

Peace through Peaceful Means: A Buddhist Perspective on Restorative Justice

Carina Pichler

Introduction

Buddhist teachings emphasize non-violence, compassion, loving kindness and spiritual friendship. Based on the notion of an interrelated and interconnected existence, Buddhist teachings represent a religion or philosophy that values wholeness rather than individuality. The assumptions of mutual dependency and collective responsibility source in an understanding of interconnectedness. What implications do such understandings have for restorative justice?

Restorative justice describes ways of dealing with conflict and crime that focus on repairing the harm done and restore relationships. In the past decades restorative justice has been increasingly implemented internationally, especially within the legal system and enjoys growing international popularity. Common programs within the legal system include victim-offender mediation, family and community group

conferences and restorative circles. Restorative justice is also applied in non-judicial contexts such as mediation in schools or at workplaces. The key principles underlying restorative practices include the focus on repair, participation, taking responsibility, transformation of the root causes and social re-integration (cf. Roche 2006:234; cf. Strang 2001:2).

Prevention and the application of effective and sustainable measures in the resolution of conflicts and crime are essential for the achievement of the MDGs, not only in terms of providing the necessary preconditions, but also in its influence on other spheres of socio-economic development. Especially global organized crime – of which drug trafficking constitutes a major part – is a serious issue. Antonio Maria Costa, executive director of the UN Office on Drugs and Crime (UNODC), describes global drug production, trafficking, poverty and instability as a ‘vicious cycle’ as they mutually influence each other (cf. Costa 2010, quoted in: Morris 2010:1131). He further stresses: “[T]he MDGs are the most effective antidote to crime, while crime prevention helps to reach the MDGs” (cf. Costa 2010, qtd. in: Morris 2010:1131).

The effects of conflicts are far reaching: from its direct cost in human lives to undermining economies, destabilize governments, damage infrastructure, disrupt social service delivery and provoke mass displacement of people (cf. UN 2007:36). Restorative justice offers a set of methods based on a theory of justice that represents an alternative to conventional criminal justice responses. Various study results demonstrate the success of restorative justice in criminal justice matters.¹ How do Buddhist concepts and ideas relate to restorative justice approaches? How can they contribute to more effective conflict management and further develop restorative justice? What are the parallels in the underlying basic assumptions of Buddhist teachings and restorative justice?

Restorative Justice

Restorative justice aims to repair harm done and restore

1. See: Latimer, Downen, Muise 2005:137; Vos, Umbreit, Coates, 2006:9; Nugent, Williams, Umbreit 2004:415)

relationships in participatory processes. It refers to a conceptual level of understanding justice and wrongdoing, and to a methodological level of dealing with conflicts in practice (cf. Zehr 2008:4). Whereas retributive justice approaches such as the criminal justice system regards crime as a violation of laws and focus on punishing the law-breaker, while in restorative justice, crime is understood as a violation of people and relationships that creates needs and obligations. "Restorative justice is 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." (Zehr 2002:37) Howard Zehr, who is known as a pioneer of restorative justice, stresses the aspect of handling the conflict collectively with the aim of healing and does not limit restorative justice to certain programs.

Restorative justice is not a new concept; it has been practiced within many communities and cultures worldwide and is based on traditional practices. This is why many authors describe restorative practices as a re-introduction. Restorative practices to deal with conflict have been traditionally used in indigenous communities in Australia, Canada, North America, New Zealand, Fiji, Samoa, Japan and Thailand (cf. Lux 2007:10, cf. Roujanavong 2005:127f.). In Nigeria, the Philippines, Bangladesh and Uganda community based non-state justice systems have been applied regularly (cf. UN 2006 29f.).

Restorative Justice Programs

What are common programs of restorative justice that are applied in practice? This section gives a short overview of common models applied within the legal system. Restorative justice programs are often used as alternatives to regular court proceedings.²

Mediation

In mediation procedures two or more conflicting parties meet with the guidance of a mediator to discuss the conflict and find a solution

2. Specific types of application within the criminal justice system vary from country to country.

together. At the end of a successful process an agreement is found where the obligations are determined typically written down and signed by both parties. The element of establishing dialogue and willing participation of the parties is central. The types of obligations range from compensation payments to garden work.

