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IS THERE A PLACE FOR FORGIVENESS IN THE JUSTICE SYSTEM?

*Everett L. Worthington, Jr.**

Transgressions unbalance the scales of justice, socially, emotionally, and sometimes politically. Unforgiveness can be seen as a set of “cold” emotions involving resentment, bitterness, hostility, anger, etc. that occur after ruminating about the transgression. People reduce unforgiveness in many ways. Justice reduces unforgiveness by balancing the social — and to some extent emotional — books. Forgiveness involves super-imposing emotions of empathy, compassion and other-oriented altruistic love (or even romantic love) on top of “hot” anger at the transgression or “cold” unforgiveness emotions. Justice involves social processes, while forgiveness occurs within individuals, even though social processes may hinder or facilitate forgiveness. Yet, there is a place for forgiveness in the justice system, but it is in the background rather than foreground.

There is something deep within almost every person that desires justice. Our spirits rail against unfairness and inequity. Unfortunately for most people, this deep-seated desire for justice is virtually a one-way street. The outrage of injustice happens almost exclusively when we are on the light end of the scales of justice — when we see ourselves as the victim, the one transgressed against. In those cases, we cry out for a balancing of the scales. We demand justice.

There is something deep within almost every person that desires love, mercy, and grace. Love, mercy and grace are closer to being two-way streets than is justice. In a kind of “justice of love,” we are able to reciprocate love when we receive it, balancing the scales of love. The marvel of humanity, however, is that we sometimes are able to give love to those we do not think deserve love. To make that miracle of love, grace, and mercy happen requires *empa-*

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thy. We cannot meet the needs of others if we cannot empathetically experience what they experience.

A PERSONAL EXPERIENCE

I must admit to you that this struggle between justice and love, mercy and grace is not just of academic interest to me. Four years ago, in a botched home burglary, some youths murdered my mother, bludgeoning her with a crowbar.

At the beginning, I felt the rage and hatred for the youths, which you might expect. As I walked the floor late at night, fantasizing about beating the offenders' brains out with a baseball bat, the irony of having investigated forgiveness as a scientist, professed forgiveness as a Christian, counseled forgiveness as a therapist, and written of forgiveness as an author struck me. In fact, I had just finished a book co-authored with two of my graduate students, *To Forgive Is Human*,¹ based on seven years of psychological research. We described a five-step method of forgiving that centered on empathy for the transgressor.²

As I began to apply the method we had found successful in clinical research,³ I imagined the way a youth might feel who planned a perfect robbery on New Year's eve. Suddenly, his careful plans would have been destroyed when an old woman walked in and caught him. He saw the certainty of jail flash before his eyes and reached out in anger to beat back the threat to his future and his happiness with a crowbar.

I could understand his motives and his feelings. Then I realized that I had said aloud that I could beat this youth's brains out with a baseball bat — to do to him what he had done to my mother. We were the same at heart. Yet as a Christian, I knew I was forgiven by God for my evil heart. Who, then, was I, to deny forgiveness to the youth? I forgave.

1. MICHAEL E. McCULLOUGH ET AL., *TO FORGIVE IS HUMAN: HOW TO PUT YOUR PAST IN THE PAST* (1997).

2. See Michael E. McCullough, et al., *Interpersonal Forgiving in Close Relationships: II. Theoretical Elaboration and Measurement*, 75 J. PERSONALITY & SOC. PSYCHOL. 1586 (1998); see generally McCULLOUGH ET AL., *TO FORGIVE IS HUMAN*, *supra* note 1.

3. See Michael E. McCullough & Everett L. Worthington, Jr., *Promoting Forgiveness: The Comparison of Two Brief Psychoeducational Interventions with a Waiting-List Control*, 40 COUNSELING & VALUES 55 (1995); see also Everett L. Worthington, Jr. et al., *Forgiving Usually Takes Time: A Lesson Learned by Studying Group Interventions to Promote Forgiveness*, 28 J. PSYCHOL. & THEOLOGY 3-20 (2000).

