

“THERE IS A WORLD ELSEWHERE”: PRELIMINARY STUDIES ON ALTERNATIVES TO INTEREST-BASED BARGAINING

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INTRODUCTION

We live in an Age of Reason, which our predecessors were pleased to call an Age of Enlightenment. The laws of physics and molecular chemistry, not the appearance of angels to shepherds, define our social expectations. In economics and in politics, we accept the guidance of a collective rationale, an Invisible Hand that, if it doesn't predict, nevertheless records the aggregate of decisions made by millions of social actors, each expressing not the general welfare but their individual self-interest.

What if the system stutters and fails? What secular instrumentalities are brought to bear when social relationships become dysfunctional? How do we resolve disputes in a manner consistent with our enlightened self-interest and predominant rationality?

Many students of contemporary dispute resolution and systems management would reply, “Not well.”² Conflict resolution that involves courts, social workers, lawyers, juries, document exchange, testimony, investigations and judgments are notoriously inefficient: slow, bureaucratic, expensive, erudite, abstruse, arbitrary, inaccessible to the poor and exploited by the wealthy.

We must conclude from experience that not all dispute resolution systems are the product of enlightened self-interest. That is, these systems seem, in operation, to serve purposes other than resolving the dispute at issue. The Anglo-American concept of a court, for example, purports to serve the interest, not of the disputants, but rather of an abstraction—“society at large” or, worse,

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² See G.E. Irani & N.C. Funk, *Rituals of Reconciliation: Arab Islamic Perspectives* [hereinafter *Irani*], in *PEACE AND CONFLICT RESOLUTION IN ISLAM: PRECEPT AND PRACTICE* 179-80 (A.A. Said, N.C. Funk, & A.S. Kadayifci eds., 2001) (arguing that, without ordered ritual, collective involvement, and shared values, “individuals have all too often been left to fend for themselves” and, in conflict situations, turn to “an attorney or a therapist”).

“justice.” Articulating the attributes of “justice” is a challenge for most of us,³ even though a very great many of lawyers purport to act in its service.

As these “systems of justice” have failed to provide disputants with either resolution or justice, alternatives to courts have recently arisen in Western countries. If adjudication is sought, private judging, or arbitration, is available. The predominant non-adjudicative alternative dispute resolution method is mediation by a mutually trusted neutral. But these methods, too, are driven by self-interest.

The modern American mediation process is classically stated in the influential book *Getting to Yes* by Roger Fisher and William Ury.⁴ Not surprisingly, the approach emphasizes identification of disputing parties’ individual interests.⁵ The measurement of success of a negotiated resolution is, then, the extent to which those individual interests are satisfied, as distinguished from whether one disputant “wins.”⁶ In the course of interest-based negotiation (goes the method), it is sometimes possible to create new and unexpected value, improving the parties’ relationship in ways impossible to achieve through crude Solomonic compromise⁷ or, perhaps worse, principled adjudication on that portion of the problem that the law identifies as the “merits.”⁸

Underlying this paradigm are fundamental values, paramount among them the virtue of self-determination. Other attributes of a

³ Indeed, the absence of broadly embraced religious doctrine and the rise of rational thinking may be said to mean, “there is no shared set of values we all absorb as preconscious assumptions. In our world, individuals have to find or create their own meaning . . . Individuals are usually not capable of creating their own lives from the ground up.” David Brooks, *The Arena Culture*, N.Y. TIMES, Dec. 31, 2010, at A23, available at <http://www.nytimes.com/2010/12/31/opinion/31brooks.html?r=1&ref=opinion>.

⁴ ROGER FISHER & WILLIAM URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (2d ed. 1991).

⁵ *Id.* at 40-55.

⁶ *Id.*

⁷ See THE BIBLE, 1 *Kings* 3:16-28. Two women presented themselves to a judge, each claiming to be the mother of an infant. The judge decreed that there was insufficient evidence to find in favor of either, and ordered the infant to be cut and divided between the disputants. The disputant who objected and conceded rather than witness the infanticide was deemed to be the deserving mother, as proven by her own compassion. In almost all commercial civil cases involving compromise, the baby is simply split, leaving the disputants without vindication, without justice, and without a useful outcome. Despite empirical evidence to the contrary (see, e.g., a 2007 report of the American Arbitration Association, available at <http://www.adr.org/sp.asp?id=32004>), many disputants leave arbitration perceiving that, rather than adjudicating the matter, the arbitrator “split the baby.”

⁸ FISHER & URY, *supra* note 4, at 56-80.

“complete” resolution in this paradigm might include an element of vindication or moral acknowledgement (sometimes through apology); restitution for the harm done to the claimant; forgiveness extended by the claimant; and a plan for prevention of a recurrence of the conduct causing the harm.⁹

All of these, it may be argued, are the products of logic. Yet there are other approaches to resolving disputes, most of them having little to do with negotiation and nothing to do with court-perceived justice.

This study addresses two examples of this other species of dispute resolution—methods and processes that are not the product of rational analysis and that do not seek to satisfy the self-interest of the disputants. The primary subjects of this essay are the culturally accepted dispute resolution methods that arise from cultural, social, spiritual or other urges that transcend the interests of the individuals engaged in the dispute. The essay attempts to describe those conflict approaches; articulate to the extent possible the nature of their genesis; and observe shared attributes, objectives, and social consequences between them.

The ultimate question posed is this: We know what happens when the goal of conflict resolution is to attain justice, or the disputants’ private aims. What happens when, instead, the goal is affirmation, and even healing?

MEDIATING IN THE PRESENCE OF THE SPIRIT: HO’OPONOPONO

Traditional Hawaiian practices include a structured ritual whereby a family gathers to exchange concerns, reveal wrongs and resentments, and set the family unit right. The practice, *ho’oponopono*, is often inadequately understood by non-Hawaiians and in certain instances misappropriated (whether intentionally or through ignorance). This chapter attempts to describe the practice, with acknowledgement that non-Hawaiians necessarily labor under spiritual and cultural limitations that prevent full understanding of, and engagement in, the traditions of others.

⁹ See, e.g., KARL A. SLAIKEU, *WHEN PUSH COMES TO SHOVE* 35-38 (1996).

A. Derivation and Traditional Use

Ho'oponopono is variously defined as a setting to right; a process of reconciliation; and a rebalancing of relationships. The word “*ho'o*” means to make, or cause, or bring about; “*pono*” means right or ordered or balanced. Repeating the word intensifies this concept and converts it to action, so “*ponopono*” means cared for or attended to. Thus, *ho'oponopono* refers to “the specific family conference in which relationships were ‘set right’ through prayer, discussion, confession, repentance, and mutual restitution and forgiveness.”¹⁰

Traditionally *ho'oponopono* takes place only within families. However, as will be noted below, there have been modern efforts to adapt it to therapeutic, delinquent youth centers, and other social work contexts.