Restorative Conferencing

Family group conferencing was inspired by traditional justice systems of the Maori in New Zealand (cf. Wachtel 2012:2). Conferencing models include a larger number of people compared to mediation. Also relatives and friends of the wrongdoer and those harmed participate in the process together with other members of the community. A facilitator guides the procedure, but tries to not intervene in the decision finding process of the group.

Restorative Circle

Circle models traditionally have been used by the First Nation communities in Canada (cf. Zehr 2002:50). Circle models in restorative justice today can take various forms and centralize different aspects. For instance sentencing circles aim to determine a sentence for the wrongdoer in a participatory process. This raises the question if it is appropriate to categorize sentencing circles as restorative justice as it seems to work strongly in the mindset of retributive justice by focusing on imposing 'proper sanctions'. Other restorative circle models focus more strongly on restoration of the harm and needs of those who have stake.

Truth and Reconciliation Commission

In the 1970s and 1980s many truth and reconciliation commissions were established in Latin America and other countries to address past crimes committed within so-called transitional countries. Finding out the truth and establishing a collective memory as a society are key elements. Reconciliation should ensure a more or less harmonious future after large parts of the society have suffered from massive human rights violations. South Africa's truth and reconciliation commission introduced in 1995 to deal with the crimes during the

Apartheid is the best known example and was given much attention in the media.

Basic Principles of Restorative Justice

While restorative practices may emerge in different forms, they need to be based on the key principles in order to be classified as restorative processes. The principles provide the framework for establishing new programs of restorative justice, but also provide the basis for the continuation of regularly applied models.

Focus on Repair

Repairing harm and restoring relationships are the focus in restorative justice procedures as means to address conflict and crime. Thereby the needs of those harmed are centralized. What kind of reparation is required? What needs have arisen from the harm caused? The main aim of restorative processes is to reach healing and a harm-free situation, to the extent possible.

Participation

From a restorative justice perspective, sustainable conflict resolution process requires participation of those concerned. Depending on the particular program, the procedures can include also members of the community who are not directly involved in the conflict. Constructive dialogue between the conflicting parties should be established and possible solutions should be discussed together. Harms, needs and obligations should be addressed in participatory decision-making processes. Restorative justice regards those having a stake in the conflict as highly qualified in dealing with the conflict and therefore they should play a main role in dealing with the conflict (rather than giving the conflict to state authorities without including those concerned).

Responsibility

In restorative justice, wrongdoers should take responsibility for their actions through being confronted with the results of the

behavior and taking part in the solution-finding process. In contrast to retributive justice that focuses on guilt, responsibility and accountability are centralized in restorative justice. Jarem Sawatsky writes: "Guilt paralyzes. Responsibility calls for account and for restoration." (Sawatsky 2003:14) Developing a sense of responsibility is strongly linked with participation. If one is included in the process, the person can develop a sense of responsibility for the situation.

Transformation

Restorative justice aims to eliminate the causes of the problems and transform the conflict at its roots. Only fighting the symptoms through inflicting punishment does not lead to the core of the conflict, from a restorative justice point of view. Real transformation requires mental changes and cannot be imposed from outside, but only supported. Dialogue can lead to greater mutual understanding of the different perspectives and emotions about the conflict and hence, support real transformation. According to Van Ness transformation can be reached through making amends that may involve restitution, apology and changed behaviour (cf. Van Ness 2000:7).

Restorative Justice and Buddhist Concepts

How do the underlying principles of restorative justice resonate with concepts and ideas found in Buddhist teachings? Where are parallels in the underlying values of the approaches? What further inspiration can be gained from Buddhist concepts and practices? In the following we look at the Buddhist concepts of dependent origination, karma, no-self and the transformation of the 'roots of evil' and analyze them in regard to potential inspiration for restorative justice.

Dependent Origination and Restorative justice

The Buddhist doctrine of dependent origination or dependent arising (paticca samuppada) assumes that all phenomena are interrelated with each other. According to that, nothing can exist independently. "Because of A arises B. Because of B arises C. When there is no A, there is no B. When there is no B, there is no C." (Mahāthera 1998:326) Assuming an interdependent co-existence

among all beings and things, the world can be described as a web of relations in which every part of it affects the whole. Hence, every action of any beings impacts the web and all things are conditioned by each other. How does such an understanding influence approaches to justice and dealing with crime?

