THE MUSLIM/ARAB SULHA AND THE RESTORATIVE JUSTICE MODEL
SAME PURPOSE, DIFFERENT APPROACH

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This Article establishes sulha, the traditional Arab and Islamic dispute resolution practice, as a restorative justice ("RJ") mechanism. The Article compares sulah with western RJ: both practices strive for the same goal, repairing damaged relations, highlights the conceptual and functional similarities, including support for victims, and the importance of perpetrator responsibility. The Article introduces the concept of reintegrative honoring theory ("RHT")—a novel concept that describes the reliance of sulha relies on restoration of victims’ sense of honor. Finally, the Article compares RHT with western reintegrative shaming theory ("RST").

I. INTRODUCTION

Many countries practice traditional RJ, a regular feature of conflict resolution theory.1 RJ emphasizes the importance of victim-centered conflict resolution in contrast to perpetrator-centered retributive justice. In RJ, responsibility plays an important role confronting the consequences of the offense, including the effects and damages and taking positive steps to repair the rift the conflict created.2 Initially, taking responsibility involves addressing the

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damages, encourages mutual empathy, and relieves the sense of shame. In the second stage, responsibility encourages personal change, correcting injurious conduct, coping with addictions, and improving personal skills. In the third stage, responsibility encourages future support for re-integrating the offender into the community.

The role of the community in RJ is critical. Crime greatly affects the community, which is often considered as a secondary victim. Therefore, members of the community play important roles in the process of restoration, and bear responsibility toward the victims, the offenders, and the community as a whole. Community responsibility applies not only to the circumstances leading to the injury, but extends support to the victims by meeting their needs, and to the offenders by providing services and support for their return to proper conduct and responsible membership. We will show significant similarities in community centrality, involvement, and responsibility between RJ and Muslim/Arab sulha.

RJ requires a collaborative process between the parties (victims, offenders, and communities) in order to accomplish the goals. This collaborative process should ideally transform the attitudes of the disputants, their relationship, and their relations with the community. According to RST, RJ stresses the centrality of shame in the creation of a bond between the offender and the community. RSI argues that shaming mobilizes offenders’ conscience and facilitates the construction of relationships of respect and approval between the offender, community, and the victim’s kin group. We will demonstrate the similarity of goals between RJ and the sulha; how and why reintegrative shaming does not occupy the same place in the sulha as in RJ; and how this place is supplanted by a similarly-structured, but differently-applied, reintegrative honoring approach.

Scholars do not agree on the meaning of community and the manner in which community can assume responsibility for RJ

5 Declan Roche, Accountability in Restorative Justice (2003).
7 Heather Strang, Repair or Revenge: Victims and Restorative Justice (2002).
processes. This is particularly problematic in cultures in which traditional communities have been eroded, as in much of Western society. At the same time, there are still many communities worldwide where people live in close proximity and are in daily contact, participate in joint activities, and are acquainted with most members of the community. These communities, we will see, engage in practices very similar to restorative justice.

*Suisha*, a ubiquitous conflict resolution practice in Islam and the Arab world, is predicated on restorative justice principles: a collaborative effort to repair the fabric of the community that was torn by a conflict. *Suisha* transforms the attitudes of the disputants from a desire to avenge to a willingness to forgive, using a set of mediation and arbitration tools. In the case of *suisha*, however, restoration efforts take place at the level of a clan (*hamula*), not of the individual disputant (including, by default, the perpetrators and victims, who are members of their respective clans). Unlike reintegrative shaming, the *suisha* process restores honor of the disputants, particularly the victim's side, and shaming is avoided entirely. RST does not describe the restorative justice process that takes place in the course of the *suisha*. For an accurate description that explains the practice and predicts the outcomes of *suisha*, we propose a (RHT).

In the first part of the Article, we examine RJ theory alongside RST, explores their core assumptions and derivative functionality, and describes their process and intended results. In the second part, we describe and explain *suisha*, and its core theory, RHT. Finally, the discussion section compares the two similar yet different RJ approaches.

