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**RELIGIOUS ETHICS, CAPITAL PUNISHMENT AND
RECONCILIATION IN A NEW SOUTH AFRICA**

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ABSTRACT

The new democratic South Africa is a society that is bedevilled by violent crime. The reintroduction of the death penalty, in the view of many of the victims of violent crime and a section of the politicians, seems to be the only solution.

This thesis: "Religious Ethics, Capital Punishment and Reconciliation in a New South Africa," contends that reintroducing capital punishment is not a solution to the problem of violent crime, for two principal reasons: It violates the principle of legitimate pluralism as it infringes on the right of religious and cultural freedom, and it is incompatible with the notion of reconciliation.

First, the thesis discusses the justifications of punishment from the perspectives of reason and faith. Then, it goes further to look at the seriousness and causes of violent crime in the new South Africa. In addition, it presents the teachings of five religions - Judaism, Christianity, Islam, Hinduism and African traditional religion - on capital punishment and reconciliation, comparatively.

In the concluding part, it makes an evaluation of crime, capital punishment and reconciliation. This thesis identifies the root cause of violent crime as "poverty", defined as "lack of". It ends, therefore, by suggesting that the solution to violent crime in the new South Africa is reconciliation as it is the solution to "poverty" as the root cause of violent crime.

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PROLOGUE

I listened to the prosecutor and I saw that he did not have any idea about us. He was ignorant of our ways and feelings. I looked at the Judge and the prosecutor and the thought came to me that they were ants and in engaging with them we were dwarfing ourselves. It is a curse to be a Judge when you believe that you hold the life of a person in your hand. Only God holds our lives in his hands. He gives it and He alone can take it.

By Andrew Zondo, 19-year-old soldier of the African National Congress, after being sentenced to death for planting a mine in 1985 which killed five people in a South African shopping centre.

CHAPTER ONE

1. INTRODUCTION

Hugo Adam Bedau (1998, 414) describes capital punishment as: "the practice of putting offenders to death under the authority of law as punishment for their crime". This practice has sparked debate across various disciplines and classes of society around the world. Many questions have been asked and are still being asked as to the morality and justification of punishment by death. According to Stephen Nathanson (1987, ix), in his book: *An Eye for An Eye*, the death penalty is a controversy that has become the epitome of an irresolvable issue, a question which people answer on the basis of gut reaction rather than logical argument. John Stuart Mill, the great utilitarian, is famous in this debate for his popular speech in favour of capital punishment. Amnesty International, on the other hand, is famous for its campaign against the use of capital punishment as it violates the fundamental right to life. Religions are often divided and sometimes indifferent in regards to the moral indefensibility or justification of the death penalty as a punishment for crime.

The questions that need to be asked here are as follows: in a multi-religiocultural democratic society such as the new South Africa, with its ideal of reconciliation, is capital punishment justifiable? Can the death penalty assist our reconciliation process and on what grounds?

Many countries around the world, including South Africa, have already abolished capital punishment because it is unconstitutional. But a few of these countries have reintroduced it, citing increase in recidivist activities as the main reason.

In the new South Africa, however, there has been an alarming increase in crimes like murder, rape, robbery and kidnapping, which were once capital offences. Faced with this increase, many people, including the opposition parties, notably the erstwhile

New National Party (NNP), have again and again called for the reintroduction of capital punishment as the only solution to the new surge of criminal activity.

South Africa's President, Thabo Mbeki, and the African National Congress (ANC) government's efforts to combat the alarming crime rate seem to have yielded no fruitful result, as crime continues unabated. For many people, bringing back the death penalty is the only solution to the alarming crime rate in South Africa. According to Miller (1997) as well as many others, bringing back the death penalty is a worrying counter-violent measure, which raises fears that the brutality of the death penalty might increase violence in society rather than act as a deterrent to crime. Hence, the debate about bringing back the death penalty can no longer be ignored by academics, religious leaders and politicians alike.

1.1 AIM / PURPOSE OF STUDY

The aim of this study is to analyse the calls for the reintroduction of capital punishment in the new South Africa. To this end I shall:

- present the doctrines regarding capital punishment of five major religions – Judaism, Christianity, Islam, Hinduism and African Traditional Religion;
- evaluate the different religious viewpoints against – (a) their own teachings and practice and (b) the secular debate vis-à-vis the spirit of reconciliation and forgiveness;
- show that capital punishment will not strengthen reconciliation in South Africa;
- conclude that crime in the new South Africa can best be solved by reconciliation and forgiveness as the foundation of a democratic South Africa.

1.2 SIGNIFICANCE OF THE STUDY

The significance of this study lies in the fact:

- that capital punishment was used in the past as a means of oppression and that many lives, some innocent, were lost in the process. This study intends raising awareness among lawmakers and the general public about the possible implications of reintroducing capital punishment;

- that South African society has been bedevilled by crime, and capital punishment is believed by many politicians and by the general public to be the only effective solution in the fight against crime, it is, therefore, important to show that, as Miller (1997) puts it: "reintroducing the death penalty will provide no relief from our excessively violent society".
- that "an evil deed is not redeemed by an evil of retaliation;" taking human life by legalised murder will not serve justice, nor will it promote reconciliation in the new South Africa;
- that the democratic South Africa is a multi-religiocultural society, with one of the most liberal constitutions in the world that guarantees respect for human life and religious freedom; it is important to show that capital punishment cannot be justified in such a society;
- that this study hopes to bring on board to the debate all academics, professors and religious leaders.

1.3 LITERATURE REVIEW

Though literature abounds about the debate on the controversies surrounding the morality and justification of punishment by death, especially in America, little has been written on this debate in South Africa. In particular, this is true of the new democratic South Africa, which is currently undergoing a unique experience of reconciliation and a healing process. Notwithstanding the aforesaid, the controversy over the death penalty points to one question: Is it right to kill? Most of the literature to be used in this study will have to be contextualised to suit the South African experience.

Among those who have argued in favour of the death penalty is John Stuart Mill who, as far back as 1868, made a speech in Parliament in favour of capital punishment. In his speech (Mill, 1868) opined that the morality of punishing by death is a justified one. Apart from its efficacy to deter criminals, he argued that a criminal who takes an innocent life shows no respect for human life. By violating another's right to life, he himself forfeits his right to life. Therefore to deprive the

criminal of his life, which he has proved himself unworthy of, is the appropriate thing for society to do. In the same vein, Ernest Van den Haag (1987) believes that what people fear most is likely to be the best deterrent, and since everybody fears death, he concludes that the death penalty is the only penalty that can deter criminals. However, this study hopes to take a different viewpoint from these.

Contrary to the above argument, there are those who argue against the death penalty. Among these, Stephen Nathanson, in: *An Eye for An Eye* (1987) argues that most political leaders, among others, who advocate the use of capital punishment do so as part of a calculated attempt to gain or maintain power, while others who favour it, are motivated by natural reactions of fear and indignation and by the urge to protect innocent lives as well as to see that justice is done. He, however, concludes that abolishing capital punishment reflects neither cowardice nor moral indifference, but is rather a commitment to the respect for human dignity and the reduction of the degree of permissible violence. Graeme Simpson and Lloyd Vogeman (1989), with regard to popular attitudes, argue that popular support for or against capital punishment is inconsistent, the reason being that a marked increase, for example, in violent crime, will help to heighten public support for capital punishment. People, they claimed, seem to think that there are only two alternatives – capital punishment or release back into the society of "dangerous killers". They, however, conclude that capital punishment is a cruel and inhumane punishment. In response to van den Haag, Hugo Adam Bedau (1987) points out that the death penalty is a symbol of unlimited impersonal power over the individual and should be abolished.

Reconciliation, on the other hand is seen as a symbol of unlimited possibilities for restoring the individual and community to a lost relationship due to wrongdoing and a safeguard against a possible repetition of such wrongdoing. In its report, the Chilean National Commission on Truth and Reconciliation (1993) judge reconciliation to be the safeguard of relationships and a precaution against human rights violations:

The grave human rights violations committed in recent years [have] left a still festering sore in our national conscience. Division and conflicts are still at work in our society. Hence we cannot expect to fully achieve

the intended aim of preventive measures. Unless, at the same, time we advance along the same road of reconciliation, which by its nature constitutes the greatest safeguard against the repetition of what has taken place. (Berryman 1993, 854 - 855)

In his book: *Ukubuyisana - Reconciliation in South Africa* (1998), Mark Hay argues that reconciliation necessarily follows from a breach: an alienation, violence, disruption or disordering of human relationships with God, others, creation and oneself, in order to transform the dehumanising situation resulting from the breach that occurred. In other words, reconciliation is a humanising process as opposed to punishment, which is a dehumanising response by the society to a crime.

1.4 METHODOLOGY

My approach will be descriptive, normative and analytic, based on documented sources rather than empirical fieldwork. By description, I mean to indicate something we might not have noticed. By normative reasoning, I mean to indicate that we are missing out something important – the inseparable notion of reconciliation, repentance and forgiveness, which I believe has to begin in our courtrooms. I will apply this notion of reconciliation in the same sense as Greenlee B. Mark (1986, 255) used in his application of the "love command"¹, indicating that just as there is room for the "love command" in courts, so too is there an urgent need for South African courts to be the bearers and dispensers of reconciliation and justice. I will then use analysis to substantiate the thesis that the death penalty is incompatible with reconciliation, using both the religious and secular meanings of reconciliation in the South African context to interpret this incompatibility.

It is, therefore, not within the scope of this thesis to advance any philosophical argument for or against the death penalty, as there is already a great deal of literature addressing this debate. Names like Ernest Van der Haag, H.A Bedau, Louis P. Pojman and Stephen Nathanson are well known in this field.

¹ For Greenlee B. Mark application of "Love command" see: "Echoes of love command in the hall of Justice", in: *The Journal of Law and Religion* vol. 12. (1986): 255 -260.

The scope of this thesis is rather to justify why, despite the unabated increase in violent crime, the death penalty cannot be a preferred option in combating the rising level of violent crime. I will argue that, based on South Africa's violent past, reconciliation must be the preferred option and that the death penalty is not compatible with reconciliation. A true reconciliation, it will be concluded, will reduce violent crime.

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CHAPTER TWO

2. PUNISHMENT: A TYPOLOGY

This chapter aims to develop a typology of punishment by expounding the various theories of punishment. It will then indicate which of these theories are in agreement with the teachings of Christianity, Judaism, Islam, Hinduism and African Traditional Religion.

Punishment in civil society, as Stanley I. Benn (1967, 31) puts it, is: "inflicted on an offender because of an offence he/she has committed, it is deliberately imposed, not just the natural consequence of a person's action, ... by an agent authorised by the system of rules against which an offence has been committed". The system of rules is understood in this context as the penal code, through which the state, acting through the court, punishes any violator of the rules enshrined therein. Punishment is, therefore, not just the punishment of crime; but, is also a reassurance for the society, which ensures that everybody has respect for everyone else and that none of its members violates the societal rules with impunity. By so doing, the state ensures that no individual renounces his/her obligations of collectively assumed responsibility in order to gain undue advantage, thereby upsetting the happiness of all. Therefore, punishment has to discourage such undue advantages and the social instability and relinquishment of responsibility that attend them. This then is the aim of punishment in society. The interest of this study lies in the punishment that the state metes out on its citizens who break its rules. The meaning of punishment, according to the understanding of this study, is the infliction of hard treatment by the state, through a legitimate authority, on its citizens who, by act of commission or omission, break its rules. In writing about the institution of punishment John Rawls (1955, 10) holds the view that:

A person is said to suffer punishment whenever he is legally deprived of some of the normal rights of a citizen on the ground that he has violated

a rule [by gaining an undue advantage] of law, the violation having been established by trial according to the due process of law, provided that the deprivation is carried out by recognised legal authorities of the state, that the rule of law clearly specifies both the offence and the attached penalty, that the courts construe statutes strictly, and that the statute was on the books prior to the time of the offence.

Because punishment is a deprivation and unpleasant treatment detested by all, its justification has occupied philosophers, theologians, psychologists and ethicists alike throughout the ages. Despite people's detestation of punishment, it has different meanings for different people. For example, what one person terms harsh punishment, another may, on the contrary, not regard as punishment at all.

Harsh punishment is relative to a certain degree, just as is punishment itself. For a particular people, culture and religion, the death penalty would be a harsh punishment, while for another it may not be a harsh punishment at all. This, in the sense that punishment, as the infliction of pain, requires that the one who is being punished must feel the pain of the punishment. Functionally, then in terms of harsher punishment, the pain felt in the punishment of death should be longer and more lasting than the pain felt in ordinary punishment.

The question, however, is how can the state justify punishment, that which is unpleasant and detestable? The answer to this question has given birth principally to two theories – Retributivism and Utilitarianism. Retributivism, from "retribution", is a theory that suggests that punishment should be solely for the purpose of retribution, that is, an offender must be punished for the offence he / she has committed. On the other hand, Utilitarianism, from the word "utility", proposes that punishment must be solely for the purpose of yielding a future good or benefit, either for the offender or for society. Utilitarianism has two further strands – deterrence and rehabilitation. It is necessary, therefore, for the purpose of this thesis, to elaborate on these theories justifying punishment under the following headings – retribution, utility, deterrence and rehabilitation.

2.1 PUNISHMENT AS RETRIBUTION

Immanuel Kant is one of the leading defenders of punishment on the grounds of its retributive importance. According to Kant:

Juridical punishment can never be administered merely as a means for promoting another good either with regard to the criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime (Kant cited in Pojman 1998, 8).

Punishment cannot have any purpose other than to pay the offender back for his/her offence. It cannot be punishment if it is applied for any other reason than to punish the offence of the offender. You are not punished for any other act but for the one you have committed. The punishment is in the present, but the action you are punished for is in the past. The past action, which is now punished in the present, is what is important to this theory of punishment, not the future action that is yet to happen. The exponents of this theory thus argue that there is no need to be concerned with the future that is not yet here because it is difficult to tell what offence the offender will commit in the future and how serious the offence will be. For these reasons this theory contends that punishment is punishment for a known particular offence. The offender and the degree of the seriousness of the offence are the factors that determine and justify punishment.

Retributive theory, in its most famous manifestation, or in its raw form, is found in the Judeo-Christian Bible: '*an eye for an eye*' (Ex 21: 23 & 24), which preaches restricted revenge. In his two concepts of rules, John Rawls (1955, 4) puts the retributive theory thus:

...punishment is justified on the grounds that wrongdoing deserves punishment. His example goes as follows: "a particular man is punished rather than some other man, because he is guilty, and he is guilty

because he broke the law. In his case the law looks back, the judge looks back, the jury looks back, and a penalty is visited upon him for something he did" (Rawls 1955, 6).

In this sense, the retributive theory of justifying punishment is backward-looking. For the proponents of this theory, punishment can only be justified when it is inflicted on a criminal as a redress, rather than as a preventive measure or for its reassurance or rehabilitative effect, either on the individual offender or on society. To paraphrase Immanuel Kant, "the principle of punishment is a categorical imperative" and "thus any undeserved evil which you do to someone else is evil done to yourself. If you rob him you rob yourself if you kill another you kill yourself." For Kant "this is the law of retribution (*jus talionis*)" to be applied by court. "It is the only principle that can definitely assign both the quality and the quantity of a just penalty" (Kant 1779, 155 -156). According to Pojman, Kant's interpretation of retributive theory focuses on the nature and gravity of the harm done by the offender, as against Morris and Davies' unfair advantage of fairplay theory which is concerned with the unfairness of the offence (see Pojman 1998, 8).

According to Morris and Davies, as quoted by Pojman, society has the responsibility to undo the unfair advantage assumed by any of its members, by unfairly repaying the offender. The fairplay argument is based on the fact that the criminal has abandoned the co-responsibility into which everyone in a society has entered. By so doing, he has gained unfair advantage over the rest of the members of society. To undo the undue advantage, society needs to punish the crime of the offender in proportion to the undue advantage he/she has gained. Daniel Farrell, however, objects to the argument of fairplay on the ground of *mens rea* – having a guilty mind. He argues that the fairplay argument excludes the possibility of intervention on behalf of an innocent victim who is going to be attacked by an aggressor or a malicious rapist or a killer (see Pojman 1998, 11-12). This is because such intervention would, in one sense, give he/she who intervenes and the one save from aggression an unfair advantage. The contention is that having an evil intention is not enough indication of

an unfair advantage according to the terms of the fairplay argument and, so, it excludes the possibility of preventative measures.

Just as the fairplay interpretation of retributive theory has been criticised, Kant's interpretation is equally criticised for lack of general application to all crimes. Kant has argued that if you kill you kill yourself. That is to say punishment cannot be justified for any other reason than it is meant to pay back the criminal for his or her crime. But this cannot be applied to all crimes. For instance, if you rape you cannot be said to have raped yourself or if you rob a bank and five people died from your shooting in the process, you cannot be said to have robbed yourself and at the same time killed yourself. The fact is the full amount of money you have stolen from the bank may not be recovered; you cannot be stolen from, because you do not have the money. Again one life cannot equal five lives that you have taken in the process of your armed robbery. Even if you are killed, killing you as a punishment does not and will not fit the crime proportionally. It is thus argued that it is impossible to apply retributive theory in the Kantian interpretation of "if you kill, you kill yourself" to all crimes. Proponents of utilitarianism have criticised the retributive theory arguing that retribution is merely pointless retaliation, depriving the criminal certain freedom or rights as a response to wrongdoing without actually finding out the root cause of the criminal misdemeanours.

Therefore, retributive theory, it has been argued, is essentially negative as it seeks to punish and not to prevent the criminal from re-offending (Gaughran 2000). Utilitarians argue that by punishing the offence of the offender, it leaves room for the offender to commit the same crime again and again. Because by punishing the offence, as retributive theory advocates, such action will not prevent the offender from recidivism, for it does not find a solution to the real causes of the criminal behaviour of the criminal. Another criticism of retributive theory is that of Robert Goodin. Criticising the "just desert" of retributivism, Goodin has argued that *need* overrides *desert* in the theory of Justice (see Pojman 1998, 13). He gives the example of two people involved in an automobile accident, with the same serious injuries, one

of them being the cause of the accident through gross recklessness and the other the innocent victim. Who should get priority treatment in the emergency room? According to Goodin, it would be outrageous to give preferential treatment to the victim even if everyone knew all the facts of the accident (see Pojman 1998, 13). The *need* in this case is to save life, and this overrides the *desert*, which would be the recklessness that caused the accident. Goodin's argument is that saving life is more important than punishing the offence of reckless driving which caused the accident. This implies that the theory of "just desert" as advocated by retributivists cannot be applied in all cases. Hence, the retributive theory of justifying punishment is considered as negative, backward looking and merely pointless retaliation, which does not help in solving the problem of crime.

2.2 PUNISHMENT AS UTILITY

Punishment is justifiable if it has any utility. If it can be proven that there is a benefit in punishment, it is therefore justified. In this way Utilitarianism is said to be a forward-looking theory. The utilitarian position is exemplified in Bentham who asserts: "All punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it only has to be admitted in as far as it promises to exclude some greater evil (Gaughran 2000). Punishment in this sense of utility is by itself something that is neither good nor evil. It is something undesirable. But if it cannot be avoided for some greater good that will result from punishing someone who violates the rules of society, then, for that greater good, punishment can be justified. For instance, if it can be shown that punishing an offender deters or reforms him or others, this would constitute the greater good for utilitarians.

As Pojman puts it, punishment as utility is a social control, which is justified so long as it prevents more evil than it produces (Pojman 1998, 2). John Rawls summarises utilitarian theory thus: "If punishment can be shown to effectively promote the interest of society it is justifiable, otherwise it is not" (cited in Pojman 1998, 5). The justification of punishment lies in the fact that it is a social control mechanism that

promotes the interests of the society. The interests of society are a greater good that surpasses the punishing of an offender. The interests of the society here would mean the common good of society. If, for example, punishment would promote stability, peace and harmony in society, why not apply it?

One of the greatest weaknesses of Utilitarianism, which has repeatedly been pointed out, is that it leaves room for the punishment of the innocent. For, if the punishment of the innocent can be shown to have a preventative effect or has greater utility than the evil it will produce, then it will be justifiable to punish the innocent. For example, if it can be shown that punishing Mr. X can bring about stability and peace to a war-torn society despite the fact that Mr. X is not the cause or may have nothing to do with the war, then punishing him is justifiable according to utilitarian theory.

The retributivists' criticism of the utilitarian principle is that it ignores the idea of punishment as a consequence of an offence. As F H Bradley puts it: "Punishment is punishment only when it is deserved"; punishment for any other reason is "a crying injustice" (cited in Benn 1967, 31). The retributivists' criticism contends that punishment can only be invoked if there is an offence and an offender, whereby the offence of the offender is what justifies the punishment of the offender. Punishment cannot occur because a would-be offender or a society needs to be prevented or deterred from crime. This implies that it is not appropriate to have punishment set out for a would-be offender for a would-be offence.

2.3 PUNISHMENT AS A DETERRENT

Punishment as a deterrent is a feature of the theory of utility. Punishment is justified only if it can be shown that it can deter the offender and the would-be offender. Accordingly, punishment in this sense acts as a threat to the would-be offender as well as to the individual offender. To the individual offender, it may act as a reform for the particular crime he/she has committed and prevent him/her from committing any further crimes. In this case punishment, according to the deterrence theory of the utilitarian principle, has first and foremost to control action, stabilise society and

ensure that every member of society adheres to the rules of that society. Punishment thus promotes harmonious living among individuals within society. The argument is that, not wanting to incur the undesirability of punishment, each member of society will respect the rights of each other. In this way punishment helps each individual to exercise restraint in taking undue advantage. By acting as restrainer, punishment helps in preventing crime, in that when an offender is punished, a message is conveyed to, and a lesson impressed upon, other members of society. A condemnation of the offender's action is made and the offender also feels this same effect. Thus, from punishing one offender, members of the public learn that taking such undue advantage brings the undesirable effects of punishment. The members of the public and, likewise, the individual offender are thereby deterred from repeating that crime.

2.4 PUNISHMENT AS REHABILITATION

The rehabilitation theory sees crime as a disease. The criminal is a sick person who needs to be cured. Protagoras, one of the ancient Greek philosophers, argued that what has been done cannot be undone and advocated punishment for the rehabilitation of the criminal (Gaughran 2000). Plato justified punishment by claiming that it helps to suppress the baser part of the soul of the criminal and restore reason. However, recent proponents of the rehabilitation theory see the penal system as cruel and thereby advocate therapy as an alternative to punishment. Therapy, not torture, is what the criminals need, as they are not actually in control of their behaviour. According to this theory punishment: "is a prescientific response to antisocial behaviour", which at best is a momentary suppression of this antisocial behaviour (Pojman 1998, 24). As Skinner puts it: if this antisocial behaviour is left untreated, it "will resurface again as though punishment never occurred" (cited in Pojman 1998, 24). Karman also affirms the need for therapy as against punishment:

Basically, criminality is but a symptom of insanity, using the term in its widest generic sense to express unacceptable social behaviour based on unconscious motivation flowing from a disturbed instinctive and emotional life, whether this appears in frank psychoses, or in less obvious form in neuroses and unrecognised psychoses.... If criminals

are products of early environmental influences in the same sense that psychotics and neurotics are, then it should be possible to reach them psychotherapeutically. (Karman 1956, 9)

The proponents of this theory are of the view that punishment does not resolve the root causes of the criminality in the offender. To prevent repetition, the root causes of the offender's criminality need to be treated. This criminal behaviour of the offender is not within the control of the offender; it may be an environmental influence that is causing a mental disorder in him/her, thereby resulting in criminal behaviour. Punishing the offender will not prevent the offender from similar acts in the future. Thus, to prevent the offender from recidivism, he/ she needs to be treated for the mental disorder and attempts be made to alleviate the environmental problem, rather than to be punished. Punishment, it is argued by proponents of this theory, should not serve as a treatment for offenders who are not in control of their actions. Therapy is the cure for the criminality in the offender. Any other non-therapeutic treatment would be futile, as it would not stop the offender from being a recidivist. It is, therefore, necessary to treat the disease that is the cause of the criminality in an offender, rather than punishing the criminality. It is by curing the cause of the criminality in an offender that crime can be prevented.

One of the criticisms against the rehabilitation theory is that it undermines human autonomy and responsibility (Pojman 1998, 25 and 26). That is to say, rehabilitation theory denies the individual offender any freedom and responsibility for the offence committed. The offender, according to this theory, is not to be held responsible for the offence, but the offender is to be pitied. This critique assumes the case of free will and responsibility to be cogent, which might not always be the case. The possibility that the individual may be acting under the duress of mental instability or environmental pressure cannot be dismissed.¹

¹ For the treatment on institution of rehabilitation, consult: Herbert Morris, "Person and Punishment" in: *On Guilt and Innocence* (1976), 31-88.

2.5 PUNISHMENT IN RELIGION

The concept of punishment in many religions is to a great extent founded on the utilitarian principle of deterrence. For many religions, punishment is not to be prescribed or motivated by an act of revenge, but always should be aimed at the highest good of the offender's welfare as well as the well-being of society. Among the five major religions in South Africa (Christianity, Judaism, Hinduism and African traditional religion) - with the possible exception of the retributive interpretation of Islam, the most important end of punishment is rehabilitation. Hence, they emphasise the need for confession and sincere repentance, which are necessary conditions for forgiveness from God, society and the individual, as well as for reconciliation and future blessings.

2.5.1 JUDAISM

In Judaism, punishment is, first and foremost, justified if it is meant to appease God who detests the ways of the sinner. The Jews, being God's chosen people, are not to follow the ways of the sinner that are detested by God. Punishing an offender or violator, who is a sinner, is therefore to appease God and to turn away God's anger from the offender and the community. The purpose of punishment that is recorded in the Old Testament is that of putting away the evil in their midst (cf Deut. 17:7, 12; 19: 19; 21:21). In this sense punishment is not so much directed toward the person of the offender, as it is a condemnation of the offender's conduct or offence. But, "... from the point of view of criminal law enforcement policies, the deterrent aspect of punishment in Jewish law is the most important of all" (*Encyclopaedia Judaica* 1971,1387). This importance of deterrent purpose notwithstanding, as it will be argued later in chapter four, it is the restorative purpose of punishment that takes precedence over deterrence in Judaism. This is because the original and foremost purpose of punishment in Judaism - the appeasement of God (*Encyclopaedia Judaica* 1971,1386) - is predicated on the restoration of relationship with God.

2.5.2 CHRISTIANITY

The need for penance, as in the Catholic sacrament of penance, is not only to deter the offender and would-be offender from crimes (sins), but more than deterrence, functions to restore (rehabilitate) the offender to the community and to God. The same is true of African traditional religion; the difference is that African traditional religion places emphasis on the restoration of justice through a face-to-face talk between the victim and the offender, while Christianity's emphasis is on conversion, confession and restitution, with the same goal of achieving reconciliation on three levels - individual, community and spiritual levels. The aim of punishment for Christianity, therefore, is not just deterrence, but is also for the healing, rehabilitation and reconciliation of the individual offender through forgiveness on the three levels just mentioned. For Christianity this is the justification for punishment.

2.5.3 ISLAM

The Islamic justification for punishment is, however, different in that it is based on the principle of retribution rather than the principle of utility. According to the *Qur'an* (2:178): "...just retribution is ordained for you in cases of killing: the free for the free, and the slave for the slave, and the woman for the woman." "Killing" here is to be understood as an example of the allegoric mode of expression, which has wider meaning than just the very words used. Hence many Islamic scholars interpret killing in this passage to include other crimes as well.

Islam, however, teaches that not all offenders deserve to be punished and it also gives allowance for restitution, forgiveness and reconciliation, as evident in the *Qur'anic* passage of *Sura* 42: 40. This is in agreement with the practice of *diya*, the payment of indemnity. So the Islamic understanding of punishment is not only retributive, but includes the restorative justice understanding of punishment that allows the victim and the offender to be reconciled as indicate in the *Qur'an* (2:178b): "And if something is remitted to a guilty person by his brother, this shall be adhered to with fairness, and restitution to his fellow-man shall be made in a goodly manner." Thus

the *Qur'an* emphasises the precedence of the restorative justice understanding of punishment over the retributive understanding of punishment.

2.5.4 HINDUISM

Hindu religious law laid down in the *Dharmashastra* explains punishment as follows:

Punishment alone governs all created beings, punishment alone protects them, punishment watches over them while they sleep; the wise declare punishment to be the law. If punishment is properly inflicted after due consideration, it makes all people happy; but inflicted without consideration, it destroys everything.... But where punishment, with a black hue and red eyes stalks about, destroying sinners, there the subjects are not disturbed, provided he who inflicts it discerns well (*Laws of Manu* 7: 18 - 25; Bühler, 1886).

Punishment is seen here as a tool of stability and peace if it is well and justly inflicted. It can also be a tool for instability and disharmony if it is unjustly inflicted. However, punishment is justified as a guide and guard to prevent anyone from assuming undue advantage. The punishment of the innocents is to be avoided. Punishment as a guide and guard in Hinduism must always be exemplary. The more important the offender is in the society, the more severe should be his or her punishment.

According to the Hindu text, *Satyarth Prakash*, the king and the ministers who commit an offence, are to receive greater punishment than the punishment the ordinary person would receive. "The king and the ministers should receive one thousand and eight hundred times (respectively) the punishment inflicted on an ordinary person" (Prasad 1972, 165 - 6). In this sense, punishment is first and foremost to serve as a deterrent, but it is also to restore a sense of service and responsibility. To be in a position of power is not to abuse it, but as a service to all. Punishment, therefore, according to the Hindu teaching, is not an act of revenge or retribution but a corrective measure for all in society.

