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1. Introduction

1.1. Research Interest and Relevance

Restorative justice has become a common approach in dealing with conflict and crime during the last decades. With its focus on restoring a harm-free situation for all involved, the approach based on the principles of repair, participation, transformation and accountability has been increasingly applied, especially within the criminal justice system.

A society's understanding of right and wrong is significantly shaped by the legal framework as well as by traditions and values transmitted through cultural and religious practices that co-form that understanding of what justice is. What ideas and values from Buddhist contexts can serve as inspiration for restorative approaches to justice? What parallels can be found in the underlying assumptions?

This thesis aims to find potential sources of inspiration for restorative justice approaches from Buddhist perspectives. Therefore different Buddhist concepts and ideas are analyzed and related to the underlying notions of restorative justice. By exploring different Buddhist concepts it should be demonstrated how they are consistent with restorative justice approaches. The research question is: What inspiration for restorative justice approaches can be gained from different Buddhist concepts and ideas?

The Asian Buddhist philosophy can be described as a holistic worldview that differs from an individualistic view that is dominant in western parts of the world. Assuming interconnectedness and interrelatedness of everything is a core doctrine in Buddhist teachings that underlie such a holistic approach. In the last decades there has been an increased openness in the West for Eastern philosophies and religions assuming wholeness rather than separation between individual entities. This increased interest and openness highlights the relevance

of the thematic focus of this thesis not only for the East, but also in the Western context.

Marta Vides Saade writes: “The contribution of religious ideas in understanding how restorative justice views the person and notions of freedom, responsibility, obligation and relationship between the individual and society is a foundational one.” (Saade 2008:240)

In agreement with Marta Vides Saade who stresses the relevance of religious ideas for restorative justice, I state that these and other philosophies or strands of thinking play crucial roles of forming a society’s ways of thinking. What implications do basic Buddhist concepts have for dealing with conflict and crime? How do notions of an interrelated existence and no-self influence how people understand and deal with conflicts?

In that context, it is important to underscore that Buddhism is not intended to be presented as the only element that is responsible and formative for restorative justice to occur in its form. While there are many different factors and conditions that form and influence peoples’ understandings about justice, Buddhism is only one of them and cannot be separated from other influencing fields such as cultural traditions or philosophical strands. However, the focus in this thesis is limited on sources of inspiration from different Buddhist concepts and ideas. Other aspects that might be relevant and influential in shaping restorative justice approaches are left aside as it would go beyond the scope of this thesis. Considering the variety of influencing factors of restorative justice, further academic research on other philosophical strands and theories would be desirable.

1.2. Structure of the Thesis

The thesis is divided into two main parts. The first part focuses on restorative justice; the second part links Buddhist concepts to restorative justice approaches and analyzes sources of inspiration.

In the beginning of the first part, the concept of restorative justice is introduced with its basic elements and traditions, and the ways in which it differs from retributive justice approaches are discussed. After a brief overview of common practical applications of restorative justice in the judicial and non-judicial context, we then examine what main principles function as a guiding framework for restorative practices. The chapter 'restoration and prevention' focuses on the aspects of repairing harm in the present and preventing future crimes. What follows is the question of the effectiveness of restorative justice programs: results of studies are introduced with attention to noting different possible criteria and different procedures of data collection in qualitative and quantitative research. The last section of the first part raises the question of whether restorative justice represents a new paradigm that might lead to structural changes in society, or if it just constitutes a new set of practices that can be added to the existing criminal justice procedures.

The second part focuses on Buddhist teachings and Buddhist notions about reality and human nature. First, the aspect of social engagement of Buddhism is discussed, and then the link between social and personal transformation. In close connection with this, the doctrine of dependent origination is introduced and discussed in view of implications for restorative justice. Following this, the concept of karma, the three characteristics of existence and suffering are discussed, referring to potential inspiration for restorative justice. The next chapters focus on the cessation of suffering and methods of achieving it, as outlined in Buddhist teachings. Therefore the Eightfold Path and transformation of what is described as root causes of suffering within the basic Buddhist tenets are examined as approaches of dealing with root causes of suffering.

Having examined basic Buddhist concepts and their relevance for restorative justice, in the next chapters we link the relevant aspects of Buddhist teachings with understandings of crime and conflict in society. The chapter 'peace through peaceful means' reflects the Buddhist emphasis on non-violence and critically questions harm-causing approaches in dealing with conflict and crime. The process of creating peaceful inner structures is examined from a state

perspective and linked with the concept of ego as communicated by Buddhist teachings. The last chapters focus on dialogue and spiritual friendship, and loving kindness and compassion, with a view to identifying possible parallels to restorative justice and potential further inspiration. In the conclusion relevant findings are summarized and further questions and research interests are noted.

1.3. Academic Approach and Methodology

Placed within a transdisciplinary frame this thesis focuses on the conceptual levels of restorative justice and Buddhist ideas in order to address issues of social realities from a broad perspective. In doing so, emphasis is put on potential inspiration of Buddhist core concepts for future development of methods for dealing with conflict and crime in society. Focusing on the underlying conceptual and philosophical assumptions, both the private context of handling conflict as well as social structures of dealing with conflict and crime can be addressed at the same time.

Regarding existing problems in society such as the occurrence of crimes as a relevant objective for academic research, the thesis aims to look towards future potentials for developing effective strategies concerning the issue. By taking part in the discourse about the potential inspirations from Buddhist philosophy for restorative justice new ideas for practical applications may arise and inspire current restorative practices. The values interpreted from Buddhist teachings might be incorporated in establishing behavioral patterns and traditions.

Buddhism as set of teachings is a complex field that holds a variety of different formations, understandings and interpretations and can be practiced in diverse forms. It should be clarified that culturally embedded philosophies and beliefs are not their practical applications. For instance, living in a setting where Buddhist teachings take on a strong role through being integrated in cultural traditions or as official state religion, does not mean that the political and social structures of the country and the behavior of its people is in adherence to the

philosophy. A gap between a dominant Buddhist philosophy and practical applications of countries, however, does not invalidate the philosophy.

Seeing myself in a constructivist framework, I understand realities of individuals as subjective and strongly dependent on personal perceptions and interpretations. Forming our own realities by subjective interpretations and perspectives, both academic and non-academic discourses are shaping what we make to become our realities. Regarding all actions as contributions of the process of shaping realities – whether done consciously or not – everyone is part of co-creating the social reality. Thereby discourse has a shaping role on reality and vice versa.

My constructivist positioning may be expressed in the way of choosing the language and formulating questions. In analyzing different Buddhist concepts in view of restorative justice approaches, the reflections on the potential sources of inspirations are subjective considerations. Understanding realities constructed by peoples' perceptions and interpretations and shaped by experiences within social environments, the considerations presented throughout the paper should not be regarded as independent of my, the author's, personal experiences and understandings.

Choosing the method of literature analysis, different aspects of restorative justice theory and Buddhist concepts are related to each other. After providing a comprehensive descriptive examination of basic elements of restorative justice in the first part of the thesis, a detailed analysis of the underlying paradigmatic approach follows.

In the second part of the thesis, relevant concepts of Buddhist teachings are investigated and related to restorative justice approaches in an in-depth analysis. Here, different Buddhist conceptualizations and ideas are linked with core elements of restorative justice in order to conclude parallels and find sources of inspiration. Rather than trying to find discrepancies and critically analyze those, the intention of this thesis is to examine similarities and potential

sources of inspiration from Buddhist teachings for restorative justice. Aspects of Buddhist teachings that might support and enhance restorative justice are intentionally chosen. This is why critique is limited to its necessary extent in order to concentrate on the research interest. Working mainly on the conceptual level provides the opportunity to link Buddhist understandings with restorative justice and its underlying philosophical backgrounds and ideas while keeping a view on the bigger picture.

2. Restorative Justice

Restorative justice is an alternative to the common punitive or retributive justice system in that it focuses on restoring a harm-free state after violations of people and their relationships. It refers to the conceptual level of how justice is understood and how conflicts and crimes are viewed and to a methodological level of dealing with violations in practice. In the past decades restorative justice gained wide currency internationally as a conceptual framework and practice (cf. Zehr 2008:4).

As a conceptual framework, restorative justice seeks to reframe the way we conventionally think about wrongdoing and justice: away from our preoccupation with lawbreaking, guilt and punishment, toward a focus on harms, needs and obligations. Restorative justice especially emphasizes the importance of the engagement and empowerment of those most affected by wrongdoing, and uses a problem-solving approach. (Zehr 2008:3)

Restorative justice aims to address problems on a deeper level and to eliminate the root causes rather than to simply respond to the symptoms. Repair, participation, transformation and reintegration are key elements in restorative justice processes (cf. Roche 2006:234; cf. Strang 2001:2). These elements can be applied to specially designed programs within the legal system, to conflicts in schools and companies, and in informal processes such as personal conflicts. It consists of formal and informal processes, institutionalized forms or initiatives of groups or single persons and covers both the continuation of traditional restorative practices and newly emerging forms.

Programs within the criminal justice system such as victim-offender mediation, family conferencing and circle models are now widely established and internationally applied as an alternative to conventional prosecutions. Depending on the country's laws and the severity of the crime, restorative justice programs can be applied in various cases. Reasons for implementing restorative justice within the criminal justice system vary from shortcomings of conventional criminal justice concerning reoffending rates, overcrowded

prisons or high costs to the desire for stronger community involvement and a shift from offender-focus to victim-orientation.

In this thesis the term restorative justice is used to describe practices both within and outside the criminal justice field. Understanding restorative justice as a wide ranging philosophy based on the intention to repair, the approach can be applied within diverse settings. Debates in the literature about restorative justice mainly focus on the area of criminal justice. Reasons for this focus may be that the criminal justice system serves as the most powerful mechanism to regulate conflicts on a societal level and that the implementation of restorative justice programs within the legal system has been well documented. Other fields where restorative practices are applied are hardly visible for the general public or difficult to measure. Aside from the legal system, restorative practices are now increasingly applied worldwide in education, social work, counselling, youth services, workplaces and faith community applications (cf. Wachtel 2012:3).

Howard Zehr describes the guiding questions of restorative justice as following: “Who has been hurt? What are their needs? Whose obligations are these?” (Zehr 2002:21) Those questions put the needs of those hurt at the centre and personalize the arising obligations. Crime is seen as a conflict between individuals rather than between offender and the state (cf. Mantle, Fox, Dhami 2005:3). The questions of retributive justice clearly differ from those above: “What laws have been broken? Who did it? What do they deserve?” (Zehr 2002:21) These questions demonstrate the notion of crime as violation of laws with the logical consequence of assuming that a certain amount of punishment imposed is seen as the proper response to the harm-causing person.

Regarding the scale of restorative justice, it can be conceptually differentiated between large and small scale. Katherine Van Wormer suggests differentiating between a micro and a macro level of restorative justice (cf. Van Wormer 2008:2). Particular programs such as mediation between wrongdoer and harmed person apply to the micro level whereas the macro level functions on a global

scale and the wrongdoings affect a larger part of society. Responses to such large-scale violations may be truth commissions or reparations (cf. Van Wormer 2008:2). Perhaps another dimension on the very micro level could be added; informal situations where a restorative justice approach can be applied for responding to conflicts at work, in schools, with neighbours, within families, etc.

2.1. Restorative Traditions

It was only in the last decades when restorative justice emerged under that term. However, throughout the last centuries, many communities in different parts of the world were dealing with conflicts in ways that we now describe as restorative justice processes. Therefore restorative justice is not a new concept, but deeply rooted in traditional practices of indigenous communities. Some of the best known examples of traditional restorative approaches to conflicts come from communities in North America and Canada, New Zealand, Australia, pre-colonial Africa, Fiji, Samoa, Japan or Inuit communities (cf. Lux 2007:10).

In Thailand, too, restorative justice was a traditional practice in the past, as people usually tried to settle the conflicts through negotiation in the presence of the disputants, their families and members of the community. Only in cases of severe crimes like murder or robbery the authorities would handle the case (cf. Roujanavong 2005:127). Wanchai Roujanavong explains that due to the modernization of the Thai legal system in the 19th century based on Western countries, restorative justice in Thailand gradually faded away, because no legal basis was provided (cf. Roujanavong 2005:127f.). It was only in 2003 that restorative justice was re-introduced in Thailand through the implementation of a restorative justice model called “Family and Community Group Conferencing” within the legal system. This model of restorative justice was inspired by traditional conflict regulations of the Maori in New Zealand (cf. Roujanavong 2005:128).

Howard Zehr describes the modern development of restorative justice as a river that is fed by practical programs, various indigenous traditions and current adaptations which draw on those traditions (cf. Zehr 2002:62). In Thailand and many other countries worldwide, restorative practices are deeply embedded in cultural traditions and some elements still remain within traditional community justice practices in some rural areas (cf. Kittayarak 2003:78).

Daniel Van Ness points out that “[r]estorative justice is both a new and an old concept. While the modern articulation (including the name) has emerged in the past 30 years, the underlying philosophy and ethos resonate with those of ancient processes of conflict resolution” (Van Ness 2005:2). In light of the current modern development of restorative justice the traditional processes become more visible and acknowledged by scholars and practitioners. Considering that restorative justice is built on ideas and practices that can be traced back to ancient and indigenous processes, it is suitable to speak of a revitalization or intensification rather than of an introduction of a brand new concept.

When discussing traditional restorative procedures as a source for establishing models today, the actual context must be considered: “While these examples and traditions [of restorative justice] may not provide blueprints, they may serve as catalysts for forming ideas and directions.” (Zehr 2002:62)

Approaches that understand justice as aiming to repair harm done and to reach healing in the community did not emerge as a new innovation, but are built on processes that have been applied before in different cultural settings. Aside from traditional formal restorative practices that are usually described as the roots of today’s restorative justice programs and applications, the use of restorative practices in informal settings embedded in cultural traditions should also be mentioned.

One reason why restorative justice may appear as a new concept is that at present the retributive justice system is dominant. The criminal justice system

with its focus on punishment may thus be perceived as the “normal” way of dealing with conflicts. In an environment where a retributive approach to crimes seems to have always been the normality, one might be surprised to know that historically, retributive justice was not always the dominant model. In Europe, it was only in the 11th century that more punitive mechanisms were applied than reparative ones (cf. Lux 2007:8).

John Braithwaite stresses that punitive systems have not always been the leading approach historically and writes that “[r]estorative justice has been the dominant model of justice for perhaps all the world’s people” (Braithwaite 2002a:5). This may be regarded as a bold statement about the historical emergence of retributive justice. Yet, this statement challenges what is commonly understood as the “normal” approach to justice which is – at the time - a retributive justice approach. Questioning what is commonly regarded as normal reminds us that approaches other than punitive ones are possible and reminds one that ‘normality’ is made rather than given and is therefore changeable.

2.2. Definitions

There is no uniform definition of restorative justice, instead a variety of attempts can be found in the literature. The individual definitions differ in their focus, which may lie on a specific dimension (such as the criminal dimension) and specific forms of applications or more on the principles and values as the basis of restorative justice, thus keeping a certain openness with respect to practical implementation.

Howard Zehr, who is considered a pioneer in the restorative justice movement, suggests the following definition: “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)

He defines restorative justice as an open concept that is not limited to a specific dimension such as the criminal dimension. He focuses on the guiding principles and regards restorative justice as a process. The language chosen by writing ‘those who have a stake’ describes all involved within the same term and thereby refrains from role ascriptions and stigmatization such as the labels ‘victim’ and ‘offender’.

The next definition, coming from the UN, demonstrates a different focus. It should be mentioned that in the UN document “Basic Principles on the use of restorative justice programmes in criminal matters” distinctions are made between restorative justice programme, restorative process and restorative outcome.

‘Restorative process’ means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles. (UN 2002:56, emphasis in original)

Compared to Howard Zehr, the definition of restorative justice from the UN document sees restorative justice much more narrowly by focusing on the criminal dimension and listing specific programs that are applied within the criminal justice system. Furthermore, a clear distinction between victim and offender is made.

Another definition by the Prison Fellowship International describes restorative justice as “a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accomplished through cooperative processes that include all stakeholders” (PFI 2012). Here restorative justice is regarded as a theory which is comprised of more than the application of programs; it furthermore describes a way of thinking.

An interesting point is made by saying “the harm caused or revealed by criminal behavior”. The notion that harm can not only be caused by, but also revealed by criminal behavior implicates that a crime could potentially be a response to already existent harm. Hence, law breaking behavior could also be a

reaction to harm and thereby revealing existent issues such as inequality in society. A similar definition is made by Daniel Van Ness: “Restorative justice is a systematic response to wrongdoing that emphasizes repairing the harms to victims, offenders, and communities caused or revealed by crime.” (Van Ness 2003:1)

For instance, stealing may be a symptomatic expression of existing harm such as poverty and economic injustices that may be revealed through the act of theft. Here, the crime itself would not be the real problem, but rather the reaction to it. The challenge would rather be to eliminate the harm that is already present in society through changing structures such as adjusting laws to the social realities and needs.

Important elements that are reflected in the different definitions shown above are the focus on repairing harm, active inclusion of community, participatory decision-making processes and taking responsibility. Even if the definitions focus and value different elements more than others, there is a common ground in the general understanding of restorative justice.

2.3. Distinguishing Restorative Justice from Retributive Justice

Restorative justice is often presented as “the alternative” to the opposing and currently prevalent system of retributive justice. While some stress the opposite nature of the concepts, others focus more on the similarities and parallels. How do these concepts differ in their fundamental understandings? Can parallels be found? And if so, what are they?

Considering these two seemingly contradicting concepts, Howard Zehr highlights the similarities: “Both retributive and restorative theories of justice acknowledge the basic moral intuition that a balance has been thrown off by the wrongdoing. As a result, the victim deserves something, and the offender owes something. Both argue that there must be proportionality between the act and the response and that the offender must be treated as a morally responsible

person.” (Zehr 2001:315) Sharing the understanding of an imbalance in relationships caused through harm done, the concepts differ in the ways chosen to re-establish a just state in society.

Jennifer Llewellyn writes that “retributive justice names punishment as the necessary mechanism through which such equality is to be achieved; it identifies the very idea of restoration with punishment. It attempts to restore social equality through retribution against the wrongdoer exercised through isolating punishment”. (Llewellyn, Howse 1998:32) In contrast, through supporting the wrongdoer to understand the harm caused by the behavior and through engagement in dealing with the consequences, restorative justice tries to address conflicts and crimes on a deeper transformative level, rather than on a superficial level of fighting symptoms.

The reasons for changed behaviour of the wrongdoer and for not reoffending may vary depending on the personal motivations and circumstances. The following hypothetical example relating to child education illustrates the idea of how one’s behavior might depend on the presence or absence of direct threats.

If parents threaten their children with punishment to control their behavior – such as taking away the favourite toys or forbidding them to play in the garden – the children might refrain from the “bad” actions when the parents are near, but not if they are absent. A punitive response to the children’s behavior might strengthen a “cost-effectiveness-calculation” approach rather than the development of a certain kind of morality that leads to refraining from harmful behavior naturally. An alternative reaction is to make the children understand the consequences of their actions by confronting them with the situation instead of sanctioning them with measures that are not linked to their harm-causing behavior. Through a restorative justice lens, the children need to be involved in the decision-making process and take responsibility for their actions.

