western justice systems. Although initially designed as an alternative justice process or court diversion tool, the program has evolved into a victim-centred mediation and interpersonal dispute tool, falling under the auspices of the victim-services branch of justice. Within the past two decades RJ has further transformed into what can best be described—and is evaluated in line with—a therapeutic intervention used in cases of homicide.

Howard Zehr, often called a pioneer of restorative justice, author of *Changing Lenses* (1990), offered the first theoretical model for RJ. Albert Eglash actually coined the term in 1958, distinguishing restorative justice as a restitution based justice, separate from retributive justice (based on punishment) and distributive justice (based on therapeutic treatment of offenders)(Acorn, 2004; Fassin, 2013; Van Ness & Heetderks Strong, 2010). Zehr’s model advocated for a community based justice process that brought together the perpetrator and victim, along with the community, to find constructive ways of dealing with the “harm created by conflict, crime, and victimization”(M. Umbreit & Armour, 2011). While harmony and community were central ideas, RJ was a justice program at its core.

Restorative justice scholars put forth an overly ambitious plan to restructure the entire justice system (Braithwaite, 2002). Combating injustice was among its earliest goals through a bottom-up process upholding values of accountability and amends. Some even called for “reintegrative shaming” (Braithwaite, 1989) in a private justice ceremony between the direct stakeholders in the crime. Reintegrative Shaming was widely denounced, largely because it was

misunderstood, and due also to the shift in focus from the rehabilitation of the offender to the satisfaction of the victim's needs early in its development.

Restorative Justice mediations were developed primarily for youthful offenders, predominantly for minor property crimes in the midst of a rehabilitation turn (Van Camp, 2014) in youth justice. A new 'amends model' (von Hirsch, Ashworth, & Shearing, 2003) that promoted accountability and making amends, turned out to be a windfall for the justice system. The cost savings of using RJ as a court diversion tool and early reports of lowered recidivism rates (M. S. Umbreit, Vos, Coates, & Lightfoot, 2005) led to its widespread use in the 1980s and 90s. As RJ developed and became more integrated in the justice system victim groups began voicing resistance to what they felt was their secondary role, supporting the offenders in their rehabilitation (Bazemore, 1998; Zehr, 1990). This instigated a remodeling in RJ, especially in academia, with the body of literature infiltrating multiple disciplines in social sciences.

Researchers and victim advocates steer-headed a new paradigm of the RJ concept to give the victim the central role in settling crimes that directly affect her life. Naturally, with victimology comes trauma discourse, and seemingly overnight the victim-offender conference was reborn a healing tool for victims of crime (Acorn, 2004; Fassin, 2013). The original RJ paradigm was barely recognisable as it took shape as a communication and conflict resolution tool, its justice principles superseded by a restorativeness ideology and its accountability principles replaced by therapeutic philosophies. As the thesis progresses, and the long history of victim justice schemes and state bureaucracies emerge, the reasons for this abrupt remodel will become clear.

During my research, I found that restorative justice was already operating, under the name of Conciliation, in the early 20<sup>th</sup> century. Conciliation, according to Auerbach (1983), was

a package of reforms c. 1913 designed to alleviate procedural injustices most predominantly affecting the poor. This alternative justice program used a similar rhetoric of harmony and amity as alternatives to conflict. “The presence of lawyers was discouraged; the object was ‘to get the parties themselves to meet and talk over their differences’” (Auerbach, 1983).

Not much has changed since 1913. At some point the program lost favor and the reformers went back to the drawing table. “For nearly 20 years the idea of alternative dispute settlement has shimmered elusively like a desert mirage” (Auerbach, 1983). In an “euphoric hope that burst forth in the sixties”, Auerbach claims informal mediation evolved from an alternative-to-conflict to an alternative-to-violence, “designed to coax civil rights activists and their angry ghetto constituencies from the streets to quieter sanctuaries” (Auerbach, 1983). He also notes, in nearly identical thinking to our current Aboriginal circles and sentencing practices influence, Tribal African moot was proposed for an urban criminal justice process. He further suggests rewards for compliance with tribal norms were more dominant than judgements of guilt in societies more concerned with the value of social harmony than punishment (Auerbach, 1983). While the Conciliation model was designed for minor crimes, similar to victim-offender reconciliation programs (VORP) of the 1970s, we have a clear example of what is defined as a justice program and essentially the same framework as that called restorative justice today, re-labeled as a healing program.

By the early 1990s victims of violent crime—notably those who have lost a loved one to homicide—began insisting they too wanted to meet with the offender. They were met with strong resistance but in the end victim-offender mediation (VOM) was quietly granted to co-victims of homicide on a request by request basis. The request in itself may not be so perplexing to some perhaps when one thinks of how many times the victim’s family loudly proclaims in the

news, “I need to look into his eyes” or “I want him to face me”<sup>1</sup>. Again, it heralds a reminiscence of an age-old process of person-to-person or family-to-family dispute resolution practices.

However, what is perplexing is that the VOM model, as a conflict mediation tool, was simply transferred over from cases of vandalism to cases of homicide, fully intact without any real adjustments or adequate theoretical evidence to support it.

Umbreit had defined an RJ model to be used in cases of violent crime which he termed Victim-Sensitive Offender Dialogue (VSOD) which is most often now called Victim-offender dialogue (VOD). He distinguished this new process from traditional Victim-offender Mediation (VOM) by the following characteristics:

Emotional intensity; extreme need for non-judgmental attitude; longer case preparation by mediator (6 to 18 months); multiple separate meetings prior to joint session; multiple phone conversations; negotiating with correctional officials to secure access to inmate and to conduct mediation in prison; coaching of participants in the communication of intense feelings; and boundary clarification (mediation/dialogue versus therapy). (Weitekamp & Kerner, 2003)

While there has been some recognition of the more serious nature of violent crime, Umbreit’s model seems to simply extend the preparation phase and put additional protections in place for those under the care of the state—namely offenders. The problematics of this will be discussed later in the thesis. Notably, removing the authenticity and any natural emergence of emotion by cleansing it of anything possibly upsetting or surprising ahead of time. Goleman’s (2007) claims of social intelligence denotes there being two roads when people converse in which the high road carries the informational traffic, while the low road transmits emotional information. The authentic back and forth of communication, including the natural transmission

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<sup>1</sup> I rely on a number of online media stories here and I use the male gender qualifier because the offender was male in every news article in which these sentiments were noted.

of informational/emotional information is done between the mediator and participant first in this model. The mediator is the holder, and controller, of all information of import. The science of emotional and social intelligence, of Joseph LeDoux and Daniel Goleman in particular, will be explored in the final thesis.

There seems to be an assumption that the same type of victim that should want to participate in VOM for minor crimes would participate in VOD for violent crime, and more importantly, that she would have the same motivations. As will be discussed further into this section, these and other flaws in the transfer of VOM to VOD<sup>2</sup> have created obstacles to understanding the process itself.

A number of stark differences between ‘mediation’ and ‘dialogue’ arise, particularly post-homicide. Most obvious, the fact that one of the two primary participants is deceased in VOD encounters. The entire dynamic changes within the new setting of murderer and murder victim’s kin sitting across the table from one another. Rather than repairing relationships it is severing superficial and arguably toxic bonds. “When a crime victim has been unjustly harmed by a stranger, the offense creates a relationship where there was none before” (Urban Walker, 2006). There is a sense that their life is invaded, according to Walker, that they are “bound in their life in a charged and exhausting fashion to someone who has no right to be there” (Urban Walker, 2006). The finality of the crime precludes any idea of amends or reparations.

### **Victim-Offender programs**

There have been countless studies on restorative justice conferencing since its inception in the early 1980s. Since the original purpose of RJ was offender rehabilitation, the majority of

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<sup>2</sup> I use the term VOM for minor crime encounters and VOD for major crimes for simplification, however, it should be noted that these terms have been used interchangeably throughout the literature and are not necessarily attached to the particular RJ formats that I am using.

earlier studies were concerned with recidivism rates and reintegration (Dignan, 2005). Satisfaction surveys were used to gauge the victim's experience. As one might expect, research on post-homicide VOD has returned nearly identical results as that of the earlier VOM programs. This is largely due to the first main criticism of this paper: the practice of using the same evaluation-type research model for two very different processes. Researchers adopted this evaluation model rather than any deeper qualitative method, leading to the eventual saturation and paralysis of research in this area, as will be discussed below. The inability to capture the thick description that is so important to qualitative social research is a central criticism noted in the literature.

For the most part, researchers rely extensively on quantitative data consisting of victim surveys, along with some post-conference interviews. These data are measured against the large body of victimology studies in order to determine if the VOM session is meeting predetermined needs voiced by victims of crime. Studies on actual VOD sessions for violent crime are few but are considered to be reliable indicators of the success of these restorative processes. The majority of studies say mostly the same things: victims are satisfied and the process is considered successful (Bolivar, 2010; Tamarit & Luque, 2016; M. S. Umbreit, Bradshaw, & Coates, 1999).

Using seven violent crime case studies of victim-offender dialogue, Flaten (1996) illustrated that most victims found an opportunity for closure while two remained angry, although notably less so than prior to the meeting (M. S. Umbreit, 1989).

In a multi-site study of victims of severe violence in the U.S., it was found that victims want to hear offenders take responsibility for their crimes, want offenders to feel and express remorse and they want offenders to have greater victim empathy and want them to stop hurting

other people (Bradshaw & Umbreit, 2003; Choi, Green, & Kapp, 2010; Daly, 2006; Miller, 2011; M. S. Umbreit, Vos, Coates, & Armour, 2006).

An ethnographic study in Texas and Ohio (Bradshaw & Umbreit, 2003) found of 78 participants, 99% of the victims were reportedly satisfied with the process, 80% claimed a profound effect on their lives. Reports of letting go of hate, obtaining answers, having a human encounter, placing anger where it belongs, and experiencing the offender's ownership and remorse were also found to be important factors (Mark S. Umbreit & Armour, 2010).

In another study, victim satisfaction was 70%, with a greater stress on symbolic gestures of reparation. Victims also showed a higher interest in helping the offender make behavioral changes (Daly, 2006; Miller, 2011). Participants felt safer, less anxiety or fear and anger if the offender took responsibility during the meeting. The importance of agency was noted by Kenney (2004) stressing that "victims need to be enabled to take action themselves and not remain powerless while social agencies take all the decisions" (Shapland, Robinson, & Sorsby, 2011).

Most offenders and victims are more satisfied with the conference compared to traditional models of justice (Beven, 2005; Rossner, 2011). According to Zehr (1990), many victims hope Severe Violence Dialogue (SVD) will "provide the experience of justice which eluded them after the trial, and provide a symbolic end to that chapter in their life relating to the crime" (McBroom, 2009). This outcome is consistent with other studies indicating that most offenders and victims are more satisfied with the conference compared to traditional models of justice (Beven, 2005; Braithwaite, 2002; Christie, 1977; Rossner, 2011; Zehr, 1990).

Acknowledgement or recognition is particularly important for those who have sat through court proceedings in which the accused continually denied guilt (Van Camp, 2014). According to Gavrielides (2015), The more complex the crime, the more victims want to speak up and take

part; finding it empowering. Early evaluations of minor crime VOM showed opposing views with victims uninterested in participation solely for the purpose of rehabilitating the youth that victimized them. Subsequent studies carried out on violent crime VOD were in line with Gavrielides' findings (Shapland et al., 2011; Sherman & Strang, 2007; Zehr, 2002).

Some responses stand out in their less benevolent motivations or claims. One victim of violent crime indicated that prior to mediation, "I was consumed with hate and rage and was worried what I would do when he got out" (Flaten, 1996). According to Van Camp, (2014) some respondents wanted to meet to express their anger. That this type of response was rare in the literature is of interest and will receive a more thorough examination in the thesis, although some reasons will be explained in the next section.

Llewellyn and Philpott (2014) report that since 1995, there were completed a series of 12 controlled field trials comparing face-to-face RJ conferences to conventional criminal justice processes. They cite venting emotions powering the desire for revenge as a way of diffusing that desire, the transformation of vengefulness into empathy as a key issue that will be highlighted in my theory section. (Llewellyn & Philpott, 2014).

Maybe the most striking, and for this thesis, the most crucial piece of information is the nearly uniform claim by victim's to have achieved "closure" from the encounter (Braithwaite, 2002; Eaton & Christensen, 2014; Flaten, 1996; Holder, 2016; Sherman et al., 2005; J. A. Wemmers & Canuto, 2002). The subject of closure has dominated restorative justice rhetoric, most notably in the therapeutic narrative adopted by the victim services industry. Decreases in psychological symptoms such as anxiety, fear, anger and revenge (Beven, 2005; Strang, 2006b; M. S. Umbreit et al., 1999), are most often re-reported in the literature. Improvements in PTSD symptoms (Angel et al., 2014), and reported feelings of positive emotions after encounters



(peace, closure, lightness, forgiveness) are common (J.-A. Wemmers & Cyr, 2004). The report of improvements in PTSD symptoms came from just one study (see Angel et al., 2014) but has been used to bolster the efficacy of restorative justice dialogue as a healing tool for victims.

In spite of some notable variation in motivations and outcomes for victims, the studies have been consistently translated into a need for healing. A growing body of research questions such assumptions along with a number of methodological issues and other limitations.

### **Criticisms of the research**

Criticism of the research tends to fall into three main categories, the methods used in researching VOD, the quality of the data gathered, and the over-reliance on the individual psychological aspects of the victim experience.

As noted, the methods used have essentially followed the model of evaluation research (Bolivar, 2010), leaving a poverty in substantive empirical understanding of the *interaction* between RJ participants. which is fitting in a field that government is trying to justify having taken on within the portfolio of one thing (justice) while promoting it as another (health). The research methods are no less convoluted in their pattern of applying restorative based measurements on justice-based programs. This not only tends to make the research seem to lack rigor or consistency but is rather superficial when analyzing complex issues associated with bringing a killer and his victim's kin face-to-face.

Indeed, the use of pre-coded measurements of participant satisfaction levels (Bazemore, Elis, & Green, 2007; M. S. Umbreit, Coates, & Vos, 2002) has been replicated in a vast proliferation of publications on the subject that all repeat the same discussions, as well as many of the growing list of criticisms, leading to a now famous assertion by McCold (2003) that 'research on Restorative justice is a mile long but only an inch deep' (Walgrave, 2008).

What remains is a large consensus on success of RJ defined through a contentious term that has been called an “amorphous measure of satisfaction” (Holder, 2016) and a “container concept” (Walgrave, 2008). Many authors of this field are in agreement that “we need to go deeper” (Daly, 2006), and that “research of the process is needed” (M. Umbreit & Armour, 2011) to “understand comprehensively the phenomenon of victim participation in RJ” (Bolivar, 2010). Multiple studies have consistently shown victim satisfaction from their participation in VOD, regardless of type of crime, however the “theoretical explanation for victim satisfaction has been largely neglected” (Van Camp, 2014). A deep exploration of “what actually transpires” may advance theory on how this works (Rossner, 2011). Psych and social-psych theories provide partial explanations for what happens in the RJ process but systematic empirical research is lacking.

Holder (2016) provides an example of “Charlie”, who reported being satisfied with his treatment overall, but only later when prodded further did he note that he didn’t feel justice had been done. Essentially there is a gap in the literature between “what is defined in theory and what is observed in practice” (Bolivar, 2010), a body of empirical research describing victim perceptions rather than understanding, comprehensively, the phenomenon of victim participation on restorative justice. Several researchers have identified the inability to gain access to “that room”, the actual face-to-face experience, noting the obstacle was built right into the process (Zehr, 1990). “We still do not know who the process will work for, or when. We need to develop theory that breaks into the ‘black box’ of a conference” (Sherman et al., 2005).

Without access to the process itself, researchers’ hands are tied. While the shallow nature of such studies has been acknowledged, there is an equally acknowledged fear of contaminating the ‘RJ treatment’ itself through any attempts to approach victims beforehand (Strang, 2006a). In

any case Bolivar (2010) did carry out pre-interviews but noted the coercive nature of the process as a potential obstacle to authentic insights. Fear of being denied access to conferencing could result in dishonesty and exaggerated benevolent or pro-social motivations thus it would be difficult then for those participants to give an account that differs from their initial statements.

Aside from method and methodological weaknesses there is also a significant commentary on specific limitations of content and measurement of the research.

Daly (2016) quantifies the body of literature on restorative justice as “two decades of research showing apparently ‘promising’ outcomes for a justice activity that cannot be defined”. Bolivar criticizes the failure to properly consider social components of restoration or success, for example the interactional aspects of apology and the role of social recognition (Bolivar, 2010).

Another key limitation, or perhaps better labelled a frustration of the restorative justice anthology, is the continual reduction of the experience to symptoms or suffering, which according to Young, “obliterates the moral experience of the subjects” (Fassin & Rechtman, 2009).

A specific pathway has been carved which has supported a particular narrative of the victim experience in VOD, namely as a victim.

The notion of trauma has acquired a social usefulness, according to Fassin (2009) and supported by my own experience. Rather than labelled neurotic, trauma was perceived as a normal response to an abnormal situation. “The spread of this new language of trauma encouraged victims who had not yet seen themselves as such to recognize their victimhood” (Fassin & Rechtman, 2009). In fact, the bureaucracy of the welfare model used by victim services (in Manitoba at least) requires one to *prove*<sup>3</sup> her victimhood and psychological

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<sup>3</sup>In order to qualify for counseling through the Victim Compensation program I was brought before a board (Workers Compensation Board members served in this role), authorized as a legal appeal to the court of Queen’s

symptomology and then continue to provide updates on her status or progress by an officially assigned counselor.

Murphy (2012) beautifully captures this moment we live in as a “therapeutic culture... grounded in trendy notions of mental health where such gems of psychobabble as “closure” and “a time for healing” are the order of the day” (Murphy, 2012).

This pathologization of victims upholding a trauma rhetoric is deeply problematic and essentially dismisses their agency in the pursuit of justice. “Trauma is asserted as a principle in whose name indignation is expressed and legitimized, but at the same time it annuls other moral or political positions” (Fassin & Rechtman, 2009).

Green (2014) has identified self-selection bias as potentially operating beneath the consistent reports of satisfaction; pointing out that the type of individuals that have opted to participate in VOD were more likely supportive of the process before it began or had certain expectations that were met as expected. He further reported that victims are directed toward certain kind of emotion, leaving out the sentiments of vengeance, retribution, disgust and hatred (Green, 2014).

Some researchers have confronted the coercion issues head on, criticizing RJ as a mechanism of governmentality, overemphasizing “non-disputing and peaceable conduct” (Woolford, 2008) as a guiding principle of normative behavior. Woolford notes that the screening of participants, “to ensure they have the potential to be accepting, or even forgiving, of the offender... they are ready to enter upon a path of ‘healing’ rather than continuing to hold onto fearful and stigmatizing views of the offender” (G. Pavlich, 1996; G. C. Pavlich, 2005; Woolford, 2008). Pavlich (2005), in a throwback to Foucault, talks of ‘pastoral power’ where

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bench, to provide intimate and personal evidence of my life with Adam so they could determine whether I could legally be considered his spouse, and therefore a victim of this crime.

mediation serves to encourage individuals to construct new, non-disputing self-identities that are more amenable to governance. Victims are expected to meet a certain passive and benevolent identity in order to be considered appropriate and risk minimal for a meeting with the offender. The gravity of such a meeting being the only possibility of receiving meaningful information from the offender, it is not unreasonable to expect that they will perform in whichever capacity is required for fear of losing that opportunity. According to Jean Améry (1966), “forgiving and forgetting induced by social pressure is immoral” (Fassin, 2013). As such, this practice negates the very *raison d’être* of the RJ process.

Critics might be too quick to minimize the *concept* of satisfaction. What is known about RJ tends to rely on quantitative surveys, consisting of pre-coded output measures (Holder, 2016) meant to capture motivations, expectations and satisfaction levels as reported by victims. Although it is the subjective experience being collected, it is important to note that the victims tend to be nearly uniform in their answers which lends credence to the idea that there is a universal experience taking place but perhaps the lack of properly articulating that experience is simply due to research methods that are not designed to capture a deeper profundity beneath the standard response.

### **Theoretical considerations**

Some authors have suggested the answers to the question of why victims find RJ successful and claim to have achieved the all elusive ‘closure’ from the experience should theoretically be found in aspects of other victim services and reparative processes. Victim impact statements, apology, capital punishment, and RJ letter or video correspondence have been cited as potential avenues to closure. Further, there are particular aspects of the encounter that have been investigated as possible explanations for the shared sentiments of victim participants.

Tinneke Van Camp (2014) put forward Tyler's procedural justice theory, which credits feelings of fairness and respect during a justice process as leading to feelings that justice has been served. This theory then should be equally attributable to experience of presenting the victim impact statement in court if it is simply a question of having voice, recognition and respect. However, Booth (2014) found that victim impact statements had little effect on victim satisfaction. Victim impact statements are thought to produce an emotional response in the offender therefore a sign of remorse. This is unlikely as the offender is granted the right to read the statement ahead of time so any signs of emotion that it might tug at the conscience are long spent by the time of the sentencing hearing.

