

Law, Religion and Reconciliation in Africa



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4 THE SOUTH AFRICAN TRUTH AND RECONCILIATION COMMISSION AND THE MECCAN AMNESTY: AN ANALYSIS OF JUSTICE, FORGIVENESS AND RECONCILIATION

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INTRODUCTION

The South African Truth and Reconciliation Committee (TRC) and the Meccan Amnesty represent two significant historical events separated by over a millennium and occurring in vastly different contexts. In the twentieth century, the world witnessed a wave of nationalisation and liberation from the yoke of colonialism in Africa. In 1994, multi-racial democracy was inaugurated in South Africa after decades of racial discrimination and oppression. President Nelson Mandela, in his quest for healing and national unity, commissioned the South African TRC and appointed Archbishop Desmond Tutu as its chair. The TRC gave particular amnesty to politically motivated perpetrators in exchange for the truth, and it provided a platform for victims to share their experience of human rights violations. It became an opportunity for forgiveness, reconciliation and collective catharsis. Even so, although hailed as a successful model, the TRC came under stark critique for not realizing justice and reparations for past wrongs.

The Meccan Amnesty occurred in seventh century Arabia. The general amnesty given was to the Quraysh, a tribe on the Arabian Peninsula who were persecutors of the nascent Muslim community. Following two decades of persecution and religious marginalisation at the hands of the Quraysh, the Muslim community conquered Mecca without bloodshed. Despite Muhammad's overwhelming military might, he declared a general amnesty to his enemies, the Quraysh. Historically, the Meccan amnesty is cited as a grand act of forgiveness and move towards reconciliation between two belligerent communities. However, it is crucial to acknowledge that exceptions to this amnesty and retributive justice took place.

Muslims first came to Africa seeking asylum in Abyssinia from Qurayshi persecution. Today they form almost 45 per cent of its population. Presently, many Muslim nations in Africa are navigating post-conflict situations. This study delves into the historical contexts of South Africa and Islam, with particular focus on restorative justice, forgiveness and reconciliation. The chapter begins by examining the oppressive regime of apartheid and the South African TRC. It then explores the Qurayshi persecution of Muslims, the liberation of Mecca and the Meccan Amnesty. This is followed by a discussion of justice, forgiveness and reconciliation in Islam, with particular emphasis on the events surrounding the liberation of

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Mecca. The study concludes with a comparison between the Meccan Amnesty and the South African TRC. By comparing these two events, we aim to provide insights for policy making and legislation in post-conflict situations in African Muslim nations. To this end, we analyse how the instruments of restorative justice and forgiveness can contribute to long-term reconciliation and peace in regions scared by historical conflict?

APARTHEID OPPRESSION

The subjugation of the people of South Africa did not start in 1948, with the inauguration of the racist apartheid regime. Its story began in 1652 and 1795 with the arrival of the Dutch and British respectively. Slavery, forced labour, displacement and dispossession was the order of the day. The indigenous Khoisan people integrated into colonial society and lost much of their autonomy, land and way of life. Many South Africans, who lived under colonial oppression, were descendants of slaves and political prisoners brought to the Cape Colony. Some were taken from West Africa, but the vast majority from the Indian subcontinent and Southeast Asia.² They, too, were subjected to abhorrent colonial treatment.

In 1910, after the defeat of the Dutch in the Anglo-Boer War (1899-1902), the Union of South Africa was created as a self-governing nation state of the British Empire. Shortly thereafter, in 1912, the liberation movement known as the African National Congress (ANC) was founded, and fought for the rights of blacks. It was only until 1961 that South Africa became a republic. It gained its independence from the British Empire and left the Commonwealth of Nations. Despite its independence, the racist policies continued. For in 1948, Afrikaner nationalism, through the National Party (NP), dominated the political scene and apartheid ("separateness") was implemented. A system of minority white rule and *institutionalised* racial segregation. It assumed the superiority of the white race, and thus called for the separate development of racial groups. On the surface this was understood by some as equal development and cultural expression, but was grossly unequal, both politically and economically.³

Those who challenged the system were brutally treated by the state apparatus. Dissidents were struck with batons, teargassed, incarcerated, tortured, exiled, banned or sent to the gallows. In 1960, one of the most brutal incidents took place, the Sharpeville massacre. In response to the pass laws aimed at restricting the movement of blacks, 7000 demonstrators approached the township's police station. The South African Police (SAP) opened fire at them, leaving 249 victims in total and 69 killed. In 1976, the Soweto uprising took place. An estimated 20 000 students protested in opposition to the imposition of Afrikaans as a medium of instruction in schools. Hundreds of students were shot and killed. Members of liberation movements, such as the ANC, PAC, UDF and others, were brutally tortured and

2 "The Early Cape Slave Trade", South African History Online.

3 "A History of Apartheid in South Africa", South African History Online.

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killed. The liberation movements were also fighting a just war. But there were occasions of unjust means applied to achieve liberation. Political opponents, sell-outs, and state actors were sometimes harmed or brutally killed. The primary cancer, the apartheid system, created an environment of violence and gross violations of human rights. This led to secondary infections that affected some opponents of apartheid, clouding their judgement of right and wrong.⁴

After the collapse of the Berlin Wall in 1989 and the subsequent fall of the Soviet Union, the apartheid regime could not garner support from the West under the pretence of fighting communism in Southern Africa. In addition, international boycotts and sanctions on South Africa suffocated the apartheid regime. They were at a military stalemate with the liberation movements. And the country was on the brink of a civil war. In February 1990, South African President F.W. de Klerk delivered a speech announcing his commitment to major reforms. He promised to release Nelson Mandela, unbanned the ANC and begin negotiations that would end the apartheid regime, and inaugurate a multi-racial democracy.

Two challenges were presented during the period of 1990-1994. Firstly, there was the question of how to realise a nonviolent, seamless transition to a democratic regime. Secondly, there was the question of the possibility of amnesty for historical injustices, the prosecution of past wrongs and the reconciliation and healing of the people of South Africa. What path would South Africa walk, that of amnesty and impunity, or retributive justice? Or was there a third way?

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The question of amnesty for politically motivated wrongs was a necessary option during the negotiations phase. The exclusion of any form of amnesty would have led to a long-winded struggle for power – or, worse yet, a civil war and bloodshed.⁵ The Interim Constitution of 1993 included a provision for amnesty. The South African Truth and Reconciliation Committee (TRC) was animated by the postscript of the Interim Constitution, which stated:

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not for victimization. In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end,

4 Tutu D. 1999. *No Future Without Forgiveness*. New York: Doubleday, 106.

5 Burton MI. 2016. *The Truth and Reconciliation Commission*. Johannesburg: Jacana Media, 10.

Parliament under this Constitution shall adopt a law determining a firm cut-off date ... and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed. With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.⁶

Nuremberg-style trials were not on the cards. There was no definitive victor. The apartheid government and the liberation movements were at a military stalemate. Thus, victor's justice could not easily be applied.⁷ Not to mention the strain of thousands of prosecutions on the judiciary of a fledgling democracy with the economic status of a developing economy. Many international human rights organisations argued that the provision of amnesty was a travesty of justice. It denied victims the fundamental right to seek justice in the criminal courts.⁸ However, the price paid to end violence and facilitate reconciliation was amnesty. The heated discussions that took place within civil society after the Interim Constitution of 1993 and the inauguration of a democratic South Africa in 1994 led to further developments. Contrary to the Interim Constitution, the amnesty given was not blanket, and neither did it come cheap, but with several conditions.