One author has written, “If it is good, if it is in balance, if it is right, if it helps, if it is righteous, if it corrects, if it is responsible, if it is caring, if it is humble, if it is peaceful, if it honors, it is *pono*.”¹¹

B. The Attitude Necessary for Healing¹²

A practitioner who kindly took time with me to discuss *ho'oponopono* took great pains to explain that the process takes place in a context in which at least two non-Western beliefs are embraced and pervade the event. First, one must accept that all things are invested with the spirit. Each object and each creature that surrounds us has a place in the universe not merely by means of its utility and its function, but also by its immutable spiritual characteristic. One who lives in the physical world unaware of the persistent spiritual attributes of its component parts is, by implication, not prepared to experience the healing of *ho'oponopono*.

Additionally, one must understand one's place temporally. Life did not start, and will not end, with us. Rather, we are the descendants of our parents, and their parents, and their parents, from time beyond any reckoning and any imagining. And our children will beget children who will beget children past our understanding. So the family, as it gathers on this day, is a spot in a huge

¹⁰ MARY KAWENA PUKUI, E.W. HAERTIG & CATHERINE LEE, *NĀNĀ I KE KUMU* 60 (Vol. I, 1972) [hereinafter PUKUI].

¹¹ PALI JAE LEE, *HO'OPONO* 71 (2007).

¹² See generally PUKUI, *supra* note 10, at 62-64.

canvas, a tiny sliver of a great thing. It is to be honored and recognized for what it is, but not misperceived to be what it is not.

Thus it is incumbent upon all members of the family to stay in tune with the world around them and not forget their role in the spiritual world. Neither should a family hesitate to lay bare any dysfunction or enduring harm that festers among its members, but rather lay harms bare before each other in patience, grace, and candor. *Ho’oponopono* is the ritual by which rebalancing is achieved.

C. *The Ritual Structure*¹³

Ho’oponopono is a highly structured process with four distinct phases: an opening phase that includes the prayer and a statement of the problem; a discussion phase in which all members involved share their thoughts and feelings in a calm manner and listen to all the others as they speak; a resolution phase that enables the exchange of confession, forgiveness, and release; and a closing phase to summarize what has transpired and to give spiritual and individual thanks for sincere participation.¹⁴

The process is conducted, or facilitated, by a family senior or by a *kahuna*—a kind of “family doctor” who may be spiritually gifted and who is trusted by the family to have compassionate insight into the family’s problems.¹⁵ It opens with a *pule*, or prayer, by which the spirit is convened and the family acknowledges that, henceforth, their communications with each other will take place in the presence of the spirit.

Then the immediate problem—the reason the gathering was called—is set forth, whether directly or not. This process is a *kūkulu kumuhana*, a word that in general contexts means a “pooling of strengths for a shared purpose.”¹⁶ Each such problem is then “set to rights” in a discussion and exchange known as *mahiki*. The *kahuna* controls disruptive emotions and occasionally calls for periods of silence, rest and reflection, called *ho’omalū*.

At some point, the wrongdoings (*hala*) are revealed, repented, forgiven and released in events termed *mihi*, *kala* and *oki*. These

¹³ *Id.* at 61-62; E. VICTORIA SHOOK, HO’OPONOPONO: CONTEMPORARY USES OF A HAWAIIAN PROBLEM-SOLVING PROCESS 10-22 (1985) [hereinafter SHOOK].

¹⁴ SHOOK, *supra* note 13, at 12.

¹⁵ PUKUI, *supra* note 10, at 61.

¹⁶ SHOOK, *supra* note 13, at 11, 126.

are further discussed in the immediately following section. The subject of the healing is not individual hurts, however, but rather the entire multi-person family unit that finds itself damaged and ensnared by the acts of certain of its members. "The metaphor of a tangled net has been used to illustrate how problems within a family affect not only persons directly involved but also other family members. The family is a complex net of relationships, and any disturbance in one part of the net will pull other parts."¹⁷

Once balance has been restored, *ho'oponopono* ends by a *pani*: a summary of what has taken place, a reaffirmation of the family's bonds, and a closing prayer, *pule ho'opau*. The matter is then sealed and subject to the silence of *ho'omalua* forever. Often the family then shares a meal with each other and with the *kahuna*.

D. Components of the Process

Kahuna: Victoria Shook variously describes the *kahuna* as "priest, minister, healer, sorcerer, specialist."¹⁸ Either the *kahuna* or a respected elder from the family presides over the *ho'oponopono* process.¹⁹ In either case, whether or not the leader has gifts of healing (as the *kahuna* has), it is the leader who possesses procedural authority, by which the process (but not the substance) is controlled.

Pule: Prayer. It is used not merely in *ho'oponopono* but also in other contexts.²⁰ In *ho'oponopono* it summons the spirits to observe and protect the family as it enters into the process of admission, confession, forgiveness and healing. The closing prayer is called *pule ho'opau*.²¹

Mahiki: This term describes the process by which the family body exchanges words and emotions until the *hala*, or wrongs, are revealed. The term is used to describe the process of peeling the bark off a tree in order to determine the quality of the wood beneath, or to scrape the skin of a plant in order to expose and remove a burrowed insect.²² The term has historical inferences of exorcising demons from those possessed, but is now used therapeu-

¹⁷ *Id.* at 10-11.

¹⁸ *Id.* at 126.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 127.

²¹ *Id.* at 12.

²² PUKUI, *supra* note 10, at 75.

tically to describe the process whereby, through skilled and persistent questioning, an individual is led to recognize hurts and ills that had previously been unacknowledged.²³

Ho'omalū: As previously noted, *ho'o* means to make, or cause to be. *Malū* means shelter, protection, or quiet.²⁴ During *ho'oponopono* the term refers to periods of silence called at the authority of the presiding *kahuna*. That authority is exercised broadly. During the *ho'oponopono* it may be called in order to prevent intemperate or emotional disruption. It may be called for an entire week before the *ho'oponopono* is conducted, during which any discussion of the presenting problem is forbidden. This silence is more than mere refraining from speech, and it is weighted with spiritual intent. It is resonant of similar practices in certain religions; as Pukui notes, "like the Quaker silences, the Catholic retreat, and the periods of meditation of Oriental sects, *ho'omalū* recognizes man's need for calm and prayerful contemplation."

Hala and *Hihia*: *Hala* refers to a wrong that a person has done to another.²⁵ The sum of all of the *hala* at issue during the *ho'oponopono* is the *hahia*, which Shook describes as "entanglement . . . the complex net of problems that usually involves a number of members of the family."²⁶ Indeed, the term *hahia* derives from *hihi*, meaning a fish net. The complex wrongs and resentments that *ho'oponopono* addresses are perceived as tangles and snarls in the net that connects the group.²⁷

Mihi: To confess; to apologize; to ask forgiveness.²⁸ There is an implication that true *mihi* is not attained unless accompanied by a willingness to offer restitution.²⁹

Kala: *Kala* is forgiveness, and more. Pukui colorfully says that, during *ho'oponopono*, each member of the family not only must acknowledge the regrettable deed, but also "must release himself and the other of the deed, and the recriminations, remorse, grudges, guilts and embarrassments the deed caused."³⁰ Pukui strongly intimates that *kala* is an event that has mutual benefit; she

²³ *Id.* at 75-77.