Applying the same logic to the field of criminal justice, similar effects might result from whether using restorative justice approaches or punitive approaches.

With the aim of preventing future crimes through a deterrence effect, imposing punishment on individuals should keep them from committing further crimes as they don't want to experience a similar penalty for their behavior again; at the same time the fear that is produced through inflicting punitive measures should restrain the general public from committing crimes. Do people refrain from actions conflicting with laws because of threat or fear of punishment or because of transformed values, moral stances or ethical beliefs? It might not be possible to uncover the exact and determinant reasons why one doesn't commit a crime again. However, it seems more likely that behaving non-harmfully with each other and in line with certain rules is more persistent in the long run if based on personal understanding, whether with or without the presence of punitive sanctions. Restorative justice therefore tries to prevent future crimes through addressing and transforming root causes and improving dialogue.

While retributive justice responds to harm with inflicting punishment, restorative justice at first looks at the needs that have arisen from the violations caused and tries to find solutions where everyone can benefit – the perpetrator, the one who caused harm and the community. In contrast to that, the structures of retributive justice systems do not allow the outcomes of win-win situations. Katherine Van Wormer writes: “Today's competition is the trial: One side wins, and one side loses.” (Van Wormer 2004:5)

Further critiques of the retributive justice approach include missing attention to the needs of those harmed, focus on rules and laws rather than on people and relationships, responding to violations through inflicting further harm, insufficient future-orientation, labelling of victims and offenders, encouraging social exclusion from society, etc.

2.4. Forms of Restorative Justice

Since restorative justice emerged classified under that term, different forms of application developed. As a concept, restorative justice is based on specific value backgrounds that clearly differ from retributive approaches. As a method

of responding to conflicts and crimes, restorative justice takes on diverse forms. Practical applications of restorative justice may be broadly divided into three categories: formalized practices that are integrated in national criminal justice policies, formalized forms outside the criminal justice system, and informal restorative practices.

Restorative justice programs within the criminal justice system often replace regular prosecutions. The programs are largely standardized and follow certain procedures. Popular models that are applied within the criminal justice systems worldwide are mediation, family group conferences, and restorative circles (cf. Van Ness 2005:2). While being commonly used for responding to crimes categorized as minor offences, restorative justice programs are also applied to major offences. The Truth and Reconciliation Commission in South Africa is a well known example where restorative justice was introduced to deal with severe violations during Apartheid in order to pave the way for a peaceful future.

In the following, selected formally applied models of restorative justice in the judicial field will be examined, followed by a section that focuses on informal processes. The forms and programs described do not intend to give an overview of the existing programs, but rather to provide examples and to give an idea of how restorative justice programs are applied in practice.

2.4.1. Mediation

Mediation is a form of conflict regulation that is also used within the legal system (cf. Wall et al. 2001:371). With the guidance of a mediator, two or more conflicting parties confront each other in a mediation procedure. A meeting is set up between the two sides where the participants can discuss the conflict with the guidance of a mediator. The aim is to find appropriate solutions for dealing with the violations caused, through direct interaction. Typically the process results in a restitution agreement that the participants sign. The obligations

agreed upon mainly depend on the decisions of the participants and can range from compensation payments to apologies.

Marty Price, practitioner of victim-offender mediation underlines the value of dialogue in mediation processes: “Mediation sessions, at their best, focus upon dialogue rather than upon reaching a restitution agreement, facilitating empathy and understanding between victim and offender.” (Price 1998) During the process the mediators are supposed to not take somebody’s side, but guide the participants through the process and facilitate understanding from both parties of their different perspectives.¹

The process may further be influenced by elements like the local setting, the training of the mediator and the needs of the participants. Depending on these elements, the processes can take different forms (cf. Wall et al. 2001:371). However, the most commonly applied model of mediation in the criminal justice field comprises the two conflicting parties and the mediator.² Involving other participants in the mediation process is rather the exception. In contrast, conferences and circle processes are characterized by involving a broader group of participants.

According to Wall, Stark and Standifer there are two conditions that need to be matched in order to establish a mediation process: the conflicting parties have to request or permit a third party to mediate; and the third party has to agree to facilitate the mediation (cf. Wall et al. 2001:371). Norms and specific laws strongly influence the disputant’s decisions to allow or ask for third party assistance (cf. Wall et al. 2001:372). The authors conclude that scholars have agreed upon three elements that characterize the core process of mediation: “(1)

¹ The extent to which a neutral position of the mediator is possible is controversially debated. Winslade, Monk and Cotter stress the influencing role of the presence of a mediator and write: “Any form of third-party intervention cannot be neutral; the very presence of the third party changes the nature of the interaction between the parties.” (Winslade, Monk, Cotter 1998:23)

² The number of participants engaged may vary depending on the specific situation, the participant’s agreement and on the mediator’s chosen structure of the procedure. Other participants aside from those directly involved might be family members, relatives, colleagues or teachers. During the mediation session they usually do not participate actively, but rather attend as companions taking in a supportive role.

assistance for some form of interaction by (2) a third party who (3) does not have the authority to impose an outcome.” (Wall et al. 2001:375)

Mediation is one of the oldest forms of conflict resolution and is used worldwide (cf. Wall et al. 2001:370). Within judicial procedures, mediation is mostly used for selected cases as alternative to the usual criminal procedures. Many countries worldwide use mediation processes integrated in to the criminal justice system as an alternative to court procedures. In European countries, victim-offender mediation is one restorative practice that is institutionalized in the criminal justice systems of most states; albeit specific applications, legislation and jurisdiction differ between different states (cf. Gönczöl 2010:22). As an example, the victim-offender mediation system implemented in Austria will be described in a bite more detail here.

Victim-Offender Mediation in Austria

Victim-offender mediation (Tatausgleich) in Austria is implemented in the legal structures as a form of diversion from court procedures to an alternative program that is used for selected cases. Diversion in Austria also includes other potential measures such as suspending prosecution for a probation period, compensation payments and community service (cf. Bruckmüller, Koss 2010:110).

The legal basis for victim-offender mediation in Austria is provided in the code of criminal procedure (cf. § 204 StPO). Mediation as diversion can be applied if certain conditions are fulfilled: the facts of the case are clarified sufficiently; there is no severity of guilt; the penalty for violating the law is determined with less than five years; the crime did not result in the death of a person. (cf. Königshofer 2010:9) If these conditions are regarded as fulfilled, victim-offender mediation can be applied instead of common criminal proceedings if the following conditions are met: the voluntary participation of the harmed party; the voluntary participation of the wrongdoer; the wrongdoer admits the harm-causing behavior; the wrongdoer demonstrates willingness in taking

measures of restoration and refraining from future offenses. (cf. § 204 StPO). The agreement of the aggrieved party to the diversion program is a central aspect as an important aim of the mediation program is to consider the interests of the harmed persons.³

Victim-offender mediation in Austria is conducted through the private non-profit organization 'Neustart'.⁴ The procedure is as follows: The mediator provides information about the procedure of the victim-offender mediation to the participants and offers services in facilitating the process. There is an individual meeting with each party separately before both are brought together (cf. Bruckmüller, Koss 2010:113). The specific procedure is individually adjusted in accordance to the type of case.

A successful mediation process ends with a written agreement signed by both parties which also includes specifications of any restorative actions or payments to be undertaken. After the mediation process is finished, the mediator gives feedback about the success of the mediation to the public prosecutor or to the judge (cf. Bruckmüller, Koss 2010:112). The compliance to the agreement is monitored by the mediator who also gives a final report to the public prosecution office after the obligations of the agreement have been met.

There are about 9000 cases per year that are referred to Neustart for victim-offender mediation (cf. Bruckmüller, Koss 2010:113). What types of offences are these where mediation is applied? As mentioned above, those cases being categorized as suitable for diversion determined in the criminal code can be referred to victim-offender mediation. The types of delinquencies considered as suitable are physical injury, property damage, dangerous threat, coercion and brawl.⁵ (cf. StGB) A large part of the types of cases referred to mediation in Austria are offences related to aggression; Bruckmüller and Koss write that

³ Commonly the mediation is only applied only with the agreement of the harmed person. However, there is an exception for the obligatory agreement if the reasons for refusing a mediation procedure are not categorized as being worth considering according to the code of criminal procedure (cf. § 206 StPO).

⁴ www.neustart.at [accessed: 26 March 2013]

⁵ see StGB § 83-84, § 125, § 107, § 105, § 91

these constitute 84% of all cases, and the other 14% of cases comprise offences against property (cf. Bruckmüller, Koss 2010:116). More than half of the conflicts concern the immediate social environment such as in partnerships, families or work places (cf. Bruckmüller, Koss 2010:114).

If the mediation was successful, the criminal proceedings are stopped. According to the feedback information that the mediator gives to the court Bruckmüller and Koss write that 85% of cases involving juveniles, and 70% of the cases involving adults were concluded successfully (cf. Bruckmüller, Koss 2010:115).

2.4.2. Conferencing

“A restorative conference is a structured meeting between offenders, victims and both parties’ family and friends, in which they deal with the consequences of the crime or wrongdoing and decide how best to repair the harm.” (Wachtel 2012:6)

Restorative conferencing, a format adapted from traditional justice systems was first introduced into state law and justice regulations in 1989 in New Zealand under the name Family Group Conference (cf. Wachtel 2012:2). Responding to the removal of children of native Maori people by the court, the program intended to empower families and communities (cf. Wachtel 2012). In Australia it was formally introduced as a model of restorative justice in 1991 as program to divert young people from court (cf. Wachtel 2012). Today family group conferencing is a popular model that is legally implemented in criminal justice procedures in about twenty countries including Australia, states of the US, Canada, Brazil, Saudi Arabia, UK, the Netherlands, Ireland and Thailand (cf. Barnsdale, Walker 2007:2; cf. Bazemore 2000:244).

The model that has been adapted from traditional conflict handling processes from New Zealand is mainly used for dealing with juvenile crimes. Ted Wachtel explains that “[y]oung people, who are usually the focus of these

conferences, need the sense of community, identity and stability that only the family, in its various forms, can provide (Wachtel 2012:9).” Families therefore would find quicker and better solutions of how to deal with the conflict than authorities; moreover they are empowered to deal with conflicts by themselves in the future (cf. Wachtel 2012:9).

Family group conferencing is applied within different jurisdictions and for a variety of issues including theft, arson, minor assaults, drug offenses, vandalism, and sometimes for child maltreatment cases (cf. Bazemore, Umbreit 2001:5). Whereas in most countries the model is used for minor offenses, in New Zealand conferences are also used for the most violent and serious delinquency cases (cf. Alder, Wundersitz 1994; Maxwell, Morris 1993; McElrea 1993, qtd. in Bazemore, Umbreit 2001:5).

General characteristics for the procedure of family group conferences are voluntary participation, strong community involvement and a facilitator focusing on process, and not content, as the decisions should be made by those directly involved. Aside from the wrongdoer and the harmed, relatives and friends as well as members of the community are also invited to take part in the process. By including supporters aside from those directly affected, restorative conferences address power imbalances in communities by providing space and opportunity of an encounter at eye level (cf. Mc Cold 1999, qtd. in: Wachtel 2012:2). The aims are to restore the harmony in the community, hold offenders accountable while giving them the opportunity to discard the “offender” label and getting reintegrated into the community (cf. Wachtel 2012:6).

Similar to mediation processes the conferences are guided by a facilitator to support the decision making process of the participants. Dialogue between the wrongdoer and the harmed is encouraged so that they can express their views on the incident and can discuss potential future steps together. After the encounter, the two parties typically discuss options of future steps separately with their supporters and prepare proposals that should be presented to the

harmed party. The suggestions are discussed within the group of all participants in a collective negotiation process.

Once an agreement is found that is satisfying for all involved, it is written down with the assistance of the facilitator. The duty of the coordinator is to make sure that causes and reparations are addressed according to the plan. Also timeframes and control mechanisms can be determined (cf. MacRae, Zehr 2004:13). The model of family group conferences aims to empower families and can be flexibly adapted to specific cultural contexts as the process is being handled by the families themselves.

Family and Community Group Conferencing in Thailand

In Thailand the conferencing model was introduced in 2003 by the Ministry of Justice under the name ‘family and community group conferencing’. It has been implemented by the Department of Juvenile Observation and Protection on a pre-trial stage as a channel for diversion (cf. Kittayarak 2009:11). The model was adopted from New Zealand’s family group conferencing model, but the name was changed to ‘family and community group conferencing’, because the term ‘community’ takes on a significant meaning and role in Thai culture (cf. Roujanavong 2005:128). The legal implementation was made possible by a new law – The Juvenile and Family Court and Procedure Act – that prescribes that the police needs to send children who get arrested to a protection center within twenty-four hours; furthermore the law gives the director of the protection center the authority to make a proposal to the prosecutor in the jurisdiction for a non-prosecution order under consideration of diverse criteria (cf. Roujanavong 2005:129). The training of the facilitators was conducted in co-operation with the International Institute for Restorative Practices (IIRP) (cf. Roujanavong 2005:130). Participants in the FCGC are the victim, the child offender, the parent/s and relative/s of the child, a psychologist, a social worker, one or more representatives of the community, the director of the protection center, the police investigator, a prosecutor and the facilitator (cf. Roujanavong 2005:130).

Wanchai Roujanavong, one of the main figures who contributed to the formal introduction of restorative justice in Thailand, writes:

FCGC is a process of restorative practice that not only promotes social harmony, but it yields better results when used with children committing minor offences. Moreover, it reduces the cost of criminal justice because FCGC is very inexpensive compared to formal judicial proceedings. (Roujanavong 2005:133)

2.4.3. Circles

Circle approaches are known to initially have been used by First Nation communities in Canada (cf. Zehr 2002:50). Today different models of circles are applied. One can roughly distinguish between models that are closely in line with general restorative justice principles and others that may only partly be categorized as restorative justice, because they still show a strong focus on inflicting punitive measures on the wrongdoer.

The model of sentencing circles may commonly relate to the latter, as the main focus is put on determining punitive sanctions for the wrongdoer in a participatory way. Sentencing circles were introduced in Canada and the US; they are used for addressing a variety of crimes and as a method integrated in the jurisdictions of many countries. Typically they are integrated in the criminal justice process to support the sentencing process and justice professionals are included in the procedures (cf. UN 2006:22). Aiming to find an agreement about a sentence for the harm-causer, the process is characterized by broad participation of not only wrongdoer and harmed, but also affected community members. A Community Justice Committee composed of members of the community plays an important role in the process as the committee is in contact with other agencies, organizations and stakeholder groups and the cases are usually referred to the committee from the police, prosecutors and judges (cf. UN 2006:23).

If a consensus can be found in the restorative circle, the judge will then impose it as a sentence; if not, the case will be referred back to court or the judge passes a sentence based on the information from the circle (cf. Liebmann 2007:96).

The aims of circle sentencing include promoting healing for all affected parties and providing the opportunity for the offender to make amends. Furthermore they seek to empower those harmed as well as families, community members and wrongdoers through giving them a voice and a shared responsibility for finding resolutions. The aim is to address underlying causes for the criminal behavior, build a sense of community, building capacity for dealing with conflicts and promoting and sharing community values (cf. Bazemore, Umbreit 2001:6).

The sentencing circle model allows broad participation in the process of determining what is regarded as proper sanction for the wrongdoer. However, the punitive focus of the model is similar to retributive criminal justice approaches, just more strongly focused on collective decision-making rather than leaving the decision to a judge, as a person who is not directly affected by the incident. The role of the wrongdoer in the circle process might be passive rather than empowering through active inclusion. After all, the idea is to let the participating community members suggest a sentence that is then legally binding once approved by the judge.

While sentencing circles may be described as a participatory form of determining sentences, other circle models seem to relate more closely to restorative justice principles by focusing on restoration, on needs and on equally involving all participants in the circle.

A special characteristic of these models may be the equal roles that the participants take on in the discussion when the process is conducted properly. All members are acknowledged as having equally important roles in the matter. In the circle procedure there are different ways for ensuring an opportunity for the participants to speak. Often the speaking order is determined by using a talking piece. That sequential method has the advantage that it doesn't allow pro- and contra-argument discussions to arise, as it is not possible to directly comment on what the other participant said (cf. Wachtel 2012:8). In that way the participants need to be patient and wait until it is their turn which helps to

keep a tranquil atmosphere that can be supportive for finding a consensus. Another aspect is that those people who are usually rather reluctant to speak are encouraged to express their views and feelings (cf. Wachtel 2012:8). Non-sequential restorative circles are often more freely structured and do not have determined speaking orders (cf. Wachtel 2012:8).

Indigenous Sentencing Circles in Australia

The following example of Indigenous sentencing circles in Australia should give an impression of how circles can be applied to include and empower specific groups of the community in dealing with crimes.

The Circle Sentencing Court in Nowra, New South Wales, was established as an initiative of the Aboriginal Justice Advisory Council in 2002. The sentencing circle represents one of the methods where indigenous community members are included in the sentencing processes to address offences of Indigenous people that were committed in the regional area (cf. Marchetti, Daly 2004:2). Thereby the sentencing court does not adopt indigenous customary laws, but operates under Australian criminal law (cf. Marchetti, Daly 2004:1). The program selects those clients who would receive a custodial sentence and aim to find alternatives to imprisonment (cf. Marchetti, Daly 2004:2). The type of cases being sentenced is limited and does not include strictly indictable offenses, sex offences, and strictly indictable drug offenses (cf. Koori Court Act 2002, qtd. in Marchetti, Daly 2004:6). The court is located outside the common magistrates' courtrooms in the South Coast Aboriginal Cultural Centre.

The procedure of the sentencing circle can be described as follows (cf. Marchetti, Daly 2004:2): In a closed circle meeting community elders, the magistrate, the offender, support people of the offender, the Aboriginal project officer, the victim and support people, the defense counsel and the police prosecutor take part. Whether an offender is acceptable for the court process depends on the decision of the Aboriginal Community Justice Group after the offender has been reviewed as suitable by the magistrate. Observers need to ask

the magistrate for permission to watch the circle meeting. A document with information about the offense and background of the wrongdoer is prepared by the magistrate and elaborated orally by the participants. Possible sentences are discussed and agreed upon. Another meeting is conducted a few months afterwards in order to assess the progress of the wrongdoer (cf. Marchetti, Daly 2004:3).

2.4.4. Informal Restorative Processes

Aside from programs applied within the criminal justice context, informal restorative processes represent an important, but often underestimated and invisible part of restorative justice. Informal procedures may include approaches to conflict and communication methods that aim to reveal the needs and emotions at the root of the conflict, with the intention of healing harm and restoring relationships.

There are various situations where informal restorative practices are used. They can be found in the ways in which conflicts are approached within families, friendships, with colleagues or neighbours. Such informal restorative justice practices are already present in many different social fields. Using informal mediation processes for managing conflicts with family members or friends, applying certain communication methods that enable everyone to speak and express their feelings and needs to others are examples of restorative justice integrated in everyday life.

