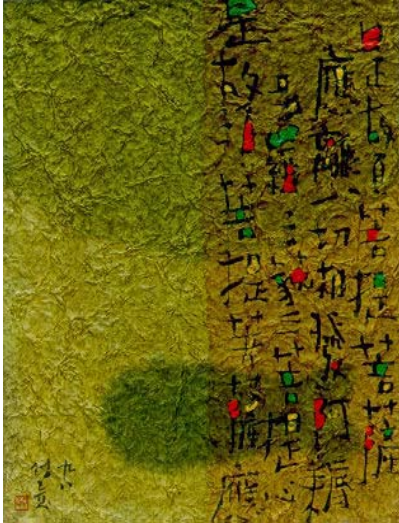


Research Article

Journal of Global Buddhism 10 (2009): 321 - 349



Toward A Buddhist Theory of Justice

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Article

Toward A Buddhist Theory of Justice

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Abstract

For more than twenty years key thinkers of Engaged Buddhism have used terms like “justice” and “social justice” quite freely. Yet despite more sophisticated discussions of other philosophical topics, Engaged Buddhists have not clearly defined what they mean by the term *justice*. Given that the term is one with a rich philosophical history in the West and has no direct parallel in Buddhist thought, it is incumbent upon Engaged Buddhist theorists to define what they mean when they use this term if they are to engage in any sort of meaningful dialog on justice and related issues in the international community. In this paper, to illustrate how Engaged Buddhists might begin this important line of work, I would focus on two cases. First, I will discuss John Rawls' theory of "justice as fairness" and compare that with some traditional Buddhist ideas and explore potential Buddhist thinking, responses, and adaptations. Second, I will discuss a relatively new model known as restorative justice in opposition to the pervasive use of retributive models implemented around the globe and consider the ways that Buddhism seems to lend itself quite well to "restorative" models, particularly with regard to criminal justice. Both examples

are merely beginning points for discussion used to illustrate how and why Engaged Buddhists ought to participate more directly in global philosophical discourse on justice.

Introduction

Theoretical developments in the Engaged Buddhist movement and scholarly analysis of these have advanced substantially in the past ten years. Sophisticated treatments of issues such as non-violence, rights, and responsibilities have helped to shape increasingly important developments in this area of Buddhist thought (for example, King, 2005). For more than twenty years key thinkers in the movement have used terms like “justice” and “social justice” quite freely.⁽¹⁾ Yet despite more sophisticated discussions of other philosophical topics ⁽²⁾, Engaged Buddhist thinkers have thus far not clearly defined what they mean by the term *justice*. Given that the term is one with a rich philosophical history in the West and has no direct parallel in Buddhist thought, it is incumbent upon Engaged Buddhist theorists to precisely define what they mean when they use this term if they are to contribute to, or engage in any sort of meaningful dialog on justice and related issues in the international community or on the world stage. ⁽³⁾ Obviously the topics of *justice* and *social justice* are enormous and ones that can only begin to be discussed in this paper. Thus, my primary purpose here is simply to highlight the need for further discussion among Engaged Buddhists on this critical philosophical topic that lies at the foundation of socially engaged Buddhism.

Rather than attempt to sketch a history of Western philosophical treatments of justice, a project outside the scope of this paper, I will take just two examples for exploration to illustrate how Engaged Buddhists might begin this important work. First, I would like to discuss some of the ideas of one of the most prominent twentieth century American thinkers on justice, John Rawls, and suggest potential preliminary Buddhist reflections on those ideas. The specific aspect of Rawls' thought that I will highlight concerns perspectives on distributive justice – the way to determine just means for distributing the goods deemed valuable by society and/or

individuals in society. (4) The second dimension of justice theory I will discuss as an example concerns the form of justice employed by society or the state in response to criminal activity. Here I will bracket issues concerning legal systems, and focus on current conversations by those advocating a relatively new model known as restorative justice in opposition to the pervasive use of retributive models implemented around the globe.

These entire discussions are not intended to draw conclusions about a Buddhist theory of justice here, but are meant to help begin the process of Buddhists entering the larger philosophical dialog on justice – one that I think is critical for Buddhists in their own internal thinking process on these issues. It is also one that I believe Buddhists will have much of value to contribute to in the larger global philosophical conversations in the future. Given the rich heritage of thought on justice in the West tracing back to Plato and Aristotle and running throughout Judeo-Christian theological and philosophical discussions, this is really meant to be a first step in opening dialog and an opportunity for Engaged Buddhist theorists to begin to consider these issues in a more sophisticated way.

I will begin this paper by reflecting a bit on the method one leading Engaged Buddhist thinker has taken thus far and offer some comments on that. I highlight Sulak Sivaraksa because he has probably been the most explicit, but I think his method is reflective of that of many major engaged Buddhist thinkers today. After some brief comments on methodology, I will proceed to the two examples mentioned above from Western philosophical discourse on justice for consideration. First, I will briefly outline the highlights of Rawls' notions of "justice as fairness," and his method for achieving this fairness in the construction of society, from behind what he calls the "veil of ignorance." I will use this as a stepping off point to compare his ideas with the Buddhist principle of "equanimity" to see what sort of parallels may be found, what of utility may be construed in this comparative work, and begin to consider if Rawls' ideas on the topic might be a fruitful starting point for constructing a Buddhist theory of distributive justice. I will then proceed to our second example, the question of retributive vs

restorative justice, and offer some reflections on potential Buddhist responses and contributions to issues that arise in such discussions on just response to criminal activity. Finally, I will offer some concluding remarks.