Apology has been suggested as the answer to this query. Tavuchis (1991) offers clear boundaries and principles that are necessary for apology to be successful. However, his noted parameters are largely absent in the VOD encounter. Tony Bottoms (2003), notes a flaw in an "ideal-typical apology" as "an assumption that victims and offenders share the same moral/social community, not necessarily the case in urban setting". The issue of moral community and group solidarity will be more fully addressed in the theory section but it suffices to say that suggesting apology alone in these circumstances could close the matter is unrealistic at this point. Dignan (2005) raises doubts whether an apology itself is sufficient to bring about successful reconciliation, especially in depending on prior "thick social relationships" that are absent (Dignan, 2005). "Apologies may restore some dignity but not the lives that existed before the violations" (Minow, 1998). It is also important to note that those who received apology by other means, such as in court or by letter were not moved in the same way as in the face-to-face meeting therefore the apology itself is not conducive to justice.

According to Armour, (2003) victims are unable to make meaning in senseless murder therefore it is this sense of “moral determinism, an insistence on the right to hold others accountable”. Further, she argues, it is a fight for what matters to them... “to re-establish order in an intense pursuit of what matters” (M. Armour, 2003). Howard Zehr has been saying much the same thing since 1990. At some point the original philosophies of justice and accountability and right that were so predominant in the youth-justice VOM programs, was replaced with a more sympathetic vernacular. Meaning making holds a key to what we are looking for and will be further examined as the thesis progresses.

Essentially, we have a puzzle then. If not the apology itself, and not the acknowledgement or the remorse alone, there must be something deeper operating within the face-to-face communication itself. We have exhausted the restorative-based concepts so I am suggesting we leave this healing project and take a look in the direction of justice potential.

RJ is successful, overwhelmingly reported to lead to ‘feelings of closure’ but can’t be explained. I suggest three avenues of investigation: 1. Instead of being conceived as a trauma intervention under a social work paradigm, I attempt to reconceptualise VOD as a justice mechanism. 2. Adopting a broader conception of the experience in its relational capacity, rather than focusing only on the individual. 3. Using a comparative analysis to situate VOD in the historical record, and through the inclusion of philosophical, political, and religious perspectives, identify shared human experiences of justice which can then be used in a theoretical framework.

I want to first look at how justice was produced after murder historically, paying attention to the cultural and relational underpinnings of person to person justice.

## Chapter Two – Genealogy of Justice

The experience of justice for the loved ones of murder victims is woven through the historical records and academic journals—mainly those of law, philosophy and classical history. Sociology has little to offer of the victim’s kin prior to 1970s political victim rights movements. Much of the restorative justice and victimology literature states unequivocally that the victim lost her role in justice in or around the Norman Invasion of 1066 and leaves it at that<sup>4</sup>. A number of other studies make some reference to restorativeness and reconciliation having a presence in justice history, citing Indigenous cultural practices or religious mediation culture (Braithwaite, 2002; Zehr, 1990). I have not found any studies that give adequate attention to the many nuances and patterns found across the historical record. Such a macro-view would offer valuable insights into the similarities in meaning, ritual and symbolism that seems to be re-emergent in current day VOD processes. For this reason, and to provide important context, I have decided to include a fuller account of historical justice practices specific to murder in this thesis.

### Pre-Ancient Justice

Pre-Ancient justice, that is the processes in which primitive communities addressed the act of murder, can best be explained through the concept of Taboo: “the oldest unwritten code of law of humanity” (Freud, 1913). According to Freud (1913), as primitive societies developed, a shift away from ideas of gods and demons led to society taking over the punishment of the offender, “whose actions endangered his companions”. Very few pre-state societies had formal law but had rules protecting community members from malicious actions of other members.

Ritual satisfaction and restitution were the most commonly used ways of re-establishing balance in acephalous societies. (T. Gavrielides & Winterdyk, 2011). The use of material and

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<sup>4</sup> Nils Christie (1977) argues the state ‘stole’ conflict from the victim and offender in his ‘conflicts as property’ thesis but this is an entirely separate discussion that falls within the contemporary justice era.



psychological redress was common within “sympathy groups” while swift and brutal revenge was carried out on out-group perpetrators (F. E. Williams, 1941). In *Totem and Taboo* (1913), Freud relates a custom in which the slain enemy is mourned and sacrifices are made to his spirit. Some “making friends, guardians and protectors of their former enemies” and even treating the severed head “for months with the greatest kindness” and putting “the best morsels into its mouth” (Freud, 1913). The link between morality and justice is not surprising. As for the spiritual concept, according to Kristeva (2014), ancestors of our species gave preferential treatment to the skull throughout history and worship of skulls appeared two million to one hundred thousand years before Christ (Kristeva, 2014). A fear of threat from beyond death is present within variations of pollution doctrines that will be discussed throughout the forthcoming exploration of justice rituals that clearly began further back than record or myth.

According to Freud<sup>5</sup>, there were a series of rules associated with the taboo of killing that he suggested were widespread customs rather than isolated peculiarities. The rules “demanded: 1. Reconciliation with the slain enemy, 2. Restrictions, 3. Acts of expiation, and purifications of the manslayer, and 4. Certain ceremonial rites” (Freud, 1913).

### **Ancient Justice**

The earliest physical written evidence of justice practices dates to around 3000 BCE (Johnston, 2011; Van Ness & Heetderks Strong, 2010). The Code of Hammurabi (c. 1700 BCE), Code of Lipit-Ishtar (1875 BCE) Sumerian Code of Ur-Nammu (c. 2050 BCE) and code of Eshnunna (c. 1700 BCE) hail from Mesopotamia (current day Iraq), and all provided restitution for violent offenses (Roth, 2014; Van Ness & Heetderks Strong, 2010). The Code of Hammurabi, an 8-foot-high basalt slab inscribed with 4,000 lines of cuneiform, portrays

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<sup>5</sup> Freud credits J. G. Frazer’s work in his *The Golden Bough* (Part II: Taboo and the Perils of the Soul, 1911) for this material.

concepts of mercy and restitution that continue to be relevant today and suggest a moral component to the response to murder. In fact, it introduced the principle of ‘expressive’ or ‘sympathetic’ punishment which some argue was a merciful clause that allowed for payment of compensation in place of death (Roth, 2014).

Notably, this option also shows early evidence of economic privilege which continues in modern justice systems today. In spite of such inequities in social justice, criminal justice was focused on relations between persons rather than a conception of right or any strict sense of duty (Johnston, 2011). The victim’s relations were centrally placed in justice; clearly recognized as the beneficiary of compensation but also at the center of what amounts to the earliest recorded social problems between neighbors in which rulers must set boundaries and sanctions. The word “justice” (*mi-sa-ra-am*), in the Code of Hammurabi, had the sole purpose of preventing the strong from oppressing the weak (Johnston, 2011). The earliest conception of *talio* (retaliation) comes from Hammurabi and was originally an attempt to control private vengeance through an economy of injury through limits on retribution. This principle was later found in biblical text and eventually evolved in Anglo-Saxon law as *Lex Talionis*, commonly identified under the moniker of “an eye for an eye” which became associated with vengeance. Similarly, the use of ‘sympathetic’ punishment evolved into a form of corporal punishment and torture in later eras. One might remember the 1757 episode of poor Damians: “his right hand, holding the knife with which he committed the said parricide, burnt with sulphur...” (Foucault, 1975).

In the ancient world vengeance was not as predominant or as cruel. It was rather cut and dry, especially as Hebrew law and biblical requirements of justice were concerned. Where in Mesopotamia victims were permitted to accept financial compensation, in Jewish law a convicted murderer was expected to be executed. Justice, and vengeance now also, was the

province of God. The rich were treated the same as the poor. “Hebrew laws do not recognize an aristocratic class with legal privileges” (Johnston, 2011).

The idea that human beings are equal in worth also appeared among the sophists of Athens. (Johnston, 2011; Plato, 348 BC). Unlike Hammurabi and God’s law, Athenian law was based on the popular consent of the people. The Homeric Age (eighth century BCE) brought the first real criminal laws into the Polis. Justice was done through informal processes between the victim and the perpetrator (Roth, 2014).

The first written law of ancient Greece was penned by Draco in the seventh century BCE. Draconian law is used in modern day parlance in reference to anything considered overly harsh or punitive, in a call back to the fact that Draco’s laws called for the death penalty for every act deemed illegal, regardless of nature or seriousness. What is not often recognized is that Draco’s Laws offers a uniquely humane treatment of homicide as regards the murderer, the victim’s family, and the victim himself. Murderers were given three choices: 1) acknowledge guilt and go into exile; 2) submit to trial, or 3) take their chances by ignoring the first two choices, whereby the offender could be immediately killed or arrested by an Athenian if he entered a public or sacred place. The power accorded the victim’s family was also unique. They could accept compensation in place of state sanctions. Lastly, the victim, “with his dying breath, had the power to forgive his killer, thus making him immune from punishment” (Roth, 2014).

Where in Hammurabi victims were accorded simple recognition and compensation, we now see an increase in status and decision-making abilities. By the fifth and fourth centuries, the role of the victim’s family was even more firmly established, assigning them power to mete out justice. However, such power was mirrored by duty. Duty to the society as a whole became tied to justice, due mostly to new philosophies and belief systems. The *pollution doctrine* (Plato, 348

*BC*) was one such idea, famously captured in Aeschylus' *Oresteia* (2002) and referenced in moral philosophies of the 'passions' (Nussbaum, 2016; Phelps, 2006; Shklar, 1990). The pollution doctrine advanced the belief that the killer was unclean and could contaminate the entire society if not swiftly dealt with. The victim's family had "a duty to either obtain vengeance or come to some type of reconciliation that would pardon the malefactor" (Roth, 2014). Variations on the pollution doctrine continue to play a role in justice systems worldwide and reach back to primitive cleansing practices noted earlier (see Freud). Ancient Greek versions of this belief are quite similar to primitive rituals; the latter appeasing the Furies<sup>6</sup> and the former evil or vengeful spirits.

The emergence of the pollution doctrine also "began the process of state retribution in that it depersonalized harm and spread the revenge requirement from the individual or the clan to the entire community" (Phelps, 2006). According to Phelps, the pollution doctrine may be seen as a "bridge between private blood feud revenge and state retribution in that it expresses a compromise between tribal traditions and the slowly evolving power of the state". She concludes, "Private settlement of any sort was not exclusively a personal matter" (Phelps, 2006). The notion of pollution is depicted in Jewish law "Whoever sheds the blood of man by man shall his blood be shed" (Gen. 9:6) "for blood unlawfully shed... pollutes the land, and the land can have no expiation for blood that is shed on it except by the blood of him who shed it" (Num. 35:33) In the primitive taboo customs, rules of purification were followed as well, consisting of variations of seclusion, and lack of contact with certain foods or persons for some set time period

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<sup>6</sup> The Furies, also known as Erinyes in Greek mythology were female deities of vengeance. In *Oresteia* Athena persuades the Furies to give up vengeance for a role as protectors of justice, ending their 'poisonous' threat to society at large. They then become the Eumenides (kindly ones) sitting next to Athena to temper justice with mercy.

(Freud, 1913). In spite of optimistic mythology, vengeance was thriving in the first millennia BC.

The Twelve Tables (Roman Laws) first appeared during the fifth century BC, largely due to plebian discord regarding laws that favored the wealthy and educated. After being destroyed in 390 BC the Twelve Tables codes were reconstructed on bronze tablets and set in the marketplace for all to see, a precedent for our current principle of *Nulla poena sine lege* which signifies that one cannot be punished for something not acknowledged in law (Hall, 1937). Making laws more accessible did not necessarily make them more civilized. The Romans are credited with the institution of brutal public justice events such as punishment of the sack (dating to 100 BC), to being torn apart by wild animals, to gladiatorial games; a precursor of what was coming in the middle ages in the name of justice.

### **Medieval justice**

Justice practices went through overlapping phases of vengeance and mercy as the influence of the church and kings rose and fell. As with ancient and primitive practices, the stabilization of societies was entwined with the personal redemption of redress.

The Blood Feud, sometimes confused with imaginings of ‘bloodbath’ but really just denoting blood ties between kindred, was a social control mechanism for collective responsibility in struggle for survival (Schafer, 1968). There was no purpose of restoration of any moral order or legal order (that was Church and State). Crime endangered existence of the victim’s tribe and the Feud was used to assert reciprocity and justice. As material culture reached higher levels of development, compensation became more utilized (Schafer, 1968). Negotiation of guilt too was carried out by families of the victim and offender.

Private punishments in Roman Law were a kind of intermediate stage between real crime and the purely civil wrong where the offender was not only obliged to make good on the damage he had caused by owes something else in addition, an act of expiation. “You restore nothing unless you restore something greater than the amount of the obligation” (Olson, 2000).

Humiliation was experienced by the offender through compensation (Schafer, 1968).

A new tension was developing between a newly centralizing government and the church. The Twelve Tables, noted above, were superseded by Justinian’s *Corpus Juris Civilis* almost ten centuries later, c. 515-565 (Roth, 2014). The Justinian Digest and Code first spoke of crime as “a public wrong that required a strong preventative arm” (Olson, 2000). Following the fall of the western Roman Empire in the fifth century AD, Germanic tribes (Barbarians) took over and flavored the justice system with their own brand of cruelty (Roth, 2014). During this period, the influence of the Church is evident.

The Ordeal (500-1200AD), called *iudicium Dei* because a Deity is asked to sanction or deny a formal oath by a party to a dispute (Olson, 2000), was used as the justice mechanism to prove guilt or innocence. Through a torturous challenge, most often against fire or water, it was “the rationalization of proof in Europe”, reflecting “the modernization demanded by more advanced social structures and a higher intellectual level (Bartlett, 2014). The ordeal is also taken as a method of proof and bond to ‘his Lord’, embodying the idea that testing one’s character through hazard and risk was a noble act and moral good, not just a denial of wrongdoing (Olson, 2000). Confession, on the other hand, and penitential works in general, could also “prove” lack of corruption, particularly because it too involved submitting to suffering, surrendering “to something other than oneself”. (Olson) Also called *Concordia* or *Concord*, (derived from Cor), it

signified an agreement of the hearts. “Concordia demanded a kind of violence upon oneself” (Olson, 2000).

Humiliation and shame were an important part of justice in the middle ages, where custom was law (Schafer, 1968). “It shaped one’s identity, delimiting a myriad of relational statuses who all held the duty to recall and preserve the law” (Olson, 2000). It was considered “deadly serious” if by his deed, he broke those bonds that granted him identity. Particularly heinous crimes were simply unamendable or considered to be ‘botless<sup>7</sup> crimes’ (Jeffery, 1957; Olson, 2000).

The *amende honorable*, an act of penitence also appeased personal justice where “on the way to the scaffolding, the condemned might be obliged to kneel before the victim of his crime... and beg forgiveness” (Spierenburg, 1984). Prostration was common among the laity of eleventh-century Flanders, where killers prostrated themselves in front of their victims’ relatives to beg for mercy and forgiveness” (Koziol, 1992). This prostration sometimes ended disputes. This phenomenon was a rite of penance and humiliation that restored the order of reason. “Prostration was not an empty gesture, it was the mark of his defeat” (Koziol, 1992). “The physical posture struck by the homage, on his knees, head bent forward to expose naked neck, and hands between those of his new lord, is one of ostentatious vulnerability. Hyams echoes the importance of “promulgating honorable relationships of dependency between men supposed to be capable of literally looking each other straight in the eyes” (Hyams, 2003).

Nietzsche’s *Genealogy of Morality* (1887) offers a memorable and well-articulated value of seeing one’s enemy made lower in elevating one above lasting resentments. I would also

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<sup>7</sup> “The complicated system of bot, ‘betterment’ was inextricably tied to the penitential system. The bot constituted a dramatized apology, which was said to be ‘amende honorable’” (Olson p.158, Pollock p. 452)

suggest that the power of belief in God's vengeance was enough to satisfy justice for the victim's kin.

According to Olson, during penance, a wrongdoer seeks to expunge his inner corruption, thereby reuniting himself with those he has offended. We again see hints of the pollution doctrine operating and again, it is cleansed through some sort of fellowship between victim and offender. A tension is noted by Olson, between the political forces interested in uncovering a crime (the ordeal) and the Church in the wellbeing of its flock through the confession. Saint Anselm spoke of the retribution/restoration dichotomy, first pointing out that God requires no retribution for Himself and then of satisfaction as negating the need to fill a lack or pay a debt. Further, he conceived of satisfaction, "not as a payment but as an offering" (Olson, 2000). "Whereas punishment is a thing 'exacted', leading to the torment of separation, satisfaction is a thing 'freely given' which restores man's relationship to God" (Olson, 2000).

The Barbarians also introduced *Lex Salica* (Salic Code) a system of fines (*compositio*) determined by the value of the victim and the offender (Bartlett, 2014). *Wergild*, or man price as it was called, became the primary method of settlement to the kin of victims for murder in the middle ages. It aimed not only to compensate, but also to restore amity.

If a man accused of homicide c. 1024 offers duel, but the family of the deceased declines, he then must clear himself before the bishop, pay the wergild and make his peace with the relatives; and these must accept (Bartlett, 2014).

The *Wer* gradually replaced the feud as the method for negotiation between the families of the wrongdoer and the wronged gained more ground, again likely from religious influence. By the time of Alfred 871, (Alfred's Dooms) feud was resorted to only if compensation was requested and refused (Jeffery), if unable or unwilling to pay, an offender becomes an outlaw



and anyone may kill him with impunity (Pollock, 1899; Schafer, 1968). It is worth noting that throughout the ancient and medieval periods we see a thread of mercy woven into justice, alongside vengeance.

During the struggles over dominance in matters of justice, there was actually a partnership between Church and State during the medieval period in which “the executive machinery for enforcing the law was weak” (Oakley, 1932) in the face of continued practices of private vengeance. “Some of the strongest obstacles to the preservation of law and order... were the survival of the blood feud and the right of private vengeance” (Oakley, 1932). The church had the financial means to imprison people and also served as a safe sanctuary for those fleeing vengeance. The church was therefore in the position of power to demand confession and penance be included as a part of secular justice, believing public penance to be an essential part of conflict (Roach, 2012). The codes of I and II Edmund required homicides to perform penance before entering into the king’s presence, another sign that the pollution doctrine was still present (Roach, 2012). Murderers were commonly ordered to a combination of compensation and penance of one to seven to ten years of partial fasting<sup>8</sup>. Money compositions were paid to the victim’s kin. It didn’t take long for the state to realize it was losing out in the calculations of justice. Legal compensation and penance were linked as *deditio*, with ritualized submission and satisfaction through the “core acts of prostration and begging pardon from the offended party” the common method of settlement (Roach, 2012). “In such ritualized reconciliations, secular punishment, ecclesiastical penance and political submission all tend to blur into a single act of self-abasement” (Roach, 2012). Again, we see shame as a core mechanism of justice, utilized by both powers—or perhaps by all three.

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<sup>8</sup> Note the practice of fasting associated with penance or cleansing, unchanged from primitive cultures.

The dual system of ecclesiastical and secular courts developed during the medieval period were separated with the Norman Invasion of 1066 (Jeffery, 1957). With the invasion, William the Conqueror instituted legal processes that proved effective tools for establishing pre-eminence of the King over the Church in secular matters. Perhaps in an attempt to usurp the role of the church, the moral reprehensibility of acts was given more attention in the new secular laws, leading to an element of moral disapproval as the essence of punishment which translated into an early wave of “moralization-individualization” in the renaissance of the twelfth century (Spierenburg, 1984). In Denmark and England the ordeal was abolished by royal ordinances of 1216 and 1219 respectively (Bartlett, 2014). Torture replaced the ordeal in short order. During 1200-1700 Judicial torture (to gain confession) fulfilled the same function as the ordeals had between 800-1200, used as a last resort, “when the truth may not be discovered in any other way” (Bartlett, 2014).

A new discourse was being constructed resulting in a second transference from the province of the church to that of the king—that of sin. With the emergence of a central authority in place of feudal lords, the church lost the right to punish sin whereas the state itself became more Christianized and “the moral duty became a legal one” (Jeffery, 1957).

The *Leges Henrici Primi* (early 12<sup>th</sup> century) asserted royal jurisdiction over offenses punishable by death, “breach of the King’s peace”, essentially transferring victimhood from the kin of the deceased to the king and redirecting reparation from the victim in the form of restitution to the king in form of fines (Van Ness & Heetderks Strong, 2010). As Jeffery concludes, during the reign of Henry II (1154-1189) the tribal-feudal system of law disappeared and common law emerged in which “wer, bot and wite were replaced with writs, procedures, and common law” (Jeffery, 1957).

The victim was still assured a significant role in the criminal justice process, however, through mechanisms of private prosecution yet this form of justice was only available to those with the means to bear the financial costs associated with pursuing a case against an accused (Llewellyn & Philpott, 2014). Llewellyn and Philpott (2014) further suggest that surrender by victims to the state (note there is an ongoing controversy on this topic, see arguments of Phelps and Nussbaum for example) was useful in that it assumed many such procedural responsibilities that were burdensome to families. Even so, the state provided participatory forums in which victims could denounce offenders and demand satisfaction (Llewellyn & Philpott, 2014).