²⁴ *Id.* at 77.

²⁵ *Id.* at 75.

²⁶ SHOOK, *supra* note 13, at 125.

²⁷ PUKUI, *supra* note 10, at 71-72.

²⁸ SHOOK, *supra* note 13, at 126.

²⁹ *Id.* at 12.

³⁰ PUKUI, *supra* note 10, at 75.

cites a phrase that means “I unbind you from the fault, and thus may I also be unbound from it.”

This concept is strongly resonant of the familiar phrase in the Christian “Lord’s Prayer,” “Forgive us our debts as we forgive our debtors.”³¹ Even more interestingly, the image of the family unit being bound up in a snarled net is also consonant with Jesus’ words, which in their original Aramaic may be understood to refer to tangled threads and cords, and an entanglement from which the speaker seeks to be released and unbound.³²

Oki: “To sever, to cut. In *ho’oponopono* the *mihi* and *kala* are made complete by the *oki*, showing that the entanglement and the troubles are really settled and released.”³³ The event of *oki*—the pronouncement that confession and forgiveness have been thoroughly and sincerely accomplished in every respect—is acknowledged in the closing invocation, the *pule ho’opau*.³⁴ Indeed, in certain senses the event of *oki* is one of severing the bad thing through divine intercession, by “taking it to the gods.”³⁵ “In any context of emotions and relationships, secular or spiritual, *oki* was always prayerful appeal or decisive announcement in which God . . . was a silent participant. Often prayer and an almost legal-sounding declaration were used together.”³⁶

Pani: The ceremonial close. In pre-Christian times, the *pani* was a series of rituals by which the end of the process was marked. They might have included ritual slaughter and offering of animals, or a ceremonial bath in the ocean. Today *pani* might be marked by a shared meal.³⁷

E. Observations

1. Self-Determination in Communal Healing

In an interview with the author, an experienced practitioner of *ho’oponopono* suggested that *mihi* (acknowledgement of harm, request for forgiveness and offer of restitution) and *kala* (extension

³¹ THE BIBLE, *Matthew* 6:12 (King James Version).

³² D. DOUGLAS-KLOTZ, *PRAYERS OF THE COSMOS* 30-31 (1994). That author offers as one translation of the phrase, “Loose the cords of mistakes binding us, as we release the strands we hold of others’ guilt.”

³³ SHOOK, *supra* note 13, at 127.

³⁴ *Id.* at 12, 19. See also PUKUI, *supra* note 10, Vol. II at 245.

³⁵ PUKUI, *supra* note 10, at 8.

³⁶ *Id.* at 175.

³⁷ *Id.* at 62.

of forgiveness, decision to rid oneself of the binding cords of resentment and anger) may not be mutually experienced or simultaneously exchanged. Rather, they are states that a participant comes to in the course of *ho'oponopono*. Thus, it is possible that, at a certain point, one person may be clear to forgive something another has not yet acknowledged; or, *vice versa*, one may articulate (and be released from) a fault irrespective of whether one receives forgiveness for it from the person harmed. The prospect is that each person is capable of “making things right” by a spiritually-guided process that is not dependant on another person’s willingness to acknowledge or accept the decision to do so.³⁸

2. Conflict Resolution, Spiritual Healing and Therapy

Early on in the study of *ho'oponopono* one begins to compare it to modern secular practices of family therapy. Victoria Shook notes that the process shares many attributes with therapy³⁹ while also observing that, among other distinctions, “[m]ost Western therapeutic practices are oriented toward relieving an individual’s suffering; *ho'oponopono* focuses more on the relief of tensions in the relationships among group members.”⁴⁰

Shook documents the use of processes derived from *ho'oponopono* in eight case studies, in none of which the context was the traditional family unit. These included a program for youths involved in drug abuse; a wilderness program featuring physical, emotional and spiritual challenges; another wilderness program aimed at delinquent adolescent males;⁴¹ and various initiatives involving co-workers, a boat crew, groups of neighbors, and agency social work. In these secular applications, the summoning of the spirit may not be involved, and the question arises whether the complete *oki*—the deep release of past hurts—and complete *ho'omalū*—the permanent removal of the hurts even from memory—can be achieved without *pule*—the summoning of protective and authoritative spirits. That is, can *ho'oponopono* be complete within a unit in which not everyone shares certain basic assumptions of the spiritual source of the legitimacy and authority of the process itself?

³⁸ But see SHOOK, *supra* note 13, at 92. (“Each person must separately admit his or her wrongdoing and be forgiven by the other involved.”).

³⁹ SHOOK, *supra* note 13, at 31-34.

⁴⁰ *Id.* at 85.

⁴¹ One practitioner conducting *ho'oponopono* in such a program reported that he believed that he was, indeed, working with a family unit, “not by blood, but by the very virtue of experience.” SHOOK, *supra* note 13, at 60.

3. Co-Opting Spiritual Influences in an Age of Narcissistic Secularism

One who Googles the term *ho'oponopono* will find proposals for “getting aligned with existence” because “It’s All About You”;⁴² opportunities to harness “miracle powers” for “self-healing and self-improvement”;⁴³ mantras to recite during “cleaning meditations”;⁴⁴ methods for “releasing negative energies, allowing a new space for the healing power of your true Divinity in thoughts, feelings, words, and actions”;⁴⁵ and opportunities to “solve your problems and take the road to love, happiness, wealth and the life of your dreams.”⁴⁶

For such a subtle, communal, spirit-based, family-oriented, giving, other-directed rite to be thus trivialized as a means of individual benefit is distressing. It is no wonder that practitioners of *ho'oponopono* are reluctant to discuss the process for fear of its being distorted for personal gain.

Indeed, respect for the process forces the conclusion that no non-Hawaiian could possibly understand *ho'oponopono*, certainly not enough to engage in it with any hope of reaping its rewards. The spiritual assumptions that the process requires are foreign to those outside the culture.

Nevertheless, its very existence is noteworthy for the purposes of this study, because it is a cogent, effective, rigorous method of conflict identification, resolution and prevention that is driven by objectives other than satisfying the self-interest of the immediate parties to the conflict.

It is also essential to recognize that it is not a method in which the gods do the healing. The work is done by the human participants, and the authority for the process is lodged in the trusted human elder or *kahuna*. What powers the *kahuna* may possess are also not called upon to effect the healing, but rather to keep the process on track. The healing takes place when the individual comes to a point where wrongs, resentments and guilt that entangle her life are released by virtue of her own decision to release them.

⁴² *The Ho'oponopono Method*, HOOPONOPONO HELP, <http://www.hooponoponohelp.com/> (last visited Mar. 25, 2012).