**DEALING WITH CIVIL, CRIMINAL AND PERSONAL
TRANSGRESSIONS**

Civil, criminal and personal transgressions occur within the justice system. Besides the societal issues involved in transgressions, many parties experience unforgiveness. Below I define unforgiveness, forgiveness and reconciliation, and analyze the role of forgiveness, if any, in the justice system.

Unforgiveness

Unforgiveness is defined as a complex of "cold" emotions involving hatred, anger, resentment, bitterness, hostility and perhaps fear. Those emotions arise from ruminating about the transgression and motivate a rapid reduction of unforgiveness.

A model of unforgiveness is embedded within this definition.⁴ Unforgiveness begins with a transgression.⁵ A person reacts with "hot" emotions of anger and fear.⁶ Anger is experienced to the extent that a person's sense of justice is perceived to be violated.⁷ Fear is experienced to the extent that the person is perceived to have been hurt and is concerned about future harm.⁸ That anger and fear are not unforgiveness. Unforgiveness occurs as a person ruminates about the transgression and its consequences.⁹ Over time a sense of resentment, bitterness, hostility, hatred, anger and fear, coalesce into a cold complex of emotions that we call unforgiveness.¹⁰ Unforgiveness is an unpleasant state of affairs and motivates people to reduce their unforgiveness. There are many ways to reduce unforgiveness. Forgiveness is only one of those ways.

I have summarized many of those ways elsewhere.¹¹ Many ways to reduce unforgiveness center around promoting different ways to feel that justice has been served. These involve achieving successful retaliation or revenge, which can reduce a person's desire for retribution because the person believes that justice has occurred.

4. See fig. 1 *infra* p. 1734.

5. See *id.* box 1.

6. See *id.* box 3.

7. See *id.* box 2.

8. See *id.* box 2.

9. See *id.* box 4.

10. See *id.* box 5.

11. See Everett L. Worthington, Jr., *Unforgiveness, Forgiveness, and Reconciliation and Their Implications for Societal Interventions*, in *FORGIVENESS AND RECONCILIATION: RELIGIOUS CONTRIBUTIONS TO CONFLICT RESOLUTION* (Rodney Peterson & Ray Helnick eds., in press).

Other ways of recognizing that justice has been done, and reducing unforgiveness, involve traditional punitive justice as well as restorative justice.¹² If an offender makes fair restitution, the victim can feel that justice has prevailed. Yet another way to believe that justice has or will be done is to hand the judgment over to God. This can be done with a desire for seeing God's justice and punishment poured out on the offender or it can be done as an act of faith, trusting that God knows more about people's hearts than does the person who is relinquishing judgment to God.

Forgiveness

As described in the lower part of Figure 1, forgiveness is an emotional super-position or juxtaposition of different emotions onto the emotional complex of unforgiveness.¹³ Emotional attachments to memories of transgressions prevent a person from ever experiencing unforgiveness to the same intensity or in the same way again¹⁴ because unforgiveness is reduced¹⁵ and forgiveness is experienced.¹⁶

Forgiveness is an individual phenomenon in which emotions are changed. Emotions involve not just feelings but also the person's body, brain chemistry, hormones, behavior, and mental processes.¹⁷ It obviously matters what emotion is juxtaposed over the cold emotions of unforgiveness. Forgiveness involves emotions associated with love, empathy and compassion for the person who has offended or transgressed against a victim. (Recall the empathy I experienced for the murderer of my mother.) Forgiveness is furthered by a sense of humility, which sees oneself as capable of perpetrating great evils and harm to others, regardless of whether one has ever actually perpetrated such harm. Forgiveness also involves a sense of gratitude at having experienced forgiveness oneself for having hurt others in the past. That sense of having been forgiven can involve: (1) forgiveness by another person or, as in the case of the murder of my mother; or (2) forgiveness by the Divine. So forgiveness involves a complex of positive other-oriented emotions, which contaminate the hot emotions springing from the transgres-

12. See HOWARD ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* (1995).

13. See fig. 1, *infra* p. 1734, box 6.

14. See *id.* box 7.

15. See *id.* box 8.

16. See *id.* box 9.

17. See ANTONIO R. DAMASIO, *THE FEELING OF WHAT HAPPENS: BODY AND EMOTION IN THE MAKING OF CONSCIOUSNESS* 35-81 (1999).

sion or the cold emotions of unforgiveness that arise out of ruminating about hurts or offenses.