2.5.5 AFRICAN TRADITIONAL RELIGION

In the context of African traditional religion, according to S.A Adewale, the essence of the code of conduct is that: "this code constrains the individuals to live in conformity with the well-being of the society" Adewale (1994, 54-66). Putting it differently, Christopher I. Ejizu asserts that the: "vast majority of norms, taboos and prohibitions is directed towards protecting the community and promoting peace and harmony" (Ejizu 2000). Here punishment is first to prevent or deter anyone causing instability and disharmony in society. However, the well-being of earthly society is linked to the spiritual realm. In this sense, to restore (rehabilitate) the individual offender to both the temporal and spiritual realms becomes the overall purpose of punishment. Another goal is to restore harmony between the temporal and the spiritual realms. Hence confession and sincere repentance is a pre-requisite for punishment and forgiveness. Punishment in African traditional religion is conceived holistically, whereby it is not just offender-focused, but also focuses on the victim, the community and the spiritual realm. This is why the emphasis is on restorative justice, not just on utility.

With regard to the importance of restorative justice and punishment, drawing on Zehr's work: *Correctional Compendium*, Willem Luyt states:

...restorative justice involves the victim, the offender and the community in search for solutions which promote repair, reconciliation and reassurance. Goals are restitution and healing for victims, healing the relationships between victim and offender, accountability and healing for the community (Luyt 1999, 67).

Punishment in African traditional religion is therefore forward-looking but does not forget the past, as the past forms the basis for looking forward. Therefore, through restorative justice, African religion finds: "a balance between the legitimate needs of the victims of crime, the community where the crime was committed and the offender in order to enhance community protection" (Luyt 1999, 67). In the next chapter I will apply this to the problem of violent crimes in South Africa.

In conclusion, a typology of punishment has been presented, based on different theories and understandings from both secular and religious perspectives, including an indication of the different understandings of crime and the fight against crime in South Africa. It is also an indication of what the possible position of each of the different understandings would be in regard to the question of the death penalty as the best possible solution for fighting crime in South Africa.

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CHAPTER THREE

3. SOUTH AFRICA AND UNABATED VIOLENT CRIMES

This chapter seeks to discuss the seriousness and the causes of violent crimes in the new democratic South Africa. This has angered most people, and especially victims of violent crime, and has led them to demand the reintroduction of the death penalty in the belief that is the only solution to curbing crime. The focus is mostly on crimes that were classified as capital offences during the apartheid years in South Africa. But, before discussing each crime, the history of violent crime in South will be briefly explored to give a holistic picture of the violent heritage of South Africa that has bred the present, since it holds the key to understanding the present wave of violent crime in the new South Africa. Caroline Nomoyi (2000, 67) argued that a long history of confrontation and conflict in South Africa created a culture of violence, which has become deeply rooted in many communities. The culture of impunity that has developed taught young children that violence and crime could bring material as well as non-material profits.

Since the first democratic election in 1994, South Africa seems to have experienced an upsurge in violent crimes. This upsurge has led both print and electronic media to use phrases like "the rape capital of the world", "criminal country of the world", "murderous country" to describe the South African crime situation. It has become a commonplace argument that the unabated crime in South Africa scares away potential foreign investors, which hampers job creation and causes a rise in unemployment levels. The crime situation in South Africa is so bad that there hardly passes a day, according to Graeme Simpson (1998), in which over 1,900 serious crimes are not reported. In his assessment of the scale of the seriousness of the crime situation, Simpson provided the following figures as the average rate by which a particular crime is committed in a day in South Africa:

50 murders
 88 rapes
 150 cases of fraud
 187 aggravated robberies
 216 burglaries of businesses
 260 car thefts
 431 aggravated assaults and
 544 burglaries of houses

As the Internet source below indicates some people have even gone further and put the rate as shown in table 1 below.

Table 1 shows the "unofficial" rate in minutes at which a particular violent crime is committed in South Africa. (The above statistics are taken from the following Internet address: <http://osprey.unisa.ac.za/south-africa/crime.html>)

CRIME COMMITTED	TIME
1 murder	Every 29 min
1 rape	Every 18 min
1 robbery	Every 5min
1 vehicle theft	Every 5min
1 assault	Every 3min
1 theft	Every 3min
1 house breaking	Every 1min

Before going on to discuss each violent crime in detail, it is vital to explain briefly the history of violence in the new South Africa.

The history of violence in South Africa cannot be discussed without reference to the apartheid regime that ruled for about 48 years. It was a regime that ruled with oppression and violence, so that violent crimes in the new South Africa are a direct inheritance from the culture of violent apartheid. Violence in South Africa is not something new as has been portrayed in some media. It was the brainchild of the apartheid government of the National Party. This assertion was indisputable for Nelson Mandela in 1962 and 1964 during his trial as demonstrated by Chidester (1992, 121-122):

Mandela argued that the government [the National government] had initiated the conflict by its brutal suppression of peaceful protest. The government had "set the scene for violence by relying exclusively on violence to answer our people and their demands". [As a result], the violence of the state had bred the counterviolence of resistance.

Hence Rev. John Lamola could come to the conclusion in January 1989 that South Africa, in essence and reality, is violence (see Chidester 1992, 123).

Owing to the violent nature of the apartheid government, Chidester contended that it was this that led the then president of ANC, the late Oliver Tambo, to conclude: "if the opponents of democracy have their way, we will have to wade through rivers of blood to reach our goal of liberty, justice and peace" (Chidester 1992, 116). Today that conclusion has come to be a reality. It has become a "legitimate" for people to reach their goals of whatever kind, in the new South Africa by "wading through the rivers of blood".

During the apartheid regime, violence was given legitimacy; legitimacy that has today become rooted in the bone marrow of South African society. Thus it requires not just hard work on the part the present government but even more important, the willingness of the whole society to eradicate violence in the new South Africa. The history of violence is not limited to the apartheid government, as already indicated, for the same is true of the counterviolece produced by the struggle against apartheid. When the apartheid state legitimised violence to maintain itself in power, a remark

once made by J. F Kennedy, the assassinated president of the USA, became important for the liberation organisations of the struggle: he who made peaceful change impossible made violent change inevitable. This was what Mandela meant during his trials when he noted: "solely because the government had left us with no choice", but to turn to violence; because; "there can only be one answer to this challenge: "violent forms of struggle"" (cited in Chidester 1992, 122). The liberation movements thus responded to government violence with violence, thereby making violence an "official language" in South Africa, which Chidester refers to as a "mode of communication".

As already noted, violence begets violence. The violent crimes that are experienced today in South Africa may be regarded as, and are a product of, the combination of the violence of the apartheid state and the violence of liberation organisations. It is as result of the resistance to, and the movement for change in, the apartheid state.

Exclusion during the apartheid regime, which includes political bastardisation, economic marginalisation, and social peripheralisation of the black majority, as Chidester argues, was however, "only one aspect of oppression". This is in itself an act of violence. For Chidester (1992, 137): "A more pervasive dehumanisation was found in the perception of black South Africans as objects to be owned, operated, exploited and manipulated by white interests". They were regarded and treated as violent criminals by the white minority because they were fighting for change. But for black South Africans, it was change that could not be achieved by a process of peaceful means. When blacks resorted to violence, which became inevitable, as the apartheid government responded to their call for change with violence, it was to make the country under apartheid ungovernable through violent means. This resulted in a general climate whereby murders, rapes, tortures, disappearances, gross human right violations, arsons, robberies and general violence became, as it were, the order of the day in both camps.

The message that was sent to the public and especially to the black populace, by the use of violence, was that anything that can make South Africa under apartheid ungovernable was right. This is why Ronnie Kasrils (former leader of *Umkhonto we Sizwe*) later argued that violence: "was meant to inspire our people, and build our forces, the nucleus of a people's army to be". As Chidester noted, violence was therefore "an inspirational message." This message did not preclude the possibility of engaging the people in partial or general insurrection because it was the people's war (Chidester 1992, 142). On the other hand, anything that was to maintain the white minority's dominion was sanctioned by the state. Violent crimes in the democratic South Africa can therefore be seen as the synthesis resulting from the thesis and antithesis of the maintenance of and the fight against apartheid.

Furthermore, as McCarthy (1998) argues, as the political violence heightened, the media reports of crime during the apartheid regime, especially in the black townships, defined it as political violence, with no attention given to individual, violent crimes - either by the government fighting to remain in power or by the liberation movements that sought to overthrow it. Not even in their enthusiasm to bring the happenings on the political scene of South Africa to the attention of the world, did the media do this. All the attention was on the events and new developments on the political front, to the extent that violent crimes that were unrelated to politics: committed by individuals, or groups of individuals, went largely unreported. McCarthy (1998) argues that:

...violent crimes that were committed during the system of minority rule went largely unreported, and political violence captured the headlines. Because of these skewed statistics on violent crime during apartheid, the rise in criminal violence today may not be as large as the press portrays it to be, but it is still a significant problem.

It is, however, not these skewed statistics alone that provide the reasons for the rise of violent crime in South Africa today.

Apart from the activities of the past mentioned above, there are disappointments, mostly among the black population, about the lack of social and economic change. This is, to large extent, the reason for the continuing increase in violent crimes. According to Simpson (1998): "the rising crime rate indicates growing dissatisfaction, especially among the young". A claim made by a former MK combatant, in an interview published in the *Sunday Argus* of March 1998, seems to confirm this:

By turning to violent crime, Freedom Fighters are making a final stand against the ANC. It is a different form of guerrilla warfare now; we fought for liberation of South Africa. MK soldiers were made promises by ANC. They have not kept any of them. Instead they despised us.

As a result, these ex-combatants have decided to create jobs for themselves in the form of violent crime, one could argue. It can further be said that these combatants (from both the camp of the apartheid government and the liberation movements), who were themselves "graduates" and "professors" of violence in the apartheid era, have been put out of a job. And having been put out of jobs, as trained experts in the act of violence, they have found a new "job" for themselves – not political violence, but criminal violence. Pelser and De Kock (2000, 88) elaborated this point in the following passage:

During the years of political struggle many members of the former security forces and liberation armies were trained in guerrilla warfare skills like intelligence gathering, ambushing techniques, firearm handling, explosives, etc. Many of these combatants are now unemployed, but continue to employ these skills in hijackings, house and business robberies, bank robberies and robberies of cash in transit.

The history of South Africa's past has been a violent one. Hence it is possible to say, with Lamola that: "in essence and reality South Africa is violence"(cited in Chidester 1992, 123), and the generation of today is a product of that violent history.

To develop further understanding I intend to discuss South Africa's increasingly violent crimes under the following categories - armed robbery, murder (assassination), hijacking (car snatching), drug trafficking, rape and general violence.

Violent crime is a complex phenomenon in the new South Africa, occurring daily, with an ever-changing face. Violent crime has hardly captured the interest of academic literature. What is available are media reports on incidences of violent crime and some articles on the causes and possible prevention of violent crimes in South Africa. We can, therefore, only discuss how crime presents itself and discuss its seriousness in South Africa, based on media reports and articles (in no particular chronological order) written in the interval between the first democratic election in 1994 and the year 2000. The police monthly bulletin on reported crime in South Africa released in the month of January 2000 (available on the internet) will be used extensively where applicable. Citing cases of violent crimes as reported in the media will form the primary source of most of our information.

3.1.1 ARMED ROBBERY

According to 1999 police statistics released in January 2000, (available at [http://www.saps.co.za/8_crimeinfo/bulletin/2000\(1\).html](http://www.saps.co.za/8_crimeinfo/bulletin/2000(1).html) table 1), the present incidence of armed robbery in South Africa is on the increase, which is attributable to the economic climate - the high level of unemployment and poverty among the majority of the citizens. Armed robbery has been on the increase since 1994 after the first democratic election. The violence that now marks criminals' operations, involving loss of lives and property is of serious concern to the South African public, who feel unsafe with their property both at home and at work.

More importantly, violence is of critical concern to foreign investors who fear for their lives and investment in South Africa. It is argued that due to this fear, they are not making investments and consequently employment is not being generated.

Many have dubbed South Africa as the country of criminals. A robbery, according to the Internet source already cited, is committed in South Africa every five minutes. Although this may be an exaggeration there may, however, be some truth in it. Looking at the police statistics from 1994 – 1999, it is evident that armed robbery will continue to increase due to the disappointment, disillusionment, and retrenchment and

that sees a continued rise in the level of unemployment. Relying on police statistics, which are arguably inaccurate, does however, gives us an indication of the seriousness and the trend of armed robbery or robbery with aggravated circumstances. The figures in Table II represent cases of armed robberies reported to police between 1994 and 1999, based on crime ratios per 100, 000 of the population.

TABLE II: ARMED ROBBERY BETWEEN 1994 AND 1999.

1994	1995	1996	1997	1998	1999
219.8	202.8	166.7	169.0	209.6	226.3

As evident from the figures above, armed robbery was very high soon after the first democratic election but decreased over the following two successive years, when people were still full of hope that changes would occur rapidly. As the public became disillusioned about the prospect of social and economic betterment, armed robbery began to rise again. 1996 represented the lowest level of armed robbery since the 1994 democratic election: 166.7 reported cases. 1997 saw a rise in armed robbery that might be attributed to the lack of social and economic improvement.

The increase in armed robberies is a resultant effect of the slow and, at times, about transformation in the socio-economic situations of the majority of South Africans. Thus in 1998 there was a massive increase in armed robbery. This increase was attributed, according to the police bulletin on reported crime, to the disappointment of many people in the slow pace of transformation and, in some places, lack of social and economic betterment. For Simpson (1998), although the expectations of the people for immediate better living conditions after the general election in 1994 were unrealistic, they were, however, the source of people's frustration.

The increase in armed robbery, therefore, is an indication of dissatisfaction among the people. As more people have no source of income and livelihood, the correlation between lack of better living conditions and crime became more evident, as the increase in armed robbery continues unabated in the successive year, rising to 226.3 in 1999. In the same period of January 1999 to December 1999, the total number of armed robbery cases reported in Gauteng alone was 585.0, while in KwaZulu-Natal and the Western Cape the figures were 247.2 and 199.1 respectively. According to this particular bulletin, the increase in armed robbery is a source of worry for the South African Police Service (SAPS): "...the increase of 8.0 % (1999 compared with 1998) in robbery with aggravated circumstances are very worrying and the SAPS is currently paying special attention to these problems."

The continuous increase in armed robberies noted above is likely to go on. A reading of the police bulletin, together with McCarthy (1998), "Violence in South Africa: ...", indicates that a decrease in violent crime and, in particular, armed robbery, depends on the attainment of social and economic betterment in black communities. As already mentioned, the increase in armed robberies has reinforced the call for the reintroduction of the death penalty as the way to deter armed robbers.

One only has to read the newspaper headlines to understand the seriousness of armed robbery in the new South Africa. For example: "Cash - transit industry gets ready for 1998 after losing 60 guards, R150million in 1997"; "A brazen gang held up a police station today (16th January, 1998) shot dead a policeman and seized two handguns while accomplices robbed the neighbouring Bonteheuwel post office of R300 000 in pension money"; "Heavy firepower used in Heist Alarms Police"; "Robbers Walk off with R200 000"; "Man followed, shot dead after withdrawing R2 500" (*Cape Argus* January, 11 and 12; *Cape Times* December 30). These are just some of the armed robbery cases, among many that make newspaper headlines every day in South Africa. Those calling for the reintroduction of the death penalty use these headlines as part of their justification.

Three forms of armed robberies that need to be mentioned in brief are: bank robbery, cash-in-transit heists and vehicle robbery. Loss of lives is always involved in these robberies, and they have become commonplace in the new South Africa. Writing in *Acta criminologica*, Andrea Peeler (2000, 88) estimated that about 100 persons are killed annually in bank robberies and robberies of cash in transit. In 1999 alone, a total of 356 robberies and heists were recorded, according to Bob Tucker, the South African Banking Council chief executive officer, in briefing the National Assembly's safety and security committee in April 2000. This, he said, has cost the banking industry R68million and an additional R1 billion has been spent on improving security measures. The number of bank robberies and heists for 1999 show that more than one robbery or heist occurred every day, excluding Sundays and holidays when banks are not open for business.

1998 was the "year of the heist" with the biggest heist in South Africa of R17, 4million (*Cape Argus*, December 5). On January 22, R5million was stolen in a heist committed by a 15-member armed gang, seriously wounding five security guards (*Cape Argus*); On July 30, R8million was taken in a cash-in-transit, killing two security guards on the Witbank highway (*Late Life*); and on November 30, the Standard bank in Umtata was robbed of R9, 6 million (*Dispatch Online*).

While the foregoing shows the seriousness of armed robberies and the need for tough measures in fighting the menace of violent crimes in South Africa, it does, however, bring to the fore that the multifaceted nature of violent crime cannot be solved by a single and harsher punishment like the death penalty because, using Nomoyi's phrase, a multifaceted problem requires "a multidimensional solution" (2000, 66).

3.1.2 MURDERS

The meaning of the term "murder", in this thesis, is inclusive of assassination, family murder, hijacking murder and other forms of killing among human beings.

According to police crime statistics, there seems to be a decline in the murder rate. The frequency at which murder is committed in South Africa is alleged to be one murder every 29 minutes. For instance, between June 30, and July 3, 2000, the independent newspapers in South Africa published the following headings: "Woman dies in Khayelitsha bus attack"; "Bus attack leaves one dead, 10 injured"; "Store manager shot dead"; "Off-duty cop killed in pre-dawn shooting"; "Cape 'drug lord' killed in club shoot-out"; "Man shot as friend helps hijack victim"; and "Burglars kill father in front of family" (IOL crime and courts, 2000). Between 7 and 8 August, 2000, the same independent newspapers reported about 9 murder cases involving the loss of 18 lives. According to IOL (Independent on Line), 6 people were murdered in farm attacks in 11 days and 5 others were brutally murdered in the Mahlabathini area near Ulundi in KwaZulu-Natal on the night of Tuesday 8, August, 2000.

On July 22, 1997, magistrate Ivan Ristow made the following comment: "Today I have to deal with three murder cases and it seems that human life is cheap in Grahamstown" (*Cape Argus* June 17, 1997). Three days earlier, PAC MP Patricia De Lille had referred to her sister's murderers as "barbaric criminals who do not value human life" (*Cape Argus* June 18, 1997). This is an indication that violent crime in South Africa affects everyone and that it is an ethical issue as much as it is a social menace. Three years later, Judge Joop Labuschagne seems to share the same sentiment in sentencing the murderers of Brenda Fairhead and her daughter Kia when he said: "these crimes are prevalent throughout the whole country. People are not safe on the streets anymore. They are not even safe in the sanctity of their home or motor vehicle" (*Cape Argus* June 15, 2000).

In April 1997, within two weeks, 9 policemen were murdered. 44 policemen were killed between January and July of the same year in Gauteng alone. While on August 31, 1998, as reported in *Late Final*, murders in Richmond, KwaZulu-Natal between May 1997 and August 1998 had passed the 100 mark.

The terrifying prospect about murder in this country is that life has no meaning and is considered by many to be very cheap, to the extent that a quibble over a girlfriend or boyfriend, even trivial matters like differences in opinion, can instigate a situation whereby a person can lose his or her life. On 27 December, 1999 the *Cape Argus* reported how Noreen Slabbert was shot dead in Mowbray, Cape Town, as she drove out of her drive-way in the presence of her son, Dillon, who was in the car; on the 28, December the same paper reported the murder of a 76 year old hiker, John Davis, on Signal Hill.

What is particularly worrying is the fact that murderers are becoming more animalistic in their action, and that children have also become their prime target. In describing the horrific and brutal murder of 12-year-old Candice Louw of Manenberg, the *Cape Argus* (December 30, 1999) has the following to say: "... brutally murdered, stab wounds to both breasts and her naked body, huge gash against her temple, her teeth knocked out, her legs spread apart, a bruised face". Earlier in the same year, BBC News Online: World: Africa (internet), produced the following publication on Saturday, July 3, 1999: "Gang rape and murder stuns South Africa". This publication came after 6-year-old Veronique Maans was murdered and half-buried in a sandy area near Cape Town and after the rape and death of Valencia Farmer who was stabbed 42 times and her throat slashed by her attackers. Valencia's killing was so brutal and senseless that the residents of her township took to the street to demand immediate justice. The publication quoted the ANC provincial parliamentarian, Shaun Beyleveld, saying: "Valencia's death violated the post-apartheid vision for children in the new South Africa."

The vision for children is indeed violated in the new South Africa. In a different way it is the children, the "tomorrow" of South Africa, who are seriously in jeopardy as they are victims and perpetrators of these acts of murder. Youngsters who are the future of the new South Africa commit most of these acts of violation and violence and have a total disregard for human life, including that of tourists, as many tourists meet their fate at the hand of South African teenagers. On New Year's Eve 1998,

three teenagers on a crowded beachfront in Durban, murdered a German tourist - Helmut Kriegbaum, 44 years old - in front of his two children. Another tourist - an American - was murdered near a black township in Cape Town two days earlier (Nando.net 2000).

August 2000, like every other month in South Africa, has also witnessed many killings - 16 were killed in Cape Town on 14 August, in gang-related shooting and, in the Eastern Cape, two teenagers were brutally gang-raped and their throats slit. One died and the survivor is fighting for her life in hospital, according to etv news. Murder cases continue unrelentingly. Hence the calls for the death penalty to be brought back to stop murders, as many believe that the rise in murder rate is linked to the abolition of the death penalty. An article published in the *Cape Argus* on July 12, 1997 elucidates this perception when it notes:

the startling discovery that haunts many South Africans is that there appears to be a correlation between the abolition of the death sentence and the gruesome consecutive murders that have been committed recently.

3.1.3 HIJACKING

Car hijacking in South Africa, occurs every five minutes. Police crime statistics for 1999 show that in Gauteng alone 340.5 out of every 100 000 of the population reported incidences of car hijacking between January 1999 and December 1999. This makes car hijacking one of the most frequently committed violent crimes, after rape, in South Africa. It is a crime that affects all strata of society, irrespective of colour, status, race or creed. The monthly bulletin on reported crime released in May 2000 shows that hijacking is on the increase on the national level, as the period between December, 1996 and December, 1999 shows in Table III below.

TABLE III COMPARISON OF CAR JACKING AND TRUCK HIJACKS FROM 1996 TO 1999

YEAR	1996	1997	1998	1999
CARJACKING	13.7	12.9	13.8	14.9
TRUCK HIJACKS	3.8	3.9	5.0	5.8

These figures are taken from the police monthly bulletin released in January 2000, based on crime ratios per 100,000 of the population.

The seemingly unabated increase in hijacking has forced many motor owners to include vehicle alarms and an extra security system in their vehicles. Yet hijacking as a daily occurrence has become a crime that South Africans have learned to live with. Burke and O'Rear (1996, 24) referred to vehicle hijacking in South Africa as: "live to drive another day".

According to Linda Davis (1999, 1) of the department of criminology, University of Pretoria, vehicle hijackings are taking on alarming proportions in South Africa, as media and police statistics (as shown in Table III above) indicate. Hijacking is a crime that many South Africans would love to do away with and owing to the fact that it has become one of the country's fastest growing "industries", it has become a nightmare for law enforcement agents to combat. Car hijacking in South Africa comes in two different forms: the gang-run and the syndicate-controlled.

The former has been referred to as a "hunter gatherer society" by a sociologist (Marais 1999, 28). In other word, the gang hijacks because the members are "hungry" and want to get something to eat. Describing the *modus operandi* of gang-operated hijacks, a policeman said:

These guys want your personal belongings and whatever's in the car. They don't want the hassle of trying to find a buyer. Sometimes, they will strip the vehicle of wheels, stereo, even the battery. Mostly, they use the vehicle only to get away from the scene of crime. Then they dump it (Marais 1999, 28).

In these gang-operated hijacks, the chances of the hijacked person being shot are very high. The gangs, known for their brutality, usually become more brutal and kill when a targeted car owner shows signs of hesitation. A gang does not care about the government, law-enforcement agents, the laws or God. Their concern is to satisfy their immediate need, which of course is to get money to "feed", which includes using drugs. According to police, the chances of recovering vehicles hijacked by gangs are high as: "they only hijack to get at the victims' belongings; now and again they do a hijack for a syndicate, as a sort of sub-contract" (Marais 1999, 28). It may, therefore, be argued that hijacking, for the gang, is not a regular business or occurrence but "a need-based" operation.

According to Hein Marais (1999), "Road to a fast buck", syndicate-operated hijacking is less violent, but there is also less chance of recovery of the vehicle. Syndicate hijacks are the most common hijacks and the fastest growing illegal business in the new South Africa. It is comprised of well-organised "conglomerates" that involve not only the hijackers, but also those who are allegedly in the legitimate vehicle market and those who are law-enforcement agents. Syndicate hijacks, unlike gang hijacks, are full-time employment for those who are involved. Hence the recovery of hijacked vehicles is very difficult. As a business, it is well-organised, from the person who drives the vehicle from the point of the hijack to the point of sale, as well as to the spraying depot and finally to the "legal" vehicle market for final sale to the public, who will become the end user.

Marais described two strands of syndicate hijacks. The first are those which operate locally, within the country, and the second are those which operate both locally and internationally - otherwise known as transnational syndicates. The local syndicate hijacks vehicles within the country, makes changes to the vehicles and resells them

within the country. The transnational syndicates hijack within the country, but sell the vehicles in neighbouring countries as imported second-hand vehicles.

Gerrie Nel, Deputy Director of Public Prosecutions for the Investigative Directorate on Organised Crime, has the following to say about the *modus operandi* of the syndicates operating within the country, which he calls "parochial":

They will hijack the car, change it and sell it here. Usually, they will contact a buyer in the underworld, tell him what vehicle they have and try to do a deal. Delivery occurs soon afterwards. The hijackers are paid in cash and leave. By implication the business of the hijacker terminates immediately when he receives his pay. The new 'owner' will then change the car (resprays it, alters engine numbers, fits new license plates and so on) and often resells it into the 'legitimate' vehicle market (Marais 1999, 29).

From Nel's description, just as what happens between the time of the hijack and the point of sale has nothing to do with the buyer, so too, the hijacker is not perturbed by what the buyer does after delivery and payment have been made.

According to Hein Marais the transnational hijacks are larger, more organised and sophisticated operations. These hijacking syndicates have contacts and connections throughout the country, in all facets of government departments that have anything to do with the import and export of vehicles in all the countries in which they operate. Their contacts and connections spread through Licensing, Customs, Police, Judiciary, Home Affairs and Correctional Services, in case one of their hijackers runs out of luck and they have to organise an escape from the prison. The SAPS says that these syndicates operate with "order lists" from their customer in the "legitimate" vehicle market. Marais describes the *modus operandi* of the transnational syndicates in this way:

...syndicates have a kingpin who works through a chain of 'lieutenants', often he is based in a neighbouring country and has a 'representative' stationed in Gauteng. They contact the hijacker locally, arrange registration and licensing certificates, hire drivers to take the vehicle to its final destination and, if necessary, set up borders post bribe" (Marais 1999, 29).

According to Linda Davis (1999, 1), the continuous increase in hijacking is a serious concern for both the public and the government. It has profound implications for the individual: "in terms of the loss of property, physical injury and emotional trauma". The public outcry and international condemnation of hijacking, Davis contends, is a contributory factor to the reasons why the South African Police Service (SAPS) consider it to be one of the most serious crimes in South Africa today.

The unabated increase in hijacking, apart from the more remote causes of violent crime, is attributable to corrupt practices among government officers who accept bribes from syndicates. The corrupt practices are often blamed on the poor conditions and salaries of the officers involved. This notwithstanding, it can be argued that the complex nature of hijacking dictates that a solution to violent crimes in the new South Africa cannot be found in the reintroduction of the death penalty. Rather, it is in multi-disciplinary efforts rooted in ethical values aiming for reconciliation and accelerated transformation that the solution to violent crimes lies.

3.1.4 DRUG TRAFFICKING

The danger of drugs and drug trafficking manifests itself in the high level of violent crime in South Africa today. The USA State Department, in its 1998 International Narcotics Control Strategy Report, as reported by the *Cape Times* on March 4, 1998, listed South Africa among the seventeen sub-Saharan countries with the highest incidences of drug trafficking. According to the report, South Africa is the largest consumer of mandrax, a significant cocaine and heroin trans-shipment area and one of the largest cannabis (marijuana) producers in the world, most of it consumed domestically and in the regional market. This report was underscored by the then justice minister in South Africa, in a statement made to the media on August 18,

1998, when he said, "drugs cost the country between R2, 5billion and R7, 1 billion a year. South Africa produces enormous quantities of dagga and it is estimated that it consumes 80% of the mandrax produced worldwide" (*Cape Times*).

Drugs and drug trafficking constitute one of the greatest contributory factors to the unabated violent crime in South Africa. In a study conducted by the Medical Research Council (MRC) and Institute for Security Studies, published in the *Cape Argus*, December 21, 1999, the correlation between drug abuse and violence was found to be very significant. The survey showed, *inter alia*, that drugs and liquor are key catalysts in the crime wave that continues in the Western Cape, as elsewhere in South Africa. It has been found that more than 52% of people committing serious violent crimes, such as murder, rape or armed robbery, are high on drugs or liquor before they break the law. The following results in table IV were obtained from the study.