⁴³ *Ho'oponopono*, I, DREAM CATCHER, <http://www.idreamcatcher.com/hooponopono/> (last visited Mar. 25, 2012).

⁴⁴ *Ho'oponopono Cleaning Meditations and Prayers*, THERE IS A WAY, http://www.thereisaway.org/Ho%27ooponopono_cleaning_meditation.htm (last visited Mar. 26, 2012).

⁴⁵ HO'OPONOPONO BLOG, <http://hoopono.blogspot.com/> (last visited Mar. 25, 2012).

⁴⁶ *Ho'oponopono*, MABEL KATZ, “THE EASIEST WAY”, <http://hooponoponoisbeyondthesecret.com/> (last visited Mar. 25, 2012).

The spirits witness, the spirits attend, and the spirits carry them off.⁴⁷ But it's the people who do the work, the people who engage in the process to heal themselves.

ARAB APPROACHES TO CONFLICT: WHERE HONOR AND
RESPECT DRIVE THE PROCESS⁴⁸

Western approaches to conflict contain assumptions: (a) that conflict is inevitable, normal, and can lead to positive change within enterprises; (b) that conflict can be managed and resolved to the satisfaction of the disputants; (c) that the disputants' rational assessment of interests and generation of alternatives can yield value-added outcomes; (d) that written and enforceable legal instruments are the ideal expression of the outcomes of consensual conflict resolution processes; (e) that negotiation is best facilitated by a third party who is independent and neutral; (f) that the terms of the resolution are socially satisfactory if they are satisfactory to the disputants, and need not conform to the terms that a court might render in conformance to law; and (g) that the resolution process typically addresses the allocation of resources and risks as to which there are competing claims.⁴⁹

By contrast, Arab assumptions about conflict include: (a) that it is negative, disruptive and dangerous; (b) that group affiliation, not individual interest, is the source of the strategies adopted during the resolution process; (c) that emotional spontaneity, social expectations and shared cultural values are legitimate and indeed dominant during the process; (d) that shame, honor, dignity and reputation are the driving forces towards ultimate resolution; (e) that the community has a vital interest in the disputants' reaching a settlement; (f) that third-party intervention should be performed by people who are known, trusted and respected, and who are per-

⁴⁷ "O, great eyeball of the sun, please take all this bundle of wrong-doing. Take it out to the West with you. And, as you go down again, to your rest, please take all the faults and trespasses that were committed. Lay all of this into the depth of the sea, never more to come back." PUKUI, *supra* note 10, at 64.

⁴⁸ This portion of the study benefitted from interviews held with Anas Ghazi, Hussein Khaddour, Nicholas Khoury, Houssein Al Wasty, and three Damascus lawyers and arbitrators. However, any errors or misinterpretations are the responsibility of the author.

⁴⁹ See Irani, *supra* note 2, at 171-72. ("In contemporary North America . . . [c]onflict is accepted as a natural concomitant of self-interest and competition which, when subject to an optimal amount of regulation by carefully designed institutions, keeps societies dynamic, energetic, and strong . . . This philosophy, whereby every conflict can be managed or resolved, clashes with other cultural approaches to conflict.").

sonally involved with both disputants; and (g) that the outcome is measured by the repaired, durable relationships between the parties, not the satisfactory allocation of particular resources or risks.⁵⁰

The goals of the Western process are pragmatic, and are directed toward the possibility of a “win-win” scenario that will enable disputants to forget the past and move on. In contrast, the goals of the Arab-Islamic process manifest concern for preserving and cultivating the established “wisdom” of the community. The process is therefore continuity-oriented; history is regarded as a source of stability and guidance that provides lessons for shaping a common future.⁵¹

Long before the introduction of Islam,⁵² Arab tribes created a procedure to identify and resolve disputes that threatened social stability. The process, *sulha*, continues to be practiced in some parts of the region and vestiges of it can be seen even in highly developed economies in the Middle East.⁵³

A. *The Process and its Context*

The term “*sulha*” derives from the Arabic word *Sulh*. The abstract concept of peace is *Salaam*, but the literal act of stopping

⁵⁰ M. Abu-Nimer, *Conflict Resolution in an Islamic Context: Some Conceptual Questions*, in PEACE AND CONFLICT RESOLUTION IN ISLAM: PRECEPT AND PRACTICE 130-32 (A.A. Said, N.C. Funk, & A.S. Kadayifci eds., 2001). For an express comparison of Western mediation and Arab *sulha*, see H-C. Rohne, *Cultural Aspects of Conflict Resolution—Comparing Sulha and Western Mediation*, in CONFLICTS AND CONFLICT RESOLUTION IN MIDDLE EASTERN SOCIETIES – BETWEEN TRADITION AND MODERNITY 187-214 (H-J Albrecht, J-M Simon, H. Rezaie, H-C Rohne, & E. Kiza eds., 2006) [hereinafter *Rohne*].

⁵¹ Irani, *supra* note 2, at 181.

⁵² *But see* H. Tarabeih, D. Shmueli, and R. Khamaisi, *Towards the Implementation of Sulha as a Cultural Peacemaking Method for Managing and Resolving Environmental Conflicts Among Arab Palestinians in Israel*, 5 J. PEACEBUILDING AND DEVELOPMENT 50 (2009) (referring to *sulha* as “a religiously based and culturally accepted social conflict resolution tool used in many Muslim societies”). The likely reason for this misunderstanding is explained by Rohne: “Although pre-Islamic in its origin, with the emergence and evolution of Islam in the Middle East its elements were adopted by Islam and *Sulha* is now regarded as an integral part of Islamic conflict resolution and has become known primarily as a religious tradition.” Rohne, *supra* note 50, at 188.

⁵³ D. Pely, *Resolving Clan-Based Disputes Using the Sulha, the Traditional Dispute Resolution Process of the Middle East*, 63 DISP. RES. J. 80, 87 at n.2 (Nov. 2008-Jan. 2009) (“*Sulha* is used in Lebanon and throughout the Arab community in Israel. In Jordan, it is the officially recognized conflict resolution tradition of the Bedouin tribes. The process differs slightly between regions.”).

conflict and settling into peace is *Sulh*.⁵⁴ The word can also mean "reconciliation," "cooperation," or "forgiveness."⁵⁵

The principles of *sulha* are "embedded in tribal culture and in wisdom and experience passed down from generation to generation."⁵⁶ *Sulha* arose to respond to the need to restore order between families, tribes, or villages so that quarrels and feuds do not mature into broader conflicts that might threaten the stability of the larger community.⁵⁷ Much of the literature on the process is set in the context of physical assault committed by a member of one family or tribe against a member of another, and the easiest way to understand the broad principles of *sulha* is to set the explanation in that hypothetical context: An attack by one family member upon a member of a different family.