The notion of interconnectedness can also be found in restorative justice. Howard Zehr writes that the assumption of society underlying restorative justice is based on the notion of interconnectedness (cf. Zehr 2002:19). Restorative justice regards a crime as a violation of people and relationships that always affects the community as a whole. An understanding of interrelatedness and interconnectedness in relation to conflict and crime implies the need of involving the community members in the process. Even though participation constitutes a key element in restorative justice, the actual involvement of the community often varies considerably, depending on the specific program and implementation. While mediation only includes those directly affected, restorative conferences and circles usually include a large number of community members.

Assuming an interrelated and interdependent existence also refers to the aspect of responsibility. If one understands himself or herself as being a part of the whole, one might develop a stronger sense of responsibility. Causing harm to someone does not make sense from that view as one would harm the whole that affects oneself, too. A worldview based on oneness suggests developing a stronger sense of care-taking for other beings and things. That relates to questions of guilt and blame. Thich Nhat Hanh uses the example of a tree that does not grow well: “We know it is funny to blame a lemon tree, but we do blame human beings when they are not growing well. [...] But human beings are not very different from lemon trees. If we take good care of them, they will grow properly.” (Thich Nhat Hanh 1998:34) Trees and human beings need certain conditions to ‘grow well’ and thus, would require even stronger care or supportive conditions in their environment. The more understanding there is about the conditions, the less anger there is about people not behaving in expected ways.

In restorative justice the interconnected worldview is reflected in its focus on repair and healing for all involved. The needs of

those having suffered violations and the causes of the crime should be addressed. This orientation towards repair and healing in restorative justice differs substantially from criminal justice approaches that mainly focus on blame and guilt in order to harm the wrongdoer for the behavior. Restorative circles provide an example for practical application in conflict resolution resonating with the idea of interconnectedness as the participants are encouraged to share a sense of mutual responsibility for the well being of the community and the individuals within it, and develop an understanding that what happens to one person affects all. (cf. Greenwood 2005:2)

Karma and Restorative Justice

“Like attracts like. Good begets good. Evil begets evil. This is the law of Kamma. In short Kamma is the law of cause and effect [...]”. (Mahāthera 77 1998:267)

The causal conditionality, as assumed in karma, combines past, present and future. “The present is the offspring of the past, and becomes, in turn [sic!] the parent of the future.” (Mahāthera 1998:302) The present state results from the past and simultaneously creates the future. The law of karma states that all actions result in resonating consequences. ‘Actions’ thereby are defined in wide terms and include aside from physical behavior, also speech and thoughts as elements constituting karma (cf. Mills 1999:31). David Loy describes intention as “the most important factor in the operation of the law of karma, which according to Buddhism is created by volitional action.” (Loy 2000:156)

How does unintentionally caused harm affect one’s karma? Mills gives the example of killing a mosquito as whether a volitional action or accidentally and concludes that karmic results are only created if killing is done intentionally (cf. Mills 1999:31). U Silananda even goes further and describes karma as the mental efforts underlying actions (cf. U Silananda 1999:11). According to that, karmic results are only created if the actual outcome of behavior is congruent with the internal motivation. Hence, the intention and volition of an action is valued higher than the actual outcome.

U Silananda warns about misinterpreting karma with moral justice: “The theory of karma is the theory of cause and effect, of action and reaction; it is a natural law, which has nothing to do with the idea of justice or reward and punishment. (U Silananda 1999:6) Interpreting karma as a natural judgement mechanism ignores a key element of karma: everyone creates the consequences of an action oneself. A judgement system needs another person to judge upon the others and decide what is right and wrong. Such understanding of a higher instance as judging mechanism is not existent in the Buddhist tenets. The idea of karma – that actions lead to resonating consequences – contradicts with the idea of outside instances judging about the behavior of others. Inflicting punishment to others leads to its own karmic consequences and attracts the resonating effects of the action of doing harm. What implications might the understanding of karma have for restorative justice? What parallels are found?

