Amnesty as a tool of conflict resolution: A comparative assessment

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AMNESTY AS A TOOL OF CONFLICT RESOLUTION: A COMPARATIVE ASSESSMENT

by

Nabil Ouassini

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A thesis submitted in partial fulfillments of the requirements for the

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ABSTRACT

Amnesty as a Tool of Conflict Resolution: A Comparative Assessment

by

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Drawing upon various theoretical approaches and the analysis of case studies, the current study explores the use of amnesty as a way of dealing with civil strife in national and international conflicts. Conflicts in different regions in the world are examined to illustrate the use of amnesty for restorative purposes, but primary attention will focus on how Arab countries are using amnesty in the current war on terror. By examining amnesty in both general and specific cases, the present study hopes to shed light on the effectiveness of amnesty as a restorative principle in addition to the manifest and latent functions associated with it.
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CHAPTER 1

INTRODUCTION

The current war on terror has raised many questions on theories of punishment and its use within and outside the criminal justice system. Punishments in this war vary, depending on the philosophical outlook that nations adopt in dealing with terrorists. Some countries, such as the United States, embrace a retributive stance on dealing with terrorists by sending them to the Guantanamo Bay prison camp or to allied Arab countries for torture, interrogation and at times execution. Other countries such as Jordan and Egypt adopt a deterring stance on terrorism as a way to keep terrorist organizations from recruiting new members. Several other Arab countries are using a restorative stance on terrorism by granting amnesties as an alternative to retribution and deterrence.

Many political commentators are trying to understand the rationale for why Arab governments are granting amnesties to terrorists after the confessions of the atrocities committed by their organizations. The debate over the granting of amnesty to criminals, terrorists, and violators of human rights is not a new one. Almost 60 years after the signing of the Universal Declaration of Human Rights, the world continues to be threatened by numerous conflicts that have cost the lives of millions. The majority of

these conflicts arose in nations that struggled for the transfer from authoritarianism to democracy. The motivation for political transformation occurred in some nations when there was a popular demand for reform; while in others a political, civil or world war appeared (Goldstone 2000, ix.). The challenge for all of these nations remains; how should a nation rectify the crimes of the former conflict and move on with its future.

The first response most people have is a retributive one that demands justice. But what if the prosecution of the criminals will lead to either “a refusal to allow a transition to democracy, a coup d'etat, a resumption of hostilities, damage to a country’s economy and infrastructure or the killing of civilians and political opponents” (Zyl 2000, 43)?

Another question that arises in the carrying out of prosecution and punishment of these political crimes is how can justice be equitably served? Can there be a comparable penalty for such horrific political crimes? Also how does a government administer justice to a nation that has too many participants in the violence (Goldman 2002, 258)?

Research Questions

This thesis is designed to address two research questions about amnesty. First, how does amnesty work in general and within various political and social contexts around the world? Second, does amnesty as a principle of restorative justice have different functions and is it associated with different effectiveness in the specific context of conflict resolution in Arab countries surrounding the current war on terrorism? These questions will be addressed by conducting a comparative historical analysis of multiple case studies of amnesty in different world regions. The results of this study have
important implications for understanding the role of amnesty as a restorative tool for
different types of conflict situations.

The second chapter will provide a general discussion on amnesty. Chapter 3 will
examine the principles of restorative justice and the role of amnesty within this
framework. The chapter also applies various theories to understand amnesty and
describes the case study and comparative research methods used in the current study to
examine amnesty within different social and historical contexts.

Chapter 4 will explore the use of amnesty as a restorative method of conflict
resolution in different regions of the world. In American history, the primary discussion
will focus on Andrew Jackson’s amnesty to former Confederate officials and soldiers in
the Reconstruction Era after the Civil War. In South America, the focus will be on
Chile’s attempts of healing after the dictatorship of Pinochet that lasted almost two
decades. In Africa, South Africa’s amnesty process will illustrate the reconciliation and
unity that the nation is trying to accomplish after the division of apartheid. In Europe, the
focus will be on the aftermath of World War II and how allied forces limited amnesty to
prosecute those who were responsible and guilty of the crimes committed against
humanity. In Asia, the discussion will focus on Cambodia’s attempts of restoration
among competing political factions. In each example, both the functions of amnesty and
its effectiveness at achieving restorative justice will be critically reviewed and assessed.

Chapter 5 will focus on amnesty in Arab countries. The chapter will start with a
brief description of the Arab world and the Islamic faith to understand the amount of
influence the faith has on today’s amnesty programs in Arab countries. A concise
discussion will be followed on the Islamic perspective on amnesty. Particular cases in
Arab countries will be presented to identify the functions and characteristics of their amnesty programs.

A comparative analysis of amnesty at an international and regional level will be described in Chapter 6. This final chapter will review the sociological theories used to understand the functions and effectiveness of amnesty in general and specific, political and social circumstances. This chapter will conclude with a discussion of the specific strengths and limitations of amnesty as an effective strategy for restorative justice in current conflicts in the Arab world.
AMNESTY DEFINED

Amnesty literally means forgetfulness and forgiveness, derived from the Greek root *amnestia*. It usually denotes a "legal forgetting" and can be understood by the more familiar word amnesia (Goldman 2002, 266).

According to the *Encyclopedia Britannica* amnesty in criminal law, is "the sovereign act of oblivion or forgetfulness for past acts, granted by a government to persons who have been guilty of crimes. It is often conditional upon their return to obedience and duty within a prescribed period." This is the traditional definition of amnesty where the citizens are granted amnesty for their offences against a state.

The *Lectric Law Library* defines amnesty in a broader sense as "a general remission of punishment, penalty, retribution, or disfavor to a whole group or class; that may imply a promise to forget." This definition applies the traditional description of amnesty and includes the new forms of amnesty that increased in this century where members of a repressive regime seek amnesty after their offences against the citizens in a change of regime.

2 Ibid.
Amnesties are also distinguishable from pardons and clemencies. An amnesty is different from a pardon by the fact that the latter is an act of forgiveness after the criminal has already been convicted. A pardon is “the forgiveness of a crime and the penalty associated with it.” Clemency is “the lessening of the penalty of the crime without forgiving the crime itself.” The main difference is that a pardon and clemency are given to one who is certainly guilty, or has been convicted as a sign of forgiveness, while amnesty is granted to those who may or may not have been so, to forget.

Types of Amnesty

In his study of amnesty, Robert Parker identifies three types of amnesties by analyzing the primary motivation of state granted amnesties. The first amnesty Parker identifies is the moral amnesties. He defines moral amnesties “as those that are granted primarily because of a perceived moral or religious obligation to be merciful on the part of the grantor.” The grantors of such amnesties deem forgiveness and mercy as a religious duty and a legitimate goal (Parker 2001, 83).

The second amnesty that Parker identifies is the just amnesties. He defines just amnesties “as those that are granted to offenders who have committed acts that should not have been criminal.” He explains that “the motivation for this type of amnesty is a belief that justice can only be served if amnesty is granted.” The grantors of a just amnesty

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7 Ibid.
8 Ibid.
deem the crime by the offenders “to be either unworthy of punishment or not properly an offense at all” (Parker 2001, 83).

The last type of amnesty is the political amnesties. Parker defines political amnesties as those that “encompass everything else and are granted as a means of achieving an ulterior goal.” These amnesties are not developed out of a “moral or religious obligation”, nor are they granted to correct an unjust circumstance. Instead, political amnesties are usually designed to settle conflicts by promoting peace and restoration while preventing the perpetuation of violence and vengeance (Parker 2001, 83-84).

History of Amnesty

Amnesty is not a contemporary concept. In the Code of Hammurabi, the king was authorized to pardon adulterers (Parker 2001, 76). Countless law codes written subsequently from the early Sumerians, Babylonians, Egyptians, Israelites and numerous other civilizations included some form of clemency, pardon, or amnesty. Particular historical examples of amnesty are described below for different regions and civilizations of the world.

Amnesty in Classic Antiquity

The roots of amnesty in European law can be traced back to the Greek and Roman forms of amnesty, pardon and clemency. One of the most famous amnesties in the ancient world was the one granted by Thrasybulus. In the year 405 B.C. the Peloponnesian War ended with the victory of the Spartans over the Athenians. The conquering Spartan General placed the Thirty Tyrants as rulers of Athens which eventually led to civil war.
As the Athenian civil war persisted, the rebels requested the assistance of Thrasybulus, the exiled Athenian. Thrasybulus agreed to return and support the rebels in exchange for a guarantee of amnesty to the remaining exiles (Parker 2001, 77). The oligarchic reign of the Thirty collapsed after the victory of Thrasybulus' troops. The exiles returned home and "no grievance was held against any citizen, save only the Thirty" (Loraux 2002, 246).

