BLOOD MONEY IN SUDAN AND BEYOND:
RESTORATIVE JUSTICE OR FACE-SAVING MEASURE?

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By

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ABSTRACT

This thesis assesses the restorative justice aspects of blood money processes used around the world but focuses primarily on Sudan and South Sudan. It examines sulha, judiya (Darfur), galad (eastern Sudan) and other processes using a mixed methods approach and a multi-site ethnography methodology. The paper scrutinizes these processes from foundational agreements, information gathering and truth-telling, through selecting a third party, and examines truces, exile, women’s roles, compensation agreements, closing rituals, and implementation measures. The paper documents contemporary challenges facing these blood money processes such as collective responsibility, global trends like urbanization, widespread killing and retaliation that rises to a feud, situations where killer and killed are unknown to each other, and situations where blood money is paid by outsiders. I identify shortcomings within these processes relative to international legal norms and human values, as well as areas where they are consistent.

Using a restorative justice analytical framework, I determine whether blood money processes are restorative and constitute justice, and ask whether these
traditional mechanisms are sufficiently robust to stop the cycle of violence. I examine concepts of reconciliation, including truth telling, recognition, rituals, and forgiveness. I consider cultural, historical, and psychological aspects of retaliation and revenge, as well as the Arabic concepts of qisas,\(^1\) (retaliation) and tha’r\(^2\) (blood feud), cultural codes of honor and shame (sharaf and ’ayb), and the complex Dinka (and Nuer) concept of cieng, to assess factors impacting blood money’s effectiveness at breaking the cycle of violence, as well as examining the role it plays in preserving honor (or saving face).

I determine that, in many cases, these compensation processes are not fully restorative, in large measure because some key aspects of their practice are circumvented or neglected, or due to other challenges facing these processes. Yet their primary aim remains to restore communal relationships, and they continue to hold value for many people. I conclude by recognizing that blood money processes may be the most accessible and culturally acceptable conflict resolution practice in ungoverned spaces experiencing violent conflict, and therefore recommend improving, not replacing, these practices.

Keywords: diya; blood money; restorative justice; sulha; judiya; rule of law; tha’r ajaweed; reconciliation; multi-site ethnography; sharaf, honor, `ayb, cieng, qisas

\(^{1}\) J. Milton Cowan, ed., *Hans Wehr: A Dictionary of Modern Written Arabic*, 4th ed., (Ithaca: Spoken Language Services Inc., 1994), 896. *Qisas* has meanings including ‘to retaliate; to return like for like; to avenge; to take vengeance.’

\(^{2}\) Ibid., 121. *Tha’r* has meanings including ‘to avenge the blood of; to take blood revenge; retaliation; take vengeance.’
PREFACE

What may be the oldest conflict resolution mechanism known to man—the compensation mechanism known as blood money—is still practiced and holds great meaning for millions around the world. Muslims, tribal chiefs, and customary law practitioners claim it as their own, but the practice itself can be traced through many generations, from Herodotus and the ancient Greeks to contemporary Sudan, and across the miles ranging from ancient Iceland to Papua New Guinea and many times and places in between.

I was first introduced to the concept of blood money during a conflict resolution training workshop I conducted for the U.S. Institute of Peace in Darfur, Sudan in 2006. The workshop topic was about customary law and its contributions to peace and conflict resolution. Much of Darfur was, at the time, embroiled in a raging war—some called it genocide—between the Government of Sudan and various rebel movements in Darfur. Yet in addition to this civil war, in which the government had armed and engaged certain ethnic groups to attack certain other tribes, high levels of inter- and intra-tribal violence were ongoing as well.¹ The workshop included opportunities for the participants, who consisted largely of traditional leaders from multiple tribes who identified themselves as

¹ Controversy exists within academia regarding the suitability of the word “tribe” to describe ethnic groups, persons affiliated through familial ties, or other entities who share a common identity frequently associated with blood relationships. My use of the term ‘tribe’ refers more specifically to identity groups which may cross ethnic, political, geographical, blood, or other boundaries, but within which some members practice collective responsibility. I use the term recognizing its problematic nature, but I find that alternative terms fall short as well.
sheikhs, omdas, nazirs, sultans, and a variety of other traditional titles, to examine their customary mechanisms for resolving conflict and reflect on reasons why the mechanisms were falling short in terms of stopping violence from escalating. One of the reasons cited by these leaders for their inability to stop the violence was the government’s intervention in *diya* payments--compensation payments from a killer’s clan to the clan or extended family of the victim--citing situations where the government paid the compensation on behalf of tribal members who participated in intentional killing (murder) even when the tribe’s members themselves refused to pay the *diya*. (According to custom and some laws, murders are not supposed to be resolved through payment of compensation, but are supposed to be adjudicated in a court of law, normally with compensation as part of that process). The leaders also cited situations where family members of victims had refused to accept the *diya*, because they wanted the offenders to face justice in a court of law (versus being settled outside of court through payment of the blood money), but the families were, in

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2 Carolyn Fluehr-Lobban, “Homicide in the Afro-Arab Sudan,” *Journal of African Law* 20, no. 1, (1976): 22 and 34, and Carolyn Fluehr-Lobban, *Shari’a and Islamism in Sudan: Conflict, Law, and Social Transformation* (London: I.B. Taurus, 2012), 115-120. The 1991 Shari’a Code of Law in Sudan incorporated *diya* as part of the legal code. Legal codes in Sudan and in many other countries are a mélange of civil law, criminal law, customary law and Shari’a law. A snapshot of legal codes in Sudan in the 1970’s clarifies distinctions between criminal law and Shari’a: “The law recognizes several types of homicide: (i) murder; willful and intentional killing; (ii) culpable homicide: killing in self-defence or under sudden and grave provocation; Sudan Penal Code, section 253; (iii) killing with the intent to cause grievous hurt: S.P.C., section 254.” The Islamic law was somewhat different: “According to the laws of Islam, willful homicide is punishable by God and by retaliation (*qisas*). Unintentional homicide is punishable by God and by the payment of *dia* or compensation for the loss of life, but not by retaliation ([Sudan] Code of Mohammedan Personal Law, section 299).”
essence, coerced by third parties/mediators into accepting the diya (and therefore could not pursue prosecution of the offender).³

I asked myself whether this manipulation of this traditional conflict resolution mechanism could be directly related to increasing levels of violence, and I vowed to look into the matter. Almost eight years later, I still cannot confidently answer that question. Yet in this paper I come as close as possible to addressing the core issues embedded within that question and consider how we might know whether the mechanism of blood money is effective at breaking the cycles of recurring violence.

My insights into the practice of blood money are therefore informed, in large measure, by my personal and professional experiences with people whose communities practice this mechanism. I have met people and heard stories about blood money from Sudan, South Sudan, Afghanistan, Yemen, Iraq, Somalia and beyond. Having worked in the peacebuilding arena in all of these places (except Somalia), I have a unique cross-cultural and interdisciplinary lens through which to view this mechanism. However, clearly I am still a ‘stranger,’ as is desired for objective academic research.⁴

My experiences led me to ask questions and search for answers, and

³ Fluehr-Lobban, Shari‘a and Islamism, 116. According to the Shari‘a code of 1991, “It is the personal choice of the victim to forgive or to accept the diya, in whole or in part; otherwise the qisas punishment is to be applied….”

therefore my approach to this topic is clearly inductive. My observations have led me to generate a hypothesis that blood money, although relied upon to resolve large numbers of violent conflicts in certain settings, may not actually be effective at accomplishing what it aims to achieve, and may instead be failing to contribute effectively to conflict resolution. I demonstrate that the failure of blood money to constitute accountability is almost certainly linked to high levels of violence.  

One specific example of this dynamic is drawn from South Sudan, where the available data, although incomplete, are fairly compelling in terms of making the connection between shortcomings of accountability and continued violence. A recent report describes the situation in this way:

In recent years, violent conflict has resulted in the deaths of thousands of people in rural areas. The perpetrators of this violence are able to kill innocent people, loot livestock, destroy property, abduct women and children and commit acts of sexual violence with impunity. Political interests, such as armed rebellions against the state and government counter-insurgency campaigns, often contribute to this violence and heighten the scale and intensity of conflicts.

Within this context, some recent research on dispute resolution shows that approximately 80% of killings in rural areas of several countries are resolved through customary law primarily through the payment of blood money, with payment of compensation (or the transfer of a young girl in lieu of exchange of

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cattle) often constituting virtually the sole form of accountability.\textsuperscript{7} In conditions characterized by the breakdown of state institutions, the lack of judges or other legal professionals, the absence of prisons to hold criminals, and the risk to killers of retaliatory violence, the need for and reliance upon compensation becomes even more intense. Yet the violence continues, and levels of killing in some areas where blood money is relied upon reflect some of, if not the highest rates of killing in the world.\textsuperscript{8} Further research clearly needs to be done to assess cause and effect and attempt to determine correlations and linkages between blood money and high rates of violence. This study only opens the door to such research.

There are other indications that blood money processes are breaking down. A foundational premise of blood money is that it works on a system of collective responsibility in which the perpetrator’s clan or family is responsible for both paying compensation if one of their own kills another, and following payment, to put pressure on its members not to resume violent acts. Yet I question whether this concept of collective responsibility still functions when the family or clan

\textsuperscript{7} Noah Coburn and John Dempsey, “Informal Dispute Resolution in Afghanistan,” \textit{Special Report 247}, (Washington D.C.: U.S. Institute of Peace, August, 2010): 20 (Footnote 4). See Center for Policy and Human Development, \textit{Afghanistan Human Development Report 2007: Bridging Modernity and Tradition—The Rule of Law and the Search for Justice} (Kabul: CPHD, 2007): “The percentage of cases resolved by the informal sector in various countries is disputed and difficult to quantify…particularly since many such disputes are addressed away from the eyes of local officials and outside researchers. In 2007, the Center for Policy and Human Development (CPHD), in one of the most comprehensive assessments of the nonstate sector in Afghanistan, argued that 80 percent of all disputes are being resolved by the informal system…” Also see Deng, \textit{Challenges of Accountability}, 20, which cites the “vast majority” of homicide cases in South Sudan are resolved through informal mechanisms.

refuses to pay, or when the blood money is paid by outsiders. My conjecture was that something may be fundamentally flawed about these processes.

The scope and scale of the challenges of researching blood money and fully validating these hypotheses are daunting. Violence-prone areas such as Jonglei state in South Sudan, the border areas of Sudan and South Sudan, Darfur or the rural areas of Yemen, Iraq, and Afghanistan where levels of violence are highest and the influence of state institutions lowest, and where for those reasons, blood money is likely to be the primary means of resolving violent conflict, are exceedingly dangerous even for local citizens. Historical anthropological data on homicides in Sudan in the 1970s shows high numbers of cases being resolved through blood money, but does not have data on recidivism, which could indicate whether the process was successful or sustained peace.\(^9\) Many databases on violence and access to justice, such as the World Justice Project, cover few of these areas.\(^{10}\) Data such as that in a recent South Sudan Law Society report support my hypothesis.

Upon closer examination of the blood money process, it becomes clear that the mechanism intends to bring peaceful relations not solely through the process of accountability. The blood money mechanism incorporates a unique and complex blend of processes and rituals that combine synergistically to determine


\(^{10}\) The 2014 World Justice Project Rule of Law Index does cover three relatively urban areas of Afghanistan, ranking the country 98 out of the 99 countries in which data was gathered. See http://worldjusticeproject.org/rule-of-law-index.
a narrative of what happened and why, to negotiate through trusted third parties
a satisfactory agreement that attempts to satisfy victims for their loss, to hold
perpetrators accountable through collective responsibility, and to restore
relationships between clans sufficiently to convince the victim’s family or clan that
retaliation or revenge is unnecessary, if not bringing them further to the point of
reconciliation or forgiveness. Under this microscopic view, each component of
the process becomes critical to the success of the whole, and each is facing
challenges.

My research and analysis draws upon both emic-insider native
perspectives as well as the etic-outsider, viewed through both cross-cultural and
interdisciplinary lenses. I am applying a methodology not unlike what is referred
to as a ‘multi-sited ethnography’ in which “the object of study is ultimately mobile
and multiply situated, so any ethnography of such an object will have a
comparative dimension that is integral to it, in the form of juxtapositions of
phenomena that conventionally have appeared to be (or conceptually have been
kept) ‘worlds apart.’” ¹¹ Using Marcus’ example of ‘Follow the Conflict’ as a
framework, I will be using ‘Follow the Restorative Justice Process,’ applying an
analogous analytical process.¹² Aware of the risks of trying to produce ‘middle-

¹¹ George E. Marcus, “Ethnography in/of the World System: The Emergence of Multi-
http://web.b.ebscohost.com.proxy.library.georgetown.edu/ehost/pdfviewer/pdfviewer?vid=3&sid=37cf1db6-b1de-4267-9eaa-b26c92ce5528%40sessionmgr114&hid=119 (accessed: March 23,
2014).

¹² Ibid., 110.
range theory,’ I aim to produce a work squarely “between theoretical ambition and empirical data.”¹³ This mixed-methods approach deals with a subject that has elements simultaneously of law, religion, history, sociology, psychology and criminal justice, which I view through an interdisciplinary, conflict resolution lens.

Unlike a true ethnographer, much of my knowledge has been acquired over the course of travel to Sudan and South Sudan several times per year over the course of a ten-year period, with approximately 25 distinct visits during that time frame. These visits have taken me from Atbara and the pyramids along the Nile cataracts in the north, to Kassala near the Eritrean border in the east, and to the center through the Nuba Mountains towns of Dilling and Kadugli. From El Obeid, I have traveled by car west along the oil pipeline (on a trail incongruously called the ‘pipeline road’) to El Fula in western Kordofan, passing through the lovely old town of Nahud. In what is now South Sudan, I have traveled to the Nile port of Malakal, to Juba and onward to Yei, across to Wau and up to Aweil, and from there to the peace market town of Warawar near the Sudan/South Sudan border, as well as to Abyei, the site of cyclical conflict. In the west, I have traveled to the main cities of Nyala and El Fasher in Darfur. I have stayed with families in north and south, attended weddings and discussed family matters, and have interacted with many elements of society through my work. In short, I have seen more of Sudan and South Sudan than many citizens raised in the two

countries. In addition, as already mentioned, I have worked with people familiar with blood money from Sana’a, Yemen, to Kabul, Afghanistan, to Baghdad, Iraq.

Throughout these travels I have talked extensively about blood money, and worked side-by-side with people striving to assess their own conflict resolution practices and learn new skills, including tribal elders, sheikhs and chiefs who are practitioners of these processes, members of civil society, police, and government officials. I have met with countless international scholars, rule of law practitioners, and policy-makers focused on these countries and cultures, and have discussed this mechanism with many of them. I am informed by wide-ranging views of the process from scholars and practitioners coming from multiple policy, thematic and occupational perspectives. For one example, I have had a member of the Iraqi government whisper to me, in the midst of a room full of sheikhs, “between you and me, we wish these sheikhs would just… “delete themselves,” while sweeping his hands away as if brushing a dog away from stealing food scraps off a table. In another situation, a very senior traditional leader in Sudan told me about blood money, “this process has to change.”

I am also informed by academic research within many specialties and disciplines both inside and outside these systems of practice. I have met a number of individuals, like these men, who believe blood money is a vestige of the past and is no longer acceptable in the modern world, though I have met others who believe that blood

14 Author conversations in Baghdad, Iraq, October 2007, and Khartoum, Sudan, September 2011.
money is a core traditional process that heals communities and is an irreplaceable part of conflict resolution traditions.

Surely a process used for many generations over so many regions of the world must have been written about ad nauseum. In fact, I have not come across a single work that summarizes and takes the perspective of this mechanism that I am taking. I draw upon a wide spectrum of academic literature, including anthropology, primarily ethnographies, that describes the practice of blood money across the span of countries and the span of years, but those generally discuss only a small geographical setting or the view from within a single ethnic group. I access literature on religion to understand how the various faith communities view this practice and concepts such as compensation, reconciliation, restitution, retaliation or other aspects of the process. I draw upon resources of law and legal pluralism, such as works that detail how customary law correlates to or integrates with formal judicial processes. I include contributions from psychology about revenge and retaliation and how the mind processes these urges, and I utilize historical documents culled from the Sudan Archives at the University of Durham.\textsuperscript{15} I also have access to and utilize unpublished documents including an Arabic-language document on “Customary Laws of Blood Money and Tribal Dispute Resolutions” provided to me by a researcher of the practice from Darfur as well as a handwritten document handed

\textsuperscript{15} Documents from the Sudan Archives Durham are given reference citations beginning with SAD followed by numbers, and little else in terms of identification.
to me by an elder practitioner of the process outlining *diya* payments for the Hawazma Arabs in South Kordofan state.

The goal of this thesis requires me to synthesize all of this material by viewing it through the interdisciplinary lens of the conflict resolution framework of restorative justice in order to fully understand not just how blood money works, but how to assess its impact, positive or negative. To my knowledge, there is no single work integrating all of these perspectives and asking the questions about not just what blood money is, but how it works or fails to work across boundaries of geography, culture, and religion. This study asks the question of whether in fact the process of blood money is actually effective at breaking the cycle of violence and retaliation. We know why blood money exists, and we know how it is supposed to work. We do not know whether in fact it fully satisfies victims, holds perpetrators accountable, restores relationships, or prevents or stops violence; in short, we do not know whether it is restorative, and whether in fact it constitutes justice, and that is the reason for this paper.

Importantly, this study represents not an exegesis, as in a critical explanation, per se, as much as it is a humanistic, hermeneutical process of unfolding the significance of restorative justice practices and blood money’s potential role in restoring relationships. I produce an overview of the mechanism of blood money as practiced in many different contexts, outlining the elements of the mechanism itself and where it intersects with, or diverges from international legal norms, human rights, and conflict resolution best practices—and having
done that, I characterize the impacts, positive and negative, of changes to the global environment and our understanding of core human values and how they impact the practice of blood money today.

My use of a restorative justice framework to analyze blood money allows me to examine each of these component parts, but hones in on what for me is the crux of the matter. What do blood money processes require to be effective, or more effective, at breaking the cycle of violence? What elements of the process are clearly showing signs of stress, and how can those aspects be buttressed or encouraged to be more effective? If blood money fails to bring parties to the point of true accountability, and on to reconciliation, what would be needed to do so?

Within the ungoverned spaces where people are experiencing violent conflict, there are many different levels and types of conflict and violence that might be resolved (or attempted to be resolved) through the practice of blood money. Some violence may be simply a killing by a member of one family of a member of another family, and the two families might be known or unknown to each other before the killing. Killing could occur between two tribes, clans, or sub-clans with a long history of interaction, with precedents and pre-standing agreements about how the process works and amounts of blood money, or the killing could occur between total strangers. The violence could be related to old feuds, it could be retaliation for recent violence, or it could be the result of a random set of events. The killing could be intentional and premeditated, or it
could be completely accidental and unintentional. Within this complexity there are many similarities, but each case of killing is absolutely unique, in that no one person can be killed twice, and no single family can therefore have had the experience of losing that exact family member previously. I never lose sight of the human element of the deaths I am researching, and I am fortunate to draw on the work of many courageous anthropologists, historians, and scholars of law who have done work of impressive depth in conditions of great challenge. I am grateful for their sacrifices.

A close examination of the process raises valid ethical and human values concerns. A general rule of law principle is that impunity for killing is unacceptable, yet as I demonstrate, there are clear concerns that payment of blood money—particularly in circumstances where there are no other judicial remedies—may constitute the sole form of accountability for murders. Although not common, there are indications that the age-old practice of exchanging young girls as compensation is still in use. There are questions as to whether women, who may be spouses of victims, participate in these processes, either formally or informally, whether they are satisfied with the outcomes, whether any compensation benefits them at all, and whether customary measures related to the process, such as the widow marrying the brother of the deceased, delegitimize the process sufficiently to undermine its credibility as a recognized legal practice.
Although drawing conclusions from this study that are transferrable to different contexts may appear challenging because I highlight examples primarily from Sudan and South Sudan, I have included examples and case studies from other contexts to demonstrate similarities across a broad geographical and cultural spectrum. I raise issues, questions, and challenges during the course of this study that can inform future research on this and related topics.

The ‘holy grail’ for contemporary conflict resolution practice and theory is to examine a specific set of actions applied to a specific set of challenges, to analyze the theory of how that action will result in certain impacts or result in certain changes, and then document cause and effect—that a particular set of actions conclusively generated the desired impact. It is challenging, at best, to determine why one party or another chose not to fight or to retaliate, and conclusive results are virtually impossible. Even perceptions of being ‘satisfied’ with the practice does not tell us whether in fact it actually works to break the cycle of violence, and whether it does so at any given point in time. We don’t know, and we cannot know, how many homicides have been prevented through the pressure of collective responsibility, or how many retaliatory killings have been prevented through acceptance of blood money. What we do know is that blood money has been and is practiced in many areas of the world experiencing excessive levels of violence. It is an unanswerable question as to whether the violence is a cause of failures of blood money, or whether the violence would be worse without this mechanism.
This paper could have significant policy implications for practitioners of conflict resolution and customary law across the Muslim, Arab, and developing worlds as well as in Sudan and South Sudan. My study will demonstrate specific areas where small changes can positively impact the effectiveness of blood money for helping societies to heal. One area where this might be true is addressing the question of accountability through payment of blood money by third party actors, which could circumvent the healing and collective responsibility aspects of the mechanism. Another area of focus is moving from compensation to true reconciliation through these processes. I also believe my work informs the wide body of programs examining how to transition customary approaches toward more formal justice mechanisms so these processes can increase both accountability and healing.
ACKNOWLEDGMENTS

This thesis fulfills, to a certain extent, my commitment to people whose lives are affected by the practice of blood money daily. I promised them I would seek to understand more about the subject. I know they see global changes encroaching on their traditions, and they may or may not accept that their traditions may need to adapt to those changes. I believe it is not either one or the other, but that they can retain aspects of their traditions that comfort them and bring hope for a more peaceful future while at the same time working to improve the positive impact of these processes.

This paper is dedicated to the Sudanese, South Sudanese, Iraqi, Afghan, Yemeni, and other peacemakers whose efforts toward peace make my sacrifices seem petty, and to my husband and children who have been the source of all that sustained me through these years. They kept cheering me on despite their frustration that my time and attention were not theirs to enjoy. I am grateful to my mother Carolyn Herrera for her example of lifelong learning and for her gift to me of ‘grit’. I thank my editor/father-in-law David Wilson for his gift with words and his generosity. I am grateful for the amazing opportunities provided by my work at the U.S. Institute of Peace and for the support of my colleagues there. Finally, I am exceedingly grateful to Dr. John Voll for his belief in me, to Dr. Carolyn Fluehr-Lobban whose work in Sudan over many years informs and inspires, and to Brian Kritz, a lawyer and scholar with his heart in peace work who has been a
continuous source of encouragement. I also thank the Liberal Studies program at Georgetown without which I could never have achieved this accomplishment.

For some doctoral students, the final product brings a cathartic sense of closure for a rewarding accomplishment. My sense of pride in this paper lies mostly in the realization that there is much more to be done to help violence-wracked societies grapple with how to bring peace to their communities and families, but that I have contributed to achieving that goal. I now feel a renewed sense of purpose and direction about how to begin. I hope this paper inspires others to follow their own journey of academic and personal discovery that this Doctor of Liberal Studies degree represents for me.
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## GLOSSARY

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<td>Aano</td>
<td>Killing in revenge (Somali)</td>
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<td>Ahl al mait</td>
<td>People of the Dead; deceased person’s relatives (Dinka)</td>
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<td>Ajaij</td>
<td>Dust devil (associated with ‘dusty’ diya) (Arabic)</td>
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<td>Ajaweed</td>
<td>A third party mediator in Darfur and Kordofan (Arabic)</td>
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<td>Amd</td>
<td>Offenses committed deliberately (i.e. murder) (Arabic)</td>
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<td>Anywaa</td>
<td>(also spelled Anuak) A Shilluk-Luo group of Nilotic peoples who live in Eastern South Sudan and across the border into the Gambella region of Ethiopia (Anywaa)</td>
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<td>Apuk</td>
<td>(Sometimes puk) Blood money processes among the Dinka (Dinka)</td>
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<td>Aqila</td>
<td>Male relatives or solidarity group (Arabic)</td>
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<td>Aruok</td>
<td>Compensation for seducing an unmarried girl (Dinka)</td>
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<td>Ashira</td>
<td>A group of clans; an ashira can range from several hundred members into the thousands (and even up to 100,000; Arabic)</td>
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<td>Atwa</td>
<td>Ceasefire which is a set period of time, generally between two weeks to a month (renewable), in which the victim’s family agrees not to exercise their right to retribution (Arabic)</td>
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<td>Awec</td>
<td>Compensation for rape (Dinka)</td>
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<td>`Ayb</td>
<td>Shameful behavior; shame; dishonor; disgrace (Arabic)</td>
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<td>Baad</td>
<td>Offering a woman or girl into marriage to settle a dispute. (Afghan)</td>
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<td>Bang a Bith</td>
<td>The chief of a Gol with a fishing spear; the spiritual head of each Gol (Dinka)</td>
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<td>Bayt</td>
<td>House; similar to khams; A bayt can represent a group of five generations of male descendants or can be a larger extended family. In Sudan and South Sudan, tribes north of the border coordinate grazing and intermarriage with a corresponding group called a hashim bayt. (Arabic)</td>
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<tr>
<td>Bisha’h</td>
<td>Truth-telling ritual ordeal conducted by a mubasha who asks</td>
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</table>
accused to lick a hot metal object; if the tongue blisters, they are deemed guilty (Arabic)

Cieng/Ciang. Overarching societal norm of unity and harmony; incorporates law and custom; sociocentric behavior; friendly living together; moral order (cieng, Dinka, ciang Nuer)

Dakhl. Refuge; protection; usually used when a group at risk seeks the protection of a stronger clan or tribe (Arabic)

Dheeng. Dignity (Dinka)

Dimui. Bead used as blood compensation among Anywaa community (Anywak)

Dinka. Largest tribe in South Sudan; Nilotic agro-pastoralists

Diya. Blood money; compensation Includes dusty diya (diya al ajaija); harsh diya, (diya al-mughlita); diya paid by larger sub-clan (diya es sof); diya of ancient custom (diya djajia), etc. (Arabic)

Fasel. Blood money process in Iraq; also used for the compensation itself (Arabic)

Fakhdh. Clan, comprised of a number of houses or khams (Arabic)

Fatwa. Religious interpretation serving as legal opinion (not law) made by Islamic religious leaders (Arabic)

Foret ad-dam Boiling of the blood (Arabic)

Gacaca. Rwandan restorative justice mechanism; used after 1994 genocide (Kinyarwanda)

Galad. Process of negotiating blood money used in eastern Sudan (Beja)

Gar. Blood money (Eritrea/Tigriniya)

Gassas. Claim or right to retaliate (Eastern Sudan; Arabic)

Gol. Cattle camp (Dinka)

Ghura. Unmarried female relative (usually a teenage girl) given as compensation within a co-liable group. (Arabic, Bedouin)
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Gurtong</td>
<td>Local peacebuilding/reconciliation process used by Anywaa people (Anywak)</td>
</tr>
<tr>
<td>Gullad</td>
<td>Word of honor (Eastern Sudan Arabic/Beja)</td>
</tr>
<tr>
<td>Guurti</td>
<td>Traditional group of elders for governing and dispute resolution (Somali)</td>
</tr>
<tr>
<td>Hamula</td>
<td>Clan or lineage; persons having the same surname (Arabic)</td>
</tr>
<tr>
<td>Hadd</td>
<td>Serious Islamic crimes generally considered crimes against God: generally considered to be theft, fornication, adultery, consumption of alcohol, and apostasy (murder is not) (pl. <em>hudud</em>).</td>
</tr>
<tr>
<td>Harambee</td>
<td>Community fundraising technique in Kenya (Kiswahili)</td>
</tr>
<tr>
<td>Ijhaf</td>
<td>Injustice (Arabic)</td>
</tr>
<tr>
<td>Irд.</td>
<td>Decency (Arabic)</td>
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<tr>
<td>Jaha</td>
<td>Committee of 1-20 respected male leaders (Arabic)</td>
</tr>
<tr>
<td>Jala</td>
<td>Forced exile (Arabic)</td>
</tr>
<tr>
<td>Jira</td>
<td>Initial payment of blood money; down-payment/promissory note (Arabic)</td>
</tr>
<tr>
<td>Jirga</td>
<td>Afghan conflict resolution custom; customary decision-making dialogue (Pashtun)</td>
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<tr>
<td>Judiya</td>
<td>Mediation process used in Darfur for conflict resolution; <em>judiya</em> processes are conducted by an <em>ajaweed</em> (Arabic)</td>
</tr>
<tr>
<td>Karama</td>
<td>Personal dignity; honor (Arabic)</td>
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<tr>
<td>Khams</td>
<td>Extended family, consisting of all male-born children who share the same great-great grandfather (therefore five generations of men in a single family). (Arabic)</td>
</tr>
<tr>
<td>Koor cieng</td>
<td>Homeland or local war (Nuer)</td>
</tr>
<tr>
<td>Koor kume</td>
<td>Government war (Nuer)</td>
</tr>
<tr>
<td>Lex Aquilia</td>
<td>Justinian laws promulgated in 529 AD calling for compensation (Latin)</td>
</tr>
</tbody>
</table>
Lex Talionis. Law of Retaliation found in Deuteronomy, 19:21 and Exodus 21: 23-25 (Latin)

Malual. Dinka clan found in Bahr el-Ghazal region (Sometimes Malwal)

Matsyanyaya. Justice in the world of fish (Sanskrit)

Messiriya. Pastoralist Arab, largely Muslim tribe in Kordofan region of Sudan

Mior de Kueng. Bull of peace settlement; accompanied by oath to keep peace and avoid vengeance (Dinka)

Mior de Yuom. Bull of the bone; bull pulled apart and shared in symbolic ritual (Dinka)

Mubasha’. Man who conducts the special Egyptian Bedouin truth-discerning ritual of *bishahu*; the *mubasha’* plays a role somewhere between that of a mediator and an adjudicator.

Muhanna. When each clan pays *diya* in proportion to its size (Kordofan, Sudan, Arabic)

Nazir. Senior traditional leader among Rezeigat tribe of South Darfur, Sudan (Arabic)

Niti. Justice; organizational propriety; behavioral correctness (Sanskrit)

Nuer. Large Nilotic tribe in eastern South Sudan (Nuer)

Nueer. Poisonous spirit (after killing) (Nuer)

Nyaya. Realized justice (Sanskrit)

Nyiya. Anywaa king (Anywak)

Omda/Umda. Local traditional or government appointed leader; akin to a mayor (Arabic)

Pashtunwali. Cultural code among the Pashtun tribe of Afghanistan and Pakistan (Pashtun)

Qabila. Tribe or federation of tribes (Arabic)

Qadi. *Shari’a* law judge (Arabic, Kiswahili)
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<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
<th>Language/Region</th>
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<tbody>
<tr>
<td>Qawm.</td>
<td>Afghan term meaning ‘us’ as opposed to ‘them’ (Pashtun)</td>
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<tr>
<td>Qisas.</td>
<td>To retaliate; to return like for like; to avenge; to take vengeance</td>
<td>(Arabic)</td>
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<tr>
<td>Rakuba.</td>
<td>Foundational agreements between tribes in Darfur (Arabic)</td>
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<tr>
<td>Salif</td>
<td>Foundational agreements between tribes in Eastern Sudan (Arabic)</td>
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<tr>
<td>Shaklat.</td>
<td>Legal term in Sudanese law that specifically refers to large-scale</td>
<td>(Arabic)</td>
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<tr>
<td></td>
<td>inter-ethnic fights. Its meaning is derived from its root word shaqq,</td>
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<tr>
<td></td>
<td>which means to split, to cleave, to break or tear apart (Arabic)</td>
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<tr>
<td>Sharaf.</td>
<td>Honor conveyed to an individual or family by upright living within a</td>
<td>(Arabic)</td>
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<td></td>
<td>Community (Arabic)</td>
<td></td>
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<tr>
<td>Shari’a</td>
<td>Islamic law (Arabic)</td>
<td></td>
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<tr>
<td>Sheikh.</td>
<td>Religious and/or political leader of a group. In some cases sheikhs</td>
<td>(Arabic)</td>
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<tr>
<td></td>
<td>are senior leaders of a large group, and in other cases they are local</td>
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<tr>
<td></td>
<td>leaders (Arabic)</td>
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<tr>
<td>Sulha.</td>
<td>Process used to negotiate blood compensation in Levant region; from</td>
<td>(Arabic)</td>
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<tr>
<td></td>
<td>the root sulh, meaning (re)conciliation; settlement, composition,</td>
<td></td>
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<tr>
<td></td>
<td>compromise (Arabic)</td>
<td></td>
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<tr>
<td>Sultan.</td>
<td>High-level traditional leader among certain tribes in Sudan (Arabic)</td>
<td></td>
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<tr>
<td>Ta’awun</td>
<td>Collaboration (Arabic)</td>
<td></td>
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<tr>
<td>Takaful</td>
<td>Cooperative payment of compensation (Arabic)</td>
<td></td>
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<tr>
<td>Tha’r.</td>
<td>To avenge the blood of; to take blood revenge; retaliation; take</td>
<td>(Arabic)</td>
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<tr>
<td></td>
<td>vengeance; tha’r also can be used to indicate a blood feud. Members of</td>
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<td></td>
<td>a khams are theoretically obligated to conduct tha’r if one of their</td>
<td></td>
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<td></td>
<td>own is killed (Arabic)</td>
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<tr>
<td>Urf.</td>
<td>Customary law; also used to refer to blood money processes in Yemen</td>
<td>(Arabic)</td>
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<td></td>
<td>(Arabic)</td>
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<tr>
<td>Vali-ed-dam.</td>
<td>Heirs to the victim (Arabic)</td>
<td></td>
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<tr>
<td>Wagab</td>
<td>Truce (Eastern Sudan Arabic)</td>
<td></td>
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<tr>
<td>Xeer.</td>
<td>Customary law in Somalia (literally ‘contract,’ foundational agreement)</td>
<td>(Somali)</td>
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<td>(Somali)</td>
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INTRODUCTION

Blood money, known as diya across the Arabic-speaking world, is an age-old process used across the world that exists to help resolve violent conflict. It attempts to accomplish this goal through a combination of elements. Primarily, two aspects of blood money are most critical to its theoretical or actual success; first, something about the process constitutes some form of accountability for perpetrators of violence; and second, something about the process satisfies surviving family members of victims sufficiently that it removes, or at least dampens, their desire to avenge the killing and conduct additional violence.

Legal practitioners, historians, anthropologists and sociologists believe the mechanism arose over the course of human development as a means of breaking cycles of recurring violence occurring as rising populations and the movement of people generated conflict over resources. Compensating victims' families for human losses was intended to circumvent their desire to retaliate through compensation geared to the value of their lost loved one. Throughout the vast spectrum of situations in which such blood compensation has been practiced, this aspect of placing value on the lost life and compensating accordingly, though in a currency and amount situated to a local context, has remained consistent across the practice of blood money.

Understanding how this process works requires delving into the nuance of various concepts. Blood money could be described as a process of restitution, meaning an act of making good or compensating one to some measure of equivalency. Another description might go further than restitution, by claiming
that *diya* is a form of reparations, which by some definitions incorporates the act of making amends, or in essence “repairing” the damage caused by the harm or violence.

Either of these compensation mechanisms serve to prevent or stop violence from escalating, because through accepting *diya*, the victim’s family relinquishes any right to retaliate for the loss of one of their own. This concept can range anywhere along a spectrum, from stopping retaliation, which would relate to some measure of equivalency, to squelching the desire for vengeance, a more vindictive process which risks escalation.

In terms of relationships, some would offer that acceptance of *diya* constitutes or incorporates some form of forgiveness. Even further, some recipients would claim that the process of agreeing to pay and accept the *diya* can be equated with reconciliation, which implies a restoration of peace and harmony and a deeper level of healing. (The Arabic term for the process of negotiating the *diya* is called *sulha*, related to *musalaha*, which is generally considered to mean reconciliation).\(^1\) When addressing crimes or other harms, these largely informal, customary mechanisms are primarily concerned with preserving community harmony, as opposed to punishing criminals or protecting individual rights.\(^2\) The focus of blood money has been more closely aligned with addressing harms against a person as opposed to wrongs committed against the state. Woven within this contextual concept of wrongdoing is the idea that harm

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\(^1\) See glossary for broader definition of the Arabic root *sulh*.

has also been done against a group of people, usually kin, and therefore that responsibility for righting the wrong is shared.

In addition to a mechanism for preserving community harmony, blood money is a component of, or related to, the practice of law, and is intended to constitute some form of accountability. Although those who practice blood money are generally not judges per se, practitioners of these processes are considered to be endowed with some knowledge or expertise and garner a form of recognition, or reputation, within the scope of practice of customary law. The agreement to pay blood money on behalf of a community member is an acknowledgement of wrong or harm to others, if not an outright acknowledgement of guilt. Therefore, blood money can be considered a component of customary law, within which the process itself constitutes a communal form of accountability for hurtful actions. The practice is distinguished from the accusatory, zero-sum confrontation of a courtroom in which a third-party is empowered to declare guilt or innocence and in which there are clear winners and losers.

Any one of these lenses--that viewing it as compensation for loss or reparations, as a tool to facilitate restoration of relationships, or as a mechanism for accountability or justice--can provide a useful perspective for examining and better understanding blood money. Yet choosing from among the legal, economic, and social lenses loses sight of the fact that the practice of blood money is an interwoven mélange of legal, economic and social all at the same time. In addition, the fourth lens of conflict resolution rises to the surface. In
short, blood money actually represents a complex interdisciplinary construct that does not easily lend itself to analysis from a single academic or analytical lens.

Blood money may therefore be a classic example of what many would call “restorative justice,” practices intended to hold perpetrators of harm accountable for their actions, and at the same time to ‘restore’ relationships between the aggrieved and the accused to what they were before the crime occurred. One might question whether in fact blood money restores relationships, and whether it constitutes justice. Modern penal codes may incorporate tort claims and liability, but lawyers might scoff at the concept that payment of cows constitutes fair recourse to the state for one citizen murdering another, and may raise questions about whether this constitutes, in essence, impunity. Contemporary ideas of individual accountability call into question a mechanism that permits killers to ‘share’ their guilt with their entire community. Conceptually, scholars point to the use of compensation primarily in cases of unintentional killing—homicide—or other losses, but intentional killing—murder—calls for other measures of accountability. Yet blood money has been documented being paid in cases of murder (which were not also tried in a court of statutory law). The communal nature of the process assumes the power of collective pressure—that the clan or family can impede the perpetrator from killing again and hold him (or her) ‘accountable’ for their behavior. I propose that this assumption may be flawed.