It seems the church rebranded itself from an authority of punishment to one of mediation, gaining a new stronghold in justice through its interest in the soul of the offender. The church also now held a position of opposition against violent acts such as the ordeal or the feud and began to instigate peaceful measures of justice between people.

While vengeance and reciprocity are most often talked about, the literature on mercy and atonement is prolific. Cities of refuge, well documented in the Bible and historical legal texts, offered the dual purpose of protection for due process for unintentional manslaughter and for sober second thought, a time-out period to allow the dissipation of the passions and perhaps a chance for the guilty party to beg forgiveness or attempt to atone for his actions.

Smail (2001) gives an informative account of the Peace Act. The issuance of exile or banishment was widely used in cases of murder. Usually the assailant was required to do some sort of penance before being allowed to return from exile. Negotiations then took place, often including family, friends, kin, the wife of the assailant, and social elites. A mendicant (the church) helped mediate and churches or cemeteries were favored venues for the final reconciliation. Peacemaking rituals dominated the middle ages, most notably the Kiss of Peace.

The kiss was preceded by the *festuca*, an ancient ritual role, described by Petkov (2003) as a pre-Christian legal tradition in which the transfer of a staff [*thalmken*], “embodied the Germanic concept that the complete person of the offender was in the power of the injured party. To reciprocate, the injured kin were in the possession of the mercy [*bermherticheijt*] that originally they and they alone decided whether to bestow on the offenders” (Petkov, 2003). *Festuca* was considered a sign of self-pledge through a special sign “that embodied in a magical way the personality of the owner” (ibid). Petkov notes that *Festuca* did not carry the same moral and social implications of the ritual kiss.

The ritual kiss, or kiss of peace, conferred peace to the wrongdoer in order that he may fulfill his or her obligations “to the quick and the dead” before the feud was terminated (by both parties)(Petkov, 2003). Pilgrimages were undertaken, often with the additional benefit of giving a cool off period to the aggrieved, and alms were given for the soul of the murdered person. These acts served to bind the offender to his “new kin” (Hyams, 2003; Petkov, 2003). “Upon prostrating self to kin, the offender becomes bonded to them as they become his own kin. He is brought into their fold and from then on has kin-like obligations to them” (Petkov, 2003). It is of value here to note that in my own experiences, with both offenders, they each made similar oaths to me and my family, promising to be there for us should we ever need anything. How can such a particular practice that links back through hundreds of years be explained other than it being an innate sense of what justice requires? These boys had been sentenced and paid their price so they owed nothing (legally) to me. Yet both, independent of the other, voluntarily faced me and pledged what is essentially kinship. I suggest there is a moral (personal) justice operating alongside legal (public) justice. This concept will be further examined shortly.

The benevolence argument of the offender seeking to “expunge his inner corruption” did not sit well with all historians. Robert Axelrod (Hyams, 2003; Petkov, 2003) proposed an evolution of cooperation theory that denied the need for direction from above, i.e. coercion of some authority. Axelrod alluded to the basic instinct of trust as dominating our behaviors and causing us to risk cooperating with our neighbors. (see Luhmann’s systems theory also) He put forth a *Tit for Tat* strategy which depends on mutual interest in peace and suggests that the one should “meet strike with counter-strike swiftly until opposition blinks and is ready to propose cooperation” (Hyams, 2003). He concludes that “the best option becomes a favorable hearing of peace overtures in the hope of achieving closure” (Hyams, 2003).

What was at issue in peace acts, according to Smail (2001) was “not a material good or an estimated damage but rather a hatred” (Smail, 2001). Since hatred was a form of right to the victim’s kinfolk, like any right, they could cede or remit it at will. The peace act was an “intensely personal involvement, unthinkable without the face-to-face, personal encounter and co-operation of former enemies, invariably described in terms of giving up personal hostility and of demonstrations of good will” (Petkov, 2003). It goes without saying that if the peace act failed, the offender faced the alternative, namely death or banishment. Only the victim’s kin held the power to interrupt the trial “to withdraw the offender from the clutches of public justice” and grant him grace (Vallerani, 2012). “By 1226 an agreement between the criminal and the relatives of a slain man would not avail to save the murderer from an indictment and a sentence of death” (Jeffery, 1957). This marks a big shift in the role and power of the victim’s family. The original plea of the family was now replaced by the plea of the Crown, foreshadowing our contemporary adversarial justice system. Juries were developing in several European countries in the twelfth and thirteenth centuries. The jury would decide a murderer deserves to be outlawed for killing

without cause or that he should pay compensation for killing an enemy or they could clear him absolutely. The verdict was final, like the ordeal.

### **Late Middle Ages**

By 1229, the jury trial was the normal mode of proof in all criminal proceedings. Church and State continued in their tug of war battle to control justice, each inserting a foothold into private ritual. According to Petkov (2003), authorities sought a role within ritual reconciliation in order to “de-legitimize the individual and group rights to violence and monopolize violence themselves”. Control over the interaction allowed for appropriation of those rights. The similarity in the modern day restorative justice program is stunning.

The acknowledgement of rights of the other in the feud (to request, receive and enjoy peace) was woven into the informal reconciliation ritual. Ritual liability—essentially a duty to uphold peace—superseded the obligation to pursue revenge through violence (Petkov, 2003). Beneath such obligations was the introduction of the right of authorities to “establish, promote, and maintain the peace as a legal duty of the private person” (Petkov, 2003). A hidden dynamic, says Petkov (2003), between the individual, the collective, and the social was emerging where historically it was assumed that the larger society would benefit from peaceful settlement between adversaries but it had never been specifically articulated.

The now ‘legally required’ kiss of peace continued to be deeply embedded with a sacramental character: “the humble demonstration of guilt and repentance, the promise of pilgrimage, and the penitentiary garb and gestures of the offender” (Petkov, 2003) clearly indicative of the stronghold of the church.

At a time when the state was in its infancy regarding the monetary gain from crime, the continued use of private justice rituals was considered costly to its coffers certainly, but also to

its legitimacy. In trying to usurp the status and right of the victim to justice, the state created public spectacles in a show of power and legitimate right to vengeance.

The state fully supported the continuation of violence and torture in dealing out justice, despite earlier attempts to outlaw the feud and ordeal. Legal texts from late medieval Germany explicitly refer to punishments as vengeance (Bartlett, 2014; Spierenburg, 1984). Penalties became crueler in England as the machinery of state emerged. “Breaking on the wheel, hangings, beheadings, brandings, variations on punishment of the sack, and an unlimited amount of barbarity were used by “chronically insecure” central governments in their nascent stages of development” (Roth, 2014). The only difference between these corporal punishments and the ordeal seems to be one was used for proof of guilt or innocence by God and the other to play God in symbolic measures of hell on earth.

According to Luhmann (1993), “the archaic rule of repayment of violence with violence” was essentially transferred to the state as “the only actor entitled to apply a violent response”. The state continued to justify the spectacle by espousing “quasi-medical advice, ‘le mal se guarist par le mal’ [evil is healed by evil], which was also abandoned in the seventeenth century (Luhmann, 1993).

Contrary to many published accounts, and appearing throughout various mediums such as art, literature and political theory, the brutality and violence of our judicial past was not socialized or moralized away. We, as societies, did not revolt against the spectacle or shame our governments for ill treatment of criminals. As Smail (2001) declares in his volumes on the subject of hatred, it was power and the manipulation of various schemes and enmities between people and throughout societies that led to the shifts in our criminal justice system. Beneath the systems of law and justice lives human emotion and relations, operating just as strongly as they

ever have. It wasn't until the 18<sup>th</sup> century and Enlightenment that significant change happened in the name of science and rationality. Moral outrage still exists. It has just been removed from the books. As Smail (2001) explains:

...more significantly the implicit right to retaliation challenged the state's developing monopoly over this right. They had no interest in admitting that private citizens could defend themselves independently of the Crown. The ascription of anger or unreason was a key component of the Crown's claim to judicial sovereignty.

Hatred served as an important political and social function. It was an inexpensive source of honor, a language of social structure. "Enmity was an institution" and hatreds gave structure to social in-groups and out-groups. Everyone was aggressive, he continues, (regardless of gender or economics) and it is very difficult to treat as pathological or irrational something that is characteristic of virtually every member of a society" (Smail, 2001).

The use of 'the appeal' to the Eyre courts was increasingly taking precedent over the private reconciliation. As will be further examined in the theory section regarding the civilization thesis, people began hiding their hatreds for fear of having their claims de-legitimized. They were willing to swallow their anger in order to affect a more beneficial outcome. Again, looking back to Axelrod's Tit for Tat theory, such strategies and Nietzschean sentiments are not uncommon as private ritual gave way to formal appeals. "People remembered that their grandparents had done better, for they had received monetary compensation as well as the fuller, more personal satisfaction of peace settlement" (Hyams, 2003).

The Crown was quick to observe how hatred was used as an asset in contests of will and used that to its advantage by creating an adversarial model. Exploiting human emotion gave the state the final push it needed to secure its hold on justice for good. Ironically, perhaps, it would soon eliminate all traces of that same emotion from the justice system, at least on the face of it.



## **Pre-modern Era**

In addition to a new rationality in justice came a new period of economic and political growth. Public spectacle was replaced by private imprisonment. The transition from corporal punishment to confinement, according to Aubert (1972), was predominantly the consequence of the state's growing fiscal power. Confinement, once the province of Church coffers (Roth, 2014), was now economically viable for the state (Borneman, 1997). Punishing the body was superseded by 'treating' the soul (Foucault, 1975). The state was once again trampling on the toes of the church. If John Howard's 18<sup>th</sup> century account of the prison is any indication, cruelty was simply transferred from public spectacle to hidden jail cells (Foucault, 1975; Howard, 1929).

MacIntyre (2007) illustrates an important shift in thinking during the seventeenth to eighteenth centuries. The "distinguishing of the moral from the theological, the legal and the aesthetic" had led to a project of an independent rational justification of morality that became "not merely the concern of the individual thinkers, but central to Northern European culture". So then, we have an acknowledgement of the moral as something operating on its own yet consciously removed from justice in the name of rationality.

Rather than exhibit the power of the state through brutal force, (which some argued normalized violent retribution for the masses), the use of intellectuals and professionalization in the courts raised the specter of justice much higher above and further out of reach for the majority of society. This was a more effective show of power while at the same time bolstering the new sciences of law and criminology. The relationship between victim and offender had been increasingly considered arbitrary by this new philosophy that espoused "the efficacy of criminal law could be measured by its impact on the criminal alone" (Borneman, 1997; Dignan, 2005). The so-called Golden Age of the Victim had come to an unceremonious end (Schafer, 1968).

## **Contemporary Justice System**

With the eighteenth century and Enlightenment came the rationalist science of positivistic criminology. The offender and his criminality became a medico-scientific problem (Foucault, 1975) to be solved. The slow transition of power from the victim's family to the state was now completed by the reduction of morality and justice to legal rules and procedures (Walgrave, 2008) and the use of prisons as the universal punishment mechanism (Foucault, 1975). Various forms of corporal punishment continued into the early 20<sup>th</sup> century and capital punishment is still practiced in some US states.

With the shift to positivism came also the transformation of revenge into retributivism, further eliminating the emotional dimension of justice (Walgrave, 2008). The primary aim of justice, according to Johnston (2011) is “an order within individual human beings in which reason and wisdom rule strictly over human impulses and emotions.” The irony of this statement is surely recognized in the murder trial, in which the family is cautioned to remain stoic and neutral through weeks of details and photos of the violent death of their loved one.

We are at a major crossroads in the history of murder where the main components required for justice for more than 5000 years have been altered, leaving an administrative and bureaucratic behemoth that has eliminated the core human aspects of killing and its resolution. The modern-day response to homicide has essentially split justice into two separate spheres: 1) legal justice, the public side of justice which punishes the killer for breaking the laws of society; 2) moral justice, the private sphere, the person to person or family to family justice process that deals with the actual harm. By severing the victim and her private justice practices the fuller justice process is left incomplete. Where formerly justice included some sort of principle of private prosecution that allowed for the personal justice requirements noted above, there is now

only a separate civil court system that is accessible only to those with the financial means to participate and relies on monetary ability of offenders to pay financial penalties—neither of which is generally found in homicide<sup>9</sup>.

What has been lost? The victim's right to resolution and the moral weight (of both the act and its consequences) of the crime of murder. In essence the duality of public/private justice that bound together the duality of legal/moral obligation has been severed. Legal punishment then aspires to satisfy societal maintenance, and nothing more (Ryberg & Corlett, 2010). At what price? Criminal law and its court system fails to uphold the duality of justice, leaving the personal harm unanswered and leaving justice incomplete.

A strange paradox emerges in which the offender is protected by society while the victim is cast out. Normative alienation and estrangement, I would argue caused by the justice system, signify that one is “without social shelter—literally without, outside at the margins, pushed to the edge of a community in which one is no longer certain of one's place” (Urban Walker, 2006).

The victim's kin lose their secure and respected place within the fold of the society in which they have abided by the rules of membership while the offender is sheltered and given rights and agency by the state. In the past, the kin of the offender paid that of the victim, asserting a clear definition of who owes and whom is owed. The wrong was made right. It was settled. Today the lines are blurred. Today the victim's family is left with no options but to observe, as any other citizen. Is it any surprise that these so-called co-victims are experiencing mental health crises? The denial of acknowledgment of the deep personal injustice surely leads to some resentment at least.

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<sup>9</sup> Those at highest risk of becoming a victim or of being accused of homicide in 2013, according to Statistics Canada, were males aged 18 to 24 years. [www.statcan.gc.ca/pub/85-002-x/2014001/article/14108-eng.htm](http://www.statcan.gc.ca/pub/85-002-x/2014001/article/14108-eng.htm) Average income of males 18 to 24 in same year was \$15,600.00 [www5.statcan.gc.ca/cansim/a47](http://www5.statcan.gc.ca/cansim/a47)

By failing to provide the opportunity for victims to confront the moral wrong, societies are left vulnerable and those most impacted by the murder are left unsettled; posing additional threat to social cohesion. Susan Jacoby (1983) argues “[Retributive institutions] remove the practical, not the psychological, burden of revenge from individuals. If they fail—or are seen to fail—in the fulfillment of their practical function, they are likely to increase rather than decrease the psychic burden of vengeance” (Elliott, 2011). “To fail to reassure or to satisfy victims is to cast doubt on the authority of norms, to authoritatively if implicitly mark those victims as outside the norm’s protective cover or to indicate that those victims are not members to whom the community’s general responsibility reaches, or are not members at all” (Urban Walker, 2006).

The consequences are not isolated to the victim’s kin alone. They reach into the larger social structures, festering and slowly picking away at the authority and legitimacy of this justice system that has renounced their plight. The pollution doctrine that has remained consistent throughout the ages is no longer adhered to, no longer honored. The toxic hatreds simmer as the victim’s family is cast out and begins their search for some elusive sense of closure.

Petkov captures the essence of the pollution left over after incomplete justice in his re-enactment of John Gower’s allegorical female ‘Hatred’. He writes, “Hatred won’t cease even after confession; ‘she tells the chaplain she will give up her ill will forever, but right after Easter she returns to it as dogs to their vomit.’ When she comes back later from the altar, she runs off again spreading anger” (Petkov, 2003).

## Chapter Three – Requirements of Justice

### Moral Justice

“The term Plato used for justice—*Dikaiosyne*—most often associated with righteousness but more representative of morality in book II, of *The Republic* (Plato, 1966). Pojman further elucidates this translation as “a core set of principles are binding on every human being, respecting human life being the first” (Pojman, 2006).

A vast territory, a prominent organizer of our daily discourse this concept of justice is, a system of life, such that through its interplay, through the specific ways it opens, organizes, channels our thinking, we stir up certain emotions or find ourselves free of them, generate the needs to speak or the capacities for silence, consider matters open or closed. (Axelrod, 1986)

The legal crime and its consequences are quite clear and have been written about ad nauseum but little has been written about the moral crime of murder in the particular context that I’ve been discussing. A number of different disciplines have studied the topic of morality and moral injury, and when brought together it creates a solid foundation for moral justice.

Durkheim (1993) makes two claims regarding morals that are helpful to conceptualize the term in this thesis. First, he distinguishes between ethics and morals: an ethical issue requires one to think about it first where a moral issue requires no thought—there should be no question. Second, he ascribes a duality to morality itself: subjective and universal morals where the former might decide whether to give money to a homeless person and the latter is automatic and applies to all. The universal would be akin to Kant’s categorical imperative, which murder would fall under (Kant, 2009).

Moral justice, then, is simply an extension of morals that encompass the natural laws attributed to human beings a priori, independent of states or laws (see Aristotle and Cicero). While it can be said that the legal justice mechanism addresses a moral component of murder, it

can only be said in terms of the societal norms that are governed by law specifically; murder being one. When discussing the private moral injustice, that which runs between individuals, we can further delineate it into moral injuries and moral repair (Bibas, 2012; Smith, 2016; Urban Walker, 2006).

Moral justice encompasses the realm of outrage for the injustice and breach against the normative expectations of trust that we simply do not act violence on one another, we respect the lives of each other and have a baseline of trust in safety (Seligman, 2000; Smith, 2016). The response to moral injustice is the raw personal reactions mixed with subjective judgement of the response provided by the offender that will lead to some form of vengeance/mercy spectrum of answer. Personal beliefs, customs, and values, as well as experience and perspectives will shape the justice requirements of any particular individual. The personal nature of moral justice is not and cannot possibly be addressed by the impersonal realm of law and order found in the courts.

This idea of moral justice is not new as can be seen in the following discussion of the dual nature of justice as required after murder.

### **Duality**

Two questions come up in the literature regarding justice. The first is whether it is *necessary*, in the aftermath of crime, to punish offenders in order to achieve justice. The second is whether it is *sufficient*, in the aftermath of crime, to punish offenders in order to achieve justice (Johnston, 2011). The opinion that society has a right and duty to punish criminals is shared widely (Bentham, 2007; Hegel, 1952; Kant, 2009; Plato, 348 BC), regardless of affiliation with utilitarians or retributivists. I am suggesting that offenders of homicide have an additional, extra-judicial obligation to the family of the victim. I am referring to that same “something greater than the amount of obligation” earlier attributed to St. Anselm.

With the introduction of common law in the 13<sup>th</sup> century came the notion of natural crime, “a crime against a law of nature rather than against a legal law”. This delineated a duality of crimes as *mala in se*, acts bad in themselves, and *mala prohibita*, acts which prohibited by law. According to Jeffery (1957), this led to a confusion between anti-social and anti-legal behavior and the dilemma of how far legislation ought to inflict capital punishment for positive offences; offences against the municipal law only, and not against the law of nature. I would suggest crimes considered ‘bad in themselves’ can best be categorized as ‘moral crimes’ and must be just as rigidly upheld as the breaking of legal codes.

Public law is held to regulate the relationships of the individual with the state, private law those of individuals with one another. Juridical laws place limits on conduct, not intentions or motive (Johnston, 2011)

The act of murder creates a dual injury, first to the persons directly harmed (victim’s kin) and then to the social group of which the offender has broken laws (society). As such, the fulfillment of justice requires a dual system too, penalty for the social wrong and amends or some sort of reckoning with the kin of the victim. The one and the other are separate, with different reasons and requirements and the one cannot cross into the province of the other. Englebrecht (2011) echoes this sentiment through his assertion that because a prosecutor represents the community, we are left with a paradox—“we can’t have a victim with enforceable rights because victims interests not best interests of community”.

Durkheim (1984) similarly distinguished the duality as penal and moral laws. Penal law requires that “punishment is exerted by society alone because it is harmed even when the harm done is to individuals, and it is the attack upon society that is repressed by punishing” (Durkheim, 1984). He further argues that “as for the other kind of sanctions, they do not

necessarily imply any suffering on the part of the perpetrator, but merely consist in restoring the previous state of affairs, re-establishing relationships that have been disturbed from their normal form”. This is done either by forcibly redressing the action impugned, or by annulling it, that is, depriving it of all social value (Durkheim, 1984). From the other direction, Moore (1997) delineates corrective justice: obligating those who culpably violated their duties to another to correct as best they can, through some sort of compensation; and retributive justice as obligation to suffer for the violation. Compensation to the victim does not satisfy the wrongdoer’s duty to undergo punishment (Moore, 1997). Both are necessary for justice to be served.

We can see that these sentiments remain consistent through the ages.

“The Classical Greeks understood the importance of a personal understanding of justice” (Van Ness, 2004). Aristotle argued that law alone is insufficient since it is universal, abstract, and impersonal but disputes are particular, concrete and personal (Van Ness, 2004)

From Aristotle’s *Rhetoric*:

Equity bids us be merciful to the weakness of human nature; to think less about the laws than about the man who framed them, and less about what he said than about what he meant; not to consider the actions of the accused so much as his intentions, nor this or that detail so much as the whole story; to ask not what a man is now but what he has always or usually been. It bids us remember benefits rather than injuries; to be patient when we are wronged; to settle a dispute by negotiation and not by force; to prefer arbitration to litigation—for an arbitrator goes by the equity of a case, a judge by the strict law, and arbitration was invented with the express purpose of securing full power for equity. (Aristotle, Book I, Sec. 13, Lines 11-23)

Recognition of the dual requirements of justice after murder is illustrated in Plato’s *Laws*, (thus *Attic Laws*) where the interests of society are represented in the pollution doctrine and subsequent rules of temporary banishment alongside the obligation of the victim’s kinsmen to carry out justice. The beginning of this notion of duality is alluded to as far back as Draco’s laws (620BC), where we first see a legal code set forth and then the clause for the murder victim’s kin



to pardon the killer. Plato's Laws delineates the dual justice requirements of kin for right to themselves as well as duty to the larger polis.