The granting of amnesty was conditional on the disclosure of the whole truth to the committee. The amnesty given was on an individual basis and the crime committed had to be politically motivated. The TRC did not require that the perpetrators show remorse or give an apology. To offset the encroachment on the rights of the victims through amnesty, provision for reparations were made through *ex gratia* payment, erections of symbols and monuments of the struggle, medical benefits, housing subsidies, education support and other forms of social assistance.⁹ The TRC not only provided truth for victims but also gave them the opportunity to express the wrongs they experienced at the hands of the apartheid regime. The manifestation of the truth from the perpetrators and the sharing of harm incurred by the victims, provided an opportunity for South Africa to go through a national catharsis and facilitate long-term reconciliation.

Then-Minister of Justice Abdulla Omar drafted and introduced the Promotion of National Unity and Reconciliation Act, which brought into being the TRC. Abdulla Omar was almost assassinated because he was on a hit squad list of the apartheid government. He was the very man that brought into legislation the act that would indemnify his attempted murderers.¹⁰ Former Chief of Justice of South Africa and Deputy President of the Constitutional Court, Judge Ismail Mahomed, delivered a judgement on the 25 July 1996. The Constitutional Court unanimously ruled in

⁶ Constitution of the Republic of South Africa Act 200 of 1993 [Repealed].

⁷ Tutu, *No Future Without Forgiveness*, 20.

⁸ Villa-Vicencio C and Du Toit F. 2007. *Truth & Reconciliation in South Africa: 10 Years On*. Claremont, South Africa: David Philip, 3.

⁹ Burton, *The Truth and Reconciliation Commission*, 82–94.

¹⁰ Tutu, *No Future Without Forgiveness*, 38.

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favour of the TRC and its right to grant amnesty. In Mahomed's written judgement he said:

Every decent human being must feel grave discomfort in living with a consequence which might allow the perpetrators of evil acts to walk the streets of this land with impunity, protected in their freedom by an amnesty immune from constitutional attack, but the circumstances in support of this course require carefully to be appreciated. Most of the acts of brutality and torture which have taken place have occurred during an era in which neither the laws which permitted the incarceration of persons or the investigation of crimes, nor the methods and the culture which informed such investigations, were easily open to public investigation, verification and correction. Much of what transpired in this shameful period is shrouded in secrecy and not easily capable of objective demonstration and proof ... Records are not easily accessible, witnesses are often unknown, dead, unavailable or unwilling. All that often effectively remains is the truth of wounded memories of loved ones sharing instinctive suspicions, deep and traumatising to the survivors but otherwise incapable of translating themselves into objective and corroborative evidence which could survive the rigours of the law.¹¹

Thus, in 1996, two years after the democratic elections, the TRC was up and running. Its mandate covered the period between 1960 and 1993, coinciding with the Sharpeville Massacre and the Interim Constitution respectively, which was extended to May 1994. Archbishop Desmond Tutu was appointed as its chairperson, presiding over 17 commissioners, split between three constituent committees, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparation and Rehabilitation. Over 22 000 victims of human rights violations submitted statements to the TRC, and approximately 10 per cent provided evidence at public hearings.¹² And 17 000 were eligible for reparations. The TRC dealt with over 7 000 amnesty applications, of which 1164 were granted amnesty.¹³ The TRC recommended that some of these cases be investigated and prosecuted, and gave 300 names to the National Prosecution Authority (NPA).¹⁴ Unfortunately, only eleven perpetrators were prosecuted between 2001 and 2006.¹⁵ The struggle activist, Imam Abdullah Haron, who was killed in detention, was one case recommended by the TRC to be investigated, and only in 2022 was the inquest reopened in the High Court at the behest of the family and civil society, not the initiative of the NPA. Thus, many individuals were *not* given amnesty by the TRC. Also, many were never held to account either because they did not apply to the TRC for amnesty to begin with, or the NPA did not prosecute the recommended

11 *AZAPO v. Republic of South Africa*, No. Case CCT 17/96 (Constitutional Court of South Africa July 25, 1996).

12 Villa-Vicencio and Du Toit, *Truth & Reconciliation in South Africa: 10 Years On*, 53.

13 Burton, *The Truth and Reconciliation Commission*, 78.

14 Burton, *The Truth and Reconciliation Commission*, 78.

15 Burton, *The Truth and Reconciliation Commission*, 78.

TRC cases because of various challenges that were mostly indicative of a lack of political will.

The establishment of the TRC aimed to implement restorative justice, not a system of retributive justice. Retributive justice is the repair of justice through a unilateral imposition of legal punishment, akin to the Nuremberg trials.¹⁶ Restorative justice is the repair of justice through a bilateral process. The affected parties, the perpetrators, the victims, and the community, are all involved in the justice process. It seeks accountability for the crime, but also rehabilitation and healing for the parties. The TRC provided a platform for the victims to share their stories, the perpetrators to gain amnesty, and the society to bear witness to the disclosure of the truth. Although not a condition, it gave an opportunity for perpetrators to express remorse and victims to show forgiveness. These are steps along the way to restorative justice and reconciliation. A necessary step in the direction of justice was the reparations entitled to the victims. Initially, the TRC recommended, a generous, individual reparation grant (IRG), but after much delay, the government paid a once-off, miserly amount to the victims. Amnesty was immediate, but reparations were belated and tight-fisted. In the case of forgoing retributive justice, compensation for individual victims cannot be meagre or delayed, but rather must be given the full-backing and support of the state. At the same time, compensation should be given on a mass scale, to reverse the systemic injustices of past infractions. True liberty and reconciliation cannot be achieved with the mere inauguration of a democracy, but the provision of equal opportunity *and* just economic redistribution.

It is important to remember that the dispossession and oppression of the South African people did not begin in 1960, or even 1948, but in 1652 when European colonialists came to our shores. The decolonisation project, emphasising land reform, was shadowed by the democratisation paradigm.¹⁷ The negotiations process and new dispensation did not adequately address the original sin of land appropriation. In the words of Ali Mazrui, "the white man said to the black man: 'You take the crown and I will keep the jewels.'"¹⁸ This has perpetuated a reality in which thirty years later, South Africa is still plagued with poverty, gross inequality and landlessness. The South African TRC was a noble endeavour, lauded internationally and modelled in other regions navigating political transition and post-conflict situations. However, the state urgency to follow through with prosecutions, reparations and land reform has fallen short. Disregard for restitution and criminal accountability undermines the gravitas of providing amnesty to violations of human rights.