II. RESTORATIVE JUSTICE

An ancient and fundamental understanding of the essence of harm to people creates the basis of RJ theory. Although understanding harm manifests differently in different cultures, the approach appears to be common to most traditional societies. Three universal principles exist: (1) harm creates a breach in relations among people; (2) the breach creates an obligation; (3) the obligation creates an opportunity for a corrective action; assuming an understanding of harm and injustice from an unwritten charter which

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9 Id.
10 GERRY JOHNSTONE, RESTORATIVE JUSTICE: IDEAS, VALUES, DEBATES (2d ed. 2002).
unites a society.\textsuperscript{11} Relationships within the community, including mutual obligation, form the charter. Possibilities of mutual responsibility within the community arise from society's mutual relationships.\textsuperscript{12} Scholars of RJ tend to agree that what makes the response of society to the criminal act a "restorative event" is not some specific practice or process but adherence to the principles expressed in the objectives of RJ. The objectives serve as a common ground for the participation of the parties in response to the harm and its consequences.\textsuperscript{13}

The concept of RJ continues to evolve. Different countries interpret RJ differently.\textsuperscript{14} Different languages translate the process differently. These forms of translation results in the emergence of numerous expressions used to describe very similar processes.\textsuperscript{15} Interpretations vary with time, place, country, and the community where it is practiced. RJ scholarship does not provide a uniform definition.

However, it is possible to state the concept of RJ refers to several practices and theories for coping with criminal, civil, ethnic, and other harms, offenses, and social conflicts.\textsuperscript{16} Comprehensively defined, RJ refers to a growing social movement aimed at solving violations of legal and personal rights. The "restorative process" is defined as any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.\textsuperscript{17}

RJ ascribes equal importance to the process and the outcome. In Europe and elsewhere, people are referred to as "parties" and engage in "mediation," as opposed to legal adjudication. The restorative process results in an agreement referred to as a "restora-
tive outcome.” The agreement, usually includes acceptance of responsibility by the parties and referral to programs such as community compensation services, aims at meeting personal and collective needs. In the case of severe offenses, multiple different programs work in combination to provide the necessary restorative support.\(^\text{18}\)

The common approach to RJ involves, as much as possible, the parties to an offense to identify damages, needs, and obligations, and to cope with the conflict together in order to correct the injustice.\(^\text{19}\) The restorative justice model is viewed as pragmatic, offering an alternative based on voluntary dialog between the parties affected by crime. Healing the injuries requires all the parties recognize the harm caused by the crime. Healing means maximum correction of the material and non-material consequences of the crime, and a solution to the needs of all the parties. Therefore, RJ focuses on the needs of the victims, the offenders, and the community, rather than on satisfying abstract legal principles or punishing the offender. All stakeholders affected by an injustice have an opportunity to discuss how they have been affected and decide together what should be done to repair the harm.\(^\text{20}\)

### III. Reintegrative Shaming Theory

RST is one of the foundations of RJ. In the words of Nathan Harris and Shadd Maruna, “[t]he concepts of shame and shaming occupy a central, if controversial, position within the theoretical understanding of restorative justice . . . .”\(^\text{21}\)


\(19\) Howard J. Zehr, Journey to Belonging, in RESTORATIVE JUSTICE: THEORETICAL FOUNDATIONS 21 (Elmar G. M. Weitekamp et al. eds., 2002); Howard J. Zehr, Changing Lenses: A NEW FOCUS FOR CRIME AND JUSTICE (1990); Roche, supra note 5; Mark Umbreit & Marilyn Peterson Armour, RESTORATIVE JUSTICE DIALOGUE: AN ESSENTIAL GUIDE FOR RESEARCH AND PRACTICE (2011).


Australian criminologist John Braithwaite, in conjunction with RJ theory, provides practical tools applied to RJ practice. RSI stresses the centrality of shame in the creation of a bond between the offender and the community. According to Braithwaite, reintegrative shaming helps reintegrate offenders into the community by awakening their conscience and by facilitating the establishment of a relationship of respect and approval between the offender on one hand, and the community and the victim’s kin group on the other.22

Braithwaite maintains that there are two types of shaming: disintegrative and reintegrative; the former “creates a class of outcasts and thus prevents offenders from re-joining the society,” whereas the latter “maintains bonds of respect or love, and sharply terminates disapproval with forgiveness.”23 The second type of shaming, as a theoretical foundation, explores shame as a constructive restorative component within conflict resolution.24 According to criminologists, Hee Joo Kim and Jurg Gerber, RST “underpins the conferencing alternative.”25 Lode Walgrave and Ivo Aertsen similarly situate shaming in RJ practices, arguing: it can be a powerful aspect in the informal process that brings the victim and the offender together in their search for a just restorative solution to their conflict.26 Reintegrative shaming, within the context of community conflicts, “is about the positive power of human relationships to deal with offenses and other types of behaviour that jeopardize harmonious community living.”27