From a conflict resolution perspective, blood money can be seen primarily

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3 Most legal codes reviewed, including those in Sudan and South Sudan, require intentional killing (i.e. murder) to be tried in a court of law, either instead of or in addition to blood compensation. In reality, however, most cases are resolved through custom.
as a mechanism useful for stopping the cycle of violence, yet it is important to understand how the process actually works in practice. In theory, the confluence of accountability or justice, compensation for loss, and a form of forgiveness or restored relationships results in recognition that one’s acceptance of blood money indicates a willingness to forego revenge. It is supposed to work in that the compensation acts in lieu of some other penalty; rather than an eye-for-an-eye, it becomes a cow for an eye (or some similar equation). Acceptance of this equation is supposed to stop the violence. Yet examination of various blood money practices around the world highlight gaps that could indicate serious flaws in its performance.

In fact, the entire process of blood money is facing many challenges. Despite the fact that blood money has existed for as long as man’s history has been documented, situations in which conflict and violence occurs around the world have changed profoundly, as have structures of governance, rule of law processes, social structures and organizations, communal relationships, and the interactions between and among local, sub-national, national and international people and societies. Challenges include those related to the proliferation of weapons, creating opportunities for anonymous killing, and mass casualties where blood money amounts skyrocket. Other challenges relate to changes in society causing people to move for jobs or education, meaning they may no longer maintain close ties to their communities or desire to participate in traditional processes.

These and other challenges may actually have created a dynamic in which
blood money no longer functions as intended, yet these same challenges have not yet resulted in its demise. In other words, it may actually be operating poorly, with existential flaws, yet for any number of reasons, no viable alternatives have yet arisen to take its place. Despite universal efforts to create societies governed by the rule of law, formal legal processes and structures remain out of reach financially or geographically. They may be untrusted by large percentages of global populations. People in large swaths of the developing world may see customary processes as their best—or only—option for accountability and redress.

Broadly speaking, there are two primary schools of thought with respect to the value and effectiveness of blood money practices. One category of observer seems to say that blood money has existed for generations for a reason, and that this longevity and the sheer breadth of its spread must mean that it continues to have value for societies that continue to practice it. The opposite view has weight as well, grasping the possibility that the mechanism has been affected by globalization and contemporary challenges that make it irrelevant at best, problematic or ineffective at worst. Senior-level practitioners of blood money processes have told me personally “this practice needs to change.”

Certainly, one could surmise that as long-time conflict resolution scholar and practitioner William Zartman claims, “traditional African conflict management practices have

4Abdel Rasool el Nur, author interview, Khartoum, Sudan, 2011.
Dr. John Voll states:

…the corrosive effects of rapid social change and modernization have undermined the foundations of traditional Muslim institutions in many areas of the world. Virtually nowhere in the world of Islam have the pre-modern religious structures survived intact. However, in the second half of the 20th century, Islam remains a vital force and is in the process of a transformation that could insure its place as an important factor in the lives of a significant portion of the world’s population.

One could easily replace each instance of the word ‘Islam’ or ‘Muslim’ in the quote above with the terms ‘blood money,’ and the terms related to religion with those related to customary law or dispute resolution, as the concepts are completely analogous.

I will closely examine many elements related to the practice of blood money. I will delve into the nuanced terms related to conflict resolution, healing, and accountability, using literature to demonstrate how the practice is supposed to work, and case studies to highlight how it functions in reality in a variety of settings. These cases are gleaned from unpublished and published sources from a number of countries, showcasing both similarities and unique aspects of practice, yet allowing the reader to draw his or her own conclusions about questions related to the practice’s continuing validity and effectiveness.

This paper therefore examines the practice of blood money through an interdisciplinary lens with a goal of understanding what blood money intends to
achieve as well as how one would know whether or not it is effective at achieving its intended outcomes. I will use the key elements of restorative justice, including compensation (or reparations), accountability or justice, and reconciliation as the three primary components analogous with the practice of blood money, drawing upon recent literature reflecting on several decades of restorative justice processes and offering insights for evaluating their effectiveness. Restorative justice scholarly works have blossomed over the past decade, and efforts to analyze and measure its successes have become more robust, including several fairly recent meta-analyses of a variety of restorative justice practices. I will draw upon that research to create an analytical lens or framework that can be applied to the practice of blood money to help highlight areas of consistency and areas where the process falls short.

The question of whether blood money is effective is not easily or directly answerable, as the question needs to be broadened to address the answer to another question of ‘effective at what’? Yet the question of whether blood money has flaws or shortcomings that cause it to fall short of evolving international legal and human rights norms, is both answerable and important. Short of gathering data on every single instance of crime where blood money is offered and exchanged, and documenting whether or not there is a return to violence, there are ways to more generally determine whether or not blood money is achieving its intended aims more broadly.

An important part of this paper is to question assumptions about the practice. For example, stopping the violence may not actually be the most
important aspect of the practice from the perspective of those who practice this mechanism. In some cases, the primary goal of the use of blood money may be to sustain fragile relationships between neighboring tribes. In other cases, it may primarily serve as a palliative device to keep a family member from sinking into despair. In some instances where rule of law and the formal justice sector are severely lacking, a blood money process may constitute the closest thing to justice that can exist in that space at that time. In short, it is important to examine the process of blood money from a wide spectrum of lenses in order to more broadly understand its true value.

In addition to contributing understanding of blood money through a lens that conjoins the religious, cultural, historical, anthropological, sociological, economic, and legal perspectives beneath an umbrella of conflict resolution, this study aims to contribute ideas to the methodological challenge of better understanding and evaluating the effectiveness of the mechanism at breaking the cycle of violence. This paper suggests practical approaches to assessing and improving its effectiveness.

Preliminary observations tell me that blood money can be judged in many ways; from a contemporary, western-oriented rule of law and human rights lens, blood money can on the one hand be considered seriously flawed, largely constituting impunity and potentially violating human rights. From another perspective, some examples of its practice are deemed consistent with rule of
It may fail to compensate victims for losses adequately, in that immediate family members may fail to benefit, or it may be that the gesture alone of promising to provide some form of compensation is sufficient to satisfy needs, redress harms, and that it remains an adequate tool for dampening violence.

It must be recognized that blood money has been for generations, and in many places remains, the primary form of conflict resolution in situations characterized by the absence of rule of law and state governance. For that reason alone, I expect to discover that it trumps all alternatives for stopping violence because, despite its shortcomings, it is at its core a non-violent method of resolving conflict. I expect to demonstrate that through breaking blood money practice down into its component parts, that is, by examining the nature of its elements of accountability, compensation, and restoring relationships, that blood money can be considered mostly effective at each of the above aspects.

The following general description of the content of each chapter highlights some of the key points I will address in this study:

**Chapter 1: Overview of Blood Money** provides a broad and comprehensive overview of the practice of blood money in general. It begins with definitions that help describe the breadth and scope of the process I am referring to, and that will later help to frame and clarify objectives and variables about what the process intends to achieve. It continues with an historical overview spanning in time from the earliest references to blood money in Greek mythology to contemporary references, with some characterization of

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differences/ evolutionary stages of development, and spanning geographically from Papua New Guinea to Iceland and include numerous examples from Sudan and South Sudan as well. The introduction incorporates references to the legal, religious, and customary, social aspects of the process to help place the process within society.

**Chapter 2: How Blood Money Processes Work** examines the various processes used to negotiate blood money, such as the *sulha* process used in the Middle East/Levant, the *judiya* process used in Darfur and the *galad* process used in eastern Sudan, among others. In this chapter I examine the process of initiating and negotiating blood money agreements, look at foundational agreements that provide guidelines for the process, and examine some of the core characteristics of the process across various geographical and ethnic communities. I explain the role of the mediator or third party, consider mechanisms embedded within the process designed to stop escalation, and consider the various forms and amounts of compensation.

**Chapter 3: Case Studies** from various countries around the world, but focusing primarily on Sudan and South Sudan, highlight key elements of the process including information gathering, selecting a third party and initiating a process, truth telling processes, agreements about compensation, types of compensation, and measures to implement the agreements, among others. Some of these cases are previously unpublished, while others are drawn from ethnographies and literature from a wide spectrum of disciplines.
Chapter 4: Challenges Facing Blood Money Processes documents the numerous challenges facing the implementation and effectiveness of blood money today. Challenges related to collective responsibility are interwoven with challenges linked to shifting global trends such as urbanization and increasing literacy. Situations with an anonymous perpetrator, such as cases where the scale of killing is high due to automatic weapons, or situations of wide geographical (and cultural) distance between families of the killer and killed, makes it difficult to hold the perpetrator (or the killer’s clan) to account for paying the blood money. In some cases third parties step forward to pay, generating another set of challenges about whether this process satisfies the intent of the mechanism. Finally, there is increasing recognition that women and girls—family members of victims or those who might be exchanged as compensation—may bear the brunt of challenges related to this institution. Finally, the mechanism has shortcomings with respect to international legal standards and norms. The purpose of this chapter is not necessarily to say that blood money cannot be effective at achieving some of its intents given these shortcomings, but rather to highlight situations where changes may be undermining the mechanism to the point where it may no longer (if indeed it once was) be effective at breaking the cycle of retaliation and revenge.

Chapter 5: Is Blood Money Restorative Justice? This chapter delves into one of the key questions about blood money. In conflict resolution circles, there seems to be an operating assumption that blood money represents a customary version or restorative justice, and I challenge that assumption. I
examine the core components of the mechanism with an aim of creating analytical frameworks, outlining variables, and helping clarify how one would know whether in fact blood money is still effective, and if so, under what circumstances. It examines blood money through the lens of the primary components of restorative processes drawing on recent scholarly works framing the evaluation of restorative justice practices around the world.

Certainly, the cases where most restorative justice processes are conducted, primarily within a North American, European, and former British colonial context, is clearly different than the places where blood money largely functions beside the state or in lieu of state structures and processes. The chapter makes this examination keeping the distinctions between retributive justice and restorative justice at the forefront, and looks at evolving international standards and norms with any eye toward placing blood money along the continuum of actions that might constitute justice and accountability. It delves into the various elements of reconciliation, including truth telling, recognition, memorialization, and forgiveness. It looks at the cultural, historical, and psychological aspects of retaliation and revenge in order to assess what blood money requires to break the cycle of violence. It examines the Arabic concepts of *qisas* (retaliation) and *tha’r* (blood feud) and religious and customary assumptions about retaliation and revenge. This chapter also examines cultural codes such as the importance of honor and shame. Importantly, this chapter does not seek to evaluate the effectiveness of blood money at achieving its
various goals, but rather creates an analytical framework outlining what would be needed to do so.

Chapter 6: Conclusions and Recommendations  This final chapter, in addition to including a summary of insights about blood money, also provides concrete recommendations about how to improve the process of implementing compensation mechanisms while simultaneously improving aspects relative to international legal norms. In addition, “not all conflicts are the same, and the appropriateness, the methods, and the name or newness of the approach vary according to the type of conflict it is addressing.” My recommendations are framed within a construct of respect for the dichotomy of needs of some communities that feel this mechanism is irreplaceable, while at the same time recognizing that norms of international justice and peace, as well as efforts to make the mechanism more restorative, may compel changes that can reliably stop violence from escalating and hold killers accountable for their actions.

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8 Zartman, Traditional Cures, 7.
After the cattle raid, family members gather the bodies and begin to grieve. The elders gather under a tree, clarifying details about the number of raiders, the victims, the causes. They select a party of important men and depart at dawn to see a neighboring village sheikh. They announce their presence and are welcomed into the home. They all agree on a respected ajaweed from a neighboring tribe to act as mediator.

When the negotiations begin, the elders of the raided clan describe the impact of the attack: 60 head of cattle and 20 goats stolen, two young warriors dead, three girls missing. The raiders’ village elder told how his own tribe suffered a similar raid not long ago in which his eldest son was killed—the next generation of leadership gone. He reminded the mediator that a portion of the blood money from the previous raid had been held “in trust” so if no killings occurred in the following year, the debt would be forgiven. Now the debt burden had shifted.

The mediator outlined the exact number cattle for a ‘full diya,’ for each young man lost, broken down by numbers of she-cows that have borne young and haven’t, bulls and calves, male and female which constitutes the tradition between these neighboring tribes. The negotiation addressed extenuating circumstances and strove to restore balance and stop the cycle of violence. The mediator states his decision.

The elder from the killer’s clan indicates that they accept the deal. There is no sense of grief, only of wise decisions, negotiation on behalf of their communities, and respect for tradition. The party thanks the mediator and departs. They return to their village and convey the result to the victims’ relatives, who accept the promise of compensation. The widow walks to the watering hole. The youth return to the cattle camp, talking of retaliation.

The customary conflict resolution mechanism commonly referred to as blood money has been practiced since time immemorial to compensate families

1 The timeline of this composite scenario, compiled from real cases, is condensed. According to recent research conducted by the South Sudan Law Society, only 50% of homicide cases are resolved in less than 20 days. See David K. Deng, Challenges of Accountability, An Assessment of Dispute Resolution Processes in Rural South Sudan (Juba: South Sudan Law Society, 2013), 23.
of victims of violence, to serve (ostensibly) as a form of accountability, and to restore relationships among members of the affected communities. The ultimate goal of blood money is to bring relationships, if not to the point of forgiveness and reconciliation, at least to the point where the aggrieved no longer feel the need for retribution or revenge above and beyond an accepted level of retaliation on par, or in lieu of retaliation at all; in essence, to break the cycle of deadly violence. This process of compensating the families of victims has changed little-over the several millennia of its use-- in many respects. Yet the circumstances in which blood money is practiced have changed considerably since its earliest days, generating new perspectives of its legitimacy and new questions about its effectiveness.

The phrase “blood money” is used in many different ways, so it is important to define what it is I will be referring to. Blood money is defined as follows:

…compensation paid by an offender (usually a murderer) or his kin group to the kin group of the victim. In many societies blood money functions to prevent the continuation of hostilities in the form of a feud. Some customs allow the injured party the choice of punishing the murder by blood vengeance or by blood money. Blood money is known as *diya* in Arabic-speaking or Islamic contexts, where *diya* is defined as “a specified amount of money or goods due in cases of homicide or other injuries to physical health unjustly committed upon the person

2 The compensation mechanism has been called blood money, bloodwealth, and blood compensation, among other local names in various languages.

of another.”

In the context of early Arabia, the amount of blood money was fixed at 100 camels for a man, half that for a woman. According to the South Sudan Law Society, “Blood compensation is a traditional remedy for homicide under customary law. It involves the payment of a certain number of cattle to the family of the deceased in order to compensate them for their loss. In some cases, women or girls may be provided to the family of the deceased in lieu of cattle.” These definitions help outline the construct of blood money. Key elements across geographical, historical, ethnic and religious boundaries include:

1. Compensation in cases of homicide,
2. Payment (or contributions) by the perpetrator’s extended family or community passed to the community or family of the victim (with family being defined by degrees of closeness),
3. A sense that this collection and transference of payment constitutes a form of accountability for the wrong or harm; and,
4. Some sense of remedy; in essence, an intent to prevent or stop the taking of vengeance or a continual cycle of escalating revenge; in other words, breaking the cycle of violence.

It is important to clarify additional terms used throughout the literature on this topic. A number of terms relate to the compensation aspects of this mechanism. Composition, a legal term, refers to “the adjustment of a debt, or

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5 Ibid.

6 Deng, Challenges of Accountability, 26. Also see Associated Press of Pakistan News Agency, “Pakistan court orders probe into tribal ruling on girls as compensation,” BBC Monitoring South Asia (London) 29 June 2006, under http://search.proquest.com.proxy.library.georgetown.edu/docview/459862866 (accessed 23 March 2014) which describes a court case in Pakistan challenging a jirga ruling in which five girls were to be used as compensation to end a blood feud.
avoidance of an obligation or liability, by some form of compensation agreed on between the parties.”  

Seagle talks of composition as “the idea of pecuniary payment for wrong.” The definition goes on to clarify that “formerly in English law, as in other systems, violent wrongs and many other offenses could be settled by composition, but composition of a felony is now unlawful.”

A related term, from earlier legal systems, is *bote*, (sometimes *bot*):

…a compensation paid by way of composition for a wrong or injury; amends; satisfaction. The *bot* originated as a payment made *by* or *for* the offender to buy off (italics added) the injured person, or his family or clan, from the infliction of punishment or vengeance by self-help. In its widest sense, it included any payment made by way of such compensation, as the *wer* and the *wite*.

There are two important aspects of this definition of *bote*; first, that the payment is made either *by* the offender, or *for* the offender. This distinction may appear minimal, but when I discuss justice and accountability, its importance will become clear. The second key element is the italicized phrase ‘buy off,’ which of course has unclear meaning. Perhaps the editors of the dictionary, or Webster himself, were at a loss to find an English word to capture this exact meaning. What becomes clear, however, is that the *bote* intends to put a stop to retaliation.

The term *wer* mentioned above refers to the word wergild described as follows:

______________________________

7 Webster’s New International Dictionary of the English Language, 2nd ed. Unabridged, s.v. “Composition.”


9 Webster’s Dictionary, s.v. “Composition.”

10 Webster’s Dictionary, s.v. “Bote.”
…in Anglo-Saxon and Germanic law, the value set upon a man’s life; the fixed price to be paid by the kindred of the manslayer to the kindred of the slain person as composition to avoid the blood feud. A fixed scale of values was established varying from that of the churl\textsuperscript{11} to that of the king. Originally, acceptance of the wergild by the kindred of the person killed was optional. Later it was made compulsory. Ultimately it could not be demanded nor could the blood feud be waived, but the slayer was left to public justice.\textsuperscript{12}

Again, important elements arise within the definition. In the case of wergild, we see the amount of compensation related to the status of the victim, a concept documented as far back as the Code of Hammurabi circa 1850 BCE. Other aspects of wergild of interest include the extent to which the payment is voluntary or compulsory, what meaning acceptance of the compensation holds, as well as the system of linkages between compensation and the formal justice sector.

Another term regarding compensation, less common, is wite, usually blood-wite or bloodwite, “a fine or amercement for the shedding of blood, payable to the king, lord, or other superior in compensation for the breach of his peace. It was distinct from the wergild, hence, a penalty for murder.”\textsuperscript{13} This fine was at the discretion of the court and was not fixed to station in life (though perhaps to the circumstances of the harm). In this case, the perpetrator’s family would face both accountability for financial compensation to the victim’s family and a penalty payable the state.

\textsuperscript{11}A freeman of the lowest rank.

\textsuperscript{12}Webster’s Dictionary, s.v. “wergild.”

\textsuperscript{13}Webster’s Dictionary, s.v. “wite.”
In addition to this spectrum of closely related terms, we have reparation, “the act or process of restoring, act of making amends or giving satisfaction or compensation for a wrong, injury, etc.” with a specific connotation within the Roman Catholic Church of “Expiation offered by men to God for their own sins or the sins of others.”

One final set of terms is solation or condolence payments. The correct word is actually solatium, defined as “anything that alleviates or compensates for suffering or loss—compensation,” derived from solace, “to give comfort to in grief or misfortune.” When the U.S. military makes payments to families of civilian victims of military action, they call these ‘condolence payments.”

It is helpful to pull these terms together and identify key characteristics that distinguish one from another. Although coming from different time periods, different geographical locations, and different contexts, each of them constitutes a form of compensation for losses or harms, and each addresses a different set of outcomes or goals.

14 Webster’s Dictionary, s.v. “reparation.”
15 Webster’s Dictionary, s.v. “solatium.”
Table 1: Methods and Goals of Compensation Processes

<table>
<thead>
<tr>
<th>System</th>
<th>Amount</th>
<th>Key Points</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diya</td>
<td>100 camels (man) 50 camels (woman)</td>
<td>Family chooses compensation or retaliation on par</td>
<td>Stop escalation of violence beyond retaliation</td>
</tr>
<tr>
<td>Composition</td>
<td></td>
<td>Not suitable for felony (murder)</td>
<td>Payment for wrong; avoidance of liability</td>
</tr>
<tr>
<td>Bote</td>
<td></td>
<td>Payment by or for the offender</td>
<td>Amends; satisfaction; “buy-off” the victims to prevent ‘self-help’</td>
</tr>
<tr>
<td>Wergild</td>
<td>Amount depends on status of victim</td>
<td>Initially optional; later compulsory; still later, public justice required</td>
<td>Compensate victims for loss</td>
</tr>
<tr>
<td>Wite</td>
<td>Amount varies depending upon circumstances</td>
<td>Fine or amercement payable to the king in addition to punishment</td>
<td>Compensate the state for breach of peace</td>
</tr>
<tr>
<td>Reparation</td>
<td>Amount and form varies</td>
<td>Satisfies victims</td>
<td>Amends; satisfaction to ‘repair’ harms; expiation from sin</td>
</tr>
<tr>
<td>Solation/Solatium/Condolence Payment</td>
<td>Amounts largely unknown; some cite $2,500 per death</td>
<td>Victims come to US military, fill form; amounts related to number killed</td>
<td>Token symbol of sympathy and condolence; solace; comfort victims</td>
</tr>
</tbody>
</table>


Again, this panoply of terms raises interesting issues and questions. Collectively, they highlight the need to distinguish between any number of purposes or objectives for the compensation aspects of blood money by delving into the nuances of each to answer the question of what blood money actually seeks to accomplish. Is blood money’s primary purpose ‘the avoidance of a liability,’ in essence, ‘composition’ in lieu of punishment? Is the purpose of blood money to pay a penalty to a superior, or to pay a fine to the state—in essence to compensate the state in some way for a breach of the peace? Is the payment of compensation expected to take the place of formal justice—in other words, does the payment of blood money constitute accountability? Or perhaps blood money is simply a palliative device intended to provide solace to the victims and make
them ‘feel better’. Blood money may intend to, or may actually, serve some, many, or all of these purposes.

Regarding violence or physical responses, we see another widely ranging set of potential objectives or purposes for blood money. Is the primary goal, as with *bote* or *wergild*, to ‘buy off’ the family of the victim ostensibly to prevent retaliation and avoid the blood feud? Is the system intended to maintain retaliation to par, that is, to ensure violence does not escalate beyond ‘an eye for an eye’? Or is the blood money supposed to prevent any retaliation? What impact does it have on the likelihood of violence when the compensation is paid by an entire group for a member of the group, versus being paid by the individual perpetrator or on behalf of that group by an outsider? How do any of these relate to the concept of ‘satisfaction’ in terms of compensating the victim for losses incurred? Another question is whether blood money is indeed victim-focused, in terms of its intent to repair the harm and compensate for losses, versus perpetrator focused, in terms of protecting the perpetrator’s clan from revenge from the victim’s clan—and possibly seeking to help a perpetrator avoid formal justice. Does the mechanism work differently for wars than it does for

17 Hardy discusses situations where retaliation is allowed, perhaps condoned, and possibly even expected, either at a particular level—on par, for example, the chief’s son for the chief’s son—or for a certain time period (referred to as the ‘boiling of the blood’) See M. J. L. Hardy, *Blood Feuds and the Payment of Blood Money in the Middle East* (Leiden: E.J. Brill,1963), 76.

18 This is referred to as “dusty *diya*” because the requirement to pay the *diya* falls over the entire village like dust. Author interviews, Nyala, Darfur, Sudan, March, 2006. This is also called the *muhanna* system, whereby each clan pays *diya* in proportion to its size, referred to as the *ajaij* by the Misseriya Homr, “for all concerned are ‘scattered with dust’ like the *ajaij*, or dust-devil.” See SAD 768/5/63.
homicides or other more inter-personal harms? These and many questions arise when one starts digging beneath the surface of the practice.

Beyond compensating victims for losses, stopping the cycle of violence, and possibly serving as a form of accountability, other key questions relate to the linkage between these potential objectives and the restoration of relationships between aggrieved or affected groups and individuals. In the parlance of restorative justice, which “assumes that crime relates to private relations between people...thus the state remains aside while victims and offenders resolve their disputes,” we do not know the extent to which blood money is either restorative or constitutes justice.

Several important terms relate to the use of violence to which blood money is linked. Commonly used terms include retribution, retaliation, revenge and vengeance, as well as other less commonly used terms such as requital and reprisal. Webster’s Dictionary clarifies distinctions among the various terms:

Retaliation (to return the like for; to repay or requite in kind) implies more specifically a rendering of evil for evil; reprisal is applied especially to retaliation in warfare. Revenge (to return evil for evil; to inflict harm or injury in return for, as an injury, insult, to exact satisfaction for, to vindicate by avenging) is retaliation especially for personal wrong or injury, and usually implies resentment, spite, or malice; vengeance (punishment inflicted in return for an injury or an

19 Douglas P. Fry and Patrik Söderberg, “Lethal Aggression in Mobile Forager Bands and Implications for the Origins of War,” Science (19 July 2013): 270-273. According to Fry, “...war implies the killing of any outgroup member because they are in the outgroup; having a personal motive makes a homicide.” See also Carolyn Fluehr-Lobban, Sharia and Islamism in Sudan: Conflict, Law and Social Transformation (London: I.B. Taurus, 2012), 116. The Sudanese law adopted in 1991 exempts “a criminal act in the performance of duty,” which could theoretically be construed to cover attacks conducted by government-sponsored militias, such as the Popular Defense Forces, conducting “anti-rebellion” activities.

offense; often, also, passionate or unrestrained revenge) is
sometimes used of passionate revenge, but more frequently implies
stern or righteous indignation, and often suggests avenging others’
wrongs. 21

With respect to distinctions between reparation and retribution, retribution
is “the dispensing or receiving of reward or punishment according to the deserts
of the individual…Reparation is now applied chiefly to compensation or
recompense for wrong, loss, or injury.” 22 In other words, we are looking at two
types of ‘getting back,’ one being the payment of some form of compensation,
and the other through physical violence.

Yet if we are to consider the extent to which blood money constitutes
‘restorative justice,’ the primary topic in Chapter 5, we must explore topics of
justice and accountability as they relate to blood money processes. Justice itself
can take many forms and have many intentions. The two primary paradigms are
retributive justice and restorative justice. Although sometimes juxtaposed as
opposites, both paradigms have in common that they purport to represent a form
of accountability, though with different goals. Retributive justice, with the name
derived from the word ‘retribution’ constitutes an opportunity to ‘get back’ at the
perpetrator. This can be, but is not necessarily, punitive, such as where the
perpetrator receives a form of punishment, perhaps confinement, a fine, or some
form of physical punishment (flogging, for example). Blood money, it seems,
exists to contradict, or to prevent, retributive justice. In other words, if the blood
money is paid, there is supposed to be no retribution against the offender. The

21 Webster’s Dictionary, s.v. “Retaliation.”
22 Ibid.
payment of blood money, in essence, becomes the penalty or punishment. (There are cases, though seemingly rare, where payment of blood money does actually become a true hardship).\(^{23}\) Considering the compensation mechanisms themselves, then, it is unclear whether any of them seek to provide accountability or justice.

History and spread of blood money

From the earliest days, mythological gods interacted with man to hold men accountable for their actions and to help them distinguish between right and wrong. In many places, ancestors were consulted and people searched for signs pointing them toward the right choice or response. Gradually through exploration of ideas such as the role of the mind by philosophers like Anaxagoras, man took on his own responsibilities for resolving the inevitable conflicts between men, and as Comford describes the transition, “Reason takes the place of Zeus.”\(^ {24}\)

Yet in tribal, rural areas such as pre-Islamic Arabia, “no central authority existed to curb the autonomy of the various tribes and no regulatory force controlled the constant skirmishing between them, other than that provided by the shared principles of a primitive, polytheistic religion.”\(^ {25}\) Tribal structures, based upon actual or created blood relationships, produced groups in which

\(^ {23}\) SAD 768/5/59 indicates that for some segments of certain tribes “other segments of the group would combine against the culprit and his more immediate kinsmen, and compel them to forfeit all their possessions including their stock and even their household equipment which were handed to the kinsmen of the deceased. Such treatment was severe, since the people concerned would be left destitute and forced to live as servants of the more fortunate. Here there is an element of the concept of punishment, a conscious political combination to enforce justice, rather than a free resort to retaliation or restitution…”


“each member of the group was responsible for the group and in return received assistance from the group...if any member of the tribe was killed, it was communal blood which had been spilt.”

The spilling of communal blood compelled members of the tribe to restore honor and either retaliate for the attack, or negotiate compensation.

Maine details another key influence on the link between custom and law in his discussion of ancestors. The connection between the living and dead manifests itself through custom in many ways, drawing upon a perspective that “as long as his relatives remain impure, the departed spirit finds no rest, and returns to visit his relatives…” Similarly, Hardy documents the concept among the Arabs, for whom “numerous gods and spirits were believed to exist with powers to influence a man’s fate, usually adversely, so that it was advisable to pacify them by means of sacred oaths and blood sacrifices.” In numerous cultures, the soul or spirit was envisioned as distinct from the physical body.

It is important to understand this deep connection between the individual, the family, and the law. Maine refers to the “patriarchal theory of society…” in which “separate families, held together by the authority and protection of the eldest valid male ascendant” act as a unit in terms of custom, and therefore law.

Evidence of family connections include common markings of

26 Ibid., 15.


28 Hardy, Blood Feuds, 18.

29 Maine, Dissertations, 196.
identification, “woman-stealing,” and the Levirate system, in which a deceased childless man’s wife will be impregnated by his living brother to carry on the deceased’s bloodline and name. Blood money would be added to that list.

In fact, Doron Pely, writing about the sulha process in Palestine, states that “…male members of the victim’s clan view every male member of the killer’s clan as a legitimate target for revenge, by virtue of clan “circles of responsibility.”30 In Somalia, this familial group is referred to as ‘the diya-paying group’ that is defined as:

…a lineage or coalition of lineages within the sub-clan…(that is) collectively responsible for the payment of compensation in the event of the death or injury of a member of another group at the hands of one of the diya-paying groups’ members. It is also collectively entitled to the receipt of compensation in the event of the death or injury of one of its members… the group is sufficiently large, ranging from a few hundred to a few thousand men, to be able to pay the diya.31

Sir Henry Maine clarifies the importance of this responsibility and the relationships within the diya-paying group:

The moral elevation and moral debasement of the individual appear to be confounded with, or postponed to, the merits and offences of the group to which the individual belongs. If the community sins, its guilt is much more than the sum of the offences committed by its members; the crime is a corporate act, and extends its consequences to many more persons than have shared in its actual perpetration. If, on the other hand, the individual is conspicuously guilty, it is his children, his kinsfolk, his tribesmen, or his fellow-citizens who suffer with him, and sometimes for him. It thus


happens that the ideas of moral responsibility and retribution often seem to be more clearly realized at very ancient than at more advanced periods, for as the family group is immortal, and its liability to punishment indefinite, the primitive mind is not perplexed by the questions which become troublesome as soon as the individual is conceived as altogether separate from the group.32

Interestingly, Maine highlights one of the important aspects of contemporary blood money processes; they are both ancient and modern at the same time, as the process represents a continuation of ancient processes yet it still exists and operates in many areas today.

Because of the strengths of these communal relationships, defending the family or group honor becomes critical. In fact, honor is so strong and compelling a drive for the group that Pely hypothesizes this is frequently viewed as more important than other more basic needs.33 Given these intense communal pressures to defend or avenge the extended family, either alive or dead, one can envision continuously escalating cycles of revenge and violence. In some cases, retaliation was restricted to specific individuals—consistent with “an eye for an eye,”—so that if the young son of a chief was killed, rules of retaliation dictated that only the son of the chief of the perpetrator’s tribe could be killed to avenge the death.34


33 “…it appears that …in…perceived offenses against family honor or violence against a family member… disputants in the Arab community in Israel tend to focus more on satisfying family honor and belonging (identity) needs, as perceived by them, while ignoring or allocating secondary or tertiary place to basic survival needs and health needs, such as safety, freedom from incarceration, economic security, etc.” Pely, “When Honor Trumps Needs,” 206.

34 Jared Diamond, “Vengeance is Ours: What can tribal societies tell us about our need to get even?” The New Yorker (April 23, 1998), under
Clearly, the need to retaliate for harm to one’s group was a powerful motivating force. Escalating cycles of violence demanded the creation of mechanisms to somehow put an end to the violence. According to Seagle, “The blood feud was the anvil on which custom was shaped into law. In the process of retaliation the idea of the organized sanction was born.”^35

This challenge of putting an end to perpetual cycles of retaliation and revenge contributed to the search for suitable interventions. One approach would be for the tribe of the perpetrator to identify the perpetrator but Hardy, citing Procksch, clarifies that the need for solidarity among the members of the tribe prevented this from occurring.\(^36\) In addition, the reference to ‘organized sanction’ above clearly presented a challenge in a stateless society. Something else was needed, and compensating victims seems to be the response of choice.

“As a practical means to solve this problem resort was had to the payment of compensation. …Although they could not be forced to accept compensation, and acceptance was indeed…regarded as dishonourable, the custom grew so that it became at least not unusual to accept blood money following long bargaining before a respected arbitrator.”^37 The practice brought with it benefits and challenges. According to Hardy, a positive aspect was that it brought immediate compensation and resources to the tribe. Yet revenge was an


important socio-cultural construct. In pre-Islamic Arabian society, it was believed "soul of the murdered man was imagined to flutter round the tomb in the form of an owl, crying with thirst and unable to find rest until vengeance was taken."³⁸ If the expectation was that the recipient tribe would forego revenge if they agreed to accept the compensation in lieu, this represented a tremendous shift in cultural norms. In addition, it states:

...this mode of settlement brought two principles of tribal life into conflict; on the one hand was the utilitarian idea of present gain and reparation; on the other was the religious motive associated with the thirsty bird of prey and family honor. Although the acceptance of blood money was therefore to some degree sacrilegious, it was not solely...the intrusion of egoism or of personal interest in the religious domain; ...it might often be to the advantage of the tribe as a whole to restore its strength by accepting blood money from a distant tribe, with whom future conflict was unlikely. Acceptance of blood money might thus aid the tribe as a functional unit, designed to protect its members, even as it weakened the mythological importance of the blood link.³⁹

The practice seemed to take hold and spread. In cases beyond the Arabian Peninsula, cultural norms and practices were carefully interwoven within the practice of compensation. These included the practice of bride wealth, the package of resources--typically cattle among the Dinka and Nuer people of South Sudan, as well as for other pastoralist peoples—passed from the family of the bridegroom to the bride's family. The connection of blood money facilitated, in essence, a replacement for the lost relative, or rather, a means for the name of a

³⁸ Ibid., 18.
³⁹ Ibid., 22-23.
loved one to live on.\textsuperscript{40} Sharon Hutchinson, ethnographer of the Nuer, describes this relationship between blood money and bride wealth; “…if a man died without heirs, his relatives were able—indeed obliged—to collect cattle and marry a ‘ghost wife’ in the name of the deceased to bear children for him.”\textsuperscript{41} The exchange of blood money for the loss of a loved one facilitated this regenerative process.

For this reason, Hutchinson highlights the important connection, “a fundamental oneness” in her words, between cattle and humans, and cautions that “by thinking of cattle exchange and sacrifice solely in terms of ‘reciprocity,’ ‘compensation,’ and ‘restitution’ would be to reduce…the creative potency of Nuer social life as a whole...”\textsuperscript{42} The interactions between humans and their cattle, facilitated through the culturally interwoven practices of blood money and bride wealth, became a source of life itself.

**Blood Money in Legal and Religious Codes**

Likely building on long-practiced custom, compensation, either in addition to or in lieu of retaliation, became incorporated into the earliest legal codes. In fact, the earliest discovered written legal code, known as Ur-Nammu’s code, discovered in Mesopotamia and estimated to be dated from 2050 BC, includes a

\textsuperscript{40} Sharon E. Hutchinson, *Nuer Dilemmas: Coping with Money, War, and the State* (Berkeley: University of California Press, 1996), 61. Although Hutchinson refers to a ‘ghost wife,’ typically, the deceased is the male husband who is replaced through a ‘ghost marriage’ in which a replacement husband is selected to sire children in the deceased’s name. In many cases, the replacement sire will be a brother of the deceased. This practice, known as levirate marriage, is detailed in Stephanie Beswick, “We Are Bought Like Clothes: The War Over Polygyny and Levirate Marriage in South Sudan,” *Northeast African Studies* 8, no. 2 (New Series, 2001): 35-61.

\textsuperscript{41} Hutchinson, *Nuer Dilemmas*, 61.

\textsuperscript{42} Ibid., 61.
provision for “the ability of the judges to order that damages be paid to a victim by the guilty party…” This concept of ‘damages’ was clarified and outlined in great detail in the Code of Hammurabi, promulgated by Hammurabi, king of Babylon from approximately 1792-50 B.C.E. Excerpts from Hammurabi’s Code highlight several key aspects of the relationship between compensation and retaliation as well as other points of interest:

198. If he put out the eye of a freed man, or break the bone of a freed man, he shall pay one gold mina.
199. If he put out the eye of a man's slave, or break the bone of a man's slave, he shall pay one-half of its value.
200. If a man knock out the teeth of his equal, his teeth shall be knocked out. [ A tooth for a tooth ]
201. If he knock out the teeth of a freed man, he shall pay one-third of a gold mina.

There are several elements of the code that bear closer examination. One point that stands out is that compensation in linked to the assessed value of the victim, either to society or to one’s family (as seen in wergild). A description of the structures within society at that time highlight how this class system impacted justice and restitution:

The Code (of Hammurabi) contemplates the whole population as falling into three classes, the amelu, the muskinu and the ardu. The amelu was a patrician, the man of family, whose birth, marriage and death were registered, of ancestral estates and full civil rights. He

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had aristocratic privileges and responsibilities, the right to exact retaliation for corporal injuries, and liability to heavier punishment for crimes and misdemeanours, higher fees and fines to pay. To this class belonged the king and court, the higher officials, the professions and craftsmen…. the term… muskinu…came in time to mean "a beggar" … He was free, but had to accept monetary compensation for corporal injuries, paid smaller fees and fines, even paid less offerings to the gods…The ardu was a slave, his master's chattel, and formed a very numerous class. He could acquire property and even hold other slaves. His master clothed and fed him, paid his doctor's fees, but took all compensation paid for injury done to him….Throughout the Code respect is paid to status.45

The Code seems to give greater weight or importance to retribution, given that this result is reserved for societal elites. However, there could be other reasons for this distinction. In some ways it could be viewed that keeping retribution between citizens of equal status assures that, in essence, there will be a fair fight. In other words, were a patrician to retaliate against a commoner or slave, one could surmise that the retaliation could escalate beyond the level of par. Some scholars believe that the justification for the clause “an eye for an eye” is to provide a restraint on even greater retaliation, keeping retaliatory violence on par with that received and no more, marking “a turning point in the evolution of lawful punishment. It introduced a policy of restraint and it sanctified proportionality as a moral principle of punishment.”46 From another perspective,


“the principle’s demand for punishment commensurate to the crime makes it look like the codification of vengeance. In reality, it seeks to restrain humans’ insatiable thirst for retaliation: Take a tooth and be done with it.”

It is unclear why compensation in lieu of retaliation is reserved for the lower classes. Seagle indicates that “the amount of the composition was nicely adjusted to the likelihood that the victim’s kin would fly to their weapons and resort to violence. Thus there was taken into consideration in fixing the amount of a composition the victim’s rank, age, and sex, and the element of accident or design.” It seems Seagle believes that the lower classes were less likely to exact revenge, and therefore required less compensation to keep retaliation at bay. Another way to view this, however, is to consider that the value of the victim, to society and to their family, in terms of productivity or salary, would be lower for the lessor members of society.