For the Romans, a victorious war hero was granted the right to either execute prisoners of war or to pardon them. Roman emperors also declared their generosity on special occasions such as coronations and national holidays (Rolph 1978). Many of the Roman amnesties were usually reserved for times of unrest and civil war and limited to external enemy controlled territories (McKnight 1981, X).

One of the most famous amnesties was the one granted by the Emperor Galerius called the "Edict of Toleration." After his brutal persecution of Christians, Galerius believed that his illness was the reprisal of the Christian God. The edict began by justifying his murder of Christians by stating that:

Among other arrangements which we are always accustomed to make for the prosperity and welfare of the republic, we had desired formerly to bring all things into harmony with the ancient laws and public order of the Romans, and to provide that even the Christians who had left the religion of their fathers should come back to reason.

After recognizing that some Christians had renounced their faith out of fear while others persevered, the Emperor declared that:

In view of our most mild clemency and the constant habit by which we are accustomed to grant indulgence to all, we thought that we ought to grant our most prompt indulgence also to these, so that they may again be Christians and may hold their conventicles...
Galerius added that:

Wherefore, for this our indulgence, they ought to pray to their God for our safety, for that of the republic, and for their own, that the republic may continue uninjured on every side, and that they may be able to live securely in their homes. 9

Amnesty in Chinese Civilization

The system of amnesty was one of the most striking aspects of justice during the first millennium of the Chinese empire (McKnight 1981, 112). One of the influences behind these acts of grace was Confucius, “for whom the art of government involved pardoning small faults,” and an obligation, “to cleanse the wicked so that they might have the chance to begin afresh” (McKnight 1981, 2, 5).

There are many examples of Confucius philosophy in the practice of emperors in different periods. In the early empire the famous Emperor Han Kao-tsu “issued eight amnesties that touched the whole empire and created precedents for granting amnesties on the naming of an heir apparent, on the coming of peace, on the establishing of a new capital city, and on the appointing of a new king” (McKnight 1981, 16). In Medieval China, hundreds of encyclopedic collections of preserved acts of grace from the T’ang period are recorded (McKnight 1981, 44). Scholars found that “a great act of grace included all people guilty of capital crimes or less” (McKnight 1981, 45-46). Under the T’ang system, a criminal granted amnesty escaped the punishments of (1) decapitation, (2) strangulation, (3) several degrees of permanent lifetime exile (4) penal servitude, (5) degradation of status or loss of position, (6) beating with a rod (McKnight 1981, 46). In the late imperial China, the Ming Emperor Yung-lo held seasonal assizes and granted

amnesty to selected criminals so that they can remain healthy during the severe weather seasons (McKnight 1981, 101).

Amnesty in the Islamic Civilization

In the Islamic civilization, the teachings of the Quran and the examples from Mohammed’s life emphasized the importance of mercy and restoration in law. One of the first amnesties in Islamic history is the one granted by Mohammed to the inhabitants of Mecca, the city that persecuted his followers.

After 23 years of exile Mohammed’s army of ten thousand Muslims surrounded Mecca. The Meccans surrendered without a fight and an amnesty was granted as Mohammed repeated the words that Joseph, the son of Jacob, said to his brothers as found in the Quran, “This day let no reproach be (cast) on you: God will forgive you, and He is the Most Merciful of those who show mercy!”\(^\text{10}\) This idea of mercy and forgiveness carries on to modern Muslim governments when they grant amnesties to criminals of various crimes on Islamic holidays and celebrations.\(^\text{11}\) Amnesty in Islamic law and civilization will be discussed in more detail in Chapter 5.

\(^{10}\) Quran 12:92. All references from the Quran are from The Holy Qur-an (Abdullah Yusuf Ali trans., 1934)

\(^{11}\) Many of these amnesties and pardons that are granted on holidays can be found daily in most headlines from the Arab world. A couple examples can be found at: AlJazeera. “Morocco Islamists Get Royal Pardon,” August 20, 2005, http://english.aljazeera.net/NR/exeres/D527F062-00E3-4978-A07E-BF1CD7687999.htm.

RESTORATIVE JUSTICE AND AMNESTY: THEORETICAL DEVELOPMENT AND RESEARCH METHODS

In a modern world full of international laws regulating conflicts, restorative justice has now become one of the most popular methods of conflict resolution for keeping the peace between diverse groups of peoples.

The term “restorative justice” in this thesis will be associated with the resolution of political conflicts in various parts of the world. The paper will use Tony Marshall’s broad definition of restorative justice as a process, “whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future” (Llewellyn and Howse 1999). This definition emphasizes the restoration of relations between the victims, the offenders and the community (Llewellyn and Howse 1999).

Amnesty is a popular method of conflict resolution in restorative justice. Many academics, such as Charles Villa-Vicencio, support the ideas of amnesty in restorative justice and argue that “politically driven conflicts are less likely to curtail human rights abuses due to the threat of punishment.” Villa-Vicencio further contends that “historically fixed mind sets, entrenched prejudice and the kind of ideological bloody-mindedness that drives militant perpetrators of political crime, are forces too powerful to be prevented by...
the possibility of future prosecution.” He complains that those who assert that “the threat of punishment will discourage those who violate human rights and international conventions” are fundamentally similar to those who allege that “the threat of capital punishment deters crime.” “If this were the case,” he asserts, “those who support the deterrence argument need to ask whether the threat of prosecutions would not make authoritarian regimes more reluctant to seek a political settlement with those who want to end their rule” (Villa-Vicencio 2000, 70).

Villa-Vicencio seeks to present a well-rounded theory of justice that “involves restoration of relationships as a basis for the prevention of the reoccurrence of human rights abuses and the reparation of damage to the personal dignity and material wellbeing of victims”. In a situation of political transition, Villa-Vicencio presents the following eight factors and concerns associated with restorative justice (Villa-Vicencio 2000, 70-72).

1. An organized system of justice based on international standards of human rights.

2. The administration of justice to the benefit of all involved.

3. The promotion of moral values that make for a shared commitment to the creation of a society governed by the rule of law.

4. The need to hold accountable all those responsible for the gross violations of human rights.

5. The issue of collective criminal guilt. Villa-Vicencio quotes Karl Jaspers, in his celebrated essay written shortly after the institution of the Nuremberg Trials, rejecting this concept of collective criminal guilt, while arguing that all Germans needed to share political responsibility for the past.

6. The acknowledgement of the importance of memory, suggesting that memory is the ultimate form of justice and healing.

7. The need for punishments, where necessary.
8. The rehabilitation of victims.

Restorative justice, Villa-Vicencio argues, “will succeed where punishment has failed; reducing the recurrence of human rights abuses and enabling the emergence of a more just social order.” It should rebuild the self-respect and general welfare of the victims, while assisting in the reintegration of the offenders back into society (Villa-Vicencio 2000, 72).

Theories of Society and Social Order Associated with Amnesty

The functions of amnesty rely largely on the legal, social, political, and economic conditions of that society. Despite the different conditions, amnesties are used to achieve numerous restorative purposes and other functions. In the following section, amnesty will be explored using several sociological theories.

Labeling Theory and Amnesty

Similar to restorative justice, labeling theory is another theory that has been popular “because of its focus on the informal and formal application of stigmatizing, deviant labels by society on some of its members” (Akers and Sellers 2000, 135). The theory maintains that “individuals who are labeled or stigmatized as deviant are likely to take on a deviant self-identity and become more, rather than less, deviant than if they had not been so labeled” (Akers and Sellers 2000, 137).

For understanding amnesty, the most important variant of labeling theory involves Braithwaite’s reintegrative shaming (Braithwaite 1989). Braithwaite argues that “stigmatizing or disintegrative shaming provokes additional crime” and claims that
"efforts to reintegrate offenders back into the community of law abiding citizens are necessary through words or gestures of forgiveness or ceremonies to decertify the offenders as deviant" (Braithwaite 1989, 100-101). From his perspective, official efforts to control crime and other disruptive behavior are most effective when it is directed at condemning the actions rather than stigmatizing the offender as an evil person. He argues that through a process of reintegrative shaming, instead of stigmatization itself, that social order is restored and further deviance is minimized (Akers and Sellers 2000, 146).

