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## **Justice, Zedeka and Ubuntu – A Relational Understanding**

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### **Abstract**

The study of the Roman and Judaeo-Christian “legal systems” makes clear that the understanding of law in the western world, which provides the fundament at use of the legal system, was not formed by biblical testimony, but, instead by the Roman legal tradition. On the other hand, the understanding of law in the African context demonstrates distinct parallels and points of reference to the Biblical model of *Zedeka*. The tradition of law, which we encounter in the model of *Zedeka*, features communal and common elements, which are genuine of most African understandings of pre-colonial legal systems, which have to a certain extend still an influence in that very context.

### **Keywords**

justice, civil law, common law, reconciliation, repentance, truth, guilt, confession, community, zedeka, ubuntu

### **Introduction**

The European law-tradition has developed throughout many centuries. Hereby one has to differentiate the Civil Law and the Common Law. While the Common Law is the legal tradition which evolved in England as soon as the 11<sup>th</sup> Century onwards, with principles that “appear in the most parts

in report judgements, usually of the higher courts, in relation to specific fact situations arising in disputes which courts have adjudicated”<sup>1</sup>, Civil Law has its origin in Roman law.<sup>2</sup> It has *peu-à-peu* developed in Continental Europe and around the world and had a lot of influence on the legal system of some African countries.

The legal tradition of civil law is “highly systematised and structured and relies on declarations of broad, general principles, often ignoring the details.”<sup>3</sup> To characterize it with the words of Crépeau:

“The Civil Law is not simply collection of rules drawn from Roman, ecclesiastical or customary law, and handed down to us in solidified form. The Civil Law, as it was so aptly described by Professor R. David [...] consists essentially for a ‘style’: it is a particular mode of conception, expression and application of the law, and transcends legislative policies that change with the times in the various periods of the history of a people.”<sup>4</sup>

Roman law played a significant role, giving Continental European Civil Law its effective normativity. This legal system will stay in our mind in the following paper.

In the following, I will first draw on the Continental European understanding of law to elaborate the reference to the Roman context.

In a second part, I will highlight the understanding of *Zedeka* (Justice) in the Old Testament context.

Through looking at the two “legal systems” – the Roman and the Judaean-Christian – it becomes obvious that the understanding of law in the western world, which provides the fundament at use of the legal system, was not formed by biblical testimony, but, instead by the Roman legal tradition.

From those recognitions, I will draw in the third part on the relational and reconciliatory understanding of law in the African context and will

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<sup>1</sup> Tetley, William, *Mixed Jurisdiction: common law vs civil law (codified and uncodified) Part I*, p.4, in: [www.unidroit.org/english/publications/review/articles.htm](http://www.unidroit.org/english/publications/review/articles.htm) (12/07/06)

<sup>2</sup> Cf. Yannopoulos, A. N., *Louisiana Civil Law System Coursebook, part I*. Baton Rouge/Louisiana: Clairtor’s Publishing Division, 1977, pp. 9-10. The Roman Law was codified in the *Corpus Juris Civilis* by Justinian. The *Corpus Juris Civilis* is the name given to a four-part compilation of Roman Law prepared between 528 and 534 AD by a commission appointed by Emperor Justinian.

<sup>3</sup> Tetley, *Mixed Jurisdiction...*, p. 4.

<sup>4</sup> Crépeau, P.-A., *Foreword to the Report on the Quebec Civil Code*, vol. 1, “Draft Civil Code”, Editeur Officiel du Québec, Québec, 1978, xxvii-xxviii.

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show that the understanding of law in the African context demonstrates distinct parallels and points of reference to the Biblical model of *Zedeka*. The tradition of law, which we encounter in the model of *Zedeka*, features communal and common elements, which are genuine of most African understandings of pre-colonial legal systems, which have to a certain extent still an influence in that very context.