Scholars differ in their views regarding how the Code of Hammurabi relates to later monotheistic Abrahamic-faith religious texts, but in the approximate period of 1000-500 BCE, the stories of the Pentateuch, or first five books of the Old Testament of the Christian Bible, which also constitutes the Torah for Judaism, came to include mechanisms and passages that are remarkably similar to Hammurabi’s code. This is perhaps not surprising given


48 Seagle, Men of Law, 6.

49 The slave class is not permitted to accept compensation, which goes to their owners.
that Babylon was the common home of Hammurabi and what has been called ‘the Babylonian Talmud’ which was a compilation of works from a variety of Judaic scholars across Mesopotamia and regions of the eastern Mediterranean.\(^{50}\)

The most well-recognized content of the Pentateuch or Old Testament related to responding to violence, known as the *Lex Talionis*, or law of retaliation, is present in Exodus 21: 23-25:

23: And if any mischief follow, then thou shalt give life for life,
24: Eye for eye, tooth for tooth, hand for hand, foot for foot,
25: Burning for burning, wound for wound, stripe for stripe.\(^{51}\)

And similarly in Deuteronomy 19: 21 “And thine eye shall not pity; but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”\(^{52}\)

Also referred to as the Covenant Code (as in, covenant between God and man) or the Mosaic Code, due to its attribution to Moses, scholars disagree over the extent to which it is directly, indirectly, or only coincidentally similar to Hammurabi’s code, and also the extent to which it derives directly from the word of God.\(^{53}\) But the resemblances between the Code of Hammurabi and the

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Covenant Code are striking…. “That said, there are important differences between the two.

Both Hammurabi and Exodus call for retaliation in equal measure to the harm. In some cases, there are calls for compensation for losses as well. Yet glaringly, there seem to be no references in the Old Testament clauses relating to damages or harm that compensation (or fines) can be used in lieu of retaliation. There is reference to compensation for other types of harm, including damage to crops and animals. But with respect to compensation for the death of a loved one, the passages are largely silent, calling instead primarily for retaliation. Wells points out that Exodus 21:12-14 calls for the following:

1) A killer should be put to death (v. 12),
2) Consideration of the killer’s intent (v. 13a),
3) Reference to a place of asylum (v. 13b)

The Laws of Hammurabi, Wells says, are actually silent with respect to homicide directly, though law 207 specifies a monetary fine. In fact, “…despite a few primitive survivals relating to family solidarity, district responsibility, trial by

11, 2013). Despite those disagreements, there is consensus that the legal customs and traditions of the time informed, and in some cases were integrated into, the religious law as it evolved.

54 Seagle, Men of Law, 29, and Code of Hammurabi (196): “If a (noble)man put out the eye of another (noble)man, his eye shall be put out.” [ An eye for an eye ], and (200) “If a man knock out the teeth of his equal, his teeth shall be knocked out.” [ A tooth for a tooth ], from Washington State University, “Code of Hammurabi,” under http://public.wsu.edu/~brians/world_civ/worldcivreader/world_civ_reader_1/hammurabi.html (accessed October 8, 2013).

55 Hardy, Blood Feuds, 13. Hardy cites Sir Henry Maine’s introduction to Ancient Law in which Pollock indicates that the feud scene in The Iliad depicts “an ancient blood feud in an interesting stage of transition, that in which the slain man’s kindred are no longer free to accept or refuse compensation at their will, but are expected to abandon the feud, in a proper case, on receiving a sum fixed either by custom or by the judgment of the assembly.”


57 Ibid., 98-99.

**Table 2. Laws on Harming a Pregnant Woman**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1) If men fight</td>
<td>1) If a man strikes the daughter of a man</td>
<td>1) If a man strikes the wife of a man</td>
</tr>
<tr>
<td>2) and they strike a pregnant woman/wife</td>
<td>2) and he causes her to miscarry</td>
<td>2) and he causes her to miscarry</td>
</tr>
<tr>
<td>3) and she miscarries</td>
<td>3) he shall pay 10 shekels for the fetus</td>
<td>3) partially broken: “...wife of a man...”</td>
</tr>
<tr>
<td>4) and there is no injury to the woman</td>
<td>4) if she dies</td>
<td>4) do to him as he did to her</td>
</tr>
<tr>
<td>5) the one who struck her shall be fined</td>
<td>5) that man’s daughter is killed</td>
<td>5) he shall pay in full for the life of the fetus</td>
</tr>
<tr>
<td>6) based on the husband’s assessment</td>
<td>6) if he causes the daughter of a commoner to miscarry</td>
<td>6) if that woman dies</td>
</tr>
<tr>
<td>7) he shall pay accordingly</td>
<td>7) he shall pay 5 shekels of silver</td>
<td>7) the man is killed</td>
</tr>
<tr>
<td>8) but if there is injury to the woman</td>
<td>8) if that woman dies, he shall pay 30 shekels of silver</td>
<td>8) he shall pay in full for the life of the fetus</td>
</tr>
<tr>
<td>9) talionic retribution is applied</td>
<td></td>
<td></td>
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</tbody>
</table>


There are a number of important questions that arise when examining this table. One question regards the payments listed. It is unclear to whom the

\footnote{59}{“Middle Assyrian Law Code Tablet A,” comparison of trans G.R. Driver and J.C. Miles with trans. Theophile Meek under http://jewishchristianlit.com/Texts/ANElaws/midAssyrLaws.html (accessed October 9, 2013). The codes known as the Middle Assyrian Laws followed Hammurabi by approximately 600 years, being promulgated circa 1200 BCE. The codes are comprised primarily of laws about women.}
payments go, in which case they could constitute compensation for the victim’s family, or instead they could constitute fines or another form of penalty paid to the state (or as sometimes described, as ‘ransom’).

Another important distinction is whether the compensation is considered in lieu of retaliation, or if it is in addition to retaliation. In a different example, the story of the gored ox which is repeated in each of the codes, the availability of compensation in lieu of retaliation or punishment is clear as in the passage “if a ransom payment (in lieu of death) is placed on owner a) he must pay for the redemption of his life b) he must pay the whole amount placed on him.”

Around the same timeframe, references to the practice of blood money are found in ancient Greek writings as early as the 8th century BC including Homer’s Iliad, in which there is a description of men disputing whether blood money had been paid:

Meanwhile the people were gathered in assembly, for there was a quarrel, and two men were wrangling about the blood-money for a man who had been killed, the one saying before the people that he had paid damages in full, and the other that he had not been paid. Each was trying to make his own case good, and the people took sides, each man backing the side that he had taken. …

Blood money processes continued to make their way around the world in various legal codes that complemented, or supplemented religious law.

Compensation for harms is also included in ancient legal codes from the Brehon

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laws of old Ireland to the Gortys’ Law Code of Crete, (circa 480 BC). It is incorporated into the Twelve Tables of Roman law (circa 450 BC)—where clauses such as this reinforce the reliance on reparations to repair the harm:

It is a general rule of law, that every wrongful act which causes damage to another, obliges the wrongdoer to make reparation. This responsibility extends to damage arising not only from positive acts, but also from negligence or imprudence. …In criminal law, every offender must bear his own punishment; but, as regards civil reparation, when several persons have committed an offence, they are liable, *singuli in solidum*, for the whole damage, without the benefit of division.  

Once again it seems clear that the compensation in this case does not take the place of punishment. And in fact, the clarification that persons are liable ‘without benefit of division’ may indicate an effort to bring the practice away from an extended family paying compensation and closer to a place in which the individual perpetrator is liable for paying, a point I will return to in a later section.

The passage also highlights the development of an important distinction between criminal and civil law. As civilization progressed and nation-states developed legal codes, each made a determination about what constituted criminal behavior—in other words, which acts were considered crimes against the state, and which were considered personal wrongs. Whereas in custom, murder and homicide were considered wrongs against an individual or a family, and in religious codes, these would be considered sins, in the developing legal codes of the western world, lines were being drawn between criminal wrongs and civil

wrongs. We see the transition from ancient Greece, where “in Athenian jurisprudence, only an act that threatened the entire state, like impiety, qualified as a crime. According to the Athenians, theft, rape, adultery, and even sometimes murder offended private parties. The victims of these acts (or their kin) were expected to petition for compensation or restitution,”⁶³ to England where we find the following situation:

…there are two other classes of wrongs which create obligations, termed respectively by the Romans, obligationes quai ex delicto, and obligationes quasi ex contractu. The former obligation, quasi ex delicto, occurs when the injurious act or omission is not a crime - i.e., an act or omission for which the guilty can be punished criminally but is one for which he may be compelled, at the suit of the injured, to give satisfaction or compensation⁶⁴

The most relevant portion of Justinian laws, promulgated in 529 AD, is the *Lex Aquilia*, which “provides that if anyone shall have wrongfully killed a slave, or a four-footed beast, being one of those reckoned among cattle belonging to another, he shall be condemned to pay the owner the greatest value which the thing has possessed at any time within a year previous.”⁶⁵

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The *Lex Aquila* “refined the very basic and rudimentary rules of law in regards to unlawful or accidental damages caused to others….Although the original *Lex Aquila* text spoke only of compensation for injury to slaves or livestock, the principle of monetary compensation for harm done had sprung to life in the garden of law.”66 Yet the focus on compensation was not all encompassing. “In fact, a Roman legal scholar named Josephus, writing near the end of the first century, reflected the Roman practice of giving the victim a choice between monetary compensation and physical talion.”67

Similar provisions for compensation made their way across Europe, known as *wergild* in the German legal codes. The concept is a key element of the story of Beowulf and features in other tales, such as Tolkien’s *Lord of the Rings*. “The great majority of German laws cite the compensation (*wergeld*) owed one party by another, for theft or damage to property.”68 The *wergild* system outlines in great detail the levels of compensation as well as the familial relations responsible for paying and the specific circumstances of harm for which “amends” are payable. “Among the Anglo-Saxon tribes, members of the killer’s kin group contributed to pay *wergild*, or blood money, to the kin of the victim.

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Kinsmen contributed according to the distance of the relationship to the murderer; the sum was divided among the victim’s kin on the same basis."^69

Building upon the Pentateuch and Mosaic code, Judaic scholars and religious practitioners went to great lengths to clarify and elucidate the guiding principles and ethical reasoning underlying their law. This analysis became the Talmud, which over the course of generations documented conversations between religious scholars that highlight important ethical and theological principals. Regarding the question at hand, an excerpt from one portion of the Talmud clarifies this failure to mention compensation in lieu of retaliation in the passages noted:

According to the rabbis, who apply capital punishment to him who killed one person, although he intended to kill another, the verses Ex. xxi. 22 and 23, "... then shalt thou give life for life," ... In accordance with Rabbi of the following Boraitha: "Thou shalt give life for life" means money (i.e., the value of the woman should be paid to her heirs).^70

The guidance seems clear in this passage, yet it too raises questions. Clearly

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^69 Perkins, Richard, Peter G. Foote, and Andrew Dennis. Laws Of Early Iceland : Grágás, The Codex Regius Of Grágás, With Material From Other Manuscripts. Winnipeg [Man.]: University of Manitoba Press, 2006. eBook Collection (EBSCOhost) under http://web.ebscohost.com.proxy.library.georgetown.edu/ehost/ebookviewer/ebook/nlebk_497376_AN?sid=e9ba35b9-cf8a-40ba-946f-e51de7ec432d@sessionmgr14&vid=1&format=EB&rid=1 (accessed October 9, 2103). "There are four wergild rings fixed by law. The first is of three marks. The second of twenty ounces. The third of two marks. The fourth of twelve ounce-units. ...Three men are both payers and receivers of the main ring: father and son and brother. Four men are both payers and receivers of the twenty-ounce ring: father's father and son's son, mother's father and daughter's son....With that the wergild rings are disposed of. Those men who are first cousins once removed of the man killed are to take a mark from the killer's kinsmen of like degree. Second cousins of the killer are to pay five and one-third ounces as atonement to second cousins of the man killed....Fourth cousins of the man killed are to take one ounce from fourth cousins of the killer. There ends the atonement list."

the killing of the woman in this case was accidental—a homicide versus a murder.

Continuing through the conversation, we find additional insights:

The following statements...correspond neither with Rabbi nor with the rabbis mentioned above. Namely: It reads [Lev. xxiv. 21]: "And he that killeth a beast shall make restitution for it, and he that killeth a man shall be put to death." As in the case of a beast there is no difference whether it was intentionally or unintentionally, by an error or by premeditation ..., he is always liable and must pay. The same is it in the latter case of a human being: there is no difference whether it was intentionally, etc.,--he is absolved from any money payment. 71

We can see that between the code of Hammurabi and the writing of the Old Testament, there has been a shift from restorative, victim-focused compensation, toward a punitive approach, at least for cases of murder, and possibly for cases of homicide as well. As passages from Deuteronomy 19 demonstrate, punishment is the approach of choice in order to drive out evil: 19-21: “19 ... You must purge the evil from among you. 20 The rest of the people will hear of this and be afraid, and never again will such an evil thing be done among you. 21 Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” 72 Compensation, although likely still practiced in a customary context, takes a back seat to punishment in the Old Testament scripture. Yet according to Fisher, “moral sensitivity...distinguishes biblical justice from its ancient Near Eastern counterparts... Talion is understood in the

71Babylonian Talmud, Book 8: Tract Sanhedrin, trans. Michael L. Rodkinson, [1918], Chapter 9, pg. 234, at http://www.sacred-texts.com/jud/t08/t0812.htm - page_222, accessed 12 September 2013. It is an interesting construct for the rabbis to say "he is absolved" from paying compensation to the victim because he has paid with his life, but this appears to be the case.

sense of moral vindication, not of literal, physical retribution.”

The New Testament changes many aspects of religious life for believers, and shows distinctions between the Old and New Testaments in terms of treatment of harm. The Vatican encyclical of Pope Pius XI, written in 1928, reminds followers of the role of reparations in Christianity:

But to all these duties, … something else must needs be added…we mean that duty of honorable satisfaction or reparation… if …it has been neglected by forgetfulness or violated by offense, some sort of compensation must be rendered for the injury, and this debt is commonly called by the name of reparation. … To Consecration, …there must be added expiation, whereby sins are wholly blotted out, lest the holiness of the supreme justice may punish our shameless unworthiness, and reject our offering as hateful rather than accept it as pleasing….But no created power was sufficient to expiate the sins of men, if the Son of God had not assumed man's nature in order to redeem it. ….we must ever remember that the whole virtue of the expiation depends on the one bloody sacrifice of Christ…And this indeed was the purpose of the merciful Jesus…truly the spirit of expiation or reparation has always had the first and foremost place in the worship given to the Most Sacred Heart of Jesus…In order that these faults might be washed away, He then recommended …that men should approach the Altar with this purpose of expiating sin, making what is called a Communion of Reparation, - and that they should likewise make expiatory supplications and prayers… because the sins of men and their crimes committed in every age were the cause why Christ was delivered up to death.

This approach to expiation of sins or of reparations buttresses the focus on penalties, which in this case, constitutes penance in the form of prayers and


confession. There is no clear indication of a call for compensation for victims, but rather the focus is on repairing the restoring the relationship between man and God (or man and the church).

When the prophet Mohammed entered the scene in the 7th century AD in the pre-Islamic Arabian peninsula, the tradition of an extended family of both victim and perpetrator taking prescribed roles in retaliation and compensation was well ensconced, a setting which informed the development of Islam during the life of the Prophet Mohammed. When Mohammed received the Quran between approximately 609 and 632 A.D., it was within this context of a tribal society with well-entrenched customs of retaliation, but also with a custom of blood money that, in belief at least, was intended to stop the cycle of violence. Yet in the Arabian Peninsula at the time, there was no alternative in terms of rule of law or judicial system. Tribal law was the law. Although the Quran is considered the word of God revealed through the angel Gabriel to Mohammed, it largely complements practice of the day in terms of incorporating tribal customs, albeit with some modifications.

An excerpt from the Quran clarifies the requirements and guidelines from

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76 I do not delve into the differences exhibited by Mohammed’s move from Mecca to Medina. Sudanese scholar Mahmoud Mohammed Taha distinguished between the more punitive aspects of Islam when Mohammed was not well received by the community in Medina versus the more peaceful tone of Islam when he was well received by communities in Mecca. For more details, see Mahmoud Mohamed Taha, The second message of Islam, trans. and intro. by Abdullahi Ahmed An-Na’im (Syracuse, N.Y.: Syracuse University Press, 1987) and Mohamed A. Mahmoud, Quest for divinity : a critical examination of the thought of Mahmud Muhammad Taha (Syracuse, N.Y. : Syracuse University Press, 2007).
the Sura on Women as follows:

Never should a believer kill another believer, except by mistake. If anyone kills a believer by mistake he must free one Muslim slave and pay compensation to the victim’s relatives, unless they charitably forgo it; if the victim belonged to a people at war with you but is a believer, then the compensation is only to free a believing slave; if he belonged to a people with whom you have a treaty, then compensation should be handed over to his relatives, and a believing slave set free. Anyone who lacks the means to do this must fast for two consecutive months by way of repentance to God: God is all knowing, all wise. If anyone kills a believer deliberately, the punishment for him is Hell, and there he will remain: God is angry with him, and rejects him, and has prepared a tremendous torment for him.77

Regarding any restorative aspects of blood money, the two seem unrelated, and the Quran seems to leave reconciliation and healing to God alone:

How could you not fight a people who have broken their oaths, who tried to drive the Messenger out, who attacked you first? Do you fear them? It is God you should fear if you are true believers. Fight them: God will punish them at your hands, He will disgrace them, He will help you to conquer them, He will heal the believers’ feelings and remove the rage from their hearts.78

In other words, Quranic practice did not rely on the measures of compensation for healing or accountability, but rather depended upon God to perform these functions. The Quran also clarified some aspects of *diya*, while confusing others. One area of clarification was with respect to when *diya* is optional and when it is mandatory, which relates to conditions of intent.


Diya is sometimes optional and sometimes obligatory as shown:

...(diya is) optional in the case of offences committed deliberately (ʿamd). In the case of homicide the condition of intention is interpreted restrictively: notably it is necessary that the murder should have been committed with a weapon intrinsically likely to kill. In the absence of this last condition there is quasi-deliberate (shibh ʿamd) homicide where the diya is no longer optional.... The diyas are obligatory in all cases other than those of deliberate offences which entail a right of vengeance.... Controversy exists among the different schools on the question as to whether the choice of the optional diya in place of kisâṣ depends solely upon the wishes of the victim or his heirs, or whether the agreement of the offender is necessary for the choice to be effective.79

It seems, however, that custom took a different approach; “in matters of homicide particularly the principle of the exercise of personal vengeance (thaʿr [q.v.]) reigned supreme, apart from the possibility of voluntary renunciation of the right against the payment of diya.”80

Although Islam also draws heavily upon the traditions of the other two Abrahamic faiths, there are clear points of distinction. Islam ensconces the practice of compensation, known as diya, within its boundaries. Islamic law considers there to be two types of sin, sins against God and sins against man. “Sins against man are forgivable only if the offended pardon the offender or if the proper compensations and/or punishments are applied.”81

Hammudah Abdalati clarifies the role of law with respect to interpersonal


80 Ibid.

81 Hammudah Abdalati, Islam in Focus Islamic Teaching Center (Jeddah: Al Medina Printing and Publishing Center, (n. d.), 33.
violence and the role of forgiveness or pardon in Islam:

If a Muslim is wronged or oppressed, he has the free choice either to resist and retaliate in equal measure or to forgive and entrust God with the results of his deed. He knows that he is authorized to take either action, and he equally knows that it is better for him to forgive. So when he forgives, he does so with his own free choice for the love of God. Similarly, when he retaliates he is not violating the Law or acting unjustly; he is defending his rights, an attitude which is a sacred duty in itself, and is helping the rightful authorities to establish order and justice.  

The translator’s explanation of this passage clarifies its content as follows:

Note 182: Note first that this verse and the next made it clear that Islam has much mitigated the horrors of the pre-Islamic custom of retaliation. In order to meet the strict claims of justice, equality is prescribed, with a strong recommendation for mercy and forgiveness. To translate qisas, therefore, by retaliation, is I think incorrect. The Latin legal term Lex Talionis may come near it, but even that is modified here...“Retaliation” in English has a wider meaning, equivalent almost to returning evil for evil, and would more fitly apply to the blood-feuds of the Days of Ignorance. Islam says: if you must take a life for a life, at least there should be some measure of equality in it, the killing of the slave of a tribe should not involve a blood feud where many men would be killed; but the law of mercy, where it can be obtained by consent, with reasonable compensation, would be better.  

The Quran also addresses the question of status of the victim:

O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude.  

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82 Abdalati, Islam in Focus, 47.

83 Qur’an, 2.A, 177-178, 182n 72. Additionally, see 183n 73: “The jurists have carefully laid down that the law of qisas refers to murder only. Qisas is not applicable to manslaughter due to a mistake or an accident. There, there would be no capital punishment.”

84 Ibid., 177-180 (Al-Baqarah): 71-73.
This issue of status is further clarified by the translator as follows:

Our law of equality only takes account of three conditions in civil society: free for free, slave for slave, woman for woman. Among free men or woman, all are equal; you cannot ask that because a wealthy, or high-born, or influential man is killed, his life is equal to two or three lives among the poor or the lowly. Nor, in cases of murder, can you go into the value or abilities of a slave. A woman is mentioned separately because her position as a mother or an economic worker is different. She does not form a third class, but a division in the other two classes. One life having been lost, do not waste many lives in retaliation: at most, let the Law take one life under strictly prescribed conditions, and shut the door to private vengeance or tribal retaliation. But if the aggrieved party consents (and this condition of consent is laid down to prevent worse evils), forgiveness and brotherly love is better, and the door of Mercy is kept open.85

We can see that the nexus between the religious and secular aspects of blood money present some challenges. As Sir Henry Maine put it in his 1886 work Early Law and Custom, “there is no system of recorded law, literally from China to Peru, which, when it first emerges into notice, is not seen to be entangled with religious ritual and observance.”86 Noted Hardy, who studied compensation in the Levant, “the student of comparative law, for example, may note the long continuance of a procedure in which, although the state provided the machinery, punishment for crimes of violence was regarded as a matter solely for God and the individual victims to decide.”87 Clearly individuals were accustomed to taking justice in cases of violence into their own hands. Referring

85 Ibid., 73.
86 Maine, Dissertations, 5.
87 Hardy, Blood Feuds, 10.
to the early days of Islam, Hardy writes:

In the absence of any distinction between secular and religious law, and without any real executive power, the Prophet was virtually bound to allow the system of private vengeance practiced among his adherents to continue as an official institution of the new body. However, this incorporation of a highly individualized system of remedies left a permanent mark on the structure of Sharia'h law. Whereas in pre-Islamic Arabia responsibility for the infliction of death or injury had a collective element in that any member of the aggressor tribe might be killed in reprisal for the acts of a fellow tribesman, the right to exact vengeance was never placed on a similar basis. The immediate kin of the slain man were always free to choose whether to take physical revenge or to accept payment in lieu.\textsuperscript{88}

There does not seem to be consensus within the literature on whether in fact acceptance of the compensation necessarily indicates a commitment to relinquish thoughts of revenge. In some cases, such as the example of Hawazma diya I will examine in a later chapter, the recipients are free to reject the diya, but the cost of doing so is exile from the tribe, at least for a time.\textsuperscript{89} It is unclear whether, upon return from exile, one might reinstate calls for revenge, and whether this may occur even in cases where compensation is paid (in essence, the question is whether compensation conveys to the next generation). Likewise, as we have seen earlier, Herodotus believes revenge lasts five generations, and Hutchinson tells us that compensation helps relatives to bear heirs who, it is hoped, will someday take revenge.\textsuperscript{90}

\textsuperscript{88} Ibid., 11.


The relationship between religious law and civil or criminal law required clarification and continued to develop. Sir Henry Maine traces important concepts in the transference of religious concepts into law through an examination of Hindu law, in which "man's acts and experiences in one form of being determine the next." 91 Maine links the actions of sin or impurity to the need for some form of penance, without which transition to the next stage of life might result in purgatory or an inability to ever experience the higher form of living in perpetual peace. In Hindu society, the ability to enforce the penance or penalty transitions at some stage from the religious authority or wise elders to the government in the form of the King, whose duties include protecting the people, and to "enforce the whole social and religious system as conceived by the... lawyers." 92 This same relationship between the ecclesiastical and the secular played out in other places as well. Throughout the march of time, compensation for wrongs was a critical part of maintaining balance within society.

The fact that blood money has its roots in religious texts and practice create a bond between blood money and faith communities, contributing to its resilience as a practice. Hardy refers to “successive religious obligations imposed on the victim’s next of kin by the spilling of blood,” a stark reminder of the fact that although largely practiced as part of customary law in some places, it can also be viewed as a core component of one’s faith practice. 93 In fact, the

91 Maine, *Dissertations*, 35.
92 Ibid., 39.
historical record of violence and the view of society with regard to culpability reflects a process of determining who the ‘ultimate’ judge and juror should be.

Blood Money and Law

The incorporation of blood money into a corpus of law came via development of the concept of torts. Early distinctions were made between offenses against the state and offenses and harms to the individual. “Now the penal Law of ancient communities is not the law of Crimes; it is the law of Wrongs, or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action, and recovers compensation in the shape of money-damages if he succeeds.” 94 Yet as we know, this practice is not confined to 'ancient communities,' but in fact is still practiced in many parts of the world today.

The examination of legal pluralism shows that many, if not all, countries exhibit a somewhat unique combination of civil and criminal, customary and religious, state-based and non-state legal systems, processes, or institutions. 95 In each of these systems, the role of compensation varies widely in terms of how it functions relative to criminal or civil harms. The traditions and goals of blood money continue to have “a still perceptible influence upon the modern law of torts and contract.” 96 This desire to retain and incorporate at least aspects of this

94 Maine, Ancient Law, 370.


96 Hardy, Blood Feuds, 10.
mechanism is further validated by its inclusion in the Ottoman’s Tanzimat reforms in the mid-late 1800’s which impacted citizens across the entire Ottoman empire.\footnote{Abdullahi Ahmed An-Na’im, “Shari’a and Islamic family law; transition and transformation; Critical essay,” Ahfad Journal (Dec 1, 2006), under \url{http://search.proquest.com.proxy.library.georgetown.edu/docview/211023077} (accessed October 9, 2013).} Although striving to both modernize and secularize the society, the Ottomans justified incorporating the practice into their penal code as follows:

…the survival of the system in communities…is essentially attributable to the religious character which it had acquired. A typical example in this regard is provided by the Ottoman Empire, where, despite the modernization of the law towards the middle of the 19th century, and notwithstanding the fact that the principle of the rule of compensation (properly so-called) for loss suffered had been enunciated and the system of public law had been duly organized, the right of the interested parties to demand the application of kiṣāṣ and, finally, the ḍiya, was retained, notably under the terms of the penal code of 1863.\footnote{“Diya." \textit{Encyclopaedia of Islam, Second Edition}. eds., P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Brill Online, 2014. Reference. Georgetown University under \url{http://referenceworks.brillonline.com.proxy.library.georgetown.edu/entries/encyclopaedia-of-islam-2/diya-COM_0172} (accessed 1 March 2014).}

Chapter Conclusion

There are critical lessons—and critical questions—to derive from this exploration of the development and spread of the practice of compensation. It is clear that the purposes and objectives of the practice vary widely, from compensating victims for losses, to ‘ransom’ for a perpetrator, to a fine or penalty payable to the state. In some cases, the compensation seems designed to circumvent retaliation, yet in others, retaliation seems not only justified, but mandated. The practice of blood money throughout the ages reflects how it has ebbed and flowed and responded to various influences.
One of the greatest challenges in the understanding of blood money is answering the question of whether in fact it is effective in encouraging those bent on vengeance to abandon the feud. There is little documentation of its effectiveness, and in some cases, deeply entrenched customs of honor and revenge are not easily severed.\footnote{An article published in the journal Science cites a radical reduction in violence after communities in Papua New Guinea re-invigorated traditional customs of compensating victims with valuable pigs. See Polly Wiessner and Nitze Pupu. “Toward Peace: Foreign Arms and Indigenous Institutions in a Papua New Guinea Society,” Science 337, no. 6102 (September 2012): 1651-1654.} The inter-relationship of all factors must be explored more carefully in order to fully grasp the scope and importance of blood money. Exploring examples of how compensation is negotiated, how agreements and commitments are sustained, and the role of various actors relative to processes of blood money, will help the reader to understand the contemporary practice of blood money today.
CHAPTER 2

HOW BLOOD MONEY PROCESSES WORK

Having outlined the history of blood money as it spread from custom into early legal codes, through religious texts and then into various contemporary legal and customary practices, this chapter examines in greater depth how processes of blood money are actually conducted today. It is important to recall that just as “there is no such thing as a typical tribe,” there are many different methods of practicing blood money.¹ This chapter highlights both similarities and distinctions among several processes conducted in various parts of Sudan, the Horn of Africa, the Middle East, and beyond. In the chapter I explore the relational constructs within which blood money functions. I outline key components of blood money practices across geographical and cultural boundaries, drawing upon numerous ethnographic, legal, religious, and historical sources. I examine the role of third party actors who support these processes, and explore several foundational constructs such as long-standing agreements that underlay blood money negotiations. I delve into the elements of commitment regarding paying and receiving blood money, and examine the expectations in terms of what those commitments signify with respect to restoring relationships and stopping violence.

Diya and Kinship Relationships

Tribal and/or kinship relationships are intricately interwoven with both the use of violence and resulting compensation mechanisms. As indicated previously, the collective responsibility for vengeance and the responsibility to pay compensation lie within the same family or kin units, identified as ‘co-liable groups’ by Marx in his 1967 work *Bedouin of the Negev*.\(^2\) Ethnographer of the peoples of the Arabian peninsula, Robertson Smith, describes it this way:

All the members of the group regarded themselves as one blood. A kindred group is a group within which there is no blood feud. If a man kills one of his own kin he finds no one to take his part…On the other hand if the slayer and slain are of different kindred groups a blood feud at once arises, and the slain man may be avenged by any member of his own group on any member of the group of the slayer.\(^3\)

The burden of revenge fell on the closest male members of the patrilineal group, with “the apparent order of succession (of responsibility)... sons, brothers, cousins, and uncles, each one taking up the obligation in turn according to seniority until the blood first spilt had been avenged.”\(^4\) These same male members are also responsible for collecting and paying the compensation. In the Iraqi traditional process known as *fasel*, as well as in other Arabic-speaking contexts, “the official group responsible for vengeance and against whom vengeance may be taken is normally the *khams* (five), all those males who share


\(^3\) W. Robertson Smith, *Kinship and Marriage*, 15.

a common ancestor five generations back.”

This number, of five generations, reflects a customary norm that changes depending upon context and conditions. An Arab proverb describing this phenomena is “I and my brother against my cousin; and I and my cousin against a stranger,” which Misseriya ethnographer Ian Cunnison referred to as “the brotherhood of the closest.”

In the words of a traditional Darfurian proverb, ‘Conflict reveals origins,’ highlighting that these situations reveal kinship relationships based upon who responds to calls for revenge and who contributes to pay compensation. This important construct has been described as “the dynamic of fission/fusion of groups that is typical of segmentary societies. It facilitates equilibrium between segments...” In other words, when fighting breaks out within a family group, that family group usually divides, leaving the original group and creating a new set of allegiances.

In addition to being based on kinship relationships, the variety of processes for initiating and negotiating blood money agreements have similar elements of the process and seemingly similar goals. In general, the mediation process of discovery, truth-telling and calculation serves to ascertain the motivation for the crime (or accident), thereby serving as a customary hearing


7 Ibid., 7.

process of accountability. The calculation of payment serves as a measure of redress or restitution. Another description, that the payment serves as “reparations,” intended to ‘repair’ the harm caused by violence, reinforces the relational component at the core of this blood money mechanism. This focus on relationships highlights a third component embedded within the process, beyond accountability and restitution. The mechanism and the process of negotiation constitutes a process of reconciliation—that is, reconciling relationships between the parties to the point that they recognize retaliation for the wrong has no place. Acceptance of the blood money equates to agreeing not to seek retaliation and to stop the cycle of violence.

The mechanism or process of stopping the cycle of violence through paying compensation has several names. For certain Arab, pastoralist tribes such as the large Misseriya and Rezeigat tribes of Sudan including Darfur, the process is known as judiya. In the Eastern Sudan region around Kassala inhabited primarily by the Beja and Hedandawa tribes, the process is known as galad. The Dinka and Nuer tribes have similar processes, (known as apuk in Dinka). In the Levant or eastern Mediterranean areas including Israel and Palestine, the process is known as sulha. In Iraq, both the process and the blood money payment itself are generally referred to as fasel. In Somalia, a similar process is conducted by a guurti circle of elders, with the settlement referred to as xeer. In the Pashtun areas of Afghanistan and Pakistan, these processes would be conducted through a process known as a jirga. Yet despite being called by different names and having many unique qualities to them, these
processes have many similar characteristics that highlight key elements of the mechanism. ⁹

**Exploring blood money processes**

Despite the existence of inter-tribal agreements that are intended to prevent violence from occurring, the process of negotiating blood money payments is reactionary, and begins only after violence has happened. It is likely for this reason that practitioners place particular emphasis on regimenting aspects of the process. The descriptions that follow of several different processes help to highlight the similarities and differences among the practice in different cultural contexts.

**Judiya**

The mediation processes used for determining blood money payments—known as judiya in a number of Sudan contexts--are customarily conducted by third parties playing a role somewhere between mediation and arbitration, through individuals known as ajaweed. For the judiya to begin, either party may invite a third party to intervene. Traditionally, the ajaweed are respected and reputable members of a neighboring—and therefore disinterested—tribe.

The process begins with these mediators trying to understand the details of the situation. In a judiya session “the aim is less to find the truth of the situation, but to reach a point where both parties can live with the definition of what happened… To do this, rhetorical skills are important, appealing to the

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⁹ For simplicity purposes, when I refer to blood money processes, I am referring to the broad spectrum of practices, whereas if I am making distinctions between different practices, I will refer to the specific name.
A report by CARE International based upon focus group surveys conducted in Darfur outlines what the process of judiya conducted by an ajaweed third party would look like:

The Ajaweed work to bring together tribal leaders from both (or all) sides in a dispute. It can take several bilateral meetings before the two or more parties are willing to come together. When they do finally meet, proceedings open with a recitation from the Koran which emphasizes the need for coexistence, tolerance and harmony. The parties the lay out their cases and submit a list of complaints and demands. The Ajaweed discuss what the group considers to be a just settlement, based on the precedents established by the Rakuba (foundational) agreement between the tribes in question. In this sense, the Judiya process is a mixture of arbitration and mediation. The Ajaweed make a determination of the rights and wrongs of the case as well as a judgment about the appropriate restitution and compensation to be paid; they then set about convincing each party to accept this solution and withdraw any demands that might block an agreement. Negotiations ensue, with the leaders of the disputing parties consulting their tribesmen (usually leaders of lower rank, who may then be responsible for garnering the views of the ‘rank and file’ of membership of the tribe), and after several rounds of negotiations and consultations an agreement is finally reached. Once the agreement is reached the leaders of the disputing parties swear an oath that the conflict is at an end and that they will not fight again.

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The ajaweed “based their decisions on an intricate system of jurisprudence that governs the relationship between the tribes that are members of a particular Rakuba agreement. These precedents are articulated over time in the shape of agreed norms concerning justice, compensation, punishment, reconciliation, forgiveness, and the continuation of peaceful coexistence.”

I will return shortly to a discussion of these Rakuba agreements which contribute to the standardization of the process and its outcomes.

**Galad**

The Beja people, pastoralists of mixed Arab-Cushitic ethnicity who live in the Red Sea regions of Eastern Sudan and near the city of Kassala bordering Eritrea, apply similar practices to resolve violent disputes, calling their process galad. Although the judiya process may utilize more than one ajaweed, galad is generally conducted by an entire council. A galad council is comprised of community leaders including sheikhs, elders, mayors, or other respected leaders. The galad is presumed to have a conflict prevention role, but also intervenes when conflicts become violent. Disputes taken to a Galad council include disputes over grazing land and water, over land ownership, damage to farmland by livestock, livestock theft, and human killing and revenge killings.


“The Galad Council retains the right to look into, intermediate in, and decide about any case that is presented to them in the way they consider just and equitable.”

Punishments available to the council include compensation for killed or lost livestock, diya for those killed (which the council collects or may pay for the poor members of the community), deportation of aggressive members or “trouble-makers,” and determining grazing and farming boundaries.

The description of the galad process is as follows:

When a conflict erupts between two tribes, tribal chiefs, mayors, sheikhs and elites rapidly move to contain the conflict before it escalates or to (inter) mediate between the disputing tribes. This Galad mechanism is marked by the adoption of a step-by-step method which is known—in the Eastern tradition—as the council of the laying of the Galad foundations. It is an oath and a convention to which all the disputing parties are subjected and obligated to comply with. The Galad is authorized to invite chiefs, mayors, wise figures, religious characters, and recognized powerful elites of authority and is staged according to the following order:

1st Stage: A Galad concept-laying council for the disputing tribes is held to contain the conflict or the raised crisis, during which, time and venue for the upcoming 2nd stage-session are fixed and agreed upon. Normally, the 2nd stage session is organized in a week’s time—quite enough period to allow for efforts to calm down the stands and narrow the gap of differences between the fighting factions.

2nd Stage: At this stage, casualties, injuries, wounds, and damages to belongings are counted, and diyyas (which the Beni A’mir call Si’eir, Tuokala in Bedawait, i.e. estimation) are calculated. The council affirms the abolition of such problems and takes adequate disciplinary measures. In case a party has not complied with what the Galad has judged and has been agreed upon, he will then come under severe pressure from all the council’s tribes. If one party persists in offending another, the offended party will then be protected by all the tribes taking part in the council.

3\textsuperscript{rd} Stage: Is resorted to when one of the basic accord conditions is violated—resulting, therefore, to the formulation of the \textit{Galad’s} council of reference and guaranty. The council could charge itself with the execution of certain acts such as burial and funeral of the deceased, curing of the injured, estimating of \textit{diyyas}, paving, hence, the way for the advent of mutually-respected intermediaries who shall deliver the agreed-upon sums worth of \textit{Diyyas}, compensations, etc.\textsuperscript{15}

Importantly, the \textit{galad} represents an “oath of obligation to all conflict parties” which the council is empowered to enforce through traditional means.\textsuperscript{16}

\textbf{Sulha}

Clearly there are similarities and parallels between these two processes, \textit{judiya} and \textit{galad}. Probably the best-documented is the \textit{sulha} process, practiced in the Levant region including Israel and Palestine and other parts of the Middle East.\textsuperscript{17} Importantly, we see examples of \textit{sulha} being practiced across religious and ethnic boundaries among communities living in close quarters. “The \textit{sulha} provides the path for reconciliation between the extended families of the disputants, whereas either Sharia law and/or formal legal systems are used to adjudicate disputes between individual disputants, or between disputants and the state.”\textsuperscript{18} Like \textit{galad}, the \textit{sulha} process is conducted via a committee of respected

\textsuperscript{15} Yousif, “Mechanisms of Tribal Conflict Resolution,” 8.

\textsuperscript{16} Ibid., 7.