TABLE IV: CORRELATIONS BETWEEN DRUG ABUSE AND VIOLENT CRIME

CRIME	% NO. OF PEOPLE UNDER THE INFLUENCE OF DRUGS
HOUSEBREAKING	77
DRUG AND ALCHOL OFFENCES	71
WEAPON RELATED CRIME	56
ROBBERY	53
MURDER	52
RAPE	47

Drug addiction is reportedly growing among Cape Town's richest people: doctors, lawyers and businessmen are not excluded. Dawsie Palme, a narcotics police officer in Cape Town's Drug and Liquor Enforcement Unit, said that heroin and other

upmarket drugs such as cocaine and LSD, have become very popular with rich people in Cape Town; to the extent that some unscrupulous doctors do mix designer drugs and cocktails and sell them to teenagers and that students with access to laboratories are joining in the business of drugs (*Cape Argus* July 16, 1998). As Table IV above indicates, there is a strong link between the use of drugs and alcohol and the perpetration of violent crimes. Drugs and alcohol probably remain one of the major causes of violent crime in the new South Africa, especially since most violent crimes occur over the weekend when drugs, and especially alcohol, are freely accessible. This implicates our ethical values system and consequently religion, which has always prided itself to be the foundation for ethical values.

Children and schools have become targets and are being used for the sale and consumption of drugs. Drugs in South African schools are contributing to the violence increasingly experienced in schools, both of which impact on transformation and reconciliation in those schools where drugs are "freely" available. More and more teenagers are turning to drugs because of their easy accessibility in schools. In 1998 a 16 year-old boy, a grade 11 pupil and regular smoker of dagga, was sentenced in Johannesburg to eighteen years in prison for the murder of both parents. The more drugs are easily available to teenagers in school, the more violent crime will obstruct transformation and reconciliation in South Africa's schools.

The Cape Flats in Cape Town is one of the striking examples in South Africa attesting to the devastating effect of drugs. It is a gang and drug-ridden area, according to independent newspapers correspondent, Joseph Aranes who wrote on February 25, 1998 that the state had lost the battle over the control over the Cape Flats to gangsters and druglords. In the report, it is alleged that many suburbs are ungovernable, with gangsters ruling the roost. Gangsters and druglords are taking control of the situation in order to carve out their fiefdoms in areas like Manenberg, Belhar and Mitchell's Plain where shooting and killing has become an almost daily experience for the residents of these areas. In August 2000, 16 persons were killed in

gang-related shootings in the Cape Flats, as reported on the SABC television news. Situations of this nature do not allow for transformation and reconciliation.

The forms of drug-trafficking in South Africa can be categorised in three ways: the syndicate market, the gang-drug market and the social need market. The syndicate market is internationally operated and is responsible for bringing drugs into a particular country. The well-connected syndicates supply their clients - the drug-lords - while the drug-lords control the gang-drug market. Gangsters are the main clients of the drug-lords and the absence of gang wars means loss of business for them. On the other hand, the social-need market comprise all those who use drugs for social reasons, such as the business people, performing actors/actresses, lawyers, doctors, and participants in weekend drinking sprees and raves. According to recent media reports, alcohol remains the most abused substance among low-income earners in the urban informal settlements and in the rural areas. The August 2000 cocaine and mandrax seizures reported in the news are indications that the drug trade in South Africa is showing no signs of abating.

3.1.5 RAPE

South Africa has one of the highest rape incidences in the world. Worse still, rape in South Africa is becoming more violent by the day and many victims have died. It is perhaps even more heart-breaking because of the fact that children are increasingly becoming the target of a new surge of bestial acts involved in rape. In the Cape Flats alone, in Cape Town, all missing female children found dead by the police were raped. The number of missing children found dead so far this year alone in the Cape Flats is put above ten. The disputed national SAPS rape statistics for 1999 estimate 119.1, as against 117.0 in the previous year. This increase calls for concern, especially as it relate to the safety of South African children.

South Africa, many contend, is a sick society if we consider the fact that many see rape and gang-rape as normal and not the exception. South Africa is a society where a father's rape of a daughter is common. On July 3, 2000, an Alexandria man in

Johannesburg was arrested, as reported by Independent on Line (IOL), for raping his 13-year-old daughter. In 1998 (September 16) in Durban, 27 year-old Gerhard Mather, was dubbed a "blatant liar" and jailed for 25 years by the presiding judge for raping and murdering his 13-year-old stepdaughter Maryke Hoyer. (*Cape Times*). The rape of children and gang-rape has become commonplace in South Africa. In June 1999, the world was horrified by the gang-rape and murder of 14 year-old Valencia Farmer¹.

The fact that no woman is safe in South Africa from the current animalistic behaviour now associated with rape -whether journalists, tourists, teachers or the aged - makes the issue of re-introducing the death penalty appear more urgent. In June 1999, a 28 year-old Brazilian journalist was gang-raped in her hotel apartment in Johannesburg. On October 16, 1998, five men shocked the South African public and the world with the media report of the abduction and repeated gang-raping of three Swiss tourists in Durban. On July 14, 1997, *City Late* reported that an 80-year-old woman was raped in her flat in Cape Town.

The continuous increase in the incidences of violent rape, as of other violent crimes, constitute an *obex* to real reconciliation, forgiveness and healing in the new South Africa. Violence in any form and against any person is detrimental to harmonious co-existence and relationship. Rape is an act of violence in itself and is therefore detrimental to mending the relationships that have been destroyed by the violence of apartheid. To achieve a true reconciliation any form of violence needs to be buried.

According to police statistics released in January 2000, rape is one of the crimes in which numbers are stabilising. This claim is, however, disputed by such South African organisations as Rape Crisis, which estimates that only one in every twenty

¹ Valencia Farmer, according to the *Cape Argus* of December 27, 1999, was repeatedly raped as shards of broken beer bottles cut into her back before she was stabbed 42 times and her throat slashed. Valencia's rape and murder came a day after the six-year-old Veronique Maans was apparently raped, murdered and buried.

women reports her rape case to police. Using this estimate, the organisation's 1999 annual report put figures at over one million women and children raped in South Africa annually. The concern here is not so much about the figures as about the seriousness of rape, the violence against and murder of rape victims, the targeting of children and the threat this crime poses to reconciliation, forgiveness and healing in the new South Africa.

Two forms of rape are identifiable in South Africa - gang rape, which in most cases is very violent and usually results in the victim's death, and one-to-one rape, which is also violent and can result in the victim's death; children are becoming more and more victims of the latter.

A study conducted by Bongani Linda (1999, 46) for *Siyaya* magazine reveals the prevalent attitude towards rape in South Africa. According to one of the perpetrators interviewed, now behind bars, rape is a "boy's game". Such is the attitude of many South Africans who indulge in rape and it is freely talked about by the perpetrators. No woman or child is safe if any of the gang members solicit sex or friendship from her and she refuses him; she has then chosen the "B alternative" - violence. Therefore she is to expect the worst - not just being raped, but even being murdered after rape. She has no choice in the matter if she refuses - "alternative B", violence, according to how one of the perpetrators now serving a prison term puts it, is always available. Using force, one of them said: "you pick and choose the best and they give you the best" (Linda 1999, 46).

Reflecting on the role of violence at the 75th anniversary of the ANC, Oliver Tambo (former president of the ANC) recognised the fact that violence is a "dehumanising tactic", but went on to "assure his audience" that the need to use violence to fight the violent apartheid government "will never transform us [the people] into prisoners of the ideal of violence, slaves to the goddess of war" (Chidester 1992, 116). But today, with the violent crime situation in the new democratic South Africa, Tambo's rhetoric has become a self-fulfilling prophecy in two ways. Tambo was correct about the fact

that violence is a "dehumanising tactic" as it is evident in the new South Africa today. But, he was wrong about the fact that the people will never become prisoners of the ideal of violence and slaves to the goddess of war. The attitude of rapists and other criminals and some members of the South African society attest to the fact that the people have indeed become prisoners. This is clearly evident in the attitude and orientation of a particular gang rapist, best summarised by his following words: "one thing I can tell you about gang rape, my bra' is that it is the best. When she is scared she is at your mercy. She obeys. I've seen that in all races - black, coloured, especially whites. They are afraid of dying" (Linda 1999, 46).

What is certain here is that rape and the use of violence is about the assertion of power, authority and being in control of a situation. Historically, it was the assertion of the white minority's power, authority and control that brought about the violence of the past, today known as the legacy of apartheid. Similarly, Mandela argued, during his trials of 1962 and 1964 in defence of the ANC use of violence: "the violence of the state had bred a counterviolence of resistance" (Chidester 1992, 122); but today the same violence has bred yet another counterviolence which has taken away protection from women and children in South Africa. On the other hand, this counterviolence has given the rapists power, authority and control. Violence was, according to Chidester, a substitute for talk - to awaken, to gain hearing, to bring the government to the negotiating table (1992, 123). But in the new democratic South Africa, in the case of rape, violence has become not only a substitute for talk, to gain hearing; but more importantly for the rapists, it serves to bring women and children to accept their authority, power and control over their sexuality, and worse still, over their lives.

Though apartheid was about political domination and social control, it is the same dynamic of demanding and taking by force that manifests itself in rape. In fact, the violence of rape can be regarded as an extension of the political violence and social control in wider society. The one of who it is demanded has no right to refuse the demander and any attempt on the demanded to refuse is asking that control should be

taken by violence. Violence then becomes, using Caroline Nomoyi's phrase, a "means of guaranteeing result".

Attitudes of this kind have serious negative implications for South Africa, which is still undergoing transition as a very tense, racially-divided country seeking reconciliation.

3.1.6 VIOLENCE IN GENERAL

General violence in South Africa, in spite of government commitment to curbing it, is showing no signs of abating as more and more young people are turning to it as the best way of achieving wealth, pleasure, popularity, power, authority and respect. Nomoyi (2000, 67), of the Department of Criminology, University of Pretoria, echoes the same sentiment: "the youth are adopting the dangerous attitude that if you can't get it when you open your hand, a clenched fist guarantees results". In fact, it is not just the youth who believes in the "alternative B" mode of violence. This is evident in the different taxi wars in different parts of the country that have claimed not less than sixty lives. Recently, after the impasse in talks between the Golden Arrow Bus Company and the various Taxi Driver Associations in Cape Town, the taxi drivers promised that blood would flow, and indeed seven lives have been lost so far and many others have been injured in the violence, as reported on SABC television news on August 6, 2000.

The ongoing violent war between the gangs and drug-lords on the one hand and People Against Gangsterism and Drugs on the other, is yet another case of how violence has become a tool for resolving disagreement in South Africa - a symbol of power, control, authority and respect. According to Nomoyi (2000, 67), violence in South Africa has become an accepted means to solve political, social, economic and even domestic conflict. Examples of these are the ongoing taxi violence to dominate specific routes, the huge increase in car hijackings and robberies accompanied by increased brutality, the ongoing political violence in KwaZulu-Natal and the People

Against Gangsterism and Drugs (PAGAD) pipe-bombs attacks which have culminated in 400 incidents over two years in the Western Cape.

These violent behaviours of many South Africans pose serious problems in the transition and economic development of South Africa; hence the call for the re-introduction of the death penalty. But knowing that some of these violent problems are products of our past, the extension of the dominant attitude of power, authority and control, will the death penalty not aggravate the already precarious situation and destroy the fragile reconciliation and possibility for healing and forgiveness of past abuses?

3.2 SOLVING THE PROBLEMS OF VIOLENT CRIMES IN THE NEW SOUTH AFRICA

The increase in violent crimes in the new South Africa, as obvious from the preceding section, calls for harsher punishment of criminals. Yet, the concept and understanding of the phrase "harsher punishment" differs considerably in meaning for different people, cultures and religions, as already noted in the previous chapter. Thus, for some people, the taking of life is no punishment, nor is it in any way a harsh punishment, because the prerogative of giving and taking life belongs to God, the creator of life. Notwithstanding this relativism regarding what constitutes harsher punishment in a multi-religious and multi-cultural society like the new South Africa, the problem of unabated violent crime requires not only zero tolerance² on the part of the justice system, but also firm and drastic measures to curtail its continuously rising level. To this end, the government has taken many measures.³ Such measures include

² For the concept of "zero tolerance", see essays in N Dennis ed., *Zero Tolerance: Policing a Free Society*. London: Institute of Economic Affairs Publication, 1997.

³ For the measures taken by the government see 53 of the criminal act and the 1996 crime prevention strategy.

tougher bail conditions, minimum sentences, the establishment of the elite Scorpion unit in the police department, the upgrading of facilities in the justice systems and calls for more alternatives and options concerning punishment, not precluding the death penalty.

According to Bukurura (1999, 17), the campaign of the retentionists to reintroduce the death penalty: "recently found support in the voices of influential politicians who are calling for a referendum so that the matter can be put before the general populace". The popularity gained by politicians promoting the death penalty in the period leading to the 1999 general elections was more of an electioneering tool than of a genuine concern to combat violent crimes. This is evidently true, since the end of the elections also saw the demise of politicians' enthusiasm for the reintroduction of the death penalty as the only solution to fighting the new wave of violent crimes in South Africa.

During the elections, in television debates and public campaigns, parties like the New National Party (NNP) consistently maintained that the reintroduction of the death penalty was the solution to combating the violent crimes that bedevilled the nation. The African Christian Democratic Party (ACDP) and the Pan Africanist Congress (PAC) also supported the reintroduction of the death penalty as evident in the PAC president's (Stanley Mogoba) speech at the funeral of Mrs Tindleni Vuyiswa, who was shot dead in a hijacking attempt in September, 1998. He asserted that the death penalty has to come back - but we need to get to the root cause of the problem (*City Late* September, 1998). The United Democratic Movement (UDM) and Democratic Party (DP) asked that a referendum be held.

As Graeme Simpson and Lloyd Vogelmann (1989) indicate, asking the public to decide on the reinstatement of the death penalty would probably have resulted in a favourable vote, since a marked increase in violent crime in South Africa has helped to heighten public support for capital punishment. According to E. P. Cain (1997, 17) the death penalty should be reinstated, if not for all violent crimes, at least for the

most serious crimes like murder and rape. This is the same sentiment that many South Africans will probably identify themselves with due to the rise of violent crimes.

The calls for the reintroduction of the death penalty as the solution for solving crime in the new South Africa has only received support among some opposition parties, as already mentioned, and people who perceive that violent crime is no longer under government control tend to believe in the debatable deterrent "magic" of the death penalty. This support is perhaps rooted in the saying that because "everyone fears death," death must therefore be the ultimate deterrent to violent criminals. In contrast, among academics and the government of the day, the death penalty has not found support or proved to be a tenable alternative or option in fighting violent crime. Brandon Hamber is one of the strongest voices and most quoted in the debate on the rising level of violent crime and reconciliation in the new South Africa. In his numerous writings, Hamber, like others, has not mentioned reintroduction of the death penalty as an option or alternative to solving the unabated violent crime in South Africa.⁴

Hamber (1998), along with others such as Elirea Borman, Anthony Minnaar, and Louw Ross (1999), André Pelser and Chris de Kock (2000), see the solution to the problems of violent crime in the new South Africa to be residing in the root causes of violent crime. This is the general feeling among academics and most members of the government and also echoes Stanley Mogoba's viewpoint (news) that the root cause of the problem of violent crime is the key to its solution. For Hamber (1998, 350): "the notion of 'reconciliation' is central to these questions precisely because reconciliation is assumed to provide an alternative to violence". The notion of reconciliation is important as it presupposes knowledge of a cause or causes and is thus a vital tool for finding a solution to the violent crimes in South Africa. The

⁴ Brandon Hamber is a manager at the Centre for the Study of Violence and Reconciliation. His writings on violent crimes include: "'Dr Jekyll and Mr Hyde': Problems of Violence Prevention and Reconciliation in South Africa's Transition to Democracy", 1998; *"Have no Doubt it is Fear in the Land": An exploration of*

causes of violent crimes in South Africa are what should be addressed in solving the problems of violent crimes. The obvious question is: what are the causes of violent crimes in the new South Africa?

The answer to the above question is, for Andre Pelser and Chris de Kock (2000, 85): "essential to really effectively fighting crime in South Africa." They identified two main generators (causes) of violent crimes in South Africa - social /socio-economic generators and organised generators (Pelser and De Kock 2000, 86; 88). Furthermore, McCarthy (1998) identifies economics, history, policing, vigilantes and Psychological changes as causes. Caroline Nomoyi, of the Department of Criminology, University of Pretoria, in her article: "The Incidence of Violent Crime in the Rural Areas in South Africa: A Challenge to Indigenous Institutions?", sees the causes of violent crime in South Africa to be a result of the political culture of violence and crime. She identifies the following strands: an economic strain of deprivation, low education levels, high rates of urbanisation, the free availability of guns, population structure and the weakness of the criminal justice system which results in escape from justice.

Within the context of this study it will be impossible to discuss the above-identified causes separately, for they are all interwoven and there can be no mention of one without necessarily mentioning the others. There is no one cause of the violent crimes and all of the above-mentioned causes contribute in different ways to the problem of violent crime we experience today in the new South Africa. It is for this reason that the causes of violent crimes will be discussed in this thesis under the following categories - socio-economic situations, the old and new justice systems, law-enforcement agents, the judiciary and the prison. Through these agents, the moral fabric of South Africa has been undermined, resulting in the prevailing culture of violence and crime. Hence, E. P Cain (1997, 5) argues that the "principal cause of crime in South Africa is the decline in public morality," which has its foundation in

religion. A solution to violent crimes, therefore, must also take into account this ethical religious consideration, which will be discussed later in Chapter Four when discussing religion, capital punishment and reconciliation.

3.2.1 THE SOCIO-ECONOMIC SITUATION

According to Brandon Hamber (1998, 350): "the root cause of political violence in South Africa has to be located in the social matrix and the long oppression, poverty and exploitation in the country", leading to the annihilation of the moral fabric of society and, consequently, the prevalent culture of violence and crime. The political violence that bedevilled apartheid South Africa was, as it were, about the social and economic control of the majority by the minority, with the effect of dehumanising and impoverishing the majority of the population.

Dehumanisation and impoverishment can be caused in various ways, but always through a single channel of violence: which has to do with demanding and taking by means of force. The violence that dehumanised and impoverished the black majority during apartheid in South Africa took various forms such as systematic economic and social exploitation, deprivation of equal opportunities through government policies and laws, stealing people's belongings and even taking human life. The violent crime that we are witnessing today could well be seen as a form of dehumanisation and an attempt to impoverish the perpetrators and benefactors of past violent system that dehumanised and impoverished the majority. Putting it differently, the dehumanised and impoverished have become the dehumaniser and impoverisher. If violence constitutes the single means of dehumanisation and impoverishment, then violence can be seen as such a means in this context.

As Simpson and Rauch (1991, 212 -39) note, the political violence was: "consequently, socially sanctioned as a means of solving problems in South Africa." The social and economic structural deprivation in South Africa thus provides the context to understanding (Hamber 1998, 354) and solving the increasing levels of

violent crimes in the new South Africa. Concurring with this view, the 1996 National Crime Prevention Strategy (NCPS):

attributes the increase in crime to the destruction of social control mechanisms, enormous social and economic disparity, unemployment and underdevelopment, the legitimacy crisis in state institutions related to the transformation from the old order, and the 'culture of violence' in South Africa (Hamber 1998, 355).

In further agreement Davis (1999, 2) says: "real or relative economic deprivation, unemployment, a decline in opportunities in the job market as well as legal avenues to succeed financially and the marginalisation of the youth", are all generators of violent crimes. In attesting to the link between economic disparity and violent crimes, McCarthy believes that poverty and unemployment are naturally synonymous with crime and violence. He contends that the cause of the unabated violent crimes in South Africa is: "the immense economic gap between blacks and whites and the rift in incomes between the South African rich and poor" (McCarthy 1998).

Any solution that is proposed in the fight against violent crime should not therefore undermine any proposal for the betterment of the socio-economic conditions of the majority of South Africans who have become disillusioned as a direct consequence of the violent destruction of the moral fabric of society. Socio-economic betterment does not mean, as many seem to believe, the economic betterment of the few in government. Political power does not in any way equal economic power, nor does freedom of religion equal social equality. The continuous poverty of black South Africans evidently demonstrates the validity of this statement. Despite the fact that blacks in South Africa now have the political power and are free to worship anywhere, economic power, the key to social status, is still in the hands of the white minority. As a direct result of this, it can be argued, blacks are still poor and are being forced into a life of crime for sustenance and survival. As McCarthy (ibid) notes: "although a tougher police force may increase arrests, it will not serve as a long-term solution to poverty, hunger, and the economic and social inequalities left behind by

apartheid that forced many black South Africans into a life of crime." In other words, any meaningful fight against violent crime in South Africa needs to address the socio-economic inequalities created by apartheid.

It is only when there is positive change,⁵ a social and economic betterment in the lives of the marginalized and bastardised of apartheid that the war against violence will be won. If not, they will be entitled, as it were, to use the same means through which they were dehumanised, impoverished, marginalized and bastardised in order to recover their humanity. The likelihood thus exists that any steps taken against crimes that neglects positive change is doomed to failure; notwithstanding tougher action, including the death penalty. Echoing the same sentiment, Brandon Hamber contends:

...unless the impact of apartheid on the identities of its victims, the nature of its institutions and the nature of the underdevelopment that it wrought are addressed, there can be little guarantee that the current social violence will be overcome (Hamber 1998, 350).

The truth of this assertion is that: "the unequal distribution of resources and the structural inequality wrought by apartheid are the root causes" (ibid) of the violent crimes in the new South Africa.

The fact is that the main cause of violent crime in the new South Africa, though not solely responsible, is socio-economic inequality, a legacy of apartheid. The reintroduction of the death penalty as a solution to the problem of violent crime will in all probability exacerbate the already precarious situation and thereby create a new cycle of violence, because as it is said: violence begets violence. Creating such a cycle of violence will make the hope of attaining a lasting reconciliation impossible and will be reminiscent of apartheid resulting in the resurgence of a culture of violence.

⁵ Positive change that is all-embracing. Social, political and economic changes that must culminate in true reconciliation. Reconciliation therefore must be the motivating factor underling any change.

3. 2. 2 *THE OLD AND THE NEW JUSTICE SYSTEM*

The justice system is a key factor in fighting crime in any society. The weakness and corruption within the justice system have been pointed to as a contributory factor to the causes of violent crime. The lack of commitment of the "old guard" and the lack of experience and commitment among the "new guard" are manifested in the ineffectiveness of the justice system to fight crime. Linda Davis (1999, 3), sees the weakness as an inability of the justice system to deal effectively with violent crimes, which has resulted in their rapid increase. Quoting from the 1996 Nedcor Project on Crime, Violence and Investment, she says: "the present criminal justice system is not functioning at a level where it constitutes a credible deterrent to criminals."

The major problem with the present justice system is rooted in its understanding of justice premised on the goal of punishing the criminal as against the African religio-cultural understanding based on the goal of finding a solution to the problem of criminality. The two different understandings and goals have an adverse impact on the effectiveness that is expected of a justice system. The current justice system places emphasis on punishing the act of criminality while the African religio-cultural justice system emphasises finding a solution to the act of criminality by focusing on the settlement of conflicts arising from criminal activity and to resolve the underlying cause of the criminal activity. The latter is a justice that is all-inclusive, involving the victim, the offender and the community, a system that has been referred to as restorative justice. Restorative justice encourages repair, reconciliation and reassurance, aiming for restitution and healing for victims, healing the relationships between victim and offender, accountability and healing for offenders and healing for the community (Luyt 1999, 67).

For the black majority apartheid was an act of criminality requiring a solution which must include the victim, the offender and the community, with the aim of repairing injuries done to a relationship through the wrong that has been done. Where applicable, a punishment for the physical damage resulting from the criminal act, restitution, reconciliation, healing and forgiveness must be sought. Contrary to the

black majority's expectations and understanding of justice, they, victims of apartheid, believe that they are made to stand before the offenders of apartheid to be judged by the current justice system. In the process, most victims have the idea that they have been turned into offenders by the real offenders, whose understanding of justice remains vindictive and retributive. Such a justice system is unfortunately alien to African people - the black majority and victims of apartheid. Because the current justice system is alien to Africans - the black majority - it does not enjoy their mandate and consequently their respect. For them, it is a contravention of their religio-cultural ethics and a mockery of justice. As a direct result of this response, the current justice system is toothless and hence it is functioning in a way that constitutes no forceful deterrent to criminals.

Apart from the above two different understandings and goals of justice, there are two further possible reasons why the current justice system is not functioning effectively. First, as briefly mentioned above, is the lack of commitment and change of attitude among the "old guard" towards the cause of the present dispensation. Second, is the lack of adequate experience and commitment on the part of the "new guard" in furthering the ideals of the new order. There is a lack in the justice system, from both the old and new guards, to show an even higher commitment to the fight against crime than they did in the fight for and against apartheid. The justice system should take the lead in creating a working environment that promotes reconciliation, mutual trust and partnership in the fight against crime.

The lack of mutual trust between the old and the new guards within the justice system has caused fragmentation within the system itself. There is no communication and cooperation between them, resulting in: "not only abuse but also neglect, which can be defined as the failure to take care of charge" (Smith and Cilliers 1998, 202). This is an indication of lack of transformation, reconciliation and change of attitude between the old and new guards in the justice system. Furthermore, the fact that the overriding excuses for the ineffectiveness of the justice system to curb violent crimes has always been the relative inexperience and lack of training of the new incumbents

(ibid)⁶ shows the division that exists between the old and the new guards. Hence, the ineffectiveness of the justice system to function at a level that shows it can be a deterrent to criminals, through successful apprehensions and convictions.

Criminals are clearly taking advantage of the ineffectiveness of the justice system to perpetrate their acts of terror on the populace. For example, Myerson states: "that hijackers [as well as other criminals] 'laugh openly' at the impotence (inability) of the criminal justice system to punish criminals and prevent crime" (cited in Davis 1999, 4). The laughter is a proof that it is close to impossible for any system that contravenes a particular religio-cultural system of ethics to function as a deterrence to the people of that particular culture. This is inevitable, given that religion and culture are the most basic foundation and enforcing authority behind any legal system.

Supporting evidence for the ineffectiveness of the justice system is presented in Moolman's in 1998 analysis of the Nedcor Institute for Security Studies Crime Index. Its finding was that only 7.1 offenders would serve a sentence, for every 1,000 crimes committed in South Africa. The rest would escape justice as a result, *inter alia* of poor detective work in collecting evidence by those entrusted with the task and of offenders escaping from custody with the assistance of corrupt officials. Identifying the same weakness, Ben Smit and Charl Cilliers say: "case dockets (dossiers) are said to be poorly prepared or cases superficially investigated by police" (Smith and Cilliers 1998, 203). They point out that the level of inexperience is a result of lack of training and, consequently, a lack of commitment. This problem of ineffectiveness and weakness, which the criminals are taking full advantage of, is a direct result of the lack of integration of the old and new justice systems, thus providing eloquent testimony that the reintroduction of the death penalty is neither an option nor a solution to violent crime.

⁶ The inexperience of the incumbent can be seen as a direct consequent of the lack of cooperation of the old and new guards. It is the duty of the old to teach and train the new guard. And the new also has the responsibility to learn from the old guard. But none of these are happening in the justice system. Everyone

The priority task, therefore, should be to remedy the biases and lack of trust that continue to create an environment conducive to criminal activity. The conclusion, therefore, is not that tougher measures such as the reintroduction of the death penalty are required to combat crime, but that, even with the toughest measures, criminals are still going to escape justice if there is no reconciliatory working environment that encourages the old and new to work together in unity, trust and equal dedication and experience.

The crisis in the justice system requires a holistic and methodical approach that can bridge the racial divide that is still clearly evident in the justice system as well as in other spheres of our social, economic and political lives. The lack of reconciliation in the working environment makes it more difficult to fight violent crime in one, undivided spirit. As the biblical saying of Jesus affirms, "a house divided against itself cannot stand". I intend to detail this problem below, when I discuss specific departments within the justice system. But meanwhile, as Simpson states:

South Africa cannot at one and the same time, recognise the roots of violence and criminality in the historical dehumanisation of the apartheid system but ignore the impact of politically motivated amnesties on the credibility of the criminal justice system" (cited in Hamber 1994, 17).

It is, therefore, of paramount importance that any solution that can reduce violent crime in the new South Africa must and should not lose sight of the need to heal and undo the mistrust of the past that continues to dictate the relationship between the public and these institutions in the justice system, as well as among the old and new guards in these institutions. Only the achievement of healing and trust can reduce the violence in the new South Africa, an achievement that can only be reached if there is true reconciliation. Hence reconciliation remains the goal and the solution.

does what he thinks it is right precisely because of the rights and constitution they have been employed to protect. Yet they are not functioning at the level which deters crime, which is their duty.

3.2.2 LAW ENFORCEMENT AGENTS - THE SOUTH AFRICAN POLICE SERVICE (SAPS)

The perception that law enforcement agents in the SAPS are generators of violent crime must be understood against the background of the role the police played in creating the historical violence of the past. During apartheid, the police service was a state organ through which the state perpetrated violence and crime. It is a fact that police were trained and used by the apartheid state to perpetrate violence and crime and the police unfortunately have to live with the effects of their past actions. Conspicuous among such effects of the past are: loss of trust and respect from the public, racialisation and acquired violent behaviour by members of the SAPS. Jeffrey McCarthy gives clear explanation of why the police service is part of the cause of violent crime in the new South Africa in his article: "Violence in South Africa: A Study of the Causes of Violence in the Post-Apartheid Era". He elucidates how the effects of the police service's past actions in the apartheid state have come to impact negatively on the increasingly violent crimes in the new South Africa.

During apartheid, the police were known as a violent, controlling force that used brutality and torture as a means to intimidate and suppress political protests and movements in blacks neighbourhoods. Police protection and patrols in townships and homelands were almost unheard of, and violent crimes that occurred in those areas were hardly ever reported or investigated. Although the mass killings have ceased with the end to apartheid, the police force has not undergone significant change and many of the aspects of the police under apartheid are still evident in today's South African Police Service. Black South Africans cannot be expected to trust a police force that is still corrupt and unresponsive. It is impossible to imagine the crime rate in South Africa being curbed when those who are supposed to uphold the law are perpetrators themselves (McCarthy 1998).