### **I. The Continental European understanding of criminal law**

#### **1. The Roman criminal law**

The western model of justice not only goes back to the ancient philosophers, but also is connected to a considerable degree to the ancient understanding of justice and law. It can be drawn back to the Roman understanding of justice. Though there have been several changes during the centuries, the essence of the Roman law system has been preserved. This concerns not only specific rules, but also the manner of interpretation of those rules as well as the jurisprudence in general.

The juridical influence of the Romans on different cultures during the last centuries was enormous.<sup>5</sup> Nevertheless, it is also of importance to enlighten the shadow side of that society. One should not easily forget that this same juridical system favoured long-life enslavement and accepted that people were seen as objects and merchandise. Furthermore, that system encouraged permanent conquests. In fact, there was probably no other culture, which practiced enslavement so efficiently and with such fervour as the European and Western culture. This was true from antiquity up to the mid of the 19<sup>th</sup> Century. Most other cultures knew the possibility for a slave to buy oneself out: either he was free again after the payment of his debt or he was released from enslavement after a certain number of years. Practically, in no other culture than the Greek and the Roman, i.e. the European, enslavement was practiced so systematically and life-long. This found its extension in the slave trade of African people.

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<sup>5</sup> Next to the influence that the Roman law had on the civil law tradition, which influenced the whole continental European Sphere, Roman Law had even its influence on Great Britain. Cf. Robin, Evans-Jones, *Roman Law in Scotland and England and the Development of one Law for Britain*, in: "Law Quarterly Review" 115, 1999, pp. 605-630.

Another important aspect, which results from the Roman understanding of justice, is the differentiation between private and public law. The private law is the one valid between two free citizens. The public law was seen as the law used for the State, for the ruler, and for the ruler towards the citizen and *vice versa*. The Roman public law was established to support the ruler and the political system. Clearly, it was not conceived to help the citizen. As soon as the power of the ruler or the Empire was menaced, the citizen was always the one who lost. It was a strictly imperialistic law.

In my opinion, it is not a coincidence that this type of law and understanding of justice was rediscovered in and for the Continental European context, especially in a time where Europe began to colonize the world. For those imperialistic expansions, there was a need for a system of law. For that reason, Europeans drew heavily on the distinction of private and public law.

## 2. The development of Continental European criminal law

Many theories have been developed concerning the origin of criminal justice. Bianchi states that especially in the last years one is wondering about the fact that it has developed in the western tradition – and nearly not in another culture.<sup>6</sup> It is obvious that an objective view on history on that matter is not possible. However, if one looks at different cultures throughout history, it is very difficult to find one with a distinct legal system with a criminal law. Cultural sociologists have searched in vain for that use of justice. The normal procedure in almost all cultures has been, in times of criminality to gather together and try to discuss the issue, make good and repair the caused damage. Even the Romans did not have a criminal law, though they had a gigantic army, conquered nearly the whole known world and had a currency system and were for that times a very progressive community.

Instead, they had three different and separate systems of justice for three different groups in the population: First for free Roman citizens, second for free non-Roman citizens and third for slaves.

Slaves did not have any rights and so no law and justice was applicable to them. They had the status of objects, which could be eliminated at any time.

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<sup>6</sup> Bianchi, Herman, *Alternativen zur Strafjustiz*, München: Kaiser, 1988, pp. 18-19.

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Free non-Roman citizens lived by their own understanding of justice and law. Free Roman citizens regulated their problems and conflicts through private law, even if the case should have been that of a punishable act by the government. Criminal prosecutions did not exist. After all, there was no one to lead the prosecution because attorneys did not exist up to that time and there has not yet been any form of public prosecution.

As we have seen already, next to private law, the Romans also had public law. If someone addressed himself to the state and rulers in a legal matter, he had to fear for his life. The rulers of the Roman Empire were without scruple and only interested in their own well-being.

These actions were not established for the sake and the protection of the citizen, but for political aims and with the intention of fortifying the power of the ruling class and of *Roma aeterna*.