In the Talmudic law too, homicide is distinguished "from other grave capital offenses, such as idolatry, incest, or the desecration of the Sabbath – "destroys the civilization of the world" (Maim. Yad, Roze'ah, 4:9). This suggests that the willful taking of life is both an ultimate act against God as well as the most serious harm to society. As we saw in the transition from Feudal to Industrial society, and as Durkheim points out, as societies became more secular, the [personal] sin against God transforms to a [personal] harm against the individuals, here on earth, that suffered the loss (Durkheim, 1957).

According to Gabbay (2005) every crime has a public and private dimension. Retributivism satisfies the offender's obligation, and right according to Hegel (1952), to bear punishment. "Restorative justice broadens that obligation to ... restore part of the harm caused by the offender" (Gabbay, 2005). This additional justice, according to Adam Smith, "is called for by God for the widow and the fatherless child" (Smith, 2016).

### **Resituating Restorative Justice**

Van Ness and Strong (2010) relate the story of the encounter between Achilles and Priam in *The Iliad*, (Homer, 2009) in which they come together in the midst of war to negotiate the release of Hector's body by Achilles. The story includes Homer's depiction of "carefully chosen words, an awareness of nonverbal communication and symbols of hospitality and respect", as they both wept for their dead loved ones (Van Ness & Heetderks Strong, 2010). "The tension, barely contained anger" so accurately portrayed by Homer captures the authenticity that takes place in highly charged human tragedies, when we must come face-to-face with one another and

deal with difficult and painful events. This is something that is missing in the legal justice side but is fully present in the moral confrontations of restorative justice dialogue.

The medieval peace, according to Petkov (2003), was unthinkable without the face-to-face, personal encounter and co-operation of former enemies. Having conceded by now that restorative justice VOD is no different from the medieval ritual, I therefore transfer Petkov's sentiments to modern day.

### **Emotionality**

Alessandro Manzoni captured the essence of ritual interaction as “an affair of the sentiments” as relayed by Petkov (2003).

The passions associated with justice will be more fully discussed in the theory section of the thesis. However, it is of value here to note the direct link of emotionality between reconciliation ritual and modern restorative justice VOD.

Ritual triggered the innate moral dispositions defining humanity. It made the feuding parties act upon the feelings of repentance, benevolence, and conciliation, ‘which God has planted in the hearts of all of us’ in the interests of social peace” (Petkov, 2003) Ritual serves as a closed system, what in Luhmann's Systems Theory would be called *autopoietic*, within which a transformation occurs allowing for the dissolution or remitting of one's anger. The rites of peace provided a major strategy to deal with societal pressures embodied in emotions that otherwise would have been unbearable, threatening the individual with destruction.

Robert Solomon argues for an emotional basis to justice, one that stems largely from the ‘nasty’ passions. Echoing Nietzsche's disturbing remark that morality is the vengeance of the weak, he speaks of justice that transcends the old dichotomy between reason and thought. “What we call reason is often a matter of emotion versus emotion”. Lurking behind is “a cauldron of

sometimes competing passions, all of which have as their basis an almost visceral sense of what the world should be like” (Hyams, 2003). Axelrod (1986) illustrates the simple truth that “we would not be able to register the emotions of shame, gratitude, bitterness, forgiveness—to mention only a few taken from a longer but incomplete list—except by employing the conceptuality of justice” (Axelrod, 1986).

### **Re-evaluating Restorative Justice**

“Restorative Justice is not only about restoration, it is also about justice. There are two ways of considering the notion of justice: moral justice and legal justice” (Walgrave, 2008).

I think there is an error is the continual focus on the restorativeness of RJ at the expense of investigating the justice potential. In order to do this, one must dig deeper, beneath the idea of satisfaction or empowerment. The dark emotions, the reality of vengeance, the Furies; they cannot be ignored. The socialization to feel shame for vengeful thoughts is impeding research and the ability to understand and improve RJ. The rhetoric around RJ, it’s feel good, peace-loving philosophies are stunting its theoretical possibilities. Victims are expected to feel compassionate and forgiving so that’s what they report. They may say I feel a weight lifted, I’m no longer afraid, but it might not be because they feel warm thoughts toward the offender. It may actually be because they saw him suffering, they got some satisfaction in seeing him beg for forgiveness. These are difficult things to ask a person, a “victim”.

By taking the experience out of its micro-psychological cocoon, as an isolated phenomenon, and placing it alongside various historical versions of itself, i.e. human to human dispute resolution and justice processes, we might begin to see the emergence of particular truths about what is operating beneath this face-to-face meeting. For example, victims overwhelmingly report satisfaction with the RJ process. This is interpreted to mean their stated reasons for

participation were met; their questions were answered or they received an apology. These same things should theoretically be attainable through letter writing or pre-recorded video messages. However, research has shown that it is only those in-person encounters that have resulted in victim satisfaction. Researchers are at a complete loss to explain why this is. Yet when we look through history of blood feud, wergild, and amende honorable, the kiss of peace, these encounters were done face-to-face and the matter was settled.

Through this in-depth genealogy of justice after murder I have been able to draw out a number of similarities if not exact replicas of justice rituals throughout ancient and medieval epochs right through to the enlightenment. I would suggest that I have shown adequate evidence to support my claim that restorative justice VOD is essentially an age-old human practice that is an essential factor in achieving justice and therefore closure after the murder of a loved one. I further provided the case that there is a dual aspect to justice that is unique to murder, that the reconciliation ritual addresses the moral component, and that the completion of both the moral and the legal is necessary in achieving justice for the individual and society.

And still, we have come full circle. I cannot explain why the ritual works or what is taking place beneath the interaction that meets the complex justice requirements. I am no closer to explaining the one (historical peace ritual) than I was in explaining the other (restorative justice ritual). Therefore, I will rely on a theoretical discussion through autoethnographical analysis in hope that by explaining one, I might offer explanation for the other.

## Chapter Four - Method and Methodology

### Method

The greatest obstacle cited by researchers has been the inability to be inside the room where the face-to-face phenomenon plays out. I am in a unique position. I have been inside that room, as a participant, and have documented the experience in an open and honest way. Now I am opening up that experience fully and transparently in hopes of being able to explain rather than describe the ‘magic’ that happened between me and the persons that violently took the life of my best friend and father of my child.

At the cost to a broader empirical analysis, I will be gaining a deeper, experiential knowledge of the subjective experience of one individual. Throughout this thesis I have criticized the body of literature for its narrow focus on the individual, however, by offering a deep examination of my personal experience I hope to expose it fully in such a way to create new implications for wider research possibilities in the future.

I propose, then, to present this study as a test-case of sorts which offers a preliminary theory that may then be applied to larger numbers of individuals, both victims and offenders. I suspect this theory will be of value to those studying the offender experience also, and eventually be able to look at the broader interactional and social implications. In spite of my reliance on a number of different disciplines, at its core this is a sociological study to understand our relational communicative process in the personal and interpersonal experience of justice after homicide.

I utilized a multiple-methods yet wholly qualitative study, primarily an analytical auto-ethnography that relies on narrative evaluation through content analysis and coding. Having set forth a preliminary theoretical framework, I separately analyzed my personal accounts of my experience of losing my partner to homicide, with some attention paid to the justice system,

courts, and victim services experiences, and with the primary focus on participating in VOD with two of the three offenders. I then situated the results of my analysis within the larger theoretical discussion. At this point, it has been approximately 8 years since I met with the offenders and 13 years since the murder. In order to sustain objectivity, I had not read most of the written materials before I began my analysis. The only “rule” I’d given myself is to take full advantage of the rare opportunity to open up the entire personal experience in hopes of exposing things that might be difficult to ask a homicide survivor. The vulnerability I felt in sharing some of my most personal journal entries and letters made this thesis challenging on a level I hadn’t expected. I am hopeful that it has paid off and that I am not judged too harshly for my less than noble moments.

## **Methodology**

Autoethnography is often associated with story-telling, sharing one’s subjective experience through the relation of personal memories. However, this research method has developed over time to include a variety of models. For the purpose of this thesis I would like to point out the particular distinction between emotive and analytic autoethnography—the former being primarily concerned with the subjective experiences and that latter focused on a wider social context in which the experiences are set (Wakeman, 2014).

Ellis (2011) uses a similar dichotomy, that between what she calls evocative and analytic autoethnography. “Analytic autoethnography is consequently directed towards objective writing and analysis, whereas evocative autoethnography leans towards researcher introspection from which readers are expected to make a connection with the researcher’s emotions and experiences.

There is a valid criticism of the ways in which the personal story is often accepted at face value. “When it comes to personal narratives, spoken performances, oral testimony and

autoethnographies, we should not simply collect them as if they were untrammelled, unmediated representations of social realities” (Atkinson & Delamont, 2006). I agree with the assertion that narrative should be analyzed as a social phenomenon, starting with the self in order to critique the social. Ellis (2011) points out “the need to analyze, not just tell”, that it is important to connect the showing and telling of qualitative research with an objective scholarly lens. I chose to use the confessional and the interpretive, to investigate and interrogate my motivations and goals throughout this journey. The emotionality of murder, as previously discussed, is accessible through autoethnography in ways that other methods preclude.

Autoethnography has the benefit of “using empirical data to gain insight into and develop a theoretical understanding of a broader set of social phenomena” (Anderson, 2006).

As both researcher and participant I am situated at a unique advantage of being able to critically assess the “victim experience” fully in ways that would likely be denied to other researchers for fear of “re-victimizing the victim”. According to Ellis (2007) good qualitative methodologists conduct research the way they conduct themselves in their personal lives and ‘seek the good’ with the key being honesty towards self and the audience for whom the research is intended”

I intend to focus on two areas: 1) My experience in the main ‘victim’ role with the traditional system such as the court trials and victim services; 2) My experiences as a participant in VOD with two of the offenders. It is my hope that the material I have included will provide the reader with enough rich experience to compare and contrast the different justice processes and ultimately determine and consider those aspects of the face-to-face interaction that led to my own sense of closure. While this study offers a fairly deep understanding of the phenomenon in question further research would be needed to examine whether the results of this study might apply to a larger pool of participants.

## **Data**

The data I examined consists of a vast collection of personal writings, correspondence (letters and emails) and published accounts of the case as detailed below.

## **Notebooks.**

The criminal justice process of this case consisted of two preliminary hearings [one for the adults and one for the youth, each lasting 7-10 days], two criminal trials [the youth trial lasted 5 weeks, the adults 3 weeks], one appeal hearing [5 days], one Supreme Court appeal [2 days] and multiple smaller hearings and court appearances. I specifically chose the strategy of writing notes in a notebook during these hearings in order to avoid seeing evidence and photos that I did not wish to see. I have 8 notebooks of written notes from the court hearings which I relied on mostly in their capacity as back-ups for the primary written materials I used directly in the thesis.

## **Journals.**

During the seven years of court hearings and group therapy and the extremely frustrating struggle of trying to find a way to be allowed to talk with these three boys I wrote, or “journalled” the myriad day to day happenings, with the intentions of maybe writing a book about it one day. This rather lucky circumstance has given me 200 pages of lived experience documented and untouched of which I was able to look back on. While I have some memory of what is written, I had forgotten much from that time period and I found some surprises, at my naivety in some cases and my chutzpah in others. I think the authenticity of the accounts add an additional element of objectivity to this study.

## **Transcripts and Judgements.**



I have copies of many of the court transcripts and written decisions that I relied on a great deal in recreating timelines and details.

### **Correspondence.**

I reviewed correspondence from various government departments, corrections, victim services and the parole board, again to verify timelines, decisions, etc. As well, I have letters I wrote *to* all three of the accused, *from* one of the accused, and my victim impact statements. I shared excerpts only from letters I wrote and my victim impact statements.

### **Emails.**

The emails that I've compiled provide the richest and most honest account of many of the things I went through during those years, including my reasons for wanting to meet with the boys, the justifications I provided to friends and family, and my account of the meetings and aftermath. Included are the emails I sent out seeking assistance and facilitation of a meeting and emails with restorative justice providers. More than anything else I believe these emails capture the emotion and thinking process that would likely be missing from qualitative research conducted by others rather than the self.

### **Other Considerations**

#### **Ethics**

Autoethnography encompasses the lives of others that may be identified, resulting in potential privacy violations. In addition to this, I take the unspoken promise of privacy in my conversations with the individuals very seriously. I have removed the names of all persons and places that could potentially be identified from the text. The personal accounts I shared in this study was based on public record.

I have taken reasonable steps to ensure the security of any documentation pertaining to the offenders. Included in the materials that I will rely on are various government correspondence and legal documents that contain privileged information about the offenders. In order to secure the privacy of these documents I requested and was provided with a locked filing cabinet in my office on campus. I did not make a second copy of these particular materials. I have since removed all documentation to my home where it is secure.

### **Significance**

This research has important implications for program, policy and theory development. Statistics Canada reported 516 homicides in 2014, with 23% of victims and one third of offenders identified as having Aboriginal ancestry (Maladinovic & Mulligan, 2015). In spite of this, the literature notes a surprising absence of Aboriginal VOD participation research (Pastia & Palys, 2016). In Canada, we are currently experiencing a crisis or reckoning of sorts regarding the disconnect between indigenous people and the justice system—which is only amplified by the limitations of the courts to adequately address the moral injustice of murder as examined in this thesis. At a time when there is growing presence of victims’ families demanding “closure”, my study will add a much-needed perspective and theoretical component to enhance our understanding of justice for survivors of homicide, indigenous and non-indigenous alike.

The impact of murder spans every aspect of life for the families of the murder victim. The effects on income, employment and health of homicide survivors is well documented (Amick-Mcmullan, Kilpatrick, & Resnick, 1991; Angel et al., 2014; M. P. Armour, 2002). The possible implications for reduced costs to social resources through increased use of post-homicide VOD is a reasonable expectation, at likely a fraction of the cost currently incurred. The

costs to the offender and his/her family may also be mitigated through participation however this goes beyond the scope of this thesis.

## Chapter Five – Stories

### The first week: March 6, 2005

Hello, this is Winnipeg Police, Lt. \_\_\_\_, Am I speaking with Noelle Dietrich? Are you a relation of Adam Lecours? What is your relation to Mr. Lecours?

There's been an accident. I'm sorry, you'll have to wait until we speak to Adam's next of kin. I'm sorry, I can't tell you anything more.

The phone rang again, almost immediately. Adam's employer. He hadn't show up for work.

The evening news was announcing the top stories when I glanced at the television, not comprehending the relevance of what was being said with the video coverage of the field next to our house, then a crumpled up black jacket in a pool of blood... yellow police markers, blood... our house...

*I don't remember walking out of that hospital but remember getting through the door to the bitter winter air where I collapsed into my mother's arms as a blood curdling sob exploded from my core. It was more of a long sickening moan than a cry or a scream. It echoed through my head and all around me. I'll never forget that sound. It was like nothing I had ever heard before. Like something that came through me rather than from me. But it was nothing next to the deafening silence after telling our daughter.*

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*As we all sat sipping our tea Adam's dad was the first to bring up the obvious. "Did they tell you yet what happened?" he asked. Everyone went silent and each of us looked at each other. It hadn't even occurred to me that they still didn't know what had happened. It was after the phone call to Adam's mom that the homicide detectives had come to our house to formally "notify" us and answer our questions. Adam's parents had just arrived in town an hour or so earlier, knowing only that their youngest son had been killed and now we had to repeat the awful details, putting them through the same horror we had just been through.*

As I copy these words into this document, living these moments again, I find myself holding my breath again. Breathe... I tell myself—just as I had done so many times during those years.

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*There were bits of police tape still lying on the frozen ground and I could see patches of pink under the snow. Blood. There was so much blood. I brushed away the fresh snow with my foot and stood back. There, right in front of me was a single boot print, perfectly encased in the icy red ground. There it was. The last print Adam had or would ever make on this earth. I knelt down and put my hand in the grooves left by Adam's boot. I looked across the field at our house and saw just how close to home he had really been. This print I knew so well, left all over our driveway from when he shoveled the snow, the boots I had just bought him for Christmas. Next to his was a smaller print, a Reebok running shoe with a waffle pattern.*

The first week is the time period in which things are said to me that are so horrific and incomprehensible that they are imprinted forever. The first week is the period of time in which I am in a fog, wandering in a sense of utter shock, able to hear these things that are said to me only because I have the buffer of the fog surrounding me.

In that first week I was told:

Police: "They cornered him like a dog, he fought like a dog"

Hospital: "No you can't see him... His body is now evidence, locked up at HSC<sup>10</sup>... You don't want to see *it* anyway."

Police: "The driver of the car that hit him saw him raise his arm, almost in protest, at the last moment"

Police: "There was no car. We don't know where that came from or why that was reported in the media"

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<sup>10</sup> Health Sciences Centre in Winnipeg.

Funeral home: “You’ll need to bring a shirt or sweater with a high neck, to conceal the... damage; ...a hat as well. There was nothing we could do, we tried our best. You may want just immediate family to the viewing.”

CTV news: “...and in a bizarre turn of events the victim was run over by a car. The 34-year-old man was taken to hospital where he later died.”

That last one, along with the close-up on his jacket lying in a pool of blood in the street and a camera pan of our house in the back ground, will forever remain burned into my brain. It was that news flash notifying me of Adam’s death that stopped time and ended the life I had up to that day.

“Stories can translate events and emotions in a way that other forms of discourse cannot, can overcome the *différend* (the lack of a shared language in which a person can express an injury)” (Phelps, 2006).

I’ve chosen to let the stories I’d written stand as they are, as they were written. I think the narratives are able to deliver truths on their own without the interruption of theoretical discussions or analysis. I’ve added commentary where more context or explanation was needed and I leave the discussion for the next section.

### **Mug shots**

*When Sgt. \_\_\_ came to see us that first time, just a few days after the arrests, something began to change within me. My entire motivations shifted from the intense fear of these unknown monsters toward an equally intense need to see them.*

One of the offenders lived just a few blocks from me. The thought that I could pass him on the street, not knowing who he is, was ... I took photos of the mug shots.

*After his visit I sat at my computer and spent hours studying the faces of the three “men” who so brutally ended Adam’s life. I searched their eyes for the answers I so needed, for a reason for this insanity. Unable to find any I looked for evil. Of the three, T\_\_\_, who at that time I*

*believed was actually D\_\_\_, held the most evil for me. From the limited information I was given to that point I knew only that he was the main attacker, that he was the one Adam cut and hospitalized. He had a thick neck, a strong jaw with his mouth turned down in a grimace. He glared into the lens and all I saw was anger in him. He was the one I was afraid of most. The next photo, the one that would actually turn out to be D\_\_\_, looked like a school photo taken in any suburban high school. He had softer features, a nice haircut. There didn't seem to be any threat in his eyes. His photo would turn out to be the one that challenged my hatred later on. And finally I came to B\_\_\_. He immediately reminded me of a beaten puppy. He was so young! But he had pure hatred in his eyes. They were black orbs of nothingness reflecting back at the camera. He had dark circles under his eyes and a look of defiance. In short, I saw two competing identities in B\_\_\_. An abused child protecting himself and an insolent young criminal daring anyone to mess with him. So yes, at first glance these three looked like your typical gang of hoodlums. But after hours of staring at these faces there was still a hint of the reality that these were still children. I must have sat at that computer, staring at each of those photos for over an hour. I studied their facial muscles, their hair, their clothing. I searched their eyes for some clue that might explain how they were capable of such brutality. I cried as I sat there looking into the eyes of these young killers. There I was, facing these photos, facing the reality of what this meant for me. My foundation was crumbling beneath me as I fought to come to terms with the implications of this on my own fundamental belief system.*

The everyday realities of life go on in spite of the chaos. The young offender was out on bail and as part of his conditions he must enroll in school—my daughter's school.

*When Sgt. \_\_\_ came on his second visit my questions were different. I wanted to know about the families of the three. I was desperate for some tidbit of insight into what would lead young*

*people to this scenario. Were they abused? Were they poverty stricken? Did they have intellectual difficulties? Were they drunk or high? Wasn't there some little thing that I could grasp to excuse the one answer I could not fathom? There was a fear tugging at me that there were no reasons, no special circumstances for such a horrible mistake. In short, I was afraid that they simply killed Adam because they didn't care whether he lived or died and that they were not remorseful and that Adam simply died without reason or meaning. That his death was inconsequential. As I sat across from Sgt. \_\_\_\_, asking my questions, searching for the "right" question that would lead to the answer I sought, I was left unfulfilled. Sgt. \_\_\_\_'s response was my first exposure to a common response by the public. He believed these were simply criminals with no humanity and they deserved nothing more than to be locked up for the rest of their lives. Like others I would meet throughout my journey, Sgt. \_\_\_\_ was very emotional in his resolve on this issue. It was though he felt he had to show me his full outrage in order to be able to share my own pain. People need to see that rage in me in order to support their own as a member of society. When they find that I don't share in their outrage they feel as though I am abandoning the main values of our world, that I am not sharing the right feelings about this and that puts them on edge.*

Granted, the young offender came from a well-known criminally involved family and didn't have a lot of prospects for a turn around. Sgt. \_\_\_\_ advised me that since our last visit he had made sure the accused would not be attending the same school as my daughter, however his brothers still did. He left my house to meet with the school principal to put something in place to protect my daughter from them.