The development of a 'restorative environment' encourages people to use restorative justice practices and their underlying ideas as a common way of dealing with day to day conflicts. Whereas formal restorative practices are organized and structured and usually applied in the form of programs that are designed to be applied in certain settings – e.g. in schools – informal restorative justice describes the ways in which people approach conflicts without programs or organized meetings. It encourages those involved in the conflict to find

solutions together through respectful dialogue and possibly through consulting someone from the community for support.

Being surrounded by people who apply such informal practices in dealing with personal conflicts may set an example for others and encourage people to act in similar ways. Other sources of inspiration for integrating restorative practices more strongly in one's life may be provided by structures in society that formally apply restorative justice. For instance, formal mediation procedures in schools may influence the way students generally approach conflicts, and the methods they use for finding solutions for problems. That way formally introduced restorative justice methods and programs may foster the use of restorative approaches in informal surroundings as well, so that people develop abilities for dealing with conflicts in a constructive way by themselves.

Restorative Communities

Developing so-called restorative communities requires a number of informal processes to be integrated into everyday life.

Systematic use of informal restorative practices has a cumulative impact and creates what might be described as a restorative milieu — an environment that consistently fosters awareness, empathy and responsibility in a way that is likely to prove far more effective in achieving social discipline than our current reliance on punishment and sanctions. (Wachtel 2012, as cited in Wachtel 2012, emphasis in original)

The term restorative milieu stresses the meaning of informal restorative processes since formal interventions cannot be seen in isolation from those restorative techniques and processes that have been used within cultures (cf. McCold 2005:1).

Ted Wachtel points out that formal restorative processes might have dramatic impacts while informal practices have a cumulative impact because they are part of everyday life (cf. Wachtel 2012:4). That understanding underlines the relevance of developing a restorative milieu or environment in society (cf. McCold 2005:1). The impact of informal restorative justice processes constitutes a powerful tool for behaving in restorative ways in daily life and

strengthening restorative approaches in society as common behavior. That may lead to a dramatically reduced need for more time-consuming formal restorative practices (cf. Wachtel 2012:9). Regularly expressing feelings and needs in respectful ways in a safe environment and confronting each other with the effects of one's behavior can contribute to establishing a restorative social environment with improved communication and conflict resolution abilities (cf. Wachtel 2005:1).

Imagine a community where people routinely run circle groups for themselves and their peers to help manage behaviour and even deal with chronic issues, like substance abuse. Imagine a community where managers earnestly solicit employees' views in making decisions, explain decisions when they are made and clearly spell out their expectations. Imagine a community in which those in authority actively engage families and sometimes extended families in critical issues, such as setting goals for treatment or deciding where an abused young person should live or planning how to support a family member in maintaining sobriety. (Wachtel 2005:1)

Ted Wachtel's vision stresses the aspects of mutual support in dealing with problems, of explaining behavior and clarifying expectations and of participatory decision making and involvement of the community in dealing with the issues at hand. A main aspect that characterizes restorative communities is the self-reliance of people who regard conflicts as theirs. Hence, the need for authoritative intervention decreases. A restorative view allows people to actively work together on finding solutions in order to address the violations that occurred and to restore balance in relationships.

As pointed out above, a powerful aspect of growing informal restorative practices lies in strengthening the perception of restorative justice approaches as normality. Increasingly, situations of conflicts might be viewed through a restorative lens rather than a retributive lens. Approaches aiming to restore rather than to punish are already present in many fields of social life – may it be in conflict transformation in families, in schools, with neighbors or in partnerships. Focusing on needs, searching for solutions together, aiming to restore harmony in the community are key elements. How can individuals and society contribute to creating and strengthening such restorative environments in daily life? One example relating to communication is given in the next section.

Restorative Communication

Communication style may be a key term in relation to restorative justice in informal settings. Many conflicts arise from misunderstandings in communication. A clear articulation of one's needs and feelings helps to prevent conflicts from arising or from escalating. Ted Wachtel stresses the aspect of affective statements within informal restorative practices (cf. Wachtel 2012:9). Focusing on emotional aspects in the discussion by asking questions that address feelings and thereby supporting the person to reflect about his or her behavior may result in increased understanding and self-responsibility. One method of developing a needs-based communication style is suggested with the concept of 'Nonviolent Communication' by Marshall Rosenberg (cf. Rosenberg 2005). Similar to that and originated from Buddhist concepts are approaches of deep listening and loving speech like promoted by Thich Nhat Hanh as training of mindfulness (cf. Friendship Sangha of the Heart 2012).

Applying such communication methods may contribute to an improved culture of dialogue based on a restorative vision. Strengthening skills and developing deeper understanding through needs-based communication may keep misunderstandings from growing into conflicts, and may also provide the tools for dealing with conflicts that do arise.

2.5. Restorative Justice Principles

Having discussed the practices of restorative justice and some models implemented in the field of criminal justice, we will now focus on the principles underlying the concept of restorative justice. Clarifying the values and principles provides the basis for practicing and developing restorative justice programs which then can be applied according to particular local contexts. What underlying principles provide the common ground of the diversity in which restorative justice is applied?

The intention to repair harm, participation of those directly and indirectly engaged (including the community), empowerment, transformation and reintegration are often described as the basic principles of restorative justice. Marta Vides Saade refers to the principles of repair, participation and transformation as the “three Big Ideas of Restorative Justice” (cf. Saade 2008:232). These suggested principles comply with other authors and debates in the literature relating to restorative justice. Daniel Van Ness and Karen Strong refer to encounter, reparation, reintegration, participation and transformation as guiding principles of restorative justice (cf. Van Ness, Strong 1997). Similar to that Declan Roche describes participation, repair and reintegration of offenders as principles of restorative justice (cf. Roche 2006:234). Practices based on these principles and values may create community-based approaches to conflict that encourage forgiveness and enhance a sense of collective responsibility. Certain principles and values provide the basis for restorative practices that can take on different forms such as mediation, conferences, circle or other already existing models as well as for establishing new models.

Jennifer Llewelyn points out: “Each restorative justice process may be fundamentally different in design and still be entirely restorative in nature.” (Llewellyn, Howse 1998:42) While a number of restorative justice models differentiate in their procedures and designs, their source in a shared restorative vision of justice is what provides the common ground. Declan Roche describes the elements of that common ground as: “preference for deliberation over adjudication, and a search for remedies that repair harm and strengthen ties of interdependence” (Roche 2006:234).

2.5.1. Repair

Repairing harm and restoring relationships is one of the key aspects in responding to violations from a restorative justice perspective. The emphasis is put on the needs of those harmed that should be addressed with inclusion of the harm-causer and others involved. What kind of reparation is aspired and how

can it be reached? Repairing the harm done and re-establishing a harm-free state like the one that existed before the violation had occurred. Healing the wounds – physically and mentally? What forms of reparation are prioritized in restorative justice approaches?

Jennifer Llewellyn writes: “Restorative justice seeks to restore the relationships between the parties involved to an ideal state of social equality.” (Llewellyn, Howse 1998:26) Depending on the kind of harm done to people and their relationships, reparation often requires more than formal processes in order to achieve real reparation. Even if the loss of material goods can be compensated by replacing them, responding to emotional pain and fear is much more difficult – if even possible at all.

For instance, let’s consider a case where someone breaks into an apartment, violently attacks the woman who lives there, and robs her. The physical wounds and the mental state of the attacked person might be worse than the material loss. She might move to another place and give up her home where she lived for many years, because she cannot be there any more due to this traumatic experience. She might be afraid to go out on the street after nightfall. How could one repair the damage of the fear that has been produced? Even when it’s not possible to restore a harm-free state in the sense of eradicating fear, the intention to repair also needs to cover emotional aspects when an incident is addressed comprehensively.

The aspect of reparation strongly relates to the notions of restorative justice that are commonly understood to embrace reparative elements such as measures that aim to ‘make it good’ (cf. Mantle, Fox, Dhami 2005:5). With the broad aim of trying to achieve reparation, measures for doing so may be flexible, applied according to the needs of those involved in specific situations. Referring to the emotional reparation, an encounter with the offender may be one way of decreasing fear after having been attacked. Meeting in a protected environment and hearing about the reasons for the violations done can help the harmed person to reduce fear.

One essential component of repairing harm from a restorative justice perspective is to pay attention to the needs of those harmed. In the retributive judicial system, much attention is given to the wrongdoer and to ensuring retribution, whereas only little attention is given to those harmed and their needs. Howard Zehr understands the missing attention of the criminal justice system as being linked to the understanding of crime as a violation of law instead of a violation of relationships (cf. Zehr 2008:3). Yet, from a perspective such as Zehr's, it would seem that the violation primarily concerns a person. Laws and rules cannot be violated as such, as they are constructed mechanisms that have been established to serve as means to re-establish justice and enable a peaceful social co-existence after harm has been done. Likewise, it is not a law or a rule that can cause sufferings, as these depend on the people, their needs and emotions.

Van Wormer critically notes that “[t]he problem is that rules depersonalize people and create alienation” (Van Wormer 2008:255). Healing is a process on a very personal level which largely depends on the individual person and experience. Every crime is different, too, depending on the reasons, the intentions and the extent of the physical and psychological violation. From this perspective, therefore, every crime requires to be looked at individually, and a reaction needs to be in accordance with the specific situation and circumstances. Repairing harm requires consideration of the particular situation of the person harmed in order to understand the needs present and to be able to address them as best as possible.

Clarifying what is realistic regarding the chances of repairing harm done is important for restorative justice approaches. If the aspiration is to heal emotional wounds of affected people completely, that may be a goal that cannot be planned for. After all, processes of healing and forgiveness are mostly dependent on internal emotional processes of people themselves. Thus, assumptions that restorative justice could be a universal remedy may be exaggerated. However, establishing certain structures – a supportive

environment – and approaching the conflict with sensitivity for the needs and feelings of those harmed, can support holistic healing processes. What is achieved in practice may not always be in line with theoretical claims. In situations where it is not possible to achieve comprehensive repair, it may be useful to set realistic goals and seek to reduce harm as best as possible.

A true intention to repair harm as best as possible after violations are made, however, represents an important paradigmatic shift to restorative justice compared to retributive criminal justice systems – even if total reparation of all affected aspects of peoples' lives and relationships is not always feasible, paying attention to arising needs provides the opportunity for taking measures to respond to them and to cure wounds – physically and mentally – as best as possible.

2.5.2. Encounter

An encounter between the wrongdoer and the harmed is seen as an important aspect of transformative conflict management. Meeting in a protected environment where the wrongdoer and the violated person come together (and depending on the program, community members as well) can benefit all parties. Those harmed have the opportunity to express their feelings and needs directly to the wrongdoer. Within such a protected environment, those violated can process what has happened in the past and address their current needs directly to the wrongdoer. It may also be effective in reducing the fear of future crimes.

The wrongdoer can also benefit from the encounter. The encounter provides an opportunity for the wrongdoer to face the persons harmed, to speak with them and to apologize. The wrongdoers are directly confronted with the outcomes of their harmful behavior and thereby realize the effects that the actions had on those harmed. Such realization has the potential of triggering important transformative emotional processes as well. Through the encounter, mutual understanding can be increased, questions can be addressed and appropriate actions may be discussed and taken in order to deal with the consequences,

according to the needs. The meeting, the communication that takes place during the meeting and the resulting agreement can be seen as key elements of encounter (cf. Van Ness 2000:3).

A concern that is frequently mentioned in relation to using restorative justice is that it would be an easy way out for offenders and that it does not require much from them compared to classical criminal procedures. At first sight it might look like the harm-causer would get away easily in processes of dialogue and by being included in the process of deciding on further steps. However, such procedures might require more effort from the wrongdoer than retributive criminal procedures. Restorative justice puts a strong focus on holding the wrongdoer accountable by intensive confrontation with the effects of the action, with the people affected and with the needs for reparation. Being directly confronted with the results of the harmful behavior may have stronger transformative effects for the wrongdoer than not being confronted with the actual effects.

Including the wrongdoer in the healing and reparation process is one of the main elements of restorative justice. Confrontation with the consequences of one's behavior for the harmed party may lead to deeper transformation. A change of behavior may thus be sourced in increased understanding, rather than motivated by trying to avoid punishment. As the needs of the harmed persons are prioritized in a restorative justice process, possible solutions are flexible according to the needs of those involved.

For instance, after a phone was stolen, the harmed person may primarily want to have the phone back. Perhaps important information, photos or documents were saved in the phone that cannot be substituted and that are of high personal value to the person. In that case, the harm done exceeds pure financial loss, but includes elements that cannot be restored. What opportunities could an encounter offer to the people involved? How could they benefit from it and why?

Encounter provides the possibility to express feelings and needs that were caused by the incident. The person who stole the phone can benefit through becoming aware of the impacts of his or her actions and getting the opportunity of taking an active part in mitigating the harm done by behaving according to the agreement with the harmed and community members. The thief may realize that the act of stealing the phone has larger consequences than expected, and the emotional aspect of getting confronted with the harmed person may lead to increased understanding and, hence, to transformation of behavior. From a retributive perspective, a “normal” response would be to simply punish the thief for the act of stealing without any personal confrontation with the consequences.

A personal encounter might require more from the wrongdoer in comparison with a process of ‘simply’ being punished. Direct eye-to-eye confrontation with the harmed person gives the wrongdoer the opportunity to find out what effects the behavior have for the life of the person and for the community, and the chance to contribute in restoring harmony and balance. The experience of encounter may support the wrongdoer in developing an increased sense of responsibility for the actions and the consequences. The harmed person also has the chance to develop improved understanding for the situation of the wrongdoer by finding out about the reasons for committing the crime. Those may range from unsatisfied needs or unequal states of society such as poverty, feelings of desperation or greed to perceptions of being treated unjustly. For instance, one can be aware of the possible negative impacts before robbing someone, but still decide to do so, for a variety of reasons. How can the root causes be addressed in order to diminish the reasons for committing the crime? What measures can be taken? If one’s harmful behavior reveals the harm already present in society, encounter can help to uncover the decisive reasons for doing harm and establish discussions aimed at finding appropriate measures to address the problem comprehensively.

If based on voluntary decisions of the parties, an encounter may have much more potential to benefit all involved compared to forced encounter. The latter

might even strengthen negative outcomes such as traumatic effects for those harmed. For instance, forcing a boy who got brutally attacked or forcing a woman who was raped to meet with the offender could be more traumatic than healing and even increase the harm done. If an encounter should be beneficial for the involved parties, the emotional sphere needs to be taken into account properly. Depending on how much the harmed person is affected by a crime or violation that has been committed, a sensitive approach to the person may be required that respects their emotions and their readiness to confront the harm-causer in a process of encounter. If conducted properly, encounters may carry high potential for both wrongdoer and harmed for healing wounds, increasing understanding for each other, for reconciliation and for coming to terms with the past.

2.5.3. Participation

As restorative justice sees crime as concerning people and their relationships, the resulting harm needs to be addressed in a participatory process with the involvement of those affected. Assuming that the harm caused not only affects those directly involved, but also the members of the community, the need for establishing social dialogue arises. The extent to which members of the community are included in the specific restorative justice programs varies. Usually, in mediation processes only those directly engaged take part in the process whereas other programs such as restorative circles or models of family group conferences allow for more general participation of indirectly affected parties.

From a restorative justice perspective single crimes and conflicts also affect the balance of the community and therefore community members should be integrated in dealing with the conflict and in finding solutions. The conflict is regarded as belonging to the community and therefore needs to be dealt with within the community. In contrast to that, in current retributive criminal procedures the conflict, its assessment and the decision-making processes are referred to authorities outside the community. The process of managing

conflicts is seen as requiring assessment and judgement from a third party of higher power, an authority that makes decisions about measures to be taken over the heads of those directly concerned.

Restorative justice approaches regard the community as being most highly qualified and most legitimate to make decisions about what is required to restore peace, and therefore the ownership of the conflict is returned to the community by providing the structures for dialogue and participatory decision-making processes. “In most cases it is the primary stakeholders who are best placed to decide how best to address, not only the consequences, but also the causes of the wrongful behaviour in question, thus minimising the chances of recurring problems.” (Barton 2000:11)

With the guidance of a facilitator whose role is to support those involved in finding agreements, the decisions are made by the parties directly involved and often with participation of other community members, depending on the specific program and its facilitator. Through dealing with crimes and conflicts in participatory ways, restorative justice constitutes a counter-movement to passing on the conflict to external authorities, and supports individuals and communities to be actively engaged in addressing local conflicts and finding solutions that provide the opportunity for peace in the future. Giving back the conflict to the people is a major element and message of restorative justice.

Without structures that enable the people affected to participate in the procedures dealing with conflicts or crime, important concerns or messages can't be expressed and shared with others. These elements may be crucial for resolving the conflict. Since they cannot be included when the task of dealing with conflict is referred to authorities, addressing the conflict comprehensively may not be possible in that case. If community members can make decisions and if they are included to a large extent in the process, they are more likely to have confidence in the outcomes of that process. Furthermore, through participation those involved develop awareness that one's own feelings, actions and ideas are important not only for oneself but also for the community, for

these elements get included and considered in the context of dealing with conflict in the community.

2.5.4. Empowerment

The key principle of empowerment in restorative justice refers to strengthening confidence and the ability of people or communities to deal with certain problems and conflicts self-sufficiently. An important aspect of empowerment is linked to the assumption discussed above, the idea that conflicts in the community require a response from within the community rather than from state authorities. Dealing with conflicts within the community in participatory processes supports empowerment of individuals as well as of the community as a whole. Questions about how the harm done can be addressed, how a harm-free state can be restored, what is needed for satisfying the needs of those harmed, what elements can support reconciliation and forgiveness, etc. are regarded as mainly being the concern of those involved in the conflict.

Through active involvement in the decision-making process of how to deal with the consequences, the role of the individuals as well as of the community is strengthened. On an individual level, empowerment is linked to increased confidence in the value of one's contributions as actually being part of the decision-making processes in contrast to being largely excluded from it. A sense of being a part of and of importance to the community can be empowering for individuals.

Marta Vides Saade stresses the community empowerment that arises out of community participation (cf. Saade 2008:237). Especially when the decision making processes are left to the participants with nearly no interventions from a facilitator, like for example in circle or conferencing programs, empowerment processes in the community are supported (cf. Wachtel 2012:2). Through engaging and empowering families in making decisions and plans for their family member's well-being, better outcomes, less conflict with professionals,

more informational support and improved family functioning may be achieved (cf. Merkel-Holguin, Nixon, & Burford, 2003; qtd. in: Wachtel 2012:9).

Restorative justice processes challenge power imbalances by establishing respectful dialogue at eye-level where the harm-causer and the harmed can express their perspectives and feelings. Encounter at eye-level provides a space that enables speaking and being heard for all participating in the frame of an equal encounter. Such processes increase the sense of ownership for conflicts, as one understands his/her role not only as being somehow affected, but having influence in dealing with the conflict. Changing from a passive role in dealing with conflict to an active participatory role encourages empowerment of both individuals and community. Through increased confidence and a strengthened awareness of their ability to deal with conflicts constructively, people can improve their competence in self-sufficient conflict response.

Jarem Sawatsky highlights the link between empowerment and responsibility: *“Empowerment without responsibility sees freedom as doing whatever you want or will. Responsibility without empowerment is like living with a dictator.”* (cf. Sawatsky 2002:15, emphasis in original) Empowerment with responsibility in contrast enables transformative processes for participants (cf. Sawatsky 2002:15).