Criminal law as it exists today did not exist in the Roman Empire, nor in ancient Germany, nor in Greece and in old-Semitic times. Criminal law is “a child” of more recent days.

In general, one can track the beginning of criminal law in the 13<sup>th</sup> Century with the event of the Inquisition of the Roman-Catholic Church. As early as in the 15<sup>th</sup> Century, the Inquisition had already established a card-index on a majority of the Spanish population, where they gathered information of the faith-life of each individual. Through that early data bank, the church was able to punish transgressors by keeping their religious, moral and ethical “trespassing” registered.

In this type of structure of registration and punishment, which involves seeing a crime no longer as a matter between two individuals, but as a matter between the citizen and the ruler, the king, or even the Church. Heresy and criminality got the same juridical status: Both had to be handled before a powerful institution. From this point criminal law could be established: A crime was not longer conceived as a matter between the victim and the perpetrator, but was seen as a concern of the ruler and the state and the whole society.

Until nearly the end of the 18<sup>th</sup> Century, continental Europe had lived under various systems of criminal justice that

“similarly built on the concept of expiation and utilized a variety of corporal punishments and tortures. The accused was not an independent party to the proceeding with procedural rights of his own. He had no right to counsel and was required to testify.”<sup>7</sup>

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<sup>7</sup> Mehren, Arthur T. von, Art.: *Criminal Justice in Civil Law Countries*, in: “Encyclopedia Americana”, International Edition. Vol 8, Danbury/Co.: Grolier, 1996, pp. 215-216.

It was shortly before the Industrial Revolution that the system of criminal law was established, as we know it: an organized bureaucracy of attorneys, prisons, police and judiciary. However, a real fight against criminality was neither won in those days nor presently.

## II. The biblical „Zedeka-Model“

“*Zedeka*” is the Hebraic term for justice. As always, one can criticize that translation - as we should see each translated term critically, by the way. The most precise would have been to not translate the term of *Zedeka* into a western language. Each translation is an interpretation, which is weighted by the context of the author. It includes a certain perspective, which is led by the context one is coming from.

The problem with translation and the misunderstandings began already in the first Century B. C., when the Old Testament was translated into Greek – the so-called *Septuaginta*. The following translations into Latin and other European languages have obscured the meaning even more. Furthermore, ancient thinking and later the Christian Philosophy and Theology have interpreted a term in a totally different context, in their own way, with their own perspectives, separate from Biblical understanding.

A lot has been written about *Zedeka* in the last centuries.<sup>8</sup> It is one of the central terms of Jewish thinking, although in Christian philosophy the expression was nearly unknown. It was a similar situation for the western juridical Dogmatic.

Occasionally the term is used in Christian theology to describe the relationship between God and humans. It stresses on how to reach the salvation. There are good ideas behind this approach. But this does not encompass the full understanding of the term *Zedeka*: *Zedeka* is not only seen as the relationship between God and humans, but is also concerned with the interrelationship between humans.

Since the Jewish religion is always very concerned with the present time, it is oriented to the life in the present situation and has a topical interest. Only at the end it is oriented to something hereafter without having a clear picture of it. This worldly aspect of religiosity has fortunately swapped over to Christianity during the last Century.

<sup>8</sup> Cf. e.g.. Rad, Gerhard von., *Theologie des AT I*. München, 1957, p. 318ff.

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In the following I will draw on different criteria, helpful in examining the existence of *Zedeka*. The ideas are mainly taken from the Jewish philosopher Martin Buber.<sup>9</sup> The totality of those criteria and ideas is understood as a kind of correct translation of the term *Zedeka*, which are aspects of the same term, useful in translation. However, we must recognize that no term in western languages provides an all-encompassing translation of *Zedeka*.