The question remains: Is it possible to reintroduce the death penalty in this kind of situation, knowing that those who are supposed to uphold the law are perpetrators themselves? What guarantees do the public have that reintroducing the death penalty will bring about their safety and security and will not, on the contrary, increase their vulnerability, thereby removing any form of security and safety they have enjoyed hitherto? McCarthy goes on to add that: "Police are known to be involved with all kinds of corruption stemming from armed robbery to carjacking to murder, rape and torture"(ibid). A good example is the cold-blooded murder of ANC parliamentarian Bheki Mkhize in his home at Ulundi in KwaZulu-Natal by members of the SAPS on July 25, 2000.

The fact that police can murder a member of the ruling party and parliamentarian is an example of proof that police are not just the cause of violent crimes; but are, in fact, part of the criminal element that perpetrate violent crimes against the public. Consequently no-one will want to respect or entrust his or her life and property to such a police force. The corruption of the police force creates a breeding ground for violent crime. As Linda Davis says:

Information about raids, planned police action, clearing up activities or road blockades planned by the police, is often leaked by police officers to chop shops or to friends who have stolen or hijacked vehicles in their possession (Davis 1999, 5).

Entrusting such a police force with the safety and security of the public would be a case of asking a criminal to fight a criminal, the result of which will be more violence.

The police as well as the populace have lost their moral bearings. The moral fabric of society has been destroyed to the extent that self-pride and good name matters not. In situations such as this, bringing back the death penalty will only help to exacerbate violent crime. Rather, it is the moral values that need to be restored. The restoration

of ethical values then has an implication for religion, for religion is always believed to be the foundation for morality. If there is moral decay, as in this case, and a need to restore ethical values, is the death penalty the solution? What is the religious teaching on the use of the death penalty and on reconciliation as an alternative to crime and the death penalty in a transitional society like the new South Africa? These questions will be answered in the next chapter, focusing on the religious teachings concerning the death penalty and reconciliation.

Apart from the loss of trust and respect for police among the public and the violent behaviour on the part of the SAPS, one last and major problem is the racial divide that is so poignantly evident in the police force and in other law-enforcement agencies. The recent shooting and killing of eight military officers bears testimony to the fact that no solution has been found to legacy of apartheid. This racial divide has been a great contributing factor to the increasingly violent crimes in various ways. First, is the tendency for members of the old guard who are still used to the old working method and resistant to change, to adopt a "we-do it-this way" attitude, thereby not giving their cooperation in the fight against crime. Second, the fact that black townships have become no-go areas for most of the old guard in the police force has resulted in less police presence in South Africa's high-crime areas, consequently weakening the relationship between the police and the communities in these areas.

A real solution to the problem of violent crime, therefore, lies in a true reconciliation based on the African religio-cultural notion and understanding of justice, which can in turn bring about a change in public attitude towards the police force, and vice versa. Given the glaring racial divide, reintroduction of the death penalty is likely to exacerbate the violent crime situation in the new South Africa. Since the police force is part of a justice system that has no legitimacy for the majority of people, it is difficult for such a police force - judged as an offender by the majority of South Africans - to have the moral probity to fight crime. Unless the police force is able to purify itself, by undergoing a process of reconciliation, healing and forgiveness with

the victims of their past atrocities and to emerge as truly transformed force, reconciliation and social harmony may still be very far away in the new South Africa

3.2.4 THE JUDICIARY

The judiciary is one of the most important departments in the justice system in that it ought to act as a deterrent to criminals and thereby reduce the level of crime in general and violent crime in particular. In the new South Africa, however, the contrary seems to be the case, as some (if not most) of the judiciary's actions have repeatedly pointed to the contrary. This why it has been argued that the judiciary is ineffective, inefficient and discriminatory; that it is currently functioning at a level where it does not constitutes a deterrent to criminals (ibid). Just like other departments in the justice system these aspects of the judiciary cannot be separated from the apartheid legacy. The judiciary is one of the many apartheid state organs through which the state implemented its racist, discriminatory and unjust laws against the black majority.

Despite the demise of apartheid as a policy, the perpetrators and implementers of apartheid's unjust laws continue to dominate the judiciary, so much so that they determined the interpretation of new laws, which were designed to bring equal justice to the lives of the majority who were unjustly discriminated against during apartheid, to suit their "hidden agenda". Many judicial officers' interpretation of the new laws still reflect the laws favouring the minority over the majority, especially when it involves interracial cases where blacks are punished more severely than their fellow whites.

What David Chidester refers to as racial bias in sentencing⁷ (Chidester 1992, 39) remains the enduring attitude of many judicial officers. This has weakened the ability of the judiciary to function effectively and efficiently in combating crimes in the new

⁷ David Chidester in his book: *Shots in the Streets: Violence and Religion in South Africa*, Cape Town: Oxford University Press, 1992, identified racial bias in interracial cases of homicide, sexual assault and other "capital offence" as one of the arguments against the use of the death penalty. Today, the racial bias

South Africa, because many blacks have no confidence in the judiciary. The judiciary is looked upon and judged by many victims of apartheid as the offender now sitting in judgement. This, for them, flouts their understanding of justice, which ought to lead to true reconciliation, healing, and possibly forgiveness, through the process of restitution by the apartheid offenders now sitting again in judgement. Going before such officers of the judiciary, often cause black South Africans to relive the memories of apartheid's evil. Therefore, they continue to see themselves as victims, all over again, of that same system of apartheid - a system that does not represent justice for the victims, but exists only to add to their miseries. A spontaneous response of defiance, hate and total disregard thus emerges.

In its analysis of violent crime, the Nedcor Project identified inefficiency in the criminal justice process, among other things, as a major cause of violent crime. Concurring, Graeme Simpson asserts that: "the criminal justice system has not yet produced a new legitimate and respected source of social authority, with the result that there is a culture of impunity" (Simpson 1999). The inability, or rather refusal, of some members within the system to allow the judiciary to become a legitimate and respected source of social authority produces a favourable climate for criminals and violent crime.

The attitude of most of the courts in sentencing has created two kinds of effects. The one is that most judges and magistrates belonging to the old order create the impression that the government, though of the majority, has no control over them owing to the independence of the judiciary. This creates the unfortunately negative attitude among some white conservatives that they can commit violent crimes with total impunity, even in the courts. Examples are numerous to this effect, but suffice it to detail the one case that attracted public outcry, that of Nicholas Steyn and baby Angelina Zwane.

still lingers in the judiciary, whereby whites found guilty of killing or sexually assaulting blacks are treated leniently while blacks found guilty of the same crimes against whites are punished severely.

According to print and electronic media report, Nicholas Steyn, a farmer and employer of baby Angelina Zwane's mother, shot and killed baby Agelina and wounded her elder sister on his farm in the presence of their mother. Despite reports, the police did not arrest him. When President Nelson Mandela intervened, Nicholas was said to have gone to police station to make a statement and was released. The court later gave him five years suspended sentence for the killing.

The Nicholas Steyn and baby Angelina Zwane case is reminiscent of the apartheid judiciary, which considered a white person to be more human than the black person, especially in sentencing in an interracial case, a point I will revisit in Chapter Five. To buttress the point about the attitude of the "old guard", it is interesting to note that the same five-year suspended sentence was handed down to a seventeen-year-old white youth for killing a black man with a baseball bat in 1987 (Chidester 1992, 40). It shows that a lot has yet to change in the judiciary, an institution that ought to be impartial, protecting everyone equally. It also points to the fact that there are still some of the same judges who were in the judiciary in 1987. The judgement of 1987, already alluded to, led Professor J. D. van der Vyver to make the following observation:

...it would seem that our courts regard the racial element in a white-against-black violent crime as an extenuating circumstance and in black-against-white crime as an aggravating circumstance. This kind of racism in the administration of justice is most unfortunate" (ibid).

This observation is still true of the South African judiciary of today.

Regrettably, the above enduring attitude on the part of judicial officers has generated, among most black victims of apartheid, an attitude of total disregard for the judiciary and the law. Again, as it has been argued, they consider the present judiciary as the apartheid offender sitting in judgement on its victims, without any mandate from the victims. This spontaneously creates a defiant and resistant response, reminiscent of

the black attitude during the apartheid regime. These attitudes, as an effect of the lack of change within the judiciary, have created inefficiencies and ineffectiveness in the whole justice system, creating a climate for criminals and crime to thrive. The outcome of the judiciary's attitude, which takes advantage of its independence, is a weakening of the government's effort to bring about reconciliation and to effectively combat crime.

Furthermore, the general sentencing in our courts, when considered along racial lines, continues to create mistrust among the black communities of the judiciary's ability to deliver justice to all, equally and impartially. Black communities know that most of the apartheid judicial officers still serving in the judiciary are yet to change their attitudes to come into line the changing transitional context of South Africa. It suffices to say that the public's mistrust of the judiciary has not yet changed, just as the institution itself has yet to transform and establish itself as a credible, legitimate and respectable source of social authority that can earn public trust. Ben Smith and Charl Cilliers, sharing this sentiment, note:

...through institutions such as the criminal justice system the state is charged with protecting every citizen.... However, the large number of deaths and injuries due to violent crime in post apartheid South Africa bears witness to the fact that this proactional ideal has not yet materialized" (Smith and Collier 1998, 202).

Fighting crime, in particular violent crime successfully must be premised on the materialisation of changes in the judiciary. It will probably be a misguided expectation to think that reinstating the death penalty, without the required changes discussed above, can prevent violent crime. To find a solution to violent crime in the new South Africa, therefore, the courtroom should be seen and experienced by all - and especially the black communities - to be a leading place for national reconciliation. In conclusion, any action by the court that has racial undertones will always provoke a negative response from the public and serve as a platform for instigating violence.

3.2.5 THE PRISON

The prison, though the last destination in the justice system in terms of chronological arrangement, does, however, have the responsibility of implementing the decisions and judgements of the court. In this regard, the prison has primarily to ensure that those considered by state, to be threats to society are reformed and rehabilitated. Evidence of these functions is reflected in the name of the department responsible for the maintenance of the prison - the Department of Correctional Services. Correction mean that the criminality of those sent to prison ought to have been corrected before they are reintegrated into normal society. The prison, as a place of reform and correction, indicates that it is unlike normal society because the members of prison "society" are, according to the state, abnormal persons. Prison, therefore, is an abnormal society, characterised by violence. The abnormality and violence of the prison system are counterproductive to the prison's aim of reform and correction.

The South African Department of Correctional Services, known in the apartheid state as the Prison Department, has not been able to correct the criminality of criminals sent to it precisely because of these characteristics of abnormality and violence inherent in it. The prison is a place of total exclusion from the daily activities of a normal society, being a place, as it were, of suffering and punishment. Persons as social and spiritual beings are generally resentful of physical punishment, suffering and total exclusion as forms of punishment. Total exclusion has been used throughout history and is known to have crushed the spirit of human beings. Institutions of total exclusion exist in different forms in different societies, cultures and religions. Their forms are dependent on different understandings of suffering, punishment and justice. In Christianity, for example, hell is a place of total exclusion from the love of God and therefore a place of suffering and punishment. In normal modern society, hell takes the form of the prison - a place of total exclusion and suffering - as a just reward for a sinner or criminal.

Another form of total exclusion - a kind of "prison" -in a different culture, society and religion is the African form of ostracism. This represents a total exclusion of a sinner from the life of the community of the living, and the benevolence of and possible inclusion in ancestral veneration. Christopher I Ejizu, in describing African ostracism, notes:

[it] is thought to be the most severe punishment that could be meted out on any body. It feels like death for any one so punished since such a person is regarded as an outcast. He/She would not be allowed to share in the life of the community (Ejizu 2000, 14).

This description of African ostracism is analogous to the Christian definition of hell as well as modern prisons. The commonalities of these institutions of exclusion are abnormality, violence and dehumanisation.

David Chidester (1992, 67) in his chapter: "Tours of Hell", talked about these commonalities as applicable to South African prisons, which he refers to as violent underworlds, as places of social death and dehumanisation where the recovering of humanity is to be foraged for. South African prisons have ceased to be houses of correction and have become schools of perpetrating violence and training criminals. Chidester, as well as Dante, believe the prison to be a living hell that translates pain and punishment into power. There is a psychological aspect to this in that the human person can feel pain and punishment to a point that it becomes a source of power. Examples can be found in the liberation struggles around the world and in human beings facing martyrdom.

Chidester argues that the power to enact punishment and exact pain is what makes and reinforces the divine power of the state. I would argue that the same divine power of the state is what makes and reinforces violent crimes and criminals in the new South Africa. As Dante says: "Divine Power made me". It is the "divine" power of the apartheid state, through its prisons, that has made and created the current

violent crimes and criminals, because the current prison system is based upon apartheid policies of violence and repression. What is seriously lacking is an approach to how imprisonment should affect prisoners in order to bring about the major aim of punishment, which is to reduce crime: "The result is an outrageously high number of repeated offenders who are simply moved in and out of the prison system, perpetuating the cycle of violence" (McCarthy 1998). Hence, our prisons have become schools that perpetuate violence and train criminals.

There is another kind of violent power that is taught in the prison that, in turn, causes violent crime in the normal society. This is the gang violence that has not only become part and parcel of the prison system, but is also a recognised authority in the system. Gang violence and power in the prison is a reality that prisoners and prison staff have learned to live with. Alignment with a gang, for protection, becomes a necessary evil for a new inmate to survive in prison "society", especially since the prison staff are unable to provide the kind of protection each prisoner requires. According to Nicholas Haysom, in the face of: "powerlessness and frustration, aggression and disobedience becomes a means of expression and perhaps the only means considered legitimate amongst inmates" (Haysom 1981, 30). By asking for protection from any of the gang members a prisoner makes a decision to join in the activities of that particular gang. Violent aggression is the language of any gang and is the only way of resolving disputes and asking for favours in the prison environment. As Haysom puts it: "violence is a more potent and likely form of resolving a dispute because the disputes cannot leave the field" (ibid), unresolved.

This culture of violence, learned in prison, is carried over to outside society when prisoners are released, since it has become a habit that cannot be unlearned. Once out of prison, ex-prisoners continue their gang activities and recruit others into the world of gangsterism and violence. Ex-convicts have learned that goals that are denied them can be achieved by violence and, thus, the majority of violent criminals on our streets are ex-convicts. The success of prison "graduates", achieved through violent behaviour has, and is, attracting many teenagers to violent crime. The argument

therefore is that if majority of the violent criminals on the streets of South Africa are a product of this school of "excellence" - the prison - then it stands to reason that it is not the death penalty that needs to be restored but rather the ethical values of the society that has been destroyed by acts of violence and repression. Such restoration of ethical values will best be achieved through healing, reconciliation, education and transformation.

One more link between the prison system and violent crime in South Africa is that the prisons are no longer holding on to criminals. Escapes from prison have recently become a frequent occurrence in South Africa. On August 21, 2000, it was reported on SABC news, after another prisoner's escape, that a total of twenty prisoners had escaped from Durban's maximum-security prison within the period between January and August of that year. More than that number have or would have escaped elsewhere in the country within the same period. Corruption among prison officials has led to easy escape from prison, encouraging criminals often to boast to their prey, when arrested, that they will be back tomorrow. It is a well known fact that any convict may survive imprisonment, either through escaping with the help of a corrupt official (Nomoyi 2000, 69) or, in the case of teenage criminals, through the loopholes in the law (Maher and Mitchell 1999, 14). Unfortunately, more criminals are therefore allowed back onto the streets, resulting in more violent crimes in South African society.

Teenagers commit many of the violent crimes in the new South Africa. Teenagers committed, for example, the murder of Brenda Fairhead and her daughter Kia and the brutal rape and murder of Valencia Farmer. Yet, because there is a loophole in the law, it is difficult for the justice system to jail offenders who are under the age of eighteen years. Hence it has become easy for them to get away with crimes and escape imprisonment. Even though they are arrested and detained in places of safety, which are easy to escape from, they are usually back on the streets committing yet another crime (Maher and Mitchell 1999, 14).

According to Stan Maher and Colin Mitchell writing for *Drum* magazine, these teenagers are "untouchables". Yet "these children murder, rape and steal without fear because they know they are beyond the law"⁸. An apposite example is that of the teenager who murdered a popular photographer, John Rubython. This teenager was first arrested for housebreaking, but was released with a warning to report in court the following Monday. On the Sunday before his court appearance he broke into John Rubython's home again, but when Rubython confronted him, he pulled a knife and killed him in the process. Since he is under eighteen years of age, he cannot be imprisoned and report has it that he has been in trouble with the law since the age of nine. In cases like this, as well as many others throughout the country, the death penalty will serve no particular usefulness because criminal teenagers are simply the "untouchables."

If the recent sentences handed down by Justice Siraj Desai to the teenagers who raped and murdered Valencia farmer (*Cape Argus* 27-03 2001) will serve as an example for other judicial officers, there is hope that these teenagers will not remain "untouchable" for long. But, when there is disparity in the way these teenager criminals are treated by the justice system, they are likely to remain "untouchable" for a long time.

Bearing in mind the complex but interconnected nature of causes discussed above there is, perhaps, no single solution to the problem of violent crime in the new South Africa. It probably would be a mistake to think of taking one direction only. In this case, the direction of reinstating the death penalty, as a solution to the menace of violent crimes. From the nature of the causes, it is certain that, as Caroline Nomoyi notes: "a multi-dimensional approach" (Nomoyi 2000, 66), to the problem of violent crime is what can yield results. What has been destroyed - the ethical values of society - does not require legislation in order to be restored. The restoration of morality and its practice in society poses a challenge for religion, as religion is

⁸ Stan Maher & Colin Mitchell: "New laws make it difficult for the justice system to jail offenders under the age of 18. Instead they're sent to places of safety - which are easy to escape from. And the youngsters are often back on the streets within 24 hours, free to commit more crimes."

believed to be the foundation and custodian of ethical values. It is for this reason that I now turn my attention to religious teachings on the issue of capital punishment and reconciliation.

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CHAPTER FOUR

RELIGION, CAPITAL PUNISHMENT AND RECONCILIATION IN THE NEW SOUTH AFRICA.

In the preceding chapter a problem was identified, that is, the moral problem of unabated violent crime in the new South Africa. The magnitude of this moral problem, it was argued, is responsible for the fact that many citizens call for the re-introduction of capital punishment as one of the most effective ways, if not the only way, to reduce the ever-increasing level of violent crime. We also identified the causes of violent crimes to include: the socio-economic situation, the old and new justice systems, law-enforcement agents, the judiciary and the prisons. Then, it was contended, to solve this problem of unabated violent crime in the new South Africa, the above causes, which are mainly the offshoot of the legacy of apartheid, need to be addressed.

It was also pointed out that the issue of capital punishment as well as addressing the causes of violent crime in South Africa are moral issues requiring moral solution. This is because the causes have resulted in the destruction of the moral fabric of society, thereby resulting in the prevailing situation and culture of violence in the new South Africa. Hence, the conclusion was reached that to solve the problem of ever-increasing violent crime in South Africa, the moral fabric of society needs to be restored. It has been argued that religion must play a leading role in this task. As many people have always believed religion is the foundation and guardian of ethical values. This is very true in African society where religion and society are one and the same.

In this chapter I shall, therefore, be analysing the different religious ethical teachings as they relate to capital punishment and reconciliation in a transitional South African

society. I shall focus on the ethical teachings of five religious traditions - Christianity, Judaism, Islam, Hinduism and African traditional religion. The aim is to conduct a comparative study of the ethical system of these religions. It is not intended merely to seek their commonalities, but rather, to highlight their diversity in order to establish a common ground on which the restoration of the moral fabric of the society can be founded, so as to be able to adjudicate the problem of crime and drastically reduce violent crime in the new South Africa. I only point to reduction in violent crime because there is no society that has ever been able to completely eradicate crime in general, and violent crime in particular.

According to John Kelsay, in his review essay: "Plurality, Pluralism, and Comparative Ethics", the idea of a comparative study raises many familiar questions because "the art of depicting and interpreting cultural diversity is complex" (Kelsay 1996, 406). This complexity is even more pronounced in South Africa as a transitional and young democratic society that includes great religious and cultural diversity as well as social and racial diversity. For example, it is estimated that there are close to one hundred denominations or more of the Christian religion; so, too, there are many different groups within the other religions.

Owing to the religio-cultural plurality of South Africa, it is very tempting to give credence to ethical relativism in this kind of comparative study. But as Kelsay (1996, 406) says: "we must say, as clearly as possible, what we are doing and why". Despite the attractiveness of ethical relativism, Ronald M Green has also contended that although the fact: "that cultures differ substantially in moral teaching is obvious, [which is the core argument of ethical relativism], that these differences represent fundamentally different ways of thinking about moral choice is far less so" (Green 1998, 8). The point here is that it is certain that there are cultural and religious differences, but these differences do not produce ways of thinking about morality. Morality is founded on one universal principle of moral reasoning. This principle is what Immanuel Kant has called "categorical imperatives."¹ Green, on the other hand

¹ Immanuel Kant postulated the "categorical imperative" in his book titled: *Foundations for the Metaphysics*

calls it "radical impartiality", "moral view point" and "omnipartiality" (Green 1998, 6). This one moral standard forms the unitary foundation of different cultural and moral teachings and beliefs. To give an example, there is one, universal function of morality, which is the regulation of behaviour of persons and human groups (Little and Twiss 1978, 26). The methods of actual regulation of this behaviour or conduct are what differ considerably from one culture to another and from one religion to the other. It is the same thing as saying truth is one; but, the mode by which it is communicated, varies.

If we agree with David Little and Sumner B. Twiss, that morality: "among other things, provides a way of responding to what we call the 'problem of cooperation' among self-interested, competing, and conflicting persons and groups" (Little and Twiss 1978, 27), then we will also reach the same conclusion as Little and Twiss, that morality is "action guiding institution" (ibid). It follows that there has to be a common standard of measuring actions that are being guided. It is this standard for the measurement of morality that Kant refers to as "categorical imperative", that Green calls "moral point of view" or radical impartiality, and that Little and Twiss prefer to call "generalizability". In any case, these different terms refer to a universal standard of morality, which can apply equally to all actions that need to be guided.

While Kant, Little and Twiss seem to see this universal standard of morality as the justification and legitimation for moral issues, Green on the other hand seems to think differently. According to Green, if we agree with the conclusion reached by Kant, Little and Twiss, then: "this 'moral point of view' or 'categorical imperative', [generalizability], as a basic way of thinking morally that must always be applied in context, we can almost predict diversity in moral conclusions" (Green 1998, 9). Although, in his point of view, this may seem to be a serious problem, it: "does not lessen the value of the moral point of view as the *standard* for measuring conduct or as ideal *reference point* for adjudicating disputes" (Green 1998, 8). The reason is that: "when we try to justify an action morally, we assume it to be one that any one looking at it impartially and objectively would approve" (ibid). Even within different

cultural and religious traditions the moral point of view holds value, as evident in the following passage from Green:

Whatever their specific teachings, religions agree on the basic rules of morality. All prohibit wanton killing or injury of other persons (although many permit legitimate self-defence); all condemn deception and the breaking of solemn promises. On the positive side, all require giving some minimum of aid to those in need; all require reparation for wrongs committed; and all ask some expression of gratitude for assistance received. So prevalent are these rules across a variety of religions and cultural traditions that C. S. Lewis once called them "platitudes" of practical reasoning (1998, 11).

These rules of "generalizability" or moral points of view are not always so obvious in individual practical reasoning, as Lewis seems to imply, nor are they always authoritative; nor can they be always equated with the principles of utilitarianism of the "greatest happiness for the greatest number of people."² The fact is, in practical reasoning concerning a moral predicament, most moral individuals cannot act rationally without violating some other action-guide or moral principle, such as prudence. Owing to this imperfection of the "moral view point" in practical reasoning in individual cases, religious thoughts and beliefs have provided the all-important solution through the creation of "Supremacy", "Ultimacy" or "Finality" (Little and Twiss 1978, 31) of the "Other-worldly". Through religious creation of the permanence of the "Other-worldly" and the temporality of this world, religion provides a way out of the apparent conflict between the "omnipartiality" of moral reasoning and practical reasoning in individual cases. This is how Green puts it:

Neither can reason deny the apparent discrepancy between morality and prudence. Moral commitment appears to entail self-sacrifice. But what a rational person can affirm, and what religions insist, is that this discrepancy is only apparent, not ultimate. Although the individual may appear to run terrible risks in choosing to be moral, these risks are not the last word on the matter. Beyond sacrifice lie possibilities of fulfilment directly proportional to moral effort. Moral retribution is

²This principle of utilitarianism "the greatest happiness for the greatest number of people" is, according to Ronald M Green represented by John Stuart Mill as advanced in chapter 2 of *Utilitarianism*.

certain. The righteous are rewarded. Those who risk their lives shall gain them (Green 1998, 15).

Religious thoughts and beliefs are, therefore, not in conflict with moral reasoning or the moral point of view - as Little and Twiss (1978, 31) seem to have suggested, but rather provide the individual with legitimate reasons why acting morally is good and, moreover, why acting morally is the only way to ultimate happiness at the end of life here on earth. This religious legitimation and authority offer what the moral point of view lacks in an individual's practical reasoning. All religious beliefs and thoughts are formulated on the basis of moral reasoning, but, at the same time, these religious beliefs and thoughts in turn give justification, legitimation and authority to moral reasoning when confronted with a dilemma in practical reasoning and real situations. It can be concluded from the above that moral reasoning creates the common grounds for action-guides, while practical reasoning and justification of these action-guides, in individual cases and situations are responsible for the "predicted diversity". In the case of South Africa, an example would be the Dutch Reformed Church's legitimation of apartheid, while other Christian bodies such as the Council of Churches and the Catholic Church, regarded apartheid as illegitimate.

To clarify my aims, I need to apply both moral points of view - moral reasoning and practical reasoning - in doing a comparative study of the ethics of Christianity, Judaism, Islam, Hinduism and African traditional religion with regard to capital punishment and reconciliation in South Africa. Moral reasoning represents the teachings of these religions and practical reasoning represents the actual practice of their ethics. To contextualise this in South Africa, I intend to tell the story³ of two multi-religious families as a basis for my comparison. The first family consists of two Christians, two African traditional religion followers, two Muslims and a Hindu. The other family comprises a Jew, two Christians and a free-thinker. The first family is

³ This story is my creation to illustrate my point on the role of "poverty" in violent crime, capital punishment and reconciliation. The families in the story though bear resemblance in term of the content of the story to the babe Angelina Zwane and Nicholas Steyn case, they are however not the families referred to in this story.

impoverished and has to work on the farm of the second family, which is very wealthy and supports the ruling government.

During the political turmoil after the 1976 uprising, on a Sunday afternoon, the farm owner, Mr Swart, had gone over to see Mr Cele, one of his employees, at his home and found him absent, as Mr Cele had gone to a meeting with some other farm-workers in the area. Mr Swart left a message that Mr Cele should see him when he returned. Mr Cele returned at about 7.30pm that day and was told by his wife that Mr Swart would like to see him. Mr Cele, therefore, went over to Mr. Swart's house and on reaching there, knocked on the door - but there was no reply. When he knocked again and waited for the door to be opened two shots were fired from inside killing Mr. Cele on the spot. At the time this incident happened, the death penalty was still in force. Mr Swart, though convicted of the murder of Mr Cele, was given five years suspended sentence because the judge had heard that Mr Swart accidentally shot and killed Mr Cele, whom he had mistaken for an intruder. Believing that his life was in danger, Mr Swart had fired two shot from his pistol, killing Mr Cele in the process. Cele's family forgave without compensation and justice. All this happened long before South Africa's democratic transition and the recognition of equal rights for all citizens.

Twenty-four years after the murder incident had occurred, and six years into democratic rule, with a new generation on the farm, another murder incident happened. The new farm owner, Mr Muller, was standing with one of his employees when he noticed children crossing his farm. He took hold of his gun to shoot, calling them intruders, but the employee begged him not to shoot at them, saying they were not intruders but her children. Mr Muller, who was not "convinced" by the words of his employee, fired a shot, killing a baby and wounding the sister who was carrying the baby at the time. Mr Muller was not arrested or detained, although the case did go to court. This time, there was no death penalty in force and Mr Muller was given five years suspended sentence. The reason given was that the judge had heard that Mr Muller did not intend to kill the baby but to "scare" the children away with live

ammunition. The same family went home, for the second time, without justice served, but nevertheless forgave their employers.

After the court case a journalist put the question to both families, separately, as to whether the death penalty should be re-introduced as the best punishment for murderers and a deterrent to other potential murderers. The members of the first family (the farm workers) answered according to their religious beliefs as follows: The Christians' response was: "revenge is for God, our faith does not allow us to pay evil with evil"; the Muslim responded: "murderers should be hanged, but we are allowed to accept *diya* (blood money) if the criminal is sorry; *qisas* (retaliation) is the best punishment"; the Hindu answered: "the murderer ought to be killed but I would not ask that the death penalty be re-instated, since any one who kills is adding to his or her *karma*"; and the followers of African traditional religion responded that: " we are not asking for the death penalty because it is wrong, according to our tradition, to kill for revenge. It would be better to banish or put them away for a long time. Although monetary compensation may be necessary, exchange-compensation of life (the offending party giving life to the victim party in the form of another human person as compensation for the lost of their person) would be a preferred option. In this way the role of the deceased could be continued". The Christians in the second family (the farmers) gave almost the same answers as the Christians in the first family, by saying: "It was a mistake. As Christians we are taught to forgive those who have sinned against us. If they want the death penalty, it means they want revenge and that is against our faith". The free-thinker answered: "It is just a baby who died, and it was by accident. It was not intended. We should not re-instate the death penalty for that. After all, we talk about reconciliation, how can we be reconciled if we want the death penalty or revenge for the accidental killing of an ordinary baby". The Jew responded: " Life is from God. We are not allowed to take life but must respect life and protect it by all means. It is unfortunate that the baby died by mistake. If we want revenge or the death penalty then we will become murderers ourselves".