Despite attempts by Braithwaite and others to frame shame as a constructive element, lack of worthiness lies at the base of shame. Educational psychologist, Jessica Van Vliet, ties together the worthiness and social connection elements when she writes, “shame is conceptualized as an assault on the self, where the individual’s self-concept, social connection, and sense of power and control comes under attack.”28

23 Id. at 12.
24 This discussion accepts Braithwaite’s assertion; when referring to RST assume the latter case.
26 Walgrave & Aertsen, supra note 8, at 83.
27 Id. at 85.
IV. Sulha: Restorative Justice in the Muslim and Arab World

A. Essence and Characteristics

Formal legal systems across the Middle East and the Muslim/Arab world usually focus on the infractions, but do not account for the wounds inflicted on the community and the fabric of life; or, more specifically, on the lives of the extended families (hamail, in Arabic) of the disputants.29 According to anthropologist, Victor Ayoub:

"[A]n individual who resorts to the courts does not solve the problem of the group. Whatever the result of the court action, the need for mediation persists because reconciliation of the disputants continues to be considered important in maintaining the solidarity of the group."30

Aseel Ramahi, a Legal Fellow at the American Bar Association Gulf Rule of Law Initiative, provides additional insight into the place of sulha in Arab culture: "Whereas westerners know the primacy of law, the Arabs know the primacy of interpersonal relationships."31 This concept is as organic and intuitive to community-centered cultures as it is bewildering to individualistic ones.

In Muslim/Arab societies, no man or woman is an independent entity that exists outside the context of their extended kin group, and no dispute is limited to the individuals alone. Every conflict immediately evolves into an inter-clan or intra-clan dispute, engulfing dozens, hundreds, sometimes many thousands of kin, spreading across national and international boundaries. This is where the sulha (Arabic for "settlement") comes in.32 Sulha is a

30 Victor F. Ayoub, Conflict Resolution and Social Reorganization in a Lebanese Village, 24 HUM. ORG. 11, 13 (1965).
32 According to The Encyclopedia of Islam, the word 'peace' has two distinct terms in Arabic: salaam and sulh. Salaam refers to the abstract notion of peace, while sulh refers to the literal act of settlement. Majid Khadduri, 'Sulh', in ENCYCLOPAEDIA OF ISLAM 845-46, (Clifford Edmund Bosworth et al. eds., 1997). Anthropologist Sharon Lang provides additional insight into the term sulh. She writes: "Throughout the Galilee, as in many parts of the Middle East, the Arab population has traditionally practiced a ritualized process of conflict resolution known as sulh, a term glossed by informants as 'reconciliation,' 'cooperation,' or 'forgiveness.'" Sharon Lang, Sulha Peacemaking and the Politics of Persuasion, 31 J. OF PALESTINE STUD. 52, 53 (2002).
common Shari'\'a-based traditional restorative justice, conflict management, and resolution process; the only dispute management and resolution tool available to manage the inter-clan and intra-clan disputes in the Muslim/Arab world. It is widely practiced, with variations, throughout the Muslim and Arab world, alongside formal justice mechanisms, where they exist.\textsuperscript{33} In the words of Rahimi: "Sulh is the preferred result and process in any form of dispute resolution."\textsuperscript{34}

The goal of the sulha is to facilitate reconciliation in many types of disputes, from simple honor-damaging insults, such as pushing another man's wife through property disputes to assaults and murders. The severity of the offence is measured by its potential honor-losing effect and by its consequent potential to evolve into a more serious dispute. The general purpose of the sulha, as seen by practitioners, disputants, and the community at large is to mend the social fabric of the community by fixing the relations between the affected people and their relatives, which was harmed by the conflict. As such, it has a clear restorative mandate. To hurt an individual means to hurt an entire community. In the words of three sulha scholars: "the Sulh ritual . . . stresses the close link between the psychological and political dimensions of communal life through its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended."\textsuperscript{35} A sulha committee (jaha) comprising several dignitaries—men with exceptional standing and influence in the community—carry out the reconciliation process, using diverse mediation and arbitration tools in a sequence that can range from months to decades.\textsuperscript{36}

Regarding the relation of the term sulh to the term sulha, Lang writes: "Any specific case of sulh is referred to as a sulha, as is the formal public ceremony that marks the culmination of the peace-making negotiations." \textit{Id.} However, in the north of Israel, the term sulha is used (by practitioners and disputants alike) to denote both the process in general and the ceremony in particular; for example, see the title of Elias Jabbour's book: Sulha—Palestinian Traditional Peacemaking Process.