The three criteria, which shed light in relation to *Zedeka*, are:

To make something true/ how the truth is established

To confirm the truth

The aspect of Liberation

Ad a: For Martin Buber the kernel of *Zedeka* lies in the term of proof and trial. It is understood as follows: Somebody or something can be seen as *zedek* (here used as an adjective) or a *Zaddik* (here used as a substantive) if he/she or it has passed the examination of virtuous and truthfulness. The term can be used for humans or for things and objects. One can also examine social situations about their “*zedek-kindness*”.

A prime point is that it is never oneself who decides about his or her own “*zedek-ness*”. This is always up to “others” to decide about the “*zedek-ness*” of an individual. Nobody will ever be able to know the truth of a situation by himself through his or her conscience. In fact, there is no word in ancient Hebrew for “conscience”. The Old Testament has no word for it. Even in the LXX the Greek term *syneidesis* is virtually absent. If the concept, which it denotes is not to be regarded as an innovation by the authors of the New Testament, its origin must therefore be sought in a world of Greek rather than Hebrew ideas.<sup>10</sup> The Hebrew culture was, in this sense “other-directed”: Only the “others” knew, and through the others one can know, if one is just.

<sup>9</sup> Buber, Martin, *Bildung, Menschenbild und hebräischer Humanismus*. Paderborn: Schöningh, 2005.

<sup>10</sup> Smaley, S.S., Art.: *Conscience*, in: “New Bible Dictionary”. Third edition. Leicester: Intervarsity Press, 1996, pp. 221-222, 221. Many scholars opt in fact for a Stoic origin of the term conscience. Pierce further believes that the term came into the NT as a result of the troubles at Corinth, in which appeals to ‘conscience’ were being made in order to justify controversial actions, notably the eating of food offered to idols (cf. 1 Cor. 8, 7-13). This would explain the absence of the term from the OT and Gospels, and its prevalence in Paul – especially in the Corinthian letters. Cf. Pierce, C.A., *Conscience in the New Testament*, 1955, p. 60.

Ad b: There exists two very different understanding of the term “truthfulness” – two understandings, which are quite contradictory. The one is the so-called *objective* term for truth. Here we are talking about a truth, which is said to exist independently from human experience and interpretation. This notion of truth originated already among the antique Greek philosophers<sup>11</sup>: “Something is either false or true” – no other option, no other possibility would have been possible – a third answer was not possible. It was indeed possible, later in the history of philosophy, to accept in the philosophy of logic different modalities, i.e. something could have had some truth to a certain extent, but those have only been variations of the principle of objective truthfulness.

This understanding of truth became one of the main principles of European epistemology. Up to the present, whole generations have been indoctrinated with the belief that there is always one form of truthfulness: the objective, and it is the aim of science to describe it.

Next to the objective understanding of truth, there exists the *relational* understanding of truth. This term implies that truth is always related to a social reality, a reality, which is a kind of interpretation of reality. Therefore, truth is something, which exists between humans. One gets into action and so it has to focus on the social reality. Truth exists between social configurations or in dialogue. In trying to paraphrase the term of relational truth it is helpful to make use of the terms sincerity and trustworthiness. Truth without sincerity is untruth, in other words: lying. In general, one can say that adherents to the relational truth are more tolerant.

In my opinion it is an important aspect to look at truth and justice from the perspective of the result and the outcome. Truth does not exist in an empty sphere. Truth has to happen, has to be realised in a determined situation.

If one does not have this formula in mind, one can possibly destroy and act unjust, where one wants to act reasonably and justly.

These two understandings of truth can be decisive for further undertakings of justice. The tension between both can regularly be observed in politics, especially in intercultural gatherings and assemblies.

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<sup>11</sup> Cf. Plato, *Great Dialogues of Plato*. New York: New American Library of World Literature. Inc., 1956. For more recent positions on truth cf.: Descartes, René, *Philosophical Works of Descartes*. New York: Dover Publ., Inc., 1931, two vols.

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The authors of the Bible, in agreement and conformity with the Hebraic tradition, were not dealing with what we call objective truth but with the understanding of relational truth. The situation and the very tradition played a crucial role in the juridical acting.