Buddhist Resources: Where to Start?

Though Buddhism has not formally discussed justice in the way that it has been discussed in Western philosophical traditions, that is not to say that ideas and principals are not present and that there is not much to draw from in Buddhist literature, ethical discussions, Buddhist descriptions about the nature of reality and its ways of functioning, as well as our ways of knowing (that is, Buddhist epistemology or *pramaa.navaada* thought). Much is explicit; other dimensions can be abstracted in fruitful ways.

In his book, *Seeds of Peace: A Buddhist Vision for Renewing Society*, leading Engaged Buddhist thinker and activist, Sulak Sivaraksa, proposes a number of innovative ways Buddhists can think about and act upon systemic problems that plague our contemporary societies and situations. He is an intellectual hero for many Engaged Buddhists, and his life's work is an embodiment of the Engaged Buddhist ideals he espouses. Much of his theoretical work revolves around the question of how we are to build a just society, one that for him, by definition, embodies the basic principles of Buddhism. What does a society that embodies, or at least engenders, pursuit of Buddhism's highest ideals look like? And how are we to go about attempting to create such a society, or at least move in that general direction? His method is to begin by going to traditional literature as our primary source of wisdom on such topics. (5) Sivaraksa writes:

To create a Buddhist model of society, we must first look into traditional Buddhist notions of social order and social justice. It is worthwhile to begin by examining the Buddhist scriptures. (6)

I think this method of turning to ancient Buddhist texts and scriptures has important virtues. Buddhist canonized literature and the wisdom it contains can and ought to be a rich resource for this project. (7) That said, our reading of those traditional sources can be fruitfully complimented by two methodological considerations that may not have been fully utilized: a rigorous historical contextualization of the sources, and a sophisticated understanding of broader discussions about justice from outside of Buddhist traditions so as to see how Buddhist ideas might fit or shape those found in extra-traditional (that is, Western) sources. Historicism deepens our understanding of meaning in context such that the ideas can be more fruitfully translated into current situations. A broad and sophisticated understanding of ideas about justice, including those outside of the Buddhist tradition opens the possibility of gathering new insights and new avenues for framing traditional Buddhist ideas that may not otherwise occur to thinkers within the tradition. It also makes a reciprocal global conversation about justice much more viable. Though the first methodological consideration is critical, in the interest of space, and because this has been discussed exhaustively elsewhere, my focus in this paper will be on the second of the methodological considerations, explorations of the long philosophical discourse stemming from outside of the Buddhist traditions.

Considering Theories of Justice: Two Examples

1) Rawls on Justice as Fairness: The Veil of Ignorance

With this in mind, I would now like to turn to discuss John Rawls' notion of justice as fairness. John Rawls was one of the most important political philosophers of the twentieth century. He is perhaps most famous for his theoretical strategies for setting up a just society and the distribution of goods in society (in other words, "distributive justice"). (8) The concern for constructing a just society is one that Rawls shares with Sulak Sivaraksa and many other Engaged Buddhist thinkers, though as far as I know, he has no Buddhist background. Perhaps Buddhists can profit from considering the thinking of such a leading figure, or others like him,

who have inherited a tradition of philosophical analysis on justice that spans more than two thousand years. Rawls is interested in the guiding principals that one could use to construct a just society. What are these principles that can be used to construct a just society? Rawls begins to describe them as follows:

They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.

The principles so derived would then guide all further agreements in the construction of society. This process of deriving and utilizing principles of justice are referred to by his famous phrase, "justice as fairness".

The question soon arises as to what it means to establish principles of justice from "an initial position of equality". Rawls proposes a hypothetical situation to do this where the free and rational persons constructing fair principles of justice would do so behind a "veil of ignorance". In other words, if one wants to determine the principles of justice for constructing a just society under Rawls' notion of "justice as fairness," then those involved in determining these principles must reflect and contribute to notions of what is fair and just from behind a veil of ignorance. Rawls describes this veil of ignorance as follows in his *A Theory of Justice*:

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstance (Rawls, 1971 and 1999: 10).

In other words, what kind of basic principles for constructing society would I advocate if I did not know whether I would personally be an African-American male, or born into extreme poverty, or a CEO of a multi-national corporation, or of extraordinary intelligence, or physically handicapped, or lesbian, or Buddhist, or Christian, or non-religious, etc.? If I stood behind a veil of ignorance with regard to my own personal position in the kind of society I would create, it is from this basis, that we can begin to discover the basic fair principles upon which to construct a just society according to Rawls. Thus, Rawls' notion of justice as fairness emerges from behind a "veil of ignorance," with the stated goal of creating, "rules [that] specify a system of cooperation designed to advance the good of those taking part in it" (Rawls, 1971 and 1999: 4).

Obviously there is much more to say about Rawls' ideas, but I believe this is a good starting point for some Buddhist reflection on justice. Many Engaged Buddhists take as one of their basic premises that the construction of a just society and/or work towards the transformation/reconstruction of our current situation is and always has been an indelible part of the Buddhist project. (9) To quote Sulak Sivaraksa again,

To suggest that Buddhism has been unconcerned with the organization of society is to ignore history. Traditionally Buddhism has seen personal salvation and social justice as interlocking components (Sivaraksa, 1992: 67).