That visit was the last bit of information I received.



I wasn't told anything more than what the media had reported, for" fear of jeopardizing the case". It wasn't until the first preliminary hearing 15 months later that I heard the details, or rather the Crown's cherry-picked details that supported their theory, of that night. The things I wasn't told until I was in the courtroom, surrounded by people and under order to control my emotions included the following:

The recording of the 911 caller, a young woman that happened to drive up to the scene, offered her account of three men kicking and stomping an unmoving man, face down on the road, the only movement is his body being bounced around from the impacts.

The identification officer outlined the 15-20 slashes in the jeans and legs of the accused, inflicted by someone in a sitting or lying position. He also noted the more than 200 of Adam's hairs found at the scene and on the shoes of the accused.

The coroner's review of the three pages long list of injuries attributed death to both blunt force trauma from the assault and injuries from a motor vehicle accident—the extent of the injuries made it impossible to determine which came from what. I no longer had the shield of shock to protect me from these new facts that Adam had the waffle pattern of a running shoe imprinted on his arm, chest and shoulder, that his ribs were broken—all of them. The rest of the report is too gruesome to repeat here.

So here in this thesis we sit at this chasm this seemingly unsurmountable distance between the fact of what these boys did and the fact of having made peace with them.

## **First Appearances**

### **T\_\_ bail variance application**

*I was shaky as I exited the elevator on the second floor. My nerves were in tatters. I also hadn't had any appetite in weeks and hadn't eaten anything in two days. made our way down the*

*hall to room 210 and I reached for the handle of the heavy oak door. I had made sure we were early so we would be there first. I wanted to see him walk in, not be seen. Now I began to worry that we were not early enough. Maybe he was already inside. Maybe he would see me before I saw him. As we walked inside I immediately felt a sigh of relief. The courtroom was empty. I felt as though I'd waited a lifetime to come face to face with the monster responsible for Adam's death. I took a seat in the back row, next to the door and S\_\_\_<sup>11</sup> sat to my right.*

*He would not be watching me, intimidating me. I would be the intimidator. As I sat waiting for him to enter I felt like I had left my body and was floating above myself, watching from afar. It could have been the lorazepam I took an hour earlier, determined that I would not have another anxiety attack - not there, not in front of him. Above all, he would not see my weakness. I was determined to hide any ounce of fear and suffering from him. I took out my notebook and wrote the date and courtroom number down. My notebook was my armor. I brought it for two reasons. The most obvious one being that I wanted to document every word that was said. The less obvious, that I had something to do in moments I was uncomfortable or losing my composure. I had no idea how I would react to seeing this young murderer, sitting in the same room, breathing the same air. I now had an out. I could look down and start scribbling away. That way, I thought, he does not have any power over me, he is not making me bow my head, I am writing everything he is saying thus showing him that I am watching him, listening to him, judging him. The power in this room is mine.*

*The door opened and the first few people walked in. A well-dressed, middle-aged woman entered first, followed by an older woman and a young man with glasses. He looked like a university student. My first thought was that they might be his family. I scrutinized them for signs*

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<sup>11</sup> S\_\_\_ is a friend that accompanied me to court hearings.

*of guilt. No. They were too well dressed. The younger of the two women had a scholarly face with just a touch of make-up in the right places. She was wearing a light blouse and beige skirt that hung just below the knee. She walked with a sense of reverence in her low pumps. She looked like she might be a professor. The other woman wore simple slacks and a suit jacket over a blue dress shirt. She had a pearl necklace offsetting her aging brown neck. The young man with glasses wore a grey and black striped shirt, buttoned right up to the collar, and jeans. I only saw the side of his face but he appeared to be in his early twenties with a clean-shaven jaw. Maybe they were social workers, or researchers. Yes, the younger woman pulled a notebook from her shoulder bag as they sat down two rows ahead of me. I was secretly glad that none of his family came to support his first appearance. It served to reinforce my sense of justice. He didn't deserve support.*

*I looked up at the clock above the jury box that showed only five more minutes until this was to begin. Maybe he won't show. As I started imagining the warrant for his arrest, the revoking of his bail, I found myself staring ahead at the group in front of me again. Something suddenly struck me. The young man had small hoop earrings in both ears. My blood suddenly ran cold while at the same time my face began to burn. Those were the same earrings that had been burned into my memory from hours of staring at those mug shots.*

*After all my preparation he had managed to catch me off guard anyway. I was furious. Just then, the smug lawyer with the greasy ponytail and horn-rimmed glasses rushed in through the door and scurried over to them. He immediately ushered the three of them to the door, quickly whispering something to them as he hurried them out. One brief dirty look in my direction told me all I needed to know. He was warning them; warning them about me. This realization made me livid. How nice that his comfort is being looked out for. Nobody came to me to point him out to me. Nobody came to make sure I was prepared to be in the same room with him. They re-*

*entered, but rather than casually walking past with their heads held high like their first entrance, they quickly shuffled back to the front row, heads down, and nervously made their way to the end of the row, as far away from me as they could get. I stared at the back of T\_\_\_'s<sup>12</sup> head. This time I was in control and I knew that he knew it. I could see the tips of his ears reddening. My presence behind him was making him nervous. Good.*

*I became angry thinking about the gall those people had in thinking they could masquerade this monster with nice clothes and glasses in front of the judge. Who did they think they were kidding? I reminded myself that they had managed to fool me. Yes, the glasses were definitely a nice touch. For the next 20 minutes I never took my eyes off the back of his head, not for a second. I was shooting death rays through his brain. I silently dared him to look back at me, just for a moment, just long enough to see the fury and hatred in my eyes that I so wanted him to receive. He never looked back.*

*We all stood as the judge exited and then I sat back down. I had no intention of leaving, not yet, not until he did. My eyes remained stuck on him as he approached the clerk's desk to sign his new recognizance.*

*He kept his eyes down, feeling my glare, knowing I was still there without having to check. I could see his face fully now. It was thinner, meeker than the only photo I had seen. He was a nice-looking boy. Yes, just a boy. And smaller somehow. He was still as tall as Adam, but just not as overbearing as his mug shot portrayed. He looked as though an invisible weight was bearing down on him, like he might wrap into himself at any moment. I was confused by my new impressions of him. As I was struggling with the conflicting appearances in my mind, yet keeping my eyes on him, he stopped, right at the end of my row, next to the door. He*

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<sup>12</sup> T\_\_\_ is one of the offenders. There were three.

*straightened his back, slowly lifted his head and looked straight into my eyes. I couldn't breathe. I was pretty sure my fiery glare had already been replaced by my overwhelming confusion but there was no time to re-adjust. Our eyes were locked for what felt like an hour but were really only seconds. In those seconds I saw the eyes of a child looking out from the monster I had created. Those eyes were filled with sadness, fear, shame, and most of all, remorse. Yes, remorse. Someone once said to me that the eyes are the windows to the soul. I was now looking right into that soul and it was pleading for my forgiveness. Before I could take a breath, he looked back down at his shoes and walked out the door. I was numb. A new conflict was rising inside of me - I wasn't sure if I wanted to cry or throw up.*

*I lay there and replayed the moment over in my mind. The look in those scared young eyes had changed everything. I thought about the women that were with him. Those women were there on a mission. They were there to support him, to protect him, shield him from our anger, and love him. He was their son and nephew. He was loved. Everything was different now. One moment in time, eyes locked in a most awkward embrace had changed everything I thought and felt. I now seemed lighter, calmer, at peace almost. As I continued lying in my bed, considering it all, I came to a conclusion. I no longer hated T\_\_\_. And then another conclusion followed. I never had. I'd hated an image; an image created by me from a mug shot of a hung-over, sleep deprived, over-interrogated teen.*

### **Preliminary hearing February 13 2006**

The Crown presented a scenario of a group of aboriginal youths in town for a career fair going out to “jack” people for kicks during a night of drinking. As far as the incident goes, the theory wasn't far off. The case, however, was translated into bits of evidence strung together to form a particular narrative to support the highly technical argument of “chain of causation” that

was being sought to justify the charge of manslaughter. The crime to be tested in court was that they left Adam in a position in which any reasonable person could infer that he could be hit by a car; that the car killed him. Therefore, technically, he would be alive “but for” having been put in danger. Since the autopsy report attributed death 50% to the beating and 50% the car, it opened the realm of “reasonable doubt” whether he was dead before the car approached. The reason for including this information here, in the thesis, is to show the dehumanizing process that takes place in the legal side of justice, elevating the implications of having removed the moral or emotional aspects of murder from justice.

Luhmann’s Systems Theory explains this phenomenon as the interaction of two closed systems, i.e. moral and legal. “The legal system is closed because it cannot consider any matter except as either ‘legal’ or ‘illegal’... a piece of information that is not legal first has to be turned into legal information” (Vines, 2007). Vines notes the significance because “whatever information has been transformed is now turned into something of a different character. So, if it was a moral view it now becomes legal” (Vines, 2007). So, clearly the moral still exists and is operating, both as transformed legal technicalities in court and through informal, interactions and processing by the individuals (victim and offender) whose actual lived experience is being played out.

## **RJ behind the scenes**

### **Meeting with Mennonite Central Committee November 2006.**

*The meeting with R\_\_\_ and W\_\_\_<sup>13</sup> was the most successful one to date. Ruth had again gone beyond the call of duty and had come to the meeting more prepared than I expected. To answer my question, whether it was okay, legally and ethically, for me to send a letter to T\_\_\_ she*

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<sup>13</sup> R\_\_\_ and W\_\_\_ are members of the Mennonite Central Committee. They were assisting me with trying to set up a restorative meeting with T\_\_\_.

*decided to get the opinion of all players involved. She interviewed a defense lawyer, a restorative justice expert, a community legal resource provider, and even a Crown prosecutor. My answer was an overwhelming yes. Another hurdle overcome. However, with this achievement came a whole new set of challenges. The yes came with a variety of warnings and cautions about the contents of the letter and how the letter can be used against me and against the Crown. It turns out that while I can legally and ethically send a letter to T\_\_\_, it would be frowned upon by both the defense and the Crown. I would be setting myself up for a fight. Having annoyed both sides there would be a good chance that I would be called as a witness and my letter used as ammunition in a war I was trying to avoid. I would essentially be starting a whole new war within this war.*

*W\_\_\_ asked me if I still wanted to proceed. My answer to her was yes, without any hesitation. She seemed relieved and began to assure me that if I had the courage to go forth, MCC would remain by my side. We are cutting new ground, she said. This is going to be anything but easy. Now that the four of us were in agreement to continue on this journey it was time to take the next step. I would review my letter for content to ensure there was nothing in it that could be construed as evidence or used against me or T\_\_\_ in the criminal proceedings. I would then submit my letter to MCC and they would forward it to a Crown prosecutor in another province. We want to make sure that we have covered our bases and a Crown is the perfect person to assess that. The second thing we decided was to hold off on any further actions until the first trial was complete. There were a few reasons for this. All three accused are related and we cannot risk word getting to the others that I have approached only one for this opportunity. With the young offender going to trial in less than six weeks we did not want to do anything to jeopardize his own chance for a fair trial. The issue that concerned us was that a) upon pleading guilty, T\_\_\_ may then be called to that trial to testify against the other. b) that the young offender would plead*

*guilty first to try to sabotage T\_\_\_\_. B) that I am called as a witness and therefore banned from observing the proceedings. Waiting until after this first trial eliminates these possibilities. The one risk left is that the young offender appeals his trial because of his co-accused being offered this opportunity. We agreed that this was his right and should not be of our concern, legally or ethically. We all sat there, deep in thought it seemed, and nobody spoke for a few moments. I was the first to say something. So, I guess we have a plan. Everyone nodded. We all knew we were a part of something big now, that we were indeed cutting new ground. The energy in that office was one of a silent power. We said our goodbyes and I thanked Ruth and W\_\_\_\_ again.*

### **Youth Jury Trial January 2007**

A murder trial is nothing like what one might expect. It is more like sitting in the gallery of city hall watching a council meeting, but in four-hour segments twice a day for weeks on end. Lawyers make long drawn out submissions of legalese while witness after witness is sworn in and answers the questions chosen by council. The majority of witnesses are there to provide the most technical or seemingly insignificant facts, such as the angle of the headlights on the car that hit Adam, or what the witness ate for dinner. It's an exercise in banality. But it's also the only way for the family of a murder victim to hear the details—or some version of a story—of what happened and how their loved one ended up erased from their lives. It is in the courtroom, surrounded by people, where the family first hears what their loved one experienced. At breaks the families of the victim and the offender walk the same hallways, sit in the same corridors, eat at the same cafeteria. During the most gut-wrenching testimony, or hearing one's loved one denigrated and blamed for his own death, his family must remain stoic, unemotional, for fear of 'influencing the jury'. The consequence of which is removal from the proceedings. During breaks, or waiting for the judge or jury, the Crown and defense lawyers joke around, as if



standing around the water cooler. It wasn't all bad though. There were a few minutes at the start of each day as the court was preparing and people were settling in their seats that we looked forward to. Bo jangles, as we called him. Each day the accused was brought into court, shackled from hand to feet, flanked by sheriff's officers shuffling him down the long, marble corridors of the law courts building, the rattle of his chains echoing louder and louder as he approached the courtroom door. We relished this daily humiliation. It was one small taste of vindication afforded us in a system designed to exclude us.

### **Youth verdict February 2007**

*The call came. I heard the words we had been waiting for over the past 22 months. We have a verdict, she said, her voice a little shrill and shaky. I said I'm on my way. I used every side street I could find to avoid traffic. Still, back on Broadway, every light turned red for us, like the universe was taking pleasure in making us crazy. Somehow we reached the court house in record time and made our way to the front entrance, alternating between running and brisk walking. Inside, Judy set off the metal detectors for the first time in that entire month. I chuckled, in spite of my panic. We quickly shuffled our feet to the court room. I flung open the door to find both sides packed with people. Everyone was silent and unmoving while I was out of breath and frazzled. I looked to my left and my mom was a statue. I looked across the room and B\_\_\_<sup>14</sup> was sitting, head down, also a statue. The court clerk stood at the judge's door, opened a crack, while she waited for the Crown to enter. My breathing began to slow a little but my heart was pounding loud in my ears. I held the tiny urn necklace that held Adam's ashes tight to my chest and prayed. Please, give me justice for Adam. Please, give me justice for Adam. Over and over again I prayed, clasping the little urn in my right hand. I looked again to B\_\_\_ and*

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<sup>14</sup> B\_\_\_ is the youthful offender. He was tried separately from the 'adults'.

suddenly found myself in a surreal setting. B\_\_\_ too was holding his little wooden cross, in both hands, eyes fixed on it and visibly praying his own prayer.

Ms. LC<sup>15</sup> nodded to the court clerk and she, in turn, told the Judge behind her that all were present. My heart began to beat faster. “All rise for the honorable Judge K\_\_\_”. I stood up, still clutching his ashes as the Judge walked in. Everything and everyone evaporated. It was now only me and B\_\_\_, clutching our very existence in our hands, bound together in fear, praying together for two very different outcomes.

I looked into the faces of each and every jury member, trying to find a glimpse of what their answer was. Nothing. No emotion. I sat forward, deciding in just that moment that I wanted to look only at B\_\_\_ as the verdict was read. I needed to see his face the moment his future was sealed. There he sat, clutching his little cross, face like stone, staring straight ahead. I turned my attention again to B\_\_\_ and then the court clerk began reading the charge. In the matter of the queen versus the young person, B\_\_\_, of the city of Winnipeg, in the province of Manitoba, a young person as described by the youth criminal justice act, who stands before you, charged with the crime of manslaughter on the deceased, Adam Norman Lecours, on or about the 6<sup>th</sup> day of March, 2005, how does the jury find? My heart was pounding and I began to tremble uncontrollably as these words flew through the air and hung there over my head. I stared at B\_\_\_. I grasped the ashes. I held my breath. Guilty.

B\_\_\_ hadn't even flinched at a single word of this. He remained, unmoved, unemotional, unaware I thought, of what had just happened.

The judge then said he had a few comments to make. I froze. I immediately worried that he would overturn this verdict, that for some reason he would find that there was a miscarriage of

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<sup>15</sup> Ms. LC is the Crown attorney for the case against the youthful offender.

*justice. He began by reminding the jury that he had warned them of talking to others about this case. My mind raced at the possibility that he had found out the jury had cheated in some way. A moment later I realized he was just requesting that they continue to keep their deliberations to themselves and he thanked them for their service. As they rose to leave, we all rose. I looked into the faces of each and every juror as they stepped down from the jury box. This time they were all filled with emotion. Tears stained the cheeks of many of them. Six of them looked right into my eyes, some with pity, some with respect, all with love. I tried to thank them through my eyes but I had no emotion left to offer. I suddenly found myself to be completely empty, just a shell. Everything went silent and I slumped back into my seat.*

## **RJ Behind the Scenes**

### **Meeting with lawyers February 2007**

*The door opened and in walked the lawyers. I tensed up and felt my face stiffen into the defensive stone look I had used for court on so many occasions. They took their seats across from me. The introductions were made and I was surprised to hear Mr. M\_\_\_<sup>16</sup> acknowledge that he'd already known both our names. What happened next was a little surprising and allowed for me to relax again. Mr. M\_\_\_ said that in his 17 years doing this he had never experienced anything like this. Ms. C\_\_\_<sup>17</sup> also reflected his submission and they both commended my mom and me on what we were trying to do. They said they were impressed and thought we were unique and courageous. I'd heard these things said many times and had started getting tired of it, thinking of just how wrong people could be and how there was nothing heroic about this. It just was what it was and it was a necessary as far as I felt. But hearing these same words from these defense lawyers felt different. It felt like they truly meant it. I couldn't help but look at this power duo in*

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<sup>16</sup> Mr. M\_\_\_ is the defense attorney for T\_\_\_.

<sup>17</sup> Ms. C\_\_\_ is the defense attorney for D\_\_\_, the other 'adult' offender.

*a new light. Suddenly they were just people, like us, just wanting to come together and do the right thing. Still, I was feeling a little intimidated when it came time for me to speak on my position. It wasn't my most articulate moment, but all in all, I got my message across. I basically said that I was there and wanting to take a restorative approach for two reasons, that I didn't want these boys to go to prison but rather to find a way that they could have some sense of a future. The second reason simply that I needed to know the truth of that night. Mr. J\_\_\_<sup>18</sup> facilitated the meeting well, especially considering his opposing stance on the situation.*

*A few minutes into the meeting, L\_\_\_<sup>19</sup> arrived. I was relieved that she was there to better explain the process and outcomes of a healing circle. She also admitted though that this was a first, it had never been done quite like this before so we would be cutting new ground. Mr. J\_\_\_ voiced the concerns of the justice department and throughout the meeting little jokes were shared about his views and the lack of weight they might actually have overall. Each person around the table made comments and suggestions as to how we could move forward.*

*There was an air of excitement around that table. Even the lawyers had a glint in their eyes as they thought out loud and shared imagined possibilities. It occurred to me at one point that the dividing line between us had begun to disappear. The adversarial system that brought us together in this room had been left at the door. We all were truly working together, on the same side. A few hurdles would need to be overcome including the fact that these boys lived in different remote reserves. The lack of services available to them would need to be addressed and community for our purposes would have to be defined as Winnipeg, where the crime took place. We agreed to cross any proverbial bridges as we reached them. It was agreed that the lawyers would speak to their clients about what we had discussed. Ms. C\_\_\_ was quite upfront in her optimism and*

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<sup>18</sup> Mr. J\_\_\_ is the Crown attorney for the case against the two 'adult' offenders. The youth was tried separately.

<sup>19</sup> L\_\_\_ is a facilitator from Restorative Resolutions, at John Howard Society.