\textsuperscript{17} More information about the practice of \textit{Sulha} can be found on the \textit{Sulha} research center’s website \url{http://www.sulha.org} Additional relevant publications include Doron Pely, “Resolving Clan-Based Disputes Using the \textit{Sulha}, the Traditional Dispute Resolution Process of the Middle East,” \textit{Dispute Resolution Journal} (November 2008/January 2009): 80-88.

\textsuperscript{18} Pely, “Resolving Clan-Based Disputes,” 80.
male community leaders, numbering from one to 20. The committee is known as jaha.  

Much like the previous processes, the sulha process occurs through a series of orchestrated steps, including representatives of the offender’s family contacting a member of the local jaha and requesting an intervention, as well as authorizing the jaha to “meet with the offender’s family (not the offender) about the problem.” Early in the sulha process, the mechanism requires specific rituals to achieve a ceasefire agreement, or atwa.

Researchers of sulha have documented these various rituals and customs embedded within the process in great detail. These procedures even include the precise language that must be used by various parties, demonstrating the legacy and importance of the process. “The ritual (of sulha) requires the offender’s family to state that, on its own behalf and that of the offender, it assumes responsibility for the offender’s deed, it feels regret for that deed, and it seeks a reconciliation with the victim’s family.” Additional steps include authorizing the jaha to act on behalf of the perpetrator’s family, committing to respect the decision of the jaha, and depositing funds as a ‘surety bond.’ The sulha, a word that has meanings related to both ‘peace’ and ‘settlement,’ also includes specified rituals to achieve forgiveness and to restore damaged inter-communal

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19 Ibid., 82.
20 Ibid.
21 Ibid., 82-83.
22 Ibid., 82.
relationships. According to Doron Pely, “…the *sulha* process aims to achieve reconciliation (*musalahada*) between the two parties…”

**Apuk (or Puk)**

Although the Dinka word *apuk* applies to the blood money compensation itself rather than the negotiation process, the mechanisms of the process will be immediately familiar. The Malual Dinka, a clan that resides in Northern Bahr el Ghazal state of South Sudan, are the recipients of Misseriya and Rezeigat pastoralists and their cattle who graze into Dinka land across the border from Sudan. The Malual are semi-pastoralists themselves, and cattle are important in many ways, not least of which is for livelihoods as well as for bride-wealth and blood compensation. For Malual Dinka, family relationships are constructed around a *Gol*, a word used to describe the dung fires of a cattle camp and the cattle camp itself, as well as the members of the clan or community whose lives revolve around the camp and who come to identify themselves as, essentially, a clan. "The members of a *Gol* are considered blood relations and claim descent from a common forefather… Customary law renders the ‘*Gol*’ liable to contribute cattle awarded as compensation for certain offences committed by a member or members of that ‘*Gol*’."

Cousins to the Malual, the Ngok Dinka of the disputed Abyei region that spans the border between Sudan and South Sudan, practice a now-familiar

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23 Ibid., 86.

24 J. N. Stubbs, “Notes on Beliefs and Customs of the Malwal Dinka of the Bahr el Ghazal Province,” *Sudan Notes and Records*, 17, no. 2 (1934): 244.
regimen of dispute resolution in cases of homicide utilizing a single mediator or council of elders, a process of information gathering, and precise rituals that dictate various parts of the process.\textsuperscript{25}

Another well-documented set of processes belong to the Nuer of South Sudan. The Nuer people have, over the years, hosted a series of reputable ethnographers who have documented in precise detail the conduct and underlying constructs of blood money practices that are discussed in greater detail later in this chapter.

**Gurtong**

*Gurtong*, literally ‘to blunt a spear’ is a restorative conflict resolution process practiced among the Anywaa kingdom of eastern Jonglei state of Southern Sudan, though the tribe spills over into Ethiopia. The Anuak king (*Nyiya*) facilitates processes that have much in common with these other practices as shown:

The communities would sit and talk about the conflict. They would discuss the origin of the conflict, identify the aggressor and the victim. These discussions eventually ended with an establishment of *Gurtong* (Anuak word for agreement). *Gurtong* assigned the blame and set conditions that attempted to prevent future conflicts between the warring parties. The *Gurtong* is comparable to a treaty, (or) justice system, or agreement that has been used to end wars in the western world. The purpose (of such) treaties or an agreement is to establish conditions that ensure the rights of victims and abusers in their future relationship because at the end of the day, they all have to live together...Killing and all kinds of atrocities should be stopped. The only way to stop killing and atrocities is through disarmament and accountability in court (to

face the rule of law) or traditionally (if the two Communities agreed for a murderer to pay compensation), if the murderer is identified.²⁶

There are any number of processes around the world, broadly similar but each with some ‘unique’ characteristics, which also seem to be found in some other part of the world. In short, the similarities between and among these various processes are vast. Closer examination reveals a number of core characteristics that will later help define its primary goals and how these processes go about achieving its purposes.²⁷

**Core Characteristics across processes**

The similarities across the various practices I have examined as well as those I have only briefly mentioned, constitute what I refer to as ‘core characteristics’ of the practice of responding to violence and compensating loved ones for their losses. These core characteristics include processes and procedures to:

- Initiate an intervention;
- Identify acceptable third parties;
- Stop escalating violence/protect people;
- Gather information, including assessing motivations and intentions;
- Refer to/draw upon existing foundational agreements and precedents;
- Decide upon the suitable amount and composition of a blood money offering;
- Validate acceptance of the decision by both parties (or not);
- Facilitate forgiveness or reconciliation, and acknowledgement of such,
- Implement the decision.

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All of these elements are conducted under an overarching purpose of accomplishing some or all of the above sufficiently to break the cycle of violence by either preventing retaliation or limiting the escalation. Examining each of these steps in the process provides insights into both the complexity and the predictability of these processes.

**Starting the process**

Consistent with the reality that these processes, although similar, are also each unique, the practice of initiating a blood money process or negotiation differs depending upon circumstance. In some cases, one or the other party to a dispute will request the intervention of a mediator or *ajaweed* (as they are called in Darfur). In other cases, the third-party observer or neutral, seeing a risk of escalation and knowing a killing has occurred, may intervene or offer services to the interested parties. In yet other cases, such as Arab villages in the Galilee region, there is a standing *sulha* committee that exists specifically to avoid the problem of finding a suitable mediator. There are processes and procedures in place to ensure the mediator is acceptable to both conflicted parties, including the ability of one party or the other to reject a mediator until a satisfactory one is found.28 Once selected, their role begins.

**The role of the mediator**

Traditional leaders and elders have long played a crucial role in the conduct of these processes. Salzman describes the role of the mediator as “a

28 Hardy, *Blood Feuds*, 82. In an interview conducted by Hardy with a Jordanian *sheikh*, the *sheikh* indicates that “three judges are chosen; the accused strikes out one, the claimant strikes out one, and the third gives judgment.”
critical lubricating factor…encouraging, cajoling, facilitating, shaming, flattering, and subtly bullying fellow tribesmen in conflict to act reasonably and responsibly…to resolve their disruptive and destructive conflict by means of appropriate restitution.”

These mediators are important to these communities in many ways. A scholar from Eastern Sudan describes the important role traditional leaders are expected to play in these societies more broadly:

- Represent an exemplary model for the tribe…
- Entertain the respect of all
- Are utterly obeyed
- Are directly touched by whatever might affect their tribes and influence their tribesmen directly
- Are surrounded by all tribesmen seeking their wise views
- Act on behalf of the tribe in conciliation negotiations and pass the council’s taken decisions to the tribe’s individuals, thus, acting as spokespersons
- Charge themselves with the collecting of diyya (fixed amount of money paid to the dependents of a killed person by the killer’s relatives) and pay it on behalf of poor tribe’s members.

Similar characteristics are included in descriptions of mediators from Afghanistan to Sudan and beyond, indicating a consistency in the broad requirements for a successful third party role across cultural settings. Although every traditional leader may not live up to soaring expectations at all times, certain among their membership develop reputations for wisdom, judgment, 


31 I have queried participants from a wide variety of backgrounds to identify characteristics of good mediators. The list of desired traits or characteristics derived from a western context varied from their own lists, in any context, only in that the Sudanese required their mediators to have knowledge of local proverbs in order to be acceptable.
fairness, and other traits relevant to the negotiation of blood-money agreements.

(Note: Despite this public trust and high expectations, there are also examples of mediators who engage in these mediation practices for their own, sometimes selfish, purposes. In a later section I discuss this issue of compensation for mediators, another interesting aspect of their role.) 32

Knowledgeable observers of these processes indicated the following conditions must be in place for the mediation to succeed:

1) The mediator must be neutral
2) The mediator must be persuasive, dependable, and fair
3) The mediator must be experienced in local affairs
4) Parties must be willing participants
5) All parties must have a chance to participate 33

In general, knowledgeable family members of the perpetrator and of the victim are called before a neutral third party to acknowledge the wrongdoing, to assess the motivation or intent of the perpetrator, and to hear about the loss to the victim’s family. This initial stage of the process is largely to assess the situation and determine acceptable, knowledgeable, third parties. General requirements may include “someone who has enough prestige and influence to sway recalcitrants but who is also regarded as being, if not neutral, at least fair and wise…The opposite technique—that is, the invocation of well-connected

32 Ginat, Blood Revenge, Chapter Three, “Role of the Mediator,” 60-89. Ginat highlights examples of mediators using their third party role for very clear political and personal goals.

33 El Amin, “Eastern Sudan,” 4. In addition, per Brian Kritz, “these are the hallmarks of western Rule of Law standards as well.”
insiders, or individuals closely connected by kinship and marriage to the parties involved— is an equally powerful technique.”

Initiating a process to stop escalation

In circumstances where violence has occurred, responsible intermediaries immediately intervene to assess the situation and take measures to stop escalation. Family members may take immediate steps to avenge the violence. Hardy explains how, in the immediate aftermath of a murder, “the male relatives of the deceased man who constitute part of his khamsa, or immediate family, are obliged to seek out the culprit and to take their revenge upon him or upon his close relatives.” The traditional saying among rural Arabs is “there must be one grave opposite the other grave.” Actually, as we have seen, cultural, religious, and historical norms dictate that retaliation should be on par, or not greater than par. In other words, the initial retaliation should be limited to killing at the same level as that which has already occurred, which is the first restraint on escalating retaliation.

As Francis Deng points out among the Dinka, “When a man commits homicide, a feud automatically arises between his kinsmen and those of the deceased.” Among the Beja of Eastern Sudan, women may not mourn the dead


35 Hardy, Blood Feuds, 76.

36 Ginat, Blood Revenge, 21.

37 Deng, Babo Nimir, 135.
until revenge has been taken. In other words, the process of reconciliation or accountability must respond rapidly in order to intervene before retaliation escalates. Ginat points toward passages in the Bible that indicate a distinction in the immediate call for revenge between situations of murder and homicide. He points out that “in Bedouin society there is no distinction between premeditated murder and unintentional killing. Revenge may take place in either case.” Clearly this call for revenge is strong and compelling, requiring distinct rituals to constructively impact the escalation of violence.

Although the customs may differ slightly, there are several techniques common across various groups that are designed to interrupt this retaliation. In the case of the traditional tribal law of Bedouins, (and Yemenis) known as urch, “during the period immediately after the killing, known as the ‘boiling of the blood,’ (foret ad-damm) the culprit’s property may be seized or destroyed.” This period in which some show of force or hostility is permitted, usually three days, is actually another form of restraint on what could otherwise be unrestrained retaliation.

Another initial response to limit escalation is geographical or physical

39 Deut 19:5 “when a man goeth into the forest with his neighbor to hew wooed, and his hand swingeth with the axe…He shall flee unto one of those cities and live, lest the avenger of the blood pursue the slayer” versus the Lex Talionis, Deut 19:11-13, “But if any man hate his neighbor and lie in wait for him, and rise up against him, and smite him mortally that he die, and fleeth into one of these cities, then the elders of his city shall send and fetch him from there and deliver him into the hand of the avenger of blood, that he may die.” Cited in Ginat, Blood Revenge, 5.
40 Ginat, Blood Revenge, 15.
41 Hardy, Blood Feuds, 76.
separation. Among the Hawazma pastoralist Arab tribe of Sudan, the perpetrator is sent into a kind of ‘temporary exile’ in order to “avoid clashes and tensions and stopping the bloodshed as well as to enable the dead person’s family to calm down and the killer’s family to feel the bitterness of the loss.” In the Bedouin context, “The culprit himself, together with his khamsa, usually takes refuge with a powerful sheikh nearby.” This technique of escape from the immediate area of the crime, and sometimes of seeking protection with a benefactor, is an important de-escalation technique. Known as al-jala in the Jordanian context, “the century-old practice is arranged by the elders through tribal law and requires the offending party, and his co-liable group of relatives, to leave the community where the crime was committed and live in another traditional enemy community. In this way, the offending party and his family are psychologically and physically punished as a collective whole.” In the Jordanian context, the al-jala escapes to a tribe that was previously considered an enemy tribe. Living among, and under the protection of a strange or an enemy tribe aims to reduce contact between the culprit and victim groups, thereby lowering the chances of immediate escalation of bloodshed and violence.

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43 Hardy, Blood Feuds, 76.

Another technique for stopping escalation is the practice of *atwa*, or ceasefire, which is a "set period of time, generally between two weeks to a month (renewable), in which the victim’s family agrees not to exercise their right to retribution."\(^{45}\) In the Eastern Sudan context, a truce, or *wagab* is accompanied by a *gullad*, or word of honor, that the victim tribe will not take revenge.\(^{46}\) These mechanisms are intended to intervene at the early stages of the cycle of retaliation, before it occurs. In fact, “until revenge has been taken or until ‘atwa (a cease-fire, in the sense of a cessation of hostile action) has been concluded, every member of the murderer’s co-liable group lives in constant fear of death.”\(^{47}\)

One additional mechanism exists to help prevent retaliation from getting out of hand. In some cases, an initial payment is made quickly in order to buttress efforts to stop escalation. Among the Gaajak people, “when a man has killed a neighbor, a cow is often immediately paid over in earnest so that the community may remain at peace.”\(^{48}\) In some cases, this initial payment, known as *jira*, is linked with the *atwa*, or ceasefire agreement. In other cases, it can be implemented as an initial payment when the retaliation exceeds the boiling of the blood period.\(^{49}\)


\(^{46}\) El Amin, “Eastern Sudan,” 16.


\(^{48}\) “Gaat Ngundeng Naath of South Sudan,” *Sudan Tribune*, August 11, 2006.

\(^{49}\) Hardy, *Blood Feuds*, 82. "If, however, vengeance was taken after guarantors of the truce (wajd—literally, ‘face’) had been appointed, the aggressor had to hand over forty white camels, a horse, and a male and female servant to the guarantor."
Gathering Information

Processes in Darfur begin with tribal leaders and interested parties convening in the company of the ajaweed, once all parties agree to come together. “When they do finally meet, proceedings open with a recitation from the Koran which emphasizes the need for coexistence, tolerance and harmony. The parties then lay out their cases and submit a list of complaints and demands.”

Anthropologist Sharon Hutchinson describes among the Nuer “a complex series of negotiations by an earth priest… (including) circumstantial details of the slaying, such as the nature of previous relations between the families of the assailant and victim, their territorial proximity and ancestral affiliations, they type of weapon used in the slaying (whether club, fishing spear, fighting spear, or gun), as well as current rates of bridewealth…”

In the Eastern Sudan context, the parties to the conflict may not actually attend this session themselves, but instead are represented by family and community members.

An interesting question is about the importance of distinctions regarding intent. Within kinship groups, there is an embedded assumption that any killing is accidental, in large measure because killing another member of one’s own clan would be self-destructive. In the Nuer context, historically the choice of weapon indicated intent, with killing by club indicating an accident, killing by spear being

51 Hutchinson, Nuer Dilemmas, 122.
more intentional, and killing with a gun indicating a different motive altogether.\textsuperscript{53}

In a later discussion on compensation, I will demonstrate that the egregious nature of certain killings has an impact on the nature and amount of the compensation (and may also impact efforts at reconciliation).

Questions also arise as to how the situation might be affected by failure to tell the truth. Elaborate mechanisms were devised to attempt to discourage the use of falsehoods in the process. A Nuer interviewee described the impact the ‘poisonous nueer spirit’ that overtakes a man who has killed someone and might try to hide it: “Nueer keeps people vomiting out the truth—you can’t hide the fact that you have killed a man!”\textsuperscript{54} Ginat describes both oath-taking ceremonies and a special Egyptian Bedouin technique, called bisha’h, conducted by a special practitioner known as a mubasha,’ who conducts a ritualized ordeal whereby a decision with respect to guilt or innocence is made after the suspect licks a hot spoon.\textsuperscript{55}

**Foundational Agreements**

Before determining what gets paid and who will pay it, the mediators or elders will refer to a series of guidelines or rules about the custom that help them assess appropriate payments. These customary agreements are foundational and often are longstanding. They reflect both the long and deep heritage of the custom as well as the desire to create processes that are steeped in a sense of

\textsuperscript{53} Hutchinson, *Nuer Dilemmas*, 122.

\textsuperscript{54} Ibid., 123.

\textsuperscript{55} Ginat, *Blood Revenge*, 37.
what is both right and just, as well as guiding practitioners in a way that helps account for and adapt to, changing circumstances.

Perhaps because of the number of disputes, different types of agreements arose to help organize the structure of these traditional mechanisms and to help improve their effectiveness. One of these is called rakuba, which is the name given in Darfur to local shelters made of sticks where people can get shade from the sun, have some tea, and discuss events. The Rakuba system uses the metaphor of the shelter to describe a situation where two parties in a dispute sit together to resolve their problems. Rakuba agreements were originally established bilaterally between two tribes who took an oath to solve their disputes through dialogue...in the Mukjar area (of Darfur) alone, up to 36 tribes are bound together by an intricate web of Rakuba agreements. These agreements set rates for a grazing tax for pastoralist access to grazing land and water as well as fix the rates of compensation for damage done by pastoralists’ animals to a farmers’ crops that then becomes standard precedent between the two groups. The rakuba system also supports the precedent-setting customary agreements regarding rates of diya. In addition, the Rakuba can include an agreement to set aside a portion of blood money. “Many times the aggrieved

56 Other tribes have foundational agreements as well. Between the Nuba and Misseriya, for example standing covenants are known as ‘suerenei.’ See Bradbury, Ryle, Medley and Sansculotte-Greenidge, “Local Peace Processes,” 63.

party would refuse to take the blood-money and leave it as a debt to be
considered in future events.”

Among the Beja of Eastern Sudan, a customary set of agreements known
as salif governs land use between tribes as well as ritual obligations related to
oaths. Similar to rakuba, these foundational agreements outline parameters of
expectations and serve to support the mediators in their decision-making
processes.

**What Gets Paid**

A story from the time of the prophet Mohammed cited in a document on
judiya processes in Darfur clarifies what practitioners learn about the practice of
diya and how the customary amount of diya was set as follows:

The story is of Abdulmuttalib, son of Hashim, the father of the
prophet. Abdulmuttalib committed that if he was given ten sons
who grow to maturity (and therefore can help protect him and the
tribe), that he would sacrifice one of his sons in gratitude. He had
ten sons, and when they had grown, he insisted on following
through on his promise. To select which of his sons would be
sacrificed, he shot an arrow (without a spearhead) at each of his
sons. The arrow hit Abdullah, his favorite son. A powerful sheikh
of the Quraish tribe tried to find an alternative option, and
suggested that Abdulmuttalib see one of the priestesses in
Damascus. She suggested Abdulmuttalib shoot his arrow at ten
camels before Abdullah, and each time the arrow reaches
Abdullah, he should multiply the number of camels. This went on
until there were 100 camels, which were slaughtered in front of the
Kaaba. From this time, it became the custom to sacrifice or
exchange 100 camels in lieu of a life.

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59 Da’oud Khair Allah El-Nur, *Customary Laws of Blood Money and Tribal Dispute
Despite 100 camels being set as the ‘standard’ compensation, this essentially served as a starting point from which local communities determined the amounts of compensation suitable for their areas, as well as to specify the circumstances in which diya is paid and how the process was to be conducted. In Darfur, local leaders recognized that 100 camels, although considered the authentic diya in Islam, was not suitable in their society where camels were becoming less common than other animals, and were also valuable trading commodities. Over time, the currency for diya in Darfur was changed from camels to cattle, and the number was reduced considerably. At an important inter-tribal conference in 1922, the diya for a man was set at 30 cows, and diya for a woman was set at half a man’s diya, therefore 15 cows. Islam says that diya was solely for cases of accidental killing and retaliation on par the penalty for murder. Recognizing that cases of intentional killing were increasing in their area, a second inter-tribal conference in 1941 saw the full diya increase to 70 cows.\textsuperscript{60} The diya was not confined to deaths; diya rates were set for the spilling of blood, for injuries to a variety of bodily organs (including teeth, fingers and eyes), and for “attacks on honor, …verbal abuse and insult with hurtful words, and causing death to animals.”\textsuperscript{61} This 1941 conference in Darfur and the diya rates fixed at it became known as the “diya djajeea,” or the diya of ancient custom, and is still referred to as a foundational agreement today.

\textsuperscript{60} Ibid., 7-8.

\textsuperscript{61} Ibid., 7.
The level of detail in terms of the payment may surprise some observers, and provides insights into the purpose underlying the payment. Customs for the *diya* among Hawazma Arabs, for example, are very specific about the current and future value of the payment:

**Table 3: Hawazma Diya**

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Cows gave birth 2 times</td>
</tr>
<tr>
<td>5</td>
<td>Cows never gave birth</td>
</tr>
<tr>
<td>5</td>
<td>Cows gave birth 4 times</td>
</tr>
<tr>
<td>5</td>
<td>3-year old She calf</td>
</tr>
<tr>
<td>5</td>
<td>2-year old She calf</td>
</tr>
<tr>
<td>1</td>
<td>6 year old Bull</td>
</tr>
<tr>
<td>2</td>
<td>4 year old Bull</td>
</tr>
<tr>
<td>1</td>
<td>3 year old Bull</td>
</tr>
<tr>
<td>1</td>
<td>2 year old Bull</td>
</tr>
<tr>
<td>1</td>
<td>1 year old calf (male)</td>
</tr>
<tr>
<td>1</td>
<td>Less-than-1 year calf</td>
</tr>
<tr>
<td>1</td>
<td>Unspecified</td>
</tr>
<tr>
<td>33 Total</td>
<td></td>
</tr>
</tbody>
</table>

Source: Yousif, “Mechanisms of Tribal Conflict Resolution,” 2

The payment of a fixed rate for the full *diya* seems to hold when cases are predictable, but of course there is little predictability about violence and harm. We can see that the compensation mechanism has developed in a way that the amounts and types of *diya* are well ensconced in custom, much as common law depends on cases and precedent. Yet the amount and process is flexible and adaptable to situations. For example, *diya* rates in Darfur were again adjusted during the drought of the mid-1980’s, which killed large numbers of livestock and restricted all tribes’ abilities to pay the full *diya*. According to P.P. Howell who served with the Sudan Political Service in the Kordofan and Bahr el Ghazal
regions in the mid-1940’s, the blood money can be adjusted based upon a variety of factors including:

1. Circumstances in which death was caused;
2. Nature of the weapon used e.g. the culpability for the causing of death by a stick is held to be less than of death by a spear;
3. The age of the claim;
4. The period elapsing between the act causing death and the actual occurrence of death.  

Among the Ngok Dinka, the nature of the killing determines “the gravity of the offense and the indignation of the dead man’s kin.” Different types of killing that can be considered to impact the amounts of diya among the Ngok include “secret killing,… killing by stealth,… killing by magic,… ordinary intentional killing,… negligent and accidental deaths,… and death incidental to other wrongs, such as breaking of taboo…”

Other factors considered in the negotiation of diya include “factors such as whether the homicide is an intra-ethnic or inter-ethnic affair (in which case ethnic group members who are non-clan members will also contribute), the wealth of the killer and his kindred, the size of the clan, and the degree of ethnic homogeneity in the area.”

There are also aspects of land and livelihoods that can impact dispute resolution practices. Historical documents by the British officer P.P. Howell who served in the Sudan Political Service of the mid-1940’s helps clarify the

64 Ibid., 132.
relationship between *diya* payments and family linkages among the Misseriya of the Kordofan area. He distinguishes between approaches used by different clans of the Misseriya tribe, affected differently by grazing land and water, by clarifying “…the Ajaira have a reputation of settling their differences amicably, while among the Feleita, who have, perhaps, greater opportunities for dispersal, there is a long and bloody history of feuds stretching back into the last century.”

In other words, compensation may have greater importance in areas where there are few other options for responses such as dispersal to other areas, or seeking the protection of other tribes.

The blood money negotiation mechanism has continued to develop a variety of adaptations to accommodate new situations. “In addition to the ‘*diya* of ancient custom’, we find the “*diya al-muglita*” or harsh *diya*, used in ‘cases of deliberate killing without justification, or assassination of leadership personality, or killing with the mutilation of a corpse.” The author of that report states that “the *Diya al Muglita* is present in Islam where it is possible to multiply the *diya* payment several times.”

There are other examples of flexibility and adaptability of the custom. These include the “Dignity and Charities” *diya*, which are “alleviated *diyas* for cases of unintentional killing, such as a dead car passenger in an automobile

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66 SAD 768/5/59.


68 Ibid., 9.
collision, or a person who causes an animal to hit another human being, etc. The *diya* payments are reduced to six cows in these cases."\(^{69}\)

When the level and extent of killing expands beyond the levels of what one might consider to be ‘expected,’ the mechanisms of blood money are put to the test. In areas of Sudan during the north/south civil war and in Darfur after the Comprehensive Peace Agreement, killing among tribes, between tribes, and beyond these customary boundaries, escalated virtually beyond recognition, and perhaps beyond the scope of what traditional practitioners could have anticipated. This situation in Darfur produced the “*Diya* of Tribal Problems.” The Darfurian practitioners talk of how “no one of the leadership of Darfur or the civil administration thought that the gentle, peaceloving tribes of Darfur, with an interrelated population in agreement on the Holy Qu’ran and on brotherhood and love, would attack and kill one another…the fathers and grandfathers did not leave a custom behind to allow people to escape from the misery…”\(^{70}\) Clearly the massive scale of killing in Darfur overwhelmed their traditions.

In this case, outlined in greater detail on page 103, an extended clash between two tribes where violence escalated quickly resulting in 24 men killed within one tribe with 12 dead in the opposing tribe. Both groups of senior leaders initially decided to pay the entire *diya* due to each other, but eventually balanced the killings so that one tribe paid nothing, and the other paid for 12 killings. The report author clarifies the significance of this practice, citing a local proverb, “The

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\(^{69}\) Ibid., 10.  
\(^{70}\) Ibid., 13.
one killed is your father, and the *diya* goes to you." 71 In essence, the leaders realized that if the generation of fathers is killed, the children of the deceased would have been saddled with paying the full *diya* of 70 cows for each of the 24 Beni Helba killed, a large number of cows for their youth to come up with. By reducing the *diya* by the 12 killed within the Rezeigat, the youth are only saddled with paying for 12 deaths vice 24. This seems to make perfect sense, yet the report author indicates his own perspective on the case and its impact:

The researcher here will not exceed the truth in saying that the system of permissive compensations in the *diyas* of tribal problems constitutes a fundamental element in the continuance of tribal struggles in Darfur, where a tribe with power can wage a vengeful attack on another tribe and kill and burn for the most insignificant of problems, and does not have to bear the burden of many sanctions. It is more appropriate for the *diyas* of problems between the tribes to be severe, like the ‘harsh *diya*’ that averts those tribes from killing and sabotaging. 72

Sharon Hutchinson, ethnographer of the Nuer tribe in South Sudan, clarifies the significance of the challenges of mass killing associated with the change from killing with spears to killing with small arms, as well as the problem presented by the growing spread of these weapons. Among Nuer traditions, feuds between tribes are described by the proverb ‘a bone exists between them,’ designating this type of situation as:

…permanent hostility forged through homicide. The buried bones of the slain—which remained firm and whole beneath the earth long after all remnants of flesh had disappeared—were said to create a social rift so deep, so strong, that relations of commensality, sexuality, and intermarriage between the extended families

71 Ibid., 14.
72 Ibid.
concerned and their descendants were prohibited, in principle, ‘forever.’

The state of perpetual warfare could only be severed through the exchange of bloodwealth cattle and through the conduct of specific rituals of reconciliation, a situation that highlights the extreme challenges that widespread deaths can bring to these communities as they struggle to apply their customary rituals.

The blood money, called *apuk* in the Dinka language, is outlined in great detail with respect to amounts of compensation related to specific injuries, even those short of killing. The amounts of compensation are closely aligned with the perception of damage to the individual victim related to both harm and intent. The details of blood money related to injuries include such descriptions as ‘blindness in one eye,’ ‘fracture of the elbow leading to complete disablement,’ and ‘cutting of tendons causing disablement of an arm or leg.’

The Ngok Dinka of the Abyei area have historically had a form of compensation specifically for rape and other sexual harms or actions that betray cultural norms. The seduction of an unmarried girl makes the perpetrator liable for three cattle for a compensation called ‘*aruok*;’ rape of a young girl is compensated with ten head of cattle and is known as ‘*awec*.’ *Awec* is a term that “has a wide range of meaning and refers in general to compensation for nearly every form of infringement of rights and recognised obligations.”

74 SAD 768/1/53.
75 SAD 768/1/47.
include flirting with another man’s fiancée or arguing with one’s relatives. This form of compensation clearly indicates that blood money is not solely for use in situations where actual blood is spilled, but is suitable more broadly to damages, injuries, and other social harms.

There are examples where the form of payment is a young girl. Ginat outlines a case of a killing between members of the same Bedouin co-liable group. Perhaps because of the closeness of kinship relationships revenge would not be taken, and other solutions were used. In this case, the solution consists of “1) the murderer going into exile, and 2) the murderer giving his closest unmarried female relative to the closest male kin of the victim.”

Who Pays

There are mechanisms and processes that are closely linked to kinship relationships to determine the amount, type, and contribution of compensation. Importantly, “jurists… agree that only the killer and not his solidarity group is liable for paying the diya in cases of intentional homicide.” The Misseriya tribe of Sudan uses two different methods of collection, which roughly line up with the distinctions between elections systems using either proportional representation

76 SAD 768/1/47.

77 Ginat, Blood Revenge, 25. Ginat describes the situation: “In cases where the murderer goes into exile he gives his closest unmarried female relative to the closest kin of the person who was killed (i.e. his daughter or sister to the deceased’s father, brother, or son). The girl who lives in such a relationship is called a ghura. The ghura lives with the closest male kin of the victim until she gives birth to a male offspring. This is done in order to compensate the family for their loss. After giving birth the woman may return to her family.”

or single votes—one system divides the diya evenly among each sub-clan, no matter the size, where the other approach requires larger sub-clans to contribute more cattle than smaller sub-clans. The diya es sof is a form of diya in which both larger sub-clans of the tribe were expected to contribute to a compensation payment (presumably to encourage the larger tribe to put pressure on its members not to perpetrate additional violence), but later this was modified so that the diya responsibility was pushed to the particular omda (traditional leader) whose member committed the wrong.

Because the responsibility to ensure the payment of diya resides at what could be called the clan level of the society, the ability to put pressure on the perpetrators not to continue the violence is theoretically greater than if the responsibility to pay is distributed across a larger, less closely connected group. The question of how widely the net is cast to contribute to diya, one must recall that this question can only be answered according to the determination of how participants in the process define their kinship relationships. I was introduced to a Misseriya man who lives in Alberta, Canada and contributes blood-money for killings that occur in South Kordofan in Sudan, among the clan to which he still feels he belongs. If someone cannot pay the diya, the Quran specifies

79 SAD 768/5/62.

80 SAD 768/5/60. See in particular page 91 in Bradbury, Ryle, Medley and Greenidge, “Local Peace Processes” for a thorough explanation of various types of traditional leaders as well as government of Sudan efforts to interject changes to the traditional structures.

81 As he still retains a herd of cattle in the area, he was also a recipient of bridewealth cattle when his daughter married a youth from the area.
“anyone who lacks the means to do this must fast for two consecutive months by way of repentance to God.”

Who Gets Paid

Because the practice of blood money is a negotiated agreement, there are situations where the outcome or suggested solution is not acceptable to all parties. In some cases, as we have seen above, only a partial payment is processed, with the remainder held in reserve in the hope that future violence will be prevented. It seems clear it is the prerogative of the victims to accept or refuse the offer of blood money. This too is subject to community sanctions. In the case of the Hawazma Arabs of Sudan, for example, “if the guardians or relatives of the killed or injured person refused the diya, they can claim the ‘qisas’ or application of the same penalty on the perpetrator or seek legal diya which might differ from the tribe’s tradition of diya. But this family shall not be considered a member of the tribe in the future in such cases.”

As pointed out by Khalid Ali el Amin about these mechanisms, “according to custom, it is considered inappropriate and socially unacceptable to refuse the solutions put forward by tribal leaders mediating the conflict.” As we have seen earlier, some mediators require participants in such a process to sign a letter of commitment to abide by the outcome of the process.

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It seems for those who live within the kinship circles defined by mutual obligations of collective responsibility the importance of continued acceptance of this mechanism cannot be underestimated:

The significance of blood-money payment (*diya*) comes from the fact that death represents one of the ideal situations for group mobilization. The *diya* is an occasion for ethnic solidarity. It is the only ‘ritual’ that the whole ethnic group performs together. For this reason the pleading of guilt and the acceptance to pay the specified amount of blood-money is more important than the actual payment itself since both parties have shown solidarity.\(^{85}\)

As I have already discussed, “…cases concerning homicide and the payment of blood money reveal the nature of mutual obligations, in this case expressed in the duty to avenge or the duty to assist in the collection of blood-money in order to settle that feud by peaceful means.”\(^{86}\) Beyond duty, however, “the payment, whatever the rate agreed upon, was intended to appease the feelings of indignation of the *ahl el mait* (the ‘people of the dead’), and was distributed among them, definite portions being set aside for the deceased’s immediate kinsmen and a further portion for those who had contracted to assist in the collection of blood wealth should one of their number kill an outsider.”\(^{87}\)

It is unclear the extent to which the third party mediators engaged in these processes have a vested interest in continuing the practice because they may be compensated through it.\(^{88}\) In the case of mediators in the Negev, Ginat indicates


\(^{86}\) SAD 768/1/39.

\(^{87}\) SAD 768/5/69.

\(^{88}\) This question was posed to me by Dr. Marisa Enser. Answering it requires careful collection of data, a framework for which this paper strives to create.
that the third party intervener changed from the role of a neutral mediator to that of a judge by asking for a fee. “The total fee can be from several hundred to one thousand dollars and must cover the cost of hospitality for all those who come to listen to the arguments presented.”

In a case between Dinka Ngok and Misseriya of the Abyei area, their practice seems to reflect a merger of Dinka and Misseriya customs, and divides the payment in this way:

- Four cattle to deceased’s family
- Two cattle to Bang de Ring who arranged receipt of cattle
- One cow to Court President for his trouble in contacting the Arabs
- One cow to Dinka agawid (mediator) going to receive cattle

In a similar example among the Misseriya, “forty-four head of cattle were handed to the dead man's family, six were sold and the money divided among the Nazir and the agawid (ajaweed), and ten were divided among the remainder of the omadia (omda’s group). . . . The elders, the agawid were always entitled to a small share.”

There are cases where someone refuses to participate in a blood money process. I have already mentioned the case in Darfur where a clan refused to pay blood money on behalf of a killing by one of its members, reportedly because the clan actually wanted the perpetrator to face the formal justice sector. In this particular case, I was told that the government paid the blood money on behalf of

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90 Ibid., 62.
91 SAD 768/1/20.
92 SAD 768/5/67.
the perpetrator. Ginat provides an interesting case where the family of the victim refused to accept the blood money. In that case, in which there were clear differences of status between the weaker victim’s clan and the clan of the perpetrator, “the weaker group sought to create a relationship in which the stronger group was indebted to it by refusing to let the latter pay their debt.”

This may have been an effort on the part of the weaker group to invoke the greater power of the state on their behalf, or simply an effort to gain leverage for future use. There are also situations where participants in a process who are committed to pay blood money truly cannot afford to pay, or situations where only partial diya is paid and part of it is held in reserve. This latter case can be considered an indicator of the strength of relationship; as put by one observer, “if someone pays the full diya, there is something wrong with the relationship.”

Other sources indicate that “The closer the blood relations between them, the lower the amount of compensation that has to be paid.” Although the amounts of diya are fixed according to custom, and sometimes documented in agreements between tribes or clans, clearly the adjudicators are willing and able to adjust to the conditions of relationships and specific circumstances.

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93 Author Interviews, Nyala, Darfur, Sudan, March 2006.
94 Ginat, Blood Revenge, 37.
95 Author’s interviews, El Fula, Sudan, 2009.
Reconciliation

Once an agreement has been reached, the process of implementing the agreement is usually accompanied by rituals of forgiveness and reconciliation.

Francis Deng describes the Dinka process in this way:

The chief calls upon the relatives of the deceased, sacrifices a bull known as *mior de kueng*, ‘the bull of peace settlement,’ and asks the aggrieved group to take an oath to keep peace and avoid vengeance. The chief then asks the relatives of the killer to collect the blood wealth cattle and hand them over to him. On an appointed day, the two groups are convened and a bull known as *mior de yuom*, ‘the bull of the bone,’ is sacrificed. The chief, or one of his relatives acting on his behalf, takes the bones of the right hind leg of the animal, breaks them in two, and throws one half to the killer’s kin group and the other to the relatives of the deceased, who must at first show resistance and wage a mock attack of vengeance on the killer’s relatives, until they are persuaded by the chief to accept the settlement. Being interested in the well-being of all his people, the chief receives one cow from the blood wealth and hands over the rest to the relatives of the deceased.  

The *sulha* process includes similarly significant rituals in which “the most senior representatives of the disputing clans are invited to tie a symbolic knot in a ‘peace flag.’”  Other parts of the ritual include a special handshake, a declaration of forgiveness, and the two groups sharing a ceremonial meal.  Misseriya pastoralists described to me a ritual that seems to have been forgotten or neglected. It is important to consider reviving traditional customs that have fallen by the wayside.

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98 Pely, “Resolving Clan-Based Disputes,” 85.

99 Ibid., 85.

100 The ritual is described in detail on page 200.
Chapter Conclusion

This survey of blood money processes in Sudan and in other cultural and geographical contexts gives one a sense of the rich history upon which contemporary practices are based, of the competence of the practitioners, and of the thought and effort put toward crafting lasting agreements and creating compensation mechanisms that restore relationships and repair harms. At the same time this overview becomes a lens into a practice that may seem, to the western eye, violent and inappropriate. Practices like slicing a bull in half, licking a hot spoon, and providing one’s sister to a man to bear a child on behalf of a dead brother, not to mention exchanging cattle to compensate for a human victim, likely raise many questions in the minds of legal scholars, human rights (and animal rights) activists, proponents of social justice and religious peacemakers. Despite these shortcomings and idiosyncracies, blood money processes reflect the reality of customary law in many parts of the world.