2.5.5. Responsibility

In contrast to the current retributive criminal justice system that focuses on guilt, restorative justice aims to encourage people to take responsibility for their actions and to become part of restoration processes. Jarem Sawatsky points out the difference of a justice system focusing on guilt and one focusing on responsibility: *“Guilt paralyzes. Responsibility calls for account and for restoration.”* (Sawatsky 2002:14) What does restorative justice imply for taking responsibility for actions? How does taking responsibility go together with a non-punitive approach? How, and to what extent can restorative justice

approaches influence the sense of responsibility in the harm-causer and in community members?

Participation in dealing with the conflict can lead to an increased sense of ownership that creates an increased sense of responsibility for the conflict in the community. Having indirectly affected community members taking part as ‘secondary stakeholders’, they may understand themselves as being co-responsible for dealing with the violations in the community that they are part of. Based on the logic of interdependent relationships, responsibility and accountability are understood communally (cf. Sawatsky 2007:85). Conflicts are encouraged to be settled locally rather than through state-based and state-driven responses (cf. Sawatsky 2007:85). A raised sense of responsibility strengthens abilities in the community to deal with conflicts more self-sufficiently and not depending on state interventions.

Restorative justice always regards the community as being affected if harm had been caused. By being included in dealing with violations within the community, people may feel more deeply rooted in the community. The perception of one’s own role as being an active member of the community may have implications that contribute to restoring a harm-free situation after conflicts or crimes.

Restorative justice approaches encourage wrongdoers to take responsibility for their actions whereas a justice system without inclusion in the processes of decision-making and solution-finding rather inhibit taking responsibility (cf. Sawatsky 2002:14). Kelly Richards stresses the active part of the offenders in restorative justice that is in contrast to retributive justice approaches: “The focus is [...] on what offenders need to do in order to “put things right” rather than what might be done to the offender.” (Richards 2011:97) Rather than passively joining a program as a service offered or imposed upon them, the wrongdoers should be actively engaged in contributing what is required for restoring the harm.

Being directly confronted with the outcomes of one's actions and having the chance to contribute to restoration as harm-causer are core elements in restorative justice. Through the engagement, direct confrontation and increased awareness of the outcomes of one's actions, the impact that was caused to the harmed and the community, the wrongdoer has the chance to take on responsibility. Whether on an emotional, verbal or physical level, the wrongdoer has the opportunity to take on responsibility and take actions that are directly linked to improve the outcomes of the harm-causing behaviour.

Emotionally a sense of responsibility can be created through raising awareness and understanding about the negative effects of one's behaviour for the others. Verbal expression of increased feelings of responsibility is encouraged in restorative justice procedures through dialogue and encounter with those involved. Apologies and forgiveness may be aspects that can't be planned or integrated in programs, but framework conditions that provide space for a respectful dialogue may support such emotional processes. Depending on the relationship of the conflict parties involved, the agreement of measures to be taken by the wrongdoer as well as others involved in order to achieve restoration may be varying. For instance, conflicts and violence in partnerships may be more likely to result in emotional needs from both sides and those involved may ask for apologies or discuss feelings, needs and wishes, etc. Taking responsibility for conflicts in different fields, such as corruption in the business sector, may be likely to require different actions such as giving the money back. However, restorative practices generally aim to raise the sense of responsibility in society and encourage people to develop increased ownership for conflicts and crimes.

2.5.6. Transformation

The idea of reaching transformation through applying restorative practices refers to victims, offenders, community and the state system (cf. Sawatsky 2002:10). Achieving real change in people and their behaviour needs a certain time span and therefore needs to be looked at from a long-term perspective.

Jarem Sawatsky writes: “Patience and vision are friends of transformation” (Sawatsky 2002:10). By establishing dialogue between the affected, by supporting individuals to take responsibility, and by enabling social reintegration, restorative justice tries to increase understanding for the different parties. Communicating one’s perspective and feelings about the conflict, increases mutual understanding and paves the way for reaching a deeper transformation.

Restorative justice aims to change behaviour on the basis of internal transformations rather than external threats or enforcements. Valuing the approach of conflict transformation by addressing the root causes of harmful behaviour is linked to the aim of preventing future violations. Transformation in the process of dealing with conflict comprises emotional as well as behavioural aspects. It can be reached through making amends that may involve restitution, apology and changed behaviour (cf. Van Ness 2000:7). Howard Zehr underlines the transformative potential of restorative justice: “By addressing this need for vindication in a positive way, restorative justice has the potential to affirm both victim and offender and help them transform their lives.” (Zehr 2001:316)

Regarding healing as both means and ends of justice, the aspect of punishment loses importance (cf. Sawatsky 2007:85). With the focus on healing, conflicts and crimes are approached differently compared to a focus on punishment. Healing for all involved should be achieved – the ones harmed and the ones harming; moreover the family as well as socio-economic and ecological structures should be transformed (cf. Sawatsky 2007:85).

2.5.7. Social Reintegration

In order to provide the necessary framework for restoring the functioning of the community after harm has been done, both wrongdoer and harmed need to be reintegrated as full members of the community (cf. Van Ness 2000:4). Van Ness describes respect, material assistance and care for the emotional, moral or spiritual crisis as the three key elements of reintegration and highlights that both

victims and offenders can suffer from stigmatization (cf. Van Ness 2000:4). Reintegration allows both wrongdoers and harmed to be regarded as full members of the community without being labelled, and also reduces the likelihood of reoffending (cf. Wachtel 2012:3).

If restorative justice processes are used as diversion programs, then the participants usually don't get an entry in the criminal record which counteracts social exclusion mechanisms in society. Furthermore, instead of isolating the wrongdoer from the community, efforts are made to establish respectful dialogue not only to find an agreement, but also to encourage and strengthen community cohesion.

2.6. Principles as guiding Framework

As discussed above, restorative justice is based on key principles that are mostly regarded as the core of restorative practices. These include repair, encounter, participation, empowerment, responsibility, transformation and social reintegration. The success of different models of restorative justice may be significantly linked to being rooted in the guiding principles. Considering the range of cultural settings where restorative justice programs are applied stresses the need to flexibly adjust the process according to specific situations. Regarding the specific social and cultural contexts, restorative justice tries to consider the particularity of the situation (cf. Sawatsky 2002:6). Models can continuously develop further and be re-adjusted in accordance to the requirements of the present local situation. Some elements of the procedures may be changed or applied in different modes while other elements are repeatedly applied and may become an integrated part of a program.

Instead of only applying programs according to standard processes, the guiding principles need to be clarified and incorporated in the practices, and should be implemented with a true intention of repairing harm done. Often restorative justice programs that include all aspects regarded as necessary according to set standards still do not result in desirable restorative processes and outcomes.

However, sharing empirical knowledge and recommendations for practical use serves as a valuable source for innovation and improvement of existing forms of restorative practices.

Howard Zehr describes his understanding of restorative justice and its principles as follows: “Restorative justice is not a map, but the principles of restorative justice can be seen as a compass pointing a direction.” (Zehr 2002:10) This quote shows an understanding of restorative justice as an open concept that allows – or suggests – flexibility in its adaption to specific situations. If one understands the practice of restorative justice as an ongoing process of learning rather than as a static concept, it is crucial to leave enough space for creating new innovations. Principles underlying restorative justice may be seen as a guiding framework for establishing new forms of applications.

2.7. Restoration and Prevention

Having examined characterizing principles of restorative justice, this section focuses on the dimension of prevention and future-orientation. How much is restorative justice concerned with reducing the numbers of future crimes? What elements of restorative justice can be seen as future-oriented? What differentiates restorative justice from retributive justice approaches in relation to preventing future crimes?

The future-orientation and preventive approach of restorative justice can be seen in its way of responding to crimes with the attempt to address root causes and trigger personal transformation of the wrongdoer through confrontation and encounter, a transformation that would inhibit the repetition of crimes. In contrast, retributive criminal justice approaches use a deterrence effect by enforcing punitive sanctions to prevent crimes, which often isolates wrongdoers from society. Social exclusion can be created by incarceration, but also by being judged and labelled by the social environment for the wrongdoings and hence excluded from community processes. Restorative justice approaches involve the wrongdoer and thereby provide the opportunity to be part of the

process of restoration or ‘making it good again’. Through that involvement, social devaluation in the community may be decreased as the structures provided serve to support reintegration processes that contribute to a harmonious way of living together in the future.

The reasons for committing a crime may depend on different factors influencing the particular case. For instance, the reasons for overlooking a red traffic light when driving a car may be different depending on the situation and the person, etc.; it may be different from the reasons for not stealing or not joining forbidden social gatherings. We can only speculate about the extent to which fear from punishment, moral stances, social exclusion from the community, etc. contribute to general prevention, to making people refrain from doing harm and/or violating a law. Referring to individual prevention, studies show more success in reducing numbers of recidivism after restorative justice programs than after retributive criminal justice procedures (cf. Latimer, Downen, Muise 2005:137; Umbreit, Coates, Vos 2006:9; Nugent, Williams, Umbreit 2004:415). Restorative justice approaches suggest that addressing crimes in sustainable ways requires stronger future-orientation than retributive criminal justice methods. Rather than using punishment to deter, restorative justice aims to transform the behaviour of the wrongdoer through processes that focus on accountability and involvement aiming to repair and restore the harm.

Restorative justice can be described as both reactive and proactive using the terms of Ted Wachtel (cf. Wachtel 2012:1). The reactive level comprises measures that are taken in response to a conflict whereas the proactive dimension is concerned with taking measures to prevent future crimes. Proactive activities aim to build and re-build relationships and to develop the community (cf. Wachtel 2012:4).

An example of an established model that can be used proactively as well as reactively is the approach of circles. Wachtel writes: “A circle is a versatile restorative practice that can be used proactively, to develop relationships and build community or reactively, to respond to wrongdoing, conflicts and

problems.” (Wachtel 2012:7) The value of circles can be seen in their characteristic of being broadly applicable to a variety of situations, in that they provide a space for respectful dialogue that encourages people to express their views and needs, in a frame that structurally enables equal participation of the involved. It is worth noting that the proactive level gets increasingly acknowledged as part of restorative justice. The International Institute for Restorative Practices, for instance, includes the proactive dimension of preventing future crimes explicitly in its definition of restorative justice (cf. Wachtel 2012:1).

Both the proactive and reactive focus of restorative justice differs from other contemporary justice systems which are mainly backward looking. A retributive justice system primarily focuses on vengeance for past behaviour while a major concern of restorative justice is to look into the future: the aim of establishing a competent and cooperative society that is capable of dealing with conflicts. Restorative practices aim to move beyond just dealing with the symptoms of a specific conflict, but also aim to reach long-term effects in the form of transformed approaches to conflicts.

Informal restorative practices also contribute to the proactive dimension as certain social skills and abilities may prevent the emergence of conflicts beforehand. Such abilities may include personal coping mechanisms for transforming destructive emotions into constructive ones, respectful and appreciative forms of interaction with others, needs-based communication, patience, tolerance and acceptance for ‘otherness’. Strengthened social skills in communication and changed perceptions of conflict situations may support such a transformation towards constructive ways of dealing with conflicts self-sufficiently and in restorative ways. There are various ways of contributing to that proactive level of forestalling the emergence of conflicts, all of which constitute important instruments of future-oriented peace-building.

The value of the proactive dimension of preventing future crimes in restorative justice may be seen in the confrontation of the wrongdoers with the outcomes

of the harm-causing behaviour, inclusion of community members and support of social-reintegration of the wrongdoer. Katherine Van Wormer understands justice from a restorative justice perspective as being sought in terms of reconciliation and the making of peace (cf. Van Wormer 2004:5). She further stresses:

Instead of focusing on a past wrong, what is needed is a form of justice that helps orient offenders toward the present and future state of affairs, toward membership in the community rather than removal from it. What is needed is a three-pronged system of justice: justice for the individual offender, the victim, and the community. (Van Wormer 2004:6)

2.8. Measuring Restorative Justice

Having discussed different forms of restorative justice including formal practices within and outside the criminal justice system as well as in informal settings, we will now focus on the effectiveness of restorative justice in the judicial field. How programs are evaluated depends to a large extent on what priorities are given to the different elements of the process. It needs to be considered that the data of studies and the indicators used also depend on the research teams' understanding of what factors are regarded as important for determining success. The chosen selection of criteria integrated in studies therefore may be seen to reflect the prioritization of the researchers to a certain extent.

Considering the many different ways of determining the success of restorative justice, it is crucial to make explicit which factors are regarded as decisive. Valuing the outcomes higher than the process? Or putting processes over results? The data collected in studies depends on different factors like the research style and method, the participants of the examined programs, their personal experiences and perceptions, etc. Measuring how much transformation actually takes place within the participating persons may be most difficult. What importance is given to single elements such as restoring relationships, recidivism rates, the sense of self reliance and responsibility within society, cutting costs in the judicial system, material reparations? There is a diverse range of factors that

may be involved in evaluation studies. Considerations about process- or result-focus will be followed by listing selected indicators of studies and results of evaluations.

2.8.1. Result- or Process-Focused Research

As there are many different variations of restorative justice programs and different priorities of the participants, it is difficult to decide the most decisive aspects that clarify the actual effectiveness. Jennifer Llewellyn highlights the result orientation of restorative justice which is to restore relationships (cf. Llewellyn, Howse 1998:72). She says that “[...] a process must be measured by its ability to restore” and concludes that an effective way of evaluation needs to measure the results (cf. Llewellyn, Howse 1998:72).

Umbreit and Armour in contrast underline the meaning of the process and stress the need to involve that aspect in evaluations: “Restorative justice is more a process than a product. Consequently, the measurement of its success requires an evaluation of the factors that influence the process as much as its outcomes.” Valuing process and the outcome equally means that a variety of factors need to be considered in evaluations. They further point out:

Restorative justice research, therefore, has concentrated on participation rates and reasons, the overall satisfaction of participants, and participant perception of fairness as indicators of the health of the process, while also considering restitution and repair of harm, diversion, recidivism, and cost. (Umbreit, Armour 2011:79)

Considering the process-focused concept of restorative justice, evaluations need to consider many aspects in order to provide a comprehensive picture of the effectiveness of the programs. Evaluations merely concentrating on results as a criterion for classifying projects as successful or unsuccessful are rather questionable, as they undermine the complexity on process and emotional levels. Choi, Green and Gilbert stress the need for more qualitative research with process-focus:

The lack of process-oriented studies calls for researchers to describe and critically assess restorative justice processes with victims and offenders by assessing their experiences. In doing so, gaining data from multiple restorative justice participants’ perspectives is also needed considering the differing positions such as victims and offenders. (Choi, Green, Gilbert 2011:339)

2.8.2. Recidivism Rates

Recidivism is one of the most common indicators used for determining the effectiveness of restorative justice programs within the criminal justice field. If a crime is not committed again that obviously benefits the community as well as the harm-causer. Recidivism data can furthermore help predict the numbers of future crimes to expect. Thus, that indicator is usually regarded as highly relevant, because it directly relates to potential future crimes in society. What results do studies on restorative justice show about the recidivism rates of restorative justice?

Several studies showed that recidivism is lower after mediation programs compared to procedures of the retributive criminal justice system (cf. Umbreit, Coates, Vos 2006:9). Lower recidivism rates when using restorative justice also resulted from a meta-analysis conducted by the Canadian government; for mediation as well as for family group conferencing (cf. Latimer, Dowden, Muise 2005:137). The evaluation results are based on twenty-two studies on the effectiveness of thirty-five individual restorative justice programs and show the success of lower recidivism rates when using restorative justice compared to criminal justice procedures.

[R]estorative justice programs, on average, yielded reductions in recidivism compared to nonrestorative approaches to criminal behavior. In fact, compared to the comparison and/or control groups who did not participate in a restorative justice program, offenders in the treatment groups were significantly more successful during the follow-up periods [...]. (Latimer, Dowden, Muise 2005:137)

The findings of a meta-analysis of fifteen studies conducted on nineteen different sites comprising more than 9000 juveniles show positive outcomes for restorative justice in relation to reoffending rates. According to the analysis, mediation participants may be as much as 30% less likely to reoffend compared to nonparticipants (cf. Nugent, Williams, Umbreit 2004:414). None of the study results provided any evidence that participation at victim-offender mediation was associated with increased delinquency. That may to some extent answer the

common concern that restorative justice may not be harsh enough to inhibit reoffending (cf. Nugent, Williams, Umbreit 2004:415).

A typically mentioned concern relating to using restorative justice programs as alternative to retributive criminal justice procedures is the assumption that it might not be effective in reducing recidivism, especially for severe cases. Since severe cases are often not addressed with restorative justice programs, little can be said about that. Another concern that is sometimes voiced is that the data showing the success of restorative justice in inhibiting reoffending could not be taken at face value due to the pre-selection of cases. For mostly those cases are referred to restorative justice programs, that are classified as non-severe.

One may argue that the pre-selection of cases referred to the programs might be a more influential aspect relating to recidivism than the impact of the programs itself. Couldn't it be that only those people get referred to restorative justice programs who would not have reoffended anyway? Although restorative justice program success rates may partly be due to the selection of less severe cases, they can still be seen as a major success and strength. Even minor crimes and juvenile crimes can lead to future offences of a more severe nature, if not handled constructively. So while there are questions as to real extent to which restorative justice is successful in decreasing, there are no hints that it would be responsible for increasing recidivism.

2.8.3. Cost Effectiveness

Evaluations of the cost effectiveness of restorative justice programs in comparison to retributive judicial programs constitute another important indicator. Assessing the relative costs of correctional programs in studies may be difficult as they depend on several factors, such as the number of cases already handled and the time that is devoted to each case (cf. Umbreit, Coates, Vos 2006:12). It should be noted that the choice of research method and approach may in this case lead to stronger differences in results than other indicators.

The aspect of cost effectiveness can be seen from two sides; one refers to the costs of the programs for dealing with crimes and its outcomes; the other one refers to the costs that are indirectly influenced through aspects such as lower recidivism rates. Determining costs of restorative justice programs is in general difficult as depending on the specific program, its structure and duration, the costs may vary significantly within a nation as well as between countries. However, several studies were conducted in order to compare the costs of restorative justice with programs of the retributive criminal justice system. What do study results show about the costs of restorative justice programs compared to retributive programs?

According to the National Commission on restorative justice in Ireland, the average annual cost of keeping an offender in prison in 2007 was €97,000 whereas the costs per case of a Probation order is estimated at about €8,200 and of a Community Service Order even lower (cf. National Commission on Restorative Justice 2009:16). The cost of a restorative conference by the Youth Conference Service in Northern Ireland in 2008 was estimated at £1,000 to £1,500 (about €1,150 to €1,700) per referral and 90% progressed to agreement (cf. National Commission on Restorative Justice 2009:24). It needs to be mentioned that from the five-hundred people working as mediators in Ireland only 30% are paid, but 70% are working as volunteers (cf. National Commission on Restorative Justice 2009:63).