There is no doubt that the TRC facilitated reconciliation in a post-liberation South Africa. However, true reconciliation cannot be realised without real material

16 Wenzel M et al. 2008. "Retributive and Restorative Justice", *Law and Human Behavior* 32(5):1.

17 Coetzee PH and Roux APJ. 2003. *The African Philosophy Reader*. Second Edition. London: Routledge, 570.

18 Coetzee and Roux, *The African Philosophy Reader*, 599.

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transformation.¹⁹ Many hearts *may* have healed, but stomachs remain empty. South Africa has the highest inequality in income distribution in the world. The inertia of apartheid continues to affect the equitable realisation of education, employment, healthcare and housing. Atonement for apartheid cannot ignore socio-economic redress. Political liberty has been guaranteed, but economic liberty is yet to be secured.

The path South Africa took was a third way between amnesty and justice, but it has yet to achieve true reconciliation through socio-economic reform. The relinquishing of retributive justice for truth contributed to the nation moving forward, both emotionally and politically.²⁰ The principle of forgiveness or pardon can never fully compensate for past wrongs, but it is often a necessity to prevent bloodshed and facilitate long-term peace and reconciliation. Through the mechanisms of restorative justice, we may heal the wounds of untold suffering and create a future of prosperity and abundance for the wider nation.

QURAYSHI PERSECUTION OF MUSLIMS

Islam is not foreign to South Africa. Muslim slaves, political prisoners, indentured labourers and merchants came to South Africa from Southeast Asia and the Indian subcontinent. They are active members of civil society and the political class. Muslims are a minority in South Africa, but they form the majority in North and West Africa. Of the two billion Muslims around the world, almost one third reside in Africa. The principles of amnesty and forgiveness are not foreign to Muslims, because they are seen in the life (*sunna*) of Prophet Muhammad (ﷺ) and the teachings of the Quran, the two primary sources that comprise Islamic law. Its legal prescriptions and teachings are thus relevant to many African countries undergoing conflict and political strife.

Muslims first migrated to Africa to seek refuge under the protection of the Christian Negus of Abyssinia in present-day Ethiopia and Eritrea. The first group consisted of twelve men and four women. They migrated four years after Muhammad (ﷺ) received revelation in 610 CE. The early Muslim community faced persecution in Mecca by the powerful Arabian tribe, the Quraysh. Muhammad advised his followers, and said to them, "If ye went to the country of the Abyssinians, ye would find there a king under whom none suffereth wrong. It is a land of sincerity in religion. Until such time as God shall make you a means of relief from what ye suffering."²¹

After three years of preaching and practicing Islam secretly, the Prophet Muhammad (ﷺ) began to do so publicly. The Quraysh were antagonistic to the

¹⁹ Tutu, *No Future Without Forgiveness*, 175.

²⁰ Burton, *The Truth and Reconciliation Commission*, 137.

²¹ Hārūn AS. 2014. *Tahdhīb sīrat Ibn Hishām* [An Abridgement of Ibn Hisham's Rendition of the Sirah] Cairo: Maktabat al-Iman; Lings M. 2006. *Muhammad: His Life Based on the Earliest*. Rochester: Inner Traditions, 80.

religion of Muhammad (ﷺ), for it opposed their gods and pagan practices. They organised a widespread persecution of all Muslims. They were slandered, belittled, and physically abused. The persecution escalated to the point that some were tortured and killed. Revelation advised Muslims to refrain from violence, and “bear patiently that which they say and take leave of them in a beautiful manner.”²²

An Abyssinian slave, and devout Muslim, Bilal, was tortured by his owner, Umayyah ibn Khalaf, the chief of Jumah. Umayya would drag Bilal into an open area exposed to the scorching midday sun and place a huge rock on his chest. No respite was given, unless he renounced Islam and affirm the pagan gods, al-Lāt and al-‘Uzzah. But Bilal refused, and continually professed the oneness of God, saying under his breath, “One, One.” Abū Bakr, the close companion of Muhammad (ﷺ), could not handle to witness the suffering of Bilal, and bought him from Umayya, and then set him free. Among many others, Abū Bakr also liberated a Muslim slave girl, whom ‘Umar ibn al-Khaṭṭāb flogged, attempting to force her to forsake the religion of Muhammad. The most ruthless persecutor was Abū Jahl, the archenemy of Muhammad. He would promise to ruin the reputation of the powerful, boycott the goods of the merchant, and torture the weak and unprotected.²³ He ordered the torture of Yāsir, Sumayya, and their son ‘Ammār, leading to the eventual death of Sumayya. It was at this juncture that Muhammad encouraged his unprotected devotees to migrate to Abyssinia.

Forty leaders of the Quraysh sanctioned a document stipulating a boycott of trade with the Banū Hāshim, and prohibition to marry any woman or man of their clan. This interdiction continued until Banū Hāshim decided to outlaw Muhammad, or until he abandoned his claim to prophethood.²⁴ Following the death of ‘Abū Tālib (d. 619 CE), Muhammad lost the protection and support of his clan. This exposed him to harsh treatment. On one occasion, ‘Uqba threw camel intestines containing blood and faeces on the back of Muhammad while he was in a state of prostration. The wife of Abū Lahab, dumped filth at his door step. One day, as Muhammad was leaving the Ka’ba, a man threw a handful of dirt in his face.²⁵ This treatment was also extended to Abu Bakr. He was abducted, roped by the hands and feet, and left alongside a highway in the gruelling desert heat.

With dwindling support from the Hashemites in Mecca, Muhammad sought protection from the people of Tā’if. He asked the chiefs to accept Islam and assist him against his adversaries. They gave little heed to his request, and they scoffed at him. Upon his departure, they ordered their slaves to chase him along the pathways and pelted him with stones. He left Tā’if wounded in the head and with

22 Nasr SH et al (eds). 2015. *The Study Quran*. New York: Harper One, 73:10. Translation by the present author. For the translation of Quranic verses, I have mainly used *The Study Quran* and Abdul Haleem’s translation. In the case of the latter, it will be referenced. If a hadith translator is not referenced, then the translation is by the author.

23 Lings, *Muhammad*, 79.

24 Lings, *Muhammad*, 88.

25 Lings, *Muhammad*, 98.

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blood flowing profusely from his legs. The situation in Mecca escalated to the point that the Quraysh plotted to assassinate him. Through divine privy, he uncovered their plot and undertook migration (*hijra*) with his companions to Medina. Their properties were seized and they were pursued, but fortunately they arrived safely in Medina in the year 622 CE.