The practice of blood money falls within what may best be described as a ‘time-warp,’ affecting people living in some ways in the 21st century, yet based on a history reflecting the first violent conflict between tribes ages ago. Denigrating the practice will not remove its value to the societies in which it is practiced, and studying the practice objectively requires finding the balance between cultural relativism and evolving international norms. Following chapters explore case study examples of blood money practices and then examine some of the many challenges facing blood money today as its practitioners, recipients, and payers strive to help this ancient process adapt to the modern world of violence.
CHAPTER 3

CASE STUDIES

In order to better capture the reality of blood money processes across a wide spectrum of time, geography, and culture, this chapter includes case study examples of a wide variety of blood money processes. Each of these cases is a real example drawn from a variety of sources. The cases were selected in some instances because the example highlights a key point with respect to blood money processes in a given context.

The first case presented demonstrates some of the complexities of blood money I highlighted in Chapter 1. In fact, the author of this case titled it “Intersections of Civil and Criminal, Customary and Formal (Law).” This (somewhat amusing) case takes place in Darfur, Sudan, in 1941, while Sudan was under British colonial rule:

...one of the individuals in the Fellata tribe was killed by an individual from one of the subdivisions of the Beni Helba tribe, and the English inspector refused the civil solutions, and insisted on adjudicating the case. This interfered with the tribal customs built upon Islam. What was observed in the investigation and the sayings of a witness made clear that the (member of Beni Helba) committed the crime by mistake and he was exonerated and released immediately. When the innocent man arrived to (the area) he was seized by the chief of the Fellata tribe and placed in jail and the family requested a diya payment! The father of the innocent (man) went to the English inspector and notified him of the matter. The inspector was aggravated and sent for the chief, and threatened to expel him from the position if he did not release the man! The chief answered with resolve, “I will not release him before he pays the diya, and if you refuse then no English will come to the Fellata again!”

Several aspects of this case bear comment. The phrase “the English inspector refused the civil solutions” clearly highlights the extent to which colonial rulers sometimes may have gone along with customs, but at other times rejected or attempted to manipulate them to be more ‘suitable’ in some way, which could mean in terms of process, outcome, winners and losers, or some other desired change. A statement in the case specifies the belief that their “tribal customs (are) built on Islam”; yet of course, our exploration of blood money indicates it pre-dates Islam by several centuries at least. One of the most amazing aspects of blood money is that it can be Islamic and non-Islamic, it can work with pastoralists and farmers, and it has functioned from Papua New Guinea to Albania.

A contemporary case highlights government interference in this process:

Thirty-two different tribal leaders from the Sultanate of Dar Masalit in Western Darfur are calling on the government to stop the false imposition of blood money on innocent civilians in the state. In a petition document which the tribal leaders presented to the Governor of Western Darfur state as well as the state security authorities, the Masalit authorities stated that the government is a custodian of its people and it should prove its neutrality…In its petition document…, the Dar Masalit administration stated that the request comes as a result of some armed allied government groups falsely accusing its members of murder and then forcefully collecting blood money, while the government is nonchalant…. The government continues to pay blood money from public funds if the deceased is from the Arab race prompting this kind of behavior. These authorities further threatened that unless the government resolves this issue they would be compelled to resort to other options…

Certainly Sudan watchers are aware of the virtual impossibility of conveying the complete truth in any news report on a government-sponsored media forum, but in this case, the news report is fairly consistent with other reports I had heard in 2006 about government manipulation of the blood money processes. This case alleges two specific types of manipulation; first, that the government was falsely accusing members of the Masalit community of murder. The second form of manipulation is the reference to paying “blood money from public funds if the deceased is from the Arab race…” The potential that payment of blood money is becoming a fund-raising or extortion mechanism seems real.

There are several aspects of this allegation that could be problematic for the fair, credible, and legitimate conduct of blood money processes; first, that the government is paying blood money on behalf of perpetrators could be a double-edged sword. As I have already indicated, one of the core principles of blood money is the function of collective responsibility, which works to put pressure on members of a group not to conduct violence. When that group no longer has to pay the blood money, it seemingly removes the deterrence mechanism of family pressure not to kill. The second pernicious aspect of this allegation is that government is paying the blood money for certain tribes but not others. This allegation certainly raises the idea for consideration that manipulation of this process could be contributing to increasing levels of violence, as those who

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3 “Thirty-Two Tribal leaders…”. This report is consistent with something I had been told, but which I could not validate—that some tribes were using the blood money process as a fund-raising mechanism. This article, if accurate, demonstrates how that may be happening.
perceive injustice in this process could decide to take up arms to try to counter
the injustice (by fighting against the government as part of a rebel movement), or
by retaliating against the tribe that appears to be killing with impunity.

Not all diya processes are quite as problematic and the first two cases
may imply. One form of blood money is called 'Dignities and Charities,' which
are as follows:

...alleviated diyas for cases of unintentional killing, such as a dead
car passenger in an automobile collision, or a person who causes
an animal to hit another human being. The diya (‘dignity’) are
alleviated in these examples to six cows. The ‘charities’ are alms
or money that the killer pays as evidence of their commitment and
recognition of guilt, and good intention and participation in the
affliction: (payment includes): 3 year old bull; sack of flour weighing
50 pounds; sack of onions weighing 50 pounds; value of a shroud
at market price; jirkana cooking oil.4

Another older case, likely from the 1950’s, clearly delineates some of the
thought processes and analysis that underlies the decision-making processes for
blood money practitioners. In this case, that practitioner is Mukhtar Babo Nimir,
the very powerful, longstanding and highly respected traditional leader of the
large and powerful Messiriya tribe. The case showcases a situation in which a
marriage-age girl was killed, and therefore this is an example of diya for a female
(portions of this case have been referred to in another chapter, but the full case
study puts that excerpt in a fuller context):

The number of their captured herd was 1200. We collected some 1094 cows. That left 106 cows. I made the young man who had invaded pay
this as a fine. I also arrested all of them and put them in prison. They
spent a year in detention. Then we made peace and reconciliation after
the settlement of the diya. When we came to the settlement of the case,

4 El-Nur, Customary Laws, 10.
they said they wanted the *diya* instead of capital punishment.... They said to the authorities: ‘Even if you were to hang these young men today, what good will it do to us!? That would not benefit us. Among our people who are dead were men with brothers or with children or with parents. When we receive the cattle of *diya*, they can be use in marrying wives; a wife bears children, and those children would be the children of the dead man. But if a man is hanged, what good does it do to the man who is already dead!? Only another man dead. No, we would prefer to receive the *diya*. Since our captured wealth has been brought back to us, all we now want from these people is just to pay us the *diya.*’ …We said to them, ‘Very well; we will pay you the *diya*. The *diya* between us is 35 cows.’ They said, ‘You are right; the custom says 35. But if you really want us to be reconciled, we and the Rezeigat pay the *diya* of 50 cows; you should give us the same--50.’ … Then they said, ‘Among the dead was a girl. Her father has now gathered all of his ropes for tethering cattle—they are lying down. She was engaged to be married for a hundred cows. And your people killed her. We want one hundred cows for her.’ I said to them ‘In our *diya* customs, a girl is half the value of a man. But because your girl was valued at one hundred, I shall give her the same value as a man. I shall pay 50 for her. I will give her the value of a man.’

Again, several aspects of this case are of interest. The perspective of the victim’s clan that the death penalty (or presumably any formal punishment) would serve no purpose helps to highlight, perhaps, the reasoning behind continued reliance on customary processes versus formal justice remedies. The case highlights the importance of foundational agreements in that both sides agreed that their custom between then specified 35 cows as a full *diya*, yet it also shows the flexibility in the mechanism in two ways; first, the reference to the agreement between one of the tribes and another tribe was 15 cows higher actually swayed the leader to agree to a much higher amount of *diya*. The second demonstration of flexibility was the change for *diya* for the dead girl from half a full male *diya* (presumably 17 ½ cows), all the way up to 50 cows in response to reasoning and the unique circumstances of the case.

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The next case also portrays a case of accidental killing. Also set in Darfur, this more recent case (2001) highlights the somewhat arbitrary nature that blood money processes can take as follows:

On May 17, 2001, during the time when … a Beni Helba man serv(ing) as deputy mayor…(the senior leader) lay bedridden because of malaria, a group of young teenage boys and girls (were) on their way to a wedding, and they fired shots into the air to express their joy. Suddenly a few rounds veered from their path and injured (a man) and he died on the spot. An ajaweed council was held with the leadership of the (two villages). They discussed the matter, and despite the fact that the incident occurred by way of mistake, they treated it as if it was a deliberate killing. It was incumbent upon him to pay the diya of thirty cows in accordance with the customs of the Beni Helba tribe.” The diya was paid in two installments….6

This example demonstrates, as mentioned, the potentially arbitrary nature of the process, but also shows that the payments can sometimes be broken down into installment payments.

Some of the more challenging cases confronting the practice of blood money relate to large tribal conflicts rising to high levels of violence, often referred to as shaklat.7 It is difficult to know why cases escalate, but as we see in the following case, this conflict escalated to the level of 114 deaths within two days, and therefore portrays a situation with extreme volatility among close neighbors. The case occurs in South Sudan between two sub-clans of the Dinka Rek sub-clan of the larger Dinka tribe as follows:

The case concerns an outbreak of internecine conflict between neighboring Lou and Konjok of Dinka Rek sub-tribal group of Tonj


7 Shaklat is a legal term in Sudanese law that specifically refers to large-scale inter-ethnic fights.
County in 1983. The fierce fighting, over grazing lands, resulted in the deaths of 114 in two days. Subsequent investigations and judicial hearings were conducted under customary laws and findings resulted in a number of awards of Dia to relatives of the slain. When details of the case reached the higher court judge, he found the standard customary law practices in this case, to be encouraging the wealthier families and clans to acts of violence with impunity; they could afford to pay Dia. The judge announced additional penalties from the statutory laws including imprisonment, fines, and land-default. The findings in this case have become precedent against which subsequent cases have been managed.\(^8\)

The actions of the customary judge in this case indicates the extent to which actors in powerful tribes were acting under an assumption of virtual impunity; although the blood money was assumed to act to squelch incentives to violence, the wealth of the clans meant that this was an insufficient motivator for peace.

Another case demonstrates the responsiveness of the process to address special circumstances and try to stop escalation, much like in the previous case, through the imposition of harsh diya. The case is from Darfur, Sudan in 1999:

In October of the year 1999, an individual from the popular police was killed at a police checkpoint…It was a provocative, deliberate killing which provoked the wrath of the family of the killed and a large number of men (literally knights or mounted cavalry) gathered around the…district. The Khazam tribe (under Beni Helba tribe administratively) applied the same diya payment as the Beni Helba tribe. It was a longstanding custom between the Beni Helba tribe and the Fur tribe for the diya payment to be 12 cows only. But the diya in the killing of (this man) was provocative in nature, so the Committee of Peaceful Coexistence between the Fur and the Arabs in this district mandated that the diya payment would be 70 cows.\(^9\)

In South Sudan, practitioners of customary mechanisms also struggle with similar challenges such as how to ensure the mechanism has the desired impact:


After the court finds an individual guilty of murder, the relatives of the deceased are given the option to choose whether they would prefer to have the perpetrator put to death or to accept blood compensation. If blood compensation is accepted, the judge sentences the perpetrator to a prison sentence of no more than ten years. According to the acting police commissioner in Nasir, ‘If the family of the deceased says no compensation then this man can be killed (hanged) automatically. If compensation is paid, we can still keep him for three or four years.’ Interviewer: So if the family refuses then the sentence is automatically a death penalty? Acting Police commissioner: Yes, this is a way we can stop people doing this sort of revenge killing. But, some chiefs can deal with it by compensation.  

Other examples highlight situations of large-scale killing and how the system or process is able (or not) to respond. In this example, a case from Darfur clarifies how the large amount of diya is collected across the group in this manner:

In 2007.... major fighting had broken out between two Arab tribes in the area—the Terjem and the Rezeigat Abbala. A group of young Zaghawa men had joined the Terjem tribe in a raid on a Rezeigat settlement in the area in which 24 Rezeigat had been killed. The Rezeigat leadership had then gone to the Zaghawa elders and presented them with an ultimatum; the Zaghawa must leave the area for good or they will all be killed....The Zaghawa leadership went to the peace committee and asked the committee to intervene and resolve the conflict...The peace committee eventually brokered a settlement involving the payment of 1,710 cows in compensation, as well as blood money. As part of this settlement... the chairman of the peace committee (went to) Nyala to collect a number of cows from Zaghawa there (10 cows from every family that owned more than 50) as part of the compensation that would be paid to the Rezeigat...”

10 David Deng, “Challenges of Accountability,” 90.

11 Just and Kleinman, Peace in the Community, 10.
This next case of *shaklat*, large-scale killing, is from 1976, and highlights the perspective of how the process apparently attempts to balance the burden of payment in cases of widespread killing as follows:

A reconciliation conference was held between Beni Helba and the Rezeigat of north Darfur in ...the city of Nyala in 1976. The private meeting was held to reflect how to treat the diya for the 24 dead in the tribe in contrast to the 12 dead in the Rezeigat tribe. The young Beni Helba leadership elected to pay the Rezeigat tribe the entire amount of the *diya* and the Rezeigat tribe decided to do the same, in order to give each tribe their proper due, but the senior men and women and the tribal administration leadership refused the idea and decided that “a man for a man dies and the Rezeigat pays the difference!”...(This statement means) that (only) the Rezeigat would pay the *diya* for 12 dead to the Beni Helba....it fell under the penalty of the phrase ‘The one killed is your father, and the *diya* goes to you.”

This important case holds interest because, in part, it uses a customary proverb to teach about the practice of decision-making in blood money practice.

The author of a paper on customary laws in Darfur helps to explain the significance of this proverb, and the same time clearly states his perception of the significance of this particular practice of reducing the *diya* paid to only the difference in killings between the two sides, rather than both sides paying the full *diya* each of them might be responsible for (12 on one side, 24 on the other, versus only 12 on one side) as shown here:

And with this decision, it was imposed on the orphans of the tribe that they took half of the legacy only, and the orphans of the Rezeigat were deprived of their complete legacy so long as they did not comprehend the matter. The Rezeigat paid the *diya* for the 12 dead...The *diyas* of tribal problems were handled with understanding, and a percentage for the enormity of the losses in lives and property, and the system of compensation applied, but it was a system that degraded the value of the *diyas* to a level that

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would not divert a criminal, and no consolation for those who lost their family! And the last expression is a settlement of lives on the account of the dead and the orphans… ‘The one killed is your father, and the diya goes to you…’ which is the utmost limit of oppression. The researcher here will not exceed the truth in saying that the system of permissive compensations in the diyas of tribal problems constitutes a fundamental element in the continuance of tribal struggles in Darfur, where a tribe with power can wage a veneful attack on another tribe and kill and burn for the most insignificant of problems, and does not have to bear the burden of many sanctions. It is more appropriate for the diyas of problems between the tribes to be severe, like the “Harsh Diya” that averts those tribes from killing and sabotaging.

The previous example of shaklat was between two Arab, Muslim, cattle-herding tribes, the Misseriya and the Beni Helba. But shaklat can also occur between tribes of different ethnicities, different religious backgrounds, and different livelihoods and customs. Yet blood money somehow manages to operate across all of these various boundaries. This particular case of shaklat happened in 1966 in Kordofan as follows:

One of the largest fights on record occurred in 1966 between the Messeria Arabs of Kordofan Province and an adjacent Dinka group. Before it was ended by the government 600-700 people had been killed. The fight had begun with the kidnapping of seven Arab women, an act which brought about the retaliatory killing of two Dinka boys. After the fighting has stopped the difficult task of negotiation begins. Neutral parties from other groups are brought in and there is replacement or compensation made for the damaged or stolen property or for the loss of life. Food is brought in by the government to make the people happy and to get the talk started. ‘We let the talk flow freely, preferably backward into time 20 to 50 years so that grievances become more and more remote from the recent event.’ The grounds for a sulha (literally peace) are then carefully laid out pointing to the advantages each side will have when peaceful relations are restored and the bloodshed has ceased.

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In the aftermath of a *shakla* near Bara in Kordofan, the sheikhs of both sides drew up the following *sulh*. ‘We refer to the quarrel which has recently taken place between our two villages. Having considered the losses which have taken place and those which may be entailed in the future, and to avoid the growth of a grudge passed along to the next generation, we have come to an agreement to bring an end to our troubles and those of our children... as for those who were injured we have agreed to consider their just compensation. Both sides have agreed that peace must be preserved, life must be fraternal and relationships strengthened... we want to forget our previous grudges and lead lives as one man.’ [From Trial of Mahmoud Ali Saeed and 23 others, Kordofan Province, Major Court at Bara.]

The statements of the elders or wise men who conducted this peace process clearly maintained a focus on a shared future in order to compel the affected groups to participate in, and hopefully to honor, the peace agreement and to implement the compensation process.

One of the challenges facing blood money processes, as we will see in the next chapter, is a situation where killers are unidentified, or in this case, where the incidences of killing go back in time. The following description details some challenges associated with killings from the past and efforts to use traditions to deal constructively with them:

Local actors in South Sudan have begun to experiment with different approaches to resolving past grievances. For example, the County Commissioner in Nasir has committed to providing collective compensation for groups for any deaths, cattle thefts and abductions arising from incidents that occurred after 2011. At the same time, he is trying to address pre-2011 cases involving inter-clan fighting among the Jikany (Nuer) and inter-sectional fighting

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15 This author has a forthcoming publication which documents the many reasons such peace processes fail to bring sustainable peace. Problems with blood money is one of the reasons. Jacqueline Wilson, “Local Peace Processes in Sudan and South Sudan,” U.S. Institute of Peace Press, 2014 (forthcoming).
between the Jikany and the Lou. The manner in which the Commissioner is approaching the issue is causing a great deal of controversy. After so many years, the facts of who killed whom and for what reason have become unclear and subject to debate. People also fear paying compensation will make it seem as though they are admitting guilt and could make them a target for revenge killings. There is also some question about the Commissioner’s methodology and whether the endeavor has a clear timeline. To the extent that people do not feel that justice is being done, there is a chance that the Commissioner’s initiative will not succeed in settling these decades-old disputes. Yet, at the same time, the fact that he is going to such great lengths to try to resolve them, and expending so much political capital in the process, highlights the importance he attaches to addressing past grievances as a way of reducing the potential for future conflicts.¹⁶

It may be helpful for readers to see examples from settings outside of Sudan and South Sudan in order to see similarities and differences among the various processes. The next case, from Egypt, details a particularly intriguing ritual ("ordeal") used for the truth-telling phase of a compensation process as indicated in this case:

In the Spring of 1990, a group of people from the Sai`d region arrived on a Saturday afternoon to the mubasha' (the one who conducts the ordeal process). Nine men were accused of murdering a member of a neighboring village. These men were accused because of the bad relations between the hamulah (extended family) of the murdered man and that of the nine people accused. The victim’s older brother told the mubasha’ that they do not know exactly who committed the murder, and therefore want to test all nine suspects, through a process of elimination. Before the bisha’h (ordeal) was conducted the mubasha’ asked the accuser, ‘What will you do if we find that one or some of the accused are found to be guilty?’ He answered, ‘We came here in separate cars, and according to the tradition of the Sai’d region, we must not lay a hand on the guilty party, until we arrive back to our region.’ The accused people did not react to the statement. During the bisha’h, three out of the nine accused people were found guilty. (Some documentary film-makers who observed and filmed the ceremony) ‘claimed that when the families left the mubasha’s compound, two

out of the three guilty men were killed in an ambush, and the third fled to Sudan. However, according to my information (Ginat’s), only one of the three was murdered approximately two weeks after the *bisha’h* ceremony. Following this murder, mediators succeeded in holding a *sulhah* ceremony, in which *diya* (blood money) was paid to the deceased person’s family.’  

Another case from Egypt shows a situation where the *bisha’h* ordeal was also implemented and after which the blood money was refused as indicated:

Three people from Asiiut, located in central Egypt, were accused of murdering an elderly man, while he was in his fields. The accusers and the suspects did not bring a document attesting to the cease-fire between the families for three days, three nights, and a third of a day, as is customary, in case the suspect was found guilty. The *mubasha’* declared that he would write in the *bisha’h* report that if the suspects are found guilty, *diyyah* would be paid to prevent blood revenge. Before holding the *bisha’h*, the *mubasha’* requested that everyone hand over their weapons, which he promised to return to them once they were in their cars, and about to leave. He wanted to prevent the possibility of violence erupting in his compound. Four guns were handed over. One of the three suspects was found guilty. Before returning the guns, the *mubasha’* requested the oldest man among the group of accusers to prevent revenge killing on the road back to Asiiut. As the group left, the *mubasha’* told me, ‘I was handed over four guns, but I could see that they were hiding six more guns that were not handed over.’ A few months later, the *mubasha’* informed me that he was notified that the accusers did not accept the *diyyah* and killed the man found guilty in the *bisha’h* in an act of blood revenge. The *mubasha’* told me that residents of Asiiut, and from the entire Sai’d region, are known as stubborn and difficult people, and that they rarely accept the *diyyah.”

A case from Somaliland showcases some similar challenges to those in some of the other places we have explored where blood money is practiced:

A member of one tribe murdered a member of a different clan. The offender was arrested, and the victim’s family was given a choice


18 Ibid., 124.
[by the court] to have the perpetrator tried in the court system [under civil or case laws] or to have the case adjudicated by a traditional council of elders [customary law]. If the latter, the agreement would be rendered on the local level [by the elders], and would be taken back to the court as a binding resolution. In this case, seven Elders from each clan were chosen to decide the case. They came together in council and agreed that the perpetrator should make amends to the family of the deceased by giving [the victim’s family and clan] 120 camels or the equivalent in Somali currency. That agreement was taken to the court and the signatures of all parties involved bound the agreements [for the families and the court].

This brief exploration of a variety of cases provides some insight into the longevity and rich history of practice of blood money processes, while also highlighting some serious challenges to the process that will be explored in the next chapter.

19 Hart and Saed, 8, citing Interview, Mohamaud Hussen Farah, 30 March 2008.
CHAPTER 4

CHALLENGES FACING BLOOD MONEY PROCESSES

My examination of the historical and geographical march of blood money and of how the process actually works compels a look beneath the surface of the practice to understand issues affecting its performance and effectiveness. Across the vast geographical, social, and temporal spectrum in which blood money has been practiced, the mechanism has had to adapt and adjust to accommodate a wide variety of political, economic, and sociological changes that could impact the effectiveness of the process. Now, more than at any time in history, blood money practices face many challenges despite clear indications of continued reliance on the process in many areas of Sudan and beyond.

I observe many categories of challenges facing blood money practices, some of which have always existed, and some of which are related to changes ongoing across the world. Some challenges facing blood money practices derive from circumstances related to, as well as assumptions about, collective responsibility. Others relate to changing economic circumstances that impact livelihoods and the medium and amounts of compensation. Still other challenges relate to changes in social structures and relationships that impact the process, while others relate to developing norms related to governance, rule of law, and the evolution of international human rights standards. Evolving gender roles and norms also present challenges to the practice. The entire process and practice of
blood money face challenges that require closer examination that will inform a later discussion of effectiveness and impact.

**Challenges related to collective responsibility**

One of the primary challenges facing blood money is the mechanism’s reliance on community norms of collective responsibility. As we have seen previously, “the customary understanding…of such groups is that each adult male member is...responsible for the actions of each other, and an injury done to one is conventionally considered as an injury to each and all…”¹ These relationships of collective responsibility are effective for these reasons:

…(there are) two complementary forms of constraint on conflict. On the one side is the deterrence resulting from likely retribution for an injury or death stemming from conflict. An individual knows that coming into conflict with another individual means coming into conflict with that individual’s group…On the other side, each group member knows that he is responsible for the actions of each other group member…Thus individuals are under intense pressure from fellow group members to restrain themselves from unnecessarily inflicting injury.²

This excerpt tells us of the intended impact of kinship ties on preventing the initial conduct and eventual escalation of violent harm to others. This dynamic actually results in a complex interwoven set of collective responsibilities—collective accountability for actions of violence, collective risk of revenge attacks, collective responsibility to retaliate, and collective liability for damages.

The primary indication of the strength of kinship ties, or of the intention to operate


2 Ibid., 3.
in a manner that will impact behavior of other group members, is payment of
blood money on behalf of others within the group. The theory behind this
financial commitment is described in this way:

Communal liability can be seen as a byproduct of the economic
structure of early societies. The family-based economy of the time,
if seen through modern eyes, left very little room for alternative
models of individual responsibility. Each member contributed to the
collective welfare of the clan, but inasmuch the clan was to enjoy
the gains procured by the individual member, it was to suffer – and
pay – for the losses that he occasioned. 3

As explained by a former British colonial officer, “Agreement to common
responsibility in the provision of dia is essentially an admission of unity.” 4

The unit that operates under this rubric of family united in collective responsibility is
known in Arabic-speaking settings as the hamula, a term that is sometimes used
to refer to a clan or lineage, but more accurately refers to “the patronymic group
made up of persons having the same surname…In a blood dispute, hamula
members who are not members of the descent group are not collectively liable as
far as revenge is concerned…however, many of the hamula members contribute
toward the blood payment in order to demonstrate their affiliation with the
descent group.” 5 These groups are not fixed, however, as shown:

It is important to keep in mind that membership in these groups is
flexible. Tribal peoples who move to the cities tend to lose their
kinship links and identify by locality over the course of a few

3 Francesco Parisi and Giuseppi Dari-Mattiacci, “The rise and fall of communal liability in

4 SAD 768/5/60. He provides examples of the various Misseriya clans and sub-clans
and how defiance to paying diya led to divisions within the tribe and the establishment of new
political units. These connections or alliances do not appear to be fixed, however, as he indicates
that “there is very little that is permanent.”

5 Ginat, Blood Disputes, 18-19.
generations. Whether based on locality or descent, Afghans call all of these groups *qawm*, a wonderfully flexible term used that indicates 'us' as opposed to 'them'. Fellow *qawmi* at its broadest can include all members of a large tribal or ethnic group (Pashtun, Hazara, Tajik, etc.) or as few people as members of the same village or lineage. It is among people of the same *qawm* that customary law has its strongest force.⁶

In South Sudan we see similar values inculcated in the Dinka concept of *cieng* which is nearly identical with the Nuer concept of *ciang*. These terms have a variety of meanings, including 'to look after,' ‘to order’ or ‘the custom or rule.’⁷ Francis Deng describes how this powerful concept encompasses all conduct, culture and law for every individual living in this communal society, as well as its considerable connection to blood money processes; “Every individual relies on other fellow members of the family, the lineage or the clan for his own prospects for being immortalized into a permanent identity and influence. So, his group is indispensible to his destiny.”⁸ This concept is interwoven with the cultural value of *dheeng*, which is “predicated on the overriding postulate of continuity is respect for every individual as a revitalization of the ancestral line. Dignity, on which respect is premised, ensures that the name, the image, and the overall reputation of every individual are valued assets to the group…”⁹ Through these

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⁸ Ibid., 16.

⁹ Ibid., 17.
concepts, one can see the importance of individual behavior to the group, and the importance of the group to the individual.

Several aspects of collective responsibility present challenges for these processes. Regarding the financial commitment of individuals to the group, the “decision concerning crime’s liability is usually made by a tribal judge through a complicated process of counting who is in and who is out of the culprit’s co-liable group….” Although in theory the ‘diya-paying’ group may be considered fixed, based upon circumscribed circles of affinity, in actuality there appears to be considerable flexibility in terms of who pays.

This flexibility becomes more interesting when the diya-paying group either cannot pay or refuses to pay. One such situation is when the amounts of diya are higher than the offender’s group can (or wants to) pay. In some of these cases outsiders to the group pay the diya. The blood money may be paid by benevolent individuals or schemes that arise to help those who cannot pay because offenders are imprisoned for long periods at risk of being put to death if payment is not made.11


11 See Sofyan Ali Saleh, Petitioner, -v- United States Department of Justice; Immigration and Naturalization Service, respondents at 962 F. 2d 234; 1992 U.S. App. LEXIS 9823. Saleh, a Yemeni citizen in the United States, killed another Yemeni in New York. While serving a sentence for the crime in the US, he was sentenced to death in a Yemeni court in abstentia. Saleh, subject to deportation, appealed, claiming that he was “being persecuted on account of his membership in the ‘particular social group’ of poor Yemenis who could not afford to pay ‘blood money’ to buy their way out of a death sentence.” The blood money in his case ranged from $186,000-$360,000.
This concept of cooperative payment of compensation, known as *takaful*, was allegedly endorsed by the prophet Mohammed and conveys a “spirit of mutual held (*ta’awun*; in essence, collaboration), and joint responsibility through cooperation (*takaful*)…”\(^{12}\) The concept arose during the early days of robust Muslim global trading when “financial protection was afforded through pooling of funds, which were used to compensate anyone who suffered losses through mishaps on these journeys…(in essence becoming) early marine insurance.”\(^{13}\)

This effort at collective payment, which is core to the system of blood money, presents challenges, particularly when the immediate family circle cannot pay in the customary way and resorts to creative measures. In addition to the situations where young girls (or boys) are used as compensation, there are examples where land or contracts are used as compensation—each of which presents an entirely new set of challenges and complications.\(^ {14}\)

There is a further complicating factor to groups or families being unable to pay the blood money. There are places, particularly in the Middle East Gulf countries, where the costs of blood money are set according to a local pay scale,


\(^{13}\) Ahmad, “Concept of Islamic Insurance,” 2.

\(^{14}\) E-mail correspondence between author and Noah Coburn, April 7, 2010, and conversation in Baghdad, Iraq in 2008 in which I was told about a $41 million contract being used as blood money compensation. In addition, see Barry Hart and Muhayadin Saed, “Integrating Principles and Practices in Somaliland,” *Africa Peace and Conflict Journal*, 3, no 2, (Dec. 2010), 11, which indicates that some Somali women “would agree with the exchange of young women for marriage across clans to cement settlements reached by the elders.” This indicates that compensation mechanisms serve to restore communal relationships perhaps even more so than compensating for losses.
which may be far beyond the financial reach of itinerant workers who may be involved in an accidental or intentional killing. NGOs and government entities have cropped up to help low wage-earners or those who cannot make a diya payment.\textsuperscript{15}

In addition to paying the diya, another aspect of collective responsibility is that of retaliation. There are circumstances where members of the hamula or other defined group are not physically able or willing to participate in retaliation; they may be away at university, or may have other responsibilities (such as military service) that may preclude their participation in retaliation, which also means they are not at risk of retaliation.

The operating assumptions of collective responsibility, both financial and retaliatory, are that there are those within the group who act to influence the behavior of others. The theoretical underpinning is that payment of blood money on the part of the clan is sufficiently burdensome on the group that they will actually put pressure on fellow clan members not to conduct violence. However, we see two primary challenges presented by this working assumption. The first is regarding the burdensome nature of the payment, and the second is regarding influence.

Regarding the first, a number of the pastoralist tribes across Sudan include herds of cattle in the thousands owned by what are reportedly extremely wealthy individuals. If these individuals are tasked with contributing a few cattle

toward diya, one wonders how damaging or painful this feels to the owner.

Researchers have examined the opposite challenge, that of increasing wealth.

Interesting recent research by economists indicates a relationship between the increasing wealth of a group, the increased size of the group, and disincentives to be concerned with criminal behavior of group members:

Our analysis shows that individual incentives are diluted by an increase in group size and wealth. This means that when communities grow bigger and wealthier, individuals tend to loosen their cooperation in the public good, both in terms of crime reduction and of provision of security for the group. We maintain that this might explain the historical evolution towards systems of individual responsibility and in general towards the limitation of the size of the group that was to be held collectively responsible for the wrongs of its members.\(^{16}\)

In addition, mechanisms have arisen to help those who cannot pay the blood money. These include government officials, tribal leaders, or NGOs who step in to pay on behalf of someone or some group for which they feel “responsible.”\(^{17}\) There are also the cases where people commit to paying the blood money but do so only under duress, knowing they cannot pay.\(^{18}\) When the collective responsibility of paying compensation by the extended family mechanism breaks down, there is risk that the collective responsibility for deterrence may suffer as well.

\(^{16}\) Parisi and Dari-Mattiacci, “The Rise and Fall of Communal Liability, 504.


\(^{18}\) Reliable observers reported to me in 2009 that Government of Sudan-appointed “peace practitioners” had been known to lock people in a room until they agreed to pay the compensation, whether or not they believed they actually could pay the amount.
The linkage between payment of blood money and influence is based on an assumption that the discomfort or suffering related to the payment will generate influence on the (potential) perpetrators of violence not to commit violence. Clearly this influence mechanism is intended to work to prevent premeditated actions (i.e. how could one use influence to prevent an unplanned homicide?) Yet blood money is described as being used in cases of unintentional killing only. Murders, according to a wide spectrum of legal codes, are categorized as criminal behaviors and are supposed to be dealt with by courts of law, not by informal mechanisms alone. \(^{19}\) David Deng’s report cites two problems with payment of blood money for murder; first, it circumvents criminal sanctions, and second, it fails to “disincentivize(ing) premeditated murders by people who are willing to pay compensation awards.” \(^{20}\) Even for cases where influence is supposed to work, there may be members who actually have no influence on particular members of the community, who may not exercise what influence they have, or those whose influence or advice is ignored. In addition, the deterrent aspects of collective responsibility and influence do not seem relevant in situations where retaliation or revenge are sanctioned by the system.

Although there are guidelines defining the parameters of who is responsible for what actions--such as within the *khamsa* or *hamula*--even these “fixed” guidelines are clearly flexible. One scholar has documented that “in some


\(^{20}\) Deng, *Challenges of Accountability*, 27.
Pashtun traditions it was legitimate to hire a substitute to take revenge in the name of the victim.” And once again, when the blood money is paid by an outsider, such as by a government official or an NGO, these cases highlight the critical question of how mechanisms of influence and deterrence can work in such a situation.

As a further example I highlight the situation of the Misseriya man living in Alberta, Canada, who indicated that he sends money from Canada back to South Kordofan to pay blood money for killings perpetrated by members of his tribe back home. Clearly this man cannot be privy to all of the details of the killing, and he seemingly pays on behalf of his tribal members no matter the circumstances of the killing, or with whatever information about the circumstances he is able to gather from afar. Yet one wonders whether he can even contribute to the supposed purpose of the *hamula* relationship to blood money, that of holding his fellow tribesmen accountable, or of putting pressure on them not to kill again. One also wonders why he contributes and participates in these processes. In this case, the question of collective responsibility seems moot—rather, the purpose seems to be one of continued engagement, of status, of being a stalwart member of the community, much like a Kenyan contributes to *harambee* activities toward costs for a wedding, funeral, or school fees for a friend, colleague or family member. Yet it is unclear the extent to which this demonstration of unity extends to holding clansmen to standards of behavior or to participating in retaliation activities. It seems unlikely this man would hop a

plane to fly back to Sudan to participate in retaliation activities for an attack against his clan.

Importantly, the sense of collective responsibility operates effectively only within a restricted environment, within a 'community' that is neither too close nor too large or distant. Within the nuclear or small-group family circle, for example, there is an assumption that relationships will endure in spite of wrongdoing or harm caused to another member, and therefore immediate family members do not compensate each other. This gap clearly does not negate a need for accountability for wrongs committed among or between members of an immediate family or small community. Perhaps there is an expectation that close family ties absolves those committing crimes within the circle from compensating victims for harms, yet there can clearly be no determination that every group member feels that way in every case. Certainly the world is flush with tales of revenge cycles occurring within and between nuclear families.

Larger groups seem to present challenges to the practice as well as shown here:

There is a payment of blood-cattle between primary tribal sections, but they do not feel a need to pay it. The tribe is the last stage in this increasing anarchy...it is held that feuds between its most distant members can be settled by compensation but often they are not settled, and if many men are killed in a big fight between large sections nothing is done to avenge them or pay compensation for their deaths. Their kinsmen bide their time till there is another fight.22

22 “Gaat Ngundeng Naath of South Sudan,” Sudan Tribune, August 11, 2006, 5.
As I have shown, the goal of retaliation on par is that the person killed in retaliation would be as close in life stage, status and station as the life being retaliated for. Yet as one knowledgeable observer stated, “there is never perfect balance.”

In another example from Somaliland, the element of targeting impacts most directly on community leaders as follows:

One (aspect) of the structural violence that is still retained in Somali culture is ‘Aano’ which literally means killing in revenge. If a male victim is murdered and the terms of settlement aren’t reached equitably, his male relatives will vow to take vengeance on any male member of the criminal’s clan by targeting only the most noble and respected members, which are the intellectuals… the vast majority of educated Somalis do not engage in this practice although some might be involved in enabling the practice by endorsing it but it is almost impossible to find an educated male taking a weapon in order to kill for revenge.

The case when violence occurs not within a tribe but rather between different tribes—situations of inter-ethnic conflict—presents challenges to this already-complicated process of mediation and arbitration. During intra-ethnic conflict within a tribe, there is an assumed motivation for the process to succeed and for family relationships (blood ties) to trump whatever dispute arises. When the problem is between tribes, some say the opposite assumption is true—that animosity, competition, and a desire for revenge are more prominent, putting even greater pressure on these processes.

There are other cases where large numbers of people are killed, in which several mechanisms used. The first is to create a balance sheet, so that the

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23 Conversation between author and member of Anywaa tribe of Jonglei state, South Sudan, February, 2014.

24 E-mail correspondence with author from member of Somaliland civil society, Jan 25, 2014.
number of deaths on each side is tallied, and the blood money is only paid for the difference.25 This practice certainly simplifies the math, and clearly reduces the burden on each group to gather the resources to compensate for large numbers of deaths. Yet one can also see how, in the absence of formal judicial structures, each group has been able to kill in large numbers of people without any cost or accountability. I was told about a second circumstance related to large numbers of deaths in the types of blood feuds that have escalated for any number of reasons. In at least one case, the parties reportedly signed an agreement (under pressure) that included commitment to pay blood money in amounts the group knew they could not pay. An observer to the process explained that this group signed the commitment knowing that they had one year to pay the diya before retaliation set in, but that rather than taking that year to gather the funds, they instead would use the year to re-arm and prepare for the retaliation they knew was coming.26

There seems to be no consensus that collective responsibility is suitable in this day and age. According to Alibeli and Frye, “Punishing Ahmad for a crime

25 Hart and Saed, “Integrating Principles,” 13: “After comparing the deaths of each side, agreement on payment is reached where only the extra deaths are compensated for (e.g. if one clan lost twenty-three men and the other twenty-five, blood compensation would be paid for only two men).”

26 The particular example was regarding a feud between two Arab pastoralist tribes in Sudan, the Rezeigat of South Darfur and a Misseriya clan from western Kordofan. The story was told to me in 2009; in 2012, I was told the same feud was still ongoing despite many efforts at resolution.
committed by his distant cousin Ali is no longer an appropriate policy to maintain peace and keeping order in society.”27

Challenges related to Accountability

When blood money is paid by a group practicing collective responsibility, the individual killer may pay nothing, and when that payment represents the sole form of accountability for killing, meaning there are no criminal proceedings even in cases of intentional killing, it means the killer has impunity. This has always been a challenge to the acceptance of the practice of blood money.

