

Restorative Justice and the Dharma

(adapted from an essay by Ben Fong)

“The history of punishment is in some respects like the history of war; it seems to accompany the human condition almost universally, to enjoy periods of glorification, to be commonly regarded as justified in many instances, and yet to run counter to our ultimate vision of what human society should be.”

- Deirdre Golash, “Punishment”¹

The above quote is the same one that opens David Loy’s article “Healing Justice: A Buddhist Perspective,” from a wonderful collection of essays called “The Spiritual Roots of Restorative Justice.” Deirdre Golash poignantly sums up the viewpoint of most restorative justice advocates in one sentence. The decision to treat someone as a fellow human being not so different from oneself rather than as a wrong-doer (or thinker) underlies some of the strength of restorative justice and part of its connection to the Dharma. Retributive justice, the main theory of punishment practiced in the West, thrives on the innocence/guilt distinction. As Howard Zehr points out, “guilt says something about the quality of the person who did this and has a ‘sticky,’ indelible quality.”² Guilt, in this sense, is similar to what Australia National University Professor John Braithwaite would call “stigmatization,” or “a kind of shaming that creates outcasts; it is disrespectful, humiliating.”³ The restorative justice conference aims to eliminate stigmatization. Instead of addressing the wrong-doer, these conferences seek to right the wrong through a dialogue among victim, offender and others close to the two. Thus, instead of treating offenders as a wrong “other,” restorative justice “has to do fundamentally with the task of helping people to become responsible members of the moral community.”⁴ This has everything to do with the Buddhist outlook. To quote Professor Loy at length:

“The Buddhist emphasis on the transience of everything means there is nothing indelible about our unwholesome mental tendencies; deep-rooted ones may be difficult to eradicate, but that is because they are an engrained result of past habits, not an ‘essential’ part of us.”⁵

The Dharma “understands the self to be a composite of unwholesome and wholesome tendencies.”⁶ Instead of treating criminal offenders as themselves unwholesome, as the retributive system often does, it could be said that the restorative model is geared towards eliminating unwholesome sankharas, or “mental formations,” while fostering wholesome ones. The intention of restorative justice is, thus, directly in line with the Buddhist view of human nature.

Restorative justice’s second attractive feature for Buddhists is its pragmatic understanding that “what is just cannot be abstracted from the particular situation of the offender.”⁷ Dr. Cornel West often speaks of the “jazz disposition,” which he describes as “a mode of being in the world, an improvisational mode of protean, fluid and flexible dispositions toward reality suspicious of ‘either/or viewpoints.’”⁸ I believe the adaptability and fluidity of the jazz disposition that Professor West speaks of is the disposition of one who takes to heart the causal fluidity of Buddhist metaphysics. The philosophy of dependent co-origination asks us, in essence, to abandon rigid systems of thought, systems of practice, and in this case, systems of punishment. No grand system of punishment will adequately serve to promote justice in every case. Retributive justice leaves the matter of punishment to the highly impersonal system of the courts, and it is one reason our court system is flawed. Restorative justice, on the other hand, sets up a forum where justice is dealt with in a more personal and flexible manner, dealing with people and circumstances rather than cases and general abstractions. The sharing of emotions and feelings, as well as an offender’s family, social, economic or even racial background, can all serve to help heal conflicts in ways that the court system, by its very structure, cannot. David Loy asks the key question at the end of his essay: do we want a caring community or a rigid bureaucracy?⁹

Not only does the reintegrative conference deal with offenders in a highly personal manner, but it also allows participants to voice broader concerns about justice and punishment in a democratic arena. The Cakkavatti-sihanada Sutta tells the story of a king who realizes that “crime, violence and immorality cannot be separated from broader questions about the justice or injustice of the social order.”¹⁰ For better or worse, our current court system is an administrator of laws decided upon to be just, not a place where the justness of those laws can be discussed. Restorative justice aims to both decide what is just and administer justice in a case by case fashion. Those most affected by a conference’s decisions make the decisions. Thus, it is clear that the theoretical basis for restorative justice is much truer to democratic ideals than that of retributive justice. One might simply say it is more caring.

Lastly, implicit to the theory of restorative justice is something that is rarely made explicit, and yet is the touchstone of its validity: it asks us, the general public, to be better people. “The moral Buddhist care[s] more for the welfare of others than for his or her own welfare.”¹¹ This is easy to say, and difficult to do, especially when the other is a criminal offender. It is undeniable that something attractive lies in the retributivist’s desire for “just desserts,” that offenders get what’s coming to them. Nonetheless, it is clear that if we wish to walk a higher moral path, we can’t make a distinction “between an offender and the rest of us.”¹² We must all reach for the will to forgive and the desire for reconciliation in our hearts if restorative justice is to take flight.

Notes:

1. Deirdre Golash, “Punishment”, 11-12.
2. Howard Zehr, Changing Lenses, 69.
3. John Braithwaite, “Restorative Justice and a Better Future”, 3.
4. Conrad Brunk, “Restorative Justice and the Philosophical Theories of Criminal Punishment”, 48.
5. David Loy, “Healing Justice: A Buddhist Perspective”, 88.
6. *Ibid.*, 89.
7. *Ibid.*, 84.
8. Cornel West, Race Matters.
9. Loy, “Healing Justice”, 95.
10. *Ibid.*, 85.
11. *Ibid.*, 91.
12. *Ibid.*, 87.