The city of Medina received Muhammad with honour and gave him their loyalty and support. Medina soon became the first Muslim polity, with Muhammad as its political leader and prophet. He drafted the Constitution of Medina, which underscored a just and egalitarian society. The community grew, and many embraced Islam. However, the belligerence with the Quraysh continued, with many battles and thousands of martyrs.

THE LIBERATION OF MECCA AND THE GENERAL AMNESTY

In 628 CE, Muhammad had a dream that he entered the Ka'ba, with its keys in his hand, his head shaven, donning the traditional pilgrim dress. The next day he invited his companions to perform the Lesser Pilgrimage (*'umra*) with him in Mecca. A group of a thousand pilgrims, embarked on the journey towards Mecca to perform the Lesser Pilgrimage. Upon their arrival, the Quraysh were not inviting, despite the sacred month, and dispatched Khalid bin Walid with a cavalry to attack the unarmed pilgrims. Muhammad quickly de-escalated the situation and peacefully awaited to negotiate with the Quraysh at the well of Hudaibiyya. Muhammad agreed to terms with the Quraysh that were seemingly not favourable to the Muslims. The Treaty of Hudaibiyya stipulated that Muhammad return to Medina without performing the pilgrimage, but with the promise to return the next year. In the interest of peace, it included a truce between the Muslims and Quraysh for a period of ten years. The treaty stated that Bedouin tribes might choose to form an alliance with either the Muslims or the Quraysh. Banū Bakr aligned with the Quraysh, and Banū Khuzā'a formed a pact with the Muslims. Muhammad's long-term plan was never to achieve unilateral military victory over the Quraysh, but to remove the fetters of pagan ignorance (*jāhillīya*), and achieve reconciliation with his Arab brethren. Military warfare is a necessity of any polity, but he aimed for a status quo of peace.

In 629 CE, the fate of the Arabian Peninsula changed, when the Quraysh breached the treaty of Hudaibiyya. Banū Bakr, aided by the Quraysh with men and arms, raided Banū Khuzā'a and killed some of their people. Immediately, the Banū Khuzā'a sent a deputation to Medina to seek the aid of Muhammad. The Prophet demanded justice for breaking the treaty and slaying the men of Banū Khuzā'a. The demands were either for blood money to be paid to the Banū Khuzā'a, for the Quraysh to terminate their pact with the Banū Bakr, or for the treaty to be nullified. The Quraysh tried to evade responsibility for the act, and not suffer its consequences. The shrewd politician, Abu Sufyān, travelled to Medina, and attempted to persuade the Prophet Muhammad (ﷺ) to overlook the skirmish and reinstate the treaty, but received no assurances from him.

Muhammad, prepared his armed forces for a military campaign. In a clandestine manner, they left Medina in 630 CE, and marched in the direction of Mecca with an army of ten thousand men, including the emigrants (*muhajirūn*), helpers (*ansār*), and loyal Bedouin tribes. Muhammad was at the height of his power, with a formidable force. Abu Sufyān, sent by the Quraysh, approached Muhammad's camp, in an attempt to quell the situation. After seeing the size of Muhammad's army, he was convinced of their superior strength. Sa'ad ibn 'Ubādah, carrying the banner of Muhammad, remarked to Abū Sufyān as he walked pass, "This is the day of slaughter! The day when the inviolable shall be violated! The day of God's abasement of the Quraysh."²⁶ Upon coming to hear of this, Muhammad (s) corrected the remark, and said, "O Abū Sufyān, this is a day of mercy, a day on which God will honour the Quraysh."²⁷

Abū Sufyān, now a Muslim, quickly returned to Mecca, and warned the Quraysh of the inevitable, and the futility of challenging Muhammad. He urged them to surrender. In the context of the amnesty and the assurance given from Muhammad (s), Abū Sufyān told the people of Mecca, "Whoso entereth the house of Abū Sufyān shall be safe, and whoso locketh upon himself his door shall be safe, and whoso entereth the Mosque shall be safe."²⁸ Abū Sufyān was an astute statesman, and understood that the tide has changed. Other personalities were stubborn and foolhardy. 'Ikrima, Ṣafwān, and Suhayl gathered a small military unit to engage Muhammad.

The Muslim army entered Mecca from four directions. Khalid bin Walid commanded one flank and came upon the small military unit. He soon overcame their attack, killed thirty of their men and lost two men from his own forces. 'Ikrima and Ṣafwān fled to the coast, and Suhayl sought refuge in his home. When Muhammad entered Upper Mecca he was disappointed to see drawn swords, and remarked, "Did I not forbid fighting?"²⁹ It was soon explained to him that they were attacked, to which he responded that God willed it for the best.³⁰ The skirmish was insignificant, and the rest of the army entered Mecca without raising a sword or issuing a blow. The Liberation of Mecca (*Fath al-makka*) was virtually bloodless. Nobody was harmed, and everybody that sought refuge in their homes or the mosque was safe. In the words of religious historian Karen Armstrong, "He [Muhammad] had no desire for bloody reprisals. Nobody was made to accept Islam nor do they seem to have felt any pressure to do so. Reconciliation was still Muhammad's objective."³¹

26 Ibn 'Asākir, *Tārīkh Madīnat Dimashq* 23282 (translation in Lings, *Muhammad*, 297.)

27 *Tārīkh Dimashq* 23282. (translation by Abu Amina Elias).

28 Lings, *Muhammad*, 296. The quintessential verse on peacemaking says, "If they incline toward peace, incline you toward it, and trust in God. Indeed, He alone is all-hearing, all-knowing (Q. 8:61)."

29 Lings, *Muhammad*, 299.

30 Lings, *Muhammad*, 299.

31 Armstrong K. 2007. *Muhammad: A Prophet for Our Time*. New York: HarperOne, 188.

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Muhammad addressed the Quraysh saying, "O Quraysh, behold God has removed from you the arrogance of *jāhiliyya* with its boast of ancestral glories. Man is simply a God-conscious believer or an unfortunate sinner. All people are children of Adam, and Adam was created out of dust."³² Muhammad sought to extinguish the ethnocentric bigotry of Arab paganism and to establish a just and egalitarian society based on God-consciousness and a common humanity. He then recited the Quranic verse, "O Mankind! Truly We created you from a male and a female, and We made you peoples and tribes that we may come to know one another. Surely, the most noble of you before God are the most reverent of you. Truly God is Knowing, Aware."³³ Muhammad (ﷺ) invited the Quraysh to forgo their tribal chauvinism, and to find common ground and reconciliation. It is not by virtue of ethnic affiliation that one man is superior to another, but piety. Armstrong remarks, "Muhammad had managed to redefine the concept of nobility in Arabia, replacing it with a more universal, compassionate, and self-effacing ideal."³⁴