A review of 36 comparisons of restorative justice with conventional criminal justice programs in the UK and in other countries shows lower costs when using restorative justice as diversion from criminal justice (cf. Sherman, Strang 2007:4). Sherman and Strang stress the cost effectiveness with an examined example of using restorative justice for youth offenders in Idaho, US, and write: “[...] if only one in 50 RJ conferences prevented a year in custody, that alone could cover the costs of the conferences.” (Sherman, Strang 2007:23)

An interesting point is made in relation to the potential cost saving effects of restorative justice: “Even if RJ has no effect on crime, it may still be a useful strategy if it helps victims. And if by helping victims it reduces the costs of other services to victims by more than the cost of RJ, then RJ would be cost-effective.” (Sherman, Strang 2007: 62) This refers to the above mentioned indirect influences on the expenses that are generally lower when applying restorative justice programs compared to retributive programs.

2.8.4. Satisfaction of Participants

Another aspect to take into consideration for evaluating restorative justice programs is the satisfaction of those directly involved. How do they experience the program? How do they feel about the program and the results? If the main persons involved in the conflict are satisfied with the process and results then it means they feel justly treated and it might be easier to continue with their normal lives. Measuring subjective feelings of satisfaction requires a sensitive way of data collection in order to get authentic insights about their emotions.

Furthermore, a determination of what satisfaction means is necessary. Umbreit, Vos and Coates list three central variables for the participants satisfaction based on the data of his study review: “1) the victim felt good about the mediator, 2) the victim perceived the resulting restitution agreement as fair, and 3) the victim, for whatever reason, had a strong initial desire to meet the offender.” (Umbreit, Vos, Coates 2006:4) They conclude that the expression of satisfaction with mediation processes is consistently high for both victims and offenders across sites, cultures, and seriousness of offenses (cf. Umbreit, Vos, Coates 2006:4).

Other studies also show higher satisfaction of both harmed person and wrongdoer with the processes and outcomes of restorative justice compared to retributive judicial procedures (cf. Mantle, Fox, Dhimi 2005:6). Focusing on the participants’ opinions about the fairness and outcomes of the process, similar studies show a higher success of restorative justice programs compared

to criminal justice procedures (cf. Umbreit, Vos, Coates 2006:6). A study by the University of Innsbruck in Austria shows that 75% of the victims that took part in a victim-offender mediation in Austria would choose a mediation procedure again for similar future cases (cf. Altweger and Hitzl 2001, qtd. in Bruckmüller, Koss 2010:115).

2.8.5. Considerations about Evaluation Results

Measuring the effectiveness of restorative justice shows generally positive results. However, evaluations and data collections also face challenges. One aspect is that restorative justice classified as such is a ‘young’ movement (at least under the term restorative justice) and thus evaluations only started to be conducted throughout the last decades. However, so far the study results imply less repetition of crimes and improved satisfaction of the participants after restorative justice processes than after retributive procedures (cf. Latimer, Dowden, Muise 2005:131). Based on the research review done on the effectiveness of restorative justice, Sherman and Strang conclude: “Restorative justice offers a strategy for holding more offenders accountable, with many more victims helped, with more crimes prevented, and with the costs of government reduced.” (Sherman, Strang 2007:24)

That the aspects of social reintegration and the preventative level of restorative justice are often not included in studies may be due to the difficulties of proper measurement. The involvement of the community, absence of criminal record entry as well as the lower expected reoffending rates of restorative justice programs hint at an improved social re-integration as there is also no isolation from the community through imprisonment. Another aspect of evaluating restorative justice that is presently lacking and needs more attention in research activities is to consider the emotional states and mental recovery of victims after being affected by crime. For instance, the emotional damage caused through a violent attack and robbery may considerably exceed the material loss. Traumatic consequences and emotional effects are difficult to measure and to evaluate, especially as a long time span is required for doing so.

As discussed above, various parameters play a role in deciding the effectiveness of restorative justice, and some of them are difficult to integrate in studies. The general tendency of restorative justice shows higher satisfaction and fewer future crime rates than the retributive justice approach. Keeping in mind that statistics and data show only some parts of the process and the decision of what indicators to choose is always a subjective one, study results can be regarded as giving an overall impression of restorative justice rather than objective and static facts.

2.9. Restorative Justice – A new Paradigm?

Having looked at definitions, principles, types of programs and applications, restorative justice clearly differs from retributive justice approaches. The question is raised as to whether restorative justice constitutes a new paradigm or philosophy or if it is a new set of programs that is added into an existing structure of dealing with conflicts and crimes. Does restorative justice represent a paradigm shift or is it rather a set of additional programs added to the usual procedures of the retributive criminal justice system?

Debates in literature about the nature of restorative justice are controversial. Some authors regard restorative justice as a new paradigm, others as complementary programs to retributive criminal justice procedures (cf. Sawatsky 2002:1). Some see restorative justice as an expression of a deeper change in thoughts and values of society, others regard it as a new innovation that comprises of a range of programs with increased focus on aspects like reparation, participation and empowerment, but not necessarily being related to a deeper transformation in the sense of shifting to a new paradigm. Does restorative justice represent a real alternative to the currently dominant retributive justice system?

Declan Roche describes the dominant way of thinking about restorative justice as being “a particular method for dealing with crime that brings together an

offender, his or her victims, and their respective families and friends to discuss the aftermath of an incident, and the steps that can be taken to repair the harm an offender has done.” (Roche 2006:217) He concludes that “[r]estorative justice is not a just a criminal justice policy, but also a policy for regulating child welfare, schools, corporations, civil litigants, and authoritarian regimes that abuse human rights. (Roche 2006:234) Regarding restorative justice as a policy widens the meaning and impact of restorative justice as a far reaching approach that is directly connected to the community.

Jarem Sawatsky points out his understanding of restorative justice:

It is more than a new, more efficient technique. It is more than a way to fine-tune the criminal justice system. It is more than a new language for old approaches to criminal justice. Restorative Justice is a new paradigm [...]. It is a different imagination. It offers an alternative to the basic assumptions underlying the modern state system. (Sawatsky 2002:1)

He describes restorative justice as an “an alternative to” basic assumptions of the current state system. His explanation comprises not only a clear distinction of restorative justice as a new approach, but also includes a shift in assumptions that differentiates substantially from those assumptions that the modern state system is based on. Interesting is his way of explaining the differing basic assumptions with the term ‘imagination’. Based on a changed imagination, a new set of basic assumptions is created that paves the way for changing a system that is based on restorative ideas. The created systems or movements – like the emergence of restorative justice - can then be seen as the expression of a shift in people’s thinking.

“Nothing will change in criminal justice until we change the basic assumptions underlying the system.” (Zehr 2001, qtd. in: Sawatsky 2002:2) Such basic assumptions are strongly connected to people’s value systems that shape opinions and attitudes and guide their actions and behaviour. Mantle, Fox and Dhami describe restorative justice as both an idea that carries many different understandings and as a movement where adherents with different aims come together (cf. Mantle, Fox, Dhami 2005:2). This perspective highlights the different understandings of the conceptual basis of restorative justice and

thereby shows that even if the broad vision of restorative justice is shared, it doesn't necessarily have to be rooted in the same ideas. Also the aims that are meant to be achieved may be different from one another. Likewise there may be different motivations for pursuing the same aims. Categorizing adherents of restorative justice generally as sharing the same motivations, moral ethics and world views would be too simplistic for the complex reasons that influence people's behaviour in reality.

The reasons for getting involved in or supporting restorative justice may vary and be rooted in diverse motivations and backgrounds; often it may be pragmatic aspects such as cost effectiveness or recidivism rates that are the decisive factors for choosing a restorative justice approach. However, the practical procedures cannot be regarded separately from the underlying philosophy they are rooted in. That view of an inherent relatedness of the underlying philosophy and practical procedures is also stressed by many authors and restorative justice advocates.

David Loy writes: "[...] our criminal justice system will always be subordinate to our larger vision of how people should relate to each other." (Loy 2001:84) Hence, this larger vision provides the basis of the criminal justice system and the first step to change it would be to change the larger vision of how people relate to each other within society.

Katherine Van Wormer describes restorative justice – like Jarem Sawatsky – as a paradigm:

As a paradigm that envisions systemic social change, as one that can be applied at the micro level to reach one youth in one community, or at the macro level to help heal a nation's woundedness, restorative justice has the potential to be one of the most influential models of the 21st century. (Van Wormer 2008:99)

She emphasizes the importance of the direct social impacts on the smaller as well as the larger scale of applying restorative justice and thereby highlights the possible range of influence of restorative justice processes. By describing restorative justice as having the potential for being "one of the most influential models of the 21st century" she stresses the potential impact in society. (Van Wormer 2008:99)

For Howard Zehr, restorative justice consists at its core of “[...] a set of principles, a philosophy, an alternate set of guiding questions. Ultimately restorative justice provides an alternative framework for thinking about wrongdoing.” (Zehr 2002:5) An alternative framework for thinking provides a different view on crime and conflict and from this alternative lens, crime and conflict will be approached differently. Restorative justice hence constitutes a different philosophical approach.

Daniel Van Ness and Karen Strong describe restorative justice as being based on a set of assumptions or patterns of thinking that structure people’s perception of crime and what a proper response should be (cf. Van Ness, Strong 2010:4).

Marta Vides Saade, too, stresses the guiding underlying assumptions of restorative justice by highlighting the definition of justice: “Restorative justice basically reframes the ethical question of how justice is defined. This redefinition, in turn, requires a reframing of the legal processes of justice.” (Saade 2008:232) Saade thereby reminds us of the link between the definition and the legal implementation of justice and how the core assumptions underlying the perceptions of justice serve as the basis for shaping legal processes. The legal procedures are of a dynamic nature as they are constructed and introduced by people’s understandings of justice rather than a static and unchangeable concept. Saade underlines the mutual influences of the definition of justice and the established legal processes of how justice should be reached.

Most of the above statements highlight the interconnection between the paradigmatic approaches and the movement of restorative justice. Therefore restorative justice approaches need to be viewed in connection with the patterns of thinking that shape people’s views when looking at situations. As outlined above, there may be different motivations for supporting or being involved in restorative justice, and concepts of human nature and world views may vary. However, approaching conflicts and crime from a restorative justice perspective are grounded in certain patterns of thinking and value systems. These provide

the lens through which conflicts are viewed and influence how we deal with them on an interpersonal level as well as on a larger scale, for instance by implementing restorative practices in the justice systems.

2.9.1. Cultural Conceptions of Individuality and Collectivism

Valuing different social and cultural realities is crucial for finding an appropriate form of dealing with conflicts or crimes in particular situations in specific local contexts. The arising needs and emotional states of people affected by violations cannot be viewed in isolation from their cultural realities. “Among the environmental influences, culture is the strongest and probably the most varied one. The best documented effects of culture seem to be those for Eastern (versus Western) influences.” (Wall et al. 2001:377) Many eastern traditional practices and teachings are based on holistic philosophies and teachings – for example alternative medicine, meditation and yoga practices – whereas in western settings there is a generally stronger emphasis on isolating individual aspects and analysing them separately.

Marta Vides Saade highlights the relevance of noting the distinction between Western and Eastern contexts:

In the West, the predominant social context is one beginning with the individual. Political and legal structures reflect that view. [...] In the East, the predominant social context is one which begins rooted in indigenous traditions that include a range of understandings regarding the interdependence of persons within society and family. (Saade 2008:240f.)

A stronger emphasis for community and perception of interrelatedness in eastern traditions on the one side seems to be contrasting with western ones that focus more on individuality.

These seemingly contrasting cultural realities between East and West demonstrate the relevance of raising the question of how both sides can benefit through learning from each other. In this particular scientific interest: What inspirations can be gained for restorative justice approaches from concepts and understandings of an Eastern Buddhist philosophy?

Considering the link between the underlying philosophy and practical procedures of restorative justice as crucial for current and future developments of the movement, the second part of this thesis focuses on Buddhist ideas and concepts as potential sources of inspiration for restorative justice approaches. It should be noted that Buddhism is only one potential influencing factor besides other philosophies and approaches that may influence restorative justice on conceptual and practical levels. However, this thesis focuses on potential sources of inspiration from Buddhist philosophy. Therefore other philosophical strands and approaches that might have important impacts for shaping restorative justice approaches can't be examined in this thesis as it would exceed the given frame. Considering that context, the focus is put on the following central questions:

What parallels can be found between Buddhist teachings and restorative justice approaches? What Buddhist conceptualizations and ideas may serve as inspiration for restorative justice approaches? How could these be used for a further development of restorative practices? In order to find answers to these questions, the next part of this thesis examines relevant concepts and ideas of Buddhist teachings as a source of inspiration for restorative justice.

3. Buddhist Teachings

Buddhist teachings with their emphasis on non-violence and self-transformation have been passed on throughout history and across different cultural and social settings in which diverse schools and traditions have emerged. Within the schools and traditions, understandings and forms of expression vary. Referring to Buddhism as one uniform set of teachings clearly neglects the diversity of branches and the complexity of interpretations and perspectives that have arisen. Different adaptations of Buddhist philosophy in different contextual settings may vary considerably. The term Buddhism consists of ‘Buddha’ which means ‘awake’ and the suffix ‘ism’ which has been added in the English language and describes the nature of something like a closed system or theory. It may be argued that the original teachings were in no way intended to form such a closed system or theory. ‘Buddhism’ in this thesis is used to refer to ideas and concepts of basic Buddhist teachings. Using the terms ‘Buddhist concepts’ or ‘Buddhist ideas’ is not meant to imply that similar or the same ideas can’t be found in a non-Buddhist context.

Focusing on the ideas of different Buddhist concepts, this thesis does not aim to discuss whether Buddhism should be defined as religion, philosophy or science, but is concerned with identifying ideas and concepts that can serve as potential sources of inspiration for restorative justice approaches. In addressing the research question ‘What potential sources of inspiration for restorative justice approaches can be gained from different Buddhist concepts?’ this analysis does not aim to provide a balanced overview of Buddhist concepts. Instead, it selects certain ideas and elements of relevance that are examined in view of restorative justice approaches.

Viewing perceptions, behavior and actions as being based on certain assumptions that are largely formed by cultural norms and traditions, my understanding of Buddhism is most in line with seeing it as a philosophy or

worldview as opposed to a religion or science. As ancient philosophy that has been practiced in societies over a long time span, it has played a significant role in forming people's perceptions, attitudes and values. Hence, the behavior of people within communities is based on certain cultural attitudes and values that have been passed on and reproduced over generations. That deep level of shaping cultural values addresses the way how people perceive themselves and their relation to others as well as their sense of responsibility. In societies where Buddhist teachings and practices are deeply embedded in the culture, it has a formative role of shaping values and norms in society.

As mentioned above, Buddhism cannot be described as a uniform set of beliefs. This notion is also expressed through Thich Nhat Hanh's description of Buddhism as consisting of non-Buddhist elements (cf. Thich Nhat Hanh, qtd. in: Ha 2008:4). Assuming that one element out of Buddhist philosophy alone can't be labeled as Buddhist, each part is important to create the whole of Buddhism. The set of assumptions that Buddhism is made of consists of different parts. When looked at separately the single parts don't have any exclusively Buddhist characteristics, but are found in non-Buddhist contexts as well. For example, non-violence and compassion are elements that can be found in many peace initiatives; the assumption of interrelatedness and mutual dependency of all things is not only a core notion in the dharma, but can be found throughout a variety of philosophical strands and traditions in many different social and cultural contexts; for example in the South African philosophy of ubuntu (cf. Krog 2008:360).

The understanding of the interwovenness of different parts creating something that appears as a whole can be well illustrated with the example of a woodhouse. Looking at a woodhouse one sees it as a whole, but it is clear that it consists of many pieces of wood and other parts. Seeing only a single piece of wood does not give any information about the existence of the house and one will not automatically associate the piece of wood with a house, because it could be used for a variety of other purposes such as for making fire or as walking stick. Only if the pieces of wood are put together in the right order with

the other elements, the many parts create a house. There are many conditions for this house to exist. Through the conjunction of the parts a new order of things is created that appears as a new whole. The same applies to Buddhism, as Thich Nhat Hanh points out: “Buddhism is not one. The teaching of Buddhism is many.” (Thich Nhat Hanh 1987:84)

The contextual setting in which Buddhism as such had been created differs significantly from today’s. Buddhist teachings need to consider the actual context. A rising number of initiatives acknowledge that fact and try to adjust Buddhist teachings to the social realities of today’s context. Ken Jones describes Buddhism as “a pragmatic teaching which starts from certain fundamental propositions about how we experience the world and how we act in it” (Jones 1981:3). Different Buddhist perspectives share a set of underlying basic assumptions that can take on different forms of practices within different traditions.

In its teaching Buddhism has no features to confine it to any particular nation or any particular country. It is universal in its appeal. To the Buddhist there is no far or near, no enemy or foreigner, no renegade or untouchable, since universal love, realized through understanding, has established the brotherhood of all living beings. A real Buddhist is a citizen of the world. Some salient characteristics of Buddhism are, therefore, its rationality, practicability, efficacy, non-aggressiveness, harmlessness, tolerance, and universality. (Mahāthera 1998:240)

In this quote, Mahāthera stresses the universal applicability of Buddhism in diverse contexts; due to the inherent characteristics of the Buddhist core teachings. It needs to be considered, however, that the interpretation of the core teachings cannot be viewed independently from its interpretations.

In the following sections different Buddhist concepts are examined and analyzed in relation to restorative justice approaches. What ideas from Buddhist philosophy support restorative justice approaches? How can certain notions and views out of a Buddhist philosophy provide a beneficial framework for restorative justice?

3.1. Buddhist Social Engagement

Buddhist practices are often regarded as being carried out alone and in isolation through the practice of meditation and through concentrating on training of the minds of individuals rather than being socially concerned. Debates on the extent of social engagement in Buddhism have generated divergent opinions. How far do Buddhist teachings and practices impact the societal level? And how much are Buddhist practices intended to do so? Some might interpret the focus on self-transformation as a rather individual practice rather than a social one, while others might see the potential for social change in focusing on individual transformation. How do Buddhist practices relate to social activism? How do individual practices and transformation relate to social transformation and social activism?

At first sight Buddhism may appear to be concerned with individuals rather than society, as practices of training the mind through meditation addresses an individual level. This imagination of Buddhist philosophy focusing on the individual perhaps derives from a cliché of Buddhist practitioners living a hermit life in isolation from society trying to train the mind. However, while for some it might be the right way to live isolated from the community this cannot be described as a typical Buddhist way. And even if one chooses to live with little social interaction, an indirect social engagement can be derived from the Buddhist notion of interrelatedness.

Indeed, the extent of social engagement of Buddhism may be interpreted in different ways depending on what aspects are considered to be significant. While some see a Buddhist social concern inevitably linked with concrete social projects, others understand individual meditation practices as a form of social engagement, if practiced with the intention of contributing to the common good. Therefore, it might not be possible to conclude the actual extent of the social engagement of Buddhism. Instead of providing a ‘balanced’ evaluation of the social engagement of Buddhism, this chapter focuses on

examining those arguments that indicate a social concern. In this way, the link between Buddhist ideas and their practical applications on a social level should be demonstrated.