\textsuperscript{33} This paper uses the terms 'conflict' and 'dispute' interchangeably.

\textsuperscript{34} Al-Ramahi, \textit{supra} note 31, at 1.


\textsuperscript{36} Thus, for example, the conflict between the Hamud and Rian clans from the Kabul village in northern Israel, which erupted on September 7, 1975 following the murder of three members of the Rian clan, was resolved on March 20, 2008 with the signing of a \textit{sulha} agreement. Interview with Sheikh Abu Riad Ali Shtewe, Member, Sulha Comm., in Nazareth, Israel (Oct. 16, 2012).
On the mediation side of the process, the sulha strives to restore the sense of honor of the disputing parties (particularly, but not exclusively, that of the victim's clan), so as to restore trust and facilitate a gradual process of reconciliation between them. On the arbitration side of the process, the sulha creates the mechanisms required to guide (at times, coerce) the disputing clans through difficult periods of stalemate, including severe disagreements, an inability to compromise, or accommodate, or introduce new ideas. The sulha also establishes the obligatory framework of commitment that forces the disputing clans to continue the process despite the difficulties, and to abide by the decisions of the sulha committee.

The sulha transforms the victim's clan from a group of grieving, angry, and provoked disputants, with a desire to avenge and restore lost honor through the infliction of pain on the perceived offender's clan, to a group willing to forgive and reconcile. To this end, sulha makers guide the disputants, separately and together, through an elaborate, seven-step transformative and restorative journey. The stages consist of recruiting the offender's clan, in the immediate aftermath of the conflict; recruiting of the victim's clan; initiating a temporary truce (hudna); negotiating with the disputants; reaching a verdict; and public reconciliation: the sulha ceremony. The process gradually restores the honor of the victim's clan, without damaging that of the perpetrator's. Simultaneously, they also introduce the concept of forgiveness as an individually and communally-preferred option to the conflict and to revenge, leading ultimately to reconciliation.

Most explorations of the sulha process focus on the sulha ceremony, the concluding public ritual that signals the successful culmination of the process. The ceremony is rife with symbolism and emotions, as well as with practical acts of reconciliation. Less has been written about the preceding functional stages of the sulha, from the eruption of a conflict through the determination of the verdict, because these stages take place usually behind the scene, are confidential, mostly invisible to outsiders and the community, and in some cases, can last for years.37

B. The Place of Honor in Sulha

The literature on *sulha* identifies the central role of honor in the practice. As Gellman and Vuinovich note: "the values most applicable to Sulha are honor, saving face, wisdom, generosity, respect, dignity and forgiveness . . ."38 Of the seven values in this list, most are directly related to honor (saving face, wisdom, respect, and dignity), and only two are not directly related to it (generosity and forgiveness). The apparent redundancy further highlights the centrality of honor in *sulha*. Political scientist, Raymond Cohen, also places honor at the core of the hamula-based society: *sulha* being just about the only inter-hamula dispute resolution tool:

In this segmented, honor-based society, clan rivalry is endemic. Conflicts may ignite over matters of honor, which can be anything concerning women, land, property, and one's good name or that of one's family. Equally, a dispute may start out as an argument over something trivial and quickly escalate into an affair of honor.39

Aseel Ramahi connects the issue of honor within *sulha* to pre-Islamic practices, claiming that "[m]any of the rules of conduct practiced before Islam continued to be honoured after the rise of Islam."40 Doron Pely identifies honor as the main instrument of *sulha*, and concludes that:

Contrary to Western ADR where honor plays a secondary role to interests, in the Sulha honor plays a major functional, as well as ritualistic and emotional, role throughout the transition from revenge orientation to forgiveness orientation. Both disputants and interveners use specific honor-enhancing tools during the preliminary stages of the process, as the parties go through the transformation, enhancing their sense of honor and using this bolstered quotient of honor to gradually help convert their anger and frustration to willingness to contribute to communal healing and wellbeing.41

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Further research by Pely led to the postulation and exploration of RHT as the essential link between honor (and its restoration) and the ability of the sulha process to deliver on its RJ promise.\textsuperscript{42} This theory and its application are described below.