And Robert Thurman, among the first important American Engaged Buddhist thinkers wrote,

The primary Buddhist position on social action is one of total activism, an unswerving commitment to complete self-transformation and complete world-transformation... [I]t is squarely in the center of all Buddhist traditions to bring basic principles to bear on actual contemporary problems to develop ethical, even political, guidelines for action (Thurman, 1985: 120).

But how does one determine the contents of a just society? It seems that Buddhists are going to want to construct a model for a society that embodies, engenders, and nurtures its most important ideals – ideals such as compassion, wisdom, mindfulness, patience, tolerance, and to as great a degree as possible – freedom from suffering, among others. These are the sorts of things that Buddhists might claim "advance the good," to borrow Rawlsian language. An ideal Buddhist society it seems would be one that encourages spiritual development and moral courage, broadly construed. That does not mean everybody being Buddhist, but perhaps everybody being encouraged to achieve their highest potential, with complete and utter freedom of religion or lack thereof. This is the sort of description we find in Engaged Buddhist writings on an ideal society for which to strive. (10)

We see a great deal of application of these sorts of ideas, but not as much serious work on the theoretical ground of such ideas and the actions that ensue. This has the potential to lead to dangerous consequences where the door of activities happening in the name of Buddhism is thrown wide open. Other than appeals to textual authority, there has not been a solid philosophical grounding to these ideas presented. Much can be extrapolated from words attributed to the Buddha in canonical sources, either directly, or with a little molding, but even the Buddha said that we should examine and question all his words and not just accept them on faith because they were spoken by the Buddha. All the more so when ideas are being molded to suit a new context. Dignaaga and Dharmakiirti, the two most important Indian Buddhist thinkers on logic and epistemology argue that scripture alone, while providing a basis for faith and inspiration for practitioners, is not necessarily a source of valid knowledge (*pramaana*), though they would argue that at times it could be considered equivalent to a logical inference (*anumaana*), which is a form of valid knowledge. My point here is that according to tradition, its ideas must be grounded in or supported by reasoning.

So the question again arises: how do Buddhists determine the contents of a just society? If the principles Engaged Buddhists

want to use to construct a just society are valid, they must be able to stand the test of rational analysis or be defensible by reasoning according to the Buddha and to Dignaaga and Dharmakiirti. This seems to be what Rawls is attempting to do in some respects. He wants to construct a just society on rationally grounded principles that are fair and in the best interest of individuals and society broadly construed - that they "advance the good of those taking part in it." (Rawls, 1971 and 1999, 4). His method for discerning those principles - utilizing the "veil of ignorance" with free and rational people at the helm - seems to me to be an attempt by Rawls to construct a society on the basis of a defensible rational standard. And this method might be one with appeal to Buddhists in a modified form.

I think that we can construe some conceptual parallels in the ideas behind Rawls' method for discovering the fair principles of a just society and the Buddhist notion of *equanimity*, though admittedly they emerge out of quite different contexts. For Rawls, the method of getting at those principles is via free and rational people considering the construction of society from behind a veil of ignorance with regard to their particular positions in that society. The fairness that emerges is ideally one of maximum benefit to the group without either sacrificing consideration of the particular situation of any individual or privileging any individual over another. This "fairness," to use Rawls' term, is maintained by one not knowing their own particular position in society during the construction period, thus guaranteeing that the principles are constructed in a context free of bias.

The Buddhist ideal of equanimity is found throughout the tradition's literature. In the Pali canon there are extensive discussions of equanimity as one of the four divine abodes (*brahavihaaras*) where the meditator trains in viewing and treating friends, neutral persons, and enemies the same. (11) The aim behind this practice is to generate an attitude of loving-kindness extended impartially to all living beings - to avoid favoritism or disregard for anybody. A profound compassion develops through this contemplation of the circumstances of loved ones, neutral people, and enemies. By

seeing how they are all similar in their suffering and that the basis of their actions – even those we see as harming us - is largely ignorance (*avijjā, avidyā*) and afflictive emotions (*kleśa*), the result is a recognition that everybody would certainly want to be rid of such obscurations that cause so much suffering if they knew the way to do it. Thus, though the details may vary, the fundamental dilemma we face and the causes behind it are quite similar. The impartiality that is the ground of this principle of equanimity seems to have many parallels with the notion of fairness developed in Rawls' theory of justice. It aims to ethically engage without personal bias.

In the Mahayana literature, discussions of equanimity are equally pervasive, particularly in relation to generating the Mahayana motivation of *bodhicitta*, the altruistic wish to achieve enlightenment in order to benefit others. (12) This Mahayana aspiration is founded in part upon equanimity, the utterly impartial mind that refrains from any bias towards or discrimination between persons with regard to compassion for their situation and the wish to personally be of maximum benefit to them, which in Buddhism of course means benefit on the path to enlightenment. The eighth century Indian master Kamalaśīla, for example, discusses the cultivation of compassion in light of cultivating equanimity in the fourth chapter of his [*Middle*] *Stages of Meditation* (*Bhāvanākrama, bsGom pa'i rim bar pa*):

First I will explain the stages of meditation on compassion. Begin with meditation on equanimity. Cultivate impartiality for all sentient beings by clearing away attachment and hatred. All sentient beings want happiness and do not want suffering. Consider how they have all been my close friend hundreds of times since beginningless *samsara*. Since there is no basis for attachment to some and hatred for others, develop equanimity for all sentient beings. Meditation on equanimity begins with contemplation of a neutral person; then also contemplate those who are friends and enemies. (13)

The fairness which seeks to advance the good for all members of society striven for *via* Rawls' veil of ignorance and the unbiased concern for others that the Buddhist notion of equanimity embodies as it may be applied in a socio-political context both have similar goals. They both aim towards achieving maximum benefit to individuals in the world while simultaneously keeping the big picture of either society as a whole or the well-being of all sentient beings under consideration.