Process-Orientation

Karma encourages focusing on the present. The present situation results from one’s past actions, but more important: this is the time when future karma is constituted. Whatever happened in the past, there is a chance to create a good future by the present behavior. Awareness about having the opportunity creates something beneficial in the present that might encourage wrongdoers to act towards repairing the harm.

Process-orientation is a key element in restorative justice. By including the wrongdoers in the process of repair, they have the opportunity to contribute something beneficial. Many criminals get stuck in the thought that what they do now is not important anymore, because they have caused harm in the past and there would be no way to remedy this. With the chance to respond to the needs of those harmed, they may lead to developing increased understanding and improved future behavior. Mediation serves as a practical example where the wrongdoer has the opportunity to directly engage with and respond to the needs of the harmed person. The harmed person may benefit as well if the offender takes responsibility for his actions and is involved in the solution finding process.

Responsibility

Karma highlights the importance of the present behavior that is linked with the past and the future. Present behavior is decisive for the future states that affect not only oneself, but the other interconnected parts of the whole as well. A situation occurring may be described as an interplay of the results of the actions of oneself and of all other. In the context of crime, that means that crime cannot alone be caused by 'the criminal', but was only made possible by the contributions of the other parts of the web in co-creating the conditions for the crime to be committed. In short: A crime is embedded in a social environment that can either support or inhibit crimes. If everyone is in some way co-responsible for creating the cause of a crime, then everyone is also part of the solution of a crime. Implications for restorative justice relate to the extent of and way of including the wider community in dealing with crimes. A suggestion that may go beyond the present development of restorative justice approaches is to give the conflict back to the community. This requires strengthening the abilities of managing conflicts and a radical reorganization of the dominant criminal justice system into a community based forum in which single persons are encouraged to take responsibility in both addressing causes and dealing with the outcomes of crimes.

No-Self and Restorative Justice

"No-self (anatta) means that there is no permanent, unchanging entity in anything animate or inanimate." (Mendis 1979:3) Nothing exists as a separate entity; instead everything rises and passes without having a personality or self. Thich Nhat Hanh writes that "in the light of Buddhism, there is no such thing as individual self. As we know, when you go into a Buddhist center, you bring with you all the scars, all the wounds from society, and you bring the whole society as well." (Thich Nhat Hanh 1987:51) The idea of a separate self is an illusion from the Buddhist point of view. It is a main cause of harm, because it is the notion of a self that leads to craving, attachment, aversion, etc. (cf. Karunadasa 1981:26). Rahula describes the notion of self is a main cause for the occurrence of crime (cf. Rahula 1990:21). He further states that "all economic, political and social problems are rooted in this selfish 'thirst' [the notion of self]" (Rahula 1990:21).

What implications can be derived from the Buddhist notion of no-self for Restorative Justice?

Role Ascriptions

If the notion of self is the main cause underlying crimes, then distinctions between victim and offender - that encourage a stronger identification with self - increase the cause of the conflict during the solution process. Role ascriptions are of static nature and do not resonate with the Buddhist understanding that living beings are characterized by continuous becoming and by ongoing change (in contrast to assuming static existence). Practical advice for restorative justice relates to abstaining from using labels such as 'victim' and 'offender' that strengthen clichés and stereotyping. Labelling can be avoided through replacing the terms with 'the wrongdoer' or 'those harmed'. Using labels such as 'the offender' implicitly judges the whole person, rather than evaluating only the behavior.

The Notion of Self in Restorative Justice Programs

Considering the different models of restorative justice, the idea of no-self can also be applied in ways of viewing the program. Are programs identified as a static model or flexible in their applications? How much clinging to habits is expressed through sticking to carrying out the program in a certain way? Practical advice may relate to decreasing the identification with specific ways of applying programs by becoming increasingly flexible in adapting the program according to specific contexts. Restorative justice programs are instruments that help people in the processes of repair and healing rather than representing an end in themselves.