One should not assume that the only options are either blood money or formal justice. We see many examples, such as in Ginat’s studies, where the two systems operate in tandem, where actions consistent with customary processes trigger responses in the formal sector, and vice versa.28 This may well be the ideal situation, where the two systems complement each other. This is not always the case. In Darfur, examples emerged whereby the traditional system was used to essentially circumvent the formal justice process. Cultural norms call for collective or communal accountability, but there are cases where victims wanted to resist accepting blood money because they wanted killers to face trial in a court of law, but they were circumvented or rejected in those efforts. In other cases, the blood money process becomes mired in a complex web of conflict, extortion, violence, and impunity.29


28 Pely, “Resolving Clan Disputes,” 82.

29 See Sudan Radio Service report “Thirty-two Tribal Leaders Call on Government to Stop the False Imposition of Blood Money in Western Darfur State,” 1 July 2013, in which tribal
This increasing awareness of formal justice options, or at least a willingness to consider formal justice in certain situations, relates to the earlier challenges of urbanization and globalization, as internet-based news permeates to even the most remote areas, and knowledge of international justice mechanisms such as the International Criminal Court becomes more widespread. This awareness of other options, which seemingly flies in the face of the inaccessibility and mistrust of formal justice measures, could manifest itself in various ways. The perpetrator’s extended family may reject paying blood money on behalf of one of their own group members, forcing him instead to go to court. On the other hand, the victims’ kin are not compelled to accept blood money, except by the power of custom, and may instead choose to pursue options for accountability or punishment within the formal sector. This rejection could indicate an unwillingness to accept a commitment by the perpetrators not to kill again, a desire to take revenge, or simply a rejection of custom in lieu of formal justice mechanisms. Another potential reason for someone rejecting blood money is forgiveness for the killing on behalf of the victim’s clan.

Another challenge related to the traditional processes of blood money and aspects of accountability are posed by evolving legal standards with respect to process and procedure. One example may be international legal standards related to representation under the law. The Universal Declaration of Human Rights (hereafter UDHR) calls for “a fair and public hearing by an independent leaders of Dar Masalit signed a petition claiming that “armed allied government groups falsely accusing its members of murder and then forcefully collecting blood money, while the government is nonchalant.” under http://www.sudanradio.org/index.php/using-joomla/extentions/module… July 1, 2013 (accessed 1 July 2013).
and impartial tribunal,” (Article 10) at which “he has had all the guarantees necessary for his defence…” (Article 11) and is “entitled without any discrimination to equal protection of the law” (Article 7).  

In addition to these purportedly universal rights, norms regarding what constitutes ‘rule of law’ indicate the importance of additional procedures and guarantees, including the following five characteristics:

1) due process;  
2) equal treatment;  
3) in criminal proceeding, a series of specific rights, notably, a presumption of innocence, a right to legal representation and a right to be tried without delay;  
4) access to justice;  
5) the right to demand that the state respect the litigant’s culture.

It does not seem possible for all of these provisions to apply to blood money practices. It is unclear whether the individuals in the process always have adequate protections, or whether, as mentioned, the third party actors have other interests in mind. It is not clear whether in fact elders, ajaweed and others are considered ‘independent and impartial.’ Truthfully sometimes they may be impartial, though in other cases they may have a vested interest in a particular outcome. Although victims and perpetrators may be able to represent themselves in some cases, in others they cannot and must trust a family member or other

30 Universal Declaration of Human Rights, under http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng, (accessed October 31, 2013). Per Brian Kritz, “Many international law scholars don’t feel that the UNDHR is ‘law.’ Others feel that it has become customary international law, but all agree it holds no treaty obligation.”

representative to speak on their behalf. In cases when an accused or a victim has the opportunity to select the family members speaking on their behalf, they may have little control over what is said or opportunity to consent on what is agreed to. Also, laws exist, in South Sudan for example, that call for the accused to have access to a lawyer, but extremely low numbers of lawyers or other trained legal practitioners in South Sudan makes this largely an empty promise, leaving those alleged to have committed a killing in a situation where blood money processes may be their only option. Technically, South Sudanese law prohibits blood money practices outside of the court system from being the sole remedy for murders, however practically, local elders, police, and government officials all facilitate payment of blood compensation to keep cases from stagnating due to the dearth of judicial infrastructure.\textsuperscript{32} Renowned Sudan Islamic scholar Professor Al Tayib Zein el Abdin indicated that “these mechanisms focus on restoring social relationships as opposed to justice,”\textsuperscript{33} indicating that aspects of accountability take second place as compared to other priorities.

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\textsuperscript{32} “South Sudanese law does not sanction the negotiation of blood compensation settlements outside of statutory courts. According to the Penal Code Act, the family of the deceased and the perpetrator are meet to negotiate the blood compensation award in the high court after the judge has delivered a guilty verdict—combining criminal and civil penalties into one process... However, given the limited reach of the statutory court system, many chiefs continue to settle homicide cases between willing parties locally, without involving statutory courts.” David K. Deng, “Challenges of Accountability,” March 2013, 27, citing Government of South Sudan, Penal Code Act, Ch. XVI, § 206 (2008).

\textsuperscript{33} Personal notes, USIP workshop, Kassala, Sudan, September 2005.
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Challenges of Compensation

Some African scholars clarify that the objectives of law in African societies is restitution, rather than retribution. With one of its primary goals being to compensate victims, a primary challenge facing blood money is the issue of determining what constitutes suitable, or adequate, restitution for lost loved ones. This challenge is multi-dimensional. In some cases, the challenge relates to different amounts in different areas. Among the Dinka of Bahr el Ghazal province, for example, “the number of cattle to be paid to an aggrieved husband was four cows and one bull in the Lakes District, while it was eight cows and two bulls in Gogrial and Tonj Districts.” As we have seen in previous examples, there are indications the amount and type of compensation are supposed to be fixed (such as the specificities regarding cows and bulls and their reproductive capacity), yet we have also seen cases where adjustments to the amounts are made. In other words, the process seems to operate much like sentencing guidelines in the United States, where a judge has a minimum or maximum sentence for a particular type of crime, but also has flexibility to adjust to the particular situation and the particular offender. This flexibility may be a strength of the customary process, but it could alternately be a sign of favoritism, bias, leniency, political or ethnic persuasion, or any number of influences.


There are other challenges related to the amount and type of compensation. Neighboring tribes or clans might practice different livelihoods, such as where a pastoralist clan conducts violence against a farming clan, in which case compensation in the form of livestock may not be suitable. One example of this is the Anywaa tribe of Jonglei state in South Sudan, which uses a very specific type of bead, called *dimui*, as compensation within the tribe. But as neighbors to cattle keepers such as the Nuer and Dinka, the compensation ritual for inter-tribal killings is different. The beads stay solely within the tribe, and the Anywaa have to purchase cattle or provide cash compensation to their neighbors, a challenge when cash is in short supply. Yet the Nuer and Dinka cannot acquire the beads, as they are very limited in number, and everyone in the community knows who has them.\(^{36}\) Were someone to sell the beads, it would upset an important communal mechanism.\(^{37}\) Certainly livestock can be sold, but as Sharon Hutchinson clarifies, among the Nuer at least, there are important distinctions between “the cattle of money,” or cattle bought with money, and “the cattle of girls/daughters,” which are cattle transferred in bride wealth exchanges.\(^{38}\) Importantly, “money...has no blood,” which Hutchinson interprets as meaning “that money was an ‘inappropriate’ medium of exchange in certain


\(^{37}\) Author interview with member of Anywaa tribe, March, 2014.

\(^{38}\) Hutchinson, *Nuer Dilemmas*, 56. Chapter 2 titled Blood, Cattle, and Cash discusses the various equations of what she calls “the commodification of Nuer values.”
contexts because it could not bind people together like ‘blood’...”\(^{39}\) That said, differences in compensation currencies, such as between pastoralists and farmers, Anywaa and Nuer, and others who value different symbols and products, are increasingly resolved through a transfer of cash, or a combination of cash and other goods.\(^{40}\)

Another challenge related to compensation is linked to US military operations and the desire to compensate innocent victims of military operations for unintentional harms. A 2013 online article outlined how these payments—known as condolence payments, serve a number of purposes. They provide an opportunity to convey condolences, to gain trust, to improve perceptions of America, and to ‘win hearts and minds.’\(^{41}\) My unanswered questions about these practices include how the amounts are set, what currency is used, to whom the payment is made, when and how the conversation with the family is had, how much information is provided, and many other questions. Rising amounts of compensation present another set of challenges to the practice, with migrant workers in high-paying Gulf countries sometimes being jailed for years because...

\(^{39}\) Hutchinson, *Nuer Dilemmas*, 74.

\(^{40}\) For example, a Nuer cattle keeper whose cow was speared by a farmer requested and was granted money for medical treatment for the cow. Interview by author with member of Anywaa tribe, March, 2014.

they are unable to pay the compensation for even an accidental killing. Someone said to me in Kassala, “If you pay $50, the next time they want more.”

Although most references to the practice state that cases are becoming increasingly rare, in some cases still, the medium of compensation is a young girl. The exchange of girls as compensation raises numerous questions about what purpose this might serve, as well as about the more obvious human rights concerns. Some speculate the idea is that a young girl will provide labor for the victim’s family, in essence restoring some of the labor which the lost loved one would have provided, which is likely true. Yet in cases—such as with the Nuer—blood money can be used to pay bridewealth for a girl, a bride, to join the victim’s family so that she can produce heirs in the name of the now dead—presumably male—victim. In South Sudan, this so-called ‘ghost wife’ not only serves to produce heirs who can later provide for the family’s well-being; according to ethnographers of the Nuer people, an embedded assumption is also that these heirs will someday take revenge for the killing of their lost loved one.

**Challenges of Third Parties**

In blood money negotiations, trusted third parties and elders are those with particular qualifications such as knowledge of local norms and family ties, local proverbs and practices, and traditional customary relationships and recognized status between or among various groups. Traditional leaders, elders, and other respected individuals take on a role that acts much like a state entity in some ways, closer to a paternal parent in others. They gain the trust of their

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42 Notes from author’s conversations in Kassala, September, 2005.
extended family members by acting in ways that earn them reputations for helping to resolve conflicts and maintain familial relationships. That trust, however, depends largely on their own credibility, standing, and competency when acting as the third parties who mediate solutions to these conflicts. I have mentioned previously that blood money exists in an environment where these very third parties have a stake in the process itself. In some cases they are compensated by “fees,” in others they are granted a slice of the compensation being offered to the victim, yet in some sulha processes in Israeli Arab communities, mediators volunteer their services.43

The roles and place in society of these elders or mediators within transitioning societies today gives no clear indication of what role they will play in ten or twenty years. In Sudan, for example, the government has attempted to essentially eliminate the “Native Administration” several times, including dissolving it through the People’s Local Government Act in 1971. In fact, “Since colonial times, and over the last twenty years in particular, successive governments in Khartoum have relentlessly manipulated and undermined the traditional administrative system throughout Sudan.”44 The government has tried to overrule the position of the traditional community leaders, granted power through the hakura system and the Nazirates by putting in place a tier of leaders known as Emirs who were supposed to be the government’s representatives, but

43 See Ginat, Blood Revenge, 61-2, for descriptions of transition from neutral mediator to paid judge, and Pely, Resolving Clan-Based Disputes, 87, for discussion of voluntary service.
44 Tubiana, Tanner and Abdul-Jalil, Traditional Authorities, 7.
this failed to completely undermine the established system.\textsuperscript{45} The role of traditional leaders may be changing in many ways, and they may be increasingly overwhelmed by the scale and scope of violence. Youth can observe that the old traditions may not be effective at protecting communities from violence. Elders have sometimes been bought off by, or manipulated by their governments, reducing their legitimacy in the eyes of their communities.

Analogous, if not identical, changes have occurred over successive regimes in Iraq, Afghanistan, and other places where blood money is practiced. It is unclear whether and how long current conflict resolution practices can succeed without legitimate, credible, trusted practitioners at the helm. Certainly the extent to which these third party actors benefit from the process, whether the outcome is sustainable or not, raises questions about their stake in the process, their true commitment to communities or to individuals, and their ability to continue acting in positions of trust. Some might question whether their interests, and their access to power and resources, might actually indicate a desire to allow conflicts to continue, in essence, keeping them “in business.” Among the Ngok Dinka, the mediators “claim that they have the right to demand \textit{awec} (the compensation sometimes associated with rape or other forms of failing to behave compatible with social norms) from any man who is foolish enough to thwart them in their recognized duties as mediators and may threaten to curse a man who refuses to pay up.”\textsuperscript{46}

\textsuperscript{45} Tubiana, Tanner and Abdul-Jalil, \textit{Traditional Authorities}, 13. When it was unclear, during the various peace processes in Darfur, who the “real” accepted community leaders were, I asked a young Darfurian man how one could know who they were. His response was that if you asked any youth, they could tell you who their “real” community representatives were.

\textsuperscript{46} SAD 768/1/47.
The traditional penalty for refusing to participate in the blood money practice, in a number of settings, is exile.\textsuperscript{47} Exile has been deemed in violation of international human rights law.\textsuperscript{48} An individual victim is strongly encouraged by custom to participate in the traditional system. In some cases victims may pushed, coerced, or compelled to participate in the communal mechanism. If victims reject the tradition, culturally they are in a real quandary. Yet cultural norms about accepting blood money change, Participants in blood money practices today must adapt to changing circumstances and changing understanding about options. Dr. Ensor’s research has documented how youth who returned from displacements resulting from the civil war returned using vocabulary with terms such as ‘international human rights law,’ which raises the question of whether internationally educated youth will comply with practices they perceive to run counter to international human rights standards, whether or not the elders encourage them to.\textsuperscript{49} Even with the influx of these norms, there are indications that chiefs continue to recognize an individual’s connections to family

\textsuperscript{47} Initially, “the perpetrator is to be sent away from the area in which he committed the crime (temporary exile)…if the guardians or relatives of the killed or injured person refused the diya, they can claim the Gassas or application of the same penalty on the perpetrator or seek the legal diya which might differ from the tribes tradition diya. But this family shall not be considered a member of the tribe in the future in such cases.” Yousif Gadim Ahmed, “Hawazma Diya.”

\textsuperscript{48} See the Universal declaration of human rights, article 9 which states “No one shall be subjected to arbitrary arrest, detention or exile,” under http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng, accessed October 31, 2013.

or community apart from their physical location, and attempt to put in place customary law decisions even when displaced.\textsuperscript{50}

Clearly there are limits to the scope of conflicts these third party actors can address. The authors of the Kassala workshop paper make recommendations to improve the impact of local peace efforts, calling for establishing joint bodies merging traditional efforts with government efforts, improved cooperation, building local civil efforts, and education to “gradually replace the Tribal and Local bodies’ instruments,” creating bodies such as peace committees within the legislature, strengthening the role of women in local peace efforts, and establishing a council comprised of government and local actors to address challenges that are beyond the control of the \textit{Galad} mechanism.\textsuperscript{51} As we saw in the Israeli Bedouin context, the local third party actors are, initially held accountable for their efforts by their linkages with the court system. Once the blood money is paid, which in these cases contributes to the perpetrator being released from the formal justice sector, it is unclear how the court reacts if the perpetrator’s clan kills again, or if the blood money fails to break the cycle of violence and retaliation or revenge killings set in.

\textbf{The Challenge of Honor}

All of the already noted challenges occur within a cultural construct that places tremendous value on honor and seeks redress for wrongs that challenge

\textsuperscript{50} Carolyn Fluehr-Lobban, \textit{Islamic Law and Society in the Sudan}, London: Frank Cass, 2012, 194-195. Chiefs from (at the time) southern Sudan in IDP camps around Khartoum were negotiating agreements for exchange of cattle to occur upon return back home.

\textsuperscript{51} El Amin, \textit{Eastern Sudan}, 9.
that honor. Violent retaliation toward the extended family of the perpetrator is most frequently the redress for violations of honor. Demonstrations of physical prowess, used to prove manhood and transition between age-sets, may set the stage for a cultural construct that rewards or encourages physical demonstrations and places value upon masculine traits such as the use of force.52

This responsibility to retaliate for killing is closely linked with cultural norms that portray such killing as key to preserving family honor.53 An anthropologist who has studied Afghan cultures since the 1970's perhaps best describes the impact of Pashtun culture in which honor and shame play a role in the concept of resolving homicides:

Homicide generates the strongest demand for personal blood revenge. There is the obvious desire to punish the person who committed the act by the victim's family, but it also involves questions of honor and personal responsibility. Not seeking blood retaliation personally is deemed a sign of moral weakness, even cowardice, not just of the individual who was wronged, but his whole kin group. Payment of compensation agreed to by both parties can also bring an end to the dispute without violence, but settling too quickly may also impugn the honor of the victim's kin group. Nor is this a task that can be shifted to the state. Reporting a murder to get action from government officials is considered a sign of weakness, that the kin group is too weak to take revenge honorably themselves.54

52 Francis Deng, *The Dinka of the Sudan* (Prospect Heights: Waveland Press, 1972), 68-70. The cultural value of courage is so strong that family members are supposed to kill a son who shows fear at initiation.

53 1st Lt. Andrew Caulk, "Kunar public trials demonstrates progress," Combined Joint Task Force 1, Afghanistan, 08.06.2011, News ID 74967 "The defendant Khan claimed he killed Gullo to avenge his father and three uncles who were killed by Gullo more than 20 years ago. Traditional Kunar culture accepts revenge killing as honorable according to Pashtunwali, the cultural code lived by Pashtuns."

In short, cultural codes of honor and shame are powerful drivers of behavior and present many challenges for conflict resolution efforts. The pull of these codes are as strong, or stronger, than formal justice rules; in fact in Yemen, women with whom I worked referred to this code as “the Law of Shame.”

Scholars such as Peristiany have documented the extent of the impact of these cultural codes, linking them to individual personality types and behaviors characterized by ideals of masculinity, patriarchy, and male superiority that manifests itself in a “family-based, face-to-face competition for resources.” Yet these observations tend to focus on the role of the individual to act in relatively proscribed ways to gain resources, protect family values, and gain or retain personal prestige. At first glance, these circumstances seem anathema to the collective responsibility and the focus on family or clan honor and reputation that seem to drive retaliation, yet they are all part of protecting family honor.

Some scholars rebut the notion that cultural codes of honor are as powerful as they are often portrayed. Gregg writes that one of the “five most prominent ‘ministerotypes’” of Middle Eastern societies is that a code of honor monopolizes the Middle Eastern psyche, and subverts modernization. Gregg counters this assumption, stating that “Neither traditional nor modern, ‘neopatriarchal’ cultures often refurbish oppressive traditions in efforts to adapt

55 Author interviews with Yemeni women in Sana’a, 2010.
to conditions in which true traditions have been destroyed but economic and political modernization has faltered," thereby blaming these cultural codes on, essentially, poverty and poor governance. 58

Whether in fact honor and shame are ‘ministereotypes’ or reality, stereotypes exist because they are familiar frameworks that help observers paint a broad picture of a society. The stereotypes are never true of every individual in that society, but they are based upon a generalization of elements of the society that are present among many members. The idea that cultural codes of honor and shame drive (or shelter) violent behavior is one that bears additional exploration.

**The Challenge of Revenge**

Like codes of honor, the notion of collective responsibility compels participants in these customary processes to retaliate when ‘the system’ dictates. This compulsion for retaliation, if it goes awry, can drive a cycle of revenge, which as we have seen, can potentially exist for generations, and can escalate to a feud. Even when there are other mechanisms, such as blood money or formal punishment enacted, the cycle of violence can be seemingly immune to intervention, as outlined in this description of a Pashtun view of revenge:

In any event, punishment by a government court does not erase the obligation to take revenge: a victim’s family is expected to kill the murderer once he is released from prison unless there is a settlement to end the feud before that time. Local communities also reject the legitimacy of state actions to punish men who have taken their revenge legitimately or to take action against a killer who has arranged a settlement with his victim’s kinsmen. Similarly, if the death fails to meet the standards set for blood feud, people also

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58 Ibid., 13.
believe that the government has no right to interfere because no crime was committed.  

Scholars who study revenge highlight various psychological aspect of the process. Stephanie Schwandner-Sievers’ research on violence in Albania shows how violence “generates its own ideology of legitimacy.” She cites three theoretical approaches to violence, and each of them; the operational, the cognitive, and the experiential, provide the possibility of legitimizing violence within a construct of honor and cultural calls for revenge. I will return to the challenge of revenge in later chapters.

**Challenges related to Reconciliation**

In addition to the shortcomings of *diya* to compensate victims appropriately and to hold perpetrators accountable, the *diya* mechanism may fall short in terms of its third primary goal, that of reconciling the conflicted parties to the point of breaking the cycle of violence and retaliation. Working under an assumption that conflicting actors need assistance to address their mutual animosities, *diya* processes are largely conducted under the auspices of trusted and recognized third parties with expertise in the process. Yet these same third party actors may benefit from the process, potentially undermining the sense that they are neutral. Additionally the mechanism fails to meet the basic criteria for what most peace actors would consider to be necessary for reconciliation. Although there is a truth-telling component to most of these processes, the

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61 Ibid., 17.
anonymity already discussed can clearly limit the extent to which the actual perpetrators are ‘called on the carpet’ to describe their actions in great detail. The process operates such that acceptance of the blood money is indication of the victim relinquishing calls for retaliation. Things are not so simple.

Communal mechanisms for reaching blood money agreements and making payment do not reach far below the surface in terms of creating a path beyond compensation, accountability, and forgiveness to the level of true reconciliation between perpetrator and victim. In this, it has much in common with more “western” judicial processes that focus more on the accountability to the state than the relationship between the parties. Blood money is different in that its focus is supposed to be about “restorative justice”; that is, both holding perpetrators accountable for their actions and restoring the relationship between perpetrator and victim (or their respective extended families)—yet, it may accomplish neither of these intended outcomes. Little about the process engenders trust beyond the times when payments are actually made as agreed. If the choice facing victims is between accepting payment of blood money or being exiled from their community, this seems like no choice at all, and certainly is not a process that engenders authentic reconciliation or forgiveness. That Even so, blood money can help to stabilize situations resulting from homicide or injury, when retaliation goes awry, or when widespread conflict breaks out.

**Challenges related to the reach of the state**

As I have shown, many of these challenges to the process are not new. But contemporary challenges may be occurring faster now than in the past, or
creating new types of challenges for these processes. Despite the tremendous progress in past decades to increase stability and reduce violence, to perpetuate the acculturation of rule of law around the world, and to increase the depth of democratic practice in nation-states around the world, blood money functions in areas of the world that are largely beyond the control of state systems.

According to Favali and Pateman, citing work conducted by Italian researcher Conti Rossini in Eritrea in the early 20th century, blood feuds were characteristic of ‘pre-state societies’ where resolving violent conflict was the responsibility of the extended family. *Lex talionis*, retaliation on par, was seen as an improvement on continuously escalating cycles of violence, and blood money, in this context, was viewed as an even further advance in stopping the escalation before retaliation occurred.62

The development of states occurs in many ways, and the context of these changes impact the practice of blood money. One common theme as countries develop is the failure of rule of law in the form of legal institutions to reach into rural areas. States may be changing incrementally, or a new government may replace an existing government, creating a transitional state of flux in terms of legal institutions. Large areas of existing states, such as the Darfur region of

62 Favali and Patemen, *Blood, Land and Sex*, 74 describe Rossini’s view as that “blood feud as typical of ‘barbaric’ pre-state societies ...(with) the concept of blood money…a more ‘modern’ and ‘evolved’ practice.” This perspective, that blood money is an improved condition, is not unchallenged. The authors cite on page 75 Eritrea Profile, “Eritrea Traditions and Customs,”, 12 July 1997, 7, regarding customs of an Eritrean community, the Hedareb, who rarely pay blood money with the reasoning that “vengeance was preferred because once the murderer is killed, peace can be guaranteed; blood money can initiate a chain of bitterness that can destroy a family, clan, or larger group,” a practice the authors speculate could be related to the absence of goods or materials with which to pay blood money, but which could indicate an alternative vision of personal accountability and/or a rejection of collective responsibility.
Sudan, may remain largely beyond the controlling authority of state officials, despite their best efforts. An example from Mozambique highlights this challenge, which is replicated in other countries where blood money is practiced: “As one of the world’s poorest countries…and one of the least educated (70 percent adult illiteracy rate), Mozambique simply lacks capacity and resources either to extend the reach of formal justice or to provide access to it.”

Blood money often operates in a milieu characterized by a relative absence of governance—some would call this a ‘pre-state’ context—that could compel populations to act within a rule of law. In cases of widespread violence and transitional stages of democratic development, customary practices operate in a complementary manner with weak formal structures. One of the challenges facing blood money is that the shifting tide of rule of law indicates a desire by some to move away from customary practice and toward a more robust legal structure, yet a recognition that doing so can create a vacuum of accountability until a formal justice sector is fully present and capable.

One example of the challenges related to a lack of state presence is exhibited in Darfur, where even ten years after extreme violence escalated to the


64 Literature referring to a ‘pre-state’ context sometimes deals literally with pre-state societies such as those of the ancient bronze age. Other literature refers to pre-nation-states settings, such as pre-state Israel, and some relates to sub-national states such as the individual states within the United States. Such a broad term seems unhelpful, particularly since Darfur and areas of Sudan wracked by cycles of violence are ostensibly entities that exist within the modern, sovereign state of Sudan. In this case, the ‘pre-state’ condition reflects a vacuum of state power, influence, and institutions, rather than the absence of the state itself—in other words, a state in name only.
level of civil war, the situation remains confused and largely beyond control of the government. That situation may be further worsened by complications related to blood money:

The chairman of the Darfur Regional Authority (DRA) disclosed he will ask clerics' advice (fatwa) about the blood money issue going on in Darfur, which he said is being imposed at gunpoint and not according to traditional methods…Insurgents have become encouraged to demand increasingly more blood money (diyya) from residents in Darfur…. Radio Dabanga has been receiving frequent reports about militias imposing exorbitant amounts of blood money on displaced persons of Darfur…Many of these incidents are reported to be forged, with sources affirming that militias falsely accuse displaced of killing cows, camels, or people and force them to pay blood money….Diyya amounts should normally vary between 20 million and 30 million Sudanese pounds…However Radio Dabanga recently reported that at the moment blood money amounts vary between 100 million and 375 million….65

Formal legal institutions in many of these situations are not trusted by citizens, and these options, if available, may be far away in places where infrastructure is poor, transportation is difficult, and access requires funds or other resources in short supply. Judicial representation is either too expensive, or not trusted, making the formal justice sector seem more trouble than it is worth. In some cases, a push toward formal legal institutions creates a situation where not only are formal institutions out of reach, they may also not be trusted by individuals seeking accountability.66


66 See Jerome Tubiana, Victor Tanner, and Musa Adam Abdul-Jalil, Traditional Authorities’ Peacemaking Role in Darfur, USIP Press, Washington DC, 2012, Summary, which includes the statement that “Darfurians believe that the first step in addressing a conflict should be a mediation and that the government should be the last resort.”
In some situations, the formal sector may have reach, but it brings with it other challenges. There may be few prisons to lock up criminals and isolate them from society. The presence of jails is not a panacea. In East Timor, for example, “…many see jail as an easy way out, whereby a perpetrator can eat, sleep, and avoid paying compensation….Moreover, when a perpetrator is taken to prison, the family—also wound up in the social tensions—remains saddled with the unsolved problem.”

Although these judicial institutions are supported by international actors seeking to inculcate values of justice and accountability, at the present time, there seems to be an unbridgeable valley between the government and the people, leaving blood money and traditional processes of accountability the option that is accessible, inexpensive, and seemingly trusted, or at least trusted more than other available options.

**Challenges related to changing global patterns**

While the spread of rule of law is stuttering and unpredictable, changes within the world at large seem inevitable. In many ways--improvements in transportation, connections facilitated by technology such as cell phones and the internet, and the movement of peoples for jobs, education, and recreation--the world is clearly becoming more interconnected. This shift, which I will call

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68 See Isser, *Customary Justice*. Each case study in the book, including Mozambique, East Timor, Guatemala, Afghanistan, Liberia, Iraq, and Sudan, indicates that formal justice is generally untrusted and inaccessible in rural and even peri-urban areas.
‘globalization,’ has an impact on blood money practices and its principle of collective responsibility. The ‘collective’ cannot be the whole world.

One impact of globalization on the practice relates to changing acceptance of the rule of law. Looking at the practice through a western, internationalized rule-of-law construct, it is difficult to imagine a situation where family members are compelled to be subject to revenge or retaliation for wrongs conducted by another member of the family. This description of events brings to mind mob rule, or gang violence, or other constructs that clearly fall outside the boundaries of what could be called “civilized” behavior. The truth is that much of the world still functions under a rubric of a code of honor that compels families to act in a way that protects, or defends honor in culturally acceptable ways that may are not necessarily acceptable from the outside looking in, but it is unclear how these codes are ‘translated’ across geographical boundaries.

The mobility of people is another globalization challenge to the practice of blood money. I previously mentioned the example of the Malian man killed in Kansas City whose parents were waiting for the American killer to compensate them for the loss of their son. The breakdown in the mechanism across cultures and continents could prevent the families of victims from having a sense of closure, allowing them to forgive or to move on.

In the more transient, mobile societies of today, youth may go away to university, or travel beyond the traditional geographical boundaries of the tribe to find work or for other reasons. It seems unlikely a university-educated youth in a capital city can have the same level of influence on an age-cohort youth who
stayed back home in a cattle camp in a remote village as he would have had he also stayed in the village. Yet this assumption may not be correct. In fact, youth who leave a village and become educated, or elders who become elevated to positions of authority in the capital may actually have greater influence on local actors, because of their education, status, or access to resources.

Urbanization is another global phenomena that also affects community relationships and therefore collective responsibility. Increasing movement to cities means that people from many different backgrounds and cultural traditions are living side by side, complicating the possibilities that any process like blood money could function in such a context. Likewise, changing family dynamics in general have most definitely been impacted by urbanization. Another challenge facing these traditional practices is acceptance by youth, particularly youth who have been educated outside of the village, or who have travelled and lived in other places. In Darfur, this “new generation of cultured youth, who abstains or nearly abstains from their roots in the village and the desert and studies law and devotes themselves to acquiring knowledge…believes that the appropriate place to solve conflicts is the role of the judge….”

Changes in livelihoods and the economic and political environment are another important set of challenges to the functioning of blood money. These changes work directly in opposition to the *hamula*. Ginat described how the shift of Israeli Bedouins and rural Arabs from traditional livelihoods such as herding and farming, an environment in which collective responsibility is critical, toward

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wage-labor, disrupts blood money processes. When members of different *hamulas* work together, for example, they cannot permit blood feuds to intervene into the work environment, so tribal or family restrictions, such as not talking to someone with whom the family has a blood feud, are not feasible.\(^{70}\) Likewise political party development creates allegiances that may rival those of the *hamula* or extended family. “The attitude of the Arabs who spend most of their time away from the village is that they are reluctant to allow themselves to be drawn into collective responsibility commitments.”\(^{71}\) Increasingly, it may be shown that urbanization, the process of sedentarization (as Ginat calls it), displacements and wars all serve to undermine the potential success of and commitment to these processes reliant on collective responsibility.\(^{72}\)

This dynamic of urbanization and sedentarization could work in several ways. It could push the practice of blood money beneath the surface temporarily, as alternatives to tribal identities take priority and alternative avenues for justice exist .\(^{73}\) It could also impact the way the process is conducted (when elders may no longer work in the village), or the mode of compensation (when pastoralism is on the decline, and society transitions from cattle, for example, to cash). It could

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\(^{71}\) Ibid., 20.

\(^{72}\) Ibid., 16.

\(^{73}\) I heard of this happening in the context of a meeting in which members of a peace committee were convened. At the time, a Misseriya clan was engaged in a blood feud with a Rezeigat clan. Initially, members of the peace committee from these two clans said they could not be in the room together because of the feud. But when we reminded them that they were invited to participate in their identity as members of the peace committee rather than as members of their particular clan, they accepted the explanation and continued participating in the program.
also lead to a situation where the desire to participate in ‘traditional’ processes, which some may view as vestiges of a distant past, could result in undermining such practices.

Each country and each context in which blood money is practiced is undergoing its own totally unique process of change over time. Egypt has seen its own movements of urbanization, but continued upheavals of regime over the past several years leaves the type of law (sharia or secular), the type of regime (religious, military, or civilian), and the constitution completely in flux. Sudan has seen the division of the country after decades of civil war. The regions of Darfur, the Nuba Mountains and Blue Nile remain hot spots of violence, insurgency, and displacement. South Sudan as well is undergoing profound turmoil. Somalia’s transformation to ‘democracy’ seems to progress in fits and starts while traditional leaders strive to retain legitimacy and resolve disputes in the complex space between radical Islamists and a relatively new democratic government. Globalization, urbanization, settling of pastoralists and similar societal shifts are occurring frequently in a context of violent upheaval and turmoil, further exacerbating challenges to traditional constructs.

**Challenges related to Widespread Violence, War, and Politics**

When violence spirals out of control, everything changes. If war occurs in places where the practice of blood money is the primary mode of conflict resolution, one may conclude the mechanism has failed. There are however many complicating factors that prevent such a conclusion from being defendable.
One factor to consider relative to widespread violence is the increased scale of killing related to the proliferation of modern weapons and the transition of killing from a condition of identifiable, known man-kills-known man to one of unidentified man-kills-unidentified man. The challenge of anonymity associated with killing by modern weapons has challenged the practice of blood money in ways that go deep into the essence of the practice.

Hutchinson describes the impact of killing by spear, where the connection between killer and killed creates an immediate and powerful incentive on the part of the entire community to quickly address the situation:

a mysterious blood bond (is) forged between slayer and slain at the moment of death. Specifically, they believed that some of the blood of the victim passed at death into the body of the slayer, being driven forth, as it were, by a mission of vengeance. Were the slayer to eat or drink anything before having this ‘embittered’ blood removed through a small incision made on the upper arm by an ‘earth priest’ (also known in the literature as a ‘leopard-skin chief,’) he was sure to die of a highly dangerous and contagious form of pollution…

Hutchinson cites Evans-Pritchard’s description of the impact of this ‘contagion’:

It is essential that a blood feud be settled (by the payment of bloodwealth cattle) if the parties to it live in the same neighborhood, not only for reasons of security, but also on account of the serious danger (of contracting nueer [the contagion] in which) both the dead man’s kin and the slayer’s kin are placed by the homicide, a danger in which the whole community is involved…If either side eats or drinks with the other or from vessels which the other side has used, the penalty is death…This intolerable state of interdiction

74 Hutchinson, *Nuer Dilemmas*, 106.
can only be ended by sacrifice by a priest when compensation has been paid.\textsuperscript{75}

Hutchinson later details how the Nuer—instinctively—transformed the tragedy of exponentially increased numbers of deaths by gun into a sort of a blessing, by making the flash of a gun analogous to a flash of lightning, which was believed to provide access to a special spirit with direct access to God, and a situation no longer requiring incisions (or compensation).\textsuperscript{76} However, political leaders sought to derail this adaptation and instead used it to their own advantage:

Machar (a political/military leader) endeavoured to convince local civilians and rank and-file Nuer recruits that there were actually two kinds of war and hence, two kinds of homicide. Homicides carried out in the name of a `government war' (\textit{koor kume}), he argued, were entirely devoid of the social and spiritual risks associated with deaths generated by more localised `homeland wars' (\textit{koor cieng}). Whereas the latter might see the rise of ethnic violence in South Sudan subject to pressing spiritual concerns, homicides occurring in a `government war' were declared entirely impersonal, secular and final. There was no possibility of claiming bloodwealth cattle from a slayer's family, no need to purify the killer of the tainted blood of the slain, and no reason to memorialise the dead through special sacrificial offerings and posthumous marriages.\textsuperscript{77}

There are at least two ways to view this situation. From one perspective, this passage highlights, like those in which I previously mentioned government officials’ interventions in blood money practices in Darfur, that these practices are


not necessarily evolving ‘naturally’ but rather that they are subject to manipulation by powerful actors who see fit to use them for their own ends. From another perspective however, this effort to distinguish between war-related killing, in which compensation was not required, and inter- or intra-communal killing, in which it was, could be viewed as an attempt to prevent the war from completely undermining the traditional mechanisms. In any case, beyond modern weaponry creating this inhuman disconnect between the blood perpetrator and victim, the scale and scope of killings in circumstances where war intervened between communities and peoples, clearly present great challenges for the practice of blood money.

Contemporary Sudan and South Sudan, several years beyond the Comprehensive Peace Agreement aimed to bring peace, are awash with violence. Large swaths of Darfur, across the border states of western Kordofan, South Kordofan and Blue Nile in the north, as well as Upper Nile, Jonglei and Unity states of South Sudan, in addition to the stand-off zone of Abyei, are fairly frequently affected by violence. Groups of actors inspired by political and ethnic messages mobilize groups to kill one another armed with the proliferation of powerful weapons.\(^78\) Clashes over cattle quickly escalate showing little restraint. Blood money processes, if and when they happen, may not occur until several dozen on both sides have been killed.\(^79\) Situations where the cycle of violence


\(^79\) Upon arrival in Dilling town of South Kordofan state in Sudan in 2007, our team learned that in the three days prior to our arrival, first three men of one group were killed, while retaliation
quickly claims tens or hundreds of victims overwhelm the customary processes
g geared to a single victim and a single killer.

As we have seen through the eyes of Hutchinson, therefore, the
proliferation of modern weapons and resulting mass-violence can serve to
undermine this entire process in various ways. She explains how the breakage
of the direct linkage between perpetrator and victim derails one of the guiding
precepts of the mechanism in Nuer society—the pollution that enters the life and
extended family of the perpetrator that cannot be distinguished without the
payment of blood money (and the subsequent cleansing rituals).

Another challenging factor is war-related, government-sponsored, or
government-incited violence. Although Hutchinson highlights the effort by senior
government officials to clarify that actions of the SPLA during the civil war would
be exempt from blood money payments, it is unclear whether the same holds
ture today when these same soldiers are committing human rights abuses
against South Sudanese citizens in Jonglei state, or when the government
encourages tribal militias in Darfur like the Janjaweed to attack civilians.
Although this violence is sometimes characterized as “tribal” or inter-ethnic, the
reasons behind it are often political. This question requires rigorous, and very
sensitive, research to answer conclusively.

The tremendous amount of movement affecting societies experiencing
high levels of violence—Iraq, Afghanistan, Sudan, Yemen, for example—has an
unclear impact on blood money and the relationships it requires. Although the

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killed six, then further retaliation killed 13 more men before influential actors intervened to stop
the killing and convene a peace process.
Misseriya in Canada and Dinka chiefs in IDP camps around Khartoum make efforts to stay connected to their home communities, I cannot confirm the extent to which they have influence over behaviors back home, the extent to which decisions they make in absentia are ever implemented, or that the relationships that existed before finding themselves in a new place are the same in terms of conflict resolution processes as they were before the move.