The tensions can take dramatic dimension if people from the West who have been indoctrinated with the objective understanding of truth are reading the biblical text and can drain whole groups of people in misfortune. Here I have in particular fundamentals in mind, which are reading the Bible through the glasses of true and fiction, through the glasses of objective truth. The Bible does not know an objective truth, which takes the role of an unshakable norm. The authors, inspired by the Holy Ghost, wanted to give help to their people, wanted to give instruction in how far that very life could be shaped and formed more in a human manner.

Ad c: The third aspect of *Zedeka* can be described as liberation. Actually, it is the logical endpoint of the two precedent understandings: in making something true and in confirming truth, liberation is necessary. When people are freed from bondage, from suppression, from restraints, from fear, then justice takes place. In short, we can say that liberation is the result of justice and I would like to add *en surplus* to Bubers position that liberation takes place only through reconciliation.

Justice, which liberates, can never happen through injustice against other people, because injustice is a form of dominion and violence: And it is impossible to drive out violence with violence. Since many hundreds and thousands of years Humans have tried it, in vain!

In global jurisdiction, it is often discussed if one frees people from fear, if one puts into jails those who provoked that fear. One day they will leave the jail anyway. Will they be better Humans? Will they have passed an exam of good behaviour?

Liberation from fear can only be obtained if people are included in the arrangement of their conflicts and if reconciliation among them takes place.

Finally, I would like to add, that liberation in the context of *Zedeka* always implies that the perpetrator has a perspective for his or her future, a perspective of a new beginning in the middle of the civilisation. This also can happen only if the involved people get reconciled.

### III. The relational understanding of Justice in many African communities

The Republic of South Africa is a mixed jurisdiction whose legal system reflects elements of both civil<sup>12</sup> and common law<sup>13</sup> as well as African tribal customary law. This recognition of African customary law (“indigenous law”), which under the present Constitution must be applied where applicable, is subject to the Constitution and any relevant legislation.<sup>14</sup>

This “indigenous law” is positive not negative. It does not say: ‘thou shall not’ but ‘Thou shall’. To put it in the words of the western jurist J.H. Driberg:

“Law (sic.: in an African context) does not create offence, it does not create criminals; it directs how individuals and communities should behave towards each other. Its whole object is to maintain an equilibrium, and the penalties of African law are directed, not against specific infractions, but to the restoration of this equilibrium.”<sup>15</sup>

Therefore African “indigenous law” is a living law. This law, which is a combination of rules of behaviour, is embodied in the flow of human life. Consequently, if one intends to look at the understanding of law and justice in the African context, one must focus on the communal and relational aspects. These two aspects are the most helpful philosophical backgrounds on understanding justice in an African context. To summarize those aspects, the key word *par excellence* in that matter becomes *Ubuntu*.<sup>16</sup>

*Ubuntu* is a concept of law and justice, unfamiliar to many modern non-African societies. It implies a system of justice based on mutual rec-

<sup>12</sup> For more explanations cf. The *Private Law Dictionary*, Art.: „Civil law“, supra note 14 at 62, where it says: “Law whose origin and inspiration are largely drawn from Roman Law.”

<sup>13</sup> Common Law is the foundation of private law in most countries which first received that law as colonies of the British Empire and which, in many cases, have preserved it as independent States of the British Commonwealth. The *Private Law Dictionary*, supra note 14, 72 defines “common law” as follows: “Legal system of England and of those countries which have received English law, as opposed to other legal systems, especially those evolved from Roman Law.”

<sup>14</sup> See the *Constitution of the Republic of South Africa*, sect. 169(3).

<sup>15</sup> Driberg, J.H. quoted in Dany W. Nabudere, *Ubuntu Philosophy. Memory and Reconciliation*, p. 6, in: [www.grandslacs.net/doc/3621.pdf](http://www.grandslacs.net/doc/3621.pdf) (01/04/06).