Reconciliation

Reconciliation restores trust in a relationship where such trust has been violated by a transgression. Transgressions might be one-sided or might have occurred on both sides. Reconciliation depends on the trustworthy behaviors of both parties, not just the granting of forgiveness. Reconciliation often, though not always, involves a sincere and honest conversation about forgiveness.¹⁸ This is because forgiveness is something within a person while reconciliation is something between people. Forgiveness is something granted to another person, reconciliation is something that people work together to earn,¹⁹ seeking forgiveness from a victim, expressing forgiveness to an offender and accepting forgiveness that has been offered are all part of reconciliation.²⁰

TRADITIONAL JUSTICE AND THE PROBLEM OF PERCEPTION

Humans see things through their own eyes. It takes a lot of effort and a certain amount of grace to be able to see things through someone else's eyes.

So when we perceive that an injustice has been done to us, we seek what is natural — repayment for that cost that we incurred, whether we had lost a loved one, property, peace of mind, physical well-being or emotional well-being.

In a two-party justice system consisting of offender and victim, the problem of differing perspectives makes it virtually impossible for both people to believe that justice has been done, that the scales have been balanced. Vigilante justice is a desire to balance the scales of justice on our own as an individual or group. But vigilante justice is seldom perceived as just by both victim and offender. We perceive wounds to ourselves as being more painful than wounds we inflict to repay the transgression. In revenge, we

18. See Everett L. Worthington, Jr. & Dewitt T. Drinkard, *Promoting Reconciliation through Psychoeducational and Therapeutic Interventions*, 1 *J. MARITAL & FAM. THERAPY* 93-101 (2000).

19. See Everett L. Worthington, Jr., *The Pyramid Model of Forgiveness: Some Interdisciplinary Speculations About Unforgiveness and the Promotion of Forgiveness*, in *DIMENSIONS OF FORGIVENESS: PSYCHOLOGICAL RESEARCH AND THEOLOGICAL PERSPECTIVES* 107-37 (Everett L. Worthington, Jr. ed., 1998).

20. See Robert D. Enright & the Human Development Study Group, *Counseling within the Forgiveness Triad: On Forgiving, Receiving Forgiveness, and Self-forgiveness*, 40 *COUNSELING & VALUES* 107-26 (1996).

typically repay more than we incurred. Vigilante justice leads to escalation of hostilities.

Even civil or legal justice is often perceived inequitable. For example, if an intruder breaks into my home and steals \$1000 and that intruder is apprehended, goes to court and is told to repay the money, I still do not feel that justice has been served. True, I have my \$1000 back, but I have lost my sense of security, my trust in human nature and even my belief in justice. To feel that the books of justice have been balanced, I will want to be paid punitive damages — say one million dollars — which will ease the emotional suffering that I have undergone).

On the other hand, when the perpetrator is apprehended and forced to pay \$1000, he might believe that justice has not been served. After all, a lot of effort and energy went into planning the burglary. The suffering and humiliation that the perpetrator has experienced at the hands of the police and in the justice system is certainly something that has put him or her at a social disadvantage for the rest of his life. Being asked to repay the money adds insult to injury and perpetuates a desire to commit additional crimes to get the scales back into balance. If punitive damages are added on top of the restoration of property, or if a jail sentence is added, then the sense of injustice and unfairness felt by the burglar is fueled even more deeply. The person becomes even more volatile once restored to society.

The justice system understands that individual senses of justice reveal individual perceptions. Therefore, the justice system establishes a third party who can arbitrate using a process that can be accepted as fair.