Due to the increased public emergence of Buddhist projects being explicitly socially engaged, especially in the past decades, a strong social concern of Buddhism became visible and commonly acknowledged. The emerging projects highlight the value of connecting the personal with the social sphere. Jack Hamrick writes that “Buddhism was always engaged in spirit even if not yet in practice” (Hamrick 2012:11). On a spiritual level the aspirations of Buddhist practices such as sending loving kindness and its orientation towards serving the common goods are always related to society. Therefore a general concern with social issues in Buddhism can be deducted. Various community projects that are initiated and conducted by Buddhist monks directly address social issues and support particular groups of society. Such projects comprise diverse social activities such as working with people with drug addiction, people incarcerated in prisons or those from difficult social backgrounds such as broken families, etc. Projects like these are often implemented in cooperation with non-Buddhist-groups and aim to help people in need.

Aside from specific social projects, Buddhist core notions of reality express the mutual impact of the individual and societal level, on each other.⁶ According to the Buddhist assumption that one’s actions always affect the community as well, everything needs to be viewed in relation to society. Training one’s mind does not only have individual impact, but indirectly affects society as well. Meditation as training of mind and concentration is helpful for strengthening certain values and for supporting behavior based on loving kindness, compassion, non-violence, etc. The aim of creating a peaceful co-existence

⁶ Examples of Buddhist social projects include prison mediation, see: <http://www.prison.dhamma.org/>; Buddhist drug rehabilitation programs in Thailand, see: http://www.seas.at/aseas/6_1/ASEAS_6_1_A12.pdf; outreach work on HIV/ Aids and support of patients, for example the ‘Sangha Metta Project’ in Thailand: <http://www.buddhanet.net/sangha-metta/project.html>; schools established by members of the Buddhist community, for example the Sisaengtham School in Thailand: <http://www.sisaengtham.ac.th/>; environmental projects, such as the ‘Mindfulness Project’ in Thailand: <http://www.mindfulness-project.org/en/indexE.php>

between people through eliminating the causes of suffering such as delusion, hatred or attachment, shows a direct link to society. Thich Nhat Hanh explains his understanding of engaged Buddhism: “When we walk in the meditation hall, we make careful steps, very slowly. But when we go to the airport, we are quite another person. We walk very differently, less mindfully. How can we practice at the airport and in the market? That is engaged Buddhism.” (Thich Nhat Hanh 1987:53)

Buddhism with the messages that it carries can be understood as a tool for establishing a culture of peace. Sulak Sivaraksa stresses the need to respond to violence, greed and delusion in society and highlights the potential of Buddhism to do so especially for the west:

We need to look for alternative cultures of awakening and understanding and try to establish more compassionate cultures, which transform greed to generosity, hatred and violence to loving kindness and compassion, and delusion to understanding and wisdom. We need to label such a culture “Buddhist”. (Sivaraksa, Yuk 2004:49 f.)

Sivaraksa focuses on the instrumental aspect of Buddhism and highlights its value as means rather than an end. Viewing Buddhism as a tool to establish and support a culture of peace does not leave doubt about the social engagement of this understanding of Buddhism. Ken Jones describes the social concern of Buddhism in a similar way:

For Buddhism, the ultimate freedom is to achieve full release from the root causes of all suffering: greed, hatred and delusion, which clearly are also the root causes of all social evils. Their grossest forms are those which are harmful to others. To weaken, and finally eliminate them in oneself, and, as far as possible, in society, is the basis of Buddhist ethics. And here Buddhist social action has its place. (Jones 2009:4)

Jones further stresses the potential of Buddhism to serve as model for social change: “The Buddhist way is, with its compassion, its equanimity, its tolerance, its concern for self-reliance and individual responsibility, the most promising of all the models for the New Society which are an on offer.” (Jones 1981:20)

The question of social engagement in Buddhism is relevant because the purpose of this research is to find parallels and potential inspiration of Buddhist teachings in view of restorative justice approaches. How do Buddhist teachings

and concepts relate to restorative justice? As can be seen in the first part of the paper, restorative justice is strongly concerned with internal transformation of people rather than trying to achieve change through external enforcements. A key Buddhist notion is the understanding of self-transformation as being inherently linked with social transformation.

3.2. Social Change through Self-Transformation

Personal transformation and a strengthening of the mind are main aims of Buddhist practices. Society is seen as affected by personal transformation, due to the doctrine of dependent origination, where all is interdependent in a web of relations. A key assumption is that one needs to look at oneself first and try to live a proper life instead of pointing at others: “One should first establish oneself in what is proper; then only should one instruct others. Thus the wise man will not be reproached.” (Buddharakkhita 1985:47)

Buddharakkhita stresses the high educational value of one’s own behavior and living in accordance to what is intended to be taught to others: “One should do what one teaches others to do; if one would train others, one should be well controlled oneself. Difficult, indeed, is self-control.” (Buddharakkhita 1985:47) Serving as a role model by applying the teachings in one’s own life may have huge transformative impacts by inspiring others to do so as well.

From a Buddhist perspective training one’s own abilities through meditation is one way to set an example of a peaceful way of living for others. Thereby the social sphere is addressed through the individual life style. Sivaraksa stresses the link between personal behavior and social problems:

It is important when we meditate to reflect on social problems as much as on personal problems. Social problems are merely an extension of our personal problems. By using the teachings of karma and interdependence, we can look deeply at the connections between our personal misconceptions and our social and cultural misperceptions. We must investigate deeply the causes and conditions that connect our personal behaviour with social problems. (Sivaraksa, Yuk 2004:60 f.)

His understanding on the close connection of the personal and social sphere leaves no doubt about the mutual influence of individual practices and social

issues. He furthermore underlines the potential effects that it can have when many people manage to decrease negative emotions such as anger or greed in daily life with the help of meditation (cf. Sivaraksa, Yuk 2004:61). The meaning of individual development for the benefit of society refers to a small as well as to a large scale. Social problems on the small scale, such as conflicts within families and problems on larger scale, such as conflicts between countries or wars may be different in extent, but rooted in similar causes. A Buddhist approach suggests to begin practicing with oneself as taking steps towards creating a “culture of peace” highlights the importance of understanding and being capable of dealing with one’s own emotions. If a person can deal with personal inner conflicts constructively, they might be capable of approaching interpersonal conflicts in more constructive ways. The same may be valid for problems of larger scales.

Emotions like anger or greed are often the reasons for harmful behavior. If one is able to transform negative emotions it also had effect on a societal level. From a Buddhist point of view, peace is a collective product, yet personal transformation is seen as key in order to reach a peaceful state (cf. Der-Ian 2006:94). Dhammahaso Hansa writes: “In order to establish solidarity and harmony in societies, we first have to build peace in our minds, because it leads us to positive behaviors, such as speaking, listening, walking and living.” (Dhammahaso n.y.:7) The Dalai Lama sees individual development as the way towards world peace: “In order to have genuine world peace, firstly we individuals should develop inner peace. Through inner peace than genuine outer peace can be achieved.” [...] (Dalai Lama 2007, min 39:42 – 40:06)

Focusing on the individual level and the interrelatedness of social change, the structural level can also be addressed by the Buddhist core notion of transformation as a collective process. Sivaraksa stresses the potential of personal transformation in relation to structural social change:

With such a personal transformation, we can really transform society nonviolently. To do so, we need to understand social structures, which are directly linked to the three root causes of suffering: greed, hatred and delusion, manifesting themselves in the forms of economism, neocolonialism and scientism. With such an understanding, we will work to

destroy or overcome structural violence in society, by not hating the oppressors, but regarding them as our friends and partners in dialogue. (Sivaraksa, Yuk 2004:38)

In Buddhism, one thing, person or phenomenon is always viewed in relation to its surrounding environment and the mutual influence; a general concern of Buddhism with social issues can be in that sense postulated. To what extent social concern is applied through specific projects varies. Sivaraksa refers to the potential of change towards non-violent structures in society through personal change. That understanding stresses the interwovenness between the personal and the political sphere. One may assume that this notion suggests organizing social structures in non-violent ways, for example through establishing dialogue by using victim-offender mediation instead of imposing punishment, in dealing with crimes or the abolition of the military.

Having described a general social concern inherent in Buddhist philosophy and expressed through diverse projects, in the following chapter we will examine selected Buddhist core concepts in relation to restorative justice approaches.

3.3. The Concept of Dependent Origination (Paticca-samuppada)

Often referred to as the heart of Buddhist teachings, the doctrine of paticca-samuppada, translated as ‘dependent origination’, ‘dependent arising’ or ‘causal conditioning’, describes the interrelatedness and interdependence among all beings and things. The essence of the doctrine is that everything that is, can only exist because everything else exists. There is nothing that can exist independently. It can be described as such: “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)

Ongoing conditionality and causality bring things, living beings and situations into existence. The mutual dependency and interrelatedness described above between A, B and C applies to more complex relations in the same way. According to the doctrine of dependent origination all is interrelated and in a continual process of transformation.

The doctrine provides the basis for other Buddhist concepts such as the Four Noble Truths, the three characteristics of existence and the teachings of karma and rebirth (cf. Gnanarama 2000:94). Assuming an interdependent and dynamic co-existence, the world can be described as a web of relations in which all parts rely on each other. Every single part of the web is important as it affects the whole; hence every action of every single person impacts the web and all things are conditioned by each other: “Every condition follows another and all are part of an orderly sequence of cause and effect. A tree falling in the forest changes the life of a banker in the city.” (Henning 2002:11) This quote illustrates the understanding of causal conditionality of all phenomena through the web of relations of the central Buddhist doctrine.

Thich Nhat Hanh uses the example of a sheet of paper to illustrate the interrelatedness of all things:

If you are a poet, you will see clearly that there is a cloud floating in this sheet of paper. Without a cloud there will be no water; without water, the trees cannot grow; and without trees, you cannot make paper. So the cloud is in here. The existence of this page is dependent on the existence of a cloud. (Thich Nhat Hanh 1987:45)

He continues to explain that not just the clouds, but also the sunshine is in this sheet of paper, because the forest needs the sunshine to grow and concludes that everything is in this sheet of paper: “the wheat that became the bread for the logger to eat, the logger’s father” (Thich Nhat Hanh 1987:46). Regarding all people, things and phenomena as being interrelated and impacting on one another, is opposing an individualistic world view that understands people as separated entities. From a Buddhist perspective nothing can be separated from other things, because everything comes into being conditioned by many causes and results out of conjunctions of these conditions. Taking the example of the sheet of paper as metaphor; if only one condition for the existence of the paper would be missing, the paper could not exist.

3.3.1. The twelve Links of Dependent Origination

The twelve links of dependent origination or the theory of causation identifies the origin of suffering and ignorance. The concept helps explain the reasons of

suffering, in order to eradicate dissatisfaction, which is seen as the ultimate aim of Buddhist teachings and traditions. The twelve links describe the conditionality among all things and the repetitive cycle that one thing consequently results in another as a natural law. Aside from describing the causes of suffering and ignorance it describes the concept of karma. “Ignorance is shown as the past cause that conditions the present; and craving, the present cause that conditions the future.” (Mahāthera 1998:333)

Pategama Gnanarama describes the twelve links as dealing with “a causal account of the factors that operate behind human suffering and the psychological reasons, which cause one to be born again and again in numerous spheres of births unfolding links of previous life, present life and the life immediately after this life” (Gnanarama 2000:98):

- 1–2 Through ignorance conditioned are the Kamma formations.
- 2–3 Through the Kamma-formations conditioned is Consciousness.
- 3–4 Through Consciousness conditioned are Mentality and Corporeality.
- 4–5 Through Mentality and Corporeality conditioned are the Six Sense-bases.
- 5–6 Through Six Sense-bases conditioned is Sense impression.
- 6–7 Through Sense-impression conditioned is Feeling.
- 7–8 Through Feeling conditioned is Craving.
- 8–9 Through Craving conditioned is Clinging.
- 9–10 Through Clinging conditioned is Rebecoming.
- 10–11 Through Rebecoming conditioned is Rebirth.
- 11–12 Through Rebirth conditioned are Decay, Death, Sorrow, Lamentation, Pain, Grief and Despair. Thus arises the whole mass of suffering. (Gnanarama 2000:99)

There are different views of whether the twelve links refer to three-life times or only to one and if they were articulated in the same sequence in the original Buddha teachings (cf. Shulman 2008:305). Common interpretations understand the first two links of ignorance and karma foundations as referring to a past life and providing the pre-condition for the present life. According to that interpretation the links from three to seven are effects of the past in which the conditions for the present life have been created and link eight to ten are formative for the future or next life. Although there are different interpretations there is one major point of agreement (cf. Shulman 2008:305): all twelve links are concerned with analyzing the way in which the mind conditions experience

and existence. Thus, the focus is on how the mind operates and the consequential effects.

General interpretations of the concept dependent origination highlight the interrelated nature of existence; Eviatar Shulman understands the original concept of dependent origination as addressing only the workings of one's mind and therefore regarding occurring phenomena as being dependent on subjectivity (cf. Shulman 2008:299). According to Shulman, the understanding of dependent origination as a general principle of causality relating to all things was a result of later doctrinal developments (cf. Shulman 2008:316). He refers to the important ontological implications of the concernedness of the twelve links of dependent origination with the mind and writes: "It [the doctrine of the twelve links] is based on a metaphysics which seems to believe that objects—real objects!—are conditioned by consciousness." (Shulman 2008:305) According to Shulman the ontological implications suggest things being conditioned by consciousness rather than by other things (cf. Shulman 2008:297). The important role of the mind in creating peoples' realities is a basic assumption in the teachings of the Buddha and supports Shulman's conclusion.

Aside from a detailed explanation of how suffering comes into being the paticca samuppada doctrine offers a cycle of liberation as well.

Faith is condition to contentment.
Contentment is condition to rapture.
Rapture is condition to calmness.
Calmness is condition to bliss.
Bliss is condition to samadhi.
Samadhi is condition to Wisdom sight to see Truth.
Wisdom sight to see Truth is condition to disenchantment.
Disenchantment is condition to dispassion.
Dispassion is condition to deliverance.
Deliverance is condition to the Wisdom that initiates cessation towards nibbana.
(Buddhadasa Bhikkhu 1978)

While the 'mundane order' explains how suffering comes into being, the above described 'transcendent order' illustrates the way to the cessation of suffering through reversing the order. It starts with faith as being conditioned by

suffering. Hereby the state of suffering offers positive effects as it provides the pre-condition for the existence of faith.

3.4. Dependent Origination and its Relevance for Restorative Justice

The concept of paticca-samuppada illustrates the causal relations that lead to suffering and conflict and, in turn, those conditions offering liberation from suffering. This is relevant for understanding the harmful formations at the root of conflicts and crimes. All of the twelve links of dependent origination are exclusively described as mental states in the doctrine. There is no attention given to external conditions. In line with that, addressing crimes and conflicts in the community in restorative justice focuses on transformation of inner processes at the roots of the problem. An awareness of the causal links as illustrated in the paticca-samuppada may lead to an increased understanding for the reasons underlying crimes and conflicts. That might encourage addressing the causes of the problem rather than fighting only the symptoms. Becoming aware of the causal relatedness of conditions and their effects in suffering and conflicts provides the basis of change by which conflict can be transformed (cf. McConnell 1995 17).

Understanding oneself as embedded in an interconnected web of relationships comprising all people and phenomena may encourage more respectful behavior with each other as compared to regarding oneself to be a separate entity existing independently from all others. Being aware that one's own behavior affects the whole web may lead to a stronger sense of responsibility. When understanding oneself as part of the whole there is no sense in causing harm to other parts of the whole as it would, in turn, affect oneself. Rather, a stronger sense for care-taking may result from that worldview of oneness as each part such as people, animals, things, and environment is seen as somehow being connected to oneself. When dealing with crimes such increased awareness of mutual affectedness may have important implications for approaching the case.

From the perspective of the court, as the main body dealing with violations considered as crimes in society, not causing more harm in the process of trying to reach justice would be a logical consequence considering the notion of interconnected existence. Attempts to heal the already existing harm would be a logical behavior based on these considerations, rather than causing more harm by blaming and punishing individual persons. Assuming interrelatedness and an increased understanding of the causal conditions that created the circumstances for the crime to occur would provide the grounds for the courts to deal with crimes more on the level of causes rather than symptoms.

The following quote from Thich Nhat Hanh illustrates the implications conveyed through understandings of dependent origination by using the example of a pirate (cf. Thich Nhat Hanh 1998:34f.). The first reaction to the presence of a pirate who behaves harmfully towards others might be that the pirate is seen as the problem and the solution is to get rid of the pirate. If the pirate as an individual is seen as guilty and to be blamed, the implication to kill the pirate seems to be a logical consequence from that mindset. What implications does the notion of interconnectedness as found in the Buddhist tenets have for circumstances such as the presence of pirates?

Thich Nhat Hanh stresses the need to reduce one's own anger and develop understanding for the causal conditions leading to the existence of the pirate (cf. Thich Nhat Hanh 1998:34f.). He stresses the need to provide supportive conditions for people to change and writes: "Blaming never helps. Only love and understanding can help people change. If we take good care of people, we will be rewarded by their pleasantness." (Thich Nhat Hanh 1998:34)

Comparing the pirate – as someone who behaves harmfully towards others – to a lemon tree that does not grow well, he concludes that in both cases blaming would not be beneficial:

When we grow a lemon tree, we want it to be vigorous and beautiful. But if it isn't vigorous and beautiful, we don't blame the tree. We observe it in order to understand why it isn't growing well. Perhaps we have not taken good care of it. We know it is funny to blame a lemon tree, but we do blame human beings when they are not growing well. Because our brothers, sisters, and children are humans, we think they should

behave in certain ways. 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)

According to that, with growing understanding for the conditions that led to the situation the need to blame diminishes. Then there would be no justifiable reason for anger against the pirate anymore as the problem is not only seen in that individual person, but also in the supporting conditions around. If one develops anger against individual persons being pirates, that anger can be transformed by practicing mindfulness and ceases when greater understanding for the conditions of a situation is developed (cf. Thich Nhat Hanh 1998:33). Thich Nhat Hanh suggests refraining from saying anything to the person that seems to be the cause of the anger until there is some level of understanding (cf. Thich Nhat Hanh 1998:34).

He further writes:

If I had been born in the social conditions of a pirate and raised as a pirate, I would be a pirate now. A variety of interdependent causes has created the existence of the pirate. The responsibility is not solely his or his family's, but it is also society's. As I write these lines, hundreds of babies are being born near the Gulf of Siam. If politicians, educators, economists, and others do not do something to prevent it, many of these babies will become pirates in twenty-five years. Each of us shares some responsibility for the presence of pirates. (Thich Nhat Hanh 1998:34f.)

In this quote emphasis is put on the different conditions that play a role in the existence of the pirate. They can't be separated from each other as all is regarded to depend on another. Thich Nhat Hanh highlights the duty of all parts of the society to prevent babies from being raised as pirates and mentions politicians, educators and economists as responsible parts as well as others. What applies to the pirate also refers to criminals more generally: All are part of the crime and all are part of the solution. As the individual is seen as being only partly responsible, the aspect of providing the necessary frame for preventing crimes in the future refers also to structural aspects and raises fundamental questions about educational systems or structural inequalities that indirectly support the prevalence of crimes. The latter might include issues such as poverty, unemployment or unequal access to educational institutions or health care.