In Darfur, we know that the traditional leaders (“native administration”) were replaced, manipulated, used, and abused in various ways at various times from colonialism until today, and that these changes have impacted the relationships between communities and their customary leaders. Community members who have been forcibly displaced are isolated or are separated from their traditional norms in some ways, and introduced to new practices in other respects. Displaced Dinka living in Khartoum would have no longstanding blood money agreements with tribes who were not their neighbors back home, and it is unclear whether any pre-existing agreements extend reliably to situations that occur outside the ‘purview’ of the traditional homeland. Traditional leaders linked to pieces of land may have no power when the people affected by violence are no longer on that land. Strangers committing crimes have no allegiances to ensure they make things right with the families of other strangers. Wars in many countries where blood money is practiced literally pitted neighboring tribe against neighboring tribe. With deaths and displacements spiraling to enormous numbers in Iraq, in Afghanistan, in Sudan and South Sudan and elsewhere, the

80 Tubiana, Tanner, and Abdul-Jalil, Traditional Authorities, 7-35.
challenges faced by the customary mechanisms in conditions of widespread violence are tremendous.

These situations of upheaval create challenges for the process in other ways. The movement of people to escape from repressive regimes or communal violence produces a diaspora who hope to remain connected to their communities back home and may be asked to contribute blood money for killings without knowing the context. They may contribute in order to remain within the bride-wealth/blood-wealth circle so they can continue to be part of the group that receives bride-wealth cattle. As mentioned previously, diaspora sending money back home could be used to purchase cattle, adding wealth to the tribe, and in the process, undermining the effectiveness of accountability mechanisms.

Traditional elders and chiefs in some cases were engaged by the government to fight on behalf of nebulous promises of land, while elders who remained in communities, although not involved, might be considered untrustworthy by youth who no longer knew whom to trust.81 As displacements raged, some traditional leaders remained in villages while new leaders arose within displaced persons camps to fill the leadership void. Communities that had achieved some semblance of power balance through foundational agreements found themselves uprooted, and therefore those agreements may no longer be valid.

81 See generally Tubiana, Tanner and Abdul-Jalil, *Traditional Authorities* for context on Darfur and the role of traditional leaders, both constructive and destructive.
Challenges related to Women and Gender

There are many challenges associated with gender issues related to blood money. With respect to compensation for injuries or death, the death of a woman is generally compensated at half the rate of a dead man. This can be considered an affront to some women, even though this is recorded in the Quran, one of the most sacred holy books in the world. This also raises questions in light of the Universal Declaration of Human Rights (UDHR) mandate in Article 1 that “All human beings are born free and equal in dignity and rights.” One might ask whether this principle holds true for cases of customary law and blood money practices. In any case, an educated or professional woman might resent being told that she has half the value of a man, whether educated, employed, or not.

Another question is regarding compensation for a female family member. In addition to collective responsibility, the mechanism functions in essence under a rubric of ‘collective benefit.’ If the victim is a female, the compensation would go to the surviving husband’s clan, who would likely use the bloodwealth cattle as bridewealth to acquire a new wife. If the victim is a male, his widow’s situation is much less secure. She could be remarried (voluntarily or involuntarily) to the husband’s brother in a so-called levirate marriage in order to continue producing

82 Scott C. Lucas, "Diya." In The [Oxford] Encyclopedia of Islam and Law. Oxford Islamic Studies Online under http://www.oxfordislamicstudies.com/article/opr/t349/e0039 (accessed 07-Mar-2014). The value of the diya is reduced if the victim is a woman, a non-Muslim, or a slave whose market value is less than one thousand dinars. On the basis of consensus and a weak hadith, all major jurists hold the value of a female to be half that of a male.

children in the deceased husbands’ name. “According to Somali tradition, a widow must marry her deceased husband’s brother. One widow refused her brother-in-law’s overtures, and he shot her. Though her diyuh (diya) group will receive compensation for her injury through xeer (a Somali blood money process) she still must live with her attacker.”

She may be remarried to another man, but because of her being “not pristine,” or because of her advanced age (particularly if she is beyond child-bearing age), her clan will receive less bride wealth for her remarriage. Because this remains a communal process, with neither victim nor perpetrator perceived as individuals, this reduced compensation affects the entire community. Marriage builds the power of the clan itself, as does bride wealth, demonstrating the complex relationship between customs of blood compensation, bridewealth, and inter-marriage.

I have been discussing compensation largely in terms of homicide or murder, but blood money is also used to compensate losses short of loss of life. Detailed charts demarcating compensation for the loss of a tooth or a finger indicate an appreciation for the nuance of valuing loss, yet the compensation for a rape, in cases where this is documented, is approximately one-fourth of a full diya. But what form of compensation, how many cattle, can compensate a woman for being raped? Recall that the compensation is actually not for the victim, but for the victim’s community or clan, clarifies another of the complexities of blood money. Certainly marrying into the family of her rapist provides her


85 SAD 768/1/47. The Awec for rape among the Dinka can be no more than 10 cattle.
some form of protection, which a “soiled” woman might not otherwise be able to find, but there may be better options available (group homes for women?). As we saw among the Dinka, the fact that amounts of cattle for rape, or for adultery, or for the deflowering of a young girl exist and are documented, indicates that these may not be uncommon occurrences. The acceptability of this mechanism to constitute truth, justice or accountability, or suitable compensation in cases like these remains an important question.

Interesting data from the 1970's highlights that women who conduct homicide themselves. The data, gathered from analysis of almost 400 cases, shows that approximately 4% of homicides are conducted by females. These cases include cases within a marriage, (frequently when that marriage was pre-arranged), over societal rules of conduct related to honor and shame, and over behavior such as insults which also relate to honor. The issue of compensation for losses seems turned on its head when the victim is male and the killer female. Compensation to his family could become bridewealth to acquire a new bride, but it would come from the clan itself, to itself, so does not occur. Because the woman generally marries into her husband’s clan, she may be completely dependent upon them for her support. This seems to be a case where compensation and accountability are fruitless, for the woman has already sacrificed everything in these cases of family homicide.

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87 Ibid., 25.
Across the set of examples I have examined with very few exceptions, women are largely excluded from public participation in the blood money processes. According to Weris Ali Warsame, chairwoman of the United Somali Women’s Roots Organization, “We have no rights.” This sense that women are completely absent is not entirely accurate. Doron Pely, researcher at the Sulha Research Center, titled his article on the topic “Women in Sulha—Excluded yet Influential.” In the article, Pely validates the lack of formalized, public roles for women in the sulha process. He identifies numerous roles for women played out largely behind the scenes, but which are still critical elements in the sulha process. At the very beginning women participate through demonstrating grief in a process Pely calls “venting,” which he says is “the only part of the Sulha where women’s participation is recognized (even somewhat encouraged).” Some of the stages in the process in which women’s participation is critical include “pre-Sulha maneuvering, the selection of Sulha committee (Jaha) members, deliberations, outcome (formal agreement) and post-outcome reconciliation.” In other stages, the women operate largely through intermediaries--usually their male relatives--which could undermine a woman’s ability to see that her views are represented accurately, that her family members are negotiating in her best interest, or that the outcome of any negotiation will compensate the women victims as needed. “Throughout the deliberations of the Sulha Committee, 

89 Ibid., 92.
women have no formal access to it, and no formal influence on the process. Women, including mothers and wives of victims or offenders, and of course female witnesses to the events, are not eligible to testify formally in front of the Jaha (mediating council) and are not allowed to participate in the meetings with the Jaha…“91 It does not seem fair to state unequivocally that women do not have due process in this instances, but clearly stating they have equal access is a stretch. That said, Kritz argues that women’s participation in sulha processes generally meets rule of law standards.92

Pely’s research indicates a paradoxical view of the sulha process among women interviewees. 96 percent of women surveyed in his research agreed that ‘Sulha is good for the community.’93 Yet of the six women who actually agreed to be interviewed by him, half of these interviewees, “rejected the Sulha in its entirety, as an element of a patriarchal control structure, used as a tool of oppression by their own society to preserve its patriarchal privileges, and by the state of Israel as a control mechanism, required to ensure the maintenance of the Hamula structure (since Sulha provides primarily an inter-Hamula dispute resolution function).”94 Although clearly not based on a scientific survey, this latter finding, coming from well-educated respondents, parallels other statements

91 Ibid., 94.
94 Ibid., 98.
that seem to indicate that increasing levels of education result in lower levels of support for these customary practices. \(^95\)

Clearly there are many aspects of women’s interactions with customary processes that present analytical challenges. Individual women in each society may play very different roles within different contexts, and may be affected by these processes in different ways. Embedded within these roles are perspectives of their primary identity and any secondary identities, the place and status of their upbringing, their access to education and travel, whether or not they married, either by choice or not, and the perspective of their spouses regarding women’s roles in customary processes and society in general. Within these societies there may be customs regarding levirate or ghost marriages. There may be customs related to the perspective that women should be protected and cared for. There may be differences in the woman’s value in terms of diya and retribution. \(^96\)

\(^95\) Another example includes the statement from a woman from Somaliland who indicated the educated population did not support the blood revenge, as well as the statement of the Iraqi government official—which was more directed at traditional leaders themselves than any specific custom they practice. Clearly this is an area for further research.

\(^96\) Mohammad Hossein Nayyeri, “Gender Inequality and Discrimination: The Case of Iranian Women,” Iranian Human Rights Documentation Center, accessed at http://iranhrdc.org/english/publications/legal-commentary/1000000261-gender-inequality-and-discrimination-the-case-of-iranian-women.html#3 7 March 2014. Article 379 of the new Penal Code provides: “When a Muslim woman is murdered, the right to qisas (retaliation) is created; however, if the murderer is a Muslim man, prior to qisas, the heir(s) of the victim [vali-e-dam] should pay the murderer half of the diya (blood money) of a man…”. Interestingly, although the new Penal Code insists on this unequal treatment, it has prescribed a new solution to alleviate the inequality of diya between men and women. The note to Article 545 provides that: “In all cases of homicide where the victim is not a man, the difference between the diya and the diya of a man shall be paid from the Fund for Compensation of Bodily Harms.”
There are customs that prevent women from testifying in a Jaha, or participating in a sulha process or customs that prevent her from making choices about her marital state were her husband to be killed. In Afghanistan, “…some traditional practices that violate basic rights, such as baad [offering women into marriage to settle a dispute] are reinforced by the informal system.”\textsuperscript{97} Reflecting on challenges we have already addressed such as increasing globalization and urbanization, we can add women’s interaction with customary processes like blood money agreements to the list.

**Challenges of Shifting Norms and Values**

There are many ways that societies are changing physically, such as through urbanization, but socially, societies are experiencing changes to norms, such as a virtually universal consensus on basic human rights, changing views of whether women can participate in public life, work outside of the home, and be educated, norms of tribal allegiance, and to values, such as the value of universal education, the value presented by rule of law and ending impunity, and the value of personal freedom and security. These shifts may have profound impacts on blood money processes. Belief in supernatural powers (though I am distinguishing this from more formal religious beliefs), for example, may be shifting. The concept of ranking individuals according to status runs counter to evolving universal norms such as the belief in (at least striving toward) basic human equality.

Societal norms related to the development of rule of law are calling for individual responsibility for actions. International human rights norms place processes such as exile beyond the scope of contemporary standards. The spread of democracy toward all adult citizens having a voice means that a process that relies on offenders and victims speaking through third party voices process that relies on offenders and victims speaking through third parties may soon be unacceptable for victims or perpetrators. The use of blood money practices as a way to enforce societal norms and values may become more problematic as society becomes more heterogeneous, educated, and mobile. In each of these ways, we see society changing in ways that puts additional pressure on the practice of blood money to continue as it did in the past.

According to John Wuol Makec, African customary legal sanctions derive from four sources: “the fear of God, the fear of supernatural powers, the fear of public criticism, and the fear of revenge.”98 Certainly the fear of God remains a constant among many societies, and my purpose is not to discuss any change in the extent to which this power still holds sway within the ebb and flow of secularization.99 Yet the power of supernatural beliefs, such as the requirement to confess a killing in order to receive purifying rituals which prevent sickness from being transferred from a killer to his (or her) family, or the belief that truth


can be attained through licking a hot metal blade, may no longer be as compelling as they once were."¹⁰⁰

Other changing norms may relate to the structure of societies and communities. In the case of a quarrel with one’s relatives, it is unclear how (or why) an offender would be compelled to pay compensation to his own family, particularly in the case of communal ownership of cattle. Clearly this link between the blood of cattle and the blood of a loved one does not present a problem in other cultures, where money is the medium of compensation, but this too presents challenges. The changing role of cattle in Nuer society presents challenges for blood money. “Cattle’s role in creating and maintaining this socially enriched sense of self was subsequently diminished…by the emerging opportunities for individuals to acquire and own cattle wealth…”¹⁰¹ In other words, the norm that cattle represent an exclusive form of wealth—such as the Anyuak beads—that hold real meaning when passed from offender to victim, may be changing.

As mentioned above, differences of class, status, and power impact the way the process of blood money is practiced (as well as the system of retaliation associated with it). This system of compensation, as we saw from the time of

¹⁰⁰ Ginat, Bedouin Bisha’h Justice, 168. Two similar rituals used (at least in the past) in Sudan are described in Tore Nordenstam, Sudanese Ethics, Uppsala: The Scandinavian Institute of African Studies, 1968, 196; in one practice, a woman is asked to hold the hot handles of seven axes, and in the other she is supposed to pull seven needles from a pot of boiling oil. Although one may assume these practices are waning, the opposite may be true. According to Ginat, although the bisha’h process has been banned in Jordan, “the number of bisha’h cases is growing. In addition, a majority of participants in the ceremony are Arabs from all parts of Egypt, including towns and cities, rather than Bedouin.”

¹⁰¹ Hutchinson, Nuer Dilemmas, 98.
Hammurabi, results in the ‘ranking” of the value of individual lives, a system which Montesquieu, writing in the 1700’s, considered “cruel distinction” and “unequal treatment.”\(^{102}\)

Interventions by government officials to pay the blood money, or other efforts to “assist” the effectiveness of these processes, may have actually had the opposite affect. “Although the British succeeded in dramatically reducing the intensity of local warfare during much of their rule, they simultaneously created an overarching political situation that foreordained the Nuer and other Southern Sudanese to a seemingly endless state of civil war during the postcolonial era…once the Nuer had come to depend on centralized governmental institutions for the forcible settlement of violent disputes among themselves.”\(^{103}\)

**Chapter Conclusion**

As I have demonstrated in this chapter, the practice of blood money is facing numerous challenges to its practice and to its effectiveness in terms of accountability or justice, fair compensation, and restoration of relationships. Given this list of challenges, it seems almost unfair to lay on another, but there is one that requires mention. In a day and time in which conflict prevention is the desire, blood money falls short because it is reactive. The deterrent mechanisms are always present in terms of collective responsibility, but the mechanism itself

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\(^{102}\) Montesquieu, Baron de. *The Spirit of the Laws*, trans. Thomas Nugent. New York: Hafner Publishing Company, 1949, ii. 95-96. “When a Frank, a barbarian, or one living under the Salic law happened to be killed, a composition of 200 sols was to be paid to his relatives; only 100 upon the killing of a Roman proprietor, and no more than forty-five for a Roman tributary. The composition for the murder of one of the king’s vassals, if a Frank, was 600 sols; if a Roman, though the king’s guest, only 300. The Salic law made therefore a cruel distinction between the Frank and Roman lord, and the Frank and Roman commoner.”

\(^{103}\) Hutchinson, *Nuer Dilemmas*,110.
does not kick in until after the harm is done—after blood has been spilled.

Although the collective responsibility operates, theoretically, such that there will be pressure put on a perpetrator not to kill again, as well as the idea that the payment of blood money is intended to stop revenge killings, in truth, these traditional mechanisms can serve to resolve violent conflict but cannot prevent it.

It is impossible to determine cause and effect—whether widespread violence is causing, in essence overwhelming—traditional processes such as blood money, or if a breakdown of the traditional processes is causing widespread violence to proliferate. We know that large parts of the world where blood money is practiced experience high societal levels of violence. Changes in society related to the practice, such as changes to the practice of bride-wealth, which many are calling for, could be linked with blood compensation. Government actors, who step up to pay blood money, may believe they are helping to calm conflicts and are part of the solution, not part of the problem (and in fact, they may be). Third parties who facilitate these processes may in fact be participating in them for altruistic reasons, or they may be in the process for self-interest (consciously or not). The anonymity of killing from afar, leading to the inability to link directly perpetrator and victim, could completely undermine the legitimacy and effectiveness of the process, if the payment of blood money by members of a collective responsibility group is considered critical to accountability. The mechanism may not serve all members of the community equally well if female members of the perpetrator’s, the victim’s, or extended family members of either side, are unable to participate in the process, are not
compensated adequately for their losses, or if they feel in other ways that the process is not serving them well. In other words, the challenges facing this practice are profound and increasing.

Certainly I may be overemphasizing the challenges facing these practices of communal compensation. Clearly, communities have managed over many years to negotiate rates and currencies, and establishing agreements that must satisfy the victims in some way, or the process would not exist as it does. Another perspective of this same situation, however, is that these challenges have been dealt with, but not well, and they may add up to make these processes unsuccessful at breaking the cycle of violence or achieving other goals it intends to achieve.

Despite these challenges, however, blood money remains, if not the most, certainly it is one of the most, pervasive conflict resolution practices in areas largely unreached by formal justice processes, including large zones of Sudan and South Sudan, sub-Saharan Africa, the Middle East and South Asia. “Since pre-colonial times, local justice systems have been the primary means by which South Sudanese have sought to resolve their disputes.”\textsuperscript{104} Despite this breadth and its longevity, the world has a shallow and under-developed understanding of the construct.

The paradigm of blood money serving as adequate and fair compensation, as accountability and a form of justice, and as a restorative measure to rebuild relationships to the state before the violence, must be examined in a way that

\textsuperscript{104} Deng, \textit{Challenges of Accountability}, 11.
helps us to understand whether it actually works to do what it exists to do, as well as to consider potential options for addressing its shortcomings and improving its constructive impact. Questions arise as to whether the process of truth-telling, negotiation, and exchange of blood money is sufficient to reconcile the parties involved, however an overarching question relates to the conflict resolution component of blood money—is it effective not solely at justice and accountability, compensation, and reconciliation—but is it actually effective at preventing or breaking the cycle of violence. Is blood money an effective conflict resolution mechanism in the modern world? Does its value outweigh its shortcomings? The rest of this paper explores these and other important questions.
IS BLOOD MONEY RESTORATIVE JUSTICE?

Looking back at the practice of blood money as it is intended to function, the process has a goal of repairing losses from harm, holding offenders accountable, and restoring, to the extent possible, the community relationships to what they were before the violence occurred. One common phrase to refer to similar processes around the world is ‘restorative justice.’ One of the founding fathers of restorative justice in the United States, Howard Zehr, defines restorative justice as “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”¹ Another simple definition from restorative justice practitioner and scholar Marian Liebmann is “Restorative justice aims to restore the well-being of victims, offenders and communities damaged by crime, and to prevent further offending.”²

The description of restorative justice practices raises two primary questions with respect to blood money; first, is it restorative?, and second, is it justice? There are important perspectives of restorative justice to keep in mind as we examine similarities and differences between classic (read: largely western) restorative practices and blood money processes. According to

¹ Zehr, Changing Lenses, 2002, 37.
² Liebmann, Restorative Justice, 25.
Umbreit and Armour, restorative justice recognized crime as being directed against individual people. It is grounded in the belief that those most impacted by crime should have the opportunity to become actively involved in resolving the conflict. Repairing harm and restoring losses, allowing offenders to take direct responsibility for their actions, and assisting victims to move beyond vulnerability and move toward some degree of closure stand in sharp contrast to the values and practices of the conventional criminal justice system…³

This definition clearly raises questions with respect to distinctions with blood money. Blood money seems to recognize crime being directed at individuals, but only as they are members of a group. (It seems totally blind to retaliatory killing that is considered legitimate). It rarely demands individual participation in resolution efforts, allowing instead third parties to represent both killer and victim. It rarely seems to compel offenders to take “direct responsibility for their actions,”⁴ and brings participants in the process to a unique, almost communal, degree of closure.

According to Liebmann, restorative practices have several core elements or guiding principles that distinguish them from other practices. These include: a focus on healing for the victim(s); acknowledgement of responsibility for actions on the part of the offender; dialogue to clarify what happened; an effort to repair or ‘put things right’; consideration of how future harm can be avoided;


⁴ Ibid., 4.
reintegration into the community for both victims and offenders. Umbreit and Armour outline a more specific set of activities or actions characteristic of a variety of restorative justice processes:

…the inclusion of victims and offenders in direct dialogue, nearly always face-to-face, about a specific offense or infraction; the presence of at least a third person who serves as mediator, facilitator, convener, or circle keeper; and usually, advance preparation of the parties so they will know what to expect. The focus of the encounter nearly always involves naming what happened, identifying its impact, and coming to some common understanding, often including reaching agreement as to how any resultant harm will be repaired.

I will now compare these and other aspects of restorative justice to blood money processes.

**Restorative versus Retributive Justice**

Restorative justice is often juxtaposed with its presumed opposite, retributive justice, in which “offenders should get what they deserved… punishments that were commensurate with the seriousness of their crimes.” Blood money practices incorporate aspects of both restorative and retributive justice, with the threat of retribution held out as incentive to reach agreement and to actually contribute the promised blood compensation. In fact, Howard Zehr recognizes that processes are not exclusively either retributive or restorative, but that most processes contained elements of both.

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7 Ibid., 8.
Table 4. Comparing Retributive and Restorative Justice Paradigms

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Zehr suggests six questions, the answers to which help determine the extent to which a process is restorative:

- Does the model address harms, needs and causes?
- Is it adequately victim-oriented?
- Are offenders encouraged to take responsibility?
- Are all relevant stakeholders involved?
- Is there an opportunity for dialogue and participatory decision-making?
- Is the model respectful to all parties?[^8]
At first glance, the goals and characteristics of restorative practices sound largely similar to and consistent with blood money processes. Yet a deeper exploration of some of the nuances of each of these core principles reveals several areas where blood money processes may diverge from the ideal restorative process.

The question of whether the process addresses harms, needs and causes is relevant to blood money processes, and actually unearths many important aspects of the process, especially about whether the process is victim-centered. In the case of restorative practices, repairing the harm via some form of compensation or reparations, seems a requisite component. Superficially, blood money is clearly about reparations—the focus of the compensation is supposed to be about ‘repairing’ the harm.

But nuance is critical, and the focus of victim-centered reparations for a truly restorative practice may look different than a blood money process. In my observation, blood money processes may be restorative in many respects but may not be reparative. In other words, the goal of blood money processes is to restore relationships between communities that have experienced violence, not necessarily to repair harms to the victim him or herself.

What would a reparative process look like? Zehr says that responses should respond to the suffering of the victim. Using an example of a cattle raid where a victim’s husband is killed, her home burned, and her small plot of

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vegetables trampled, a reparative approach would compensate the victim herself for the loss of her husband—this might include compensation toward medical care for the family, school fees for her children, or literacy classes for the widow. It might also include the offender providing material and labor to rebuild the home and seeds and help to replant her crops. In the blood money processes we have seen, none of these types of restitution happen, although at least one reference cited that a murderer who kills with premeditation is personally liable for any of the compensation.\textsuperscript{9} Instead, the compensation in blood money seems focused on restoring the relationship through facilitating dowry for a new bride for a member of the clan, or similar types of compensation.

Restorative justice also requires the process to consider needs. The question of needs, in a context of Sudan and South Sudan, is largely a moot point; so many individuals, including millions who have nothing to do with crime or death, go without basic human needs being met on a daily basis. Asking the question about whose needs are not being met seems to stretch the scope of the process well beyond what can realistically be expected. Likewise, addressing root causes, as the first question seems to imply, seems well beyond the scope of what any single restorative justice effort might be able to tackle. Sudan and South Sudan are rife with excessive violence that could be related to many root causes-political, economic, and social marginalization, violent customary

practices such as cattle raiding, a history of civil war stretching over decades and across wide swaths of both countries, unresolved tribal grievances over land and resources, mistrust, and deeply entrenched stereotypes that prevent efforts to overcome tribalism, and perhaps most relevant to this study, incomplete or superficial accountability, compensation, and reconciliation processes that may be failing to break the cycle of retaliation and are actually contributing to escalating revenge killings. The hope is that these societies can get to a point where basic human needs can be met and root causes can be addressed. Clearly, I do not believe a restorative process can necessarily address the deeper causes, but we can and should examine the extent to which these processes even attempt to address proximate causes.

My sense is that in these contexts, there exists an assumption, indeed almost an expectation, of violence. In my personal observations, there seems to be a quality pervading these societies that somehow, life is worth less, or perhaps that death is less unexpected, than the way life and death are viewed from a western lens. Given this expectation or assumption, situations like cattle raids that turn deadly come as no great surprise. They seem to be greeted with a sense of normalcy. Places where blood money is practiced are settings of protracted violence, where millions of citizens are now, and have been for decades, ‘displaced’ from their former homes, where millions lost their lives in the course of two major civil wars and a number of smaller wars, such as the war in Darfur, the war in the Nuba Mountains and Southern Blue Nile. In South Sudan, the already horrific cyclical violence in Jonglei state has recently been
exacerbated by politically-inspired violence ongoing in that state and several others. The shock value that death and dying should bring seems to be gone; death is the norm; everyone is a victim, everyone is either an offender or a witness. The dynamics of dying or killing in these places is somehow different than elsewhere, and this dynamic has to affect practices such as restorative justice. Yet that difference does not preclude the need to examine processes thoroughly and to attempt to offer observations that may help make them more effective.

Zehr also points out that there are harms to the offenders as well, particularly those for whom punitive sanctions, such as prison, apply. This is another interesting perspective for the context in which blood money is practiced. It would be interesting to determine the extent to which people serving prison terms in places like Sudan are there because of their political affiliations or their resistance to government entreaties. The cynic—or perhaps realist—in me fears that offenders with the ‘right’ connections receive leniency, while offenders with the ‘wrong’ connections receive harsh, even inhumane, punishment. Zehr’s point is well-taken, however. There is a cost associated with punitive measures—they negatively impact the family, which loses a wage-earner and a defender. Yet, again, in my observation, the balance of power in these cases rests on the side of the offender. Concern with offender’s harm may be something that becomes more important in the future.10

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10 One caveat to this delay may be situations in which honor is at stake. One example is the concern among sheikhs from Mahmoudiya, Iraq, who expressed concern that coalition efforts to detain women who were associated with Al Qaeda-linked terrorists—presumably wives,
The question of whether the process is adequately victim-centered provides another opportunity to reflect on what exactly this means in the context where, as already mentioned, victimhood is so widespread. Traditional practices that address victim needs in some ways, such as the practice to address a widowed woman’s need to find a new husband when her own husband is killed by having her marry the brother of her dead husband, clearly meets some needs but perhaps not others. Compensation through exchange of cattle may meet the needs and desires of her extended family to be able to use the cattle for dowry to facilitate another marriage, but may leave the widow herself destitute and alone. The challenge, it seems, of assuring victim-centeredness seems almost like a luxury rather than a given in the context in which this study is focused.

The question of whether the process encourages the offender to take responsibility also raises additional questions. Zehr points out:

…the rationale for restitution has often been fuzzy and misplaced. Often it is viewed as a way of punishing the offender rather than a way of making things right to the victim. Also, it is usually an imposed sanction and thus does not encourage offender’s ownership in the outcome. Usually the offender does not participate in the restitution decision and has little or no understanding of the victim’s losses. He or she thus is likely to view restitution as one more punitive sanction rather than as a logical attempt to right a wrong and fulfill an obligation to another person. Restitution sentences which are imposed on offenders as punishment are unlikely to help them be responsible…He must be allowed and encouraged to make things right to the extent that it is possible to do so. And he should participate in finding ways that this can be done. That is real accountability.\(^\text{11}\)

\(^{11}\) Zehr, *Changing Lenses*, 42-43.
It is interesting to reflect on the concern with the offender taking responsibility for his or her actions, particularly because of the collective responsibility aspect of blood money processes. One Jordanian, interviewed by Richard Antoun about changing views of tribal law (in the 1970s), stated “Sometimes it is harmful: collective punishment (tha’r) on one who has no blame;...the discord of revenge (intiqam); the discord of compensation (diya). It should be that the person himself is charged with the burden of the punishment....”\(^\text{12}\) And from another interviewee, “injustice (ijhaf) is not right... We are brothers; you err, I didn’t. Religion says, ‘Every person is held to account by himself.’”\(^\text{13}\)

This idea of bringing victim and offender together for face-to-face dialogue offers additional insights into distinctions between processes in a domestic, western setting and those in an international, context in terms of truth-telling, accountability, and relationship-building between victim and offender. As Antoun points out, if the surviving family-member of the victim is a woman, she will likely not be permitted even to personally attend the gathering, much less speak; other participants in the process may face either ‘imposed absence’ or ‘imposed silence’ in order to protect the offender from risk of possible retaliation, or to reduce tensions.\(^\text{14}\) In blood money cases, we already recognize that two key categories of stakeholders—women and offenders—may well be absent from the

\(^\text{12}\) Antoun, *Civil Society*, 454.

\(^\text{13}\) Ibid., 454.

\(^\text{14}\) Ibid., 448.
discussions. One wonders about the extent to which others too might be kept away. Considering a case where cattle camp youth participate in a deadly raid, it seems likely that the youth from the entire cattle camp will not participate in a process, but rather selected individuals might participate, if any at all. Although these latter actions make sense in situations where retaliation is anticipated or even expected, the challenges of fully implementing restorative principles becomes clearer. Generally, we may assume that requiring offenders to participate directly in blood money processes, to allow them to describe what happened, and to compel them to accept responsibility for their role in it, would be an improvement in the restorative aspects of current practices.

The idea of having a third party present who acts as mediator, facilitator or convener raises the possibility that these mediators act in ways that are unhelpful to sustainable outcomes. In some cases, these third parties are actually stakeholders in these situations. In the western context, third parties may be professionally-trained, perhaps certified practitioners of a recognized model. They are almost certainly not related to the participants in the restorative process. In a non-western contexts we have examined where blood money practices occur, the third party is almost certainly either a respected family member or member of a closely linked (perhaps neighboring) tribe, or someone who knows the parties to the conflict yet is trying to play more of an insider-neutral role. Antoun highlights the specific approaches of “invocation of the powerful third party, someone who has enough prestige and influence to sway recalcitrants but who is also regarded as being, if not neutral, at least fair and
wise. The opposite technique—that is, the invocation of well-connected insiders, or individuals closely connected by kinship and marriage to the parties involved—is an equally powerful technique.”  

In either case, we have seen that there is insistence the third party be acceptable to both parties. Many of the practitioners are elders who learned the practice at the knees of their fathers while growing up as the son of a sheikh, so although not technically ‘professional,’ they have years of observation and practice behind their reputations as a fair and wise mediator.

Yet what is seldom written is the extent to which the third party puts pressure on the participants to reach agreement. I have previously described a case where participants were literally locked in a room, with some participants paid money (presumably as an incentive) and told they could not leave until agreement was reached.  

It is impossible to know, with the current state of research into the practice, just how widespread coercive practices might be. A young Jordanian puts the role of these third parties in another light: “As far as I’m concerned, tribal law has no place in our society. We’ve had some bizarre crimes and the perpetrator got off because his family had influence and begged a shaykh [to intervene]. These shaykhs who render decisions don’t necessarily have knowledge, only wealth….”  

Other descriptions of the process indicate that third parties who conduct these processes control who speaks, for how long they speak, and what they are permitted to say. Although some cases indicate the

15 Ibid., 448.

16 Author interviews in Dilling, South Kordofan, Sudan, April 2009.

17 Antoun, Civil Society, 454.
processes can go on for considerable time until parties believe they have been heard and consensus is reached on a solution. This also presents opportunities to work with traditional practitioners to improve their customary practice.

Bush and Folger have developed a process known as transformative mediation which incorporates two key elements, empowerment, which refers to empowering participants in the process to find their own solutions, and recognition, which implies face-to-face interaction between offender and victim. Transformative mediation requires an additional set of actions within a blood money process to recognize not solely the suffering of a community but to bring the offender to recognize the suffering of the individual victim. The inclusion of these perspectives to the toolkits of the mediators could be a constructive addition.

Zehr’s final requirement is that the process should be respectful of all parties. It is unclear exactly how to implement such a requirement in situations where collective responsibility and communal compensation are the norm. Theoretically, rituals demonstrating mutual respect could be built into the process, from the early stages of initiating a process, to the convening, through the gathering of information, into the dialogue bringing offender and victim together, and beyond into the reconciliation and recognition rituals. Again, it is unclear the extent to which Southern Sudanese might consider a ritual such as slaughtering a cow as indicating respect or recognition.

We have seen that there are key differences between how blood money

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processes function and how restorative justice practices operate in other contexts, and I have been rather critical, some might say, in highlighting distinctions which could be perceived as putting blood money processes in a negative light. Certainly, there are challenges inherent in the contexts in which blood money is practiced of which we should remind ourselves. For one, situations such as the sheer vacuum of typical rule of law infrastructure such as prisons, means that blood money processes have had to adapt to this state of affairs. We have seen that processes such as the practice of exile known as _al-jala_—sometimes temporary, sometimes permanent, sometimes self-imposed and sometimes mandated—are intended to address the unique societal avenues to keep violence from escalating in cases of homicide and to restore the balance of society, and relate directly to cultural norms of shame and honor:

Besides preventing crime, punishing the offenders, and deterring future offenses, ‘_al-jala_’ brings “satisfaction to the members of the injured group and saves their face by redressing their wounded honor” (Khalaf, 1990, p. 268). In term of this, salvaging the honor of the victim’s group and keeping their dignity is more important in tribal society than punishing the culprits’ and inflicting pain on them.19

Local perspectives on these and other aspects of blood money processes, such as the impact of punitive measures on society, shed light on what could be viewed as impunity for killing, as expressed by a well-known Sudanese Misseriya tribal leader, Mukhtar Babo Nimir:

When we came to the settlement of the case, they said they wanted the _diya_ instead of capital punishment. They said to the authorities: "Even if you were to hang these young men today, what good will it do to us!? That would not benefit us. Among our people who are

dead were men with brothers or with children or with parents. When we receive the cattle of diya, they can be use in marrying wives; a wife bears children, and those children would be the children of the dead man. But if a man is hanged, what good does it do to the man who is already dead!? Only another man dead. No, we would prefer to receive the diya. 20

Restorative justice is clearly linked to a process or intent to restore relationships or restore a situation to what it may have been before the harmful event occurred. Examples of restorative justice include the gacaca process, where the perpetrator is tasked by community councils with providing resources in the form of services that meet certain needs, directly to the victim. 21 Yet although deemed a ‘restorative’ process, and having elements of restorative justice, the gacaca process very much included judicial terminology, with individuals identified as judges, talk of ‘tribunals’ and similar language. 22 Yet the process combines this aspect of justice with an aspect of accountability. The process of truth-telling and inquiry before members of the broader community, including the opportunity to confront the accuser and respond to pieces of evidence or testimony, clearly demonstrated accountability to members of the community as well as to a legal system.

This circumstance relates to another characteristic where blood money processes in Sudan and South Sudan differ from those in other settings, including those in Palestine and some of the other cases I explored in earlier


chapters. In these settings, the payment of compensation constitutes the primary, if not the sole, form of accountability, in contrast to settings where blood money works to complement a formal justice process. In other words, when the extended clan pays the compensation but the offender himself does not, one could say that there is limited accountability, at least in the form of collective responsibility and the pressure of the clan to prevent the offender from repeating the harm. But in cases such as those where a third party steps in to pay the compensation, because the clan is either unwilling or unable to do so, and if there are no complementary system of formal justice and accountability, it seems to me that this constitutes complete and total impunity for killing. The perpetrator of murder, in these cases, gets off ‘scot free.’ In addition, the process of negotiating blood money presents challenges when the offender is not identified, yet sometimes the process goes on, with third parties or clan members stepping up to contribute compensation in cases where the killer remains anonymous. This situation, again, clearly highlights that cultural and traditional values, and the context of societies where violence is rife, presents challenges to the restorative justice model applied in a non-western context.

This question of accountability is critical. Zehr states:

...genuine accountability...includes an opportunity to understand the human consequences of one’s acts, to face up to what one has done and to whom one has done it. But real accountability involves more. Accountability also involves taking responsibility for the results of one’s behavior. Offenders must be allowed and encouraged to help decide what will happen to make things right, then to take steps to repair the damage.\textsuperscript{23}

\textsuperscript{23} Zehr, \textit{Changing Lenses}, 42.
There seems to be opportunity to add components related to personal accountability to the practice of blood money.

There are other distinctions between the restorative and blood money processes. Antoun points out how the dynamic of retaliation works in the non-western context: “If one of a tribe's members is wronged or attacked, this set of kinsmen must either take revenge on the aggressor or seek and receive compensation. If one of the tribe's members commits a crime and prompts a revenge attack from the victim's group, the offenders must seek refuge and protection (dakhl) with a third party, arrange for truce and mediation, and pay compensation.”

This complexity presents potentially other dynamics, such as one in which “the roles of victim and offender may overlap. Both parties may be victims and offenders. The classic case is one where provocation has occurred and the other party has finally boiled over and retaliated. In other cases people may be victims on one occasion and offenders on another.”

Blood money is not required in cases where ‘legitimate’ retaliation occurs, leaving many cases of killing that would seemingly avoid any process of restorative justice, or any justice at all.

It is exceedingly hard to imagine, in the context of the United States for example, for a neighbor, friend, or family member of a victim who is attacked to decide to take up arms to retaliate for that attack or to seek out compensation for

\[\text{\textsuperscript{24}}\text{ Antoun, Civil Society, 446.}\]
\[\text{\textsuperscript{25}}\text{ Liebmann, Restorative Justice, 19.}\]
the attack, or for a neighbor of a perpetrator to go into hiding and/or seek a “ceasefire” or protection order against the victim, and this distinction also needs to be considered. This scenario might be feasible in the context of gang warfare conceived of as “family” on the east side of Chicago in the late 1980’s, or within warring drug cartels in Mexico. But for this construct to be considered ‘normal’ behavior clearly highlights the context of “ideological and the social organizational core…located in the institution that merges trust, cooperation, and social control at the local level in the mores and behavior of the community—that is, tribal conflict resolution….”\textsuperscript{26} within which blood money is commonly practiced.

There are several other areas of distinction to explore. In addition to collective responsibility for harm, there is collective benefit from compensation. In a South Sudanese village where cattle are the currency of blood money, any cattle that are exchanged would not be given to a female spouse of a victim, but would be distributed among the victim’s clan or extended family. As pointed out by Hutchinson, those cattle may be used as dowry to acquire another bride who may bear children in the name of the deceased, or to remarry the victim’s own wife to another man. The goal of the restitution is not necessarily to ‘heal’ the pain and suffering of the victim, but rather to restore balance or harmony within the community or extended family.

In discussing potential responses to violent harm, Galtung juxtaposes the perspectives of the victim’s trauma with that of the perpetrator’s guilt. The victim’s response may include seeking restitution, having the perpetrator

\textsuperscript{26} Antoun, \textit{Civil Society}, 447.
punished, or hoping to retaliate for the attack by attacking the perpetrator.

According to Galtung, “Material and nonmaterial gratification may derive from this, but hardly reconciliation or release from the trauma... The perpetrator may seek release from his guilt: from the Third Party (God, the State, or Society), through submission, penitence, or punishment; from the victim through apology and forgiveness; or from himself by hard inner work.”