With that said, there are differences. Rawls' primary aim in advocating for justice as fairness is not soteriological at its basis, whereas the Buddhist notion of equanimity does encompass that salvific goal at its foundation. Rawls seems to want to get at the secular principles upon which one can construct a just society. The principles themselves may or may not include soteriological goals, though presumably they would be supportive of them if there were members of society with such motivations. The Buddhist notion of equanimity seems to start with the soteriological goal and secondarily may find secular applications that are also virtuous. It seems to me that the two start with different presumptions. Rawls wants to begin on secular ground but not neglect the spiritual aspirations of certain members of society. A Buddhist application of equanimity to issues of the creation of a just society would seem to begin on religious grounds, but in social-political application would not want to neglect the more secular needs and aspirations of both non-religious and religious members of society or the particular aspirations of those of other faiths.

Does Rawls' method here resonate with an adoption of the Buddhist idea of equanimity as a principal ground for a Buddhist construction of a just society? Can a Buddhist fruitfully adapt Rawls' method so that it would be inclusive of the kinds of ideas and principles that would be of central importance to Buddhists? Can Rawls' "veil of ignorance" be "Buddha-ized"? If so, in what ways would Buddhists want to use Rawls as a starting point? What sort of changes would we want to make? Is there something contra-Buddhist if the guiding principle for Rawls' method is self-interest, even if the end goal is to use self interest to facilitate the

interest of all? If self-interest is utilized merely as a tool for coming to conclusions that serve the wellbeing of others, is there still a fundamental flaw? When combined with the veil of ignorance, isn't it just a skillful way of approaching the construction of societal rules with equanimity for the bearing they may have on all members of society? Might this be a particularly skillful way for unenlightened people to go about this project?

If a Buddhist were to want to come up with an adaptation that would appeal broadly to both Buddhists and non-Buddhists, then we need to think things through very carefully. For example, I think Buddhists would want to ground the Rawls' "free and rational" persons who act behind a veil of ignorance in some virtuous predispositions or considerations. Rawls seems to have confidence in an inherent tendency among such persons to engage in such a way simply by virtue of their intelligence, rationality, and freedom. I think a Buddhist may want to be more explicit. Rawls' model tends to rely on the enlightened self-interest of those behind the veil. I would imagine that a Buddhist theory of justice would want to ensure a profound and pervasive compassionate attitude as the ground upon which a just society would be built. Enlightened self-interest would be nice, but a Buddhist might have reason to doubt that actual enlightened application, even given the parameters Rawls has set up, would follow suit. Thus, perhaps in addition to being free and rational, that those behind the veil might supplement or replace the enlightened self-interest implicit in Rawls' account with explicit imperative to consider the role compassion for the suffering of individuals might play at every turn in constructing or adjudicating just principles. Rawls may consider this to be implicit, but making it explicit could be important for Buddhists. The parameters of such an imperative would need to be thoroughly considered. If there is one virtue that guides Buddhist ethics more than any other, it would be compassion for the suffering of living beings. Any Buddhist vision for a just society must both be guided by compassion in its formation and nurture its further cultivation in its application. Thus, perhaps one modification of Rawls' theory for Buddhists might be that those free and rational beings be

explicitly required to consider compassionately the potential suffering in various scenarios in working from behind the veil of ignorance so as to explicitly consider ways that social structures do or do not contribute to such suffering. This is just one consideration among many. My purpose here is not to solve the problem, but to raise some questions with this example.

2) Retributive vs. Restorative Justice: A Buddhist Perspective

I would like to take a brief look at a second example and second dimension to philosophical discourse on justice, that of criminal justice. How might or ought a Buddhist or Buddhist society deal with crime? What might Buddhism stand to gain from participation in a larger global discourse on responses to criminal activity? And what might Buddhism have to offer to a broader global discourse on the topic? Generally speaking, the approach of most nations today toward crime is to attempt to control it, largely through dispensing punitive measures against those who violate the state's laws. This is seen as fulfilling a dual purpose: deterring future crime and enacting justice on the perpetrator of the crime already committed. In the case of prison-time as punishment, it may additionally be considered beneficial in that it takes a potentially dangerous individual out of circulation from society, thus making the society safer. This mode of justice in its varying forms is what is known in philosophical discourse as retributive justice; it enacts retribution on criminals for crimes committed. Retribution, whether that be the death penalty for murder, or extensive jail time for stealing or other crimes, is viewed as enacting justice on the criminal. They get what they deserve. Without extreme forms of punishment, its effectiveness with regard to deterrence is highly questionable. I believe that the ethics of this sort of punitive or retributive approach to justice would, in most cases, be equally questionable from a Buddhist perspective. I will discuss this shortly below.