Muhammad (ﷺ) addressed the Meccans, saying, "O Quraysh! What do you think of the treatment that I should accord you?" They responded and said, "We say well, and we think well: a noble and generous brother, son of a noble and generous brother. It is thine to command."³⁵ Muhammad then spoke words of compassion and forgiveness; "Verily I say as my brother Joseph said, 'This day there shall be no upbraiding of you nor reproach. God forgiveth you and He is the most Merciful of the merciful.'"³⁶

Muhammad (ﷺ) was not seeking a vendetta against the Quraysh, despite their infractions. At the height of his power, Muhammad (ﷺ) offered a general amnesty to the Quraysh.³⁷ It was not prompted by a military stalemate or ongoing negotiations; his victory was definitive, and yet forgave them all. He was not seeking to dominate over others and further shed blood, but to reconcile his Arab brethren and guide them out of the darkness of *jāhiliyya*. Muhammad entered Mecca peacefully, without a thirst for vengeance and "in the hour of triumph, every evil suffered was forgotten, every injury afflicted was forgiven, and a general amnesty was extended to the population of Makkah."³⁸ In droves, the people of Mecca pledged fealty to the Prophet (ﷺ).

32 Sunan Abī Dawūd 5116. (translation in Armstrong, *Muhammad*, 189).

33 Quran 49:13.

34 Armstrong, *Muhammad: A Prophet for Our Time*, 205.

35 Lings, *Muhammad: His Life Based on the Earliest*, 300.

36 See Quran 12:92 (translated in Lings, *Muhammad*, 301).

37 Abu Huraira reported: The Messenger of God (ﷺ) said, "Moses asked his Lord, and said: Who is the best in judgment of your servants? God said: Those who judge people as they would love to be judged themselves. Moses said: Who are the most honoured of your servants? Allah said: Those who forgive when they have power over others." Ṣaḥīḥ Ibn Ḥibbān 6353 (translation by Abu Amina Elias).

38 Ali SA. 2000. *The Spirit of Islam*. New Delhi: Kitab Bhavan, 78.

Muhammad put ten people who were excluded from the general amnesty on a list. Six were eventually pardoned, and four were executed. The list consists of those who instigated Muslim propaganda, committed acts of treason (or apostasy), gross acts of violence, or endangered social security. However, most of them were given indemnity through embracing Islam or pleading for clemency.

Table 1: The List of Exceptions to the General Amnesty

	PERPETRATOR	REASON	OUTCOME
1	ʿIkrimah	Political security	Pardoned
2	ʿAbdallah al-Sarḥ	Anti-Muslim propaganda/ apostasy	Pardoned
3	ʿAbdallah bin al-Khaṭal	Treason/apostasy/murder/Anti-Muslim propaganda	Executed
4	Singing-girl	Anti-Muslim propaganda	Executed
5	Singing-girl	Anti-Muslim propaganda	Pardoned
6	Sārah, third singing-girl	Anti-Muslim propaganda	Pardoned
7	Miqyas bin Dubābah al-Laythi	Murder	Executed
8	Al-Ḥuwayrith bin Nuqaydh	Social security	Executed
9	Habbār bin al-Aswad	Social security	Pardoned
10	Hind	Mutilation	Pardoned

Muhammad was not seeking to destroy the Quraysh, but rather to find reconciliation with them. He respected their offices and political structures. Muhammad didn’t reside over affairs directly from Mecca, but returned to Medina after a few weeks. He made Medina his abode. He continued to give honour to the Medinan people, who sheltered him when he was a refugee. Montgomery Watt, a Scottish Orientalist, poignantly encapsulates the events:

In all this one cannot but be impressed by Muhammad’s faith in his cause, his vision and his far-seeing wisdom. While his community was still small and devoting all its energies to avoiding being overwhelmed by its enemies, he had conceived a united Arabia directed outwards, in which the Meccan would play a new role a role no less important than their old role of merchants. He had harried them and provoked them; then he had wooed them and frightened them in turn; and now practically all of them, even the greatest, had submitted to him. Against considerable odds, often with narrow margins, but nearly always with sureness of touch, he had moved towards his goal. If we were not convinced of the historicity of these things, few would credit that a despised Meccan prophet could re-enter his city as a triumphant conqueror.³⁹

39 Watt MW. 1956. *Muhammad at Medina*. London: Oxford University Press, 70.

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Despite his formidable military might, he *ultimately* conquered through the transformative power of mercy and compassion. The act of forgiveness played a pivotal role in reconciling the hearts of the Meccan people. In the words of the Lebanese-American historian Phillip L. Hitti, "The people ... were treated with special magnanimity. Hardly a triumphal entry in ancient annals is comparable to this."⁴⁰ While punitive measures were not ignored, restorative approaches to justice were the primary means to unify the people and to establish a lasting era of peace and prosperity throughout the Arabian Peninsula.

JUSTICE, FORGIVENESS AND RECONCILIATION IN ISLAM

The events of the liberation of Mecca and the subsequent amnesty are informed by the Islamic spirit of justice, forgiveness and reconciliation. Both justice and forgiveness are foundational virtues in Islam. Retributive justice is a necessity for the peace and security of any society or state. In the context of judging between two individuals, the application of justice (*'adl*) cannot be compromised. The Quran states, "Say [Muhammad] I am commanded to bring justice between you (Q. 42: 15)."⁴¹ In another verse, God says, "if you judge between people, do so with justice (Q. 4:58)."⁴² The Quran also uses the synonym, *qist*, which more particularly refers to matters within the socio-economic realm.⁴³ It says, "My Lord has commanded justice (*qist*) (Q. 7: 29)." For the sake of law and order, it is a necessity that a society be founded on justice, lest impunity flourish. A society without justice, is one that perpetuates injustice and oppression (*ẓulm*), the very opposite of the spirit of mercy.

In Islamic criminal law, there are punishments for various crimes, such as *ḥudūd* (fixed penalty), *ta'zir* (discretionary punishment) and *qiṣās* (just retaliation). The *ḥudūd* crimes violate the limits of God, and its punishments are specified in the Quran. They include adultery (*zina*), the false accusation of adultery (*qazf*), theft, terrorism, alcohol consumption and apostasy. There is no room for pardon by the state or victim, however, the conditions of "beyond reasonable doubt" are stringent.⁴⁴ In cases of doubt, other rectificatory measures, such as pardon, conciliation or fines, can be applied. Muhammad (ṣ) said, "Avoid applying legal punishments against the Muslims if you are able. If the criminal has a way out, then leave him to his way. Verily, for the leader to err in pardoning is better than to err in punishing."⁴⁵ The *ḥudūd* punishments thus creates scope for the implementation

40 Hitti PK. 2002. *History of the Arabs*. Revise Tenth Edition. New York: Red Globe Press, 118.

41 Translation by MAS Abdel Haleem in *The Qur'an*. Abdel Haleem MAS (trans). New York: Oxford University Press.

42 Abdel Haleem, *The Qur'an*.

43 Mohamed Y. 2020. "More Than Just Law: The Idea of Justice in the Qur'an", Yaqeen Institute for Islamic Research, 7 February, 4.