THREE PARTIES IN THE JUSTICE SYSTEM

When a crime or civil dispute occurs, three parties are involved: (a) a victim and supporters of the victim; (b) an offender and supporters of the offender; and (c) society, or two plaintiffs and society. Each of those has different interests and all are involved in resolving crimes and civil disputes justly. The justice system seeks to balance the social scales. The concern has traditionally weighed toward helping victims feel that the social scales are more balanced by punishing offenders. However, mostly, in the traditional litigative justice system, the victim's *emotional* scales are ignored. At best, it is assumed that rendering a fair verdict or judgment will balance the emotional scales. As I have argued above, though, unforgiveness might persist.

Unforgiveness might continue to torture the victim and create costs to the victim that go beyond the crime itself. For example, unforgiveness can result in decreases in health, troubled mental health, and interpersonal costs due to chronic anger and bitterness.²¹

There appear to be two ways that a victim can reduce her sense of injustice and give up unforgiveness. The first is in some way to see that the scales of justice become more balanced. The other is to forgive. Pursuing justice seeks a reestablishment of a *power*. The crime reduces the power and status of the victim. A victim's sense of power can be reestablished through balancing the social books (e.g., by restitution or incarceration of the offender) and balancing the emotional books (e.g., by seeing esteem lowering acts by the offender or through publicly humiliating the offender). In each, raising the esteem of the victim increases the victim's relative power — either by seeking revenge or seeing the criminal punished.

With forgiveness, the victim seems to be more motivated by love for a needy offender than by asserting power relative to a formerly powerful offender. Forgiveness is an altruistic gift to someone who needs forgiveness to restore him or her to a position of moral parity, whereas reducing unforgiveness through justice or vengeance is aimed at either pulling down the offender from a pedestal or elevating oneself above (or at least equal to) the offender. In forgiveness there is a recognition, as Aleksandr Solzhenitsyn remarked, that every person is a mixture of good and evil and people cannot destroy the evil with our hearts without also destroying the good.²²

Offender

The offender has an important stake in the justice system. The offender suffers a loss of esteem as well as potential penalties including financial costs and incarceration. The offender will also bear the stigma of having been convicted of a crime for the balance of his or her life. The offender might or might not want to restore what was taken from the victim in the course and aftermath of the crime (e.g., property, psychological well-being and physical well-being). The offender might or might not feel deserving of a verdict

21. See Carl E. Thoresen, et al, *Forgiveness and Health: An Unanswered Question*, in *FORGIVENESS: THEORY, RESEARCH, AND PRACTICE* 254-280 (Michael E. McCullough et al. eds., 2000).

22. See ALEKSANDR SOLZHENITSYN, *THE GULAG ARCHIPELAGO: 1918-1956* (1985).

that attempts to equalize suffering through incarceration of the offender and punitive fines. As I illustrated earlier, victim and offender will *necessarily* have different perceptions of what is needed to *fairly* balance the scales, but both will be highly emotionally involved.

Society

The third player in this triumvirate is society as represented by the trier of fact, the jury, and the observing public. Society's main interest traditionally has been in protecting the public, deterring future crimes, and providing for a fair and equitable balancing of the interests of victim and perpetrator to the extent possible. This balances the social books. Generally, the role of society has been more involved with conflict-resolution between offender and victim than in restitution, healing, and reconciliation after the conflict has been resolved. This balances the emotional books.

Yet, once society is involved, there is a third set of books to balance — the political books. Issues about forgiveness can work their way into society's consciousness, particularly if some members of society believe a verdict to be unjust. Notable examples of this are the O. J. Simpson and Rodney King verdicts, which displeased some (perhaps most) members of society. In the Simpson case, the legal system's differing verdicts in criminal and civil systems provided a way of resolving a conflict and rebalancing the political books. The riots following the King verdict were vigilante attempts to balance the political books.