Two years later a member of the second family was killed in a car-hijacking attempt. The trio of hijackers were apprehended and it so happened that one of them was a member of the first family. Even though the judge heard that the deceased white person from the second family was shot in self-defence because she threatened the hijackers with her gun before she was shot in the chest by one of the hijackers, the trio were each given life imprisonment. The same question of revenge and the death penalty was again put to the second family, who are now victims. The Christians responded: "The trio must die for killing our mother. The death penalty must be brought back and whoever kills must also be killed". The journalist then asked about their Christian faith that teaches forgiveness. Their answer was: "The Bible teaches 'an eye for an eye' and so as they have killed, they also must be killed". Mr Muller, the free-thinker, said he was not satisfied with the sentence. He would rather have the death penalty brought back and the trio hanged, while the relatives of the deceased, who are Jews, answered: "The death penalty is not the way to go. We need to respect human life as belonging to God and therefore no-one has the right to take it".

The above story brings out the complex problems of religio-cultural diversity found in South African society, as well as the difference between moral reasoning and practical reasoning and justification. I will now turn to the teachings of the different religions.

4.1.1 JUDAISM, CAPITAL PUNISHMENT AND RECONCILIATION

In Judaism, life is considered to be very sacred and to belong to God. A human being is only a custodian of life, not the owner. It is thus not acceptable for any person to take this life in whatever form. *A Book of Jewish Concepts* puts it this way:

The sanctity of human life is one of the basic principles of the Torah, according to which deliberate homicide is punishable by death, and involuntary manslaughter with exile. There is no difference between the life of an infant and that of an adult. Though attempted suicide is not punishable, it is strongly condemned. Since life is not man's own possession but a trust from God who creates life (Birnbaum 1975, 142).

This view is treated here as one accepted by all Jews including those in South Africa.

Apart from the fact that killing is totally forbidden in Judaism, it is also worth noting that there are only two forms of killing recognised by Jewish law: deliberate homicide and involuntary manslaughter. The former is punishable by death and the latter by exile. This is in contrast to Christianity's teaching, at least the New Testament, that makes no distinctions of any form in defining killing. It also stands in contrast with Islamic teaching, where distinctions are made between different types of killing. There is further distinction made between the punishment of Muslim killing Muslim, Muslim killing non-Muslim, non-Muslim killing Muslim, father killing a son, and the killing of a woman, to mention but a few ⁴

Despite the fact that, in principle, deliberate homicide is punishable by death, criminals who commit this crime are seldom punished by death, either as a retributive or deterrent measure under Jewish law. The respect for human life as something divine forbids any person from taking the life of another person. This prohibition includes the state. The aim stated in Exodus 21: 23-25 affirms that a punishment: "which requires that a murderer shall pay with his own life for taking the life of another man, is not revenge" (Epstein 1968, 10). According to Isidore Epstein (1968), the very idea of retribution or retaliation for killing is opposed to the teaching of Judaism (ibid). Even where the killing is a deliberate killing, the nearest relative, who ought to avenge the blood of the deceased person, does not have the right to take the law into his or her own hands and neither does the state (ibid). As such, though the death penalty is still in force in the state of Israel: "no such sentence was ever executed" (*Encyclopaedia Judaica* 1978, 146). Two chief rabbis of Israel argued that killing either as a punishment justified by retribution or utilitarian principles, is: "incompatible with and against the Jewish laws" (ibid).

⁴See Mohamed S. El-awa treatment of: "Disputed points concerning the infliction of *qisas*" in his book: *Punishment in Islamic law*. P 77ff.

As confirmation of the above and as the warning of the Jew in our story, if we want revenge or the death penalty we ourselves will become murderers, it is observed in Mishnah Makkot 1: 10: "A Sanhedrin that puts a man to death once in seven years is called a murderous one" (ibid). To oppose the practice of capital punishment in other religions, Jewish law provides cities in which those who have killed can take refuge.

This practice attests to Judaism's respect for life on the one hand and detestation of killing on the other. For example, suicide is regarded as murder and abortion is viewed in the same way, since there is no difference between the life of the infant (the unborn included) and that of any adult, as already explained. The interpretation of "eye for eye" which has its origin in Judaism does not mean taking the life of a killer, but as Epstein explains, is intended to impress upon the offender the terrible nature of the crime of injuring a person and the extent of his duty to make good the damage. It is also meant to be a guide for the amount of punishment that can be inflicted on the offender for a particular crime (Epstein 1968, 13). We find that the meaning of "eye for eye" does not have the same meaning in Judaism as in Islam or Hinduism. An eye for an eye has no retributive connotation in Judaism as it has in Islam or as expressed in the Hindu law of *karma*. The Jewish teaching of respect for life, therefore, needs to be examined in terms of actual practice of what is written in the sacred books in everyday life.

At this point, it is important to note that the Jewish practice of non-retribution is to be understood in the light of the importance Jews place on forgiveness and making peace with neighbours who have committed wrong-doing. This understanding informs my discussion of reconciliation in Judaism. There is a Jewish expression that epitomises Judaism's teaching on peace and reconciliation, namely: "Who is a hero? He who turns his enemy into a friend" (Auerbach 1996, 31). According to Rabbi Shimon ben Gamliel, in the Talmud: "The world endures on three things - justice, truth and peace" (ibid, 30). We can read peace to mean reconciliation, as the essence of reconciliation is the realisation of peace. The process of forgiveness, justice, truth and peace is embodied in reconciliation and there can be no forgiveness or peace

without reconciliation. But, for our purpose in this thesis, let us read "peace" to mean "reconciliation" because the purpose of making peace is to be reconciled.

In Judaism, one cannot be reconciled with God if one has not been reconciled with the neighbour he has wronged or who has wronged him. Reconciliation is thus a *conditio sine qua non* for harmonious living. Hence, there is the great Jewish holy Day of Atonement on which the Jews, as a people, would be reconciled with their God. In the Talmud, Tractate *Yoma*:

... one finds that the Day of Atonement atones for sins between human beings and God, but does not atone for sins between human beings and other human beings until they have made peace [been reconciled] with one another... Hence, the custom of seeking forgiveness from those one may have wronged on the eve of the Day of Atonement, without which proper atonement cannot be made" (*Yoma* 8:9; cited in *Encyclopaedia Judaica* 1978, 1436).

Reconciliation is considered to be an integral part of Jewish identity, to the extent that if the injured party refuses to reconcile with his offender, after the sinner has come before him in the presence of others for reconciliation, then the injured party is in turn deemed to have committed a crime by refusing to be reconciled (ibid). Reconciliation for a Jew is, therefore, a day-to-day requirement. As the Jews in our story told us, in Judaism, the death penalty is not the way to go, but reconciliation is. All Jews, irrespective of their locations in the world, share this teaching. We need to respect human life as belonging to God and, therefore, we have no right to take it.

4. 1. 2 CHRISTIANITY, CAPITAL PUNISHMENT AND RECONCILIATION

To be able to explain meaningfully the teaching of Christianity on capital punishment in a way that will allow for comparative study is best to examine how the different religions, including Christianity, view the killing of one human being by another. As evidence has shown over history, capital punishment has been applied frequently to cases of one person killing another person or persons. As the answers given by the Christians in our story above have indicated, the issue of killing a person who had

killed another person is not only socially and culturally problematic, it is religiously even more so. It is problematic not because there is ambiguity in the teaching of the Bible (for instance, regarding killing; the teaching of the Bible is "*thou shall not kill*", meaning that killing is morally wrong); the problem lies in the area of the practical justification of killing as wrong. This problem, which is not restricted to Christianity but present in all religions, is one of interpretation. Because South Africa is a pluralistic religious and democratic society, each tradition and sect within Christianity, for instance, has different interpretations of the teaching of the Bible to justify its own doctrines.

The Christian biblical teaching, *thou shall not kill*, is understood by Christians and non-Christians alike to mean that killing is wrong. The moral reasoning is that killing of human-beings by human-beings is universally wrong but, as Green (1988, 11) points out, all religions prohibit killing; at least in principle. The problem emerges in the religious interpretation of how humans can be prevented from killing humans and its practical justifiability. Not only are humans killing humans in the new South Africa, but the state is being called upon to take moral standards and values from these murderers by legitimating state killing, instead of the state imposing its own legitimate, impartial moral standards and values on these murderers.

Although there is no mention by Jesus of a death penalty in the New Testament as a way of preventing humans from killing humans, there are however, evidences of the use of capital punishment in the Old Testament. The frequently quoted passage in the Old Testament as the practical justification for the use of capital punishment, in Christianity and Judaism alike, is Exodus 21: 23 - 25. This passage, referred to by the Christians in the second family in our story, reads thus: "But should she die you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot" (Exodus 21: 23- 24). It is dangerous to interpret this passage as the practical justification for the use of death penalty in Christianity today or as a moral justification for the call for the re-introduction of capital punishment in South Africa. Though many interpretations of this passage are possible, it would be mistaken for Christians to interpret this

passage as justifying the death penalty precisely because Christianity, as a religion, is founded on the teaching and ministry of Jesus, who condemns all forms of killings. It is said in the New Testament that Jesus came to fulfil and also to perfect the laws of the prophets (Mt 5: 17). Jesus seems to have abrogated the Exodus passage cited above in favour of a new law, stated in the gospel of St. Matthew, when he says: "you have learnt how it was said to you *eye for eye and tooth for tooth*. But I say this to you: offer a wicked man no resistance" (Mt 5: 38 - 39).

If Jesus' actions and teachings are the authorising reasons (Little and Twiss 1978, 96) that justify Christians' practical reasoning, it is only appropriate that one should think that Christians' religious beliefs and attitudes should be in conformity with the interpretation of Jesus, whose authority alone can function to "resolve the ontological problems of interpretability"(ibid). This being the case, it is difficult to say that Jesus' actions and teachings support the interpretation of the Exodus passage as a justification for the use of capital punishment.

Jesus' teachings and actions, as authorising reasons for practical justification, clearly did not give justification for the death penalty, even when he encountered the perfect moment to do so. When the woman caught in adultery was brought before him (John 8) the accusers intended to stone her in accordance with the Levitical law. However, Jesus articulated a new interpretation of Exodus 21: 12-13 (in Mt. 5: 21): "anyone who strikes a man and causes his death must die", saying: "you have learnt how it was said to our ancestors: you must not kill; and if anyone kills he must answer for it before the court". Jesus does not say: "he must die", giving a clear indication that his understanding of "you must not kill" refers to the prohibition of all forms of and motives for killing. This is, therefore, the teaching of the New Testament and that of Jesus, which indeed should be what informs the doctrine, understanding and practice of the religion that professes to follow Jesus' teaching. Some Christians and followers of other religions may challenge this interpretation, arguing that many Christians have in the past and even in the present, supported state killings with the same passage.

This problem, as argued above, resides in the context of interpretation of practical reason.

Having demonstrated that Jesus' attitude towards the killing of one who had killed, either as retribution or deterrent, is one of repugnancy, I would suggest that this should be the attitudes of all Christians, by association. I would further argue that the same meaning could be attributed to the Exodus passage of "*life for life, eye for eye*". Jesus has demonstrated the authorising reason for practical justification by interpreting the above passage *giving* life for life, as against *taking* life for life. It can be understood that giving life for life, which forms the first part of this passage, actually means exchanging (as in replacing), rather than taking. If you take life, you violate the law, "thou shall not kill"; but if you exchange life for life, you do not violate the law, "thou shall not kill" - on the contrary, you fulfil it.

Taking cognisance of the above teaching, Christianity, in the course of its existence has, in practice at one time or another, tacitly given its approval to the state to execute criminals. Despite this, the church has always maintained through its pronouncements that the state, in killing criminals, must recognise with all absoluteness God's justice and mercy. This is evident, for instance, in pope John Paul II's gospel of life enunciated in his encyclical letter *Evangelium Vitae* in 1995. D. R. Campion further asserts the following about Christianity and capital punishment: "pronouncements of the church contained at least tacit recognition of the state's competence to execute criminals; insistence that the death penalty be imposed with due regard for justice, prudence, and mercy" (Campion 1967, 80).

In the South African context, although the apartheid government called itself "Christian" and implemented the death penalty, there was never any due consideration for justice, prudence and mercy as these were non-existent. Many were executed out of revenge and show of power, authority and control. A case that comes to mind here is Andrew Zondo a nineteen year old, who was executed on the 9 September, 1986 for planting a mine in 1985 that killed five people (Dyzenhaus 1998, 1). Just as the apartheid state lacked justice, prudence and mercy then, the present

lack in the present South Africa justice system is even more endemic. Judge Denis M. Davis seems to have affirmed this by commenting that the present justice system operates within a pathetic policing system and poor prosecution (Cornell 2000, 6).

It may be argued that Thomas Aquinas, one of the most respected theologians in Christian history, defended the use of the death penalty for hardened criminals. Though Thomas Aquinas defended the killing of unrelenting and unrepentant criminals for the good of the community, he did however, reject any form of penalty that has a retributive purpose. "If a man be dangerous and infectious to the community on account of some sin, it is praiseworthy and advantageous that he be killed in order to safeguard the common good" (ST 2a, 2ae, 64.2). He went on to add, though, that: "in this life penalties should rather be remedial than retributive" (ST 2a, 2ae, 66.6). Therefore, it would be incorrect to say that Thomas Aquinas justified killing, but it would be correct to say that in agreement with the general teaching of Christianity, he advocated punishment that is directed toward the future good of the criminal.

The teachings of Christianity on capital punishment, in a general sense, are well summarised by Evans:

It is impossible to make any compensation for a life that has been destroyed by a murderer: even the murderer's execution cannot adequately match the moral iniquity of his offence. Punishment is therefore concerned not only with the wrong act and with restoring - or seeking to restore - the order that has been violated. Retribution is an attempt to do this, and in this life it can never be adequate (Evans 1967, 1027).

As mentioned in Chapter two, on the "typology of punishment", the most important aim of any punishment in Christianity is, therefore, rehabilitation. To this end, as Evans says: "repentance is the condition for man's reconciliation and the sinner's acceptance of the punishments inflicted by God is accompanied by his conviction of

the tempering effect of God's mercy. 'Happy the man whom God reproves'(ibid). This, therefore, is what Christianity teaches and, comparatively speaking, it is different from Islam and Hinduism, and closer to Judaism and African traditional religion.

The teaching of Christianity on reconciliation is in alignment with the non-retributive but reformative and rehabilitative aim of punishment examined above. Punishment is imposed to help facilitate the act of reconciliation. In this sense, a sinner (criminal) who accepts the punishment imposed on him willingly, thus expresses the wish to be accepted back into the community and can be reconciled with the community. This reconciliation is a prerequisite for a criminal who wishes to escape the punishment of God that many religions teach and refer to as the ultimate punishment. This type of punishment taught in religious traditions provides the justification for practical reasoning - that beyond this life there is an ultimate reward and punishment for any action - good or bad - committed in this world. To avoid the ultimate punishment of God, the criminal ought to be reconcile to the body of His faithful. This entails repentance from crimes (sins) and making peace with God through the body of His faithful. For Christianity, as the Bible teaches, God does not want the death of a criminal but his repentance and salvation. "As I live, says the Lord God, I swear, I take no pleasure in the death of a wicked man, but rather in the wicked man's conversion, that he may live" (Ez 33: 11).

Conversion of a sinner presupposes reconciliation with God. But reconciliation with God, as Jesus tells us, is not possible without reconciliation with our neighbour who has wronged us or whom we have wronged.

So then if you are bringing your offering to the altar and remember that your brother has something against you, leave your offering there before the altar, go and be reconciled first, and then come back and present your offering" (Mt.5: 23 - 24).

Reconciliation (or failure to reconcile) with your opponent is here seen by all Christians, including South African Christians, as the only way to receive the ultimate reward or punishment in the life hereafter with God. Just as reconciliation is believed to open the doors of ultimate reward or punishment with God, so too does it open and close two different doors in the world of the here and now. First, it opens the door for communication, forgiveness, peace, good relationship, friendship and cooperation; and, second, reconciliation closes the door to violence, hostility, possible wars, enmity, individualism, crimes, strife and, above all, poverty. The question remains as to whether this is the understanding and belief of other religions in South Africa? To answer this question we now turn to Islam.

4.1.3 ISLAM, CAPITAL PUNISHMENT AND RECONCILIATION

In Islam, as we saw in our story, *qisas* - retaliation or what some Islamic scholars like to call "just retribution" - is the Qur'anic prescription as punishment for killing. Islam is a religion in which the prescription of punishments for almost every conceivable crime and form of killing is so explicit that it possibly has one of the most numerous categorization of killing. Each crime and form of killing has its own prescribed punishment, except rape. Surprisingly, rape is also not mentioned as crime in any of the other four religions, except in Hinduism, and thus it is not punishable under the laws of any of these religions. It is perhaps even more surprising to discover that in Islam, the death penalty is the prescribed punishment for habitual homosexuality (El-awa 1993, 108 and 109), and yet nothing is said in Islam concerning rape, which has become the norm rather than the exception in South Africa today. Islam has no one single punishment for killing, which obviously makes Islamic teaching on killing vastly different from other religions.

Because of the many classes of killing, recognised by Islamic laws, whereby each class has its own prescribed punishment, it is difficult to ascertain to which class of killing the death penalty, as *qisas*, can be applied - deliberate killing or accidental killing. Unlike African traditional religion, Christianity, Judaism and Hinduism, Islamic law not only classifies killing into deliberate killing and accidental killing, but

also recognises further classifications of quasi-deliberate killing (*shabah - al - 'amd*), equivalent to accidental killing (*jari majra al-khata*), and indirect killing (*bisabab*) (ibid, 74). This classification of killing in Islam can be more or less in numbers depending on the classification of a particular jurist school. However, *qisas* (retaliation) is to be applied principally to killings in the first category and *diya* (compensation) to all other categories. This is according to the Qur'anic injunction that states:

O you believer, retaliation is prescribed for you in the matter of the murdered: the freeman for the freeman, and the slave for the slave, and the woman for the woman. And if something is remitted to a guilty person by his brother, this shall be adhered to with fairness, and restitution to his fellow-man shall be made in a goodly manner (Qur'an 2: 178).

It is not, however, always a clear-cut case. It is unclear in other Qur'anic passages, which give Muslims the right to kill non-Muslims, if *qisas* applies to such cases of Muslims killing non-Muslims as a deliberate act. This apparent contradiction between applying *qisas* as the prescribed punishment for all deliberate cases of killing, and the injunction for Muslims to kill non-Muslims, leads to a different definition of deliberate killing which excludes the definition from any act of murder in which a Muslim is the provocator, for example, Muslim killing non-Muslim, Muslim killing Muslim and a Muslim father killing his son from being a deliberate act, even if it was premeditated murder. Though there is no mention of a Muslim being killed by non-Muslim, but: "the majority of Muslim scholars hold that a Muslim is not liable to *qisas* if he killed a non-Muslim (*dhimmi*)" (El-awa 1993, 79). It is obvious that *qisas* should be applied in such a case and this disparity means that the killing of a Muslim by a non-Muslim as a deliberate act should be treated equally, but is not.

This contradiction does not only make the application of *qisas* to all deliberate killings something which is prejudiced in favour of Islamic people, but also it makes some lives cheap and inferior to others. The killing of Rashied Staggie by PAGAD, Muslim community members is a classic example. This killing took place in the full

view of the media and public and was justified by most Muslims, partly, if not exclusively, on the basis of the above Islamic teaching. Such a life, then is deemed less important, so that deliberately taking it does not warrant *qisas*. As we heard the free-thinker in our story say: "It is just a baby who died" - meaning that the baby's life is less important. On the other hand, this contradiction makes other lives so much more superior that deliberately taking such lives would warrant *qisas*. The same principle of the cheap and the valuable applies also to the killing of women, slaves, the unborn and the aged whose *diya*, as prescribed by Islamic law, is half that of a man. In some cases *diya* is not required at all.

The Islamic teaching described above is reminiscent of the apartheid state, which considered one race as superior to the others. It is a principle whereby the lives of the "superior race" were regarded as superior. In contrast, the lives of other races were considered inferior and cheap. This interpretation appears to be the majority view and is also supported by the *Qur'an*, as Mohamed S. El-awa says: "non-Moslems are not equal to Moslems and by a *hadith* which forbade the killing of a Moslem on account of his killing a non-Moslem (*Kafir*)" (ibid, 79). The application of the Islamic law of *qisas* in South Africa, where restoring a culture of respect for human life is proving to be a mammoth task, would mean a reversion to apartheid principles. This certainly would not be in agreement with the principles of a pluralistic society and, above all, it would oppose the democratic right of every citizen to live in a non-racial, non-sexist society where every one is treated as an equal citizen.

One thing is clear concerning the infliction of *qisas* as punishment for murder in Islam is that it seems to exempt Muslims in many cases from this punishment. It is interesting to note that this interpretation of exemption perhaps explains the reason for the violence perpetrated by Muslim fundamentalists in many countries around the world. In South Africa, the allegations implicating Muslim fundamentalists' involvement in urban terrorism and the killing of law-enforcement agents and witnesses involved in these cases, which seem to continue unabated, supports this

interpretation. Hence, such teaching that justifies this position could be interpreted as giving Muslims and, in particular the fundamentalist among them, licence to kill.

The above interpretation is supported by the majority (Sunni group) in Islam, but, in itself, it has the potential to impugn the understanding of the principle of retribution or retaliation in Islam. As El-awa says:

To limit the infliction of *qisas* only to cases involving the killing of a Muslim is contradictory to the principle of the law of *qisas* itself. This law was made in order to protect human life, and if one imposes such a limitation on it, it is a clear contradiction of its purpose" (El-awa 1993, 79).

Thus, the Islamic justification of killing a killer - the death penalty - is called to question. Given an interpretation that exempts members of a religion from the punishment the same religion recommends for a particular crime, then it is hard to justify such a teaching on the basis of the principle that Green (1988, 6) calls "radical impartiality" or "omnipartiality". The difficulty here is that the application of *qisas*, as taught by the Qur'an and interpreted by the various Islamic schools, will seldom pass the test of Kant's "categorical imperative" or Green's "radical impartiality", and certainly not Little and Twiss' "generalizability". In South Africa, where the majority of Muslims are of the Sunni order, this interpretation is even more prevalent. Notwithstanding the inherent partiality with regard to the infliction of *qisas* in Islam, the following question still needs to be asked: Is reconciliation possible within such teaching and practice?

Islam is a religion that includes a core belief in a most merciful and benevolent God. Yet, the same God has ordained *qisas* as punishment for murder. Where, then, is the mercy and benevolence of God? The application of *qisas* as a punishment for murder, as taught by the Qur'an, is dependent on the refusal of the victim's family to forgive or accept *diya* - "blood money" as compensation payable by the criminal to the victim's family for the damage done. Here we can read *diya* to mean reconciliation in the same way that we read peace to mean reconciliation in Judaism. Even though *diya* is

referred to as blood money, in a broader perspective, it represents a reconciliatory act between the criminal and the victim himself (if such crime only caused partial damage to the victim), or between the criminal and the victim's family if the damage results in the victim's death.

As already pointed out, the paying of *diya* represents, as it were, a settlement of a dispute, which has arisen out of the damage caused by the action of the criminal to the victim of his crime. Settlement of a dispute represents an agreement between the opposing parties wishes to stop fighting and be friends again. In the case of criminal and victim, it is the prerogative of the victim or the victim's family to stop the fight. However, it is the responsibility of the criminal or his family to repair the damage that has been caused. This is what the act of reconciliation is all about, and it is precisely this that *diya* stands for in Islam. In the treatment of Judaism we contended that the process of forgiveness begins with reconciliation and that forgiveness thus presupposes reconciliation. *Diya*, as the act of the offender compensating the victim or his family, is, therefore, an act of reconciliation.

Many people believe that there is no room for reconciliation in Islam, as retaliation or retribution are "praises" most loudly sung in adjudicating disputes. The opposite is actually the case. Reconciliation in Islam takes precedence over the law of retaliation or just retribution. According to Mohamed S. El-awa (1993), it is only when the nearest relative of the victim refuses to be reconciled that *qisas* can be applied. In other words, reconciliation is the first option that the family of the victim has to take. It is an option in which the family of the victim has the prerogative, not the state or court of law. *Qisas* is only applied as punishment when the victim's family refuses to exercise the option of reconciling: either by asking for *diya* or even forgiving without asking for compensation. Mohamed says: "However, *qisas* may be ruled out if the victims' nearest relatives do not demand it... The relative may then ask for the payment of *diya* or forgive the killer altogether" (El-awa 1993, 75).

The *Qur'an* supports reconciliation as having precedence and preference over retaliation and thus carries God's reward. It says: "the recompense for injury is injury equal thereto: but if a person forgives and makes reconciliation, his reward is due from God: for (God) loveth not those who do wrong" (Sura 42: 40). It is correct to assert, then, that reconciliation is more valuable and is recommended over retaliation. In the light of this, PAGAD's recent alleged actions, in particular the killing of Rashid Staggie might be considered to be contrary to *Qur'anic* teaching. The meaning of Islam is peace and, in the light of the above, it ought to play a leading role in enabling South Africans to find peace in reconciliation.

4.1.4 HINDUISM, CAPITAL PUNISHMENT AND RECONCILIATION

Hinduism represents a religious tradition that teaches respect for all things that have life in them. These include lower animals as well as higher animals. Due to this religious attitude to all living things, Hindu religion is ideally opposed to any form of killing. All forms of killings, be it animal or human, are considered morally wrong. However, like Christianity and Judaism, Hinduism has two classifications of killing - deliberate killing and manslaughter - but, the punishments for killing are quite different from these two religions. In Hindu tradition, there are two types of punishment in both criminal and civil cases. The one is corporeal punishment, which includes capital punishment, and the other is pecuniary, which is a monetary fine (Glucklich 1988, 106). Punishing criminals is the duty of the king who should punish each offender according to his or her wealth or status in the community. For example, a poor criminal would receive a lesser fine than a rich criminal, and so, too, would a man of high caste (high spiritual purity) or a government officer be punished more severely than the ordinary citizens (Prasad 1972, 165).

Although corporeal punishment is organised according to the rule of *les tallionis* (just retribution), it is, however, not regarded or interpreted as taking life for life, as we saw in Islam. But, it is: "clearly related to the expiatory dimensions of *prayashcitta*, keeping in mind that expiations are designed to cut off, scold, or suppress precisely the offending limb" (Glucklich 1988, 106). According to the *Laws of Manu*, texts

attributed to the sage Manu, that form part of the legal codes (*Dharmashastra*) of Hindu tradition: "with whatever limb a man of low caste does hurt (a man of the three) highest (castes), even that limb shall be cut off; that is the teaching of Manu" (*Laws of Manu* 8: 279). This particular teaching of Manu is not to be understood as permitting the death penalty or as a doctrine of revenge; nor should the passage that permits the killing of an assassin: "by killing an assassin the slayer incurs no guilt, whether (he does it) publicly or secretly; in that case fury recoils upon fury" (*Laws of Manu* 8: 351) - be regarded as permission for retaliation. These teachings are to be interpreted in the light of other teachings in the *Laws of Manu* on how the king is to punish an offender justly. For example:

Let him punish first by (gentle) admonition, afterwards by (harsh) reproof, thirdly by fine, after that by corporeal punishment. But when he cannot restrain such (offender) even by corporeal punishment, then let him apply to them even the four (modes conjointly) (*Laws of Manu* 129 - 130).

It is evident from the passage cited above that Hindus do not teach revenge as conceived by Muslims and in some Christian traditions, or even in Judaism. The execution of assassins should be understood in the same context as that in which Thomas Aquinas defended the killing of infectious and unrepentant criminals. It is, therefore, not to be seen as grounds for justifying revenge or the death penalty but, rather within the context of self-defence, which is permitted by almost all religions. Aquinas asserts that this is for the common good of the community (*Summa Theologica*, 2a, 2ae, 64.2) or in defence of the community's common interest.

Where Hindu doctrine concerning killing differs from the four other religions under consideration is in its compensational practice for manslaughter. According to Ariel Glucklich:

the crime of manslaughter is regarded as so sinful that most *Dharmashastra* treat it in their chapters on sin and expiation. *Baudhayana* states in his *vyavahara* sections that "for slaying a

Kshatriya (the offender) shall give the king one thousand cows and a bull in expiation for his sin" (Glucklich 1988, 106).

Here we see that it is not the victim or victim's family who has the prerogative in forgiving the offender, as is the case in the payment of *diya* in Islam or in the African traditional religion's restorative justice, or as in the teachings of Christianity and Judaism.