By custom, a family has not only the right, but the obligation to revenge an attack on one of its members.⁵⁸ "To avenge the murder of a close kinsman is honorable; to fail to do so is dishonorable."⁵⁹ This precept, however, may subject the community to violence in its midst for many years, as cycles of vengeance feed long-lasting feuds. In order to prevent such dysfunction, the tradition of *sulha* is invoked.

Immediately upon an attack having occurred, the family of the attacker approaches one or more highly respected, influential people, asking that they intervene on behalf of the party. These interveners are referred to collectively as the *jaha*. There is no hedging of the facts or of the family's responsibility.⁶⁰ The deed is overtly confessed, and the *jaha* is asked to act on that basis.⁶¹ Certain words of entreaty are customarily used, pleading with the *jaha* to assume the responsibility. Among them might be, "We are in your

⁵⁴ *Id.* at 82.

⁵⁵ L. Lang, *Sulha Peacemaking and the Politics of Persuasion*, 31 J. PALESTINE STUDIES 52, 53; Irani, *supra* note 2, at 183.

⁵⁶ E. JABBOUR, *SULHA: PALESTINIAN TRADITIONAL PEACEMAKING PROCESS* 16 (1996).

⁵⁷ *Id.* at 26.

⁵⁸ See *id.* at 36 (In old Arab tradition, the offended family would have the right to revenge within twenty-four hours, within the hot period of extreme anger, described as "boiling blood" in the veins of the victim's family (*fawrat el-dam*)); Lang, *supra* note 55, at 56 (translating the phrase as "the eruption of the blood").

⁵⁹ Lang, *supra* note 55, at 54.

⁶⁰ Irani, *supra* note 2, at 183 ("Private *sulh* takes place when both the crime and the guilty party are known."); Rohne, *supra* note 50, at 190 ("[I]nherent in the action is an admission of wrongdoing by the offender and his family as well as an expressions of their willingness to pay the price for that wrongdoing.")

⁶¹ See JABBOUR, *supra* note 56, at 42 (The offending family "admit to their responsibility and are ready to accept whatever just decision may arise from this event.").

house and you must help us . . . Our son has committed a crime and our family is in your hands.”⁶² The attacker’s family must literally beg the *jaha* to take on the matter; otherwise when they do visit the aggrieved family it will not be able to carry the authority required.

Indeed, when and if the aggrieved family agrees to meet with the *jaha*, a preliminary question will be, “Have you been asked to come here by the other side, and have they agreed to accept any ruling you make?”⁶³ The offender’s family may make its authorization express by executing a *taffwith*, a written document that authorizes the *jaha* to act on the family’s behalf in approaching the other side and committing the family to abide by the *jaha*’s decision.⁶⁴

Any delay in approaching the *jaha*, and any delay by the *jaha* in approaching the victim’s family, is unacceptable. The aggrieved family must know without any doubt that this event has completely subsumed the life of the other family and the life of the community as reflected in the composition of the individuals constituting the *jaha*. “If the injured family waits for a long time, without anyone asking them what happened, they will be insulted . . . The terminology used here, translated literally, would be: ‘They went to sleep while our honor was hurt.’”⁶⁵

The *jaha* seeks the offended family’s acceptance of its role as mediator. That acceptance may not be immediately forthcoming, and it may take several visits before the offended family is satisfied that the *jaha* brings with it a restoration of the family’s tainted honor.⁶⁶ The *jaha* uses freighted terms in its entreaty: “We are asked by the offender and his family to have the honor of offering their repentance, to express their sorrow, and to have the honor of accepting this *jaha* so that we can see how peace may be restored between you.”⁶⁷ The tactic has been referred to as “reverse *musayara* [politeness or patience].” The *jaha* being the most respected members of the community, they reverse this standing with respect to this ordinary, grieving family, and beseech the family to grant them the kindness of making peace through *sulha*. The

⁶² *Id.* at 27; Lang, *supra* note 55, at 56.

⁶³ JABBOUR, *supra* note 56, at 27.

⁶⁴ Pely, *supra* note 53, at 82.

⁶⁵ JABBOUR, *supra* note 56, at 29; Rohne, *supra* note 50, at 190.

⁶⁶ The story is told of a *jaha* that was refused admittance to the victim’s house and instead had ashes poured over them from the roof. Said one of the *jaha*, “You have the right to do that. Go on, go on. Don’t throw at your enemy – throw at us. You have the right – pour the ashes – you have the right.” JABBOUR, *supra* note 56, at 46.

⁶⁷ *Id.* at 31.

family's eventual consent is thus a gesture of magnanimity, rather than compromise or retreat.⁶⁸ Traditionally the *jaha* uses florid and respectful words, the "beautiful" or "sweet" language of respect and entreaty.⁶⁹

Acceptance of the *jaha* must be clear, intentional, and stated in words spoken in front of the family, to the effect that, "We accept that this case shall be in your hands, and that it is on your conscience, and we will accept any ruling that you issue."⁷⁰ Indeed, the practical effect of the grieving family's accepting the *jaha* is its foregoing the right of revenge—a waiver that is so substantive that there should be no doubts as to whether it occurred.⁷¹

The *jaha* is not merely facilitative or consultative. The *jaha* possesses adjudicative powers, and in this initial process it obtains from each side a commitment to be bound by the *jaha*'s final decrees in the matter. This commitment having been mutually obtained, the *jaha* has accomplished its first goal, one highly prized by the community: a truce, or *hodna*. The families are now bound by an agreement that no violence will ensue while the *jaha* does its work.⁷² Indeed, the *jaha* cannot leave the home of the victim's family without obtaining the *hodna*; it is of the essence of the utility of the *sulha* process itself.⁷³

Several conditions attach during the period of *hodna*. One is that the offending family will flee the community so as to avoid the risk of confrontation or unintentional disrespect. "[I]n nomadic times, the offender's family might be asked to pack up its tent and move far away from the tent of the victim's family to reduce the potential for anyone to get hurt."⁷⁴ In modern society, *hodna* does not require literal relocation; however, "if they meet inadvertently on the same bus, the offender's family member has to get off the bus. If it is in a public place, they have to leave immediately."⁷⁵ The purpose is not merely to avoid re-incitement of passion, but for the offending family to "show humility and remorse by demonstrably staying out of sight of those they have offended."⁷⁶

⁶⁸ Lang, *supra* note 55, at 54-55, 65 n.11.

⁶⁹ *Id.* at 57.

⁷⁰ JABBOUR, *supra* note 56, at 32.

⁷¹ Rohne, *supra* note 50, at 190-91 ("The agreement to *Sulha* has to be declared by the representative of the offender's family in a clear tone in the presence of the *jaha*.").

⁷² JABBOUR, *supra* note 56, at 33.

⁷³ *Id.* at 35; Irani, *supra* note 2, at 183.

⁷⁴ Pely, *supra* note 53, at 83.

⁷⁵ JABBOUR, *supra* note 56, at 33.

⁷⁶ Lang, *supra* note 55, at 56.