An emerging response to retributivist forms of justice, both in philosophical circles and actual implementation in select cases, is a growing movement with nuanced variations that is referred to with the over-arching label of "restorative justice". I think that a

Buddhist approach might resonate well with many of the ideas and approaches circulating in restorative justice discourse and that Buddhists might have important contributions to make to this discourse as well. Restorative justice aims to restore well-being and heal the wounds inflicted by the crime through a variety of means. Rather than view offenders and victims as adversaries in criminal proceedings, open communication that sees them as partners in a healing process tends to be a much more effective perspective according to advocates for restorative justice. One of the prime examples often cited for this process was the use of the Truth and Reconciliation Commission in South Africa in the wake of Apartheid which gave voice and ultimately greater comfort and healing to both victims and perpetrators. Dullah Omar, former South African Minister of Justice explained that the commission was a "necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation." (14) There are a variety of shapes and forms restorative justice might take in varied circumstances. No advocate of restorative justice views it as a one-size-fits-all solution. While prison may be a dimension to it in some cases for example, advocates of restorative justice would want to see a wholesale prison reform in most circumstances. Prison would become a place that not only protects society from dangerous individuals, but would also be a place where the incarcerated are given the opportunity and encouraged to use the time for a healing and transformative process. It would be seen as an opportunity rather than punishment. Working out the details of the shapes this might take would be a major project, but the end result would be a facility that fosters positive rather than the sort of negative transformation of inmates, as is so often the case in prisons around the world today.

Before proceeding further in discussion of restorative justice from a Buddhist perspective, I would like to briefly summarize the plot of one particular *sutta*, the *Angulimaala Sutta*, from which I believe much can be gleaned regarding Buddhist perspectives on some of these issues. The *sutta* recounts the story of the encounter between the Buddha and Angulimaala, a serial killer who had been

terrorizing the local countryside in the state of Kosala by going on a murderous rampage, earning his name (Angulimaala, Finger-Garland) by wearing a garland around his neck made of the fingers of his victims.

One morning, as the Buddha went on his alms round, despite repeated warnings about Angulimaala's presence in the area, he encountered him on the road. The Buddha kept walking as Angulimaala ran after him, intending to kill him. The Buddha continued to walk calmly as he was chased, but due to his supernatural powers, no matter how fast Angulimaala chased after him, he could not catch up. Finally, Angulimaala shouted at the Buddha to, "Stop," to which the Buddha replied, "I have stopped, Angulimaala, you stop too." A confused Angulimaala goes on to question the Buddha's statement to which he replies, "Angulimaala, I have stopped forever, I abstain from violence toward living beings; but you have no restraint towards things that live: That is why I have stopped and you have not." (Nanamoli, Bhikkhu and Bhikkhu Bodhi [Trans.], 1995: 771). Upon hearing this, Angulimaala was immediately struck by the Buddha's wisdom and became his disciple, requesting and receiving ordination as a *bhikkhu* at once.

Upon hearing that Angulimaala was with the Buddha in Jeta's Grove, King Pasenadi led a cavalry of 500 men to go arrest Angulimaala. When the king arrived, he had an audience with the Buddha and respectfully asked about the whereabouts of Angulimaala. The Buddha asked the king what he would do if Angulimaala were transformed and now leading the life of a virtuous *bhikkhu* of good character. The king replied that he would honor and pay homage to him in an assortment of ways. The Buddha then pointed out the transformed Angulimaala, former serial killer, to the king who was amazed. The king, indeed, paid homage to Angulimaala. It was not long after that, that upon further teachings from the Buddha that Angulimaala achieved arhatship.

The following morning, when on his alms-collecting rounds, Angulimaala was attacked by townspeople who, knowing of his previous deeds as the killer of their kinsmen, threw various objects

at him, drawing blood and breaking his begging bowl. When he discussed this with the Buddha, the Buddha told him to bear it, for he was experiencing the results of previous karmic deeds. The *sutta* closes with a verse recitation by Angulimaala rejoicing in his transformation due to following the teachings of the Buddha.

Given my very cursory remarks about restorative justice, some basics of Buddhist philosophy, and in light of some insights we might glean from the *Angulimaala Sutta*, I would like to make some very preliminary comments about Buddhism and restorative justice. First, until we are all enlightened, there will probably be a need for laws. How ought a Buddhist or Buddhist society deal with crime, with the violation of laws? Most nations, modern and ancient have utilized some form of retributive justice – to exact some form of retribution on the violator of the laws. Some have argued that it is just in and of itself for people to be punished for violation of laws agreed upon by the community. Others have argued it serves as a deterrent. I don't think either of these are particularly "Buddhist" ways of thinking or compelling arguments from a Buddhist perspective. Punitive justice entails exacting harm on criminals. Causing unnecessary harm for anybody, even a criminal, seems to me to run utterly contrary to the most fundamental ideas of Buddhism. After all, did the Buddha not leave the palace in search for a cure for suffering? Are Buddhists not charged with having compassion for all living beings, even the worst among them? It is common at the ceremony for taking refuge in the Three Jewels that new Buddhists are urged to do their best to avoid causing harm or suffering to all living beings. It is hard to imagine the Buddha advocating the overt execution of suffering on individuals out of revenge or spite, or in the name of some notion of justice. Even the utilitarian argument that claims that punishment as deterrence to greater and more future crimes and suffering seems to have logical holes if one were to presume some Buddhist philosophical basics, like the notion of dependent-arising. Nothing arises without dependence on related causes and conditions. Effects have a direct relation to causes. Just as it is counter-intuitive on a large scale to bring lasting peace through war and violent means, so too is it