Galtung envisions a process of inner struggle necessary to transform the trauma and guilt from a destructive, potentially toxic inner voice to a healing, restorative release. Blood money processes, as we have seen, take on a contractual, transactional air. In fact, Galtung seems almost dismissive of the possibilities for restitution to lead to reconciliation, and cautions against its potential to make the situation worse. “When trauma has been wrought and is deep-rooted, any restitution borders on an insult, adding violence to violence... trying to make the victim forget what happened by filling the gap caused by the harm has an element of ‘buying oneself off the hook.’ The perpetrator is seen as trying to buy release from guilt. The harm is reduced to a commodity to be traded....”

As already noted, there are multiple purposes of restitution or reparations. As noted above, some scholars are skeptical about the possibilities for compensation to constitute sufficient remedy for violent harm, decrying the transactional, contractual nature of relieving guilt and reducing trauma inherent in


28 Ibid., 6.
the process. Yet Galtung does allow that a “concrete act of restitution” (services to the victim as opposed to a mere exchange of goods) can constitute an alternative approach.\(^2^9\) He specifies that certain arrangements must accompany this approach, including that both parties must accept that the act of restitution conveys “the correct symbolic message.”\(^3^0\) He also suggests that measures such as an apology on behalf of the perpetrator and forgiveness on the part of the victim can supplement restitutive acts or measures.\(^3^1\)

**Justice**

What becomes clear is that reaching ‘reconciliation’ requires reaching a point where victims perceive justice has been served, or at a minimum, that the offender has been held ‘accountable’ for their actions. Zehr states:

> An experience of justice for victims has many dimensions, some of which have already been suggested. Victims need assurance that what happened to them was wrong, unfair, undeserved. They need opportunities to speak the truth of what happened to them, including their suffering. They need to be heard and affirmed…As part of this experience of justice, victims need to know that steps are being taken to rectify the wrong and to reduce the opportunities for it to recur. As noted earlier, they may want restitution, not just for the material recovery involved but for the moral statement implied in the recognition that the act was wrongful and in the attempt to make things right. Justice may be a state of affairs, but it is also an experience. Justice must be experienced as real.\(^3^2\)

Questions about what constitutes justice are as old as blood money itself. Viewed from a western perspective, justice may look like a court of law or a

\(^2^9\) Ibid., 7.

\(^3^0\) Ibid.

\(^3^1\) Ibid.

\(^3^2\) Zehr, *Changing Lenses*, 28.
prison cell. One observer remarked to me that some see retaliation as the key component of justice. Zehr’s description above, that ‘justice is an experience’ is one that can be applied to blood money.

John Rawls spent a lifetime developing the concept of ‘justice as fairness,’ yet one of the challenges of Rawls’ sense of justice is that it requires institutions that provide fair processes and equal access. As interpreted by conflict resolution practitioners debating topics about justice, Rawls “defined equality as the essence of justice, but…located that value in the realm of the ideal: a Good to be approached incrementally and progressively, but perhaps never fully realized. In Rawls’s view, one crucial test of the justice of a social action is whether it tends over the long run to lessen the gap between the strongest and weakest members of society.”33 One of the reasons, perhaps, that blood money continues to hold value is that institutions either don’t exist, or they don’t function in a way that makes them credible, accessible, and trusted. They also don’t serve the community needs for collective responsibility and a focus on relationships. In fact, many societies that practice blood money perceive most institutions to be unfair.34


34 Transparency International’s 2013 Corruption Perception Index indicates that Sudan, South Sudan, Afghanistan, Somalia, Yemen and Iraq rank #174, 173, 175, 175, 167, and 171 respectively out of 177 the countries ranked, a statistic that could correlate with a perceived lack of trust in institutions. See http://cpi.transparency.org/cpi2013/results/ (accessed March 24, 2014)
Amartya Sen, in his book *The Idea of Justice*, essentially counters Rawl’s focus on justice in terms of fairness, and instead turns the focus toward ‘justice realized.’ Sen describes the Sanskrit concepts of justice captured in the terms ‘niti’ and ‘nyaya,” both of which have meanings associated with justice:

Among the principal uses of the term *niti* are organizational propriety and behavioral correctness. In contrast with *niti*, the term *nyaya* stands for a comprehensive concept of realized justice. In that line of vision, the roles of institutions, rules and organization, important as they are, have to be assessed in the broader and more inclusive perspective of *nyaya*, which is inescapably linked with the world that actually emerges, not just the institutions or rules we happen to have.  

Sen goes on to describe how this sense of *nyaya* impacts the ‘justice’ within the lives of people who live in a society:

…early Indian legal theorists talked disparagingly of what they called *matsyanyaya*, ‘justice in the world of fish’, where a big fish can freely devour a small fish. We are warned that avoiding *matsyanyaya* must be an essential part of justice, and it is crucial to make sure that the ‘justice of fish’ is not allowed to invade the world of human beings. The central recognition here is that the realization of justice in the sense of *nyaya* is not just a matter of judging institutions and rules, but of judging the societies themselves. No matter how proper the established organizations might be, if a big fish can still devour a small fish at will, then that must be a patent violation of human justice as *nyaya*. 

How does this concept of justice realized and a sense of *nyaya* change perceptions of blood money practices? One challenge noted previously was the question about why blood money exists today, and whether, as asked by Dr. Marisa Ensor, the third party practitioners who benefit, either financially, through prestige and reputation, and perhaps in terms of honor, dignity, and status,


36 Ibid., 21.
maintain the system as it is practiced because it is in their interest, versus the interest of the victims, to do so. Other powerful actors—big fish—could have an interest in keeping the system as it stands. Blood money processes, as I have demonstrated, largely exclude women from the practice at all. Women are often not practitioners, and as we have seen, are often not permitted to represent themselves or even to speak, much less be in the same room, with the perpetrator, potentially reinforcing the patriarchal nature of certain societies. In cases of honor killing, family members are making life and death decisions regarding members of their own families based upon rumors, innuendo and insults. Certainly, the potential to change blood money to integrate the concept of 'justice realized' could contribute, if not to improved effectiveness, at least to increased justice within the process itself.

But what does 'justice realized in society' look like for perpetrators who participate in blood money processes? One who kills, intentionally or otherwise, for whom his/her extended family pays blood money, could perceive that justice has been realized because he was provoked to kill by an insult or a violation of honor, and therefore is not to blame. Killers who kill under the cover of legitimizied retaliation perceive their cause as just. Realizing 'justice' in the eyes of Sen's vision would seemingly require a sea-change in the social mores of these societies.

The question of what justice is raises the related question about natural law, natural rights, and the balance between human nature and man’s role in mediating solutions to conflict. Although any number of philosophers—Hobbes,
Locke, Grotius and beyond—discussed the concept of what came to be known as ‘natural law’, one may begin discussing the concept of justice relative to blood money with the view of Adam Smith, who described that like natural law, ‘natural rights’ includes that “which a man has to the preservation of his body and reputation from injury.”37 Yet this definition, or any definition of natural law, viewed through a lens of blood money, presents concerns. Smith’s description of preserving reputation brings us back to a place of honor. Certainly if blood money allows one to preserve honor while ‘doing the right thing,’ the practice has value. Yet if preserving one’s body (and one’s reputation) from injury can be construed as justifying aggressive behavior (e.g. retaliation on par, escalating revenge, honor killings), the construct is somewhat problematic. The cynic might say that what looks like natural law to some looks like anarchy or vigilantism to another.

Adam Smith’s concept of justice brings us to the place where preservation of honor and reputation are core components of justice, and through this lens, blood money can be an important tool to achieve it. In fact, we could see blood money as a tool specifically geared toward helping those who participate in the process do so while preserving honor, or ‘saving face.’ Accepting blood money allows one to avoid retaliating for a harm done to your family that would otherwise cause shame or dishonor if one didn’t take revenge. The fact that honor killings of women family members happens could be related to the idea

that one does not pay blood money within the family. There is no way to compensate for the loss of honor associated with infidelity or indiscretion. Blood money in lieu of retaliation performs an important role in saving face, and thereby preventing retaliatory, retributive, violence.

Justice itself can take many forms and have many intentions. We have seen that with respect to the two primary paradigms of retributive justice and restorative justice, although sometimes juxtaposed as opposites, both paradigms have in common that they purport to represent a form of accountability, though with different goals. Retributive justice, with the name derived from the word ‘retribution’ constitutes an opportunity to ‘get back’ at the perpetrator. This can be, but is not necessarily, punitive, such as where the perpetrator receives a form of punishment, perhaps confinement, a fine, or some form of physical punishment (flogging, for example). Blood money, it seems, exists to contradict, or to prevent, retributive justice. In other words, if the blood money is paid, there is supposed to be no retribution against the killer. The payment of blood money, in essence, becomes the penalty or punishment. (There are cases, though seemingly rare, where payment of blood money does actually become a true hardship).  

Another way to view accountability and/or justice is to think in terms

38 See SAD 768/5/59, which indicates that for some segments of certain tribes “other segments of the group would combine against the culprit and his more immediate kinsmen, and compel them to forfeit all their possessions including their stock and even their household equipment which were handed to the kinsmen of the deceased. Such treatment was severe, since the people concerned would be left destitute and forced to live as servants of the more fortunate. Here there is an element of the concept of punishment, a conscious political combination to enforce justice, rather than a free resort to retaliation or restitution…”
of “sanction.” Citing Max Gluckman, an anthropologist/lawyer who studied African customary processes, Peristiany described sanctions in this way:

The term 'sanctions' is used here in a very restricted sense to refer only to the organized and legitimate action of a social group acting in protection of a socially recognized right...although the society I shall describe has no centralized system of authority and lacks differentiated executive organs, the only types of sanction to be here considered are the organized sanctions which operate inside a political and jural unit; a unit, that is, which acts corporately in relation to other units of the same order and is endowed with an effective public opinion...Where no such public opinion exists, we witness not the operation of legal sanctions but acts of unregulated violence; we are, that is, in a domain in which 'rights' and the extent of the use of force are limited solely by sectional considerations....

Some readers may continue to question whether the process to negotiate and pay blood money can constitute sanction, justice, or accountability. One useful clarification is to ask the question of accountability to whom. One of the earlier distinctions I raised was the question of whether murder constitutes a crime against the state, a sin or crime against God, a wrong to the community, or a wrong against an individual. Each entails its own set of processes for truth-telling, its own set of individuals or institutions to which the offender may be held accountable, different measures and standards of penalty, and different means of ‘making things right’ through compensation, reparations, penance, or indications of remorse.

It is important to note that blood money is typically described as being suitable only for cases of unintentional killing (homicide), though clearly it is used

in cases of murder, and practitioners include in their customary law repertoire of penalties descriptions of blood money amounts for murder. As in a court of law, the process of judiya, sulha, or related processes includes a component of assessing the culpability of the perpetrator, of understanding the circumstances, and of trying to assess the intent of the offender. Interestingly, I did not find any indication that compensation rates are different in cases of accidental killing versus for cases of murder. The blood money is the same. Yet clearly, in a court of law, the penalty for intentional, premeditated murder would be much more stringent than that for an accidental homicide. One can view this from the lens of the victim’s family—from one perspective, there is no difference in how a person died in terms of the material losses suffered by loved ones—after all, dead is dead. Yet the emotional suffering connected with a murder could theoretically be far different than that associated with an accident. Clearly then, blood money, unlike torts and civil liabilities, does not constitute compensation for emotional suffering, but rather focuses on the loss to earning potential and similar material aspects of the ‘equation.’

An additional distinction with respect to justice and accountability is the relationship between customary processes and the formal justice sector. Although “the intent of sulha proceedings is restorative and communal, as opposed to retributive and individualistic,” in cases of murder, the sulha process is conducted (or rather, is supposed to be) alongside proceedings of the formal justice sector, “where the formal system handles prosecution while the sulha
system handles the inter-clan relations.” The same cannot be said for compensation processes that are conducted in areas—such as most of Sudan and South Sudan—where the formal justice sector may be absent, may not be trusted, or where the judiciary defers to the customary sector to ‘take care of’ cases including murder. Yet as David Deng, Leonardi and Isser, et. al, indicate, this customary process has much in common with formal judicial processes. There is an opportunity to hear evidence before a panel of neutral third party observers, to allow the perpetrator (or representatives) to tell what happened, and for the victim’s representatives to be present during the negotiation of a compensation that should ‘satisfy’ them in some way. There are clearly many elements of justice within these processes. What is unclear is how much justice, and what kind of justice, will contribute to reduced levels of violence.

**Revenge and Feuds**

If one accepts that people in societies practicing blood money, just as in societies where they don’t, will experience violent deaths, intentional or otherwise, now and then, then deaths due to attacks and counter-attacks become normal. Yet the custom, or at least the belief, is that counter-attacks for violence stop at retaliation on par—that is, that blood money is a mechanism to stop violence from passing from attack to counter-attack to longstanding feud.

Feuds are different. They may last for generations. They may kill hundreds (or thousands over time, in the context of Jonglei state, for example). They may become ‘chronic destabilizers’ for which humans have either not

developed mechanisms to prevent conflicts from becoming feuds, or where those mechanisms are not working. According to McCullough, “it would be oversimplifying things to say that a feud is merely an extended cycle of revenge between families. Feuds are governed by conventions—conventions about the types of affronts that require retaliation, conventions about who can kill whom, conventions about making peace…”\(^{41}\)

An example from Libya provides insight into how blood money is used in the case of a feud:

In this case, the tribe was experiencing a blood feud with another tribe, and the use of blood money ‘was an attempt to break the chain of vengeance between and among its groups.’ The decision (from the *qadi*) included applying blood money from the *shari’a* as well as custom. The *diya* was to be “100 camels for a male and 50 for a female), but the killer is required to spend 3–4 years in exile—in accordance with custom—before he may initiate the procedure for settling the dispute by compensation, provided, of course, that no retaliation has taken place in the meantime.”\(^{42}\)

Sir Henry Maine documented various customs that are designed to keep feuds at bay, such as this example from Slavonia:

A man whose life is endangered by the enmity of another may make him an offer of what is called ‘gossiped by misfortune’. If the enemy refuses, he may be lawfully killed even by treachery. If he accepts, he becomes connected with his former adversary by a kind of spiritual relationship, and is in fact compelled to become sponsor to his next-born child. These peculiar artificial relations in the wilder Slavonian countries, and particularly Montenegro, are found extremely useful in staunching blood feuds. When a momentary reconciliation has been effected by friends or neighbors


between Montenegrin Capulets and Montagues, it is common to give it stability by insisting that the heads of the contending houses shall become spiritually related to one another.\footnote{Maine, \textit{Early Law and Custom}, 259.}

Psychologists who have studied revenge find consistencies across cultures and contexts. They find revenge fantasies are closely linked with situations characterized by envy, which is “a…feeling coming from a comparison whereby someone feels slighted. That person…often wish(es) to take over or destroy the object of envy.”\footnote{Thomas Böhm and Suzanne Kaplan, \textit{Revenge: On the Dynamics of a Frightening Urge and its Taming}, trans. Pamela Boston (London: Karnac Books, 2011): xxvi-xxvii.} The avenger produces revenge narratives that make it “perceived as natural in certain cultures and situations’…something that the individual or the group sees as being so near the inherent way of thinking and behaving that it is not questioned.”\footnote{Ibid., 5.} European researchers studying revenge across cultures find common circumstances in which revenge is related to humiliation and shame, which parallels closely with a cultural context in which honor and dignity are highly valued, and where reacting to derogatory remarks or insults easily results in deadly violence.\footnote{Ibid., 20. These findings are also consistent with Fluehr-Lobban’s findings in Sudan that over half the homicides related to situations that involved shame, \textit{ird} (decency), \textit{karma} (dignity), insults, and other humiliation-producing experiences. Fluehr-Lobban, “Homicides,” 37.}

Evolutionary biologists who studied revenge came up with similar findings. A study drawing on data from sixty different cultures around the world in the Human Relations Area Files (HRAF) Probability Sample found that “fifty-seven of the sixty cultures…had ‘some reference to blood feud or capital punishment as
an institutionalized practice, or specific accounts of particular cases, or at least, some articulate expression of the desire for blood revenge. 47

These same dynamics can emerge within a group as a “coalitional psychology—a tendency to form tightly structured ingroups that foment hostility toward outgroups. Scores of studies in social psychology now show that human beings maintain a certain set of moral rules for kith and kin, and a very different set for outsiders.” 48 Groups also develop mechanisms to maintain stability and relationships between neighboring groups, such as procedures for sharing resources like water and grass, interdependent trade relationships, and intermarriage, all of which can be useful to prevent or resolve feuding.

Reconciliation

Reconciliation can be defined as “the process of healing the traumas of both victims and perpetrators after violence, providing a closure of the bad relation.” 49 According to Johann Galtung, one of the founding fathers of the academic field of peace work, “reconciliation is a theme with deep psychological, sociological, theological, philosophical, and profoundly human roots—and nobody really knows how to successfully achieve it….Reconciliation essentially must take place between perpetrator and victim. But that also means that either

47 McCullough, Beyond Revenge, 75, citing Martin Daly, Homicide, New York : A. de Gruyter, c1988, 226.

48 McCullough, Beyond Revenge, 3.

of them can withhold reconciliation, putting the trauma/guilt into the ‘world trauma/guilt bank’ and using them as weapons.”

Galtung considers twelve approaches to reconciliation, and one by one he dismisses aspects of many of them as being insufficient to constitute true reconciliation. The exculpatory nature-structure-culture approach, he says, essentially blames physical violence on the existence of structural violence; he essentially describes the reparation/restitution approach as reducing harm to a commodity; he juxtaposes the spiritual/psychological elements of the apology/forgiveness approach with the economic/contractual elements of restitution, and hints that both require the two parties, victim and perpetrator, to participate and contribute in relatively equal ways (implying that this equality of contribution is unlikely); he somewhat demeans the theological/penitence approach for not being applicable to non-believers or people of different faiths, and he says it only works for the perpetrator, not the victim; he implies that the juridical/punishment approach largely focuses on satisfying the state but not necessarily the victim.

This goes on until he reaches the codependent origination/karma approach, which he (surprisingly) considers to be a holistic approach despite what he points out to be the concept that the entire community (or the entire world) shares contribution to the ‘bad karma’ that resulted in violence. He cites the constructive aspects of the historical/truth commission approach, yet points out that it falls short in terms of holding perpetrators accountable for more than

just the truth (often resulting in impunity), and that it often fails to generate the cathartic processes of apology and forgiveness. He shares the theatrical/reliving approach, which he claims can allow participants in the drama to choose alternative outcomes to violence, taking the drama to the point where things went wrong, yet he also cites the risky nature of this approach, bringing perpetrators and victims together to relive tense experiences—and he fails to directly address the question of whether violent interactions can ethically be reenacted in any way deemed sufficiently respectful to victims. Galtung mentions how the joint sorrow/healing approach holds potential to bring individuals, communities, and countries who together produced violent conflict, to heal through sharing joint sorrow and to consider how a similar destructive path might be avoided in the future, yet he neglects to address the complex challenges associated with convening organizers and leaders, soldiers and politicians, aggressors and civilian victims from all sides together in a room. He acknowledges that the period of ripeness for such an event may be years after the violence occurs, and fails to ask the question of whether reconciliation should wait that long, or whether the cycle of retaliation and revenge might step into the intervening void between violence and a joint sorrow event. The joint reconstruction approach provides the opportunity for great photo opportunities, yet Galtung points out that “rebuilding is concrete, while reconciliation is merely spiritual.”\(^5\) The joint conflict resolution approach holds potential, yet also faces the risk that conflict resolution

\(^5\) Ibid., 16.
may be necessary but not sufficient to address situations where violence has severed relations and hardened the hearts of those involved.

Galtung finally arrives at what appears to be his preferred example, the ho’o ponopono process of Polynesian culture, which incorporates aspects of reconstruction, restitution, reconciliation and resolution. The processes four stages, including truth-telling, apologies and forgiveness, restitution, and symbolic acts of closure, combine to bring participants and communities to a new, better place in terms of relationships. Yet Galtung acknowledges, too, the extent to which this approach requires deft handling and skill on behalf of trained third party “wise” facilitators. Galtung’s conclusion is informative and enlightening; “There is no panacea. Taken *singly* none of the approaches is capable of handling the complexity of the ‘after violence’ situation, healing so many kinds of wounds, closing the violence cycles, and reconciling the parties to themselves, to each other, and to whatever higher forces there might be.” In other words, reconciliation requires more that processes are complex, that they are facilitated by trained professionals who are neither priests nor judges yet are respected and accepted, that the parties voluntarily come together despite trauma and pain, that both victims and perpetrators are reflective and open to hearing the words and feeling the emotions, that responsibility for the past and agreements for the future can be reached, that restitution, both real and symbolic, can occur, that apologies will be offered and will be returned with

52 Ibid., 19.
forgiveness, that conflicts can be resolved, and that violence can be held at bay through a true process of reconciliation. Reconciliation seems a tall, tall order.

In fact, blood money processes have much in common with the ho’oponopono process. Consistent with the construct of ‘restorative’ justice mechanisms, blood money seeks to restore relationships, if not completely, at least to the point where the desire to retaliate or take revenge is put at bay. Certainly reconciliation is an important component, but one that can be viewed various ways. Perhaps the overarching perspective is one focusing on the outcome, the sense of reaching a state of relationships that provide a framework for resolving conflicts through non-violent means. Reaching that state of relationships, however, requires a purposeful process that is both unique and unpredictable.

One of the important stages of a reconciliation process includes some form of forgiveness or conciliation. In blood money processes, this stage may be somewhat short-circuited. According to Babo Nimir, acceptance of the blood money in essence constitutes forgiveness.53 If not forgiveness, others indicate that acceptance of the blood money (or an indication to do so) at minimum indicates an agreement not to continue with retaliation, and puts the opportunity for revenge at rest. In interviews to understand local perspectives in Jordan of blood money processes with respect to forgiveness, one young woman indicated her support for tribal law because it essentially compelled forgiveness, saying “Peacemaking (sulh), forebearance (samah). The person who forgives is good.

53 Deng, Babo Nimir, 20.
Is it a moral blemish (‘ayb) that you forgive?”\textsuperscript{54} Another supporter of tribal law said that for “the crime of murder—Jordanian [state] law only sentences [the culprit] to 10 years. The victim isn’t satisfied.”\textsuperscript{55}

Even without these special measures, according to Pely, “…the sulha process aims to achieve reconciliation (musalaha) between the two parties…”\textsuperscript{56} Some observers of Sudan and South Sudan believe that blood money processes hold the potential to contribute to reconciliation: “Diya ceremonies could serve as the equivalent of gacaca courts, where compensation has an important role, sometimes taking the form of community service.”\textsuperscript{57}

Another important component of reconciliation processes is a form of memorialization. Custom among some tribes in South Sudan, including the Dinka and the Nuer, consider the slaughtering of a white bull as an important indication of memorialization. A Misseriya tribesman described to me (and demonstrated) his traditional process for reconciliation:

\textit{The Misseriya man pulled a large knife in a scabbard wrapped around his upper arm beneath his thobe. This ceremony would be conducted in the presence of representatives of the aggrieved or conflicting parties, around a fire pit with cold logs and embers. From the hilt of the scabbard he pulled a large (6-inch) set of tweezers. He indicated that the tweezer depicted the process of pulling the ‘thorn’ or problem from the skin, in other words, removing the irritant between the parties. The tweezer would be}

\textsuperscript{54} Antoun, \textit{Civil Society}, 452.

\textsuperscript{55} Ibid., 453.

\textsuperscript{56} Doron Pely, \textit{Resolving Clan-Based Disputes},” 86.

placed on the cold embers. Next he pulled a large, 6-inch needle from the hilt. The needle, he said, indicated the willingness to stitch together the wound; in other words, to stop the bleeding, and to compel the wound, or injury, to heal. The needle would then be placed over the cold embers. Finally, the men around the table would take their hands and place them over the embers, indicating that the flames of hatred or violence had died down, and would not reignite. Placing their hands over the coals was a sign of trust that the reconciliation would last.\(^58\)

Yet interestingly, in my nine years of working in conflict resolution in Sudan, I never once heard of this process being used. In discussions with anthropologists and local practitioners of peace processes, they too had never heard of it being used. It seems to be a remnant from the past that may have slipped away. Even if it occurs, it is important to consider the context within which “reconciliation” occurs. Within the traditional milieu of Arab societies of the Middle East, for example, the context of reconciliation provides a certain kind of resolution:

Finally, the achievement of ritual reconciliation (sulha), a public demonstration that hard feelings and estrangement have disappeared as symbolized by mutual embracing, the drinking of coffee, and joint commensality by all concerned parties, is a fictive and pragmatic resolution rather than a social, psychological, or ethical one. That is, the sulha does not definitively remove the antagonism created by the original breach of normative behavior—despite the expressions of forgiveness and the confessions of wrongdoing. The kissing and the embracing of opponents and the partaking of a common meal do not necessarily, or even usually, reform the conduct of the individuals involved.\(^59\)

Is reconciliation, if it occurs, between groups, adequate to constitute reconciliation at the individual level? In other words, just because elders agree to reconcile, does that mean that every member of the community is also


\(^{59}\) Antoun, *Civil Society*, 450.
necessarily reconciled? How does the payment, delaying, or withholding of blood money payments affect the longevity or sustainability of these agreements? To what extent are these agreements visible, and how does this impact their sustainability? How, and how broadly, might these agreements be disseminated afterward, and how does this impact their longevity? What mechanisms are in place that can help bolster this longevity? All of these key questions relate to our ability to understand the sustainable impact or the lack thereof, of these processes, and require further exploration.

Perhaps a critical question is whether there can be reconciliation without justice and/or accountability. Short of reconciliation, the need to address impunity, whether through formal or informal means, stands as a pre-requisite for not only breaking the cycle of violence, but also for moving countries toward democratic values and processes. One need only witness the cycle of perpetuating the elevation of perpetrators in Afghanistan to recognize the dilemma. Yet despite this sort of challenge, scholars such as Neil Kritz insists that local processes are the "most transformational…and holistic," despite the tendency to romanticize them.

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60 A presenter at the Georgetown Conference on Human Rights, Peace and Justice on March 1, 2010 in Washington DC outlined the sequence of events thusly: the decision to incorporate leaders of (illicit) armed factions into the Afghan national forces to secure cooperation and encourage their support of the government may have resulted in new atrocities, as others wanted the rewards of generalship, and saw becoming a warlord as the path to these rewards. The elevation of warlords to high positions fostered a culture of impunity that delegitimized the government and was used by the Taleban for propaganda purposes. Yet this approach was the rational choice in a setting with no cost for committing atrocities.

61 Author’s notes, Georgetown Conference on Human Rights, Peace and Justice on March 1, 2010, Washington DC.
Chapter Conclusion

It is important to recall that blood money practices are ensconced in a powerful vortex of violence that requires interventions at exactly the right time. As we have seen, if a killing occurs, in certain circumstances, the boiling-of-the-blood retaliation is authorized, indeed expected. If the revenge process fails to inflict retaliation exactly on par, the process risks escalating as an unequal violence begets further revenge. Intermediate steps such as separating the parties, recruiting an acceptable third party, and convening the actors all require rapid response. Reconciliation, on the other hand, is a process that requires time, preparation, and numerous steps, of which compensation for loss is only one component. A textbook reconciliation process requires victim and perpetrator to sit face-to-face; in situations where lawless behavior, the lack of state presence and a proliferations of arms allowing anonymity for perpetrators, this seemingly simple step seems a bridge too far.

It is critical to identify challenges with using a restorative justice paradigm for analyzing or assessing the effectiveness of blood money processes. For starters, much of the literature on restorative practices relates to processes conducted in schools, in prisons, and in communities where the rule of law exists, and where judicial institutions such as prisons, police, and courts, function. This is largely not the case in the context of blood money practices in Sudan, South Sudan, and many of the ‘ungoverned spaces’ where traditional practices are
responsible for the resolution of three quarters or more of cases involving homicide or murder. 62

As we have noted previously, these processes are experiencing and responding to the effect of numerous impacts and challenges. In his anthropological research in a Jordanian village from the 1960’s through the 1980’s, Antoun documents the mixed emotions and perceptions of both positive, socially constructive (i.e. restorative) aspects of traditional practices, some with clearly mixed views, where the observer sees both benefits and drawbacks, while at the same time hearing clearly expressed views of consternation, concern, and even dismay at aspects of traditional processes. 63 The spectrum of these views is consistent with what my research into the practice demonstrates—that blood money practices fill a void in which government entities are either untrusted, unwilling, or unable to provide judicial remedies for harms, in which victims and offenders have, over many generations, produced processes that mostly meet their needs to restore harmony and balance to their communities in the aftermath of violent conflict, yet that these processes are being buffeted by so many challenges that one wonders whether in fact they are effective at achieving that balance, and particularly whether they can function to stop cycles of violence.

Despite these shortcomings and challenges, restorative justice provides a framework that provides for the possibility of ending violence without impunity,


63 Antoun, Civil Society, 452-455 for pro-, hedged-, and anti- views in response to his question “What is your view of tribal law?”
restoring relationships though reparative actions, facilitating forgiveness and reconciliation, and hopefully providing options for transforming solutions to conflict from violent to peaceful. In short, there seems to be no option to transform conflict from destructive cycles of violence into sustainable peace except by using restorative justice processes. The next step may be encouraging and empowering Sudanese, South Sudanese, and other practitioners of the blood money practices to be more effective at accomplishing justice, reconciliation, and at breaking the cycles of retaliation and revenge.
CONCLUSION AND RECOMMENDATIONS

I have described the age-old practice of blood money as being buffeted by winds of change that may well be undermining its ability to achieve what it intends to achieve in terms of compensating victims, holding perpetrators accountable, and restoring relationships. These practices are part of a conflict management continuum that, at its best, seeks to prevent violence from occurring, to stop its escalation when it does occur, and to heal the wounds caused by harms related to violence. My examination has raised many questions making it clear blood money may not actually perform those functions as expected (or as hoped). Blood money practices are ensconced in a powerful vortex of violence and cultural baggage that may be overwhelming the process.

Some of these challenges facing these mechanisms are not new. Preventing conflict has always been a challenge, and as we have seen, the desire for revenge is universal, so escalation is also always a risk. Other challenges are embedded within the cultural milieu in which blood money practices operate. Cultural norms and circumstances where an intentional killing occurs and boiling-of-the-blood retaliation is authorized, indeed expected, clearly presents challenges for prevention of violence, which is an oxymoron in this case. If the revenge process fails to inflict retaliation exactly on par, the process risks escalating as an unequal harm begets further violence.

These processes have within them intermediate steps that can have a positive impact on violent situations. Actions such as separating the parties, recruiting an acceptable third party, and convening the actors all require rapid
response and collective action, but can help prevent escalation if done well. Actions of third parties also offer an opportunity to reflect on potential changes.

“What is most distinctive about the use of customary law is its insistence on using community members, or respected outsiders chosen by the disputants, as fact finders and decision-makers. Both the system's strength and weakness lies in its reliance on mediation and arbitration to resolve problems.”

Some of the challenges facing blood money practices are either new or different than challenges faced in the past. Urbanization may be breaking down family and community ties, and therefore undermining the collective responsibility upon which blood money depends. The proliferation of modern weapons may be resulting in increasing levels of killing while at the same time facilitating anonymity, and therefore impunity, as killings in ungoverned spaces (or those deemed by unethical leaders to be associated with a ‘government war’) cannot be addressed through customary processes that require the association of a killer with the killer’s clan. Payment of blood money by outsiders or third parties (such as government officials) contradicts the communal deterrence efforts to prevent recurrent crimes by one of the community’s members—if it costs them nothing, they may have little incentive to work hard to prevent recidivism. Increasing wealth, as we have seen, limits the effectiveness of communal deterrence. Each of these challenges requires reflection and potential adaptations of traditional practices.

Changing norms and values, such as with regard to the role of women in

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society, can also affect these processes. Exchange of women or girls as compensation for killing, and honor killings of female family members are no longer tolerable acts, yet the international human rights and legal community is stymied to deal effectively with these issues. In his anthropological research in a Jordanian village from the 1960’s through the 1980’s, Antoun documents the mixed emotions and perceptions of tribal law, among both women and men—on the one hand, showing that it is constructive and positive for communities, and on the other hand, that villagers were concerned about its use. Changing circumstances may continue to erode support for this mechanism, although one should recall that blood money has existed for as long as man has recorded his own history.

Blood money processes do offer a window for improving the restorative justice aspects of customary processes. As noted in Chapter 5, opportunities exist to increase victim-offender face-to-face dialogue, to compel offenders to take greater responsibility for restitution, and to improve and deepen the restorative and reconciliatory aspects of the processes. As our exploration of restorative practices revealed, a textbook reconciliation process may require victim and perpetrator to sit face-to-face. Yet in situations where lawless behavior, the lack of state presence and a proliferations of arms allowing anonymity for perpetrators, this seemingly simple step will require steadfast effort and careful planning and preparation.

For many blood money processes, after the judgment by the mediator and

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2 See Antoun, *Civil Society*, 452-455 for pro-, hedged-, and anti-views in response to his question “What is your view of tribal law?”
an agreement on what to pay, that is the end of the story (other than the actual payment). All of the actors go home and resume their lives much as they were before. The case is considered complete, and the chapter closes on that cycle of violence. Yet one can question the extent to which this constitutes reconciliation, forgiveness, or truly satisfied the relational needs of all the parties to the process.

Some customary practices that involve blood money incorporate measures that are clearly restorative in aim, such as this example from *Pashtunwali*:

In addition to seeking compensation that will make a victim whole (to the extent that is possible), Pashtun customary law also attempts to make the offender publicly and personally accountable for his deeds. The community can therefore demand that the wrongdoer apologize publicly to the victim and make payments for *sharm* (shame). *Sharm* is a payment, usually consisting of one sheep and 500 Afs. [Afghan currency], that recognizes the social damage done to the honor of the victim. Upon receipt of the *sharm* payment the victim slaughters the sheep and invites the neighbors, the village *mullah*, and the offender and his family to the subsequent feast. The offender offers a public apology at this time. This is expected to end the dispute and bring the community back into harmony.3

Studies of reconciliation highlight the importance of some of the stages in this example that are absent from many blood money processes. Howard Zehr asserts that “for genuine healing to take place, at least two preconditions need to be met: repentance and forgiveness. If healing is to occur, it is helpful for victims to be able to forgive.”4 Blood money processes ask for neither repentance nor forgiveness, but they could.


4 Zehr, *Changing Lenses*, 45.
This highlights an important distinction regarding individual and group perspectives regarding reconciliation and forgiveness: “…forgiveness is an internal process of getting over your ill will for an offender, experiencing a return of good will, and opening yourself up to the possibility of a renewed positive relationship with the offender. Reconciliation, in contrast, is a friendly reaching out to the person who harmed you (or the person whom you’ve harmed) that’s supposed to fix the relationship breach.”

Interestingly, the ethnographic research of Daly and Wilson into sixty diverse cultures around the world found “that the concepts of forgiveness, reconciliation, or both had been documented in fifty-six, or 93 percent, of the countries in the HRAP Probability Sample.”

Zehr argues that restorative justice provides a framework that is ‘consistent with the values and principles of conflict transformation’ and that it ‘might be viewed as a peacebuilding or conflict transformation approach to justice.’ The question then becomes what steps might be suggested to make the blood money practices of rural Sudan, South Sudan, and other places troubled by exceedingly high levels of violence more effective at accomplishing justice, reconciliation, and at breaking the cycles of retaliation and revenge. Böhm and Kaplan talk about restoration after revenge in that “conceptual pairs of opposites …are central ingredients in the psychological process: humiliation-dignity, violation-respect, shame-pride. To break the revenge spiral, it is necessary for

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5 McCullough, Beyond Revenge, 115.
6 Ibid., 121-2.
7 Zehr, Changing Lenses, 308.
the individual to be able to create a space for reflection and dialogue.”

Providing opportunities for community dialogue and introspection could be helpful additions to blood money processes.

Although blood money ostensibly seeks to stop recurring cycles of violence, it is important to recognize that these practices do not operate in a vacuum, but rather fit into a continuum of actions embedded within the system of patriarchy affecting the home and family, the choice of how people respond to insults, the reaction of family members to rumors about infidelity, or the perception of what creates loss of honor and dignity. Close examination of all of these elements also provides opportunity, as described:

> It must be stressed... that violence as a cultural resource is employed only at the final stage of the process. None of the steps leading up to it are inevitable or irreversible. At the transition from one stage to another there are always alternative, non-violent courses of action for solving the conflict open to both parties. At each stage de-escalation may occur for a number of reasons and conflict parties may revert to peaceful interaction. Once again we stress here that violence is a resource in social relations. Just like in any other context, social relations... are always likely to be renegotiated and redefined...Recourse to violence under specific conditions results from decisions that have narrowed down the number of options for conflict resolution to one.

This passage highlights the need to closely examine each stage of these processes to improve awareness of and institutionalize non-violent alternatives.

McCullough cites two interwoven truths about human nature that shed light on a useful perspective: “Truth #1: The desire for revenge is a built-in

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feature of human nature; Truth #2: The capacity for forgiveness is a built-in feature of human nature.”

Given that assumption, it is important to recognize that data shows that “restorative justice conferences (such as victim-offender conferences) are extremely effective at reducing the desire for revenge and fostering forgiveness.” This is another addition to the slate of non-violent alternatives to escalation that is neither assumed nor easy to achieve, yet which holds potential.

At the end of the day, I come to a place of complex conclusions, having entered this study of blood money with an open mind. I see how a trusted community process is being buffeted by winds of change beyond its control, and fear that it is the changing nature of warfare that has affected, more than anything, the ability of blood money to accomplish what it intends to achieve. In a discussion with a South Sudanese youth who lives in the middle of some of the highest rates of violence in the world, he suggested that fighting on a large scale is no longer tribe against tribe, but rather that ethnic groups are mobilized into militias, and that militias either fight each other or they fight the government.

This is not only happening in South Sudan, but can be considered relatively standard in a number of the countries where blood money is practiced. This changing dynamic can explain blood money’s inability to resolve these disputes, especially if participants in this violence are considered exempted from blood

10 McCullough, Beyond Revenge, xvii-xviii.

11 McCullough, Beyond Revenge, 177.

12 Author’s conversation with Othow Onger, March 23, 2014.
money because killing becomes their duty. This single shift, accomplished largely by power-hungry politicians who use ethnicity to mobilize youth, could explain the shortcomings of the traditional process.

Yet this shift in the nature of violence also highlights the need for alternative forms of accountability for militia members, for robust disarmament, reintegration and rehabilitation (DDR) programs, and for a greater effort to build upon existing resilience within communities to help them resist calls for mobilization for causes that are portrayed as just, but for which violence holds no solutions.

I hope this paper contributes to increasing the non-violent options for communities that practice blood money that can help them renegotiate their social relations in a way that is more restorative and less violent, and provides additional options for finding non-violent solutions to violent harms. While all human societies, theoretically, are aiming for more peaceful, more just, more stable societies, we all have a long way to go to get to that place. Informed analysis of customs such as blood money processes helps us to first deconstruct, and then reconstruct, traditions with an eye toward incremental change in a constructive direction. At the end of the day, it seems that whether they are completely restorative or not, and whether they constitute perfect justice or not, practices such as blood money may be better than any alternative that undermines rather than strengthens community ties.


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