<sup>16</sup> Cf. Mbigi, Lovemore, *Ubuntu: A Rainbow Celebration of Cultural Diversity*. Pretoria: Ubuntu School of Philosophy, 1995. Shutte, Augustine, *Philosophy for Africa*. Rondebosch, RSA: UCT Press, 1993.

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conciliation. To give a simple example: One person from the village has stolen another one's chicken. When his act is discovered, he is asked to return the chicken and to give an additional chicken to the victim's family to make up for lost resources. And, even more important, he is expected to reach an understanding with the victim's family: to honestly explain his actions and to atone to his neighbours. In this way, the cycle of communal hostility is halted.

It is obvious that the implications of *Ubuntu* go further than chickens and the local communities.

The African philosophy of *Ubuntu* has more and more come into focus. More especially, as a result of the political developments in South Africa and the call made by former-President Thabo Mbeki for an 'African Renaissance'. No less than the South African *Truth and Reconciliation Commission* (TRC) has made use of that philosophical concept. The TRC has gained much attention within and outside of South Africa because it seemed to bear with it much of the hopes for a better South African future, "founded on the recognition of human rights, democracy and peaceful coexistence"<sup>17</sup> and because it represented such a broad spectrum of a deeply divided South African Society. It drew the attention of politicians and social scientists because "it so consciously sought to be inclusive, to hear from both perpetrators and victims, to establish responsibility, to investigate the truth and by so doing, to reconcile victims and perpetrators in order to establish a more just society"<sup>18</sup>.

At the heart of the whole philosophy of TRC, lies the concept of *Ubuntu*<sup>19</sup>, the theoretical centre, based on the thought and ministry of the Chairman of the TRC himself, archbishop Desmond Tutu. The term *Ubuntu* means "people" in numerous Southern African languages and is known particularly from the proverb "*umuntu ngumuntu gabant*", which can be translated as "one only is a person through other persons"<sup>20</sup>. This relational understanding of the person plays a crucial role in the report's concept of reconciliation. Here, justice is done by reconciliation – through the relational perceptive – of the involved people.

<sup>17</sup> Omar, D., Minister of Justice quoted in preface to the *Introduction of the TRC Final Report*, 5 vols. Cape Town: Juta and Co., 1999.

<sup>18</sup> Maclean, I. S., *South African Truth and Reconciliation Commission. Final Report*, in: "Anglican Theological Review", 2000.

<sup>19</sup> Cf.: *TRC Final Report – Vol. V/1*, Sections 80-88.

<sup>20</sup> Cf. *TRC Final Report – Vol. I/5*, Section 85; 39.

It is a striking feature of the TRC that in their search for justice, to make use of the language that typically would be found in theological communication. The report uses terms like “reconciliation”, “repentance”, “truth”, “guilt” and “confession”. Even if the report reminds readers that those terms are used with reference to national reconciliation and unity, and not primarily with a theological idea, it reminds that they are borrowed from the theological sphere and recognise ethical and theological foundations.

Finally, the report recalls for the reader that the whole task of reconciliation and of doing justice does not rely on the work of the TRC and their actions, but on each individual member of society, on the religious communities, the many voluntary organisations, and different government programs.

Justice in the philosophy of *Ubuntu* is not imposed from above; it is not forced from one or another power in the state, or through the government. In contrast, justice in an *Ubuntu* context takes place through interaction of two parties, either of persons or groups. Justice in this context is understood in a relational way – a relation between two individuals or two distinct groups.

In the following and final section, we will trace a parallel from the Hebraic understanding of “justice” (*Zedeka*), which we have analysed above, and the relational understanding of justice found in most African traditional communal thinking through the *Ubuntu* philosophy.