V. REINTEGRATIVE HONORING THEORY

RHT provides a new perspective for explaining how the sulha works. The interveners, during the sulha process, manipulating the disputants' perception of their honor, restoring the hurt sense of honor of the victim's clan; and, at the same time, ensures the perpetrator's clan does not experience a degraded sense of honor. The process itself creates the social space needed to allow disputing clans to replace their revenge reflex with increasing willingness to forgive the perpetrator and his clan, which in turn creates the space required for the perpetrator's clan to apologize and make amends, altogether facilitating a simultaneous gradual transformation of the disputants' attitudes from a desire to avenge toward eventual reconciliation. RHT provides a lens for observing, describing, explaining, and predicting the disputants' perception and attitude changes in the course of the sulha process, based on the specific stage of the process.

The concept of reintegrative honoring appears to be similar to RST, with the key difference that RST uses shaming as the main transformative mechanism, whereas RHT views honoring as the central transformative vehicle. RST describes a sequence of shame-acknowledgment-transformation,\textsuperscript{43} as opposed to one of honor-acknowledgment-transformation proscribed by RHT. In RHT the transformation takes place at the level of the disputants' extended kin groups (clans). According to RHT, the focus of attention in this process is the victim's clan, because it is the one group that requires substantial honor restoration and reintegration assistance.

According to anthropologist Jane Schneider: "Shame [is] the reciprocal of honor."\textsuperscript{44} This perspective is helpful when exploring the use of shame and honor in the context of conflict resolution in

\textsuperscript{42} Pely, supra note 37.
\textsuperscript{43} Eliza Ahmed, Nathan Harris, John Braithwaite & Valerie Braithwaite, Shame Management Through Reintegration (2001) [hereinafter Ahmed et al.].
\textsuperscript{44} Jane Schneider, Of Vigilance and Virgins: Honor, Shame and Access to Resources in Mediterranean Societies, 10 Ethnology 1 (1971).
general and sulha in particular. It may be profitable to expand on this pairing, to clarify some of their relevant reciprocal aspects. For example, sociologist Brene Brown defines shame as the “fear of disconnection.” If, then, honor is the reciprocal of shame, then it may be defined as “hope for connection.” Thus, the main difference between reintegrative shaming and honoring lies in the distinction between their prime motivations: fear of disconnection vs. hope for connection. Whereas shame works on the reaction to fear of disconnection (a negative sanction), honoring, the concept at the foundation of the sulha, is predicated on hope for connection (or in many cases, reconnection). According to RST, acceptance of responsibility and an apology by the offender serve to defuse the offender’s shame; by contrast, in RHT, acceptance of responsibility and an apology by leaders of the offending clan infuses the victim’s clan with a sense of restored honor, a central enabler of reconciliation.46

VI. Comparing RJ with Sulha

A. General Comparison

A review of the core principles and practice of RJ reveals significant similarities with indigenous customary justice practices in general and with sulha in particular. George Irani and Nathan Funk define sulha explicitly as an RJ process, when arguing the term sulha “has been used to refer both to a ritualized process of restorative justice and peacemaking and to the actual outcome or condition sealed by that process.” Gellman and Vuinovich also refer to sulha as a restoration practice, writing that: “Sulha furnishes a culturally appropriate means for restoring values.” They also note that “[w]hat Sulha is able to offer more broadly is a systematic process for recognizing a basic human right to dignity through restoration of honor.” These descriptions identify sulha as a restorative practice and as a process based on restoring honor—as opposed to using shaming.