There are two offers of payment during *sulha*. The first—*'atwa*—happens at this time. The offer of *'atwa* by the offending family, and its acceptance by the victim's family, is evidence of the *hodna*, and also acts as an immediate and tangible expression of remorse on the part of the offender's family.⁷⁷ The *'atwa* could be monetary, in which case it is accepted in front of the community, making it a disgrace for the offended family to seek vengeance while the *hodna* is in effect. Or it could be an *'atwa* of honor—the statement by the offended family that it needs no payment because, as a matter of honor, it gives its word that the *hodna* will be respected.⁷⁸

The *hodna* in place, the *jaha* conducts an investigation and prepares its ruling. One aspect of the final proposal will be a *diya*, which is given in order to redeem the blood of the victim. It is not meant to replace the value of the loss of life, but “is only a symbolic amount for the man's blood, which has no price.”⁷⁹ The amount of the *diya* is a function of the severity of the injury, the heinous nature of the act, and the amount of *diya* that has been determined in similar situations in the past.⁸⁰ In keeping with the oral tradition of *sulha*,⁸¹ the precedents of past similar incidents and resolutions is gleaned from the experiences of the elder members of the *jaha* or from stories learned from their fathers.⁸² Over time the amount of the *diya* may be negotiated between representatives of the families and the *jaha*, but once the *jaha* has determined the amount it cannot be changed.⁸³ Once again, it is out of respect for the *jaha* that the *diya* is agreed upon, not out of bargaining with the other side.⁸⁴

Just as the *sulha* begins in order to restore peace to the community, so it ends by the community's witnessing the families' undertaking of peace. There are three components: *Musafacha*, or handshakes between the families; *Musamacha*, or a declaration of forgiveness by the victim's father (or other authoritative represent-

⁷⁷ Pely, *supra* note 53, at 84.

⁷⁸ JABBOUR, *supra* note 56, at 34-35.

⁷⁹ *Id.* at 40-41.

⁸⁰ *Id.* at 41, 48-49, 61. See also Lang, *supra* note 55, at 58.

⁸¹ See Rohne, *supra* note 50, at 189 (“As customary law, *Sulha* is an informal system which has been passed down orally.”)

⁸² Pely, *supra* note 53, at 84.

⁸³ JABBOUR, *supra* note 56, at 42 (“Honorable people will not argue over the money.”); Rohne, *supra* note 50, at 193.

⁸⁴ *Id.* at 58 (“OK, for your sake, I will accept it.”) (emphasis added).

atives of the family); and *Mumalacha*, or a shared ceremonial meal.⁸⁵

The victim's family assembles publicly and accepts the offender's family's approaching with a white flag. The offender, surrounded by the family, goes down the line of the other family and, in silence and before perhaps a thousand onlookers, shakes hands one by one.⁸⁶ Then the *diya* is passed from the family of the attacker to the family of the victim—publicly, even these days in a transparent bag, so that the community can witness for their own eyes the promises made and stand in expectation that they will be kept. The words are then spoken, "This peace is valid and applies to those who are present and those who are absent." Formal speeches are made by the *jaha*, by the family representatives, and sometimes by high officials of the village. A knot is tied in the flag to symbolize that the peace will not become undone. The family of the wrongdoer is then taken to the home of the victim and drinks a cup of bitter coffee. Then the wrongdoer's family states, "In the name of God I invite you to eat with us today," and the entire group goes to the killer's home to eat rice and lamb. Sometimes only a small amount is eaten by any individual because so many are waiting for their turn to share the ritual meal.⁸⁷

B. *The Role of Honor and Respect*

The process is permeated with concepts of respect: the lack of respect for the injured family that the initial attack evinces, and the high respect in which the *jaha* is held by the two families and the community at large and from which it exercises part of its authority.⁸⁸ The respect that the *jaha* expresses for the aggrieved family is the source of the family's eventual agreement to enter into the *sulha*.⁸⁹ One *jaha* participant relates this incident involving a recalcitrant aggrieved family:

⁸⁵ Pely, *supra* note 53, at 85. For a summary of the ceremony's parts, see Rohne, *supra* note 50, at 195-96.

⁸⁶ "This physical contact is of special importance, albeit tense: the person(s) who otherwise would have been the object of revenge is (are) greeted amicably, symbolizing the turning point in the conflict where the tension eases and peace is manifested." Rohne, *supra* note 50, at 195.

⁸⁷ JABBOUR, *supra* note 56, at 52-57; Lang at 59-61; Irani, *supra* note 2, at 184-85.

⁸⁸ JABBOUR, *supra* note 56, at 27-28.

⁸⁹ See Rohne, *supra* note 50, at 189-90 (The reputation that [members of the *jaha*] enjoy in the community forms the basic element of their legitimacy to mediate in a case.").

We tried to tackle it from every side; it did not work. Then . . . there [was] a sense that it is an insult to the *jaha* not to yield. [And elder brother] stood up, furious, and said, “Enough! I will not let you go on more than that! These people [the *jaha*] are respected people in our society. They have spent hours and many times coming to us, asking us, and begging us. How many times are you going to make them feel so very ashamed?” He banged his fist on the table, and everybody in the room was silent. He said, “I want to tell the *jaha*, ‘I am for peace’ and I want to see anyone in this room who dares to say no.”⁹⁰

Concludes one scholar, “The entire *sulha* system is predicated on this hierarchical logic of *sharaf* [respect].”⁹¹

Along with respect, the closely-joined concept of honor also is critical to the process.⁹² The pressure to retaliate for an injury to a close family member is predicated on honor.⁹³ The injured party’s acceptance of the *jaha*, rather than exercising its rights of revenge, is framed as a gesture demonstrating that family’s honor.⁹⁴ The decision whether to accept the payments of *’atwa* and *diya* can be driven by considerations of resting upon one’s honor.⁹⁵ Honor dictates the setting of the amount of the *diya* and whether it will be accepted, once offered.⁹⁶

Particularly noteworthy is that it is respect for the *jaha* that causes the parties to accept the terms that will end the conflict and avoid the feud. “A rejection of the verdict would be considered a severe infraction of the *Sulha* process, an insult to the *Jaha*, and a general loss of face for both sides and for the *Jaha* members and

⁹⁰ Lang, *supra* note 55, at 57.

⁹¹ *Id.* at 58.

⁹² For a discussion of the derivation and ramifications of honor in traditional nomadic Arab society, see P.C. Dodd, *Family Honor and the Forces of Change in Arab Society*, 4 INT’L J. OF MIDDLE EAST STUDIES 40 (Jan. 1973). Dodd explains that, when responsibility for the protection of the family’s security and wealth rests upon the male heir, that heir’s reputation is critical to the sustenance of the group. The dominant male’s most immediate responsibility is to defend himself in physical combat, but the principle extends to the honor of the women in the family, the collective honor of the family itself, and the collective reputation of the tribe. In some instances honor is fragile. “Once lost, [honor] is difficult to regain.” *Id.* at 45.