44 Wan Muhammad R. 2020. "Forgiveness and Restorative Justice in Islam and the West: A Comparative Analysis", *Islam and Civilizational Renewal* 11(2):283.

45 Sunan al-Tirmidhi 1424.

of the mechanisms of restorative justice. The punishment for *ta'zir* crimes is not mentioned in the Quran, but rather left to the discretion of the judge. They include sodomy, usury, bribery, perjury or embezzlement. The judicial authorities are given liberty to implement a punishment they deem fit, *within* the spirit of the *sharia*.⁴⁶ Here too, restorative methods of justice can be applied to facilitate the rehabilitation or healing of the affected parties.⁴⁷

The crimes of *qisās* are physical injury and intentional homicide. In this case, the Quran allows for just retribution. It says: "You who believe, fair retribution is prescribed for you in cases of murder: the free man for the free man, the slave for the slave, the female for the female. But if the culprit is pardoned by his aggrieved brother, this shall be adhered to fairly, and the culprit shall pay what is due in a good way. This is an alleviation from your Lord and an act of mercy."⁴⁸ The Quran prescribes in the case of a *qisās* crime, a life for a life, but at the same time, encourages the victim to forgive the perpetrator. The accountability of the perpetrator is still upheld, through reparations (*diyya*) to the victim or next of kin. The act of forgiveness is performed, but justice is also upheld. However, the former is regarded as a superior virtue. The Quran says, "To forgo [justice] is nearer to godliness, so do not forget to be generous towards one another: God sees what you do."⁴⁹ Upon himself, God has foregrounded mercy. He says, "Verily, My mercy prevails over My wrath."⁵⁰ The legal prescriptions that govern *qisās* are akin to the mechanisms of restorative justice. It facilitates the rehabilitation of the perpetrator, and compensation (*diyya*) of the victim.⁵¹ If the victim so wishes, he may also forgive the perpetrator all together, and not seek compensation at all. Abū Ḥāmid al-Ghazālī, the foremost Muslim theologian, defines forgiveness as "an abdication of someone's right to punishment without resentment and with contentment."⁵² Much like *qisās*, restorative justice does not necessitate forgiveness, but it does encourage it. All parties involved – perpetrator, victim and community – are included in the process of rectifying the crimes of physical injury and intentional homicide. In the Islamic criminal system, we see a synthesis between both retributive justice and restorative justice.⁵³

46 Wan Muhammad, "Forgiveness and Restorative Justice in Islam and the West", 284.

47 Wan Muhammad, "Forgiveness and Restorative Justice in Islam and the West", 284.

48 Quran 2:178 (translation in Abdel Haleem, *The Qur'an*).

49 Quran 2:237.

50 Ṣaḥīḥ al-Bukhārī 3194, Ṣaḥīḥ Muslim 2751.

51 Mohamed, "More Than Just Law", 22.

52 Abū Ḥāmid Al-Ghazālī. 1982. *Iḥyā' 'ulūm al-dīn* [The Revival of the Religious Sciences] vol III. Beirut: Dār al-Ma'rifa, 182 (translation by Wan Muhammad, "Forgiveness and Restorative Justice in Islam and the West", 285).

53 Corporal punishment is not embraced by the advocates of restorative justice. The Islamic system of criminal justice differs to the restorative justice movement on the advocacy of corporal punishment. Hascall SC. 2011. "Restorative Justice in Islam: Should Qisas Be Considered a Form of Restorative Justice?", *Berkeley Journal of Middle Eastern & Islamic Law* 4(1):76. According to Hascall, "The fact that the law of qisas allows for retribution in

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As British Governors in India, Warren Hastings and Charles Cornwallis “both rejected, as did their British counterparts elsewhere, the entire tenor of the Shari’a law of homicide on the grounds that this law granted private, extra-judicial privileges to the victim’s next of kin, who had the power to decide on meting or not meting out punishment (ranging from retaliation, to payment of blood money, to pardon) as they saw fit.”⁵⁴ The historian Nicholas Dirks states that:

British justice [in India] turned out to be far more draconian – in practice as well as in principle – than Islamic justice had been, resorting much more frequently to capital punishment, and much less often to community-based methods of enforcement and reconciliation ... [The East India Company] was far more concerned with public order, and with the specific use of the law to protect its own trade and commerce as well as authority, than was the old regime.”⁵⁵

Islam is oft brought under stark review for its penal system. The physical harms imposed on perpetrators of crime, are viewed by moderns as barbaric, brutal and uncivilised. But it is worth taking stock of the *overall* system of Islamic criminal law, and its emphasis on restorative justice, forgiveness and reconciliation. With regard to the retributive aspect, the French philosopher Michel Foucault argues that the reform of punishment in France was not because of humanitarian reasons, but the technology of organised discipline.⁵⁶ Eventually, the punishment of the body became replaced with the punishment of the soul. He argues that through incarceration and perpetual monitoring the perpetrator is dehumanised. To Foucault, this is a heinous form of punishment.⁵⁷ Its system of prison is based on an ontology of man as a machine.⁵⁸ The restorative justice movement is critical of the current system of imprisonment, and it questions its ability to rehabilitate individuals or lift the stigma of a crime committed.⁵⁹ It often does not reintegrate them into society or find reconciliation between the victim and perpetrator.

The Islamic penal system and modern methods of restorative justice upholds the dignity (*karāma*) of a person.⁶⁰ The “preservation of dignity” (*hifz al-‘ird*) is included among the Objectives of the Divine Law (*maqāsid al-shari‘a*). The Quran states, “We

kind as an option of punishment does not foreclose its ability to aid the restorative justice movement.” Hascall, “Restorative Justice in Islam”, 78.

54 Hallaq W. 2009. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 87.

55 Cited in Hallaq, *An Introduction to Islamic Law*, 88.

56 Foucault M. 1995. *Discipline & Punish: The Birth of the Prison*. Alan Sheridan (trans). New York: Vintage Books.

57 Hascall, “Restorative Justice in Islam”, 1.

58 Foucault, *Discipline & Punish*.

59 Hascall, “Restorative Justice in Islam”, 40. Other arguments are that they do not reform the individual, it is a waste of resources, and disrupts familial systems. See Hascall, “Restorative Justice in Islam”, 76.