Labeling theory is one of the principal theoretical reinforcements for amnesty programs. The focus of labeling theory on labels and the results thereof is one of the primary justifications for the acceptance of amnesty. According to labeling theory, many conflicts continue decades or even centuries after such conflicts are over because of the continued vilification and stigmatization of the parties involved. Reintegrative shaming theory explains and justifies many of the moral amnesties that are granted primarily because of a perceived moral or sometimes religious obligation to forgive and show mercy to an offender.

Consensus/Conflict Theories and Amnesty

Consensus and conflict theories focus on law and how it is used as a method for social control over people. Consensus, also called "functionalist theory," explains "the content and operation of the law by reference to a broad-based agreement in society on social and moral norms and the common interests of all elements of society" (Akers and Sellers 2000, 213). Conflict theories differ in that it "proposes that law and the criminal justice system primarily embody the interests and norms of the most powerful groups in
society, rather than those of the society as a whole; and that the law is enforced in a way that unfairly labels and punishes the powerless in society” (Akers and Sellers 2000, 213). Both conflict and consensus theories have important implications in amnesty programs.

Under a consensus theory of social order, the idea of an amnesty can be applied to bring about a resolution to a conflict as a means of promoting the consensual interest of the whole of society. The state’s issue of amnesties to offenders is an example of Durkheim’s explanation of the role of the state as mediator in an organic society. Consensus theory explains amnesty in the form of a collective view in that amnesties can be granted through a collective sense on what is the right way to resolve a conflict.

Under a conflict theory of social order, society is based on a conflict between different interest groups. Amnesty, within this context can be used as an instrument of power. Conflict theory explains political amnesties and how they are granted as a means of achieving an ulterior goal.

Several general themes of conflict theories reflect these types of amnesties and the conditions in which they are granted. For example, conflict theories assume that mala prohibita crimes (i.e., acts that are wrong only because they are prohibited by law) can be established and/or ignored in their enforcement to both target social control efforts at groups that threaten the dominant authority or to excuse the criminal behavior of their political allies. In addition, conflict theories often assume that powerful groups can control various social institutions using force, compromise, or simple dominance over these institutions (Akers and Sellers 2000, 198). By using law as an instrument of power or a weapon in group conflict, the political interests of the ruling elite can be preserved.
and protected by the selective use and denial of their power of granting amnesties (Akers and Sellers 2000, 196).

**Marxist Theories and Amnesty**

Marxists concentrate on class as the center of conflict. Marxists argue that economics shape every facet of social life. Some criminologists suggest that “all forms of crime simply reflect the crime-producing system of capitalism” and argue that “the crimes of the working class are either “crimes of accommodation” or “crimes of resistance” to the capitalist system.” In contrast, “crimes committed by the ruling class are “crimes of domination and repression” that are committed to protect and promote the interests of the ruling class” (Akers and Sellers 2000, 243).

In his book *The Social Reality of Crime*, Richard Quinney (1970) argues that crime “is a definition of human conduct that is created by authorized agents in a politically organized society” (Quinney 1970, 15-16). The “authorized agents” are those holding political and economic power. Quinney argues that all actual control and influence belong to the ruling class whose main objective is domination by keeping the status quo (Quinney, 1974). In order to legitimize and control the masses the ruling class manipulates the media, the universities, and other sources of public opinion so that the public will remain ignorant about the reality of the system (Quinney 1970, 22-23).

Both Quinney’s theory and Marxism in general provides an interesting perspective on amnesty. In particular, amnesties within these perspectives are one of the many tools available to the capitalist elite to protect their economic and social interests.
and to maintain the status quo. Under this framework, the ability to grant or deny political amnesty is the ultimate in political power.\textsuperscript{12}

**Peacemaking Theory and Amnesty**

One of the latest theories on crime and social order is called “peacemaking criminology”. This approach derives from religious, humanist, feminist, and critical/Marxist traditions (Pepinsky and Quinney 1991).

Peacemaking theorists compare crime to war and affirm that it is time to make peace between all the different individuals involved in the criminal justice system (Akers and Sellers 2000, 240). Quinney, the former conflict/Marxist theorist, is the main proponent for this particular theory. He advocates peacemaking through restoration, mediation and reconciliation in order to “alleviate suffering and thereby reduce crime.” Quinney’s theory is largely a spiritual one that “preaches non-violence with a plea to end all suffering” (Pepinsky and Quinney, 1991) [(Akers and Sellers 2000, 240)].

The peacemaking theory seems especially important for understanding moral amnesties. This is the case because there are many examples of amnesties that are perceived as a moral or sometimes religious obligation to forgive and show mercy to an offender with no material rewards, favors or gains in return.

**Research Methods for Studying Amnesty**

There are various qualitative and quantitative methods for studying amnesty in different contexts. These methods include detailed case studies, secondary data analysis

\textsuperscript{12} An excellent example of Quinney’s theory and Marxism can be found in Doug Hay’s chapter “Property, Authority and the Criminal Law,” in the book *Albion’s Fatal Tree*. The author describes how pardons were granted to the condemned, so that they can labor for the rich.
of numerous records, participant-observation studies by strategically entrenched officials or witnesses, and surveys and interviews of those who are in position to grant amnesties.

This thesis will employ the method of comparative historical case studies to examine amnesty in a variety of different contexts. By contrasting and comparing particular cases of amnesty across time and geographical regions, this thesis will be able to make stronger inferences about the strengths and limitations of amnesty as a tool of conflict resolution in the current war on terrorism in Arab countries.

Within this comparative historical framework, several specific methodological approaches will also be employed. For example, the method of interpretive analysis will be applied to different amnesty programs and the particular laws implemented in various conflicts. Content analysis will be accomplished by reading through various secondary sources on these conflict situations. By using content analysis within comparative and historical case studies, the current study provides a relatively comprehensive research design for assessing the similarities and differences in the nature and effectiveness of the use of amnesty as a method of conflict resolution in different contexts.

A purposive sampling design was used to select the particular cases of amnesty highlighted in the current study. The particular historical examples are selected because of their widespread acceptance as major conflict situations across different continents of the world. The particular Arab countries are selected because they were the only countries with comprehensive information on their amnesty programs. As a result of this sampling decision, however, my substantive conclusions about the use of amnesty as a restorative principle will be restricted to highly visible situations of national and international conflict.
CHAPTER 4

MODERN AMNESTIES

Amnesty as a restorative method of conflict resolution has been used in many different regions of the world. The following chapter provides case studies of several well-known amnesties that occurred within the last two centuries in different global regions.

North America

In American history, the subjects of amnesty, pardon and clemency have been the source of major controversy in law and society. The present generation of Americans has been exposed to numerous pardons with the change of every administration. This began with Ford’s pardon of Nixon for the Watergate Scandal, and then continued with Carter granting amnesty to draft evaders, Bush Sr. to officials connected to the Iran-Contra affair, and finally Clinton’s multiple pardons on his last day as president.¹

The granting of amnesties and pardons are not a new phenomenon in American society. In fact, George Washington was the first when he pardoned the leaders of the Whiskey Rebellion in 1794. The most famous of all American amnesties is the one

and end of the Confederacy” (Dorris 1953, 87). One year after the proclamation, Lincoln became even more disposed to clemency as can be found in his annual message to Congress in December 1864 (Dorris 1953, 88). In this message, he expressed that his “proffer of amnesty was still open to all,” but warned that “the time may come when public duty might demand that it be closed” (Dorris 1953, 88). Four and a half months later, Lincoln was assassinated (Dorris 1953, 88).

President Johnson built upon Lincoln’s amnesties to Confederate soldiers and officials in the South by issuing his first proclamation of pardon and amnesty in the year 1865. Johnson granted a rapid, lenient form of amnesty because of the failure of many to take advantage of Lincoln’s amnesty (Dorris 1953, 111). His proclamation states:

“To the end, therefore, that the authority of the Government of the United States may be restored and that peace, order, and freedom may be established ...” (the President grants)... “to all persons who have directly or indirectly participated in the rebellion, except as hereinafter excepted, amnesty and pardon, with the restoration of all rights of property except as to slaves and except in cases where legal proceedings under the law of the United States providing for the confiscation of property of persons engaged in the rebellion have been instituted” (Dorris 1953, 111).

In this political amnesty granted by Johnson, the majority of former Confederate soldiers and officials were allowed amnesty and reintegration to the Union, as long as they asserted that slavery and succession were dead. The explicitly stated reasons for Johnson’s political amnesty were for the promotion of restoration, reconstruction and recovery of a nation from a violent civil war.