*even went as far as to say she could not even imagine her client and his family not wanting to take part in this. Mr. M\_\_\_ was a little more conservative or guarded but also felt that this was a very positive experience and opportunity. It was agreed that Mr. J\_\_\_ would contact everyone after the meeting with his department, which was scheduled for Feb. 27, to let us know where things stand on behalf of the state. Ms. C\_\_\_ preferred to go forward regardless of that meeting and in fact preferred to keep contact through L\_\_\_ rather than Mr. J\_\_\_. She had experience in restorative justice and with L\_\_\_ specifically and she knew very well that we could do this with or without the participation or permission of the justice department. Mr. M\_\_\_ would be meeting with his client at the beginning of March and would let us know what is decided. He did caution that there are some pretty serious decisions to be made by his client and family.*

*In the end it seemed unanimous that this would be a valuable process for all, whether it took place with a guilty plea before sentencing or even post-sentence during incarceration. As we all rose to leave, the lawyers again said how pleased they were to have met us.*

*Out in the hallway, Mr. M\_\_\_ offered his hand and told me it was nice to finally talk to me rather than seeing me in court just staring forward. I chuckled inside, remembering how much of an ass I'd thought he was. It was he who was doing the intimidating staring I thought, but then I guess that is only my own perspective. In the elevator down to the entrance I turned to my mom and said, "isn't it strange how different they are when we are no longer on opposite sides? It just felt so much more human". She agreed and said again how just taking part in this meeting was so healing for her. And it was for me as well. I left the building feeling a little lighter and feeling a little more connected to humanity.*

## **After the verdict**

*As people began to make their way out of the courtroom I remained in my seat, unable to move, barely able to breathe. I sat and stared at B\_\_\_ as the sheriffs locked the cuffs around his small wrists. He was so small; so childlike. I just kept watching and thinking of how small he was. My eyes moved up to his face where I noticed his cheeks were wet and tear-stained. When had he cried? I wondered. They guided him forward, out of the prisoner's box and I saw his knees buckle just slightly. His entire body looked as though it were fighting to crouch back into the box. It seemed as though he was actually being held up by the sheriffs on either side. I remembered, at that moment, seeing countless men being held up in the same way as they were led to their executions. It's like their brain refused to cooperate, using its basic survival instinct in a last-ditch effort to save itself. B\_\_\_'s brain was fighting this same struggle now.*

*He searched the room for his family. I watched still as his eyes found what they needed and became fixed on his Dad's girlfriend. His eyes pleaded with hers for help, for understanding, for her to tell him this was all just a big mistake. The sheriffs nudged him forward toward the door and the moment his eyes were torn from hers, his face began to crumble. I saw such terror in his young eyes. My heart suddenly felt as though there was a fist closing around it. I couldn't breathe. Still, I stared, unable to do anything else. And then it happened. Just as he approached the heavy oak doors, B\_\_\_ lost his fight for dignity and his face contorted into a most painful, childlike expression of despair. His lips curled downward and his mouth opened into a ghastly silent scream, and he burst into tears. It was the same expression you see when a toddler is suddenly frightened by something, and bursts into a fit of tears, crying for his mommy. It was one millisecond, the very moment before he was out the door. I felt as though I had been kicked in the stomach then and I felt a primal need to run to him and put my arms around him; tell him it would*

*be okay. B\_\_\_ needed a mother then, maybe more than he had ever needed her. She was not, nor had she even once been at his trials. I would find out later that not even his father had been there to hear the verdict.*

*I thought I might faint and I grasped the back of my seat to hold myself steady. Suddenly I was surrounded by chaos, like everything came back to life after having been on pause. It was suddenly loud, noisy, crazy. Everyone was moving around in fast-forward while I still felt like I was in slow motion.*

*I don't remember walking through the doors. I just found myself in the great marble hallway of the law courts building, crowded with people, wondering where they all came from. I mumbled that I had prepared a statement, but that my mother would read it. The media circled us, repeating to each other that there was a statement. The excitement was palpable, a crowd alive with... what...? The taste of blood? It was nauseating. There was no sense of having won anything. In fact, my feelings of loss had now only been compounded.*

*This is what we had wanted so badly and now I felt like we had somehow caused this, as we were being congratulated by random friends and supporters. It was Adam's mom that would read it. As soon as the media heard that Judy was the 'mother of the deceased' they swarmed her. I could hear the Crown's<sup>20</sup> voice, she was giving interviews down the hall. Suddenly I felt an overwhelming need to be out of that place. I had to get away from it all. I made my way to the door leading to the stairway and Ms. M\_\_\_<sup>21</sup> was right behind me, ready to parade us away to privacy.*

As I read and recall this scene, I clearly remember the atmosphere of celebration and festival in the hallway of the Law Courts building. A unified sense of triumph that good has

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<sup>20</sup> This was the Crown for the case against the youthful offender. She will be identified in the text as Ms. LC

<sup>21</sup> Ms. M\_\_\_ was our victim services worker.

overcome evil. It seemed so dark and unsettling to me. It brought images to mind of pitchforks and vengeful glee that now, years later, I can better articulate. It was a Spectacle.

*Once the media had received their statements and interviews, the crowd began to recede and we were guided to the family room. Nobody said a word. Each of us gasped, in turn, as we fought for our breath to return. The great marble hallway was completely silent except for the echo of our footsteps and the hollow sound of our gasps. This should have been our victory march. There was no victory. There was just nothingness.*

*I wrote an email to the Crown, after the verdict but before sentencing. The following are excerpts:*

*I thought I could hold B\_\_\_ the most responsible and let him take the majority of blame*

*I also thought I would want to see him suffer, to pay for what he did. I've now found this is not the case. I cannot hate him just as I cannot hate the others. He has suffered. He is suffering. I've had enough. I cannot sit back and watch another life destroyed.*

*I've found that hearing the guilty verdict is all I needed in order to be able to feel as though our loss has been acknowledged.*

*He has been found guilty and now the only thing that matters is that he finds a way to take personal accountability for what he has done and deal with the issues in him that allowed him to do what he did.*

*What I am proposing then is this. There is an organization called Restorative Resolutions that offers a program called, "Alternative Sentencing for Aboriginal Offenders."*

*Thanks to you, justice has been served. I don't think further punishment is necessary, at least not in the form of sending a teenager to what could ultimately be his death.*



## Second Appearances

### **D\_\_\_ bail hearing after breach.**

*Mr. J\_\_\_<sup>22</sup>, Ms. M\_\_\_<sup>23</sup> and I rushed into the courtroom just as we were being paged on the intercom again. As I entered I could see D\_\_\_ at the far end in the prisoner's box. He looked up at me and I met his eyes for a brief moment and then looked away again as I took my seat. What I saw in his eyes was very different from that of T\_\_\_ and B\_\_\_ as well. T\_\_\_ opened his soul to me and showed me a level of humanity and shame that I could not ignore, a look that in fact had set me on my current path of restorative healing. B\_\_\_ on the other hand had a look of mild curiosity, annoyance and tough rebellion the first time I saw him. D\_\_\_ though was almost an in between of the others. His eyes showed nothing other than a numb sadness, lacking in remorse or evil. Something in the way he seemed almost uninterested in my presence was bothering me but I couldn't put my finger on it.*

*After Ms. M\_\_\_ and I had taken our seats, Ms. C\_\_\_, D\_\_\_'s lawyer went over to speak to him. I heard the jangle of his shackles as he stood to meet her. I felt a tiny twinge of guilt in the fact that I had been looking forward to seeing him in shackles. Then he spoke. I could hear him explaining what happened, speaking like a small boy that knew he had done something bad. I strained to listen, wanting to hear every word. I noticed that his voice was very soft. I would go back and consider this later but for now I was concentrating on the excuses he was presenting to Ms. C\_\_\_. He didn't appear to be lying or trying to defend his actions. He seemed a little sulky though, like he was feeling sorry for himself. This angered me. I continued to listen in, eyes glued to him, waiting for him to look at me again, to give me something more. He didn't. Ms. C\_\_\_*

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<sup>22</sup> Mr. J\_\_\_ is the Crown attorney for the case against the 'adults'.

<sup>23</sup> Ms. M\_\_\_ is our victim services worker.

went back to her seat and he sat down in the prisoner's box, lowering his head, a position he remained in throughout the entire hearing.

After a few more minutes of small talk between Crown and defense the Judge entered. Mr. J\_\_\_ began to present his case for revoking D\_\_\_'s bail. He began by briefly mentioning the charges facing D\_\_\_ at the time of the breach with a promise to go into more detail later on. He then proceeded to read each condition of the bail agreement, taking time to focus in on those that were breached, the most serious being that D\_\_\_ was found extremely intoxicated, knowing full well what he was capable of when drinking.

Mr. J\_\_\_ then gave a summary of the Crown's theory on the string of events that led to Adam's death, including the earlier robbery that same night, that D\_\_\_ was also charged with. I sat there listening, watching the Judge's face to try to read into any thoughts she had. When Mr. J\_\_\_ got to the actual beating Adam sustained, speaking of the witness that watched as they mercilessly continued to beat him while he was unconscious on that road I became furious. He merely skimmed over the beating, not even telling the Judge what those assholes did to him. He talked more about D\_\_\_ bleeding in a snow bank than he did of the severity of their attack on a complete stranger. when I thought I could take no more, I turned to Ms. M\_\_\_ and whispered these thoughts to her. She simply rolled her eyes in agreement. How was this judge going to make an informed decision on whether D\_\_\_ was a danger to society if she wasn't even told of the violence he had already shown?

If this was a sign of things to come from Mr. J\_\_\_ in a trial, we were in serious trouble. He closed his arguments with a weak suggestion that D\_\_\_ had been doing really well with his bail management for almost two years but that something had gone terribly wrong and that he had concerns that D\_\_\_ was lacking the supports necessary to keep him out of trouble. I sat there in

awe, wondering what exactly we were even doing there. It didn't seem to me as though Mr. J \_\_\_ even cared to make any effort to revoke D \_\_\_' bail.

Ms. C \_\_\_ stood to make her statements. She began by outright disagreeing that anything had gone terribly wrong and that in fact this was a "one over", a freak mishap caused by tragic circumstances that were entirely out of the control of her client. She relayed the story given her by D \_\_\_ only moments earlier, pleading with the judge to recognize an honest mistake when she sees it. From the story she told, and my own observations of D \_\_\_, I had no reason to disbelieve that it was true. The story was thus.

Firstly, she made it clear that D \_\_\_ was in fact with his step-mother with whom his bail conditions stipulated that he may be out with. They, along with another car of people from the reserve, had gone into A \_\_\_\_\_<sup>24</sup> for the day to do some shopping. A \_\_\_\_\_ was the closest town to \_\_\_\_\_<sup>25</sup>, and the town in which people would come to buy their groceries. After completing their shopping, both parties met up at a gas station. Apparently there was some confusion as to which car D \_\_\_ was traveling in, although as the judge pointed out, he should have been under the supervision and in the presence of his step-mother at all times. However, this was not the case and it was assumed that D \_\_\_ was in the other car and in fact was left behind at the gas station. After waiting for them to realize their mistake and return to retrieve him, it became clear that he was on his own. He made his way to the hotel in town and made some effort to contact someone to give him a ride back to \_\_\_\_\_. At this time, Ms. C \_\_\_ mentioned that cell phones were not usable in \_\_\_\_\_ and his father's home phone had been disconnected. Failing to get ahold of anyone, and feeling abandoned, D \_\_\_ went into the hotel bar and ordered a drink. Having a history of alcohol abuse, his one drink led to an entire evening of drinking that lasted from 6pm to

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<sup>24</sup> A \_\_\_\_\_ is a town in Northern Manitoba.

<sup>25</sup> \_\_\_\_\_ is the home reserve of D \_\_\_.

2am. His reason, according to Ms. C\_\_\_, was that he was feeling quite sorry for himself. Aside from the stress of his upcoming trial, and being left behind at the gas station, he had recently had his common-law partner take their child and leave him to move to Winnipeg, where his bail conditions clearly stated he was not allowed to enter for any reason other than court appearances. As I sat there listening to this explanation of events, events that I sort of expected and could understand, I did begin to feel a bit of sympathy for the young man. Still, he sat, bowed over with his head in his hands, looking up only if addressed by the judge or his lawyer. My sympathies were almost immediately quashed however and replaced by shock and anger.

For after telling this story and making various excuses for D\_\_\_' behavior, trying to minimize blame where possible, Ms. C\_\_\_ then proceeded to turn him into the victim on the night of Adam's death. My back tensed up and I began furiously twisting my ring around my finger, fighting to register what exactly was going on at the same time as fighting to remain in my seat, mouth shut.

I'm sure my mouth must have hung open in awe as Ms. C\_\_\_ proceeded to tell the judge that poor D\_\_\_ had suffered 15 stab wounds that night, that they were clearly defensive wounds, and that he could have just as easily died that night and Adam could have been charged. I was livid! It took everything in me not to walk up to her and slap her hard across her red, blustering face. She didn't stop there though, and also had the audacity to suggest that had Adam been lying just a foot or so over, on the boulevard instead of in the roadway, that we would not even be here today! Jesus! What the hell kind of bullshit was she pulling?! I was seething and turned to Ms. M\_\_\_ again and whispered that it was damn well known that he would have very likely died from the brutal beating alone and that this was bullshit. I plead with Ms. M\_\_\_ to tell me how Ms. C\_\_\_ could possibly get away with a performance like this.

*What came next was as much of a shock to my system as anything I had witnessed in court or out of in the past two years.*

*Ms. C\_\_\_ lowered her overly excited voice to a calm and motherly one and began to tell the judge of the most incredible and awe-inspiring part of this case, something so wonderful that she could hardly believe it herself, as she had never come across such humanity and goodness in her entire career. I held my breath, not believing that she would dare use my good intentions to get D\_\_\_ out of jail, now, now! Right after she stood there and made Adam the bad guy in this! But before I could even take a breath, she did it.*

*I kept my eyes on D\_\_\_ the whole time, watching him holding his head in his hands, visibly reduced to a young, shameful boy.*

*I was filled with a sense of overwhelming disgust, shame, and disbelief.*

## **RJ rejected**

In the end, T\_\_\_'s lawyer advised me that his client would be taking his chances in court. D\_\_\_ wanted to go forward with RJ but I was faced with a legal and moral problem. If I said yes, and D\_\_\_ made a guilty plea it would essentially end up pitting the two against each other. I told D\_\_\_'s lawyer I would not go forward unless both took part.

The trial for the adults was much shorter than the that of the youth – just under two weeks. It was a judge-only trial and neither accused took the stand. They were convicted of Manslaughter on August 24<sup>th</sup>, 2007.

## **Adult Verdict**

### **Statement to media – Guilty Verdict – August 24, 2007**

*Justice was served today. While this verdict does not bring Adam back to us, we are appreciative that the acts of D\_\_\_ and T\_\_\_ have been judged and acknowledged as wrong and*

*criminal. After two and a half years of court dates and trials our family will now try to find some peace and learn to live each day without Adam. His senseless and brutal death encompasses the lives of our family and friends and continues to affect many others also. The acts of these young men were violent and cruel and we only hope that they use the rest of their lives to give back for what they have taken from this world. It is our hope that these two young men find the personal accountability necessary to make amends to their own families as well.*

### **Upon receiving a copy of the PSR**

*I now had the truth that I fought for so long. I now had the reality that D\_\_\_ did not feel remorse. I felt as though that last tiny piece of faith that I had clung to was crumbling away. Sadness, anger and resentment came flowing through me. Who does something like this and then doesn't have it eat at them every moment of every day? Who can show such pure ambivalence for a life? How can he not even know how long ago he did this? How can he feel no empathy? WHAT IS WRONG WITH THESE PEOPLE?*

### **Waiting for the sentence: D\_\_\_ and T\_\_\_**

*February was a long month. The inner turmoil I fought was draining. I often found my thoughts drifting back to D\_\_\_, his tears, the fear in his eyes. The first week after the sentencing hearing was the toughest. I felt a heavy burden on my heart. On the one hand I had spent countless hours researching sentencing precedents to convince Mr. J\_\_\_ to ask for the longest possible punishment. On the other, the apology was all I ever really needed so I felt as though I should be taking it all back, asking that the sentence be less. And then I would swing back again toward the anger at the defense for actually requesting conditional sentences. I no longer knew what I wanted. There were some truths. I wanted T\_\_\_ to get a slap of reality to take that smug look off his face. I wanted him to realize what he'd done. In truth, I wanted him to pay. And I also knew that D\_\_\_*

*must be punished for his actions. He too killed Adam. There was no way around that simple fact. But my heart stung at the memories of him craning to get a good look at the photos of Adam in the hallway of the law courts, his head in his hands, rocking back and forth during his hearing for breaching his bail conditions, imagining him jumping into the back of the police car, broken and exhausted and just repeating, "I did it okay, I did it, just arrest me." I found myself completely crushed for him. I just wanted to do whatever I could to help him through this.*

*So February dragged on with my mind tormenting me. A part of me wanted to 'win', to get the eight years requested by the Crown, or even more. I fantasized that the judge would rule that to be inadequate in the circumstances and decide her own sentence of ten or twelve years. And then the other part of me secretly hoped that they would get the minimum federal sentence, two years plus a day.*

## **Sentencing**

### **Victim Impact Statement Feb 29 2008**

*The last thing I ever imagined I would be doing at 32-years-old is taking care of the arrangements after Adam's death. I had to pick out a casket, choose a picture for his obituary. All I could think was did he realize when this picture was taken that he would be dead only one year later? It was a very sad moment---one of many sad moments that now encompass my life. I had to write his obituary, sum up 34 years of life in a few paragraphs.*

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*I had to look into his mother's eyes as the realization that her son had been murdered, that he was really dead, hit her like a ton of bricks. I had to tell our friends; the friend who had seen him just the day before, that Adam never made it home. I had to find the words to tell my daughter that her dad was dead, that teenagers not much older than her had hurt him and taken*

*his life. I had to sit on the edge of her bed and say the words that meant she would never see her dad again.*

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*My family and I are here today serving the third year of a life sentence of loss and coping. I did not do anything to deserve this sentence, my daughter did not deserve to suffer through this pain, Adam did nothing to deserve being randomly attacked and murdered.*

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*In spite of everything I was unable to hate you. I truly believed that if given a chance, if shown some compassion, you would sit down with me and talk, come to terms with what has happened, work with me to find a way to make amends, to find some peace. I clung to my belief in you boys for almost two years. I just needed one thing from you – accountability - a sense that there was remorse, that this was just a horrible mistake and that you were truly, horrifically sorry for your actions.*

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*T\_\_\_\_.... D\_\_\_\_..., you have brought me more suffering than I have ever known. You have hurt my family, MY CHILD..., more than you will ever realize. And still, I'm so very sad for you both, for your futures, for the lies you have chosen to live with and what this will do to your mental well-being and ability to succeed in life. I'm sad that you continue to make choices that hurt everyone around you. You can never give Adam back to us but you can start appreciating that you still live, that you have a lot to make amends for, that you can truly make a positive contribution to this world. Please don't make Adam's death meaningless.*

## **Apology**



## **D\_\_\_ apology February 2008**

*I felt like an empty shell, entirely spent of every ounce of energy or feeling. I was hardly paying attention to the Judge when suddenly her words caught my attention. She had asked D\_\_\_ if he wished to say anything before she adjourns to decide on their sentences. D\_\_\_ stood up, briefly looked toward the judge as he said, "I just want to say how sorry I am to the family". He then turned to face us and continued, "I know what I say can never bring Adam back to you. I take full responsibility for what I did. I am very very sorry. I'm sorry I took him from his family, I'm sorry to Noelle, Jess, his mom, the moms, brother and Mr. Lecours. Nothing I say can ever bring him back and I'm so sorry for the pain I've caused your family." His voice cracked as he said Mr. Lecours.*

*I looked right into his tear stained eyes as he spoke. I knew I should have had some reaction but I had none. My face was a mask of emptiness as he spoke the words I had prayed to hear for nearly three years. I didn't move a muscle, I didn't blink. I just sat and stared at him as he gave me the greatest gift in the world. The entire courtroom was silent. Not a whisper, not a grunt. Nobody moved. D\_\_\_ sat down again and lowered his head. The judge then invited T\_\_\_ to do the same. He stood up and mumbled, "My lawyer said anything that needed to be said". Movement and sound returned to the courtroom as my family and our supporters nudged each other and whispered short words of disgust. I just sat there, silently comprehending the reality of what had just happened.*

*Then I spotted D\_\_\_ being led away from the prisoner's box in shackles and there was a core need for me to keep him in my sight, to make my way to him. Someone was beside me going on and on about something kind and caring and I just waited for a break in her words to interrupt her. I was losing my moment rapidly as D\_\_\_ was led toward the door beside me. I rudely said*

*to her, 'one second, sorry', and I called D\_\_\_'s name over the railing. He looked up, red swollen eyes, almost cringing at what I might want. "Thank you", I said with as much honesty and feeling as I could muster. I wanted him to know just how much his apology meant to me but the circumstances did not permit me to portray my sentiment fully. He again looked right into my eyes and said, "I'm so sorry". He was being pulled out the door as his words hung in the air. All was silent around me as though everything else had been put on pause during this sacred human moment. After he was gone the sound slowly resumed and I began looking for my scarf, putting on my jacket and picking up my photo of Adam that I'd fought for the right to show in court.*

## **Parole**

### **D\_\_\_ Parole hearing statement September 2010**

*I will never fully understand how or why Adam was walking home one minute and fighting for his life the next. I do understand that D\_\_\_ is a human being, with faults, with weaknesses. And that he is truly sorry for his actions that night. He chose to help me to understand, to answer my questions, to allow me to find some peace.*

*I never for one moment thought that D\_\_\_ went out with the intent to kill someone. I believe there was a string of bad choice after bad choice, fueled by alcohol, juvenile male aggression and gang mentality that spiraled out of control. Yet, there were many opportunities for D\_\_\_ to stop beating Adam, to walk away, to simply not take part in a hunt for somebody to rob that night. But he did not and Adam is dead.*

*Although he can't go back... he has made an effort to acknowledge the pain he has caused and even to help ease my suffering. At my request D\_\_\_ agreed to meet with me face to face. We met and talked for a couple of hours. I felt he was genuine and that though he still doesn't seem to comprehend the devastation my family experienced, as nobody really can, he*

wanted to try to understand. He stated that he would like to be a part of the healing process, and that at any time that my daughter is interested in talking with him he would be willing, whether it was next year or ten years from now. There were some things he could not tell me as he claimed not to remember pieces of the night due to the alcohol as well as his own injury and blood loss. Although this was disappointing, I believe him to be truthful. He has made a number of choices in trying to do the right thing now.