The assumption of a shared responsibility is accompanied by a need for participation in dealing with the outcomes of the harmful actions and in deciding on future steps to take. If a broad range of people are affected, this calls for the inclusion of different members of the community in the process of repairing, depending on their potential contributions. In restorative justice approaches the assumption of shared responsibility is expressed with the principles of participation, repair and responsibility as described above in this thesis in the section on restorative justice. The main implication from the doctrine of dependent origination might be that everyone is understood to be affected. Broad participation of the community may be a main practical implication for restorative justice approaches in that context.

Acknowledging general affectedness by violations implies responsibilities of many different people, but it also implies that contributions to the solution finding process may come from different people and social groups, depending on the available resources. With the focus on healing, also those not directly affected can be involved or even provide their contributions to repair if they can. From that perspective, the aspects of responsibility, affectedness and contributing to repair can be viewed separately without having implications of guilt or blame for those being involved as anyone is considered to be affected. Contributions to restoration do not necessarily need to come only from an individual person who is accused, but could also come from other people, groups or a community as a whole.

Practical Examples in Restorative Justice Procedures

An increased sense of responsibility as implicated in the concept of dependent origination can be linked to the practices in restorative justice programs to include a number of people in the solution process. For instance, in Family Group Conferences, broad participation of community members in the process is a major characteristic. This is an example of a practical application of restorative justice within the criminal justice system where many people from various fields of the community are integrated in the processes of dealing with

crimes of young offenders. Often school teachers, relatives, friends or colleagues are invited to take part at the Family Group Conferences.

Another example where the idea of mutual affectedness becomes visible in an institutionalized form of restorative justice within the criminal justice system is in methods of circle models. As a community based form of decision-making process for dealing with crimes, restorative circles allow a broad participation of community members and provide space for dialogue on eye-level if conducted properly.

The circle process creates a distinctive kind of space for restorative dialogue. Circles are fashioned in such a way that interconnectedness, interdependence, and equality within the community are highlighted. Participants are encouraged to share a sense of mutual responsibility for the well being of the community and the individuals within it, and an understanding that what happens to one person affects all. (Greenwood 2005:2)

Greenwood stresses the encouraging effect of developing mutual responsibility for the community and its individuals as well as an increased sense of mutual affectedness of behavior. This understanding, that everyone is affected, also means that everyone could potentially contribute to the solution process depending on the current resources, even if at first sight one does not seem to be affected by the crime.

Such procedures illustrate a model of putting theory into practice in terms of applying specific models of conflict resolution resonating with the idea of interconnectedness, in contrast to models based on the idea of separateness. The latter assumes the responsibility of, the affectedness by and resources to deal with crimes as exclusively concerning directly affected individuals. In comparison with that, the idea of wholeness and interconnectedness assumes responsibility, affectedness and resources not to be restricted only to individuals, but considers the community as a whole to be concerned.

3.5. Karma

“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

1998:267) The law of karma (Pali: kamma; “action” or “doing”) states that all actions result in resonating consequences. In this context, actions are not only understood narrowly, but include speech and thoughts as being elements that constitute karma, whether in a positive or negative way (cf. Mills 1999:31).

3.5.1. Karma and Intention

An important factor contributing to one’s karma is the volition of an action. The emphasis placed on the intention of actions might be even higher valued than the action itself and its outcome. Yuen stresses the meaning of motivation of the mind and differentiates between an external or physical level of causation, and an internal or mental (cf. Yuen 2008:442). The latter relates to the aspect of volition and intention in actions. As a Buddhist perspective sees the mind inherently linked with the outside reality, it plays a crucial role for constituting karma. “Experience of pain and pleasure all come from this internal as well as external causation.” (Yuen 2008:442)

Ledi Sayādaw Mahāthera describes that in Buddhist view only volitional doings constitute karma (cf. Mahāthera 1998:265). Also David Loy stresses the meaning of intention: “Intention is [...] the most important factor in the operation of the law of karma, which according to Buddhism is created by volitional action.” (Loy 2000:156)

Valuing the intention higher than outcomes raises the question of what implications that notion has for dealing with actions that unintentionally led to harmful results. According to the notions of karma, if rooted in an intention not aiming to cause harm, harmful results do not necessarily lead to negative consequences. Rahula writes:

Volition may relatively be good or bad, just as a desire may relatively be good or bad. So karma may be good or bad relatively. Good karma (kusala) produces good effects, and bad karma (akusala) produces bad effects. ‘Thirst’, volition, karma, whether good or bad, has one force as its effect: force to continue – to continue in a good or bad direction. Whether good or bad it is relative, and is within the cycle of continuity (samsara). (Rahula 1990:23)

Hence, present karma is the result of volitional actions of the past, whereas volitional actions in the present form the conditions for the future. U Silananda explains that karma is commonly understood as doing or action, but in truth it would be volition: “When you do something, there is volition behind it, and that volition, that mental effort, is called kamma.” (U Silananda 1999:11) U Silananda even goes one step further and describes karma as ‘mental effort’ underlying actions. She categorizes good karma or good volition with generosity, morality and meditation; bad karma or volition with deeds sourced in unwholesome mental states leading to harmful results (cf. U Silananda 1999:18).

In this context ‘unwholesome’ describes actions that are debasing either one’s own mind or producing harm to other beings; ‘wholesome’ describes actions that are conducive to the development of one’s own mind or to other’s happiness (cf. Mills 1999:31). Laurence-Khantipalo Mills illustrates the meaning of intention for karma through the example of killing a mosquito:

[S]upposing a mosquito settles on a person’s arm and s/he, not liking such an insect, raises a hand and kills it – such is an intentional action and therefore kamma with a potential result. But the person who lies down and unknowingly crushes a mosquito on the pillowcase, has done so without intention – thus this action is without future result. What has been said here about killing applies also to other harmful action and also to beneficial ones. (Mills 1999:31)

According to the law of karma, through killing or causing harm with the intention of doing so, one attracts likewise consequences to occur for oneself in the future. In the same way, behavior rooted in benevolent intention attracts likewise effects for oneself.

Consequences of actions do not necessarily evolve as an immediate effect of one’s actions, but can occur within a larger time span and even form the conditions for a next life according to Buddhist teachings. Past, present and future are regarded as connected, because everything is caused and conditioned by one’s actions: the present is conditioned by the consequences of past behavior, and present actions create future conditions. Mahāthera writes: “The present is the offspring of the past, and becomes, in turn. [sic!] the parent of the future.” (Mahāthera 1998:302) Causal conditionality as explained by the

concept of karma implies not only a recognition of one's own role in the past of having created the present situation, but also the own consciousness about it. At the same time the reaction of how we act in the presence is the formation of new karma (cf. U Silananda 1999:29).

3.5.2. Karma and Morality

Could karma be interpreted as a natural justice system? Does karma punish those doing bad things and reward those doing good things? What implications for judging does karma have? Those questions address the aspect of morality and evaluation of behavior and actions.

U Silananda stresses that the Buddhist concept of karma should not be confused with moral justice:

Kamma is not moral justice. If one takes it as moral justice, then one suggests that someone is sitting in judgement over beings. There is no one who makes judgements over the doings of beings; there is just the moral law of kamma. Just as kamma is not moral judgement, so it is not reward and punishment. (U Silananda 1999:6)

Interpreting karma as a kind of 'natural judgment system' ignores a key message of the concept assuming that everybody creates the consequences of actions oneself. If karma would represent a natural judgement system it would mean that there is higher instance that decides on what is right and wrong, which does not exist in the Buddhist tenets. Besides that, understanding actions as leading to resonating consequences rather than being right or wrong does not support the idea of judging behavior.

In a broader sense the message of karma is that everyone has the power and is in charge of creating one's own future. It constitutes what is known from psychological and philosophical concepts assuming that like attracts like: "According to the law of kamma, if you do good deeds, you get good results, and if you do bad deeds, you get bad results." (U Silananda 1999:6) Karma therefore constitutes a principle of resonance of actions with its effects rather than judgements based on moral images of right and wrong. As karma works through attracting resonating effects, the consequences follow automatically.

Therefore the emphasis lies in the behavior in the present as this is the time where future consequences are created.

3.5.3. Karma and Potential Inspiration for Restorative Justice

What relevance can be seen in relation to restorative justice approaches? How does the concept of karma relate to questions of blame and guilt?

Responsibility

“Each action is related to our past and future. It has impact on others and the environment.” (Patrik 2003) According to the law of karma an action links past, present and future and connects oneself with other living beings as well as with the environment. It highlights the meaning of the present in creating the future that affects oneself and impacts the whole web of relationships. The process of creating future effects needs to be considered in light of causal conditioning of the interconnected parts of the whole. An arising situation may be described as the co-occurring results of the actions of oneself and of the other parts of the web.

Referring to the causal conditioning as assumed in the concept of karma, a crime cannot be caused by ‘the criminal’ alone, but is partly created by other parts of the web through being part of the context where the wrongdoer commits the crime. In an interrelated worldview as suggested by the doctrine of dependent origination, actions cannot be separated from the context as they are influenced by causal conditions. When a person commits a crime it is embedded in a social environment in a web of mutual affectedness. Surely, the wrongdoer who directly causes harm is responsible for the behavior and creates future karma through the chosen behavior. These future effects are assumed to resonate with the present actions. Based on the notions of connectedness and mutual affectedness, all links in the web of relationships are part of the cause and of the solution of a crime. Hence, a sense of shared responsibility may arise.

Focus on the Process – the Present as Opportunity

Karma regards the present behavior as providing the opportunity to create future effects resonating from it. The awareness of the opportunity to contribute something beneficial in the present might encourage wrongdoers to act towards repairing the harm. Such a notion implies that whatever happened in the past, there is the opportunity to create something good in the present. Many criminals get stuck in the belief that it would not matter how they behave now, because they have already done something wrong and there is no opportunity to remedy this. If the wrongdoer has the chance to respond to the needs of those harmed it may have positive effects in increasing understanding for those harmed and improve future behavior.

The basic ideas of karma suggest focusing on the present. Responding to the present needs that have arisen as effects from the past actions is of high value and undermines focusing on guilt and blame. Rather, the present behavior and transformation are highlighted as these are creating future conditions. By giving the wrongdoer the opportunity to contribute to restoration and repair to the extent that the harmed ones allow, restorative justice programs seem to incorporate that idea. The example of mediation procedures may serve as practical example to embody the prioritization of behavior in the present.

In mediation procedures the wrongdoer is given the opportunity to directly engage with the harmed person. Aside from understanding the outcomes of one's actions for that person, the harm-causer has the opportunity to directly respond to the needs of the harmed person. This opportunity to restore relationships or to do good things relating to the harm done in the present goes well with the notion of karma that the present time is meaningful. Awareness that the kind of actions chosen in the present has the potential to create something great in the future, whatever mistakes have been committed in the past, may recall the value of behaving peacefully rather than harmfully.

Encounter is a main element in restorative justice procedures. Depending on the types of crimes and the sensitivity in the application of restorative justice programs, the harmed may benefit as well if the offender takes responsibility for his actions and is involved in healing and repair processes (cf. Dhammahanon, 2006). Through dialogue and confrontation as offered in restorative justice procedures, those violated can get to know the objectives and reasons for the crime and the encounter alone can change the perspective on the crime. Furthermore it may have crucial impact on an emotional level, such as decreasing fear, growing empathy, forgiveness and sympathy.

3.5.4. Karma and Punishment

So, according to the concept of karma, the present intentional behavior attracts resonating future consequences. If one does harm to somebody, he or she will be confronted with the effects in the future. Based on that notion, what a person does to you creates that person's karma and the way you chose to react, forms your karma. For example, if I found out that someone talked badly about me, that person created her or his karma for behaving that way. If I react with talking badly about this person in return, then I create negative karma from that behavior, too. If I react in ways not harming the person who talked bad about me instead, but in ways beyond revenge or intentional harming, my future karma will be more positive.

What about inflicting punishment to one who has done harm to someone else? Does judging and deciding on punitive sanctions by an outside higher authority go in line with the idea of karma? Can punishment of someone having committed a crime in some way be acceptable from a Buddhist perspective?

David Loy distinguishes three major potential arguments for justifying punishment: the purpose of punishment is seen in the greater good; punishment would rather reform than harm; and harming wrongdoers (retribution) is good in itself (cf. Loy 2000:145f.). All these arguments of justification seem to be insufficient from a Buddhist point of view, Loy argues (cf. Loy 2000:147).

Assuming that punishment would serve the greater good in order to prevent others from doing harm through a deterrence effect contradicts the Buddhist core notion of only using non-violent ways to establish peace. Enforcing behavior of others through the threat, or actual use of punishment represents a violent approach. The argument of punishment for reformation does not find confirmation when looking at rising crime statistics and re-offender rates – especially in countries where punishing mechanisms are stricter than in others, such as in the USA (cf. Loy 2000:146).

Justifying punishment by arguing that it serves reform may be rooted in a good intention, but this does not resonate with the Buddhist idea of reaching peace through peaceful means and not by enforcements and violence. From this standpoint, encouraging reformation through incarceration seems contradicting. Keeping the aim of enabling a peaceful social co-existence in the future in mind, enforcing separation of the wrongdoer from the social situation might not be an effective method. Loy stresses that the dehumanizing prison settings do not give prisoners the chance to deal with their feelings of guilt and their need for forgiveness. (Loy 2000:146) Prison settings may encourage frustration and anger rather than reformation; mental formations that Buddhist teachings regard as major causes of suffering aside from greed and delusion, and that may be described as problems underlying crimes.

The argument of seeking retribution implies that harming the wrongdoer would be good in itself and expresses the notion of justice as something reached through vengeance. One who did harm to others would be a bad person who would deserve suffering. The law of karma says that everything consists of cause and effect and that one will reap what is sowed. An argument that is sometimes referred to in order to justify punishment is to describe it ‘as an effect of one’s karma’ (cf. Loy 2000:147). As U Silananda describes the law of karma is not to be confused with moral justice and does not work in terms of rewards and punishment (cf. U Silananda 1999:6).

Understanding karma as a mechanism that works in accordance with one's behavior and leads to the resonating consequences does not justify judging others and determining what they would deserve. Such a procedure could be interpreted as hindering rather than supporting or applying karma. The system of punishment and reward conflicts with the doctrine of karma, as Narada Mahāthera points out: "Buddhists believe in a just and rational law of Kamma that operates automatically and speak in terms of cause and effect instead of rewards and punishments." (Mahāthera 1998:370)

Thus, assuming karma to work as described above, there is no belief in a higher instance that would determine punishment and rewards that one would deserve. Karma rather can be described as law that attracts resonating effects of behavior. The same logic applies to inflicting punishment: it creates new consequences. What is crucial for creating new karma is the present decisions on how to react to situations one is confronted with. Hence, reacting to a situation of violations with intentionally causing new harm through punishment creates new karma from harm-causing for the one punishing. Hence, there is no point in punishment, as it affects the one inflicting it with the negative effects of the action. Reacting to crimes and harm caused with punishment then creates a continuing cycle of repeated violations. An alternative way, one that is in line with the Buddhist basic concept, is to create seeds of peace instead: "We reap what we sow and we cannot avoid the results of our karma. Having this awareness we will then try our best to sow seeds of peace." (Sivaraksa, Yuk 2004:60)

Sivaraksa's statement illustrates his belief that the motivation and willingness to behave in peace-creating ways comes with an awareness of the connection between intentional actions and the results. Sowing seeds of peace through one's behavior attracts resonating peaceful states in the future instead of increasing harm-doing through punishment. According to the concept of karma, inflicting punishment represents intentional harm-causing in the present and brings harm to you. There is no higher instance in the Buddhist tenets that is entitled to judge over other people. If one causes harm, the person will receive

the consequences for the behavior automatically. Hence, there is no external instance that is in a higher position to judge upon the behavior of others and find ‘the right’ responses to harmful behavior. The process of karma is understood to be an automatic process that can’t be interrupted. As pointed out above, inflicting punishment to someone who has caused harm may create karmic consequences for the ones imposing punishment.

So what could be ways in which the Buddhist perspectives on karma could inspire restorative justice approaches? According to the concept of karma, only non-harming behavior can end violence, whereas inflicting punishment may increase harm. If harm is done to the wrongdoer through punishment, more harm is attracted which again affects the community as well, due to the interconnectedness of everything. Taking karma seriously, from the perspective of a state, would mean that structurally imposing harm through legally incorporated measures does not only harm the offender, but of society as a whole.

Instead of adding harm to the situation, a Buddhist perspective may suggest a non-violent approach with emphasis on one’s potential contributions in the present to transforming the causes underlying harmful behavior. Buddhist teachings suggest counteracting the roots of suffering through cultivating wholesome virtues. They assume that reduced delusion, greed and aversion decrease the reasons for behaving harmfully towards others, and suggest increasing the positive counterparts of delusion, greed and aversion, namely clear-mindedness, generosity and loving kindness.

The acknowledgement of community affectedness in restorative justice is visible through integrating members of the community in the procedures, for instance in circles or in family group conferences, those forms that allow an especially high participation in restorative justice. The basic principle of repair and focus on the needs of those harmed, clearly demonstrates a focus on restoration and healing rather than punishment. The example of sentencing circles, in contrast, may be described as working within the mindset of a

retributive justice approach as the goal is to decide on a particular form of punishment in a participatory process rather than moving beyond the idea of vengeance. However, the theoretical concept of restorative justice focuses on repair and restoration and therefore is in harmony with the idea of choosing peaceful reactions to harm done rather than punitive ones, an idea implied by the concept of karma. By developing an increased awareness for the mutual affectedness of the society, punitive sanctions in the criminal justice system may be diminished, as they cause harm for oneself and the community as well, according to a Buddhist view.

3.5.5. Conclusion – Karma and Restorative Justice

In restorative justice approaches, conflicts and crimes are understood as harm caused to people and relationships and therefore the aim is to mitigate harm and to restore relationships. The needs of those harmed and the responsibility of those engaged towards creating beneficial future results for all involved are central aspects. Increased self-responsibility and community responsibility, as implied by the concept of karma based on the notions of causal conditioning and interrelatedness is expressed in restorative justice by the principle of participation. Such a relational view within Buddhist concepts assumes that the causes and the outcomes of crimes concern not only the parties directly involved, but also other members of the community.

In line with the concept of karma, restorative justice approaches focus strongly on the present opportunities of repair. The process-orientated character and the emphasis on including the harm-causer in healing and repair resonates with the implications of karma, valuing the present as the decisive state for creating the future. Further inspiration from the concept of karma may be to move closer towards a healing-focus and beyond judgements or questions of guilt and blame. That is especially relevant for restorative justice procedures that are applied within the criminal justice system, as they often work within the same mindset or pattern of thinking as the surrounding retributive system, for

instance assuming that, after harm had been caused, inflicting more harm would be necessary to arrive at a just state.

3.6. The Three Characteristics of Existence

A Buddhist notion of reality is based on the assumption that the mind creates the perceptions of external phenomena and thus, one's reality. That understanding is reflected and expressed in various basic Buddhist tenets such as the Four Noble Truths or Dependent Origination. Aside from the emphasis on mental formations throughout Buddhist concepts, core elements of life and reality are seen as being independent of one's perception. Reality with all its component parts is understood as being characterized by three basic elements, also referred to as the 'three characteristics of existence'. Impermanence (*anicca*), no-self or egolessness (*anatta*) and dissatisfaction (*dukkha*) describe the Buddhist core notions about reality. Examining these three characteristics of existence provides insights into a Buddhist view on reality and related values which are relevant for relating Buddhist ideas to restorative justice approaches.