⁹³ See, e.g., A. HOURANI, *A HISTORY OF THE ARAB PEOPLES* 104-08 (1992) (explaining the process by which responsibilities in nomadic tribal life bring forth the concept of honor: “It was part of a man’s honour to defend what was his and to respond to demands upon him from members of his family, or of a tribe or larger group of which he was a part; honour belonged to an individual through his membership of a larger whole.”).

⁹⁴ JABBOUR, *supra* note 56, at 31; Rohne, *supra* note 50, at 194 (“Their willingness to solve the dispute by *Sulha* is considered to be an honourable act.”).

⁹⁵ JABBOUR, *supra* note 56, at 34.

⁹⁶ *Id.* at 43.

dignitaries who were involved in the negotiations."⁹⁷ Thus, not only is it not individual interests that drive the process and by which success is measured; it is loss of honor that is the source of the injury; regaining honor that is the purpose of the process; and payment of honor to the *jaha* members that compels enforcement of the agreement.⁹⁸ It is well observed:

[T]he strongest leverage available to the *Jaha* is its clout in the community and the threat of losing respect and social standing by refusing to abide by the *Sulha* verdict. These consequences may seem trivial to the Western observer, but in a tribal culture, honor and respect are central elements, so the threat of shame or lost honor can provide considerable leverage. They also provide motivation to carry out the *Sulha* agreement.⁹⁹

C. Contemporary Use of the Process

While logic might dictate that "[m]any different kinds of disputes can be resolved through *Sulha* dispute resolution, including business, financial and consumer conflicts,"¹⁰⁰ in fact few are. Almost all of the literature studies the process as applied to crimes of violence, and specifically murder. But it is very effective in that sphere. Writes one scholar, during four years of research and observation of more than a dozen instances of *sulha* as practiced in Galilee villages, "virtually every case of murder resulted in mediation and reconciliation rather than revenge."¹⁰¹

One reason for the decline of the practice in modern Arab society may be the Westernization of social and spiritual values, and the desire to be perceived as "modern." Perhaps the main explanation, however, is the decline of traditional nomadic traditions and the rise of cities throughout the region, with the consequential loss of the importance of honor, reputation, and respect. *Sulha* arose from, and served, a nomadic, interdependent social structure. By comparison, cities invite removal from family and tribal identification, reliance on government for daily services, increased opportunities for formal and informal education, creation and consideration of intellectual alternatives, an environment of physi-

⁹⁷ Pely, *supra* note 53, at 84-85.

⁹⁸ See, e.g., *id.* at 85 (noting a distinction from Western ADR processes because, "once the parties agree to participate, they are bound to accept the outcome").

⁹⁹ *Id.* at 86.

¹⁰⁰ *Id.* at 80.

¹⁰¹ Lang, *supra* note 55, at 52.

cal density, incentives for social mobility, and relative anonymity. "If anonymity and mobility are indeed characteristics of Arab city life, they make maintenance of [traditional concepts of honor] very difficult. [Honor] involves reputation, and reputation is precluded by anonymity."¹⁰²

Nevertheless it is reportedly frequently practiced in Arab regions of Israel in cases of crime; sometimes the offender is released from prison to participate in the final ceremony, and members of the Israeli Knesset have acted as part of the *jaha*.¹⁰³

A vestige of the tradition—or perhaps the impulse beneath it—may be seen in modern cities of the region, where merchants in a commercial dispute, rather than persisting in court or seeking formal arbitration, have approached a highly respected individual such as the chair of the local chamber of industry, and submitted the matter to his negotiation. That person's eventual determination is honored, not through compulsion of law, but because not to follow it would be to express disrespect for the elder whose honor is engaged when he accepts the responsibility to intervene.

D. *Miscellaneous Considerations*

The Jaha as Servant: In most Arab countries, modern commercial mediation has yet to take hold. Although many countries in the Middle East have established western-style commercial mediation centers, the practice is not widespread.¹⁰⁴ When and if it does take root as a business practice, the most difficult aspect of the process for traditional Arabs to accept might be the status of the mediator as a paid professional.

The *jaha* serves as an authority and a beneficent force, not as a professional like a doctor or a lawyer. An old, wise Arab makes peace thusly: "If a bad man and a good man quarrel, I take from the good man and give to the bad. If two bad men quarrel, I take from myself and give to both of them. Two good men will not quarrel."¹⁰⁵

¹⁰² Dodd, *supra* note 92, at 48.

¹⁰³ Lang, *supra* note 55, at 61-63.

¹⁰⁴ Irani, *supra* note 2, at 169 ("Because the teaching and practice of [Western conflict resolution techniques] is a novel phenomenon in Lebanon, Jordan, Egypt and other countries in the Middle East, their testimony has often been greeted with distrust.").

¹⁰⁵ JABBOUR, *supra* note 56, at 45.

By Arab tradition (and, later, Islamic practice) dispute resolution is not professionalized, but rather an exercise of one's civic concern for the community.¹⁰⁶ The *jaha* is never compensated. On the contrary, it is the personal sacrifice that the *jaha* is making that is one source of its moral authority. Remuneration is "out of the question as there must be no taint of influence or bribe or even misconstrued kindness from a friend or relative."¹⁰⁷ So even in modern times, if quarreling Arab merchants approach a respected and influential member of their industry to settle a dispute, that third-party acts out of duty, or out of the responsibilities of office, and neither expects nor is offered payment.

The Absence of Mutual Dissatisfaction: Western mediation is sometimes measured by whether the parties are equally dissatisfied.¹⁰⁸ That type of comparative assessment appears to be completely absent from *sulha*. Each family is satisfied and the community is satisfied. The offended party regains its respect, honor and dignity; the accused party has averted the risk of future loss through vengeance by removal of the "root of bitterness;" and the community has prevented unrest, violence, and further loss of life.¹⁰⁹ Compared to such an outcome, the concept of "win-win," so admired in Western negotiation, seems facile.

The Emphasis on Collective Responsibility: Be it the tribe, the family, or the group, *sulha* relies upon the recognition of collective responsibility.¹¹⁰ In a society placing importance on individualism, where a person may not feel responsible for the acts of others (including family members), the process may not gain traction.¹¹¹

This sense of acting as a unit rather than as an individual permeates the process. For example, the *diya* must be paid by each member of the victim's family, not by just the patriarch or the wrongdoer. The *diya* is then allocated among each member of the

¹⁰⁶ Abu-Nimer, *supra* note 50, at 130 ("Such professionalism does not exist in Middle Eastern or Islamic societies.")

¹⁰⁷ JABBOUR, *supra* note 56, at 46-47.

¹⁰⁸ A better term might be "equitability": the state where both parties think they received the same fraction of the total value in dispute, as each of them assigned value to the components of that total value. See S.J. BRAMS & A.D. TAYLOR, *THE WIN-WIN SOLUTION: GUARANTEEING FAIR SHARES TO EVERYBODY* 14-15 (1999).