To develop a better understanding of the Hindu teaching described above, it is important first to understand the Hindu doctrine of *karma* and practice of sacrificial ritual⁵. For the purpose of this thesis, suffice it to state that *karma* is the accumulation of the effects of an individual's past actions - "good" and "bad" - within the ongoing cycle of birth, death and rebirth. This includes sins yet unpaid for by the performance of penances required for the attainment of purity in a past life, thereby causing suffering in the present life. This locates the sinner in a lower caste until he or she is able to attain purity in respect of the number of existences he or she will live in the future. Sacrificial ritual, on the other hand, comprises the penances to be performed, as prescribed by law, in order to obtain pardon for sins committed and to attain the highest caste of purity. On attaining purity, the cycle of reincarnation will cease with the individual's death and the attainment of heaven. For instance, a man who kills his wife or a friend should perform penances such as twelve years of *tapas* (austerities), or confessions and expiations such as the horse sacrifice (*Asvamedha*).⁶ But, if the king punishes the person who has committed such crimes, he/she goes directly to heaven. Having been purified by the king he/she becomes like those who have performed meritorious deeds (ibid). Glucklich explains the reason why the person who is punished by the king goes to heaven as follows:

In karmic terms such transgression will cause the fruition of the sin's moral consequences in a following existence. In ritual terms, many

⁵For detailed treatment of the doctrines of karma and sacrificial ritual read Ariel Glucklich's: *Religious Jurisprudence in the Dharmashastra*, New York: MacMillian Publishing Company, 1988.

⁶ibid 95. Tapas is what I have already referred to as a form of euthanasia. It is a religious practice by which one is allowed to fast to death in seeking purity. This I have said in my treatment of Christianity is permission for euthanasia, which for some Christians is murder.

transgressions imply a charge of "negative sacredness" associated with the sin (*papa, pataka*) or with the pollution (*sutaka, ashauca*) which render a twice-born unfit to joint [sic] the sacrifice. In either case the punishment assigned and executed by the king ...is conceptualised as a potent religious ritual, either for the restoration of one's karmic "balance" or for purging society of a dangerous force (ibid, 94).

From this passage we can see why it would be correct to argue that the killing of the one who has killed is not the teaching of the Hindus. This is because punishing crime is not only the "business" for the here and now but also involves the criminal's future reincarnations. Though Hindu theocracy is no longer practiced and there are many strands of Hinduism in South Africa, the belief in the law of Karma, whereby the effects of evil actions are worked out over lifetimes that can involve performance of purification rituals, remains fundamental for all Hindus.

The question remains as to whether reconciliation is possible according to the teaching of Hinduism. As it has been pointed out, the victim has no prerogative in determining the future of the offender. Notwithstanding this, the relationship between the offender and the victim is also karmic - having a past and a future that is not limited to this lifetime in which the crime has been committed. It is only by the performance of penances (sacrificial rituals) or by punishment by the king that a particular criminal can obtain forgiveness, which will eventually lead to reconciliation with God. From the above, it is possible to infer that there is no need for individual reconciliation or what might be called offender-victim reconciliation. But, this is only one possible interpretation, for the reality is that non-violence and compassion hold prominent positions in the doctrinal teachings of the Hindus and purity is the essence of Hindu worship. Therefore, it would be correct to assert that for a Hindu to attain purity, he or she needs to be at peace with all living things as his religion demands respect and compassion for all living things, including human beings. Without living in harmony (peace) with one's neighbour, one cannot reach the highest caste where purity and then spiritual liberation can be attained.

In accepting the above propositions, we can now read "peace" to mean "reconciliation", as we have done before in the case of other religions. This signifies that to attain the highest caste, Hindus need to be reconciled with any person who has wronged them or whom they may have wronged. This should be a daily process without which the goal of purity, by trying to reduce one's karmic "balance", cannot be achieved. Reconciliation, as a process of purification, can, therefore, be confirmed as a daily routine for Hindus.

4.1.5 AFRICAN TRADITIONAL RELIGION, CAPITAL PUNISHMENT AND RECONCILIATION

In pre-industrial African society and African traditional religion, human life has been treated with absolute respect, second only to respect for the Almighty. Human life was treated as sacred and no-one was allowed to take the life of another human being at will, as seems to be the case in today's society. Not even in the "sacrifice to the ancestors" is taking of human life permitted, as many Europeans incorrectly thought. David Westerlund referred to these Europeans as "outsiders" to African traditional religion (Westerlund 1991, 15-23). This kind of claim by the "outsiders" about African traditional religion is a disease that many scholars of African traditional religion suffer from in presenting the religious practices of the African people.

According to K. W. Bolle: "what we see in Anthropology is a disease all of us [scholars] have come to suffer from. We have learned to generalize about human beings and their orientations as human beings and forgotten the terms for thinking about human beings humanly" (cited in Westerlund 1991, 20). Still talking about the disease of the "outsiders" to African traditional religion, J. Vansina, a historian, in his critic of the structuralists' approach, referred to its analysis as an: "incredibly arrogant assumption", which presupposes that: "myth is a veiled narrative that can be decoded only by foreign researchers, not by locals who have grown up in the culture studied" (cited in Westerlund 1991, 20). Hence Westerlund came to the conclusion that: "a complete 'inside view' can only be presented by the actual believers themselves" (Westerlund 1991, 20).

Killings, as practiced by African traditional religion before the advent of other religions to the continent of Africa, were not punishment oriented. In fact, African traditional religion and culture forbade the killing of human beings as a punishment for crimes committed. Elizabeth Isichei pointed out in the case of West Africa that, though human sacrifice was: "the most serious of religious rituals", before: "the impact of the Atlantic slave trade", she argued that: "in their original form, these practices were not necessarily a matter of horror and dread" (cited in Pels and Saleminck 1999, 23). Notwithstanding the above, there is evidence of the past practice of human sacrifice in some parts of Africa as indicated by Isichei above, which became: "expanded in scale in West Africa largely through its association with royal authority and with militarism" (Pels and Saleminck 1999, 23). Such sacrifices, however, were carried out in their original form as Isichei told us, above, as religious practices that: "involve (according to Peter Pels and Oscar Saleminck), the killing of a living being in a manner in which the visible shedding of blood is itself the realization and dynamization of an otherwise invisible spiritual power" (Pels and Saleminck 1999, 25).

Human sacrifice is found in the histories of almost all religions, including Christianity. Moreover, human sacrifice is not to be equated with capital punishment. The one, sacrifice, is religious in nature with the sole purpose of *atonement*; and, the other, punishment, is juridical in nature for the sole purpose of *punishing the offence* of an offender. Nevertheless, the traces of human sacrifice in African traditional religion are to be viewed in the same light as the sacrifice that God demanded of Abraham to offer Isaac and in the offering of Jesus to the Father for the atonement of the sins of the world, as in the teaching of Christianity. Traces of human sacrifice can also be found in other religions as an act of atonement for sin. Human sacrifice in some parts of Africa was similarly practised as an act of atonement and not as a punishment for a particular offence.

The above distinction is necessary for the sake of foreign, "outsider" scholars and visitors who sometimes appear to know the religion and culture of Africans better than Africans themselves and, as foreigners and "outsiders", tell Africans how they have practised their own religion and culture. As Nokuzola Mndende pointed out citing Okot p• Bitek (1970, 105): "these outside layers should be removed before African religion is suffocated". Emphasising the need for this particular distinction that I have made here, S. G. Kibicho rejects: "the idea of Christianity as the, "fulfilment" of African religions or the conception of these religions as a *preparatio evangelica*". According to Westerlund. "I feel that this attitude towards African traditional religion ... is a relic of the old prejudiced, evolutionary view of African religion" (cited in Westerlund, 1991, 22). An old prejudice view that dismisses African religion as ancestor or spirit worship (Taiwo, 1997), which, according to Kwasi Wiredu, are misconceptions arising from the superimposition of the Western categories upon African thought that is the quintessence of conceptual colonization (Wiredu 1998, 190).

The above distinction also serves to dispel the belief that the death penalty was practised in Africa before the advent of the Europeans, a belief that supports the continuing denial of African traditional religion's equal status with other world religions. This is a belief that Mndende has decried in the new democratic South Africa. As she argues: "this so-called democracy is based on the minds that had suffered colonialism and racism", and she advocates the: "de-colonising [of] the African mind so that she can respect what her ancestors did for her, and not to place her ancestors on a lower level to foreign ancestors" (Mndende 1998, 120), as way to dispel this belief system.

To return to African traditional teaching on capital punishment, S. A. Adewale explains that in pre-industrial: "African society the sacred and the secular are inseparable. There is no compartmentalization of life. What religion forbids or condemns, society also forbids or condemns" (Adewale 1994, 54). There was seldom any part of African society where death was used as punishment or as revenge. There

have been tribal wars, but there was no death penalty for individual crime. Killing the person who has killed, as retribution or retaliation, was never part of African religion and tradition, as we heard in our story. Though there were judicial procedures to deal with a particular crime, such procedures were for the restoration of justice and were, as Alyward Shorter puts it: "devoid of vindictiveness, and there was scarcely an idea of retributive or [deterrent?] justice" (Shorter 1977, 34). The main purpose of punishment in African traditional society is for the restoration of justice as against the principle of retribution found in the present-day society's judicial system as well as in some religions. Restoring justice is equivalent to restoring the social and spiritual harmony of society since both the temporal and the spiritual are intertwined, just as religion and culture are interwoven.

Similar to other religions, African traditional religion makes a distinction between deliberate killing and unwitting killing. Chinua Achebe,⁷ in his novel: *Things Fall Apart*, referred to this distinction as "male" and "female" types of killing among the Umuofia people of the Ibo tribes in Nigeria. As elsewhere in Africa, this distinction was no different, either, in South Africa. "Male" and "female" are used symbolically to represent this distinction, based on the notion that the male is to be considered stronger than the female and consequently the "male" crime of killing is more severe, in terms of the attributable degree of guilt, in comparison with the "female" version of the same crime. Wilful killing in African traditional religion, as well as in the culture, is punishable not by death, but by banishment from the community for life. In terms of justice for the victim's family, the offending family will give another human being in exchange-compensation for the life that has been wasted. Christopher I. Ejizu explains this position as follows:

For example, most traditional African groups have stiff penalties for wilful murder of a person, not an enemy at war, including bringing about the death of a foetus. Anyone guilty of murder, would be required to repair the crime usually by providing another human being to the family

⁷Chinua Achebe wrote "Things Fall Apart" in 1959, in which he told the story of Okonkwo who was a warrior in the land of Umuofia, depicting the African culture and religion.

of the person killed, a person relatively close in age to the deceased (Ejizu, 1999).

Chinua Achebe (1959), illustrates this exchange-compensation in the story of Okonkwo, when the son of Mbaino wilfully killed the daughter of Umuofia. Umuofia received a young lad and a virgin from Mbaino, as an exchange-compensation for the wasted life of their daughter (Achebe 1959, 11). When such deliberate murder has happened within the same clan, the murderer is punished with life excommunication (banishment) from the community. By contrast, the "female" type of killing or inadvertent killing, as explained by Achebe, is illustrated in the case of Okonkwo, the well respected warrior of Umuofia, who accidentally killed a youth when Okonkwo's gun exploded accidentally at the funeral of the lad's father: "Okonkwo has committed the female type, because it had been inadvertent. He could return to the clan after seven years" (ibid, 124). In this case we see the differences of understanding of killing between African traditional religion and other religions, particularly Islam. The difference is that it does not matter *who* has committed the crime of inadvertent murder. The same punishment is applied equitably, whether it is the king or any ordinary member of the community. It also has nothing to do with the sex and age of the victim.

In African traditional religion, killing does not need to be proven as it does in Judaism, for example. There are only two types of killings and each has its own prescribed punishment, known to every member of the community. Whoever commits a murder, knowing the type, automatically and without any formal judicial procedure, decides the punishment for himself or herself. The punishment for the commission of murder is thus *latae sententiae*. In other words, just as Achebe said of Okonkwo: "the only course open to Okonkwo was to flee from the clan... That night he collected his most valuable belongings into head-loads. And before cock crowed Okonkwo and his family were fleeing to his motherland"(ibid). There, Okonkwo was to remain for seven years before he returned to his fatherland - Umuofia. Even as the murderer flees, his flight should be accompanied by sacrifices, performed at both the place from which he is fleeing and at the place to which he is going. These sacrifices

are there to appease the spiritual entity, which is closely knitted to the physical world where this terrible evil deed has occurred. In this way no calamity will befall the two communities, or the criminal, as a consequence of the murder.

The performance of sacrifices as a protection for the communities and the murderer is an indication of the place of reconciliation in African traditional religion. It also means, as already stated, that the aim of punishment in African traditional religion is not vindictive, retributive or retaliative. It is reformatory, rehabilitative, restorative and, above all, a reconciliatory act. Alyward Shorter (1977) explains it thus: "Reconciliation and restoration of social harmony is the object of judicial proceedings, not retribution. Hence the importance attributed to compensation, and even ritual fasting as the outcome of a process of reconciliation" (Shorter 1977, 2). Here we can see that in African traditional religion and culture the aim is not just to punish crime but is also to restore the damage that has been inflicted by the commission of that particular crime by one of the community's members. In this way, African traditional religion does not disown its member who has committed such a crime, and has consequently become an enemy and criminal in the community. Rather, he is shown mercy, love and compassion. It is in this process that the recognition of justice occurs. The fact is that offender's action is wrong and has caused pain, suffering and damage to the victim, to the community and to the offender himself.

In repairing the damage done, justice is being done to the victim, the offender and the community, justice that is both temporal and spiritual in its composition. This is the process referred to as restorative justice. With regards to restorative justice in this case of murder, there will be a process whereby the victim's family, the offender's family and the community come together to find a solution to the problem, namely, a solution that befits the pain and the suffering such a murder has caused all parties. Explaining this in detail, Zehr asserts:

Restorative justice involves the victim, the offender and the community in a search for solutions which promote, repair, reconciliation and reassurance. Goals are restitution and healing for victims, healing the relationship between victim and offender, accountability and healing for offenders, and healing for the community (cited in Luyt 1999, 67).

This indicates that African traditional religion's understanding of crime, punishment and reconciliation is different from other religions. That is, everyone is seen as a victim who has been affected by that particular crime and, therefore, it is not just the direct victim who needs healing but also everyone in the community, including the perpetrator of the said crime. It is only through this process that reconciliation and harmony can be achieved in a community. However, the question needs to be asked: Is reconciliation possible without forgiveness, or can there be forgiveness without reconciliation?

4.2 COMPARATIVE ANALYSIS OF RELIGIOUS TEACHINGS

Avoidance of violating the law, "thou shall not kill", has various interpretations among different traditions in Christianity, as evident in our story. But the understanding of "not killing", as taught by Jesus, is quite different from the other religions of Judaism, Islam, Hinduism and African traditional religion. Although there is no debate among different religions concerning the universal acceptance of killing as morally wrong, there is debate concerning the practical justification and categorisation of killing. We have seen that in Christianity, according to the readings of the New Testament, killing of any human being is prohibited. By contrast, in Islam, killing has been classified with prescribed punishments, which are not always capital punishment. For instance, if a non-Muslim kills a Muslim, the *qisas* - retaliation or just retribution of taking life for life - will apply. But if a Muslim kills a Muslim it is regarded as a mistake and the punishment for such killing is compensation - *diya* (blood money). However, if a Muslim kills a non-Muslim, it is a "passport" to achieving heaven.⁸

⁸ This is the understanding of the majority of the Qur'an passages of Sura 4, v 90 - 92, on which Mohamed S. El-awa, perhaps together with the teachings of the different schools of jurist thought, based his treatment of the infliction of *qisas* in his book: *Punishment in Islam* (1993, pp 69-95)

There are two possible interpretations that can be attached to this Islamic categorisation of killing, in comparison with Christianity or other religions. First, in Islam some lives are more valuable than others, and so, some killings are less or more morally reprehensible, depending on the value given to the life taken. Second, stemming from the principle of inclusion and exclusion (Chidester 1992, 67) and reinforced by social forces of race, class, ethnicity, colour, gender; a practise arises that seems to be more pronounced among Muslim fundamentalists. This practise leads Muslims to consider those who are included in Islam as superior and those who are excluded as inferior. This is indicative of the same principle as apartheid, which operated on the basis of "white supremacy" and "black inferiority." By this same principle of superiority and inferiority, the law of *lex talionis* - "an eye for an eye" - has been applied to the lives of those standing on the wrong side of the platform, whose lives are considered by those on the "right side" of the line to be less valuable. Taking such lives becomes a "passport" to attaining "heaven" in the here and now and in the hereafter.

On the other hand, the teaching of the Judaism emphasizes the preservation of life and like African traditional religion, recognises only two forms of killing - deliberate and involuntary manslaughter. This is different from the Islamic categorisations of killing. Although Judaism recognises, in principle, the death penalty for deliberate killing; in practice, the death penalty is not implemented or inflicted on an unrelenting or unrepentant offender as taught by Christianity and Hinduism; and the idea of retaliation or retribution (as taught by Islam) is opposed to the teaching of Judaism (Epstein 1968,10). While African traditional religion teaching forbids the use of death as punishment for any crime.

It is, therefore, difficult to practically justify capital punishment in such diverse religio-cultural circumstances, where there is not even agreement among the different religions in relation to what constitutes killing that needs to be condemned unequivocally. If there is no agreed "definition" of killing (in this context) acceptable

to all religions and cultures in South Africa, then the application of one punishment, in this case capital punishment, cannot be morally, socially, religiously and even constitutionally justified.

4.3 RECONCILIATION WITHOUT FORGIVENESS?

In the book entitled: *No Future Without Forgiveness*, Desmond Tutu,⁹ then chairperson of the Truth and Reconciliation Commission (TRC), draws on his vast experience in the TRC and as an Archbishop, to show why, in South Africa and anywhere else where conflicts continue to divide the people, one cannot think about having a future if the victims refuse to forgive the perpetrators. He illustrates this with many personal experiences, especially within the context of the well-acclaimed transition "miracle" of South Africa. The central argument of Tutu's exposé is that there is no alternative to forgiveness, that if there is no forgiveness, the vicious circle of retaliation will continue *ad infinitum*. This, Tutu believes, cannot bring peace and true reconciliation. Instead, it will only destroy any opportunity to make peace and become one united nation, in the South African case, to become a rainbow nation of God.

In the same vein, Tutu emphatically states the glaring fact that acknowledgement is a prerequisite for forgiveness. This, he laments, is unfortunately lacking in the South African context; hence, reconciliation cannot be said to be taking place effectively in South Africa. By extension, violence is continuing as a consequence of this absence of acknowledgement. In effect, Tutu can be interpreted as saying, as the chairperson of TRC proceedings, that the process has not achieved reconciliation and that it can only be achieved when the victims and the perpetrators of apartheid make the sacrifice of reaching out and uniting in true reconciliation. In this process, it should not really matter, what the philosophy or affinity a particular person has.

⁹Desmond Tutu, retired Anglican Archbishop and chairperson of the TRC, wrote about his experiences as both political activist during apartheid and TRC chairperson in his book *No Future Without Forgiveness*. (1999).

For Tutu, the one thing that is certain is that the mainly black victims are willing to offer their forgiveness and be reconciled with the mainly white perpetrators. But, because there are very few perpetrators asking for forgiveness through confession and acknowledgement, the victims are confused about whom to forgive and with whom to be reconciled. Forgiveness requires, as evident in Christianity, Judaism, Islam, Hinduism and African Traditional religion, the effort and willingness of both the offender and the victim to be reconciled. This is why the question is asked: Is reconciliation possible without forgiveness? The immediate answer to this question, drawing from what has been demonstrated in the teachings of the five different religions and in Tutu's book, is "NO".

While I agree with Tutu's conclusion that there is no future without forgiveness, I wish to go a little further and assert that there is no forgiveness without reconciliation. Why? As we have already inferred from the teachings of the different religions, forgiveness is embodied in the act of reconciliation. The two are inseparable.

As already contended, reconciliation opens and closes two different doors at the same time: On the one hand, reconciliation opens the door for communication, forgiveness, peace, good relationships, friendship, cooperation (working together), sharing resources and a brighter future; at the same time, on the other hand, reconciliation closes the door to violence, hostility, possible wars, enmity, individualism, crime, strife and, above all, poverty. It is with this in mind that I believe Tutu's conclusion requires some modifications to read thus: If there is no reconciliation, there is no forgiveness. The opposite is also true, that, if there is no forgiveness, there is no reconciliation, and if there is no reconciliation, there can never be peace; and if there is no peace, there is no future. Therefore, we cannot even think of having a future in South Africa without reconciliation, bearing in mind that no reconciliation is possible without forgiveness.

But, forgiveness is only part of a process, which, in turn, must be preceded by another process: that of confession or acknowledgement of guilt and the willingness to make

reparation or restitution. This is the first step of a process that Tutu defined as a continuum of confession, forgiveness and reparation (Tutu 1999, 221). These components form a continuum because, as it were, they are part of a true reconciliation process and, thus, characterise reconciliation itself. There can never be any genuine reconciliation without forgiveness, reparation and confession, nor forgiveness without reconciliation. Expressing a similar contention, Naudé says: "No healing is possible without reconciliation, and no reconciliation is possible without some form of genuine restitution" (Naudé 1991, 227).

Basil John Hendricks (1996) describes reconciliation as follows: "Reconciliation implies both a horizontal and vertical restoration of relationships. It also implies a conversion and a sincere desire to tell the truth, to receive forgiveness and be reconciled" (Hendricks, 1996, 24). In this description, confession and acknowledgement of guilt are pre-conditions for forgiveness and reconciliation, but confession must be done in sincerity and truthfulness. Hendricks went on to name four characteristics of reconciliation:

1. Recognition of sin and sincere acknowledgement of guilt.
2. Full confession of wrong.
3. Resolve to make reparation.
4. The re-orientation of one's life so as to avoid repetition of wrong (ibid).

These four characteristics are present in the five religions treated in this thesis, though they may not be explicitly expressed to the same degree in all of them. The contention here is that the process of reconciliation, which encompasses the process of forgiveness, requires first and foremost the confession and acknowledgement of guilt to oneself, as the offender, and then the acknowledgement and full confession of the same to the victim of one's crime, from whom one is seeking forgiveness and reconciliation. At the same time, the offender must be ready and willing to repair the damage that has been done to the victim, without which the victim may not be in the position to grant forgiveness and reconciliation

According to the above explanation, we can now complete the circle of reconciliation: a full circle of 360 degrees. This would mean that if there is no acknowledgement and confession of guilt, there is no willingness to make reparation; if there is no willingness to make reparation or restitution, there is no forgiveness; if there is no forgiveness, there is no reconciliation; and if there is no reconciliation, there is no peace, and if there is no peace then there is no future for South Africa, nor for anywhere else where conflicts and wars still persist unabated. This represents the complete circle of reconciliation; but, if there is any break in the circle, the circle does not just become incomplete, it aborts the whole process of reconciliation, Tutu would say (1999, 221). As a result of the concatenation between the processes of reconciliation, once there is a break in any part of the reconciliation circle, all other parts will also disintegrate.

Some commentators as well as some religious and political leaders have argued that South Africans do not need individual acknowledgement and confession to forge ahead with the process of reconciliation and forgiveness. First, because all South Africans know the wrongs and evil of the past, we must not allow that to hinder our future. We should just forget the past and look forward to the future. Second, some of the Afrikaners continue to argue that there was nothing wrong with the past and the policies of apartheid that needs acknowledgement and confession; and, consequently, there is no need for reconciliation and forgiveness and there is nothing to confess. But, the reason behind the need for confession is that it is only through confession that peace can ever be achieved in the new, democratic South Africa and not through the re-introduction of capital punishment.

Confession here is not just about some intellectual concept or statement of acknowledgement, nor is it a superficial compromise. It means, for instance, if you have stolen a book from another person, to have that person forgive you, you have to be willing to return that book or repair the damage by compensation for having stolen the book. Reconciliation, which is the goal of forgiveness, cannot be achieved if the offender refuses to return the stolen item and repair the damage he has done by the

theft. To argue that confession is not necessary is to say that no wrong was done. If there was no wrong done, there will be no need for reconciliation in the first place.

But we all know that harm has been done, that offences were committed that has caused uneasiness in the relationships between the various races, cultures and genders in this nation. To heal and repair the broken relationship, confession, as it has been argued, is a *conditio sine qua non*. The fact is that it is only through confession that South Africa, as a nation can acknowledge and amend the brokenness of the past. This provides the answer to the question of how confession can lead to peace. It is only when there is reconciliation that we can have peace, whether as offenders or victims.

Reconciliation is achieved when the offender and the victim can be friends again, working together in an environment free of suspicion of one another, sharing everything, with no ill-feeling between victim and offender. But, this is impossible if the offender refuses to make restitution and still keeps the undue advantage gained at the expense of the victim. Such refusal is unfortunately responsible for the violence that South African society now experiences. This violence destroys not only the offender and the victim, but also society at large. When this kind of situation is created, then the words of W. B. Yeats in: *The Second Coming* (as quoted by Chinua Achebe), comes to mind in relation to South African today:

Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world (cited in Achebe 1959, III).

Reparation or restitution, as articulated in African traditional religion, is an integral part of the process of reconciliation. It is no wonder, therefore, that all religions make it a requirement and teach that reparation must be paid for all wrongs committed (Green 1988, 11). It is also the demand of moral reasoning: whether the Kantian principle of "categorical imperative", Green's "radical impartiality" or "moral point of view" or the principle of "generalizability" defined by Little and Twiss, as discussed

at the beginning of this chapter. By the same token, it is imperative for the victims to forgive if the culprits are ready to confess and ask for forgiveness. This, too, is a requirement of all religions. The problem in South Africa today is not so much whether the victims are willing and prepared to forgive, however, as Tutu has implied; but, the unwillingness, arrogance, obduracy and blindness of the perpetrators in refusing to confess and ask for forgiveness. This, therefore, is the greatest obstacle to reconciliation and forgiveness in South Africa, not the violent crime.

Unwillingness, arrogance, obduracy and blindness are symptoms of one particular thing - the lack of moral rectitude. When there is an absence in peoples' lives it means that they are poor in relation to what it is they lack. If one lacks the guiding moral principles of prudence or compassion, it means that that person does not have a mainstay for knowing and doing what is right and wrong at a particular time and place. In such a case, the person or persons are poor in relation to prudence and compassion, for example.

The same is true of all other action-guiding principles and the lack of one or more of them is equivalent to material or physical lack. Any lack results in poverty in relation to that which you lack, a poverty that is not restricted to material lack. People can be materially rich but morally, spiritually or even socially poor and this kind of poverty can be worse than material poverty in that such people may be more violent than those who suffer material want. For example, policemen who set their dogs on black immigrants or the farmer who tied one of his black employees to the back of his vehicle and dragged him like a log of wood cannot be said to be materially poor, but poor in relation to moral reasoning and racial and social relationships. Thus, the unwillingness or arrogance on the part of offenders is a result of poverty that is not necessarily material. The lack of moral rectitude corresponds with moral poverty.

In all countries, and particularly third-world countries emerging from colonisation, there has always been one obstacle that continues to hinder the completion of the circle of reconciliation. This is the evil of poverty and today it rears its ugly head and

derails the process of reconciliation in South Africa. Many people have attempted to define poverty as: "not knowing where your next meal is going to come from and always wondering when the council is going to put your furniture out and always praying that your husband must not lose his job" (May 2000, 5). This definition describes material poverty but to understand poverty in its entirety, as it affects the future of South Africa today, the different faces need to be described as they are manifest in our daily lives. Poverty, in this sense, can be described as: The inability of individuals, family, community to command enough resources for basic living; alienation from community; lack of food, and crowded homes without basic amenities; of water, sanitation, electricity; lack of job, no stable source of income and lack of adequate pay; and the fragmentation of family.

Putting it more briefly, we can say that poverty is the lack of (absence of) or deprivation of (alienation from) human essentials, or the presence of anti-human essentials, for instance, discrimination on the basis of race, gender and colour. The latter situation indicates that there is a lack or absence of a particular moral action-guiding principle.

I intend to revisit this point after evaluating capital punishment and reconciliation, vis-à-vis religious teachings, in the following sector.

4.4 EVALUATION OF CAPITAL PUNISHMENT AND RECONCILIATION VIS-À-VIS RELIGIOUS TEACHINGS

Having addressed the teaching and practices of the five different religions - Christianity, Judaism, Islam, Hinduism and African traditional religion - the following questions need to be asked: Is there any possibility of advancing a moral justification for the re-introduction of capital punishment in transitional South African society as a way of restoring moral values and subsequently reducing crime? Do these different religions have a common ground to build bridges across the turbulent waters of the past into the promising rainbow waters of the future, knowing that there is no future without reconciliation and forgiveness? What is the common ground for these

religions to stand on in a democratic and pluralistic transitional South African society, in restoring the damaged moral values which have resulted in moral laxity and a culture of violent crime that is prevalent today? To answer these questions, it is necessary to evaluate capital punishment and reconciliation side by side with religious teachings.

The possibility of successfully advancing moral justification for the re-introduction of capital punishment is unlikely, at least not from the point of view of the teachings of the five different religions postulated above. Nevertheless, the thinking of some politicians and the majority of victims of violent crimes is that re-introducing capital punishment is the only solution to reduce crime. But, it is evident from a moral, religious and even a constitutional point of view, that the re-introduction of capital punishment cannot be morally justified in the new South Africa. As already contended, the road to peace in South Africa, as elsewhere, is through reconciliation and forgiveness. Unless these are achieved the morality of killing those who have killed, where the evil of structural poverty continues to dictate individual standards of morality, can never be justified.

All religions are fundamentally opposed to any form of human killing, justified on the basis of moral reasoning or a moral viewpoint. But, each religion needs to justify for itself the reason(s) why it believes that killing human beings is morally wrong, while the killing of animals, for instance, is not. This practical justification, it is argued, is the origin of the differences among the teachings and beliefs of the various religions. Each religion has to give its own reasons for supporting general standards of morality or a moral viewpoint - reasons that have to be in conformity with its beliefs and doctrines. The process of conforming practical justification with each religion's doctrines is, in the first place, what has given birth to religious pluralism as we have it in South Africa today. These religious doctrines, in turn, give justification to the moral viewpoint.