South America

In the last few decades, the rise and fall of numerous repressive regimes have occurred in Latin America. One of the most controversial regimes and subsequent
amnesties in this world region involved General Augusto Pinochet’s rise to power in Chile.

In 1973, the military General Augusto Pinochet seized power through a coup d’etat from the democratically elected president Salvador Allende. This military overthrow ended over 150 years of traditional democratic rule in Chile. The day after the coup Pinochet announced a State of Siege to increase military rule over all civilian activities (Rigby 2001, 76).

Under Pinochet’s State of Siege, “congress was dissolved, political parties were banned, trade unions were closed down, rigid censorship was imposed, and mass raids were launched” (Rigby 2001, 76). Close to 45,000 people were held for questioning while thousands fled into exile, and three months later between 1,500 and 2,000 civilians were murdered by the Directorate of National Intelligence (DINA). Nearly 1,000 people were abducted between 1973 and 1978 and were never heard about again (Rigby 2001, 77).

Looking back on this historical period, many authorities and commentators blamed the judiciary during these years for failing to defend human rights. For the judiciary, the dictatorship “became the new source of legislative and executive authority, and their task was to operate according to laws and decrees that emanated from this source.” Accordingly, the judiciary was deemed guilty of failing to defend the thousands of civilians sentenced without due process (Rigby 2001, 79).

To add insult to the injuries suffered by the victims of Pinochet’s rule, the government proclaimed the 1978 Amnesty Law. The government claimed that the State of Siege had “now come to an end and peace, law, and order had been established.” It
claimed that an amnesty was to be granted to all “authors, accomplices, or concealers” of politically connected crimes since the 1973 coup. The explicit reason for the amnesty proclaimed by the government was to “leave hatred behind and promote national reconciliation.” Under this law, hundreds of political prisoners were released only to be exiled. The only apparent beneficiaries of this amnesty “were military and security agents who were absolved from responsibility for the disappearance, torture and extrajudicial killings” of thousands (Rigby 2001, 80).

During the 1989 elections and ten years after the passage of the amnesty law, Patricio Aylwin the leader of the Christians Democrat-Socialist Coalition for Democracy vowed that if elected he would either “repeal or annul the Amnesty Law” and make an attempt to uncover the truth of what really happened during the State of Siege (Rigby 2001, 80). In March of 1990, Aylwin was inaugurated in the National Stadium, “where so many of Pinochet’s victims were imprisoned, tortured and executed” (Rigby 2001, 81).

Aylwin then focused on establishing a truth commission to discuss what had happened during those years of violations of human rights. However, he had to establish this commission without inciting the military. Aylwin appointed one by presidential decree and after less than two months in office announced the formation of the Commission of Truth and Reconciliation. To avoid accusations of partisanship he appointed eight commissioners from across the political spectrum. Three commissioners were from Pinochet’s regime, two had been exiled by Pinochet’s regime and a chair who was an ambassador under Allende’s government (Rigby 2001, 81).
Four primary goals were linked to Aylwin’s commission. These included (1) detailing how the whole system of repression had worked; (2) accounting for every disappeared and extra-judicially killed person; (3) proposing measures of reparation and compensation for the families of the victims; (4) exploring ways to ensure that such horrors should never again occur in Chile (Rigby 2001, 81).

Less than a year after the Commission was formed, an 887-page report was released. The report included a detailed description of the repression, proposals for reparations and methods to prevent future human rights violations (Rigby 2001, 83).

The Commission and its report were immediately scrutinized because of various weaknesses in it. For example, the Commission failed to identify the perpetrators by name. Many of the victims and their families were affected by this weakness because it failed to identify perpetrators to have them publicly acknowledge the pain they had caused during those years (Rigby 2001, 87). The second weakness of the Chilean Commission was the inability to “subpoena witnesses or to seize relevant documentation.” The third weakness critics identify is the “undermining of the legitimacy of the commission because of its appointment by a presidential decree rather than the legislative assembly.” Under these conditions, the mandates of the truth commission were compromised because the new regime wanted to reconcile with the past as “quickly” and “painless” as possible without upsetting anyone from the Pinochet regime (Rigby 2001, 125).

The Amnesty Law of 1978 and Aylwin’s Truth Commission represents a somewhat unique form of contemporary amnesty by focusing on state crimes against the civilian population rather than those granted to citizens for crimes against the state.

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Although many Chilean citizens strongly believed in the moral responsibility of the Pinochet regime to answer questions about these dark years of oppression, the *Amnesty Law* of 1978 was nonetheless crafted and used almost exclusively for political reasons. However, Aylwin’s *Truth Commission* was a genuine attempt at national reconciliation. Unfortunately, the specific problems with the perceived legitimacy of this commission and its decision to not identify individual perpetrators were of sufficient gravity to severely limit its reconciliatory value (Rigby 2001, 126).

Human rights activists and organizations across the world have used the experiences of the *Amnesty Law* and *Truth Commission* in Chile to promote reconciliation and restorative justice in other countries. In fact, these valuable lessons seemed to be especially salient for South Africa as it planned and developed its own truth commission associated with the past system of apartheid.

**Africa**

One of the most remarkable events in modern African history is the transition of South Africa from a country divided by apartheid to a democratic society shared by both black and white. For close to 350 years, the majority of South Africans were marginalized from the political and economic life of their state. Laws and constitutions were used throughout its history as instruments of securing white domination (Lange 2000, 16).

South Africa, like Chile, faced the problem of how a new democracy should face a previous government that was liable for human rights abuses, when many of those liable continue to hold the same positions in the new government (Rigby 2001, 124). The
South Africans learned from the Chilean experience and formed an innovative *Truth and Reconciliation Commission*. Many speculate that the structure of this commission will serve as an ideal model for other countries facing internal conflict and political change (Goldman 2002, 278).

In the transition from a white-minority dictatorship to a democratic constitutional government, South Africans tried to find a way of revealing the truth about the apartheid system. It also had to find those responsible for human rights abuses during the apartheid years, while working on ways of promoting “reconciliation, reconstruction, and development” (Lange 2000, 17).

The aim of South Africa’s new democratic government was multi-faceted. Its explicit approach to reconciliation, reconstruction, and development included the following elements:

- to transform the political, economic, social, ideological, and moral aspects of the apartheid dispensation by building a single nation that acknowledges the diversity of its people; instilling a new sense of patriotism; healing the wounds of a shameful past; liberating black people from political and economic bondage; eradicating gender inequalities and women’s oppression in particular; improving the equality of life for all through the eradication of poverty and the attainment of the basic needs of the majority; and creating a culture of democracy and human rights (Lange 2000, 16-17).

The approach to healing had to start by accomplishing four goals from the *Truth and Reconciliation Commission*: (1) to develop a complete picture of the causes, nature and extent of the human rights violations committed from March 1960 to May of 1994; (2) to grant amnesties to all persons who confessed acts associated with a political motive; (3) to know the whereabouts of victims, and allow survivors to relate their own accounts of how they suffered and their recommended reparations; and finally (4) to
compile a report on the findings and recommended measures to prevent future abuses (Rigby 2001, 127).

Commissioners spent the majority of their time justifying the granting of amnesties to the public, especially to the victims. It was the most controversial of all the Commission’s work. The thought of government security forces confessing to violating human rights violations against the members of the liberation movement in order to be granted amnesty caused general dissatisfaction and rage (Lyster 2000, 184). Archbishop Desmond Tutu, the Chairperson of the Truth and Reconciliation Commission, explained in his foreword to the report that amnesty was necessary for the new government’s future:

We could not make the journey from a past marked by conflict, injustice, oppression and exploitation to a new and democratic dispensation characterized by a culture of respect for human rights without coming face to face with our recent history. No one has disputed that. The differences of opinion have been about how we should deal with the past; how we should go about coming to terms with it (Lyster 2000, 184).

As for the criticism of compromising justice for peace by allowing some human rights violators’ freedom, Desmond Tutu confessed that:

We had to balance the requirements of justice, accountability, stability, peace and reconciliation. We could very well have had retributive justice, and had a South Africa lying in ashes- a truly Pyrrhic victory if ever there was one (Rigby 2001, 137).