¹⁰⁹ JABBOUR, *supra* note 56, at 59-60; Irani, *supra* note 2, at 184 ("The *sulh* ritual is not a zero-sum game. The ritual must satisfy the community's need for peace and stability, the needs of each family for dignity and security. The family of the victim must receive some compensation (even if largely symbolic), and the family of the perpetrator must pre-empt reprisals and, insofar as possible, save face.")

¹¹⁰ Irani, *supra* note 2, at 181 ("Far more is at stake than the interests of individuals.")

¹¹¹ JABBOUR, *supra* note 56, at 69-71.

victim's family, not just the parent or close relations.¹¹² Western traditions of individual accountability are thus at odds with one of the driving engines of *sulha*. With the latter, "social values and norms as well as social codes of honour, shame and dignity are essential components that inform the conflict resolution process."¹¹³

The Role of Forgiveness: Seldom in the literature of Western negotiation is importance given to whether the disputing parties forgive each other. Yet forgiveness is a fundamental attribute of *sulha*. From its tribal and nomadic beginnings, the purpose of the process was not so much to appease or ameliorate the disputants, but to ensure that the community was not beset by blood-feuds. It is noteworthy that, for all of its supposed concern about community standards of "justice," Western law pays little attention to whether conflicts end with reconciliation or forgiveness. Arab culture does.

If it is an act of *sharaf* [honor] to avenge, it is more honor not to revenge; that is why we call him [who forgives] a great person. If he takes revenge, then he is like any other normal person, but when he says, 'I could have killed the killer, but I chose not to,' that is a great man. In Arab culture there is nothing bigger than forgiveness. That is the highest point, the height of *sharaf*. Some people forgive because they do not have any choice, but when you have a choice and you forgive, this is the highest rank of *sharaf*.¹¹⁴

This view is consistent with a teaching in the *Qur'an*, which provides: "The retribution for evil is equal to the evil done; yet those who forgive and rehabilitate will be rewarded by God . . . If one avenges himself after he has been wronged, there is no way of blaming him . . . But he who bears with patience and forgives, surely complies with divine resolve."¹¹⁵

Forgiveness and honor can sometimes merge. It is not atypical for the patriarch of the victim's family to take the *diyya* in his hands from the offending family, raise it above his head for all to see, and pronounce, "I return this money—I do not need payment to forgive." Thus his magnanimity is unconditional, and his honor great.¹¹⁶

¹¹² *Id.* at 70; Rohne, *supra* note 50, at 203.

¹¹³ Rohne, *supra* note 50, at 204.

¹¹⁴ Lang, *supra* note 55, at 55.

¹¹⁵ AL-QUR'AN, 42:40-43 (A. Ali, trans.).

¹¹⁶ Lang, *supra* note 55, at 59.

Nor is any of this immune from manipulation or strategic power plays. A Syrian friend related the tale of the patriarch of a Druze family whose son had been killed by neighboring Bedouins. After long discussions and consultations, the patriarch authorized the *jaha* to convey that, as *diya*, he would accept one red shoe—meaning a common object of little value. The family was appalled that he would value the son's life at such a paltry sum, but the Bedouin family and the community at large was amazed at the gesture and praised the patriarch's honor and willingness to reconcile and forgive. Some years later, however, the patriarch led his family in a raid against the Bedouins that resulted in the deaths of 15 Bedouin young men. The patriarch approached the *jaha* and said that he was prepared to enter into peace—and offered a *diya* of 15 red shoes!

CONCLUSION

We end as we began. *Sulha* and *Ho'oponopono* reflect assumptions about social order and expectations that in the main are distinct from Western concepts of either justice or self-interest. *Sulha* is not about determining guilt, imposing punishment, requiring restitution, warning others through exemplary sentencing, or any of the other state goals of Western criminal law. *Ho'oponopono* is not about social work, behavior modification, family socialization, self-improvement or pre-professional training. Instead they both rely upon shared values of forgiveness, insight, acknowledgement, honor, respect, and reconciliation through public humility and the sharing of food.¹¹⁷ They arise from a perception that appears frequently in the literature: In the case of *sulha*, that nobody can carry blood—it is too heavy.¹¹⁸ In the case of *ho'oponopono*, that one cannot hurt others without eventually hurting one's self.¹¹⁹

The peace that these processes provoke is prompted by utilitarian concerns as well. The society that gave rise to them was deeply interdependent and could not afford indefinite dis-

¹¹⁷ PEACE AND CONFLICT RESOLUTION IN ISLAM: PRECEPT AND PRACTICE, *supra* note 2, at 9 ("From an Islamic perspective, the Western approach to peace puts too much faith in institutional formulas, scientific progress, and the 'invisible hand' of competition, and too little emphasis on the need for shared values that might protect the individual and the community from misguided or harmful ventures.").

¹¹⁸ JABBOUR, *supra* note 56, at 57; Lang, *supra* note 55, at 65.

¹¹⁹ PUKUI, *supra* note 10, at 243.

quilibrium, or the threat of murderous violence.¹²⁰ Reconciliation through *sulha* is not just spiritually aspirational; it is economically vital.

So these processes are effective because they are honorable; because they are restorative; because they are permeated with respect; because they are led by wise and respected people; because they affirm shared social and spiritual values; because they preserve order; but most of all, because they are necessary in order for the community to go on with their lives.¹²¹ Once reconciliation through *sulha* or *ho'oponopo* is reached, the conflict may no longer be referred to; it is past. "Once a wound has healed, it cannot bleed again."¹²²

Can this be said for Western mediation, Western society, or Western law?¹²³

¹²⁰ Irani, *supra* note 2, at 182 (*Sulha's* value lies in "its recognition that injuries between individuals and groups will fester and expand if not acknowledged, repaired, forgiven and transcended.").

¹²¹ See Lang, *supra* note 55, at 65 ("The practice of *sulha* embodies a set of assumptions about the kinds of relationships that ought to exist between people in village society. These views of the social order are perpetuated with every *sulha* as they are represented, retold, and reinscribed in the minds of those who participate.").

¹²² M. Abu-Hassan, M., *Tribal Reconciliation (El-Sulh) in Jordan*, in CONFLICTS AND CONFLICT RESOLUTION IN MIDDLE EASTERN SOCIETIES – BETWEEN TRADITION AND MODERNITY, *supra* note 50, at 557. The removal of injury entirely through reconciliation permits new and advantageous relationships in Bedouin society, including through marriage, that might otherwise be impossible to achieve. *Id.* at 561. This consideration is also the reason why the peace made at the *sulha* ceremony extends not only to those present, but also to those absent and those not yet born. *Id.* at 571.

¹²³ See Irani, *supra* note 2, at 173 ("[N]on-Western students of conflict resolution are likely to be highly sensitive to the general lack of correspondence between the principles and practices espoused by Western conflict resolution professionals and the actual conduct of Western nation-states (primarily the United States) in the international system.").