45 Id.
46 RHT is a new proposition that requires additional research and review.
48 Gellman & Vuinovich, supra note 38, at 140.
49 Id.
The common objectives of all RJ programs, derived from universal principles, match the principles of the *sulha* as described here and elsewhere.\(^{50}\) RJ addresses two aspects of harm: doing justice and achieving restoration of relationships between victim and perpetrator. *Sulha* focuses on the same goals, but at the clan and community levels.\(^ {51}\) Both the clans and the community strive to see justice done. The victim’s clan seeks to restore its sense of lost honor; lends a substantial helping hand to achieving that goal, because it affirms the primacy of the familiar moral codes and establishes a sense of stability and confidence. The perpetrator’s clan sees justice enacted in two ways: it is not humiliated to the point of losing its sense of honor, and it sees the *sulha* ritual affirming the moral code of the community by averting the risk of revenge and converting it into familiar and universally accepted paths of apology and forgiveness. The community is always alarmed by inter- and intra-clan disputes, with their destabilizing effects and their questioning of binding moral codes. Members of the community also fear becoming innocent victims if potential acts of violence. The accepted activation of familiar codes serves as a demonstration of justice having been done and of threats having been removed.\(^ {52}\)

Acknowledgement is central to both systems. In the *sulha*, community and interventionists honoring the disputants, by the perpetrator’s clan acknowledging culpability, together with the attendant public apology and other pennants, and by the victim’s clan acknowledging the communal and the perpetrators’ recognition of the wrong done to it. This acknowledgment is reciprocated by agreement to accept the apology and forgive, paving the way to gradual restoration of relations between the clans and throughout the community.\(^ {53}\)

B. *RST vs. RHT*

The efficacy of the *sulha* as a communal RJ practice rests on similar underpinnings as RST, but for the key exception in the sequencing. The process prescribed by the RST follows a shaming-

\(^{50}\) Id.

\(^{51}\) Doron Pely, Resolving Clan-Based Disputes Using the Sulah, the Traditional Dispute Resolution Process of the Middle East, 63 Disp. Resol. J., 80 (2009); Irani & Funk, supra note 47; Mohammed Abu-Nimer, Conflict Resolution Approaches: Western and Middle Eastern Lessons and Possibilities, 55 Am. J. Econ. & Soc. 35 (1996).

\(^{52}\) Pely, supra note 37.

\(^{53}\) Id.
acknowledgement-change-restoration sequence.\textsuperscript{54} RHT follows a process consisting of: honoring-acknowledgement-change-restoration.\textsuperscript{55}

Consistent with RHT, Pely has shown that the mediation and arbitration tools and rituals used by the jaha as they go through the stages of the sulha described above, lead to a gradual restoration of the sense of honor and dignity of the victim's clan. At the same time, the process maintains and, if necessary, restores the sense of honor of the perpetrator's clan.\textsuperscript{56} The end-result of the process is reconciliation and the reintegration of both clans into a non-belligerent relationship, within the larger community. Research has demonstrated that, as the clans' sense of honor is sufficiently restored (in their opinion), and as the jaha succeed in sustaining and enforcing the sense of honor of perpetrator's clan throughout the process, the clan can bring itself to acknowledge the wrong done to the victim and its clan, offer an apology, and make amends—all without feeling they are humiliating themselves in the process. At the same time, as its sense of honor slowly recovers its pre-conflict level, the victim’s clan gradually becomes amenable to forgiving the perpetrator's clan, facilitating the reconciliation stage of the sulha (the sulha ceremony), and completing the restorative cycle of the sulha.\textsuperscript{57}

\section*{C. Support for Victims}

RJ allows victims to have their say, encourages them to express their needs, and enables them to participate in the decision process. In the last three decades, criminal law systems have focused more directly on the needs and interests of victims.\textsuperscript{58} In 1985, the UN General Assembly stated that “[i]nformal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for

\textsuperscript{54} \textit{Ahmed et al.}, supra note 43.

\textsuperscript{55} The sole proposed theoretical foundation for the functioning of the \textit{sulha} is reintegrative honoring theory (RHT), a variant of the veteran Reintegrative Shaming Theory (RST). See \textit{Pely} supra note 37.

\textsuperscript{56} \textit{Pely}, supra note 41.

\textsuperscript{57} \textit{Pely}, supra note 37.