In this context of religious pluralism, each South African has the right and freedom to adopt and practise the teachings and beliefs of any religion he or she has chosen. An individual's choice and freedom of worship and practice is to be respected by others who belong to different religion(s). It is with this understanding that it is vitally important that no single religion imposes its teaching and practice on people of other religions. Religious freedom is thus an important aspect of the pluralistic, democratic South Africa. To unilaterally implement the death penalty, because of violent crime, would be tantamount to a morally unjust law that at the same time violates religious freedom, which is the essence of religious pluralism. South Africa is a secular state and the secular nature of the nation would be assaulted if the government or any religion for that matter - unilaterally imposed its beliefs and teachings on the rest of the South Africans.

We saw how the different doctrines of the five religions under consideration in this thesis have shaped their views on the question of the death penalty. Christianity teaches and believes that *thou shall not kill*. For it, therefore, the killing of a murderer because he has killed, cannot be morally justified. To accept the death penalty would mean that it has gone against its belief of non-retaliation. For instance, in the Roman Catholic tradition, abortion (the intentional expulsion of the foetus from the womb of the mother by artificial means before attaining independent survival) is treated as premeditated killing. It does not allow abortion or euthanasia and does not deal kindly with suicide. According to this doctrine, life comes from God, who alone has the prerogative of taking it.

But in Islam, Hinduism and some Christian traditions it is considered as less morally reprehensible. A case in point occurred during the 1996 debate and submissions to parliamentary committee by interest and pressure groups on the proposed legislation legalising abortion. The Catholic Church and some other pro-life groups were the only religions that condemned the proposed legislation, while other religions were either sympathetic with the bill, not interested or silent on the debate. The life of a mother is more important and valuable than that of her foetus, they have always

Life in Judaism is seen not just as coming from God, but it is God's. Humankind is only a custodian, hence it is absolutely essential that no-one take another human life, in whatever form. Even though it is Jewish law to punish pre-meditated killing with death, such law has seldom been practised, as we have already demonstrated.

Islam, on the other hand, teaches retaliation in the retributive principle of justifying punishment. For Muslims, life must be taken for life; yet, as it has been explained, a Muslim is not to die if he kills a non-Muslim, whether deliberately or advertently. This is so because a Muslim life is regarded as more important than that of a non-Muslim. In a theocratic state, this type of law might be possible, but not in a multi-religious and pluralistic democratic society like South Africa. As argued above, the same kind of principle of discrimination justified the evil and killings of the apartheid state. If such a principle of superiority and inferiority is declared a sin against humanity, it means that it is morally wrong to consider some human beings as more or less important than others. Therefore, this principle cannot be morally justified, not only in relation to apartheid, but also in the context of South Africa as a pluralistic society of religious diversity. The proposal to re-introduce capital punishment because one particular religion or section of the society is in favour, is to prize that religion or section above other religions or groups. This would be tantamount to apartheid and would make the lives of some human beings more or less important than others.

The teaching of Hinduism on capital punishment is quite different from that of Christianity, Judaism, Islam and African traditional religion, as already contended. In Hinduism, punishment is neither retributive, nor a deterrent. It is protective and purificatory. Capital punishment can only be inflicted on unrelenting, unrepentant criminals. The problem in South Africa is so complex that it is difficult to label South African criminals as unrelenting or unrepentant criminals. The fact is that South African society is in itself poor and lacks the tools to purify the criminality it has created in criminals, which would allow it to rehabilitate the criminals and return them to "normal" society. Thus it is morally wrong to punish such criminals with the death penalty when the state lacks moral responsibility. The king, who alone has the

power to punish in Hindu tradition, cannot, for instance, inflict bodily punishment on first to third-time offenders and, of course, cannot impose capital punishment.

Finally, African traditional religion does not prescribe killing as a means of punishment for any kind of crime. It does not seek revenge or retaliation or to pay the criminal back on the basis of retribution. Instead, it seeks to heal the damage that has been done in committing that particular crime. As already pointed out, African traditional religion teaches exchange-compensation and banishment in cases of wilful murder.

Faced with the above diversity, there is hardly any possibility of finding common ground among the different religious teachings in a pluralistic society such as South Africa, making the re-introduction of capital punishment even more unrealistic. Consequently, there are no moral grounds for advancing justification for the re-introduction of capital punishment as a possible means of restoring moral values that have been destroyed. Disagreement among the different religions ensures that finding common ground, through the re-introduction of capital punishment as a means of restoring moral values and reducing violent crime, is impossible. But this does not mean that the different religions cannot find common ground on how to restore moral values in society. The disagreement and differences over the moral applicability of the death penalty does not eliminate the possibility of finding a common ground among these religions. Rather, this common ground must simply be found in another process, other than capital punishment, which is suitable to the type of situation facing South Africa today. This common ground, as we have suggested, can be established in reconciliation. This is the only alternative process where all religions have common practical and moral justification.

All religions are in agreement that reconciliation is the best way to restore moral values and principles to South African society, rather than going the way of retribution, which punishment and, in particular, capital punishment represent. In the context of reconciliation, all forms of retribution, vengeance and retaliation are

eliminated because it is not possible for capital punishment, as Evans has already argued, to make any compensation for a life that has been destroyed. Not even the killing of a killer can adequately match the moral iniquity of his offence (Evans 1967, 1027). Our five religions - Christianity, Judaism, Islam, Hinduism and African traditional religion - are in agreement in their teachings on reconciliation as the only way for having a future as a nation in the new democratic South Africa.

Reconciliation, as we have seen, and as taught by these religions, is a prerequisite for the salvation of individuals and of a nation. Hence, it is understood that a deep change of heart is needed that leads one to re-orientate his or her life, turning it around and restoring to it the moral values God has given it (Hendricks 1996, 30). Reconciliation calls for a total change of life - *metanoia*. As Steven Friedman, a Jewish South African, puts it, drawing from *Tractate Ta'anit*: "A person who makes a confession, and who does not change behaviour, is like one who is holding on to defilement in the midst of purifying water. Repentance does entail and requires a change of behaviour, as well as a making of reparation to the person wronged" (cited in Auerbach 1996, 33). Friedman, furthermore, in interpreting Levinas, argued that society depends on justice (justice read to mean reconciliation); human beings on repentance and reparation. But, from a social perspective he opined that reconciliation (justice) remains the fundamental as it is within the control of the society (ibid).

The secular meaning of reconciliation has the same meaning as the religious sense of the term. Reconciliation, in the secular sense, means a change in relations between individuals, group or nations and this change relates to the social or political arenas. These changes of relations "mean [always] a change from anger, hostility and alienation to love, friendship or intimacy" (Fitzmyer 1992, 1398).

Reconciliation is, thus, the common ground for the restoration of moral values in South African society as well as in other regions of the world that have had similar experiences to South Africa. But, there is one enemy of reconciliation, about which all religions are also in agreement. This one enemy of reconciliation is the only factor

that continues to make the completion of the circle of reconciliation impossible in many third-world countries that have made an attempt to emerge from the evils of colonisation. This enemy, as already mentioned, is poverty. Poverty, interpreted above as "lack of", is the most violent crime of all times that now bedevils South African society, bringing it to the verge of disintegration.

Poverty, in all its diversifications, is the creation of society. Whether structural, moral, material, spiritual, religious, social, family, racial or gender-related poverty - all forms are the creations of society. In South Africa, apartheid took this creature and gave it more "respectability" by justifying the impoverishment of the black majority through its policies. This was done through the forceful removal or deprivation of quality education and economic and social opportunities. The condemnation of the black majority to poverty by the white minority had created an attitude of we-have-been-made poor; we cannot do better than this way we have been made to feel. What Tutu referred to as being "radically brainwashed" (Tutu 1999, 204). By "deterministically blaming apartheid for everything" (Maluleke 2000), the black majority seem to see poverty as a kind of deity that is surmountable only by violence. These, I would suggest, are the root causes of violent crime in South Africa today. The same creation of poverty by apartheid is what, in the first place, led to the destruction of the moral fabric of South African society, which has become an obstacle to reconciliation.

According to D. C. Coetzee: "There is no way in which we can try to whitewash the grave of apartheid and blame others for the awful smell of its decay" (Coetzee 1994, 19). Unfortunately, though apartheid has a political grave, the real progeny of apartheid - poverty - is yet to die. If Mndende is correct that the present South African democracy is based on the minds that suffered from colonialism and racism (1998, 120), the continual blaming of apartheid for every evil (Maluleke, 2000), including the failures of this present government, can be interpreted as refusal on the part of the present government to move forward. It has chosen to remain static and mourn the past that it cannot undo: "It is imperative to steer a course between the

Scylla of environmental determinism and the Charybdis of a blame-the-victims perspective" (West cited by Maluleke, 2000), but this process of mourning by the present government and by the majority of the previously disadvantaged people continues to present poverty as a god that cannot be defeated. Hence, the numbers of its worshippers is increasing by the day, instead of decreasing. To demonstrate why poverty is the notoriously violent criminal wanted by all South Africans for the crime of murder, rape, hijacking, drug-trafficking and armed robbery, I now return to my story in the early pages of this chapter, that is, the story of the two multi-religious families.

First, let us examine the structural and material poverty found in the first family of our story. There are three factors here that illustrate our point: First, is the five-year suspended sentence that was handed down to the killers of the husband and child in separate incidents, times and places. These sentences did not in any way, according to the reactions of the public and even judicial officers, represent justice, and yet nothing was done. Why? Because the first family were structurally and materially poor and, so, could not appeal the judgement. The same was true when the second family also killed their baby. Even though the apartheid policies that created structural differences have, in theory, died, as long as these structures still function, the first family will never be able to get justice. The reason for this is nothing else than poverty - structural and material poverty.

Second, is the forgiveness offered by the first family. It has always been argued that black South Africans have an enormous, amazing capacity to forgive wrong. However, truthful this may be, the fact is, in this context and in many other contexts, the people do so, not because of the enormous capacity to forgive: "but do poor black people have any real choice on the matter"? (Maluleke 1999, 109) They are forced to do so by the structural and material poverty to which they have been condemned. Third, is the fact that the Muslim and the African religionist made monetary compensation a willing option, not just because their religions demand it but, more importantly, because of the extent of their material poverty. We can, therefore, assert

that the actions and answers of the first family were fundamentally motivated by the structural and material poverty to which they have been subjected to live in.

The actions and responses of the second family on the other hand, were primarily motivated by poverty, but not in the same manner as the first family. For the second family, poverty was both structural and moral. Such a response as "it is only a baby who died", and the action of Mr Muller who, despite the employee's plea, went ahead and fired the shot that killed the baby, show that the second family lacked a moral obligation, due to the corruption of moral reasoning. Hence their poverty was a moral poverty. This is not because they were incapable of moral reasoning, but because they had been structurally deprived of the essential of moral reasoning, and as a result of this deprivation, had come to lack moral obligation. Accordingly, their poverty was both structural and moral. They were structurally desensitised to the extent that they became individuals who considered themselves superiors, which caused them to lack the capacity to feel human compassion, moral responsibility and moral collectiveness.

D. C. Coetzee (1994, 20), putting it differently, says: "The crisis in South Africa is one of generations of people having been brought up in a culture of imagined ethnic superiority instead of love and compassion for the disadvantaged". This, therefore, is the cause of moral evil, not ignorance, as Plato has suggested. Ignorance means that you do not have the knowledge. But in our present context, it is not so much the case that the second family did not know, did not have the knowledge, or were incapable of knowing; but, rather, that despite their capacity, capability and even willingness to know, they were structurally desensitised to the acceptance of others. This is what poverty is all about and, therefore, remains the cause of moral evil - violent crime - in South Africa.

The relationship of all these factors to reconciliation is underscored by Desmond Tutu (1999) in the passage below:

In South Africa, the whole process of reconciliation has been placed in very considerable jeopardy by the enormous disparities between the rich, mainly the whites, and the poor, mainly the blacks. The huge gap between the haves and the have-nots, which was largely created and maintained by racism and apartheid, poses the greatest threat to reconciliation and stability in our country (Tutu 1999, 221).

My contention, therefore, is that in either camp described by Tutu, no one camp is absolutely rich or poor. Many materially rich whites, on the one hand, are morally poor in the sense that they lack human compassion, moral responsibilities and feelings through the desensitisation of deprivation, leading to individualism and superiority. On the other hand, many materially poor blacks are rich in their human compassion, moral responsiveness and feelings. Both camps, thus, need healing and cure. The problem, therefore, does not lie in their richness, whether material or moral, but in that which they do not have - and that is their poverty. It is poverty - material or moral - that has been argued to be the cause of moral evil - violent crime - which remains the greatest obstacle to reconciliation. Although reconciliation is clearly the sole solution to violent crime. In the next chapter, I shall therefore elaborate on aspects of poverty as they relate to violent crime.

CHAPTER FIVE

CRIME, CAPITAL PUNISHMENT AND RECONCILIATION IN THE NEW SOUTH AFRICA: AN EVALUATION

In the foregoing chapter, after postulating the teachings of the five different religions - Christianity, Judaism, Islam, Hinduism and African traditional religion - on the death penalty and reconciliation, it was impossible to come to a common ground among the five different religions. This was demonstrated by showing that the lack of common ground is due to the vast differences in interpretation of the moral viewpoint that states: human killing human is morally wrong (Green 1988, 11). Differences in interpretation are a result of an individual religion's practical justification for punishment. Each different religion's practical justification, as explained in the previous chapter, does not fit perfectly into the two major classes of justification of punishment, that is, neither the retributive and utilitarian principle, nor the theory of fairplay. The simple reason that all five religions, and indeed all religions, are forward looking and not backward looking, as the principle of retribution suggests, means that capital punishment cannot be justified in religious and moral terms by the retributive principle. This is because, if the retributive principle argues that capital punishment is only justified in as much as it concerns itself with the crime that is in the past, then it cannot be justified on religious and moral grounds that not only look to the future, but also reserve final punishment in the hereafter.

Islam, for example, which teaches just retribution or retaliation, cannot be said to fit perfectly into the theory of retribution. This is because the principle of retribution, as represented by Immanuel Kant, states that there is no need for punishment to be concerned with the future, but that the sole purpose of punishment is to pay the offender back for the crime committed (Benn 1967, 30). This is clearly backward

looking. However, in Islam, retaliation is in anticipation of the avoidance of the ultimate punishment and the reception of the ultimate reward of God that is in the future. Hence, reconciliation is recommended as a priority option in adjudicating criminal cases in Islam, as elucidated in the previous chapter.

On the other hand, despite the forward-looking approach of the utilitarian principle of justifying punishment, capital punishment cannot be justified from the religious and moral perspectives based on this principle. Notwithstanding that the religions' practical justification of punishment is similar to the principle of utilitarianism in its outlook, the greater good that needs to be promoted and the greater evil that needs to be excluded, as proposed by exponents of the theory of utilitarianism, are different from the outlook of most religions. For the proponents of the utilitarian principle, the greater good and evil pertain to the here and now in society, while for religion, the greater good and evil pertain more to the hereafter of being united with or separated from, God (Green 1988, 15). It was also affirmed that, owing to these differences in interpretation and practical justification of the wrongness of killing in each of these five religions, it would be contrary to the principle of religious relativism in a pluralistic democratic society, such as the new South Africa, which allows for religious freedom, to re-introduce capital punishment as a solution to violent crime or a means of restoring moral values.

It has, however, been proposed that a common ground can be found in the teachings and practices of the five different religions on reconciliation. This, I contended, represents the solution to violent crime and a means of restoring the already decayed moral values of society. But, having established the implications of reconciliation, that is, the complete circle of reconciliation: acknowledgement to confession, to willingness to make reparation, to forgiveness, to reconciliation, to peace, we argued that this is the only path to having a future as a nation. Following the complete circle of reconciliation, it was argued, is the only way, from the religio-cultural, constitutional and social perspectives, to reduce crime and restore the moral values and principles of society. Having come to this conclusion, it was discovered that

there is a fundamental enemy that always hinders the completion of the reconciliation circle and always breaks the circle, thereby destroying moral values and causing violent crime. The arch enemy of reconciliation has been identified as **poverty**. Poverty was described as "the lack of" but also as the evident "presence of a lack of." "Lack of " is used in the biblical sense of Jesus telling the rich aristocrat, "there is still one thing you lack" (Lk 18: 21). This "lack of" is of various kinds, some of which I have discussed as they pertain to capital punishment and reconciliation from the religious perspective. I will now discuss poverty as it relates to crime, capital punishment and reconciliation in general reflecting the perceptions of South Africa's general populace.

In the first part of Chapter Three it was demonstrated, with indisputable evidence, that there is an alarming rate of violent crime in the new South Africa. This includes, among others: armed robbery, murder, hijacking, drug trafficking, rape and general violence. In my opinion, the evidence, provided statistically and otherwise, confirms the destructive nature of apartheid policies on South African society, which has resulted in the destruction of the moral fabric of the same. As Nomoyi already indicated, the apartheid policies created the culture of violence that is now deeply rooted in communities and has corrupted generations of youth. To the extent that violence and crime are the most profitable business in South Africa (2000, 67). *Corruptio optimi pessima est* (corruption of the best is the worst of all corruptions). The best, here, are the youth, supposedly the pride and future of any society. But, there is such violent crime in the new South Africa that the youth has become inimical to the future of South Africa. A corrupted person is, therefore, made poor in relation to that which has become lacking.

Mahatma Gandhi once told the colonial masters in India during the struggle for freedom: "The worst violence is poverty". According to Gandhi's logic, then, poverty is violence; violence is an evil; evil is a crime; and, therefore, poverty is a crime.

From this it is obvious why there is an excessive amount of violence in the new democratic South Africa, because a tougher punishment or police force are not the solutions to poverty, hunger, economic and social inequalities (McCarthy, 1998). Poverty is the violent crime that is tearing South Africa and its citizens apart. Punishing any criminal by death will not in any way deter or reduce poverty. It is poverty that should be for all citizens: "the most wanted notorious violent criminal"; because: "poverty and unemployment are naturally synonymous with crime and violence" (ibid). The apprehension of poverty, its successful prosecution, conviction, sentencing and execution will bring respite to all South Africans and their visitors. It is only then that crime can be reduced. In addition, it offers the only possibility for having the 360 degrees of the reconciliation circle completed, which would lead to true reconciliation, peace and a guaranteed brighter future. As against the: "type of reconciliation that allows the sin of injustice and oppression [as manifested in poverty] to continue, which is a false peace and counterfeit reconciliation" (Maluleke 1999, 102).

I have contended in Chapter Three that the problem of violent crime in South Africa is multi-faceted and thus requires a multi-dimensional solution. The question, thus, arises as to whether the death penalty has a multi-dimensional application to crime in general and to violent crime in particular. The answer as we know, is that the death penalty does not solve the problem of crime but only incapacitates its victim. This rests on a proposition that cannot be denied (Nathanson 1987,29) - the fact that its victim will not be able to commit the same crime again. On the other hand, the multi-faceted aim and purpose of reconciliation is well proven from the above argument. The question is: What has the apprehension, prosecution, conviction, sentencing and execution of poverty to do with the multi-dimensional solution to violent crime in the new South Africa? The reality, as has been shown above, is that poverty is multifarious and unless all the various kinds of poverty are destroyed, reconciliation, as Albie Sachs alludes to in the passage below, cannot be fully realised:

It is the course of an historical process that we deal with the process of cleaning and cleansing, and opening our society and ourselves and our memories and expectations. Against this background we deal with the process of destroying institutions and creating new ones, of establishing a regime of constitutionality, of repairing the terrible material injuries inflicted upon people in terms of how they live and are educated. In this context we deal with the great humiliation most South Africans have been subjected to by colonialism, racism and domination. We do this together, simultaneously, in one major process [reconciliation] (cited in Hay 1998, 113).

According to Hay: "Experience has shown that inappropriate attempts at reconciliation only lead to deepening of the crisis over the passage of time" (1998, 115). If reconciliation is not realised, violent crime, I would argue, will go on unabated. The idea that the re-introduction of capital punishment will deter and subsequently reduce violent crime will only be counter productive. As it is said: "a hungry man (in the sense of being poor) is a violent man." Putting it more logically, C. C. Ibe (1992, 17), quoting Emeka Odumegwu Ojukwu, says: "A hungry man is an angry man, an angry man is an unreasonable man, an unreasonable man is a violent man". Therefore, the most dangerous thing and the greatest obstacle to peace and stability in the new South Africa is poverty, for poverty begets violent crime. Kraak underscores the link between crime and poverty when he says: "But crime is also intrinsically linked to poverty, unemployment, socio-economic inequalities and gender inequalities" (cited in Hamber 1999, 6).

How does this affect the increasing rate of violent crime in the new South Africa? Poverty, as the root cause of violent crime, manifests its multi-dimensional effects in the different social consequences: in the form of violent crime and social dysfunctions that are there for all to see (Pothier 1999, 99). Taking armed robbery as our first example, this crime may have its cause in any one or combinations of social, structural, material and moral types of poverty, which develop as a result of the lack of moral action-guiding principles. An armed robber who robs a bank may do so because the socio-economic situation forced it upon him or her. In this case, the armed robber can be said to be materially and socially poor in the sense that he or she lacks the basic human essentials. If a child of a cabinet minister, an archbishop or a

successful business family takes to armed robbery that is altogether different, because by all standards, the child has enough social and material security. But, nevertheless, the child lacks certain moral action-guiding principles. This may be due to spiritual or religious deprivation and family disintegration, which in the end, has resulted in the corruption of moral values. Hence, this child can be said to be suffering from religious, spiritual and moral poverty.

As already mentioned, poverty is diversified - material, social, spiritual, religious, family, racial and moral, gender-related poverty, and poverty of deprivation and corruption of moral values. These are the different situations of poverty which cause violent crime and require a different study altogether. But, it suffices for this study to concern itself with the material, social poverty and corruption of moral values and deprivation, which are endemic in South African society. The desensitisation and sensitisation of these poverty situations over the years have so suffused South African society and have caused a chasm that has resulted in the apotheosis of poverty and the glorification of its fruit - violent crime, most especially by the young people (Nomoyi 2000, 67 and 68). It is true that *corruptio optimi pessima est*. The youths of yesterday, who represented the best in the sense of being the hope of the future, have been corrupted and, thereby, have lost their moral bearing. But, the youths of today who are the leaders of tomorrow are not fortunate like their predecessors, who knew about morality. Not only do they have no knowledge of morality, but they also actually lack morals because they are a generation of people who grew up with violence as part of their everyday existence (ibid, 69).

The above situation proves Martin Luther King Jnr.'s prediction that: "If we sow the seeds of violence in our struggle, unborn generations will reap the whirlwind of social disintegration". Hence, their corruption is the worst of all corruptions. It is a corruption that presents violence and crime as the only alternative to the youth of this present generation. Concurring, Beyers Naudé says: "The culture of impunity which developed, taught young people - such as those in Communist China during the Cultural Revolution - that violence and crime could bring material as well as

immaterial profits"(1998, 1-8). Gang rapists have referred to violence as the "B alternative."¹ The "A alternative" refers to what has been destroyed by poverty thereby making the "B alternative" the only available alternative, accordingly leading to an increase in violent crime.

The multi-faceted nature of violent crime, it has been argued, needs a multi-dimensional approach: An approach that seeks a solution to the root causes of violent crime rather than seeking to punish criminals, either in the retributive sense of paying the criminals back for their crimes or according to the utilitarian principle of deterring the criminals or would-be criminals. In both cases, the death penalty does not fulfil the purpose of being a solution to the problem of violent crime. In this regard, the retributive principle of the punishment fitting the crime or of people fearing death the most, cannot be applied to the South African situation because of the multi-faceted nature of violent crime. It has been argued that punishing a criminal with death for committing armed robbery, rape and murder cannot equal that crime, with the great pain and suffering caused by the particular crime for which the criminal is being punished.

As emphasized by R. H. May, there is difference between "justice-as-punishment" and "justice-as-restitution". He contends that justice is: "the logical derivation of the truth: Judgment of the guilty is a limited definition of justice which emphasizes retribution". But, he continues: "a broader and more adequate definition of justice implies a structure of social, political, economic and personal relationships based upon equality, reciprocity and respect" (cited in Hay 1998, 118). Following this understanding of justice in the broader definition of May, Hay argued that justice is wider than retribution of the guilty and needs to embrace also the notions of restorative justice and distributive justice (Hay 1998, 119). I would argue further that in justice, as understood by May and Hay, that is, the restorative and distributive

¹ See "rape" in Chapter Three

sense, as embodied in reconciliation, lies the multi-dimensional solution to violent crime in a new South Africa.

Likewise, the utilitarian principle, even though it is forward-looking in its approach, lacks moral infallibility as it, like the retributive principle, seeks to punish and not to find a solution to the root causes of crime. The well-being of the society that this principle seeks to protect can only be well protected by finding a solution to the root causes of violent crime in that society and not solely by punishing the criminals. The latter does not fulfil the purposes of protection but causes resentment and hatred. It is for these reasons, it has been argued, that the fight against violent crime must be multi-dimensional in its approach (found only in reconciliation) to finding a solution to the root causes rather than punishing the effects. Violent crime is an effect of a root cause, which is poverty. The utilitarian principle's approach of punishment, therefore, lacks understanding of the causes of violent crime as rooted in poverty. This lack of understanding in itself is a poverty.

It is an indubitable fact that, as it has been shown, the socio-economic situation of South Africa continues to impoverish many of its citizens, especially those who were previously disadvantaged in the erstwhile dispensation and are now poverty-stricken. Hence the socio-economic situation is considered to be one of the major causes of violent crime in South Africa. The mere fact that the socio-economic policy lacks the "magic" to transform the lives of those poverty-stricken citizens, who are mostly blacks, and the failure to provide a solution to the problem of poverty, unemployment and so on (Pothier 1999, 99), means that the policy itself is poor. This poverty and lack of socio-economic status among the majority, which has not changed for the better, is what, I have contended, manifests itself in violent crime.

The question is, how possible is it to fight violent crime with the death penalty when the socio-economic conditions of those who have engaged themselves in "warfare" (the alleged claim of former MK combatants involvement in armed robberies as reported in *Sunday Argus* March, 1998, is a good example), is still alive and active?

No-one can, therefore, be morally justified in calling for the re-introduction of capital punishment. The argument is not whether the death penalty can incapacitate its victims, but whether the "wrong criminals" will be executed and the actual criminal - the socio-economic conditions rooted in poverty - will be let loose to freely commit crime and continuously cause havoc. As it has been argued, people no longer fear death because they lack the moral, action-guiding principle regarding the sanctity of life, which was long ago executed in the "house" of poverty by its first fruit - violence. Taking other people's lives or dying means nothing to many South Africans who have been condemned to abject poverty by their socio-economic conditions.

In addition, there is a saying that: "In the absence of justice, what is sovereignty but organised brigandage". This is how the modern justice system might be viewed and is being viewed by many South Africans, that is, with suspicion and scepticism (Hamber 1999,7). According to a reality check in 1999: "forty-one percent of south Africans would either 'never' or 'hardly ever' trust the police to investigate a crime or catch criminals" (ibid). As Nomoyi (2000,69) pointed out, blacks in South Africa still believe that the legal system is corrupt and consider prisoners as victims of the system. For many South Africans and the poor throughout the world, the criminal justice system and its departments, without exception, represent not justice, but injustice. It is for this reason that I considered the entire system one of the major causes of violent crime in South Africa.

Nemo dat quod non-habet - (No one gives what he or she hasn't got). This saying is true of the criminal justice system in relation to justice and the fight against violent crime. The re-introduction of capital punishment, it is argued, will not help the criminal justice system, and especially the courts in their poverty. The fact is: "this has happened within a context of high crime rate and where the criminal justice policies have become increasingly politicised" (Hamber 1999, 9). Hence, it is in the opinion of many commentators, as Judge Dennis M. Davis could be interpreted, that the re-introduction of the death penalty will only lead to deepening the poverty of the

criminal justice system and, in particular, that of the court's relation to justice. This, in turn, will increase the violent crime situation. Davis says:

To reintroduce it [the death penalty] now in the context of pathetic policing and poor prosecution will have no positive effect. It will, however, play into the hands of those people who see little importance in a constitutional state which only implements policies that cannot be justified on rational grounds (in Cornell 2000,6).

The argument is that it is morally and legally wrong to give the power of death to a justice system, which has not changed from its legacy of "savagery and wanton killing". This, according to Justice Didcott: "must stop before it makes a mockery of the civilised, human and compassionate society to which the nation aspires and has constitutionally pledged itself" (in Cornell 2000, 17). The South African justice system, to a great extent, lacks justice. Justice, as May and Hay have argued above, is not synonymous with punishment, which unfortunately is the understanding of the present-day justice system.

As long as justice is concerned with only legality or what Michael Humphrey calls: "the rigours of legal procedure and evidence", that only: "result in limited and largely symbolic convictions" (Humphrey 1997, 10), and continues to exclude morality in criminal and civil offences, the court, police, prison and all other law-enforcement agencies will remain in poverty. Morality is the foundation on which laws are obeyed. Evans puts it thus: "To disassociate law from morals, and hence to maintain that punishment is morally irrelevant, is ultimately to undermine the abiding sanction of the law itself"(1967, 1026). As argued by Humphrey: "The fact that justice has been pursued and that individuals can be recognised as responsible become symbolic and surrogate figures of guilt [and not of morality] for the suffering of the many" (1997, 10). The law has no authority without morality, which is why the current justice system lacks justice. Justice should be universal impartiality, treating everyone equally. In this sense, real justice, which is the African religio-cultural understanding, means the repair of the damage that has resulted from the commission of a crime. Justice in this sense can, therefore, be interpreted to mean reconciliation, because

reconciliation signifies repairing the damage that has been done in order to be friends again.