The amnesty program in South Africa differed greatly from the one in Chile. In particular, the South Africans felt that in order to understand the causes and description of the human rights violations committed during apartheid, they had to pay for it by granting amnesty to the perpetrators. That is why the focus of the South African restoration was the idea of “amnesty in return for the truth” (Rigby 2000, 132).
Unlike the Chilean experience, South Africa would not grant a collective amnesty. Amnesty in South Africa had to be applied for on an individual basis and was granted only for the full confession of the details of the crimes committed. The perpetrators also had to convince the Committee of the motive for their crimes. Amnesty can only be granted for the crimes committed for political reasons and not a personal one (Rigby 2000, 132). To increase the pressure on the perpetrators, the *Truth Commission* imposed a 12 month time period to apply for the amnesty and avoid prosecution (Rigby 2000, 132).

The *Truth and Reconciliation Commission* succeeded where the Chilean Commission failed. By threatening prosecution and offering amnesty for a confession, those responsible for human rights abuses were dragged into the healing process (Rigby 2000, 137). There were criticisms from both the black majority and the white minority. As mentioned, the black majority saw problems with the amnesty provisions and the lack of justice for those who confessed (Rigby 2000, 137). But the main criticism came from the white minority who felt the *Truth Commission* was out for a “witch hunt of whites” in South Africa (Rigby 2000, 137).

The amnesty of South Africa is a perfect example of a moral amnesty. It derived from the perceived obligation by the new government to be merciful and forgiving for a brighter future. For this reason, the South African Commission focused on truth and less on reconciliation. The perpetrators were not punished for their confessed crimes.
Europe

Various historical amnesties in Europe reveal how restorative efforts have been used to both reestablish order and maintain inequalities among rival groups. The most famous case of amnesty occurred after the bloodiest war in history.

Hitler's invasion of Poland in 1939 led to six years of war and the deaths of millions in Europe. Jews, gypsies, homosexuals, and other non-Germans were killed because they were believed to be inferior by the fascist and Nazi dictatorships. How did the Allies handle Nazi war criminals and the German people after the occupation of Germany?

Unlike South Africa, Europe adopted a retributive stance toward the violators of human rights. The Allies made it clear as early as 1943 in the formation of the United Nations War Crimes Commission, that they would prosecute war criminals after Germany's unconditional surrender (Rigby 2001, 32). When Germany surrendered, the Allies established the International Military Tribunal at Nuremburg. The Tribunal focused on three main categories of crime: crimes against peace (waging a war of aggression), crimes against humanity, and war crimes.  

Along with the prosecution of Nazi criminals, the Allies focused on the general German population to "eradicate any perceived threat of a resurgence of National Socialism" (Rigby 2001, 33). The Allies implemented a new law in 1946 that screened and categorized the whole adult German population of the Western occupied areas into one of five degrees of guilt (Rigby 2001, 33). Between 1946 and 1949, over 5,000 Nazi

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15 The three crimes in the Nuremburg Charter can be found in Section II Article 6, in the following web address:
http://deoxy.org/wc/wc-nurem.htm
officials were prosecuted and close to 800 of them were executed (Rigby 2001, 33). Most Germans were charged with lower degrees of offenses; they received minor fines and were issued a certificate of rehabilitation to free them of any stigma (Rigby 2001, 33).

As early as 1947, the United States was forming an amnesty program for the German people (Rigby 2001, 33). There were two main reasons why the United States designed this amnesty program. First, the war diminished the number of skilled and experienced workers needed to rebuild the economy and reconstruct the country’s infrastructure (Rigby 2001, 33). An amnesty would allow for a larger quantity of workers. Second, the American government was fearful of the Soviet Union (Rigby 2001, 33). With the emergence of the Cold War, the United States needed German support to fight the new Communist threat as the old threat of the Nazi regime became trivial.

The reaction of the Allies to Nazi Germany was one of retribution and justice. When the Cold War became certain, both the United States and Soviet Union realized that Germany would be the front line for the clash of ideologies. The amnesty was a benefit to both the Germans and the Americans. The United States granted a political amnesty to the German people for the same reasons President Johnson granted his amnesty to the Confederates. The amnesty helped the West Germans with the reconstruction and recovery of its nation while the United States gained support for the new clash between capitalism and communism.

Asia

In Asia, another dictator followed the examples of Stalin, Mussolini and other European dictators. In 1975, political power in Cambodia fell to the communist Khmer
Rouge led by Pol Pot. In their elimination of all opposition, around 2 million people were exterminated. The killings finally slowed down when the Vietnamese overthrew the Pol Pot regime in 1979 (Adams 1998, 212).

After the Vietnamese invasion of Cambodia, show trials were held that convicted Pol Pot of genocide in absentia with a death sentence (Adams 1998, 212). The trial was in absentia because the Khmer Rouge leadership had escaped during the invasion to neighboring Thailand, where they were given refuge and rearmed with the help of the United States and other Western nations to fight against the new Cambodian government backed by the Vietnamese (Adams 1998, 213).

In the beginning, the new Cambodian government was faced with the question of how it should deal with the remaining Khmer Rouge members in Cambodia. Although the new government never proposed a formal amnesty there was an “emphasis on reconciliation and avoidance of retribution.” This idea is a result of the agreement between the Cambodian political elite and the Khmer Rouge members that remained in Cambodia. The decision by the political elite was made to secure political stability in the new government. The general population in Cambodia accepted this idea of reconciliation because in most Cambodian families there were both victims and offenders (i.e., people who died at the hands of the Khmer Rouge, in each family there were also people who participated directly or indirectly with the killings) (Rigby 2001, 3).

Although the generation that survived the Khmer Rouge’s genocide attempted to forget the past, the generations that followed began to insist on knowing what actually happened (Rigby 2001, 3). In 1994, the United States took the first step to answer some of these demands by passing the Cambodian Genocide Justice Act. The purpose of this
Act was to collect facts about the crimes of the Khmer Rouge regime and to establish a national criminal tribunal. By the end of 1995, a report was released that discussed possible mechanisms for addressing the past, but the Cambodian government chose to ignore it (Adams 1998, 213).

The Cambodian government's numerous attempts of informal amnesties came to an end in 1996. The pivotal event involved the granting of a formal amnesty to Ieng Sary (one of the highest ranking members of the Khmer Rouge) and thousands of Khmer Rouge soldiers in exchange for a cease fire. The formal Cambodian amnesty caused a contest by prime ministers and other government officials for the support of Khmer Rouge members (Adams 1998, 214).

The international community was silent before and after the formal amnesty to Khmer Rouge members. Only Amnesty International and a single Cambodian NGO leader publicly denounced the amnesty. The United States and other world powers said nothing. Even the Genocide Justice Project, which found information implicating Ieng Sary in the crimes of the Khmer Rouge, kept quiet (Adams 1998, 214).

Cambodian government officials argued that their amnesty of Ieng Sary and other Khmer Rouge members was a choice between "justice" and "peace." They suggested that "national reconciliation and peace are more important than justice, and that the end of the war is more important than putting on trial a bunch of old men." Many human rights activists disagree and argue that the debate between "peace" and "justice" in Cambodia was a false choice. They argue that the Khmer Rouge was on the brink of destruction because of internal strife between Ieng Sary and Pol Pot. Human rights activists maintain
that the government officials in Cambodia were responsible for “saving the dying Khmer Rouge from a certain death,” all for partisan political benefit (Adams 1998, 216).

The amnesty in Cambodia for the Khmer Rouge members is an example of how a political amnesty can be collectively viewed as immoral and unjust. Critics charge that war criminals in the dying Khmer Rouge were saved by shortsighted and thoughtless government officials who granted them a complete political amnesty.
CHAPTER 5

AMNESTY IN ARAB COUNTRIES

The recent advent of terrorism has radically transformed the geo-political/social order of the world. For the United States and Europe, the collapse of communism has coincided with the appearance of terrorism from Muslim countries, as the new and emerging threat. For Arab governments, terrorism is the love-child born from decades of Machiavellian policies that caused economic deprivation, social alienation and political disenfranchisement.

Economic impoverishment in the Arab world continues to be amongst the highest in the world. The colonization and continued occupation of Arab land has dramatically affected the psyche of the average Arab. The traditional, social, moral, and political order ceased to exist as Islamic law perished, cultural norms changed along with forms of dress, customs, and even the Arabic language in some cases. The implementations of most alien Western ideas have failed and produced rogue regimes that continue to use their armed forces against its public to keep the status quo.

The American invasion of Iraq intensified the gap between Arab governments and the public. Most Arab governments supported the invasion, choosing to cooperate with U.S. policy over popular public opinion. One presumed consequence of the war in Iraq is that the war would turn Iraq into a shining light of democracy in the region, which would
inspire the public in other Arab countries to demand democratic change (Telhami, 2003, 182). Although Bush's plans of turning Iraq into a shining light of democracy have not exactly unfolded, Arab regimes are feeling a pressure to reform from the invasion of Iraq.