\textsuperscript{58} \textit{James Dignan}, \textit{Understanding Victims and Restorative Justice} (2d ed. 2005).
victims."59 The opinions and interests of the victims are taken into account in the RJ process. Victims can participate in the process in a fair and dignified manner, and obtain rehabilitation and compensation by voicing their opinion in the decision-making process. At times, victims affect the outcome of the process, which makes their reintegration easier.60

Support for victims within the framework of RJ is consistent with the principles of the sulha, where support for the victim’s clan is the only way of dissuading its members from practicing the traditional honor-restoring prerogative of exacting revenge.61 The sulha process provides many examples of overt support for victims. For example, third party interveners approach the residence of the victim’s clan leader in a circumspect way; they request permission to talk (which is in direct contradiction to their elevated status in the community), and do not tell the representatives of the victim’s clan that they are required to do certain things; rather, they implore them to kindly accommodate the needs of the community and perform the rituals required to start the sulha process, such as signing the writ of authorization (tafwiith), or accepting the token of goodwill payment that the perpetrator’s clan offers to get the process started (atwa). These acts by the dignitaries are designed to empower the victim’s clan and start them on the road to restoring their damaged sense of honor.62

Later on, as the sulha process starts in earnest, the first to meet the interveners are the representatives of the victim’s clan. This is done in deference to and in recognition of their loss, pain and damaged sense of honor. During the sulha reconciliation ceremony (the only public ritual in the process), the victim’s clan enters the ceremony venue first, they get seated first and they get to decide whether they keep the cash part of the settlement (diya) or exchange it for additional honor by returning it to the perpetrator’s clan.63

61 Pely, supra note 41.
62 PELY, supra note 37.
63 Id.
D. Repairing Relations Through a Mutually-Acceptable Agreement

In RJ and sulha alike, the moral agreement enables parties to assume responsibility for people they do not know personally. When a moral agreement is breached, a new one must be drafted—to re-define the relations between the parties. When reaching an agreement parties do not intend to merely heal the rift caused by a criminal event, but also to address the relationships affected by the crime; the harm done to relations. Successful repair of the relations strengthens the community and may prevent further damage. Repairing relationships can help—in the future context—to identify basic criminal elements and develop strategies for avoiding crime.

In this sense, there is a clear similarity between sulha and RJ; both approaches focus on three areas: community, victim, and offender. Sulha focuses primarily not just on the victim, but rather, on the victim’s clan. The victim’s clan represents the greatest threat to restoring peace. Revenge, and expansion of the conflict, represents the only traditional way of restoring the damaged sense of honor—apart from the sulha process itself.

RJ tends to focus primarily on the victim, as the core challenge and apex, requiring reintegration if RJ is to succeed. Likewise, the main task of the sulha is to restore the damaged honor of the victim’s clan, without damaging the sense of honor of the perpetrator’s clan. Restoring the sense of honor of the victim’s clan enables them to forgive the perpetrator’s clan and the perpetrator himself, a necessary condition for reconciliation to take place.

The practice of sulha combines family and community conferencing. Family conferencing, in a private caucus format, provides a platform for the victim’s family to vent and to receive the honor-restoring help from the jaha. At the same time, the perpetrator’s family (in this case, clan) gradually comes to terms with the severity of the offense, the consequences for individuals and the community at large, without suffering the loss of honor. A process similar to community conferencing takes place only at the end of the sulha. The entire community comes together to celebrate, ac-

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64 Scanlon, supra note 11.
65 Braithwaite, supra note 22.
66 Pely, supra note 51.
67 Pely, supra note 41, at 67–81.
68 Pely, supra note 37.
knowledge, and empower the reconciliation. This is a time to praise the disputants; to illustrate the importance of reconciliation to community safety and cohesiveness; and to offer support to the disputants during the post-ceremony period. The ceremony also provides a less than subtle hint to the clans: reneging on the terms of the agreement will be considered an affront to the entire community as well as to the host of dignitaries who endorsed the reconciliation.69

E. Accepting Responsibility

The RJ process provides a practical means for offenders to take responsibility for their conduct and consequences. The restorative process transition provides parties with the means to transition between imposition of responsibility as a way of determining legal guilt and the attempt to assume responsibility for harm and its consequences; from passive responsibility imposed on the offender by external players to active responsibility that the community accepts toward those affected by the event.70

In RJ, the effect of assuming responsibility exceeds the meeting of legal requirements, leading to action, apology, atonement, and healing. Accepting responsibility is judged based on improved relations between the offender and the community, and at times, with the victim and the victim’s family. In the RJ process, it is also important to test whether it is right and reasonable to impose responsibility based on the circumstances at hand. For example, whether the environment of the offender played a role in the offense and whether it was possible to take action to correct the effect of the circumstances or the circumstances themselves.71