In South Africa today, Hay argued: "Is the scandal of perpetrators who receive amnesty, but are in no way obligated to perform restorative or reparative justice. They walk away free of any further obligation to victims" (1998, 119). But, I would argue that the real scandal is the willingness to revictimise victims of apartheid by calling for the reintroduction of the death penalty. It is ironical to see the perpetrators of murders, inequalities, deprivation, arsons, rapes and poverty, which are largely responsible for the present violent crime situation, walk free, while calling for the victims of their actions to be hanged. Hamber underscores this point when he says: "Those politically victimised in the past remain at the highest risk of victimisation in the current context because of their structural circumstances including their gender, poverty, race and general social marginalisation" (1999, 11). He further argues that: "If they are re-victimised, even if this re-victimisation is not political in nature and is purely criminal, their chances of reconciling themselves with the violence of the past remain slim" (ibid, 12), and will consequently jeopardise the possibility of reconciliation and worsen the crime situation.

Unfortunately, the above notion of justice as reconciliation, which is the understanding of the traditional African society, is not to be found in the South African justice system and particularly not in courts of law. Recommending this kind of justice for the new South Africa, Justice Albie Sachs argued: "Yet ... where judicial procedures were followed, capital punishment was in general not applied as punishment for murder"; he then asserts: "The 'rational and humane' aspect of Africa tradition in which the death penalty was not generally used is the tradition to be followed in a democratic South Africa" (in Cornell 2000, 27 and 28).

Our judges have been referred to as "jailers" and "murderers", while the lawyers are called liars and "murderers", particularly in interracial cases, instead of being called judges, defenders of justice, reconcilers or mediators. These characteristics are what

inform black's understanding of justice and the role of judges and lawyers. As it has been argued, many judges' and lawyers' views on interracial cases involving black and white have not changed, hence professor J. D. Van der Vyver's observation in 1987 (cited in Chidester 1992, 40), mentioned in Chapter Three, is true of the majority of our mostly white judges and lawyers today. Racial elements in white-against-black cases in violent crime are seen as extenuating circumstances and in black-against-white cases are seen as aggravating circumstances. Putting it more crudely, to be white means to have "justice" and to be black is to have punishment. In situations of this kind in the new South Africa, it is morally unjustifiable to allow the re-introduction of the death penalty. It is simply incompatible with justice and consequently with reconciliation.

To extend the comparative evaluation of interracial cases that will explicitly elucidate the incompatibility of the death penalty with reconciliation and justice, and therefore with the reduction of violent crime, I will now return to the two cases, that of the rape and murder of Brenda Fairhead and her daughter Kia, and baby Angelina Zwane mentioned in Chapter Three. The hijack murder case of the Fairheads and the wilful murder of baby Angelina Zwane are good examples of how most judges and lawyers in South Africa view interracial cases. Zolani and Bongani, two of the hijackers, were both given sentences of life imprisonment, and the third a long-term imprisonment, by a white judge. But Nicholas Steyn, who wilfully murdered a baby, Angelina Zwane, was given five years suspended sentence by a white judge and lawyer. The mockery of justice is so glaring that one need not ask if the South African courts lack justice or if they are poor in relation to dispensing justice. The poverty of the South African justice system in relation to being the vehicle of justice and reconciliation is undeniable. We are told that the trio of hijackers who murdered Mrs. Fairhead and her daughter Kia were living in abject poverty along with all its ramifications, and were certainly under the influence of drugs. They did not intend to kill Mrs. Fairhead and her daughter, according to their testimony, but to steal their car and belongings for money in order to sustain themselves. They stabbed Mrs. Fairhead and the daughter in the process of struggling to get her to give them the key to her vehicle.

By the standard of the present-day justice system, notwithstanding that they were armed robbers, there is enough room for a reasonable doubt that the action of the trio be interpreted as manslaughter.

In the case of Nicholas Steyn and baby Angelina Zwane, it is alleged, according to media reports, that there is no doubt whatsoever that Angelina's mother had told Mr. Nicholas Steyn that the children he was about to shoot at were in fact her children and not intruders. As we see, Mr Steyn was not under the influence of drugs nor are the children in possession of anything that could either be of material benefit or harmful to him, nor was he materially poor. Yet he knowingly shot at the children, killing the baby and wounding her sister. In the first instance, he was not arrested, nor was there bail application. He was released on his own recognisance and he was the employer of Angelina's mother. One does not have to be a trained judge or lawyer in order to determine that this is a case of wilful murder.

Wilful murder in African traditional religion and culture as well as in almost all religions and cultures, is more reprehensible than inadvertent murder, as we see in the case of Okonkwo and affirmed by Ejizu above. But, as we have noted with these two cases, the reverse proved to be the case according to the South African justice system. What seems to be important is the colour of your skin. If you are black, you are found guilty even before you have been charged in the court of law; the judge's duty, it seems, then, is to pronounce your sentence. On the other hand, if you are white you are to remain innocent until proven guilty in the court of law. In most cases, as a white offender, there are enough technical grounds to prove your innocence, although you are morally guilty beyond any reasonable doubt, as the baby Angelina's case and many others have shown.

Owing to this reality in our courts, rooted in the poverty of the justice system, it would not only be morally repugnant but genocidal to re-introduce capital punishment in the new democratic South Africa, as indeed it would be in any place where there is no respect for moral and democratic values. To re-introduce the death

penalty is to give such judges, lawyers, law-enforcement agents and, for that matter, the South African courts, license to remain impoverished. Further, as Judge Denis M. Davis referred to above, this plays into the hands of those people who see little importance in a constitutional state which only implements policies that cannot be justified on rational grounds (in Cornell 2000, 6). Hence it is morally, constitutionally and religiously wrong and impossible to entrust a justice system, such as South Africa's, with the decision of who is to live or die. For the courts to dispense justice, which is not racially biased in interracial cases, would be considered an ultimate surprise, an inconceivable miracle.

Justice, as we have already pointed out, means reconciliation, in which lies the solution to the root cause of a problem. In the new South Africa today, we are in a moral quagmire reaping the fruits of violence sowed during the struggle for democracy. To undo what has been done, there is only one route: that of reconciliation. In reconciliation there is justice and in justice there is peace and in peace there is hope for a better future. As Brandon Hamber already pointed out (see Chapter Three), reconciliation is assumed to provide an alternative to violence, and it is the contention of this thesis that reconciliation is the only alternative to violence and crime. Concurring with this contention, Hay says: "Social reconciliation is a fragile and very slow process. The future of the nation depends on our commitment to the process of reconciliation. It is not one option among many. It is our only option as Christians" (Hay 1998, 165) and as a nation. Pagura (1996, 58) underscores this when he argued that:

This moment in history provides us with a space of self-examination, for self criticism with respect to our actions during those dismal and atrocious times which we lived through. Without this action and gesture of honesty [act of reconciliation] there is no exit from the spiral of violence in which we are trapped.

Reconciliation is, thus, the only solution to violent crime, because the essence of having, for example, a justice system, is to be able to repair the damage done to the individual, the community and of course to God for the commission of any particular

crime. Thus, its sole purpose is the promotion of harmonious living among people of different cultural and religious backgrounds, that is multiculturalism.²

The death penalty is a "twin brother" of violent crime while reconciliation is the worst enemy of both because it is the worst enemy of poverty their "father". Although it cannot be denied, as Nordstrom has argued, that reconciliation takes violence out of people (cited in Humphrey 1997, 9), I would argue that the calls for the reintroduction of the death penalty, and indeed any punishing by death, is to implant violence in people. Therefore, we now know the reasons for the incompatibility of the death penalty with reconciliation in the new democratic, transitional South Africa as well as other violent areas of the world.

The use of the death penalty as a punishment only encourages revenge. When the state kills, no matter what the reason, the seed of hatred and revenge is sown. The seed grows to bear the fruit of violence because the death penalty is merely politics of "crying injustice". Humphrey argued that: "apartheid deployed a micropolitics of violence, while national reconciliation deploys a micropolitics of community making through social telling" (1997, 8). But I would argue that, while the micropolitics of apartheid was violence reinforced by killing (the death penalty), through which its sovereign power was exercised (ibid), it resulted in the destruction of the social and moral fabric of South African society. Reconciliation in the new South Africa deploys a micropolitics of community making (ibid) reinforced by forgiveness, restoration of identity and, thus, the social and moral fabric of South African society.

For instance, in the case of the political youth uprising of 1976, it was not just the brutality of the apartheid government that kindled the spirit of the youth to resort to violent means, but a more important contributory factor, *inter alia*, was the killing of a child - Hector Peterson. Foucault (1977) argued that: "the tortured body was given

² For in-depth analysis of violence, multicultural citizenship and national reconciliation, read conference papers of 15-17 December 1997 on: *Multicultural Citizenship in the 'new' South Africa*, organised by Idasa, Cape Town.

meaning in the triadic of victim-audience-sovereign. It was in the public witnessing of the torture (capital punishment, dismembering, etc) that the truth of the sovereign's power was exercised" (cited in Humphrey 1997, 8). The tortured body of Hector Peterson does not only become "an instrument of the state power" (ibid), but also it became for the audience a propelling force that was the turning point in the struggle against apartheid. It was this killing (violence of the state): "ascribing meaning in the tortured body" of Peterson and becoming a "symbolic exchange" (ibid), that sowed the seed of revenge and hatred in the youth of the time and made them turn to violent means; and at the same time, it removed their fear of death. Death became a friend to be loved, rather than an enemy to be feared. This unusual friendship between the youth and death, which poverty and violence created, is unfortunately continuing in the new South Africa today.

From the above argument, I would contend that the deterrent power of the death penalty in solving crime has been misconceived and misrepresented in the death penalty debate, especially on the part of the retentionists. The misrepresentation has been demonstrated in this thesis, by showing that violent crime is an effect of a cause. Violent crime is not a cause in itself and, therefore, it is a misconception to argue that the death penalty is a solution to violent crime, for it is impossible to solve the problem of an effect without solving the problem of the cause. In the principle of cause and effect, it is the cause that has the solution to its effect and not the contrary. I would argue that the justification for capital punishment is therefore misplaced.

To illustrate the above briefly, the cause of smoke as we all know, is fire. But the smoke blurs the way to the fire. However, to control the smoke, the fire must first be put out, otherwise any attempt made to reduce or control the smoke always proves abortive. The reason for this is because the fire, as the cause, has the key to the solution of controlling the effect, which in this case is the smoke. The same is true of poverty and violent crime. Thus, it has been a mistake of politicians, philosophers and scholars to argue about the deterrent effect of the death penalty.

Their argument is about controlling the effect - violent crime - rather than focusing on the cause - poverty.

My argument is that if the cause of violent crime, which has been identified here as poverty, is eliminated, violent crime will be drastically reduced. The elimination of poverty is, as it were, the solution to violent crime in the new South Africa. This offers reconciliation and the morally correct way of solving a problem. If the root cause of a problem is addressed, solving the problem itself will only be a formality. If poverty is eliminated violent crime will be reduced; and if violent crime is reduced, it is morally obvious that there will be no need for what some have called the harsher punishment, the death penalty. If it is agreed that by eliminating poverty violent crime will be reduced, it follows then that the call for the re-introduction of capital punishment is the wrong treatment for the correctly diagnosed disease.

To use wrong drugs for a correctly diagnosed disease is morally unjustifiable and indefensible. This is why the death penalty cannot be morally justified or defended in the new South Africa. It is simply the wrong treatment for the correctly diagnosed disease. The correct treatment is to remove the cause and when the cause is removed, the disease will eventually disappear. Hence, to cure the new South Africa of its disease of violent crime is to remove the root cause, which in this case has been diagnosed as poverty, defined as "the lack of". Just as the fire cannot go out on its own unless steps are taken to put it out, and unless the fire is put out, the smoke will not disappear, so too it is necessary that steps should be taken to put out the fire of poverty in order to make the smoke of violent crime disappear. The steps that need to be taken are embedded in the process of reconciliation.

The death penalty is incompatible with reconciliation and, therefore, it is morally unjustifiable to re-introduce it into the new democratic South Africa, as the constitutional judges pointed out in their judgement declaring the death penalty unconstitutional.³ The death penalty and reconciliation are not mutually

³ See the judgement of the Constitutional Court on the unconstitutionality of the death penalty.

complementary, as evident in the teachings of the five different religions. There is no alternative to reconciliation for Judaism, Christianity and especially African traditional religion (to which the majority of the previously disadvantaged group in South Africa belong), as argued by Mndende, who contends that why Christians are falsely portrayed as the majority religion in South Africa is because of the evils of apartheid and European scholars, who denied African religion its proper place. This she further argues led to: "many Africans to pretend that they were Christians during the day and go underground as African religionist" (Mndende 1998,116).

Admitting that some Christian churches, as well as other religions, support the death penalty in some extreme cases of murder, it is not the teaching of the five religions considered in this thesis that capital punishment can exist side by side with reconciliation. It is never an option in African traditional religion to contemplate capital punishment as a solution to violent crime. Justice Tholakele Mdala pointed to this fact in the judgement that the death penalty is unconstitutional. It is in conflict with *ubuntu* because it rejects the possibility of rehabilitation and reform, condemning offenders as "no good" once and for all; this is the opposite of reconciliation and the spirit of a democratic society, where all citizens share equal rights (in Cornell 2000, 21).

Although capital punishment is practised in some Islamic states, it is not compatible with reconciliation as taught by the Qur'an. It is the teaching of the Qur'an that if a murder victim's family decides to reconcile with the offender, it must be adhered to with fairness (see Qur'an 2: 178b). The Qur'an also explicitly affirms that reconciliation is the solution to crime because God's reward is for those who walk the way of reconciliation (Sura 42: 40). It is in this sense that Justice Yvonne Mokgoro's judgement on the abolition of the death penalty is to be understood, that is, the death penalty and reconciliation cannot co-exist. The South African human spirit, as a nation, has been traumatised in the past by the death penalty, which did not allow for reconciliation. But, now that we operate under a constitution that emphasises respect for human dignity, we must move away from (capital punishment) confrontation to

conciliation (in Cornell 2000, 23), because both can never co-exist. Religious support for the incompatibility of the death penalty and reconciliation also has foundation in the theological virtues of faith, hope and love. The teaching of God's ultimate punishment and reward is based on these theological virtues. To justify capital punishment is to impugn the very teaching that gives meaning to religion.

In the political context, however, it can be seen that politicians perhaps do not take responsibility for their moral evils and it is, therefore, not surprising that the present-day justice system lacks justice. It seems clear that the modern justice system is purposely designed by the politicians to exclude, among other things, morality and restorative justice, where victims and communities are part of the process of justice. This omission, it can be argued, is part of a calculated attempt by politicians to escape moral responsibility and justice for their lies and atrocities. I would argue that the death penalty could be viewed in the same way. As Stephen Nathanson rightly pointed out, political leaders who advocate the death penalty do so as part of a calculated attempt to gain or maintain power (Nathanson 1987, ix). This might be referred to as a mere political "crying injustice."

The contention is that by constantly trumpeting the evil effects of violent crime on the economy and the social fabric of society and by demonising violent crime, political leaders are blindfolding the public eye so that people are unable to think about the principal cause of violent crime. Expressing this point differently, Hamber asserts:

Political rhetoric such as "Hang Murders and Rapists" (New National Party slogan) and the Democratic Party's haunting election radio adverts that list endless acontextual statistics about individual chances of being victimised ride on the wave of fear" and such "political rhetoric feeds into simplistic understanding of the causes of violence and appropriate solutions" (Hamber, 1999, 10).

This kind of political rhetoric is what blinds many South Africans to naively believe that reintroducing the death penalty will seriously curb violent crime (ibid). This, I would argue, is a strategy by politicians to blindfold the people, in case the public see

and hold the politicians morally responsible for the actual evil - poverty - which the political leaders perpetrate.

Whatever forms of poverty are experienced in society, they are caused by and are the creations of the policies, lies and corruption of political as well as military leaders. Just as the justice system is designed to exonerate the leaders, the rich, government functionaries and society from moral responsibility, so too is the death penalty. By killing any criminal, society and government do not actually condemn the violent crime of the criminal, but their condemnation is rather a calculated attempt to kill and bury the truth about their moral failure. As Humphrey argued, while the acts of violence are means by which the state maintains its power: "they are always powerfully rhetorical in addressing an audience and inscribing meaning in the 'tortured' body" (1997, 8).

I would argue that addressing an audience through acts of violence, as in killing criminals, performs the same role of silencing the same audience. I would further argue that the call by politicians for the reintroduction of the death penalty in the new South Africa, are intended to fulfil the same role of silencing the audience. Because by killing a criminal, the truth of why the person has turned to a life of crime will forever remain silent. By so doing, the victim of a crime and the general public will never know the truth about the cause of the effect that they now suffer. It is then correct to assert that the death penalty is all about deception and not a genuine concern for the suffering of the masses, as evident in the South African situation.

Before the 1999 general election there was a desperate call from many politicians for the re-introduction of capital punishment as the best solution for violent crime, as Hamber pointed out above. But, that call immediately diminished after the election while, on the other hand, we are yet to see the demise of violent crime. As Hugo Adam Bedau (1987, 469) says: "the death penalty is a symbol of unlimited impersonal power over the individual".

As I have contended above, it is only in reconciliation that the truth about the suffering and pain caused by violent crime to the victim and community will be known and a solution found. Schreiter speaks of "narrative of the lie"⁴, which according to Hay, quoting from the work by J. Monbourquette on common memory:

... has to be disposed in order to establish a common memory of the past, which will enable healing, and reconciliation. This means overcoming the strategies, which try to "forget" what really happened by destroying evidence of the past or by trying to deflect social attention away from the truth of the past, or which, try to establish an "identical" memory through manipulation of the truth of the past. (Hay 1998, 116)

I would, therefore, argue that the politicians' call for the death penalty to be reintroduced in the new South Africa, and, indeed, the practice of the death penalty, perform an identical role as the strategies described in the above passage.

With reconciliation, the authorities are compelled to concede their moral failure and take moral responsibility for the cause of violent crime. If the authorities are compelled to accept moral responsibility as an agent of poverty and, thus, the cause of violent crime, then reconciliation functions as a restrainer to the authority's unlimited impersonal power over the individual. The fact is, as Ignatieff argued, that reconciliation is based on a shared truth, which is moral and interpretive, premised on the understanding that shared truth of the past is possible (cited in Humphrey 1997, 10) This, according to Ignatieff: "must be authored by those who have suffered" (ibid). Notwithstanding this fundamental truth, such a moral and interpretive definition of shared truth, I would contend, is not possible if the death penalty is reintroduced in the new South Africa, because the same victims who are to author it, are revictimised by the use of the death penalty. Therefore, being victims of the silencing instrument of the state (the death penalty), the victims are debilitated, unable to share their truth of the past.

⁴ For detailed treatment on "narrative of the lie", read R. Schreiter, *Reconciliation: Mission and Ministry in a Changing Social Order* (1992).

Though it was argued in Chapter Four that poverty is a hindrance to the full completion of the reconciliation circle of 360 degrees, reconciliation nevertheless remains the solution to poverty and consequently to violent crime in the new South Africa. Reconciliation, being a dialogical process where the listeners make possible the narrative, allows both parties to come away with knowledge which changes their perception of the horizons of events (Humphrey 1997, 9). It has also been shown in the preceding chapter that true reconciliation, in the socio-religious and politico-cultural contexts alone, has the power to end the vicious circle of poverty. This is because reconciliation brings the offender and the community to accept their moral responsibilities and help to find solutions to the causes of poverty and, in the process, to eliminate violent crime. Violent crime is a symptom of a gigantic moral problem, it is the effect of a cause, which is man's inhumanity to man. Exploitation, uneven distributions of wealth and resources, discrimination on whatever grounds, as it has been argued, are just a few of the causes of poverty and, by extension, violent crime.

I have also shown that the death penalty is incapable of addressing these causes of poverty, and consequently, it is incapable of solving the problem of violent crime in the new South Africa, as it is anywhere where there is a genuine concern to reduce violent crime and alleviate the suffering of the majority.

Hence, the call for the re-introduction of capital punishment is a deception rather than a genuine concern for the plight of the great majority of South Africa's citizens. In accordance with the above argument, there is no doubt that reconciliation is the way forward and the solution to the causes of violent crime in the new South Africa. It will be hypocritical, therefore, to advocate the re-introduction of the death penalty and in the same breath want reconciliation. The death penalty and reconciliation are not mutually and morally compatible.

CHAPTER SIX

CONCLUSION

In this thesis I have not advanced legal reasons for why the death penalty is or is not justified, neither have I offered a philosophical justification for or against it. The conventional arguments of the retributive or utilitarian schools of thought to show the moral unjustifiability and incompatibility of the death penalty with reconciliation have also not been used. But, by arguing that the cause of violent crime in South Africa, as indeed elsewhere where there is daily increase in violent crime, is poverty, defined as the "lack of", I was able to show that the death penalty is not only incapable of being a deterrent to violent crime, but also that it is the wrong treatment for a correctly diagnosed disease. This I demonstrated with the help of five different religious ethical systems - Judaism, Christianity, Islam, Hinduism and African traditional religion, whose teachings on capital punishment do not only differ considerably, but are, at times, in opposition to one another. For these reasons, it is argued that capital punishment cannot be a solution to the problem of violent crime in a multi religio-cultural South Africa. Because the death penalty has not proved to be a solution to violent crime, I have contended that it is incompatible with reconciliation, which has been proven in this thesis, by the teachings of the same five religions, to be the only alternative solution to violent crime in a new South Africa.

Firstly, having introduced the thesis in Chapter One, Chapter Two focused on the typology of punishment. In it, I presented the different theoretical views, which include: the retributive, utilitarian and rehabilitative schools. The justifications of punishment of five different religions were also examined. In my analysis I came to the conclusion that the retributive principle, which only justifies punishment when it aims to pay back the offender for the offence committed, is morally indefensible. This is because punishment cannot undo the wrongdoing in the same proportion, as the

loss, pain and suffering caused by what has been wrongly done far out weighs the former.

On the other hand, the utilitarian theory, though forward-looking, has no high moral grounds, as I later argued in Chapter Five. It lacks moral infallibility as it seeks to punish and not to find a solution to the cause of a problem. The rehabilitative theory that teaches the elimination of the cause of criminality in the offender did, however, receive some degree of support from this thesis. In this regard, it was later argued in my subsequent chapters that the solution to violent crime is in the root causes of it, which I identified as poverty, in the sense of "lack of". However, I did not agree with the proponents of rehabilitative theory in saying the cause of criminality in the criminal is sickness.

In my examination of the five religions' justification of punishment it was clear that Judaism, Christianity, African traditional religion and to some greater extent, Hinduism, with the exception of Islam, bear resemblance to the utilitarian principle of justifying punishment. But, as it was later argued in Chapter Four, these four religions are more reformatory, rehabilitative and restorative in their approach to punishment, rather than being merely concerned with deterrence and utility. The Islamic justification, though, seems to profess purely the retributive principle in practice, but in its tenets, it was discovered that Islam teaches a restorative approach, in the form of indemnity payment, and valued it above the retributive approach.

Secondly, the first part of Chapter Three, on the basis of media reports, examples and statistics, discussed the alarming situation of violent crime in the new South Africa. Looking at armed robbery, murder, hijacking, drug trafficking, rape and violence in general, it was indicated that with the daily increase in violent crime in the new South Africa, the calls from victims of crime and some political leaders for the reintroduction of the death penalty are understandable. This understanding notwithstanding, part two of Chapter Three argued that the causes of violent crime are multi-faceted, which require a multi-dimensional solution. Identifying the socio-

economic situation, the old and the new justice systems, law-enforcement agents (the South African Police Service), the judiciary and the prison as the major causes of violent crime in South Africa, the contention was made that the lack of improvement in peoples' lives and the lack of commitment from a justice system that is rooted in the polices of the past, has resulted in the moral malaise in the new South Africa. It was further argued that the restoration of moral values, which have been destroyed, is the way forward towards solving violent crime in the new, democratic South Africa.

Religious leaders as well as political leaders and even the masses, believe the restoration of moral values resides more in the domain of religion. Chapter Four was then dedicated to the examination of the teaching of five different religions - Judaism, Christianity, Islam, Hinduism and African traditional religion - on capital punishment, in order to find a common ground, in a religiously and culturally pluralistic South African society, to stand on, so that the moral values that have been destroyed might be restored. A common ground could not be established in their teachings on capital punishment, as it was demonstrated that the practical justification of punishment in the five different religions differed considerably. It was further argued that to re-introduce the death penalty, because one religion justified it, was to morally violate the constitutional rights of other citizens that belong to other religions. In addition, it was contended that such a move would destroy the principle of pluralism and would be an assault on the secular nature of the new democratic South Africa.

The differences and disagreement, and consequently the inability to find a common ground among the five different religious teaching on capital punishment, made the calls for the re-introduction of the death penalty morally, socially, religiously and even constitutionally unjustifiable. Nevertheless, it was contended that reconciliation is the only possible common ground, among all five different religions, through which moral values could be restored to South African society. The ethics of the five different religions considered in this thesis are in agreement that reconciliation is always the best and only way that leads to peace, not just in the here-and-now but

also in terms of some kind of ultimate or divine reward in the hereafter. Reconciliation was thus concluded to be the best, if not the only way to find a solution to any problem, not least, that of violent crime.

Consequently, it was further argued that reconciliation is the solution to the problem of violent crime in South Africa because it is multi-dimensional in its approach to resolving problems that require the restoration of moral values. This chapter further argued that poverty is a hindrance to reconciliation and also that reconciliation was not possible without forgiveness. But, reconciliation is a process that embodies forgiveness, which begins with wanting to be reconciled, and ends in reconciliation itself. This, it was argued, involves many processes: acknowledgement and confession of guilt, willingness to make reparation, restitution, forgiveness, an act of reconciliation, peace and then continuation into the future. All these together, it was asserted, make up the complete circle of reconciliation.

Furthermore, poverty is not just an enemy of reconciliation, but is the worst violence against human beings and, thus, poverty is evil and a crime. As such, poverty was therefore contended to be the root cause of violent crime. Poverty, defined as the "lack of" or the evident "presence of the lack of", was argued to be diverse and not restricted to material or structural poverty. There are also moral, social, spiritual, religious, family, racial and gendered forms of poverty, not excluding poverty of deprivation and poverty of moral values.

In Chapter Five an evaluation of the relationship between poverty, violent crime and the death penalty was analysed by arguing that violent crime is caused by poverty. Poverty, it is suggested, is the most violent crime that needs to be eliminated from South African society if violent crime in general is to be reduced. The death penalty, justified by the principles of retribution, deterrence and utility, is incapable of being a solution to the problem of violent crime in a new South Africa that is seeking reconciliation. These principles are poor in their approach as they all seek to punish the effect of a cause and not to find the solution to the cause itself. Moreover, it is

suggested that the socio-economic situation and the justice system, and all its departments, which are involved in the fight against violent crime, are themselves major causes of violent crime. This is so, because it is within them that moral poverty, which is one of the root causes of violent crime, is most endemic in the new South Africa. Citing examples of interracial cases mentioned in early chapters, and other analogous examples of violence begetting violence, *Nemo dat quod non habet*, the unjustifiability and incompatibility of capital punishment with reconciliation in the fight against violent crime was made obvious.

In conclusion, it is clear that the new democratic South Africa is a violent society bedevilled by violent crime and criminals, one in which lives and property are not secured. The frustrations of many South Africans are well understood, in that they, like many politicians believe that the "quickfix" solution to violent crime is the reintroduction of the death penalty, because they think that there is a correlation between the abolition of the death penalty and the daily increase in violent crime. But, the problem of violent crime is rooted in poverty across colour, race, class, belief and gender and, therefore, it is important to know that the solution to the problem of violent crime in the new South Africa is the elimination of the root cause of violent crime, namely, poverty.

To eliminate poverty, the collapsed bridge of moral values, destroyed by the violent past of apartheid, needs to be rebuilt. For this to be done, all South Africans - black, white and coloured - need to come to terms with the violent past, through a shared moral interpretation of the past (Humphrey 1997, 10). This will help them come out with knowledge that changes them and their perceptions of the horizons of past events (Humphrey 1997, 9), and reach out to one another in a new relationship of trust, honesty and friendship that will encourage a new spirit of partnership and working together. This new spirit will only develop through the process of true reconciliation, as taught by the five religions, which will in turn provide the solution to violent crime in a new South Africa.

According to the above argument, it is impossible to genuinely believe that the re-introduction of capital punishment will reduce crime and encourages a new spirit of trust, honesty and friendship among people who have previously been and, still are, divided along racial lines. We know that violence begets violence and, as it has been stated, violent crime in the new South Africa is multi-faceted, and, thus, requires a multi-dimensional approach to a solution. It is this that has been shown to be lacking in the application of the death penalty.

The approach of a multi-dimensional solution, as has been demonstrated in this thesis, is only to be found in reconciliation. This has been proved beyond reasonable doubt on the basis of the teaching of all religions, particularly, the five religions - Judaism, Christianity, Islam Hinduism and African traditional religion - that have been examined in this thesis. Reconciliation, as it has been expounded in the teachings of these religions - is the only common ground on which South Africans of all races can stand and build a bridge of better future in a rainbow nation of peace and prosperity for all in a new democratic South Africa.

EPILOGUE

Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another and suffer the indignity of being the skunk of the world. Never, never and never again shall the government of this beautiful land legitimise the killing of its citizens.

Nelson Mandela on his inauguration as the first president of the democratic republic of South Africa 10 may 1994.

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