BALANCING THREE SETS OF BOOKS

We have arrived at the need to balance three sets of books: social, emotional, and political. Our traditional justice system has done a decent job (with some notable exceptions) of balancing the social and political books. It has given little attention to the emotional books. If anything, it is typically assumed that emotions are private and should be dealt with privately. Traditional justice has been conceived as impartial, and has been equated with being emotion-free, or at least emotion-neutral.

Recall my mother's murder. I forgave the murder in my heart. No one knew that. Yet I have now communicated my forgiveness publicly (which is different from forgiving). Forgiveness is an intrapersonal act, but its communication is an interpersonal and perhaps communal act. Those two ideas must be separated conceptually even though they are obviously related to each other.

Focusing on forgiveness simply as an intrapersonal event that has no interpersonal or societal consequences is an inadequate total picture.

Most people would probably concur that we want people to reduce their feelings of unforgiveness to the extent possible. In some cases, this will be aided if we can talk openly about forgiving under controllable circumstances. We have to consider also the conversation that occurs around forgiveness and provide a structured conversation around forgiveness.

Previously, the justice system has not had a conversation about forgiveness. The rise of a victim's rights movement has brought the victim into the societal picture. The restorative justice movement is bringing society into the picture. Restorative justice is aimed not just in punishing the offender but also in restoring the offender to his or her community, and the victim to his or her community, by providing a *conversation* within the community about crime and its resolution.

A (RELATIVELY) NEW SYSTEM IN MODERN JURISPRUDENCE

A restorative justice movement is now being practiced in several states.²³ In that process, a person who has committed a crime is brought in for face-to-face contact with the victim or the victim's family. Third parties (i.e., representatives of society) are typically present to ensure fairness. The perpetrator is allowed to confess his or her guilt, express his or her regret, apologize and offer to make restitution to restore the sense of fairness and justice within the victim's social and personal world. While these expressions of remorse and offers of restitution might trigger an experience of forgiveness in the victim, the essence of this restorative justice movement is to provide a kinder and gentler system of justice that will meet people's desire for justice deep within, and will help promote a restoration of the perpetrator to the community. Restorative justice, then, is not primarily about forgiveness. Rather, it is about a form of justice that values reconciliation over retribution.

In restorative justice, victims and community representatives want to see the offender feel and show remorse. They want to hear a humble apology. Further, offenders (and community representatives) want to know that a victim is willing to grant mercy. This is justice, not forgiveness. It is aimed more at balancing emotional and social books than at replacing unforgiveness with the empathy,

23. See ZEHR, *supra* note 12.

love, and compassion of forgiveness. At best it is a severe mercy. It is grudging forgiveness, which satisfies the grudge by helping the victim feel free of hate and righteously magnanimous for granting mercy.

Unrestrained forgiveness is something else. It is giving a gift of grace not purchased by apology, repentance, and restitution — though such actions might occur.

The justice system is not able to truly employ forgiveness to deal with crimes. At best, it can attempt the severe mercy of *restorative* justice. Forgiveness happens in the hearts of the victims, apart from the ceremonies of restorative justice. Perhaps some people forgive before the meetings. Perhaps restorative justice takes a person one-mile down the hundred miles toward the eradication of unforgiveness, perhaps ninety-nine miles. Then forgiveness completes the journey.

THE ROLES OF FORGIVENESS IN THE JUSTICE SYSTEM

Based on this analysis, you can probably see that I believe that the justice system can be configured to help reduce unforgiveness through the application of fair procedures and processes in which members can feel some trust. In the justice system, the reduction of unforgiveness and the balancing of social, political and emotional books are more important than the promotion of forgiveness.

Hearing Testimony Can Produce Empathy

Nonetheless, there are some aspects of the justice system that might help people forgive. For example, a victim can listen to the testimony of a perpetrator and might develop a sense of compassion, empathy, or even love for that perpetrator while justice is being acted out in court. Thus, at the personal level, forgiveness must be built within the heart of the victim.