counter-intuitive, from a Buddhist perspective, to think that threats of extreme punishment will undermine the root causes of law-breaking in society. There may be relative or short-term success, but since the root causes will not be destroyed, it would be deluded to think that deterrence would actually be successful at eradicating crime on a large scale. And given the millennia-long experiment with this method and the lack of decline in crime, this Buddhist analysis seems to be proven correct. Rather than retributive or punitive justice, I think the Buddha would probably advocate a form of this new model of justice known as restorative justice in this respect and I think this can, in part, be gleaned from the *Angulimaala Sutta*.

It does not seem that the Buddha, or the tradition as it represents itself in the *Angulimaala Sutta*, advocates a retributive or punitive form of justice. King Pasenadi does not see any reason to exact punishment upon Angulimaala for revenge, retribution, to create a deterrent to future crime, or for any other reason. This is due to Angulimaala's transformation into a virtuous and sincere *bhikkhu* who was fully reformed and posed no threat to society. Given Angulimaala's present virtuous state as a contributing member of society, to exact punishment would not only be unnecessary; but also be an immoral cause of suffering. Buddhism is first and foremost concerned with alleviating suffering and eradicating the roots of suffering. I think that a Buddhist take on the issue of societal responses to crime would be to advocate for some restorative model that would aim to both create a resolution and peace between the criminal and victim, and would aim to heal the root cause of the crime and the damage inflicted in its wake. In a sense, Buddhism would ideally like to see criminals transformed, as Angulimaala was. This further dimension of reformation is perhaps an area where Buddhists could both learn from those with more experience in restorative models and offer unique contributions as well. (15)

Karma is, of course, a dimension to any Buddhist theorizing on justice that needs to be considered. Doesn't karma, although meant to be a descriptive doctrine aimed at explaining the effect of

intentions and actions of body, speech, and mind on our future experiences and states of consciousness, also describe the negative consequences of unethical behavior from a Buddhist perspective? One might ask if there is any need for state imposed punishment at all if one holds the idea of karma. Isn't karma *the* Buddhist theory of justice? Teachings on karma have been used successfully and probably ought to continue to be used as a motivator and teaching device on ethical behavior. Its philosophical function is to explain the causal relationship between our intentional actions and our consciousness and its future experiences rather than specifically to denote a form of reward and punishment. Technically it is not at all about reward and punishment whether under the control of a third party god, or not. It is simply an explanation of one dimension of causality from a Buddhist perspective. If karma were taken to be the beginning and end of discussion of a Buddhist theory of justice, that karma takes care of everything with regard to justice, then the Buddhist position would be a quite fatalist or determinist doctrine. It would undermine attempts to create a society that is better for the welfare of all (as is the engaged Buddhists' overarching project) because karma would be the sole factor determining outcomes. Perhaps more importantly, it might even suggest that efforts towards one's own transformation and efforts to become enlightened would be pointless. If future experience is entirely determined by past karma, it would undermine any real agency, which in turn would undermine karma doctrine itself. I think this reflects a partial understanding of karma that misses the key component of agency that really is at the heart of karma theory in the first place.

Though there are teachings on the purification of karma (for example, Tsongkhapa's *Byang chub lam rim chen mo* [*The Great Treatise on the Stage of the Path to Enlightenment*]), generally speaking it is taught in texts like Vasubandhu's *Abhidharmakośa* (Treasury of Knowledge, Chapter 4) that individuals will infallibly experience the fruits of their karmic acts at some future point. We see this illustrated in the *Angulimaala Sutta* when, even after achieving arhatship, Angulimaala is stoned by the townspeople and the Buddha tells him to bear it, for it is the fruit of his previous

negative karma. But such a display of "justice" made manifest is not, from the Buddhist perspective, reason not to engage in what contemporary writers might refer to as restorative models of justice. Angulimaala still strove for spiritual restoration, despite the inevitability of his karma. His restraint at this point was essentially an act of restorative work in that he was, in affect, hearing the grievances of those who suffered in the wake of his crime, an acknowledgement of his wrong doing, an expression of regret, and an apology. A Buddhist might still aim to establish a system to help to reform and heal the criminal as well as the victims out of compassion for the suffering of all. Though it may not have been called for in Angulimaala's case due to his rather remarkably rapid transformation, that is not to say that prison, appropriately conceived and implemented, might not be necessary for yet-to-be-reformed criminals. (16) Fundamental to a Buddhist approach to crime must be a recognition of an individual's capacity to transform (as Angulimaala did). I would think that the (Buddhist influenced [17]) state would want to want to encourage some sort of transformation through the implementation of various programs, etc. "Punishment" ought to include measures that engender such transformation. This Buddhist-type thinking is all in line with restorative justice thinking as well.