I know I cannot make recommendations regarding his parole. But I would like this board to take into account that the young man in front of you, the one responsible for so much pain and suffering, is also the only one that could give me what I needed in order to heal. He accepted responsibility. He showed accountability. He stood up in court and apologized to each of Adam's family members, and to Adam. He told me how deeply sorry he is. These steps he has taken have made all the difference in the world for me and for my ability to move forward in my life.

## Chapter Six – Conversations

During this same period from 2005 to 2010 I amassed a collection of emails and correspondence which were the data sources used for my content analysis. In lieu of a separate theory section I have drawn theoretical insights into the discussion throughout.

### **Introduction: The emails and correspondence:**

As I began coding, a natural emergence of the requirements of justice began falling into place while specific areas that I had identified in my literature review seemed to appear everywhere. Certain themes demanded acknowledgement from the start. The first coding process resulted in the following codes: judging, unjust, moral, powerless, good, goodwill, agency, anger, ambiguity, remorseless, resentment, trust, justice, empathy, frustration, vengeance, power, duty, accountability, disillusionment, honor, acknowledgement, outrage, fairness, human, needs, call/answer, meaning/reason, care, duality.

I recombined these into the following categories: judgement, unjust, ethic, power, vengeance, duty, acknowledgement, metaphysical, tension/duality, trust, empathy, justice. I summarized these and was astonished to find that they essentially left me with four overarching themes: Prudence, Temperance, Fortitude, and Justice—the four ancient Greek virtues—associated with Wisdom, Restraint, Strength, and Righteousness. This should come as no surprise since I had been arguing the existence of moral justice—of morality—as the piece that was lost in our modern justice system and is now present in restorative justice. These are the four major sections for discussion:

- Trust/Judgement (Prudence)
- Agency/Power (Fortitude)
- Morality/Justice (Justice)
- Vengeance/Mercy (Temperance)

## **Trust/Judgement**

### **Trust**

*RJ depends on the belief that a murderer is a decent human being—honest, mature, remorseful. I guess we just have to take that leap.*

*They both cautioned me, said he was the mastermind, that he's a manipulator, self-centered and has no remorse.*

*Crime changes your ability to trust*

Trust operated deeply beneath my experiences, from my loss of the most basic sense of safety, to my cynical opinions about the justice system, to my willingness to place my trust in the offenders. My judgement was faulty in some cases. In the beginning I only wanted to meet with T\_\_\_, sure that of the three he was the one to trust. And in the end, the one I was warned to stay away from turned out to be the one that was most remorseful. By meeting with me without any requirement to do so, and offering me their truth, these boys restored my own core sense of trust in people, in my prior beliefs that there is a shared moral order and that we can and do trust one another more than we ever really think about.

### **Judging**

I found a great deal of focus on trying to establish, of paying close attention to the faces of people, looking for some sign of their thoughts or motivations.

*"I searched their eyes for some clue that might explain how they were capable of such brutality"*

*"I waited for him to look at me again, to give me something more. He didn't."*

Unspoken communication is one of the greatest tools we, as a species, have in our survival kit.

What we do with this incredible gift of intuition is judge one another. We must rely on our ability to carry out this delicate operation multiple times each day in order to navigate the complexities of social life. We judge, and we mete out justice.

Long before I would eventually meet the offenders face to face, I first began the age-old process of judgement. I observed them from afar, I studied their faces to try to determine whether they were trustworthy or dangerous, whether they were remorseful or evil—whether they were Same or Other.

If I am honest with myself I will question my motives for choosing the restorative path so early. Is there something operating beneath my moral insistence toward compassion and understanding? Michael Moore (1997) struck a chord with his discussion on the moral worth of retributivism, particularly the phenomenon of showing concern for the wrongdoer. He suggests it might be, “in part because of our unwillingness to face our own revulsion at what was done. It allows us to look away from the horror that another person was willing to cause”(Moore, 1997). He later adds, “we cannot stand to acknowledge that there is such a thing as evil in the world—and, worst of all, that it is not ‘inhuman’ but a part of creatures not so different from ourselves” (ibid).

*I came to realization that maybe I needed to believe what I had about him (saw what I needed to see) that I needed him to have good side. In truth I needed to believe he was sorry for taking Adam from me.*

Perhaps all along it came down to a simple project in self-deception. This need to identify with the Other, to embrace him as Self, as a member of the in-group, one that shares the very same moral code as I do. Could it be an existential crisis of the basest form? In a word, yes.

Reinforcement of the normative moral expectations of trust in humanity very likely plays a role. How could it not? Human beings have developed morality and communication skills specifically to uphold it in order to live together in relative harmony. I believe the word for this is justice.

Feeling as though I were somehow betraying Adam, that my position was at odd with what I ‘should’ have felt was reflected in the journal excerpts.

Just like Sgt. \_\_\_ seemed to feel a need to remonstrate his outrage to me, I often encountered tensions with those I talked to about my interest in RJ. As well I was held to a particular moral role as “victim”. The jury and others were making judgements of my behavior, I believe to assess whether we share the same moral code and values.

*“I could sense the jury judging me for my tears when K\_\_\_<sup>26</sup> testified, for showing pain for ‘the other side’”*

*God forbid we crack a smile! What they don’t seem to realize is that yeah, this might be new for them but it’s been years for us. We need to laugh now and then just to be able to put one foot in front of the other”*

*“I would find that very few people would share my sentiments.”*

Just as the jury was judging me, I was judging the offenders. I searched their faces for answers, trying to assess whether they were remorseful or not, suffering or not, dangerous or trustworthy. Long before the actual RJ ritual process, the moral justice process began through informal evaluation and judging. In this case, I found myself using non-verbal communication and visible cues of vengeance and mercy to send messages to the offenders in hopes that they would answer my call to do the right thing. Failing that, I chose the verbal route of public denunciation by sharing my outrage at him in my victim impact statement.

*“I am telling B\_\_\_ exactly what he did in graphic detail so he faces the facts. I read somewhere that we are not allowed to mention facts of the crime. I say screw that! They want to know how this impacted me? I’m telling them. I don’t think saying ‘the night Adam died...’ is quite as effective as ‘the night you so brutally did this and this and that.’”*

I was reminded of a particular episode that shows the delicate balance of adhering to our roles in justice. During the trial, the sheriff’s officer next to the accused had fallen asleep. A few of us in the gallery were nudging each other and snickering about this. I looked up to see B\_\_\_ looking at me, chuckling along with us, joining in on the humor. At the time I thought he was delusional to

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<sup>26</sup> K\_\_\_ was the estranged partner of the accused. I felt sympathy for how the crime affected her.

think we could have a laugh together, that we were all in this together. I'd thought it was the FASD, his inability to recognize boundaries or to appreciate the social rules we were bound by. I look back on that now and see something entirely different.

### **Meaning.**

The restorative justice and homicide survivor literature makes extensive reference to meaning making as an important part of restoration. My own experience supports this, both in the courts and in my meetings with the offenders. Murder is deeply existential. It affects our connections to others and normative expectations of trust and safety in the world.

*There is something intangible about the fact that the offender was the person to witness the last moments of our loved one's existence.*

*There is an innate need for connection to that moment. Given back to the family*

*Being denied involvement in something so personal leaves victim fragmented, unable to process the whole when such important pieces are missing*

I believe trust and judgement were operating in the pursuit of finding meaning, of getting closer to the intangible and abstract elements of the crime. I was looking for a way to take back Adam's death from them.

### **Agency/Power**

The aspect of power was a dominant thread in my writings and can be seen throughout the stories in this thesis. I did not like to be treated like a victim and was very forward in making that known.

*"As I approached the glassed-in security desk, the Crown came through a side door and welcomed us. I signed in and was handed a plastic badge to clip onto my shirt. It had a big, red "V" on it. "V" for victim, I thought, in disgust."*

*Want court filled with US not THEM*

*I would be the intimidator, above all he would not see my weakness*



Removal of the victim from the justice process has resulted in a moral crisis and perpetual injustice that has resulted in a trauma and closure discourse with significant impact on society. It's not about victimization. It's about the removal of a key participant in a social problem (murder).

Justice, for me, meant adhering to my own ethics as much as holding another personal accountable for his actions. The elimination of the victim's family from the pursuit of justice has been detrimental to families and their surrounding communities. The victim was central to justice as far back as the code of Hammurabi (1750 BC). The fulfillment of the moral piece of justice requires the victim's participation. There must be judgement, acknowledgement and settlement, person to person or family to family if the values of accountability and atonement are to be met. The victim has a central role in shaming the offender, in upholding the moral fabric of society. The courts create a source for social cohesion through shared rules but the victim, through confrontation, is the only one that can address the pollution created by the crime. And in respecting agency the victim must be given the room needed for her to put out the call to the offender. Restorative justice provides that room.

In my naivety I felt I was in control as can be seen in numerous examples. But more important than control was my need to do what I felt was the right thing, to adhere to my own ethics and hold others to this same measure.

*I'm calling the shots, I am determining justice for myself and my daughter*

*It did not turn out how I envisioned but took back choice, followed what feels right in my own soul,*

*They have taken enough from our lives. I refuse to allow them to take my dignity.*

## Morality/Justice

Through the written materials, both in the reenactments of first hand experiences and in my correspondence with others, there is a bewilderment and consistent indignation at the failure of everyone around me to acknowledge the shocking lack of moral accountability that I was feeling. In my immaturity maybe, I just expected that these boys must be distraught at the weight of what they've done. If I had been in their shoes I would be tearing out my hair in horror and shame, so repulsed by my Self that I would feel ill just being in my own skin. There's a name for what I felt was the appropriate response by these boys: *Agenbite of Wit*: "a hopelessness, inconsolable bit of conscience, more than guilt, so deep, wanton assault on the very meaning of a person's human life" (Murphy, 2007).

*The anger and resentment came flowing through me and I began to yell inside my head. Who does this? How does this not destroy them every day? Who can show such ambivalence for a life? How can he not even know how long ago he did this? What is wrong with these people??!*

To me, morality and justice were naturally connected. If they wouldn't do the morally right thing, justice would prevail through other means. Justice appears in my dialogue more so as fairness and accountability. These two distinct forms of justice came through in separate form and I deal with them separately in this analysis. In both cases, however, the justice I require is essentially the same—that the wrongdoer's actions be weighed and that there will be some authentic form of judgement and atonement.

What 'happens to him' we translate into a measure of pleasure and suffering (a positive or negative satisfaction), while what we consider 'his doing' we translate into a measure of virtue. The theory then... is to place the two measures opposite each other on the scale resolving both indices into one (we do this by reducing the concept of 'virtue' in order to contain it fully within the idea of 'merit'), and rendering thereof a judgement as to whether or not the scales are balanced; we call the balance 'justice.' (Axelrod, 1986).

Above all I needed to hear the truth of that night, and this came through clearly in the written dialogue.

*I want truth. This is my justice*

*You are the only person that can end my torment. I need to know the truth so I can stop imagining the worst*

### **Fairness**

My own ethics, particularly my frustration with the lack of fairness in the justice system, came up quite often in conversations. I was incensed to see the third offender continually treated better than the others, ultimately being given a stay in execution of his sentence. While the limits of the thesis don't allow the room for further discussion into the issues of economic inequality, it is worth noting here that this particular individual came from a middle-class family and had powerful supporters in his community as well as access to top lawyers. The issue of fairness also came through in my disagreement with the idea that these 18 and 19-year-old boys were considered adults and tried and sentenced accordingly.

*“The accused came in with his happy little family, holding a baby carrier. I wasn't allowed to show a photo of Adam with HIS family and baby. How can they allow autopsy photos but not photos of him as a living, breathing person? Isn't that the whole point of this?”*

*“He will be brought to trial in shackles while T \_\_\_ is sitting there in a suit.”*

### **Acknowledgement**

This suffering Thomas calls acknowledgement, in which the agent “do more than recognize that he or she brought about the bad state of affairs through his or her agency. Rather, that he or she understands what he or she had done. Here he refers to the “moral meaning” of the act. It is this “proof of a fundamental orientation to the ethical that we seek when we demand reparation from the remorseful” (Thomas, 1999).

*I want them to see how many people they affected. I wanted T\_\_\_ to feel the gravity of what he's done.*

*While this verdict does not bring Adam back to us, we are appreciative that the acts of D\_\_\_ and T\_\_\_ have been judged and acknowledged as wrong and criminal.*

“When we apologize (without excuse) we stand naked” (Tavuchis, 1991). Like the penitent murderer that falls to the ground in front of his victim’s kin and bares his neck to them. The vulnerability and trust symbolized by apology or atonement creates a sacred human moment that allows us to rise to a higher level of human-ness and see each other as Same. Repentance, the process of distancing oneself from the act, bridges the moral divide that was created by the crime. “We can then join the wrongdoer in condemning the very act from which he now stands emotionally separated” (Murphy & Hampton, 1988).

Like the act of atonement—in this case the wrongdoer answering the call and coming to face the victim and answering the demand that he explain himself—apologies “enunciate the existence and force of shared assumptions that authorize existing social arrangements and demarcate moral boundaries” (Tavuchis, 1991).

Thompkins (2015) describes justice as created within the communication act of acknowledgement, through an ethics that develops out of the responsiveness of communicators to one another. Consideration of an Other’s self-interest relative to one’s own, guides respectful encounter through Levinasian call and acknowledgement. As Levinas so eloquently states, “justice lies in the tension with the initial articulation of obligation to the other” (Gehrke, 2010).

### **Accountability**

*I have a social responsibility to do what I can to help him take accountability. I have a responsibility to help him learn from this*

*Want accountability, want to know why, want remorse, want offender to step up, acknowledge that he caused a death, validate that he saw loved one alive and well and then put an end to that life.*

In line with my ethical stance was my need for accountability and acknowledgement. The waves of release I felt at hearing the guilty verdict were a sense of relief that my society had stood up against this wrong, that they shared my sense of outrage and acknowledged and denounced the act as unacceptable and punishable. Having been excluded from the justice process I had been left in the wind until that moment. As a citizen, a member of society, I was vindicated. The offender had now been deemed the outsider. But still something remains.

### **Value**

Justice for the deceased person is important to the family and has been a central part of historical justice prior to the 18<sup>th</sup> century. The value of not only a human life, but the life that he lived and honoring his memory and acknowledging the dishonorable way in which his life was taken. In place of *lex talionis*: the practices of pilgrimage, partial fasting, begging for alms to pay the tithe for prayers for the soul of the deceased victim, paying wergild and in extreme examples, marrying the widow and taking responsibility for the children of the deceased person, RJ makes space for symbolic reparations. These were signs of honor and respect for the value of his life. The human value has been lost in our court system leaving the family to bear the burden of ensuring the victim is somehow represented and given voice.

*Adam has gotten a little bit of justice. One found guilty.*

*This is the last thing I get to do for Adam (somehow trying to make sure there is justice), will have no regrets.*

*Representing Adam by being there and VIS, only chance to speak for him*

## **Disillusionment**

*“seeing B\_\_\_ burst into tears as he left the courtroom broke my heart. I guess that’s what happens when you kill someone, but it still feels gross.”*

*[I was] most victimized by the system, most respected by offenders*

A distinct theme of injustice emerged as well in which I was frustrated and disillusioned by the limitations of our justice system and the courts. The lack of moral standards that I expected continually surprised and saddened me.

*“The justice system propagates lies before truth.”*

*“I’m saddened by the systemic lying above all else.”*

*Might be one of the saddest things about this. This kid is just screwed for life and so full of hate that he doesn’t even care.*

## **Remorse**

Thomas (1999) offers a “distinctive conceptual role of remorse” as a separate thing entirely from the concepts of guilt and shame. He proposes that guilt depends on a consciousness of having violated some rule or moral standard that one is already oriented to. In other words, the wrongdoer shares and abides by the moral code of the society. Guilt, according to Thomas, is experienced internally. Shame on the other hand is the sentiment felt in the eyes of a witness whose opinion carries weight with the wrongdoer. Remorse is both “more heavily moralized,” according to Thomas, and “stands at a greater conceptual distance” (Thomas, 1999). While guilt suggests an indebtedness for which one seeks release, in the case of remorse there is no remedy since it “involves the destruction of value rather than the infringement of standards of right and wrong” (Thomas, 1999). Deigh (1996) aligns remorse with an ethic of care and concern and guilt with an ethic of rules.

## **Obligation**

Answer the call. Could be done with a guilty plea. But justice still requires the ritual process. What if the call goes unanswered? Then justice has not been met. Without accountability and atonement, the injustice remains. This is why seeing an offender executed fails to bring closure/justice. By watching the only person with the answers be removed from life, without any show of remorse, there may be satisfaction but there is no justice for the moral issues was unresolved.

*While I genuinely care for these boys' lives and outcome, my first priority is myself and my daughter*

*I recognized two possible outcomes for me and my child. One was allowing hatred and vengeance to dominate me. I would not sentence myself and my child to a life of anger*

*That he agreed to meet me or wanted to meet me, without any Legal obligation. Strictly out of what is right. He cares.*

Levinas (1969) says the other faces me and invites me to judge him, to openly see his guilt on display, and that in turn facing him, I experience the obligation to understand and feel sympathy. At that moment I have the right to cast judgement and I can be vengeful or show mercy. "we call justice this face to face approach, in conversation (Levinas, 1969).

## **Vindication**

The waves of release I felt at hearing the guilty verdict were a sense of relief that my society had stood up against this wrong, that they shared my sense of outrage and acknowledged and denounced the act as unacceptable and punishable. Having been excluded from the justice process I had been left in the wind until that moment. As a citizen, a member of society, I was vindicated. The offender had now been deemed the outsider. But still something remains. The state has denounced the offender but the offender has not acknowledged it himself. I have not

had the offender say, “you stay, I’ll go. You have in-group status and right. I renounce my crime and remit my in-group status until you say different.”

The idea of justice emerged in various ways in my correspondence and my storytelling. Just as I have presented a case for the duality of justice, I found a mirrored duality within myself. I am both a regular citizen—member of society—that demanded state retribution for these killers that acted against us, and I am a human being that was morally infringed upon in the deepest sense.

As the stories show, there is a continual tension between vengeance and mercy. While I never felt hatred towards any of the accused, I was indignant at their behavior, morally outraged by their lack of integrity and their willingness to continually deny responsibility for what they’d done.

### **Vengeance/Mercy**

Lack of remorse by the offenders often ignited anger in me as was captured in a number of expressions of vengeful and petty remarks.

*His lack of remorse enraged me. His arrogance, his cruel indifference, would be his downfall. Of this I would make damn sure.*

The majority of my ire was directed at them in the victim impact statement as I believed at that time it would be my one and only opportunity to say what I needed to say to them.

*The **cowardice little bastard**<sup>27</sup> you are, you ran away and you left Adam in the middle of the street, bloody, broken and unconscious, unable to move, unable to protect himself. You, B\_\_\_\_.....you. You ran away, not knowing if he was even still alive. I have a question for you. WHY? That question will stay with me until the day I die.*

*You seemed to think your life would just go on as if nothing had happened. You even registered for school when you were facing a manslaughter trial; you started classes right after you were convicted. You acted surprised by the verdict of guilty. What were you*

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<sup>27</sup> I used bold lettering in my reading copy of my victim impact statement so I would remember that I wanted to look directly at them while saying whatever was bolded.



*thinking? You took a man's life! <sup>28</sup> You destroyed my family! Did you really think your life would just go on the same as ever? Your life will never be the same again, and neither will mine thanks to you.*

These sentiments, called the passions or The Furies, play an integral role in reinforcing the moral code between people. They serve to hold each other to account. They demand just response after an in justice. Barrett points out that the furies are an equal part of humanity and exist, whether or not we would like. They must be respected, at the very least, given voice to be exhausted. Only then is justice, and thus closure possible. Nietzsche had it right when he said we must allow the victim his pound of flesh, his act of response to injury, and then to move on. Otherwise resentment will boil up like a poison.

### **Empathy**

According to Murphy, “one’s inherent moral decency blocks the steps necessary to attain perfect retribution” (Murphy & Hampton, 1988). We have no stomach for it. “One’s repugnance at taking advantage of a person’s utter vulnerability... takes precedence over one’s hatred of that person and one’s desire for revenge” (Murphy & Hampton, 1988). As I had said in my letter to the Crown’s office (see page 79) “I’ve had enough.”

*So I took a good long look at them as human beings, fallible. Tried to see through their eyes.*

*Their suffering made me suffer*

*I know he is suffering like I am.*

The dissipating of vengeance could be due to seeing him shamed, brought low. A fellow-feeling is our natural response to this, not a gloating or enjoyment as Nietzsche says. Can it be both? Yes. The one does not preclude the other.

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<sup>28</sup> I used a similar method in my victim impact statement for the ‘adults’, underlining rather than bolding.