Building in Restorative Justice Procedures

In the traditional justice system, though, there are few opportunities for reconciliation between victim and perpetrator. It is only as we move more toward restorative justice that reconciliation begins to be more of a probability. Forgiveness is more likely with restorative justice than traditional justice.

Introducing Forgiveness around the Edges through Compassionate Practice

Because the justice system is concerned primarily with justice, its major emphasis will be always to establish fair outcomes that can reduce unforgiveness. But there is little room for actually producing forgiveness within the justice system. Forgiveness occurs as people are stimulated to empathy, compassion, love, humility, and gratitude. Those qualities are not commonly experienced within the justice system, though they may indeed occur as a consequence of (1) rulings by a merciful judge; (2) agreements by compassionate attorneys who, in conjunction with each other, work out arrangements that plaintiffs can be satisfied with; (3) interventions that accomplish restorative justice; or (4) pardons granted by an executive.

Involving the Wider Community

It seems to me that the involvement of the wider community into the justice system offers another promise for bringing forgiveness into that system. As healing communities, such as churches, neighborhood organizations or civic groups can be invited into the process of resolving harms, forgiveness within the heart of both victim and perpetrator can occur. Therefore, there is no formula that says that the mere participation of a community will promote forgiveness. However, communities have a stake in promoting reintegration of victim and offender. Furthermore, personal relationships can be powerful motivators of restoration.

Communities can be divisive as well as oriented toward healing. In many ways, hatred, prejudice and the economic and psychological roots of crime are like an airborne virus that can be passed easily within a community. But forgiveness is an individual dose of medicine to fight against the disease. The system of justice cannot fully bring forgiveness into people's lives, though it can provide opportunities that make forgiveness and reconciliation more or less likely. Forgiveness needs to occur person by person — in the hearts of attorneys and judges, in the hearts of victims and perpetrators, in the hearts of community members. Each person desires justice and is starved to give and receive love. Both forgiveness and justice are operating together in human hearts, and one should not try to remove either from the heart, for that cannot be done without destroying the heart.

Promoting Reconciliation

Reconciliation between perpetrators and victims, between perpetrators and society, and between victims and society is like building a bridge over a deep chasm.²⁴ One does not build a bridge by demanding that a meeting occur in thin air over the middle of the chasm, for that would lead to both sides falling. Rather, building the bridge of reconciliation starts at each side and the seeking and granting of forgiveness is the motive that helps people move away from their own entrenched self-interest, out toward the middle where they can meet. Reconciliation does not presume that each party is *equally* culpable.²⁵ It does presume that each party has wounds and probably has self-justification for pursuing centrifugal acts rather than centripetal acts. The motive of forgiveness helps people begin to walk the bridge *toward* a meeting place. The experience of forgiveness can occur at any point along the bridge to reconciliation.

FORGIVENESS OF SELF

I have been primarily concerned to this point with relationships among offender, victim, and society. One other important venue must be considered. I am friends with a successful defense attorney, and in talking to him over the course of years, I was struck at how much he wrestles with his own conscience in his private time. On one hand, he is completely committed to providing the best defense that can be provided for any defendant. He has been extremely successful at the outcomes of his cases. On the other hand, he wrestles with moral issues. In one case a defendant told him that the defendant had indeed committed the murder with which he was charged. Yet the attorney knew that the police had little evidence and a conviction was extremely unlikely. The case eventually did go to trial, and the self-confessed (to his attorney) murderer was acquitted. While this attorney had behaved within legal and ethical guidelines, the attorney's sense of morality had been offended, and he had a difficult time forgiving *himself* in retrospect. During the case, he had convinced himself that he was doing the right thing. Later, his doubts haunted him.

Therefore, forgiveness of *self* is yet another venue for forgiveness around the edges of the justice system. Judges make errors.