60 Hascall, “Restorative Justice in Islam”, 2.

have indeed honoured (*karammnā*) the Children of Adam."⁶¹ In another verse, God says, "It is He who made you stewards (*khalāif*) on the earth and raises some of you above others in rank, to test you through what He gives you",⁶² and "When your Lord told the angels, 'I am putting a steward (*khalifa*) on earth,' they said, 'How can you put someone there who will cause damage and bloodshed ... He said, 'I know things you do not.'"⁶³ This spiritual inheritance or stewardship entails the responsibility to uphold the divine law and social balance. Despite their race, class or gender, it is through the spiritual institution of *istikhlāf* and being the creation of God that all of humanity is given honour and dignity. Notwithstanding humanity's capacity for bloodshed and chaos, humanity has the capacity for harmony, peace and justice. In the spirit of Islamic jurisprudence, *both* perpetrator and victim are treated with dignity.

The Islamic criminal system, in particular the system of *qisās*, provides a mechanism for healing and reconciliation (*sulh*). The Quran states that "if two parties of the believers fight, you should try to reconcile them (*fasliḥ baynahum*)."⁶⁴ After the Liberation of Mecca (*fath al-makka*), Muhammad did not see oppressed and oppressor, but a vision of a single nation (*umma*). The Quran says, "this nation (*umma*) of yours is a single nation (*umma*), and I am your Lord, so worship Me."⁶⁵ Muhammad once said, "Help your brother, whether he is an oppressor (*zālim*) or he is oppressed (*maẓlum*)."⁶⁶ To prevent the oppressor from committing wrong, and to guide him to the straight path, is helping a brother and facilitating reconciliation (*sulh*). The Quran says "the believers are brothers, so reconcile (*sulh*) between your brothers and be mindful of God, so that you may be given mercy."⁶⁷ To show forgiveness and facilitate reconciliation entitles you to receive the mercy of God.⁶⁸ To settle post-conflict situations through forgiveness and reconciliation is a hallmark of the Islamic spirit.

Muslims strive to acquire, imitate, and adorn themselves with the attributes of God, and through it gain closeness to the creator.⁶⁹ Human acts of mercy reflect the divine mercy. Muhammad's magnanimous act of forgiveness and general amnesty

61 Quran 17:70.

62 Quran 6:165 (translation adapted from Abdel Haleem, *The Qur'an*).

63 Quran 2:30 (translation adapted from Abdel Haleem, *The Qur'an*).

64 Quran 49:9 (translation adapted from Abdel Haleem, *The Qur'an*).

65 Quran 21:92 (translation by author).

66 Saḥīḥ al-Bukhārī 2444.

67 Quran 49:10 (translation adapted from Abdel Haleem, *The Qur'an*).

68 Abdullah ibn Amr reported: The Messenger of Allah, peace and blessings be upon him, said, "The merciful will be shown mercy by the Most Merciful. Be merciful to those on the earth, and the One in the heavens will have mercy upon you." Sunan al-Tirmidhī 1924.

69 Abū Ḥāmid Al-Ghazālī. 1999. *Al-Maqṣad al-asna fī sharḥ asmā' Allāh al-ḥusnā* [The Loftiest Goal in Explicating the Meanings of God's Most Beautiful Names] Damascus: Maṭba'a al-Sabāḥ, 30-31. It is narrated that Muhammad said, "Adorn yourself with the attributes of God."

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offered to the Quraysh is a reflection of God, the Most Forgiving. The Quran also says of Muhammad, "And We sent thee not, save as a mercy unto the worlds."⁷⁰ Muhammad teaches us that mercy towards creation entitles you to receive mercy from the Creator. He says, "The merciful will be shown mercy by the Most Merciful. Be merciful to those on the earth, and the One in the heavens will have mercy upon you."⁷¹ God says, "Let them pardon and forgive. Do you not wish that God should forgive you? God is Most Forgiving and Merciful."⁷² The act of pardon or clemency is not merely political prudence, but the mercy of God mirrored in human society.

Among those who were on the list of exceptions to the Meccan amnesty were those who sought forgiveness and received indemnity. They either received indemnity through a show of remorse and repentance, or through embracing Islam. A person that sincerely repents (*tawba*) and wipes their spiritual slate is elevated in the eyes of God. Sincere repentance is an opportunity for the perpetrator to repair their relationship with both their fellow man and God and to become a constructive member of society.⁷³ Abū Sufyan repented for his wrongs, and became a Muslim on the eve of the conquest of Mecca. He was also given honour and so repaired his dignity in society; he subsequently became a productive statesman within the Muslim polity. Repentance and remorse from the perpetrator and forgiveness from the victim cultivate the reconciliation of ruptured bonds and reintegration of the perpetrator as an upright citizen into society.⁷⁴ The victim that forgoes just retribution himself receives expiation; the Quran says, "if anyone forgoes this [retribution] out of charity, it will serve as an atonement (*kaffāra*) for his bad deeds."⁷⁵ In the case of retribution, the punishment of the body is not seen as a denigration of the perpetrator, but as an expiation (*kaffāra*) of his sins.

After the liberation of Mecca, Islam flourished and reconciled the tribes of the Arabian Peninsula under the banner of the *umma*. Without the Islamic faith and an ethic of forgiveness and reconciliation, tribal schism (*ta'asub*) would persist. Prior to conquering Mecca, Muhammad established the *Constitution of Medina*, which underscored equality, fraternity and interreligious tolerance. Through this legal instrument, Muhammad reconciled the 120-year-old conflict between the two tribes, al-Aaws and al-Khazraj.⁷⁶ In reference to this, God said, "Hold fast to God's rope all together; do not split into factions. Remember God's favour to you; you were

⁷⁰ Quran 21:107.

⁷¹ Sunan al-Tirmidhī 1924 (translation by Abu Amina Elias). In another saying Muhammad teaches that "he who is not merciful will be granted no mercy". Al-Adab Al-Mufrad 97.

⁷² Quran 24:22 (translation by Abdel Haleem, *The Qur'an*).

⁷³ Hascall, "Restorative Justice in Islam", 53. See also Quran 25:68-70, which discusses repentance and the transformation of evil deeds into good deeds.

⁷⁴ Wan Muhammad, "Forgiveness and Restorative Justice in Islam and the West", 286.

⁷⁵ Quran 5:45 (translation by Abdel Haleem, *The Qur'an*).

⁷⁶ Afsaruddin A. 2014. "Reconciliation and Peacemaking in the Qur'ān", in Mosher L and Marshall D (ed). *Sin, Forgiveness, and Reconciliation: Christian and Muslim Perspectives*. Washington, DC: Georgetown University Press, 108.

enemies and then he brought your hearts together and you became brothers by His grace.”⁷⁷ This verse informs us that the transcendence from tribal partisanship and the reconciliation of hearts are based on a universal brotherhood (*ukhūwa*) rooted in the submission to God. The binding material of faith is superior to tribal affiliation or caste. Muslims are regarded as a unified community, united by the principle of *tawhīd*, which affirms the belief in the Oneness of God. It acknowledges that we all originate from the same Creator and that we will ultimately return to Him.