Forgiveness and punishment are not exclusive. While it may appear as though I was swinging back and forth between wanting them to pay and wanting to support them, I think when I look back on the experience in its entirety I felt both to varying degrees at once.

*So I am torn. On one hand I feel sad for you, on the other I feel guilty for feeling this way.*

*I felt a twinge of guilt in fact I'd been looking forward to seeing him in shackles*

### **Resentment**

*We sat through trial after trial, week after week, suffering through extreme discomfort. One hour of discomfort is not unreasonable for them to have to experience.*

*I feel so stupid that I thought these kids might have some good in them and they would do the right thing if given the chance.*

*Without remorse I was vengeful, resentful*

Thomas (1999) questions why one demands remorse of a wrong-doer, rather than guilt. The burden of guilt may be expiated through socially accepted means, such as the courts and punishment. Remorse, on the other hand seems to have a different focus. He goes on to outline the deeper implications associated with acts leading to remorse (Thomas, 1999). Here I would intervene to suggest that the difference comes down to suffering. Remorse requires repentance. Being able to stand over the pitiable creature as he suffers for his act is the only thing that can reach that depth of evil inflicted. There is no suitable expiation for murder but seeing the killer suffer takes the sting out of the moral affront. I again turn to Nietzsche's proclaimed *pleasure* to see one's enemy "despised and maltreated" (Nietzsche, 1887). However, to balance this out we see also that witnessing the suffering of the Other tempers our vengeance.

I have left my written accounts of the face to face meetings for the end of this thesis. The written account I provide of these meetings offer an honest portrayal of what I feel is a sacred

human experience. Both accounts draw out the elements of moral justice ritual that have been identified as missing from the fuller experience through justice described so far.

## Chapter Seven – Face to Face

### Visit at the Institution

I had been unable to find any program willing to facilitate a face to face meeting with a “young offender.” I mentioned wanting to meet with him in a chance encounter with a relative of his and I made arrangements to visit him in the Youth Centre. In preparing to meet B\_\_\_ I knew I had to be aware of two things, his age (although he was now legally an adult, he did not have the maturity level of an adult), and his diagnosis of FASD and ARND<sup>29</sup>. Therefore, I tried to ask very straight forward questions. I approached him from the position of a parental figure. I didn’t mean to disrespect him in any way or assert power over him. I think I just genuinely felt a sense of care, perhaps because of seeing his breakdown in court. However, a part of me was still terrified of him. I was well aware of the possibility, as remote as it might be, that he was a psychopath and this was all an act. I knew he was a liar and had been previously warned by justice officials to stay away from him.

After the meeting I made notes for myself (using the sheet of questions I had brought to the meeting and filling in what happened). One of the main objectives for this thesis was to open up “that room” to the reader, to bring her into the experience as much as possible. Yet, in order to honor the unspoken promise of confidentiality and to not breach the sacredness of the meeting itself, I have chosen to present this in such a way that my own experience is portrayed authentically without betraying the privacy of the others.

*A petite, greying woman that could have been my grandmother met us and brought us into the room. She introduced herself as B\_\_\_’s P.O., the person in charge of his program. She was*

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<sup>29</sup> Alcohol-Related Neurodevelopmental Disorder, under the Fetal Alcohol Disorder Spectrum: A complex range of disabilities in neurodevelopment and behavior, adaptive skills, and self-regulation after confirmed prenatal alcohol exposure.

[https://www.niaaa.nih.gov/sites/default/files/ARNDConferenceConsensusStatementBooklet\\_Complete.pdf](https://www.niaaa.nih.gov/sites/default/files/ARNDConferenceConsensusStatementBooklet_Complete.pdf)

*very kind and had only good things to say about him. She warned us that the meeting could potentially get interrupted by an institutional issue but they were all aware of what we were doing and everyone was making an effort to give us the time and space needed for this.*

*He was buzzed in and he entered wearing a baggy green sweat suit, carrying a white bag. He was much bigger since the last time I saw him. He had a nervous grin, came to sit right beside me and I asked him to take the chair on the side of the table, so he was partially facing me. He sat down, placing the bag on the floor beside him. He said he couldn't believe I was there, that I had come. He thanked me profusely. I nervously unfolded the paper I had brought that said the following, with a list of questions I wanted to remember to ask:*

*Thank you for meeting with us. The fact that you are willing to be here shows me that you are serious about it. I need one thing in particular from you that will help me to heal and allow me to move on. I know what I ask will be very difficult for you, to go back to that night, but I really need to hear from you what happened.*

*"Where should I start?" he asked.*

*"When you saw Adam."*

*I just let him talk, interrupting him with questions along the way.*

*"Did Adam give you the backpack?"*

*"Did you think Adam was dead when you left?"*

*I reminded him that nothing said will leave this room, no lawyers will be able to subpoena him or me, etc.*

*I need to know truth about knife. Did he bring the knife?*

*"Were you angry at Adam?"*

*"Did you know him or know of him before that night?"*

*“Did anyone ask you to attack him?”*

*“Did he notice you?”*

*“What did he say or do?”*

*“How long was the fight?”*

*“How long was he unconscious?”*

*“Did any of you intend for him to die?”*

*“Did he yell? Say anything?”*

*“Did he ask you to stop, to leave him alone? Did he tell you he had a daughter?”*

*“Did you take his backpack?”*

*“What happened to it?”*

*“Did you go through it? Did you keep anything?”*

*“Were those knives I found yours?”*

*“How far off was the Crown’s theory?”*

*“What do you hope to get from this meeting?”*

*“What do you want from me?”*

*There was a moment that he sprung THE question on me that I hadn’t expected.*

*“Will you forgive me?”*

*I was silent for some time and I could see his discomfort. I didn’t know what to say. I said, “no, I’m sorry.” “I’m just not there yet. I want to. In some ways yes, but I’m not able to completely forgive until I can see the genuine change and amends. Do you understand?”*

*I asked him if he forgives himself.*

*“Do you think you are guilty of manslaughter? A fair charge? What would have been fair?”*

*“How do you feel about T \_\_\_ and D \_\_\_? Do they deserve the sentence they got?”*

*“How do you feel about the specialized program?”*

*“Now that this is over do you think you can move on?”*

*“Do you think you have a future? Are you afraid that you will end up in jail again?”*

*“Are you going to be able to refrain from drugs and alcohol?”*

*“You have an opportunity here. Things could have been much worse for you. You have the choice now on who you want to be. Yes, there are bad people in the world but there are equally good people. I could have hated you or wished you dead. It made more sense for me to meet with you. When one person hurts another it’s better to put it all on the table and talk and come to some way of peace and healing. You are lucky to have a lot of people around you who support you. I support you, and my family.”*

*Do you think about Adam? What do you think?*

*Do you ever have nightmares about it?*

*Do you have a counselor to talk to about this?*

*Do you want to make amends somehow? Have you thought about how?*

*If you could say something to Adam’s daughter what would you say?*

*Did you ever think about pleading guilty?*

*Why didn’t you?*

*“I wanted to do something for you guys. I want to make amends and help others to stay out of trouble.”*

*He reached for the bag, which turned out to be a pillow case. He took out a letter and handed it to me. On the envelope was written in a child’s block letter scrawl:*

NOELLE DIETRICH – WIDOW  
JUDY\_\_\_ – MOTHER  
IAN \_\_\_ – BROTHER  
JESSICA\_\_\_ – DAUGHTER

*I asked if it would be okay if I read it later, on my own.*

*He went back to the pillow case and pulled out a painting he had done while in custody over the past four years.*

*“I wanted to give you other art too, I have lots. This one is about peace. It’s the 7 teachings in it. It’s hard to put into words. I want you to have it.”*

We talked about hate and vengeance, about how me and my family support him and what this means for both of us, this experience that neither of us ever expected.

I tried to explain why I didn’t hate him.

*“People make mistakes, some bigger than others. But that doesn’t define who you are for your life. You learn from them and don’t repeat them. My biggest hope is that you stay on this path and do something that makes you happy, your artwork or music. You obviously have a talent, use it. You are creating something and adding something to the world rather than taking something from it.”*

*He then shook the pillow case to empty its remaining contents. He carefully arranged them on the table:*

- ❖ A dream catcher that he had made for me – because of my nightmares.
- ❖ Braided sweetgrass and a soft leather medicine bundle that he’d made, with healing medicines.

*We talked about the future, thoughts on how to change things, to get off this road. People in his life that were important to him; people he wanted to be a positive influence on.*



*“The greatest gift you can give to Adam is to honor the life you took each and every day. Be the better person, live a good healthy life, have kids, a good job. Make sure you don’t bring this pain to anyone else.”*

*We talked about what he has lost by being locked up for so long.*

*I told him to think about my family and Adam when faced with a bad decision, before he does anything crazy.*

*“Jess would like to talk to you at some point. Are you willing to meet with her?”*

*When I got home I opened his letter. It was dated June 21, 2009. It was ten pages long, a few pages to me, then to Jess, Adam’s mom and his brother. He talked a lot about my victim impact statement, wanting to make amends, and his fear of the future and his gratitude for our lack of hatred toward him. I was amazed at the depth of insight and emotion that came from this boy that everyone had called “simple” and “evil”. He was neither. He was just a regular person trying to come to terms with this unbearable thing, the same way as I was.*

### **Facilitated meeting**

Arranged by CSC<sup>30</sup>, subcontract Saskatoon Mediation Services. Six months of preparation. Every time she called or visited she asked us essentially if we want to hurt him, but in a hundred different ways. Her biggest concern was her responsibility for his safety. Any aspect of trust was completely wiped out long before we met. I tried to explain to her the importance of authenticity and agency when she met me at my home one day:

*About ten minutes into the conversation I looked at her and asked what is in the thick folder she had in front of her. She said it was our case. I said I would like to see it. She said she*

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<sup>30</sup> Correctional Services Canada.

*is not allowed to share what's in the folder, it is confidential, there are personal things about the offender. I said here's the problem. You have that thick folder full of information, our conversations, your insights into each of us. You are in the driver's seat. You are directing this thing, deciding what is important, what isn't. You are shaping what the meeting will be, what will be said and what won't be. A big part of this is supposed to be empowerment. You are the one with the power. He and I are just pawns.*

Truthfulness and power: without the sharing of full truth by all members of society, some have more knowledge of reality than others which shifts power and allows for self-serving motives, thus injustice. Therefore justice requires truthfulness and full transparency (B. Williams, 2002).

*Finally, after months of preparation, D\_\_\_ was brought to Winnipeg from the healing lodge to meet with us in a government office downtown. The mediator was actually grey she was so pale and nervous. I felt like we had to comfort and reassure her more than anything. I'd had only one 'requirement' that we had agreed to. There were to be no cameras, no recordings of any kind. She argued this point over and over telling me victims like to have a copy to look back on because they forget. I was so tired of her telling me what victims want. I said no cameras or I'm out.*

*My mother and I walked into the room, on the table was a box of tissues and a microphone. I looked to my right and sure enough there was the video camera set up on a wheeled cart. I said they have to go. The mediator insisted they are part of the room and she can't remove them but that she promises they will be off. She went to get us some water then since we had arrived early and had time. I think she went to call her boss to ask what to do about the camera situation and the difficult victim.*

*D\_\_\_ arrived with an Elder from the lodge as his support. He came up to the table and offered me his hand in introduction. I hadn't expected this! Out of habit or politeness I reached my hand out to his while my mind was revolted at touching the hand that killed Adam. The mediator was stumbling or mumbling, trying to introduce ground rules or some such bullshit. I cut her off and thanked D\_\_\_ for doing this, for traveling to meet me face to face. I acknowledged how hard that must be for him. He told me how very sorry he was, that he could never fully put into words how sorry he was for our family.*

The meeting with D\_\_\_ was very different. It felt a little scripted. He asked me questions that I knew she had told him to ask. Things that were already said in my VIS. Regarding that night, he had little recollection.

*I redirected the meeting from the script and asked about what it was like for him in prison. I asked if he thought his sentence was fair. As carefully and respectfully as I could, I asked if he would show me the scar on his arm—the mark left by Adam in his last moments of life. He slowly unbuttoned the cuff of his right sleeve and rolled it up to show me his forearm. There were two cuts, one across the other. The long one went the length of his forearm, the shorter one across it. It was an ugly, jagged version of a cross. He hung his head as I sat there looking at that scar. I can't imagine the weight of carrying your murder victim's last physical act forever as a part of you; forever a reminder. The sadness of that moment overwhelmed me. I quietly thanked him and asked for a break.*

*We spoke for another hour or so. My mom had questions about his parents experience in this. He came across as a very quiet or private person, respectfully answering our questions but not volunteering much. He said he tried to plead guilty, on more than one occasion, but he was talked out of it. He had felt dragged through a system that he didn't want to be in and he felt*

*ashamed each time he sat in court. He did say that he would be there for us, for my daughter, should we ever need anything. If she ever wants to talk to him he'll come, whether next year or ten years from now. I left that meeting with mixed feelings. He didn't remember much about Adam. Most of his remembered experience was his own suffering and loss.*

After the meeting I received an envelope in the mail from the mediator. Inside was some sort of reflection piece, an exercise that was either part of his rehabilitation or maybe something for a parole application. It was in his own writing, of his past behaviors, patterns, trouble he'd been in, his thoughts on the future. A small note was attached from the mediator: "D \_\_\_ said he would like you to have this." It was like being given his personal diary. I was deeply touched and humbled by such a meaningful gift. I think he knew what it was I needed, but maybe wasn't sure how to tell me so he sent me something so personal, so honest, that it closed that divide and showed me what I needed to see. He was remorseful and he was trying.

## **Discussion**

The process of moral justice began with judgement (from afar in my case), a plea from me for RJ (the call); the wrong was confronted with vengeance and mercy; the call was answered; acts of penance were offered; and the process was completed through ritual—a face-to-face conference.

Some laud the cathartic functions of ritual while others consider it to be "rather a type of mechanism that channels the harmful and expansive tendencies of symbolic thought that could result in excessive individual anxiety or the disruption of social harmony" (Bell, 1997).

Catherine Bell further posits that ritual ceremonies have a protective role in society, creating a navigation of conflict by communicating, and "therein releasing, harmful thoughts and emotions" (ibid).

## **The elements of the ritual**

### **Sacred and Profane.**

The act of murder and its aftermath is a deeply human experience. I came across a number of ‘moments’ captured in my written records of similar episodes of feeling time stop, of coming back into myself and my surroundings. Eliade (1987) and Durkheim (1995) both wrote about the sacred and the profane, Durkheim from a more religious perspective, and Eliade including the secular. I would suggest that victim and offender cross a threshold into sacred space and time, where the moral justice ritual is then carried out.

There is no other way to describe the experience of sitting across the table from the individual that took part in the violent murder of someone you love; other than using terms like mystical or sacred. There is a solemn energy, a zone in which it becomes just he and I as everything and everyone around us seemingly vanish. Time passes differently—one hour encompasses the five years passed. There is an absolute sense of trust between us in that moment of time where we both bare our Selves to the Other and communicate on a level of truth that can be felt even in the simplest questions and answers. The weight of the content of the conversation and the meaning beneath what is being discussed makes everything seem a little unreal. Both meetings had moments of the sacred but in different ways.

Van Gennep (1960) cited in Bell (1997) presented a fresh analysis of the notion of the sacred, not as some sort of absolute entity or quality but as a relative one that readily shifts in different situations and at different ritual stages” (Bell, 1997). “Pivoting of the sacred” the ways in which ritual can actually define what is sacred. In the case of the RJ face to face encounter, the space itself as well as the shared experience is the sacred since time and space are felt as having been suspended while in the zone.

Durkheim also talks about collective effervescence. This was most obvious after the verdict of the first trial in which there was an atmosphere of pure frenzy by members of the community brought together to stand witness to justice being exacted. I compared it to the seventeenth century spectacle, with no hyperbole intended.

### **Pollution.**

The right to revenge—or expiation of pollution—is the duty and right of the victim, taken away by Athena in *Oresteia* (Aeschylus, 2002). Accordingly, Athena transferred this right to the newly transformed Eumenides (formerly the Furies or Erinyes) in their new role as the kindly ones, tasked with the role of wisdom at the foot of justice. In theory, we should expect that the jury now holds that role, but just as the Furies were tricked by Athena, we may have been tricked as well. There is no place for revenge in law. In lieu, our courts instead seek to punish and leave the Furies without any role at all, no outlet, left festering and broiling. Athena warned of the consequence of ignoring the Furies... “to infect the soil and sicken all the lands” (Phelps, 2006).

Hatred deprived of an outlet begins to poison a person from within (Murphy & Hampton, 1988). “Purification rites, attempt to remove impersonal forms of contagion that generally afflict the human condition, such as pollution...acquired after experiencing a death” (Bell, 1997).

While this relates more directly to a funeral perhaps, it should also be considered in the case of a murder and thus RJ.

### **Transformation.**

Transformation takes place in different ways during the RJ meeting. The action in itself of coming together and talking brings the participants to a higher moral ground in some ways, using dialogue in place of violence. “Vengefulness can be dissipated by justice rituals that foster

a victim's empathy for the 'devil': the easily demonised person or persons who caused a victim to suffer harm" (Sherman & Strang, 2011).

Levinas believed apology held freedom; the freedom to "alter one's identity across time". That identity could be changed from the identity as a person who has done wrong and been forgiven and thus has moved to a different moral space (Vines, 2007). I believe RJ meetings hold the same power.

The restorative justice research talks about the magic of RJ. According to Sherman and Strang (2011) One aspect of ritual is the transformative effect. I rely on this idea to propose that the so-called magic that takes place in the RJ meeting, the outcome that leads to feelings of lightness and peace, is a process of transformation. 'Victim' and 'offender' enter the room but the individuals leave as he and I: D\_\_\_ and Noelle. Both have regained their position and status as in-group members of society through this transformation. The ritual process, the simple, human act of face-to-face reckoning allows us to lay out the items that have weighted us down, our titles, our passions, the fears and anxieties that have been laid to rest through dialogue. These things are left on that table, in that room. There are no outstanding debts. The bonds to the event and to each other have been severed peacefully. The pollution is contained and closed off from the outside world. The ordeal is now relegated fully into the past. The matter is considered closed.

### **The Call and Answer.**

In the earlier discussion I talked about remorse, my need for remorse, and the internal aspects of remorse that make it inaccessible to outsiders. One of the key pieces of the ritual experience is the answer to my call and the willingness of the offenders to allow me to see their remorse.

In answering the call to face the Other, Tavuchis (1991) explains the meaning of apology in which one says “I have morally transgressed, and I stand facing you to acknowledge and invite you to be just” (Tavuchis, 1991). Jaspers (1947) describes a moral guilt as the private guilt within one’s heart which nobody else can truly know. I suggest he is talking about remorse and that in the RJ ritual the offender invites the victim to look within him at his remorse or moral guilt. In fact he says, “man may only judge another’s moral guilt in the solidarity of charitable struggle”, i.e. voluntarily. “He must invite me to judge his moral guilt” (Jaspers, 1947). Through the apology that followed in both of my meetings, the nakedness and invitation to judge were both offered.

### **The Closure Factor - Moral Justice Ritual**

The face-to-face ritual that took place between us followed the same general principles as those followed by our ancestors in ancient and medieval justice processes. A call was put forth demanding the offender explain himself; to which he answered. This has parallels to the negotiation of peace ritual or offer of compensation. In place of wergild the offenders gave me something different of value, either symbolic or personal. In place of spectacle practices there were moments of humiliation, punishment and repentance in my experience as shown in this thesis and echoed throughout the historical record. Instead of exile or death, they each spent time incarcerated. Although I didn’t talk about it here for reasons of privacy, one of the offenders has taken part in a spiritual journey similar in many ways to the voluntary pilgrimage as part of the composition. Honoring the deceased person is a component of both. Atonement, or promises of future intentions were also offered in both meetings.



## Conclusion

What is closure? As with the duality of justice we have a duality of closure. They are the same thing. The first takes place within an impersonal, legal structure that upholds the laws of our society. The victim is a witness and only a witness, like any other citizen. She has far more at stake in the entirety of the crime but in this piece she is there to see that those who act against our codes are held to account. I began this study believing the justice system had no value for the murder victim's family. I thought it was the path of restorative justice alone that I could credit with my sense of closure. Through the process of autoethnography I learned that I was mistaken. There was an important component of justice that only the juridical system could provide. This public acknowledgement of the injustice committed on one of us and the sentence imposed is the first half of closure – juridical closure. Still, the victim is also a private individual, a human being with intimate ties to the deceased. She has sustained something separate that remains unfulfilled. This moral aspect of human to human obligation hangs in the balance and demands answer. From the very first plea to the offender to do what is just and right, to show remorse, to prove his membership in the same moral community the victim is exercising her innate moral right to justice now in this separate sphere. The moral integrity of the offender who is willing to face the victim and accept her judgement is the one thing that distinguishes him from 'monster'. The courage to stand bare and apologize without excuse is the redeeming act that separates him from 'coward'. These two terms are common on the lips of outraged families on the steps of Law Courts buildings across our country. The injustice is the lack of remorse. The upholding of virtue in the face of a reprehensible wrong is what sustained justice throughout our history and what is missing from our justice system today. Justice, both legal and moral, must be done in order for me to say I have closure.

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