24. See Worthington & Drinkard, *supra* note 18, at 95.

25. See Jeanne M. Woods, *Reconciling reconciliation*, 3 UCLA J. INT'L L. & FOREIGN AFF. 81-127 (1998).

Juries make errors or are stampeded into awarding inequitable damages. Attorneys face irreconcilable choices, or they look back and admit to themselves that they did not give their best to a defense or prosecution. Attending to self-forgiveness within law school and providing continuing education to deal with forgiveness of self seem important, not as the major focus of law, but as an enduring subtext.

IS THERE A PLACE FOR FORGIVENESS?

I see the main role of forgiveness within the justice system as being less involved in the justice system *per se* than potentially within each individual participant in the justice system. Can each participant empathize with the other participants? Can each individual feel compassion for the others? Can each individual love the others? Can each individual experience a putting aside of pride and an active sense of humility? Can each individual experience and recall with gratitude his or her own receipt of forgiveness from others? If there is hope for forgiveness within the justice system, this is the hope of forgiveness.

Forgiveness is more a by-product of sensitivity of individuals and of establishing structures that permit and encourage sensitivity within the justice system than it is a goal of the justice system. The goals of justice are (1) provide fair (to society, to victim and perpetrator, to plaintiffs) post-injustice settlements; and (2) protect society from future injustices. Such goals can be pursued with a hard heart aimed mostly at retribution and motivated by unforgiveness. Or such goals can be pursued with a soft heart aimed at restitution, restoration, and reconciliation, which are motivated by and motivate forgiveness. Note that in both instances, justice is pursued. I believe that the justice system operates best when reconciliation is the motivation, not retribution. There is a place for forgiveness in the justice system, but it is background, not foreground.

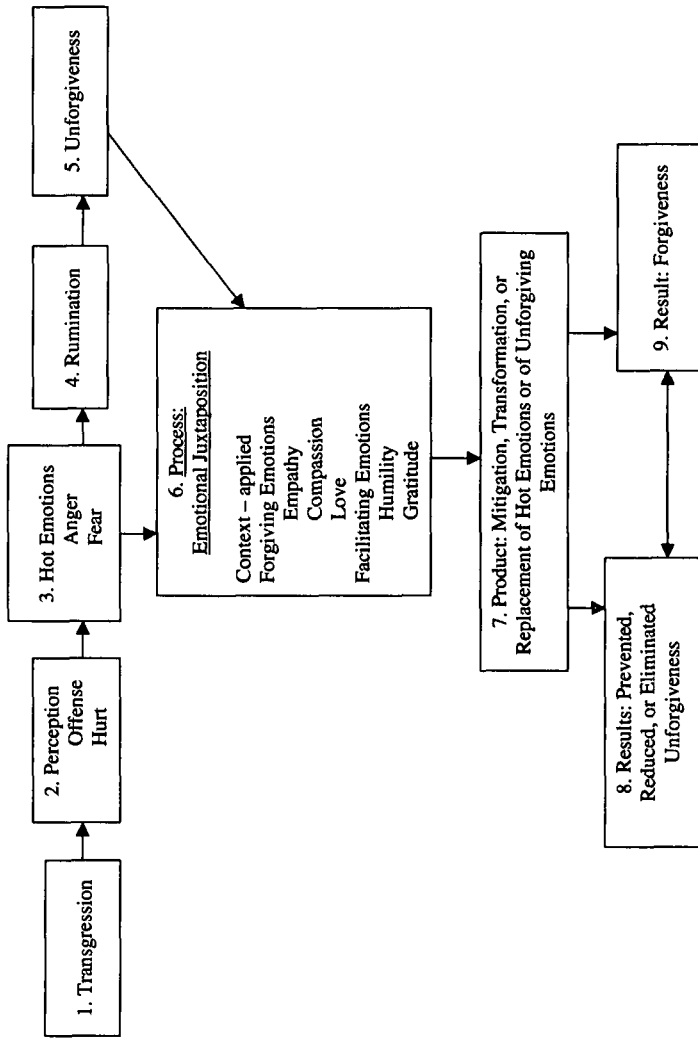


Figure 1. A conceptual model for reducing unforgiveness and promoting forgiveness through emotional juxtaposition.