It seems to me that to seek punitive retribution for a crime committed is an intention and act grounded in anger, one of the three poisons (greed, anger, and ignorance) that keep individuals rooted in the sufferings of *samsara* according to Buddhism. This is not to say that Buddhists might not advocate for a form of imprisonment for some crimes for the dual purpose of the safety of society and a period of reformation/restoration/transformation of the prisoner. But contrary to most prison systems today that are so horrendous that criminals usually come out worse than when they went in, I believe a Buddhist model would emphasize healing the root causes behind the crime, some of which are related to material conditions in the world, but more importantly for this aspect of our discussion, are related to the mental and psychological states (or one might say, 'karmic predispositions') of the criminal. David Loy pointed out

quite insightfully that,

The Buddhist approach to punishment, like any other approach, cannot really be separated from its understanding of human psychology and its vision of human possibility (Loy, 2001: 81).

For the Buddhist, there is both a faith in the possibility of transformation and a responsibility to work towards it. I think this sentiment can be applied on secular grounds as well. In most countries this would probably take the shape of some sort of serious prison reform where the focus would be on the psychological rejuvenation of the criminal and the creation of a process for healing any antipathy between the criminal and the victim. The particular details of what such a system would look like in application are beyond the scope of this article.

When I speak about potential Buddhist approaches to criminal justice, I am speaking to a large degree in the abstract. I am not speaking about the ways specific Buddhist countries or countries where the vast majority of the populations are Buddhist ought to implement specifics, but more theoretically about the kind of ideals a Buddhist, group of Buddhists, or Buddhist society might strive to achieve. Restorative justice encompasses a variety of ideas, perspectives, and methods (see Johnstone, 2003). As a general designator for an over-arching approach to criminal justice, I think quite a bit resonates with the type of approach Buddhists might want to take. The details of the shape it might one day take are the subject of lengthy and serious future considerations. I imagine that even within Buddhism or a Buddhist approach to these questions, the answers might take a variety of forms and context-specific adaptations depending on cultures, individuals, historical contexts, etc.

Concluding Remarks

Obviously these reflections here are merely preliminary. My aim is not so much to draw conclusions, as to open discussion. The primary point that I would like to make is not that Buddhists ought to

adopt a modification of Rawls' theory or that we identify ourselves as advocates of restorative justice (though I do think there are good arguments for the latter). I do not think that Buddhists necessarily need to fit their ideas into the structure – however modified – of philosophical positions alien to the tradition. Rather, my primary point, with the illustrations above, is that if we are going to engage in justice discourse at all, we ought to do it well. For when we use the term "justice," to some degree we already are attempting to fit into a philosophical category not entirely indigenous to Buddhism. Buddhists eager to take part in international dialog on social change, ought to begin a serious consideration of these sorts of philosophical topics, and we ought to equip ourselves to more fully engage in a global discourse on these philosophical and practical issues. It works to the benefit of the Buddhist tradition, moving forward as a global religion in the twenty-first century. When we isolate ourselves from a larger conversation, we deprive both ourselves and our potential conversation partners. (18)

When Buddhists use technical terms from traditions of thought other than their own without clarity of its place in a larger philosophical dialog, it looks as if we are making ungrounded or unsubstantiated claims. Traditionally Buddhist philosophers did not isolate themselves from larger pan-Indian philosophical conversations, nor did they simply make unsubstantiated claims or assertions without considered reasoning behind them. For thinkers like Dignaaga and Dharmakiirti, ascent to scriptural authority is simply not sufficient. As we begin a new century and a new global Buddhism, it is imperative that Buddhists are able to articulate their views and converse with others on the world stage. If we are to have any meaningful impact in creating the sort of world we, as Engaged Buddhists, envision, then it must begin with a thorough and rigorous foundation.

Notes

1. See for example Buddhadhasa Bhikkhu (1989) Sivaraksa (1992, 1999), Winer (2003) on Maha Ghosananda, Sangharakshita (1986)

and Blumenthal (1995) on Ambedkar, and His Holiness the Dalai Lama (2008). Dunne (1999) engages the topic with some technical terminology that is familiar to philosophers and religious studies scholars, though he does not engage in comparative work. King (2005) articulates Buddhist ideas about justice in some detail. See note 4, below.

2 . The philosophical foundations for Buddhist ideas on non-violence, responsibilities, and a host of other ethical issues have been treated extensively. See for example Sivaraksa (1992), Cabezón (1996), Nhat Hanh (1987, 1999), Harvey (2000), Samdong Rinpoche (2006), etc.

3. King (2005) begins the important work of articulating an Engaged Buddhist social ethics and ethical theory. In the process, she insightfully begins to address and analyze the questions of justice and social justice in the Engaged Buddhist context. She interviewed some leading thinkers from the movement, such as Sulak Sivaraksa and Samdong Rinpoche, on justice, and analyzes some important comments made by Geshe Sopa and Ven. Dhammananda in Israel concerning justice for Jews *vis á vis* the Holocaust and Israelis and Palestinians concerning their current conflict. All of this is an important contribution to a critical discussion, but it is largely carried out without reference to long history of philosophical discourse on justice from the Western canon from which the idea derives.

4. "Goods" is construed broadly here. It is not limited to material resources, but includes rights such as privacy, the right to vote, etc., legal constructs, access to "goods" such as education, medical care, etc.

5. Christopher Queen (1996), drawing on theoretical insights developed by Clifford Geertz (1968), discusses the process by which Engaged Buddhists have engaged in a sort of "scripturalism" in returning to traditional and canonical texts and sources of religious authority, yet with innovative theological interpretations that render them newly relevant for contemporary circumstances, particularly in

times of perceived crisis.