The Arab world in the last few years has experienced various types of progress in the areas of democracy, rule of law, control of corruption, women's rights, and human rights in general. The remaining part of this chapter will focus on amnesty laws within this changing Arab world, the reasons for these laws, and how individual Arab countries have applied them in conflict situations.

The Arab World

The Arab world consists of a large ethnic group of around 300 million people found in North Africa and the Middle East. There are 22 nations in these regions that consider Arabic as their official language. The total area in the Arab world is larger than the United States, Canada, China, and Brazil. These nations vary politically. Some Arab nations are monarchies (e.g. Bahrain, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia and the United Arab Emirates). Other Arab nations are republics (Algeria, Egypt, Lebanon, Libya, Syria), indicating that they are democracies. However, these distinctions are meaningless in practice.

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17 Ibid.
18 Ibid.
19 Ibid.
20 These democracies are meaningless. Most Arab republics have either a lifelong president or a single political party.
The modern Arab world has been heavily influenced by European colonization. Many scholars on the Arab world consider the modern borders and political regimes as artificial creations that served the colonial entities that controlled them. Efraim Halevy, the current director of the Hebrew University's Center for Strategic and Policy Studies, explains this issue in the following manner:

The border, which if you look on the maps of the Middle East are very straight lines, were drawn by British and French draftsmen who sat with maps and drew the lines of the frontiers with rulers. If the ruler for some reason or other moved on the map, because of some person's hand shaking, then the frontier moved (with the hand) (2005, 2).

Halevy gave an example of the famous story about the British consul, Gertrude Bell and how when drawing a map between Iraq and Jordan, she added considerable territory for the Jordanians because she turned her paper and ruler when she rotated to talk to someone (2005, 2).

The European colonizers also placed “kings, emirs, and sheikhs as semi-autonomous rulers over newly created states to serve them.”\(^\text{21}\) When Arab nations obtained their independence from their former colonizers, most of these autocratic leaders retained their power or were replaced by harsher regimes and leaders. Many of these leaders were later supported by either the United States or the Soviet Union as the world was divided into two by the Cold War. During these years Arab governments were unrestricted in their persecution of all those who opposed them. The staunch support for such regimes adjourned with the attacks on September the 11\(^{\text{th}}\).

Islam

The majority of the Arab world adheres to the Islamic religion, with 95% as Muslim, while less than 5% as Christians. Most Arab nations have a combination of legal traditions, usually Islamic law mixed with the legal system of its European colonizer (Reichel 2005, 135). In order for the reader to understand today's amnesties in the Arab world, a brief description of Islam and Islamic law will be provided.

There are over 1.2 billion people in the world today who adhere to the Islamic faith (Azarian, Kendall, Wiechman, 2). Only about a quarter of them come from the Arab world. The meaning of the word Islam "is submission or surrender to God's will." Accordingly, Muslims are commanded to "obey and submit to God's will" (Azarian, Kendall, Wiechman, 1). The teachings and laws of Islam derive from two key sources: (1) The Qur'an, the text that Prophet Mohammed dictated to his scribes, which Muslims believe were revealed from God and (2) the Hadith, the teachings of Prophet Mohammed that were compiled by his companions on their private initiative (Hamidullah 1969, 16).

To most Westerners, Islamic law is quite distinctive, since all aspects of Islamic law are derived from the Islamic religion (Azarian, Kendall, Wiechman, 1). In Islamic law, there is "no separation of church and state" (Azarian, Kendall, Wiechman, 2). It seeks to manage all aspects of human life, the public and the private. Islamic law is known as Shariah, which means "the path to follow God's Law" (Reichel 2005, 131).

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24 The second source of Islamic law include both the Sunna; the actions and sayings of Mohammed and the Hadith; the reports of the actions and sayings. It is an obligation for all Muslim to practice the Sunna yet it is not obligatory on Muslims to practice a Hadith.
There are many features of Shariah that can be discussed. However, the elements of forgiveness are most relevant to the Islamic view on amnesty.

Islam and Amnesty

There are many misconceptions about Islamic law. One of the common misconceptions is the belief that Shariah is inflexible and that “judges must always impose a fixed and predetermined punishment for each crime.” Under Shariah, judges are compelled to implement the nine Hadd crimes, but they also possess much greater freedom in punishments for non-Hadd crimes.25 In the crimes that fall under the Qesas and Ta’zir categories, there always exists an option to forgive the offender. Judges, especially in the Ta’zir category of Shariah, have a great deal of freedom to “create new options and ideas to solve new problems associated with crime.” This situation is unlike the English common law which is “filled with precedents, rules, and limitations that inhibit creative justice” (Azarian, Kendall, Weichman 2).

In the Quran and Hadith there exists a strong emphasis on the importance of forgiveness and restoration in law. There are two aspects of forgiveness: God’s forgiveness and human forgiveness (Siddiqi, 2004). God’s forgiveness consists of repentance for sins. In the Quran, for example, there are many names for God that include Al-Rahman (the most Merciful), Al-Raheem (the most Compassionate), Al-Ghafoor (The most Forgiving), Al-‘Afuw (the Restorer), Al-Tawwab (The Acceptor of repentance) and Al-Haleem (the Clement) (Siddiqi, 2004). It is stated in the Quran that

25 Islamic law has three crime categories: Hadd [plural Huddud] the most serious of offenses, Qesas or crimes of retaliation and restitution, and finally Ta’zir the least serious of the categories. Azarian, Kendall, and Wiechman compare the three categories of crime in Islamic law to felonies, gross misdemeanors, and misdemeanors in Common law.
God does not forgive the associating of partners with Him (without repentance) but may forgive every other sin for whomsoever He wills.\textsuperscript{26}

Human forgiveness consists of the forgiving of people and especially of one’s enemies. Specific references in the Quran to human forgiveness include the following:

“Those who avoid the greater sins and indecencies and, when they are angry even then forgive” Quran (42:37).

“The recompense for an injury is an injury equal thereto (in degree): but if a person forgives and makes reconciliation, His reward is due from God for (God) loveth not those who do wrong” Quran (42:40).

“And if ye punish, let your punishment be proportionate to the wrong that has been done to you: but if ye show patience that is indeed the best (course) for those who are patient. And do thou be patient, for thy patience is but with the help from God” Quran (16:126-127).

"Kind words and covering of faults are better than charity followed by injury" Quran (2: 263) (Siddiqi, 2004).

There are also many examples of forgiveness in the life of the Prophet Mohammed. As mentioned earlier, one of the most well-known amnesties in Islamic history is the one granted by the Prophet Mohammed to the Meccans, the city that persecuted his followers. When he entered Mecca, the Prophet Mohammed had the option of executing some of his staunchest enemies who tortured and killed many of his followers. Instead the Prophet Mohammed asked them:

“What do you think I shall do to you now?” They pleaded for mercy. The Prophet Mohammed said, “Today I shall say to you what the Prophet Joseph said to his brothers, “No blame on you today. Go, you are all free”” Quran (12:92). Soon they all came and embraced Islam at his hands. He forgave even Hind, who had caused the murder of his uncle Hamza. After killing him, she had his body mutilated and chewed his liver (Siddiqi, 2004).

\textsuperscript{26} Quran 4:116. The Holy Qur-an (Abdullah Yusuf Ali trans., 1934)
In *Shariah* amnesties were frequently utilized for two specific cases. The first was in the cases of brigandage and the other in rebellions against the state. The source of amnesties for brigands comes from the Quran itself in the following verse:

> The punishment of those who wage war against Allah and His Messenger and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land ...except for those who repent before they fall into your power: in that case, know that God is Oft-Forgiving, Most Merciful (Quran 5:33-34).

The consensus amongst Islamic scholars is that this verse relates to brigands. They disagree about the definition of repentance; some contend that a brigand can repent by renouncing their activities without appearing before the government, while others disagree, arguing that the brigand must cast away his or her weapons and surrender to the government (Ibn Rushd 1994-96, 2:550).

Amnesties in *Shariah* were also traditionally granted to rebels against the Islamic state. The rebels are defined as those who “want to overthrow him (the caliph or government), or refused to fulfill an obligation imposed by Sacred Law such as zakat, and rise in armed insurrection.” When faced with these situations, the government was required to send someone to “redress their grievances” and grant an amnesty before a war can be declared against the rebels (al-Misri 1994, 594).