On the legal and political front, we may implement retributive justice or amnesty. This is outward, but to achieve lasting reconciliation in society the inward acts of remorse and sincere repentance should be nurtured. Forgiveness should not be at the expense of justice; strides should be made to compensate victims. Reparations (*diyya*) not only ensures that justice is met but also allows the perpetrator to make right their wrongs and reintegrate into society. Amnesty is an anathema to a dogmatic understanding of human rights which excludes transcendental wisdom. It should be noted that in post-conflict situations and the introduction of new political dispensations, it is sometimes necessary to enact retributive justice, but the mechanisms of restorative justice and offerings of amnesty are an imperative to reconcile hearts, heal wounds and establish lasting peace. Islam foregrounds forgiveness and considers it a higher virtue than justice. The practice of forgiveness serves to prevent the endless cycles of violence and retaliation.

CONCLUSION

The South African TRC and the Meccan Amnesty are two disparate historical events that exhibit more differences than similarities. However, bringing them into conversation and drawing lessons from them is relevant to the context of Muslim countries in Africa. Islam is the major religion of many African nations, and the religious affiliation of almost 45 per cent of its population. Presently, many African countries are grappling with post-conflict situations, and seek guidance from recent historical examples such as South Africa, alongside the timeless wisdom of their faith. Hence, this chapter serves a purpose beyond mere historical interest, but aims to extract valuable insights that can inform policy-making in post-conflict scenarios.

Many assume, particularly in the human rights tradition, that justice and amnesty are a paradox and cannot be harmonised. In both historical events we see a third way between retributive justice and “impunity.” The common feature of both events was the practice of restorative justice and commitment to reconciliation. In South Africa, amnesty was not general, but conditional on the full disclosure of the truth and evidence of political motive. Furthermore, those that were not given amnesty or did not apply for amnesty were still open to prosecution. The contingencies of a new political disposition strained the scope of implementing punitive measures. Moreover, the spirit of forgiveness is necessary to ferment reconciliation and a prosperous future. The commission played a constructive role in incorporating

⁷⁷ Quran 3:10. Translation from Abdel Haleem, *The Qur'an*.

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the perpetrator, victim and community. The confession of past wrongs and the expression of historical agony facilitated a national catharsis. The state's tight-fisted and belated reparations for victims and overdue persecution of perpetrators is a travesty of justice. But nonetheless, the South African TRC played a role in the realisation of restorative justice and reconciliation.

In the case of the Meccan Amnesty, a general amnesty was issued, however, exceptions were made in the case of gross violations. If the perpetrator showed remorse and made repentance, immunity was given. Islam foregrounds the virtue of forgiveness, but it does not encourage absolute impunity or ignoring the commandment to uphold justice. The Islamic criminal system includes mechanisms of restorative justice. It encourages the perpetrator to seek atonement and make his wrongs right through reparations; and for the victim to be magnanimous by forgoing their right to retribution. At the nexus of these two acts, reconciliation can be achieved. In the case of historical injustices, such as the Qurayshi persecution of Muslims, the place of forgiveness is all the more encouraged, to reconcile hearts and end the cycle of violence and retaliation. In both events we witness that a dogmatic prescription of justice cannot be implemented in scenarios of transitional justice. To realise reconciliation, it is imperative that forgiveness and mercy are not strained.

Often the political and economic situation dictates how justice is delivered or amnesty is secured. South Africa was in a military stalemate, and the option of amnesty was a necessity for negotiations to move forward and democracy to be realised. Additionally, its economic state would not have sustained the financial burden of an overworked judiciary. Some argue that the lack of punitive justice was political expediency and not the moral failings of the state. The context of the Meccan Amnesty was the complete opposite. The military force of the Quraysh paled in comparison to the Muslims. Muhammad was at the height of his power, and liberated the city without much resistance. The Meccan Amnesty was all the more remarkable, for it was in the capacity of the armed forces to totally annihilate the Quraysh. Thus, amnesty can be granted solely based on mercy and generosity, without requiring political justification. It is a higher virtue to forgive when you have the power to retaliate and seek retribution.

The South African TRC and the Meccan Amnesty were both responses to the injustices of apartheid and *jāhilliyya* respectively. The retribution of its wrongs and reform of its systems naturally take its own contours. Both injustices perpetuated ethnocentric chauvinism, systematic persecution and intolerance. The new political instalments were informed by a different set of values and principles, but they did seek to uphold equality, human dignity and liberty. In South Africa, the moral principles of the human rights tradition inform its policies and legislation. Its humanistic ideals germinate from the European Enlightenment and are considered self-evident and universal. Although its legal philosophy is secular, Islam is progressive in protecting religious minorities and their freedoms. In contrast, Islam gives human dignity (*karāma*) to people by virtue of them being the creation of God. The principles that guide legislation are not secular but informed by transcendental

wisdom. It is divine revelation (*sharia*), not the natural rights tradition, that inform the ethical worldview of Muslims. Among the Higher Purposes of the Divine Law (*maqāsid al-shari'a*) is the preservation of dignity (*hifz al-'ird*). In the case of Islam, divine sanction upholds human dignity, and anything that diminishes it is an infraction against God.

The racial segregation of apartheid and the dogmatic tribal partisanship of *jāhillīya* are an anathema to nation building. The South African TRC was built upon the preamble of the Interim Constitution, which says “there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *Ubuntu* but not for victimisation.” Desmond Tutu states that the amnesty the TRC offered was consistent with the spirit of *Ubuntu*.⁷⁸ *Ubuntu* is central to the African *Weltanschauung*, and animates its social fabric. It is based on the primacy of humaneness and human solidarity. It holds that our humanity is inextricably linked to the acknowledgement of another’s humanity. Its ethic makes no distinction between generosity and forgiveness towards another or oneself. It is this philosophy that underlies the TRC’s vision of reconciliation and nation building. Reconciliation after the liberation of Mecca was animated by the Islamic spirit of *ukhūwa* (brotherhood), which ameliorated the tribalism which plagued *jāhillīya*. Islamic civilisation (*umma*) was established by a universal brotherhood based on the submission to God. The shared brotherhood is not just a horizontal relationship that exists between two humans, but it is also built upon a vertical relationship with God. It was this spirit of *ukhūwa*, or social solidarity, that formed the bedrock of the Islamic civilisation.

The South African Truth and Reconciliation Committee (TRC) and the Meccan Amnesty serve as valuable guidance to address the residual tensions that exist in nations after conflict. Currently, Sudan, a predominantly Muslim majority country in Africa, is grappling with civil conflict. In the aftermath of the destructive turmoil, Sudan can turn to the rich resources of the Islamic tradition and draw inspiration from exemplars like South Africa to foster justice, forgiveness and reconciliation.

⁷⁸ Tutu, *No Future Without Forgiveness*, 29.