The sulha process cannot start before the perpetrator’s clan assumes initial responsibility for the offense, both verbally and in writing, by asking the jaha to initiate the sulha, signing the tafweeth (writ of authorization), and offering the atwa (token of good will). The sulha process brings the disputing clans in close contact with the demands of the community to show responsibility by moving

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69 Id.
toward reconciliation.\textsuperscript{72} The community rewards such demonstrations of responsibility by honoring the clans and helping them along the route to restoring honor, which then leads to increased willingness to forgive, the foundation required for reconciliation.

F. \textit{Shaming and Condemnation vs. Honoring}

Similar to the objectives of Western criminal law, condemnation of certain forms of conduct is one of the objectives of RJ. Nevertheless, condemnation in RJ is more flexible than Western criminal law. It takes into account not only the rules that were broken, but also the unique circumstances of the offense, the victim, and the offender. The condemnation is a local component of a larger process, rather than the unique focus of the intervention.\textsuperscript{73}

People generally care how they are perceived by those around them. They want their actions to reflect their choices; they seek responsibility, and enjoy the right to have moral responsibility because of the associated honor. But they "pay" for this right with the obligation they assume, which is manifest in the condemnation that may follow a harmful event. As part of the RJ process, condemnation is personal (of the offender). It establishes a link between him and the harm to values that society seeks to preserve. It can also be more general, regarding the nature of the conduct, seeking to create an attitude of mutual respect for the values that were harmed.\textsuperscript{74}

Condemnation is not part of the \textit{sulha} process, because condemnation is usually accompanied by a sense of loss of honor by the condemned, and that is \textit{not} something that either the victim's or the perpetrator's clans can abide by or benefit from in the \textit{sulha} process. During the \textit{sulha} process, all actions by third-party interveners and by the community are designed to restore the sense of honor of the victim's clan while simultaneously avoiding actions that result in a sense of loss of honor by the perpetrator's clan.\textsuperscript{75}

\textsuperscript{72} Abu-Nimer, \textit{supra} note 51, at 35-52.


\textsuperscript{74} Johnstone, \textit{supra} note 10.

\textsuperscript{75} Pely, \textit{supra} note 41, at 67–81.
VII. Conclusion

The main aim of this Article is to identify sulha as an RJ practice. Sulha identifies a broad focus and functionality with a goal of achieving reconciliation between kin groups (clans) of victim and perpetrator while RJ focuses predominately on individual disputants. However, the reconciliation efforts of the sulha do include the individual perpetrators and victims, as they are integral parts of their respective clans. The Article also introduces the concept of reintegrative honoring theory (RHT), a new concept that has here-tofore been explained only in Doron Pely's book. Furthermore, the Article explains how RHT can be used to describe the rationale of the sulha, and to predict its process and outcome. RHT tracks the restoration of the victim-clan's honor, the concurrent decline in the urge to avenge the harm, and the increase of the willingness to forgive—all essential RJ ingredients, and all essential sulha elements. At the same time, the Article demonstrates that while RST may be the proper RJ vehicle in some cultural contexts, it is not necessarily the proper driver for RJ in honor-based communal cultures. In these cultures, RHT may provide a more successful descriptor and predictor of reconciliation and its process.

The Article illustrates similarities between sulha and western-style RJ. Both processes focus on supporting the victim's side in the dispute. Both sulha and RJ are predicated on the assumption of responsibility by the perpetrator or offender side, an act that has several legal and procedural advantages for both Western and Muslim/Arab disputants. This assumption raises various complications within the sulha process and RJ. The Article addresses some of the differences between sulha and RJ, whereas shaming occupies a central place in RJ, it plays no part in sulha. On the contrary, sulha focuses exclusively on the restoration of honor, representing a sweeping avoidance of all shaming. This shows clearly that RJ is culture-dependent and that similar goals can be attained using diametrically opposed methods.

Resting on radically different premises (RHT vs. RST), sulha and western RJ share significant similarities. These like features can inform further exploration of both approaches. Additionally, comparing and contrasting to sulha and western RJ will provide important insights for future attempts to locate and apply bridging mechanisms that can help understand and apply RJ in multi-cultural environments.