Today’s Arab Amnesties

As many critics of the war have pointed out, the Arab world was altered by Bush’s famous ultimatum: “In the war on terrorism you’re either with us or against us.” The pressure grew even stronger when he branded Iran, Iraq and North Korea as

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27 Zakat is the obligatory tax that Muslims must pay annual to the poor. It is the third pillar of Islam.
members of “an axis of evil.” The American invasion of Iraq caused Arab governments to cooperate with American interests, angering different terrorists groups in every country. The reaction from terrorists was seen in Egypt, Jordan, Morocco, Saudi Arabia, and Tunisia. Arab governments had to reassess their domestic policies and search for an approach to placate their critics. Amnesty programs worked to conciliate the public and terrorist anger at the government. In the following section, particular cases in Arab countries will be presented to identify the functions and characteristics of their amnesty programs.

**Saudi Arabia**

After constant terrorist attacks from Al-Qaeda, Saudi Arabia’s King Abdullah addressed his nation in behalf of his late-brother King Fahd. King Abdullah offered Saudi terrorists 30 days to surrender to the Saudi government and claimed on state television that:

> God is merciful and therefore we announce, for the last time, that we are opening the doors to an amnesty and a return to the righteous path for everyone who strayed off that path and committed crimes. Those who surrender voluntarily within no more than one month from the date of this speech will be treated according to God’s law but those who did not hand themselves in would face the unflinching power and unshakable determination of the state. We announce for the last time that we open the doors of pardon, return to right and applying the righteous rule of Shariah to anyone who deviated from the right path and committed a crime in the name of religion. Everyone knows that we are not saying this out of weakness, but as an option to them, and so that we will be excused as government and people since we opened the doors of return and security. The sensible ones who take up (the offer) will be secure. As for those who spurn it, by God, our forbearance will not prevent us from striking with the full force we draw from our reliance on God.\(^{29}\)


\(^{29}\) Ibid.
A month after this ultimatum was announced, only about a half a dozen terrorists responded to the amnesty, signifying a failure of this approach.\(^{30}\) Al-Qaeda denounced the amnesty from the outset by posting a statement on the web claiming that “This [amnesty] despite our meager means, is nothing but your defeat and fumbling … This path we have taken is a religion, and we owe it to God to cling to it”.\(^ {31}\) Two Islamic clerics mediating between the government and the terrorists claimed that they needed more “time and concessions” to bring in more terrorists.\(^ {32}\) Other critics argued that the terrorists did not follow suit because the Saudi government did not offer a blanket amnesty. Although the Saudi government abstained from prosecuting the terrorists, it retained the Islamic right for victims to “forgive the murderers, take blood money, or demand capital punishment.”\(^ {33}\)

The Saudi government issued an amnesty that displayed both apparent manifest and latent functions. The Saudi government knew that the amnesty was not politically viable. The failure to act was an expected response from the terrorists. There are a few reasons why this was expected. First, the fight against terrorism in Saudi Arabia is an ideological one. The amnesty was aimed at opening the door of forgiveness to the lower members and new recruits of terrorism and not the key ideological figures. Second, terrorists distrust any amnesties from the regime that they deem to be corrupt and


\(^{31}\) Ibid.


\(^{33}\) Ibid.
immoral. Thirdly, they were not granted a blanket amnesty (i.e., the amnesty offered did not rid them of legal guilt).

Despite the response of only half a dozen terrorists, the Saudi amnesty was effective in defending the government's overall interests. The amnesty was heavily supported by the general public and indicated to the world that the government was "aware that security crackdown alone will not solve the problem" of terrorism.\(^{34}\) In the legal and social context, the use of *Shariah* legitimized the amnesty for both the Saudi public and the terrorists.

Although the Saudi public saw the amnesty in a moral context, the amnesty was clearly political due to the numerous ulterior goals it accomplished. Economically, it assured foreign investment that Saudi Arabia was exploring methods of resolving the terrorist attacks on foreigners. With the support of the Saudi people and foreign countries for the 30 day amnesty, the government found a means to justify its deadly assaults and actions against terrorists. The use of *Shariah* in the amnesty also legitimizes the Islamic title of the monarchy as the "Custodian of the Two Holy Mosques."\(^{35}\) In the general context, the amnesty strengthened the rule of the royal Saudi family politically, economically, and socially.

**Algeria**

In the last decade, Algeria witnessed terrorist activities that resulted in the deaths of over 150,000 people. The conflict started in 1992 when the military cancelled

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\(^{35}\) To Islamically legitimize their rule the Saudi Royal Family adopted the title of "Custodian of the Two Holy Mosques," that is the two mosques in the cities of Mecca and Medina.
legislative elections when an Islamic party won. Civil war broke out as Islamic militants fought against government officials. The fighting then branched into targeting certain “intellectuals, journalists, and politicians” which eventually “broadened to include civilians” (Aggad, 2004, 39).

The Algerian government soon took two radical measures to fight against Islamic militants (Aggad, 2004, 39). The Algerian government worked to establish new support groups that operated with the military, “to treat, classify, and analyze all the information related to terrorism” (Aggad, 2004, 40). These support groups worked between the military and the civilians in the area where the Islamic militants were active. The Algerian government then granted a partial amnesty in 1999 to all terrorists after a national referendum. The amnesty persuaded militants who had committed minor offences to give up terrorism for a new chance in Algeria. Over 1,500 terrorists surrendered in the first year.36

In September of 2005, the Algerian people voted for a referendum favoring a general amnesty. Six months later, the President with the full Algerian cabinet approved a “Decree Implementing the Charter for Peace and National Reconciliation.”37 Under this new amnesty, thousands of Islamic militants will be released from prison. It will also extend the deadline for other Islamic militants to surrender and protect the military from prosecution for the crimes it committed against civilians.38 The decree states “Any

denunciation or complaint against (the armed forces and all other security forces) is inadmissible.” 39 The decree also includes compensation for victims and their families. 40

Many human rights groups have been critical of this new amnesty. Although the Algerian government presented the amnesty as an implementation of the people’s wishes, human rights groups argue that the particular referendum voted in by the Algerian people did not mention anything about shielding the military. 41 They criticize the amnesty for not only denying victims a chance at justice and truth but also for the threat of prosecution on anyone who raises a public debate about it. 42 Human rights groups point out that “this provision threatens victims, their families, human rights defenders, journalists” or anyone else who campaigns for the disclosure about the fate of the disappeared. 43 When questioned, the Algerian President commented that “Our objective is to serve Algeria and its people ... We opted for a solution that takes into account the wounds of some and the demands of others. Reconciliation is a good thing. We have no alternative.” 44

The Algerian amnesty is an example of a conventional political amnesty. After the success of the former amnesty, the government wanted to put an end to any possibility of a future civil war. Unfortunately, this appeared to be achieved at the cost of truth and justice for the victims. In the Algerian amnesty, the government made a

39 Ibid.
42 Ibid.
43 Ibid.
decision of forgetting the past, to create a stable future. Over ten years of civil war caused the deaths of over 150,000 people and a loss of over $20 billion dollars.\(^\text{45}\)

The new decree will help the government rebuild the economy, and create stability by keeping the support of the military and by incorporating Islamic militants back into mainstream society. However, the success of the amnesty program will depend on the reaction of the Algerian people. From the results of the referendum, it seems that the Algerian people are ready to follow the government in leaving the past behind and looking forward to the future.

**Yemen**

Yemen represents an interesting case study for amnesty. Yemen’s violent past makes it a veteran to conflict resolution. After the bombing of the USS Cole and the events of 9/11, Yemen increased cooperation with the U.S. in increasing security and fighting terrorism. U.S. and Yemeni collaboration progressed as they caught and killed numerous Al-Qaeda operatives.\(^\text{46}\) However, in September of 2003, the Yemeni government made some interesting changes to its counterterrorism strategy.

The Yemeni government decided to use Islamic scholars to confront terrorist prisoners through a theological debate. The Islamic scholars argued that if the terrorists can justify terrorism by using the *Quran*, then they would enlist in their struggle. In turn, this debate would allow the Islamic scholars a chance to convince the terrorists of their

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perspectives so that they would renounce terrorism.\(^\text{47}\) After the government found that a prisoner had renounced violence, they were released and helped by the government to seek employment.\(^\text{48}\) The plan does not cover those convicted of terrorist attacks. Up until October 2005, 364 men had been freed under the amnesty.\(^\text{49}\)

The Yemeni government considers the amnesty to be a success since there has not been a single terrorist attack in four years. But many critics argue that terrorists tell the scholars and the government everything they want to hear so that they can be released from prison.\(^\text{50}\) Others argue that the scholars are not trying to convert prisoners but rather convince them not to launch terrorist attacks, especially in Yemeni soil.\(^\text{51}\) The Yemeni government defends the program and claims to keep every person released under surveillance to make sure that they practiced what they proclaimed.