As we have seen above the three characteristics of *Zedeka* can be described as 1. how the truth is established, 2. to confirm the truth, 3. the aspect of liberation

I will briefly recapitulate the main ideas of those three characteristics. Afterward, I will draw on their correlation with the *Ubuntu* philosophy and try to demonstrate how the traditional African understanding of justice is in relation to the biblical understanding of *Zedeka*.

The first meaning of *Zedeka* is to make something true. Hereby we have to respect that this examination of truth and truthfulness comes from outside. It is not the very person who decides on his or her truth/truthfulness. He or she is not even able to decide about it. It is always the “others” who judge truthfulness. There is no possibility to appeal to a certain truth, because the others are the one who decide about the very case.

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The second meaning of *Zedeka* concerns confirming the truth. Hereby we have to differentiate between two classical understandings of truth: the objective truth and the relational truth. The later encompasses the meaning, which lies behind the Old Testament term of *Zedeka*. This relational understanding of truth is always related to a social reality, and understands that truth occurs and exists between humans.

The third meaning of *Zedeka* is related to the aspect of liberation. To realise *Zedeka* one has to be liberated from all different kind of fears. To overcome those fears, people have to be included in the arrangement of their conflicts. This inclusion contains the victim but also the perpetrator. Both of them, in the understanding of *Zedeka* should have a perspective aftermath.

Those three aspects of *Zedeka* are helpful if we want to draw a certain parallel to the traditional African understanding of justice with regard to the *Ubuntu* philosophy.

The biblical model of *Zedeka* stresses the “other” and the fact that judgement comes from outside. It also stresses on the relational truth, which takes into account the social reality and it stresses on the inclusive factor, that both sides, the perpetrator and the victim have to be involved and to be reconciled.

If we compare those main aspects with the *Ubuntu* philosophy, it is obvious that both models of justice have a close liaison. Like the *Zedeka*-model, the social reality and the surrounding situation play a crucial role in *Ubuntu* philosophy. The mutuality between the victims and individuals is important: It is a relational understanding of the persons, which can be seen fundamental in the African understanding of justice. Justice only occurs through the interaction of two persons in a reconciliatory way – as it occurs in the *Zedeka* model, where both sides are always included.

In my opinion, the similarities and parallels of the understanding of justice resp. *Zedeka* on the one hand in the Old Testament times, and on the other hand in an African customary law (“indigenous law”) like the *Ubuntu* philosophy, they exist because both models are rooted in a context of *primary religiosity*<sup>21</sup>. Primary religiosity includes the more traditional worldviews and religions. Primary religions are non-missionary. Primary religions are religions, which are struggling with daily life problems of their adherents, which are ethnical bound. Their way of thinking is related

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<sup>21</sup> Sundermeier, Theo, *Was ist Religion?* Gütersloh: Chr. Kaiser, 1999, pp. 34-42.

to the life of the community, which wants to increase the living standard and the whole social situation. Elements of that primary religious experience are found in all religions. They are not to be understood as “survivals” of former times as E.B. Tylors quoted them, which are overtaken by cultural and scientific developments. In contrary, they are anthropological basic experiences, which are constitutive for every religion. Religions are not developing from one more primitive phase to a higher one, but the religious experience is changing with the world experience as far as the *New* is always oriented and integrated in the primary experience.<sup>22</sup>

It is understandable that criminal law and justice in this context have as the primary aim, re-establishing the social order and the communal relationship to obtain a status of reconciliation in between the individuals of that very society. In that kind of society one is not interested in punishing someone individually without reparation towards the victim. One expects reparation towards the community and the communal order, so that people and society members can be reconciled.

Reconciliation in the traditional setting as it can be found in the Biblical and the African context can be seen as a reestablishment of relationships between people and also with their God and spirits who are seen as witnesses and lively participants.

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<sup>22</sup> Primary religiosity has to be seen in relation to ‘secondary religiosity’, which includes religions which occurred at a later time, and that were, and still are, overwhelming ‘primary religiosity’, without replacing them. They are missionary-minded, as they represent a truth that applies to all and not just to a specific people.