6. Sulak Sivaraksa (1992: 103). Walpola Rahula (1985: 104) echoes this sentiment when he writes: "The Buddha did not take life out of the context of its social and economic background; he looked at it as a whole, in all its social, economic, and political aspects. His teaching on ethical, spiritual and philosophical problems are fairly well known. But little is known, particularly in the West, about his teaching on social, economic, and political matters. Yet there are numerous discourses dealing with these scattered throughout the ancient Buddhist texts." Others such as Samdong Rinpoche, Thich Nhat Hanh, His Holiness the Dalai Lama, and Buddhadasa exemplify this sentiment as they repeatedly turn to scriptural sources as evidence to support their Buddhist ideas about justice.

7. Gregory Schopen (1997) has persuasively argued for the use of non-textual sources in Buddhist Studies, particularly in attempting to historically decipher the contours of Buddhism on the ground in India in its earliest periods. There may well be good reason to make use of non-textual sources to help make some philosophical arguments regarding justice. However, my hunch is that *sutta/sutra* sources and philosophical treatises by early masters will probably prove to be more fruitful resources for this project since the explicit purpose is not a historical deciphering of ancient Buddhism on the ground.

8. Any discussion of the just distribution of goods will also entail implications for issues in criminal justice as well. This will be discussed further in the following section.

9. Some scholars and thinkers within the traditions have argued the opposite, that the contemporary Engaged Buddhist movements represent a dramatic shift in Buddhist thinking. See for example Queen (1996: 1-44, 2000: 1-29), the discussion of Joanna Macy in Kaza (2000 160), and Litsch (2000: 423). Perhaps the clearest example of this side of the question of whether Buddhism has always had an engaged component or whether it is a new innovation

(both recent and highly influenced by Buddhism's recent encounters with the West) is summarized by Christopher Queen (2000: 1-2) when he writes in his, "Introduction: A New Buddhism," that, "I shall argue that the general pattern of belief and practice that has come to be called 'engaged Buddhism' is unprecedented, and thus tantamount to a new chapter in the history of the tradition. As a style of ethical practice, engaged Buddhism may be seen as a new paradigm of Buddhist liberation. Invoking traditional terminology, Buddhists might call it a "new vehicle" – or *Navayana*... - or a *fourth yana* in the evolution of the dharma." Thomas Yarnall (2003) summarizes and critically analyzes both sides of this debate, while infusing a degree of theoretical sophistication that has been lacking in much engaged Buddhist scholarship. Among the many insights found in his analysis, Yarnall, while recognizing important contributions made in Queen's argument that Engaged Buddhism fundamentally constitutes a new vehicle (*yana*) of Buddhism, he criticizes the modernist and orientalist tendencies he finds in the perspective of Queen and like-minded thinkers.

10. See for example Hanh (1987), Sivaraksa (1992), Gyatso (1999a and 2008), etc.

11. The four *brahmavihaaras* are loving-kindness, compassion, sympathetic joy, and equanimity. See Buddhaghosa. *Visuddhimagga (The Path of Purification)*. Pp. 288-319.

12. See for example, Tsongkhapa. *Byang chub lam rim chen mo (The Great Treatise on the Stages of the Path to Enlightenment)*.

13. Kamala"siila. *Bhaavanaakrama II.4. de la snying rje bsgom pa'i rim pa de dang po 'jug pa nas brtsams te brjod par bya'o/ thog mar re zhig btang snyoms bsgoms pas sems can thams cad la rjes su chags pa dang/ khong khro ba bsal te snyoms pa'i sems nyid bsgrub par bya'o/ sems can thams cad bde ba ni 'dod sdug bsngal ba ni mi 'dod la/ thog ma med pa can gyi 'khor ban a sems can gang lan brgyar dag gi gnyen du ma gyur pa de gang yang med do snyam du yongs su bsam zhing// 'di la byed brag ci zhig yod na la la la ni rjes su chags/ la la la ni khong khro bar gyur bas/ de lta bas na bdag gis sems can*

*thams cad la sems snyoms pa nyid du bya'o snyam du de ltar yid la
bya zhing bar ma'i phyogs nas brtsams te/ mdza' bshes dang dgra la
yang sems snyoms pa nyid du bsgom mo/*

14 . Truth and Reconciliation Commission homepage,
<http://www.doj.gov.za/trc/> 6/1/2009.

15. One such unique contribution that immediately comes to mind is the success of the Vipassana retreats held in prisons by S.N. Goenke. For an excellent documentary on this, see Menahemi and Ariel (1997).

16. The specifics of what shape such a reform-oriented prison would take is, of course, an enormous topic that is outside of the scope of this paper.

17. Ideally it would not require an explicit "Buddhist" influence on the state. By participating in a global conversation, Buddhists can have an impact without an exceedingly imposing use of Buddhist language. The Dalai Lama is quite skillful at this in his recent book, *Ethics for the New Millenium*, which discusses his views on ethics in purely secular language.

18. This isolationism has been a longstanding problem of Buddhist Studies within the larger disciplines of Religious Studies and Philosophy. Those working in Buddhist epistemology and logic have made great strides in this regard in the past ten to fifteen years .

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