Ending Suffering - Transforming the Root Causes

The Four Noble Truths in Buddhist teachings explain the nature of dukkha (suffering, dissatisfaction), its causes and its cessation. The Eightfold Path gives practical advice on developing wisdom, morality and concentration in order to eradicate suffering. From a Buddhist perspective the causes of suffering lie in the unwholesome mental formations (kleshas). The three main kleshas are described

as ‘the three poisons’ or ‘unwholesome states’. These are: (1) Craving (lobha): for sensual pleasures, for existence, for non-existence, (2) aversion (dosa), (3) delusion (moha). They provide the basis for other kleshas such as anxiety, jealousy, desire and depression. All these unwholesome states arise in the mind. The only way to end suffering from a Buddhist perspective is to address suffering at its roots and transform them. How should the unwholesome states be transformed into wholesome states from a Buddhist perspective?

Addressing the Root Causes – A Buddhist Approach

How can the root causes of a problem be eliminated to end suffering? Buddhist teachings see the causes of suffering mainly in the three kleshas that are regarded as the underlying causes of crime: craving, aversion, delusion. The less craving, aversion and delusion there is, the closer we get to nirvana. The term nirvana means to stop or end craving (cf. Mahāthera 1998:386). In order to decrease the unwholesome roots, a Buddhist method is to develop their positive counterparts (wholesome roots): non-delusion, non-craving and non-aversion.

- delusion → non-delusion or clear-mindedness
- craving → non-craving or generosity (this includes forgiveness)
- aversion → non-aversion or loving kindness

Through the cultivation of the counterparts, craving, aversion and delusion decrease naturally and the harmful actions are reduced with them. How are these wholesome mental states cultivated? Buddhist meditation practice certainly takes in an important role here. Meditation is used to increase loving kindness, train generosity and become aware of the interconnected nature of existence. Mindfulness can be trained through meditation and serves as catalyst to become aware of one’s own cravings, aversion and delusion through observing these mental states. Becoming aware of them without trying to change them is the first step towards transforming them. Achieving real transformation requires continuous working on one’s mental states. This process-character is underlined by the Buddhist notion of impermanence: everything is in a dynamic and ongoing change; there are no static entities of existence. Thus, peace can only

be reached by peaceful means, and not by inflicting harm.

Conclusion

Various parallels in the underlying assumptions of Buddhist teachings and restorative justice are found. Both regard interrelatedness and interconnectedness as a main characteristic of reality. In restorative justice, the understanding of mutual affectedness arising from the assumption of an interconnected nature of existence is reflected in its emphasis on participation and responsibility. The focus on repair and healing instead of punishment in restorative justice is underlined by the Buddhist concepts of karma and non-violence.

Inner transformation is emphasized in the Buddhist tenets as well as in restorative justice and suggests addressing conflicts at their internal root causes instead of singularly fighting symptoms. A Buddhist way to end suffering is to increase the beneficial counterparts instead of fighting the harmful states. Means and ends need to resonate in order to create peace. Cultivating loving kindness, generosity and clear-mindedness as the basis for wholesome actions in Buddhist teachings serve as inspiration for restorative justice approaches: reflecting and continuously cultivating wholesome internal structures. Buddhist meditation, training mindfulness and cultivating wholesome mental states strongly refer to strengthening the wholesome mental qualities that prevent problems beforehand. 'Cultures of peace' are created by developing positive virtues oneself that affect all parts of the interconnected web of relations. Developing such cultures of peace or restorative milieu may have tremendous effects concerning reduced crime rates and encouraging greater social cohesion and thus, for the achievement of the MDGs.

The 'patterns of thinking' (cf. Van Ness, Strong 2010:4) underlying restorative justice may serve as a useful basis for establishing mechanisms of conflict dealing and peacebuilding resonating with the Buddhist core idea of reaching peace only through peaceful means. Restorative justice aims to 'give the conflict back to the society' and thereby strengthen the capabilities of the community to manage conflicts. Then, less cost-intensive state interventions are nweeded and a stronger sense of collective responsibility in conflict dealing

may arise within the community. Restorative justice might not be 'the solution' for all the problems in criminal justice matters, but rather an instrument to contribute to more effectively and sustainably dealing with crimes. This constitutes a major relevant aspect for the MDGs and especially concerns the achievements of the goals of reducing poverty and hunger, improve health and combat diseases, and ensuring environmental sustainability. Buddhist teachings provide a valuable source of inspiration for restorative justice and thus, can support the improvement of structural frameworks of crime resolution and thereby contribute to the achievement of the MDGs.

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