The Yemeni case is unique in that it is a combination of a moral, just, and politically motivated amnesty. The amnesty is an alternative to the usual Arab iron-handed response. The amnesty is considered “just” because of its application to terrorists who have never been convicted of a violent crime. It is also a moral amnesty because of its attempt to re-educate terrorists on Islam and terrorism. The Yemeni intelligence’s surveillance of its paroles is a testament to its commitment to support this amnesty. There are many political benefits from this amnesty. The fact that Islamic scholars from the government are challenging and winning the debate against terrorists weakens


\(^{49}\) Ibid.

\(^{50}\) Ibid.

\(^{51}\) Ibid.
recruitment and shows the world that some terrorists can be rehabilitated. The control of Yemeni terrorists benefits its national image and counters the many accusations the world has made against its human rights abuses. The release of smaller terrorist suspects might even help the Yemeni government capture more important influential terrorists. The Yemeni amnesty is significant to the Arab world because it proves that simple dialogue can be used to defeat terrorism.

Morocco

In May of 2003, the city of Casablanca was shocked by bombings that left 41 people dead.\(^{52}\) Within the next few weeks, the Moroccan government went on a campaign that resulted in the arrest of 2,000 people.\(^{53}\) The media and human rights organizations went on a campaign criticizing Moroccan authorities for threats and abuses of the arrested.\(^{54}\) Many critics questioned the government’s strategy. The detention of so many reminded Moroccans and the world of the past human rights abuses under the reign of the late King Hassan II. Between 1956 and 1999, 592 people were killed by government agents.\(^{55}\)

In order to bring closure to the past, the King of Morocco announced a truth commission “to investigate the forced disappearances and arbitrary detentions” that were


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carried out during his father’s reign. The truth commission was assigned “to prepare a report containing specific as well as general information concerning these violations, and to recommend forms of compensation and reparation for the victims, including measures of rehabilitation and social, medical, and psychological assistance.” The truth commission “interviewed thousands of victims, conducted field investigations in different parts of the kingdom,” and organized several hearings which victims described the abuses that they experienced. The report concluded that 9,280 victims were entitled to compensation and that over 322 people were shot dead by government troops while 174 people died while in custody.

Critics of the amnesty were disturbed by the commission’s inability to identify government officials responsible for the past human rights abuses. Many of the government officials suspected continue to hold positions within the government. Human rights organizations also dispute the concluded figures of the commission.

Overall, the truth commission was deemed a success and a great example for future work on truth commissions in the Arab world. The Moroccan government has taken great strides in the field of human rights so that the country can modernize and strengthen its rule of law. The King has also recognized cases of alleged excesses

58 Ibid
committed during the detention and trials of the Islamists following the terrorist attacks in Casablanca. In keeping with the tradition of his forefathers, the King granted a pardon to 417 people, including many Islamists on a national holiday in August. The truth commissions and the pardons benefit the King by closing the legacy of his father and opening a new one through self evaluation and reform.

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62 The holiday is held August 20th celebrating Moroccan Youth day. As sample of the King's pardon can be found at: *AlJazeera.* “Morocco Islamists Get Royal Pardon.” August 20, 2005, http://english.aljazeera.net/NR/exeres/D527F062-00E3-4978-A07E-BF1CD7687999.htm.
CHAPTER 6

AN EFFECTIVE AMNESTY

Numerous amnesties from every continent and Arab countries were reviewed in previous chapters to identify the functions and effectiveness of each amnesty. This final chapter will apply the sociological theories and explore the specific strengths and limitations of amnesty as an effective strategy for restorative justice to the war on terror and the current conflict in Iraq.

Theoretical Perspectives

General theories of crime and social order are relevant to many of the cases of amnesty presented in this thesis. For example, labeling theory is applicable to many of the amnesties studied, specifically the ones from the Arab world. The fact that a terrorist is stigmatized by the public and can be labeled as a deserter by his inner terrorist circle applies an enormous amount of social pressure. In this case, Braithwaite’s process of decertifying the offender as deviant through some gesture or ceremony might help reintegrate a terrorist back into mainstream society.

Consensus or functionalist theories of social order are also applicable to many of amnesties reviewed, particularly in the Algerian referendum and the agreement to grant terrorists amnesties as a step to reconciliation. Similarly, conflict and Marxist theories
can also be seen clearly in the abuses of government officials against the civilian population, as in the cases of Morocco and Algeria when their programs chose not to publicly name government officials responsible for the abuses committed. The peacemaking theory can be applied to the cases of Yemen and Saudi Arabia, although their amnesties do have an ulterior motive rather than the perceived moral or religious obligations.

The examination of amnesties across different social and political contexts helps identify the general qualities for an effective amnesty. The American amnesty was successful in promoting forgiveness, restoration, reconstruction and recovery after a violent civil war. The Chilean amnesty acknowledged the government’s brutality against its citizens but failed to hold government perpetrators accountable for their past deeds. The victims of Chile’s repressive past never found a way to heal. The South African amnesty’s focus on truth and memory made it a sharp example to follow. The idea of an amnesty in return for truth helped victims face their anger, and allowed them to hear from the perpetrators themselves so that all parties were dragged into process of reconciliation. The Allied amnesty to German people demonstrates the political aspects of amnesty; it helped Germany recover while benefiting the U.S. Cold War against communism. In sharp contrast, the Cambodian amnesty provides a clear example of limitations and adverse consequences of amnesties.

What is clear from these examples of amnesty and its practice is that its effectiveness as a method of restorative justice, reconciliation, and re-development depends on its particular social and political context. The fact that the Truth and Reconciliation Commission in South Africa was able to substantially move this country
forward in its new democratic government is no guarantee that these truth commissions will work in other conflict situations. However, both amnesty and separate bodies to review its operation and abuses in other cases may serve important symbolic functions for a country and its citizens, regardless of its particular provisions or goals.

War on Terror

In the war on terror, there are two clear strategies involving how governments dealt with terrorists. There are some countries that deviated from international standards of human rights and decided to embrace a retributive, deterring “no mercy” attitude toward terrorists. Other countries are studying various methods of restoration to prevent the growth of such a phenomenon.

The review of amnesty in Arab countries (Chapter 5) presents four distinct methods of handling the present war on terror. Arab countries are realizing that the usual heavy-handed approach will not always work and that a new innovative method is crucial.

The Saudi amnesty is original in that it incorporates Islamic traditions and laws into the amnesty deal. This amnesty was understood by everyone in society; terrorist and civilian, which explains why it was popular in the Arab world.

The Algerian amnesty is an option in the war on terror for governments who consider a restorative, merciful approach to members of terrorist organizations. The disadvantage of this model is the denial of justice for the victims.
The Yemeni amnesty is another example of a novel approach to the war on terror. Simple dialogue and an intellectual assault on terrorism by Islamic scholars might help deter Islamists from violent acts and hinder terrorist efforts to recruit new members.

The Moroccan truth commission and amnesty is an example of how a government can investigate and become accountable for the causes of terrorism through self examination.

Iraq

The ongoing civil strife and military involvement in Iraq is a current context in which amnesty may play an essential part in the process of reconciliation and restoration. Currently, the Iraqi government has attempted numerous amnesties with the insurgents, all leading to failure. However, the Iraqi government can learn a lot from other Arab countries and how they dealt with their days of civil strife.

As an initial step in this process, the Iraqi government needs to end the hostility and find a way to institute peace by realizing that punishment can only be used as a means to restoration. Instead of adopting a purely retributive stance, the Iraqi government should focus more on the process of social reconciliation. The Iraqi government might also learn from the Moroccan and Algerian truth commissions. In fact, Saddam Hussein's regime was similar to the former Moroccan King's and the present problem with insurgents can be compared to Algeria's decade long conflict with militants.

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63 Examples of such amnesties can be found at:

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In the final analysis, amnesty and other types of restorative justice play a major role in conflict resolution across the world. When these political acts are linked to constructive dialogue between the rival parties, it may serve to ease the pain of the previous conflict and begin the healing process that is necessary for the reconstruction of the society.
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