3.6.1. Impermanence

The first core assumption about reality is its impermanent nature. Everything is understood to be in an ever-changing and developing state. The rise and fall of things, feelings and situations are seen as a main characteristic of life.

[I]n Buddhism the sum total of the teaching of Impermanence is that all component things that have conditioned existence are a process and not a group of abiding entities, but the change occurs in such a rapid succession, one does not perceive their arising (*udaya*) and breaking up (*vaya*). [...] So long as one fails to see things as processes in motion, one will not understand [the] transient nature of all phenomena. When one sees things as they really are, one realises that life is a mere flux conditioned by internal and external causes." (Gnanarama 2000:27, emphasis in original)

This explanation of the Buddhist teachings of impermanence clearly shows the understanding of the dynamic nature of reality that is characterized by continuously changing conditions. Life itself is described as a flux of conditions of internal and external causes. In the light of ongoing change, all kinds of attachment – on materialistic as well as on emotional levels – can never lead to

achieving true happiness as these states are predetermined to fade in their impermanent nature.

Pyadassi Thera highlights the meaning of impermanence in the causal chain of conditions:

All component things—that is, all things which arise as the effect of causes, and which in turn give rise to effects—can be crystallised in the single word *anicca*, impermanence. All tones, therefore, are just variations struck on the chord which is made up of impermanence, suffering (unsatisfactoriness), and no-self nor soul—*anicca*, *dukkha*, and *anattā*. (Pyadassi Thera 2008:3)

Wijesekera notes that the nature of human beings is in perfect agreement with the concept of impermanence and describes human beings as “a compound of several factors and [their] supposedly persistent personality is in truth nothing more than a collection of ceaselessly changing processes; in fact, a continuous becoming [...]” (Wijesekera 2008:4)

Wijesekera thereby points out that both body and personality of human beings are also included in the law of impermanence. The impermanent nature of the physical body is obvious whereas the idea of seeing the personality as a continuous becoming needs further consideration. If the personalities of people are created within and shaped by an impermanent and ever-changing environment, the dynamic nature – the continuous becoming – becomes visible.

3.6.1.1. Impermanence and Potential Inspiration for Restorative Justice

What implications can be made from assuming an impermanent nature of both materialistic and non-physical components of reality in relation to restorative justice?

Process-Oriented

Considering the dynamic nature of things as described above, there is no ultimate aim that can be achieved with a static character. Following this

thought, everything is in ongoing change and process. A practical implication based on the understanding of impermanence is the focus on processes rather than on outcomes. If there are no static ends to achieve and all is in ever-changing conditions, the processes need to be valued higher than the products.

The prioritization of process before outcomes is reflected in the basic theory of restorative justice and expressed in the various definitions⁷ stressing the process-character. In practical applications of restorative justice programs the focus on the process is expressed through providing space for dialogue and addressing the needs of those violated. Aiming to focus on the present process while being oriented towards the future as well, restorative justice approaches go well together with the aspect of a dynamic existence as communicated in the Buddhist core assumption of impermanence.

Establishing a Restorative Milieu

A further inspiration that can be gained from the Buddhist notion of impermanence relates to the establishment of an environment preventing future crimes. Referring to the conclusion of Wijesekera that even the personality is impermanent and a continuous becoming, the surrounding environment may be a crucial factor to prevent problems. As Buddhist teachings describe the cause of suffering arising from harmful mental formations, the implication for restorative justice may be to create an environment that is supportive for developing wholesome mental formations. In that way problems are prevented beforehand.

In a loving and non-violent environment, one can develop also virtues more easily. In addition to a beneficial emotional environment, the fulfillment of basic needs is central. Often, those causing harm or violating a law repeatedly had to face difficult conditions in their socio-economic environment, living in poverty or similar backgrounds. Through creating a supportive environment and structures enabling them to satisfy their basic needs, many crimes and

⁷ see chapter 2.2. Definitions

violations can be prevented. That aspect relates to what is described as a 'restorative milieu' or a 'culture of peace' and can serve as further inspiration for moving beyond restorative justice.

3.6.2. No-self

The concept of no-self or egolessness says that there is no such thing as self or soul. This is what distinguishes Buddhism from many other religions that believe in the existence of a self or a soul. Walpola Rahula describes the idea of an existing self as follows: "This soul or self in man is the thinker of thoughts, feeler of sensations, and receiver of rewards and punishments for all its actions good and bad. Such a conception is called the idea of self." (Rahula 1990:37) In Buddhist teachings the existence of a self is seen as a delusion:

The impersonality of all existence has been established on the basis of continual self-consuming process of arising and passing of bodily and mental phenomena. It has been shown that within or without this process there is no entity which can be taken as self in terms of 'this is mine' (*etaü mama*), 'this am I' (*eso hamasmi*) and 'this is my self' (*eso me attà*). (Gnanarama 2000:41, emphasis in original)

No-self assumes that there are no stable and permanent states in anything animate or inanimate (cf. Mendis 1979:3). The concept of egolessness or no-self is in line with the doctrine of dependent origination saying that "neither within the body nor within the mental phenomena and external phenomena can be found an entity, self-existing, abiding, immutable substance called 'Self'" (Gnanarama 2000:41). Things arise and pass without having their own personalities or selves (cf. Gnanarama 2000:41). Therefore a Buddhist perspective regards the self as a delusion that we should overcome in order to reach enlightenment. "It is the vague feeling 'I AM' that creates the idea of self which has no corresponding reality, and to see this truth is to realize Nirvana, which is not very easy." (Rahula 1990:46)

"[I]n 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) Whatever one does and experiences relates to experiences within the social and natural environment from the past.

Buddhism is made only of non-Buddhist elements. If we look deeply we can see that the elements of non-Buddhism have made Buddhism... It's exactly the same as a flower. A flower is made from non-flower elements; the sun, the clouds are not flower, soil is not flower, water is not flower. The self is made of non-self elements. It is the same with the other religions. (Thich Nhat Hanh, qtd. in: Ha 2008:4)

This quote illustrates the understanding of an existence and non-existence of things at the same time. 'Buddhism' itself is not a separate thing, but consists of many different elements. For the existence of a flower many elements are essential that contribute to the flower. Seeing religions as consisting of non-religious elements, religion itself is no thing as such, but it is only through the interplay of the single elements that make a religion come to existence. In the same way that which is called 'I' is a combination of physical and mental aggregates working together interdependently and with its dynamic characteristic operating within the law of cause and effect and without permanent or eternal existence (cf. Rahula 1990:46 f.).

The Idea of 'Self' as Cause of Harm

In Buddhism the idea of self is not only an illusion that does not reflect the reality, but also leads to producing harmful thoughts of self, ego, desire, craving, attachment, hatred, ill-will, etc. (cf. Rahula 1990:37, cf. Karunadasa 1981:26). Rahula writes: "It is the source of all the troubles in the world from personal conflicts to wars between nations. In short, to this view can be traced all the evil in the world." (Rahula 1990:37)

Craving and attachment can only exist in combination with a notion of self. Without assuming an ego, there is no attachment and craving, as a 'you' or 'I' has nothing to win or lose. If one understands everything in the light of impermanence there is nothing to be attached to as a 'self'. The notion of self and the related cravings and desire for possessions are described as the main causes for the occurrence of crimes in Buddhist literature (cf. Rahula 1990:21). Rahula states that "all economic, political and social problems are rooted in this selfish 'thirst'" (Rahula 1990:21).

That statement invites us to raise the question of how social problems and inequalities would change with a changed consciousness of people of an increased perception of togetherness and oneness. How would such understanding of a non-separateness between an 'I' and an 'other' be expressed in social structures dealing with conflicts and crimes? How would a notion of oneness influence what mechanisms people create for dealing with conflicts and crimes?

3.6.2.1. No-Self and Potential Inspiration for Restorative Justice

How can the notion of no-self in the basic Buddhist teachings be related to restorative justice? What ideas and implications might be helpful and can serve as further inspiration for restorative ways of dealing with problems?

As discussed above, the separation between a self and other is a main cause of problems in the society according to Buddhist teachings. Considering mechanisms of dealing with crimes, the distinction between victim and offender increases the identification with a notion of self by labeling those involved. A static nature is inherent in role ascriptions and stereotypes and therefore don't resonate with the Buddhist approach of a changing and developing non-static personality.

If notions of self and the linked mental formations of craving and attachment are the main causes underlying crimes, then distinctions between victim and offender that encourage a stronger notion of self are detrimental to dealing with crimes sustainably as they strengthen the underlying cause. If the notion of self is the cause of the problem and through that labeling the notion of self is strengthened, the root of the problem is increased during the solution procedures.

Potential inspiration for restorative justice may relate to moving beyond role ascriptions of victim and offender and towards a stronger focus on the behavior and its effects. Labeling people 'victim' and 'offender' puts the whole person

into a category, something which does not go well with the Buddhist assumption of no-self and of personalities being in a continuous state of becoming. Based on that, there is no sense in labeling or judging the whole person, but only the behavior.

Using the terms ‘the offender’ and ‘the victim’ may strengthen clichés labeling the whole person as being bad or passive depending on the ascribed role. Often related to those categorizations are moral evaluations of the offender deserving punishment and the victim being in need of help. If one is only looking at the behavior of people, the person as a whole is not judged, but the attention is put on the actions that have caused harm. In the same way, if the attention is put on the reactions of having been harmed, it is not the whole person that is labeled as being passive or weak.

Putting the behavior of the people engaged at the center may lead to a shift in focus away from the supposed necessity of punishment towards a stronger sense of the need to cure the pain. Following the notion of no-self, there is no separation between the parties engaged in the conflict, as both are part of the same whole (dependent origination). Based on that understanding the need for punishment becomes obsolete and the need for mutual care-taking arises, rooted in a sense of shared responsibility. These implications go well in line with restorative justice approaches, since the main aims are restoration and healing in a process that is oriented towards establishing peaceful future conditions.

Relating to particular forms of restorative justice, the idea of no-self can be applied in the way of viewing a program. How much tendency is there to stick to applying a program in the exact same way rather than being flexible, adapting to the particularity of the situation? For instance, how much flexibility is allowed in mediation procedures for cases of domestic violence or other offenses when applied routinely? The more openness to adaption to the needs of the participants and the more willingness to act flexibly, the less clinging to habits there is. Decreased identification with the name and exact form of a program provides bigger space for fulfilling the aim of being oriented towards

the needs of those harmed and for being flexibly applied according to a particular situation.

A practical implication for restorative justice could relate to the language that is used in the procedures, in literature and debates. Refraining from labeling the parties involved as 'victim' and 'offender' supports the idea of no-self, as there is less identification with the person and more focus on aspects regarding the behavior. Looking at the current literature of restorative justice, there seems to be a developing agreement on refraining from such categorizations, but often there is strong labeling of the conflicting parties as 'victim' and 'offender'. Through using terms like 'harm-causer' and 'those harmed' instead, there is less identification of self with what has been done and the effects. Social reintegration may be easier without labels such as 'the criminal' and enable the wrongdoer to take part in the restoration and healing processes.

3.6.3. Suffering

Buddhism is concerned with suffering and its cessation. Understanding suffering as a characteristic and integral part of being alive may seem pessimistic at first sight. However, the main concern in Buddhism is to free oneself from suffering. While the first and second noble truth are concerned with suffering and its causes, the third and fourth truth deal with the issue of how to overcome dissatisfaction and achieve happiness (sukha). Pategama Gnanarama mentions that viewing Buddhism as a pessimistic world view would be a common misunderstanding and stresses that Buddhist teachings intend to show things as they really are rather than making them looking more positive or negative (cf. Gnanarama 2000:56). Assuming that Buddhism shows things as they really are can be doubted, if viewed from a constructivist perspective. However, the aspect of becoming more equanimous by moving away from categorizing things and actions as positive or negative provides the opportunity to perceive things more strongly from an observing lens rather than a judging one.

In the following part of the thesis the main causes of suffering will be examined with regard to how these can be transformed constructively from a Buddhist perspective. Delusion, greed, and hatred are seen as main causes of suffering or dissatisfaction. The method to eradicate suffering addresses the root causes. The Four Noble Truths (*dukkha sacca*) describe suffering and its cessation in four parts: suffering, the cause of suffering, the cessation of suffering and the path that leads to the cessation of suffering (cf. Gnanarama 2000:51).

Suffering can be understood in the light of dependent origination: “All the Four Truths are connected to each other by way of causal relatedness.” (Gnanarama 2000:57) The mutual interrelatedness is also reflected by the focus on transforming oneself as individuals and as a society; both are understood as inherently connected and inseparable. Thus, overcoming the individual suffering is always linked to the cessation of suffering in society. The same link is valid for suffering or harm that is increased for one part of the net of relations; it affects the other parts as well.

The forms of suffering can be divided into three categories (cf. Rahula 2008:14): The first form can be described as ordinary suffering (*dukkha dukkha*) or what is universally accepted as suffering such as physical pain due to sickness or emotional suffering caused by ending a relationship to a beloved person. The second type of suffering is produced by change (*Viparinama dukkha*); through changing conditions one loses the feeling of happiness due to loss of the object that led to producing it. That could be the loss of a luxury yacht used for holiday trips or it could be the loss of a photo collection or the loss of a simple keychain that has a special meaning. The third form is suffering as conditioned states (*Sankhara dukkha*) and describes the attachment to the five aggregates; body, perception, sense, mental formations and consciousness (cf. Rahula 2008:14). Each of these five is related to an identification of oneself as a ‘self’ or an ‘I’. Aside from suffering and impermanence, no-self is one of the basic assumptions of the characteristics of nature in the Buddhist concepts. That not-knowing or state of delusion provides the basis for the clinging to the aggregates.

John McConnell suggests conceptually dividing the state of suffering into an external arrow, which are the sensual conditions, and an internal arrow which are the mind-reactions (cf McConnell 2007:27). On one hand there is a situation perceived with the senses such as physical pain, and on the other hand there is the reaction of the mind that categorizes that sensation as suffering. Only through the reaction of the mind, categorizing the sensation as suffering, is suffering created. For instance: with hearing a loud noise that reminds us of a sound once heard before in a car crash or a similar negative experience, internally an emotion of fear might be created. The noise alone does not create suffering, but the reaction of the mind is what creates what is perceived as suffering. McConnell describes the problem that people are not aware of that distinction and therefore tend to disregard the aspect of mental reaction or anxiety (cf. McConnell 2007:27).

Likewise, people tend to see the reasons for happiness almost exclusively in external conditions (sensual) but ignore the aspect of the mind. The awareness that both the outside and the inside aspects are responsible for the experience of suffering makes it easier to address the problems (cf. McConnell 2007: 27).

3.7. Ending Suffering

Having briefly examined suffering and its causes the crucial question is: how to end suffering? What are the ways of overcoming and finally eradicating suffering that a Buddhist perspective suggests? What ideas from ways of ending suffering are relevant for restorative justice approaches?

The third and the fourth noble truth are concerned with the cessation of suffering. By ending all forms of craving and attachment, the complete cessation of suffering, nirvana, can be reached. The essence or nature of nirvana may be described differently depending on one's background: "From a metaphysical standpoint, Nibbāna is complete deliverance from suffering. From a psychological standpoint, Nibbāna is the eradication of egoism. From an

ethical standpoint, Nibbāna is the destruction of lust, hatred and ignorance.” (Mahāthera 1998:441)

The basic notion underlying the need to eradicate the mental formations of lust, hatred and ignorance is that with their presence, people create those kinds of actions that are corresponding with their current mind state. The suggested practice towards achieving the state of nirvana is ethical behavior: “Nibbāna is an ethical state to be reached in this life by ethical practice, which includes concentration and insight.” (Gnanarama 2000:71) The fourth noble truth suggests following the Eightfold Path as guideline for eradicating suffering and getting closer to nirvana, the ultimate state that all beings wish to reach.

3.7.1. The Eightfold Path

The Eightfold Path or Middle Way gives practical advice on ethical conduct that paves the way towards the full cessation of suffering. The term Middle Way implies the need to avoid two extremes: self-mortification that weakens one’s intellect and the self-indulgence that retards one’s moral progress (cf. Mahāthera 1998:244). The word ‘path’ may be confusing as it appears to suggest a specific order in following the steps. Gnanarama points out that this is not the case: “It is to be noted that although it is called path, it is not to be taken as a gradual path having a series of steps.” (Gnanarama 2000:82) Viewing the eight factors as interrelated and mutually supportive, practicing them simultaneously may even be more preferable than trying to practice them in a certain order.

The eight factors of the Middle Way consist of: right understanding, right thoughts, right speech, right action, right livelihood, right effort, right mindfulness, and right concentration. Through following that ethical conduct, morality, concentration and wisdom are developed. Wisdom is classified as right understanding and right thought; Morality is categorized with right speech, right action and right livelihood; and concentration of mind is classified

as right effort, right mindfulness and right concentration (cf. Mahāthera 1998:404).

Through integrating and practicing these virtues in all parts of life, morality, concentration and wisdom are said to be increased. At the same time delusion, greed and aversion are decreased which leads to the cessation of suffering. The Eightfold Path gives very clear guidance of how to train these virtues through practicing in daily life. It reflects the idea of a dynamic nature of things as the precepts ought to be continuously practiced. Furthermore there is a clear message implied that ending suffering depends on each person. The next section addresses the Buddhist concept of transformation, of the unwholesome roots into beneficial ones.

3.8. Transforming Delusion, Greed and Aversion

In Buddhist teachings craving (lobha), delusion (moha) and aversion (dosa) are seen as the ‘three unwholesome roots’ or the main causes for suffering (cf. Gnanarama 2000:61). They provide the basis for other suffering-causing states to occur. Other terms used to describe mental tendencies through which suffering is created include the terms kleshas, defilements, mental poisons, passions or worldly desires. Based on the three main kleshas of craving, delusion and aversion, other mental states that cause dissatisfaction include conceit (māna), false views (ditthi), doubt (vicikicchā), sloth (thīna), restlessness (uddhacca), shamelessness (ahirika) and recklessness (anottappa) (cf. Mahāthera 1998:39 f.).

How to transform these mental tendencies that create harm? Delusion, craving and aversion as the main causes need to be addressed first, especially since they also provide the basis for actions that might harm others. What is a way to end those mental tendencies at the root of harmful behavior? What approach is suggested by Buddhist teachings to respond to that which causes people to violate themselves and others? How can the unwholesome roots be transformed into wholesome ones?

From a Buddhist perspective it does not make sense to fight against the negative mental formations, but the kind of transformation suggested by Buddhist teachings is the cultivation of the opposed mental factors of the three unwholesome roots – namely the wholesome roots: non-delusion, non-craving and non-aversion or, in positive terms, the cultivation of clear-mindedness, generosity and loving kindness. Through the cultivation of these counterparts, the unwholesome roots will automatically decrease and unwholesome actions will be reduced with them.

How can the Buddhist concept of the mental formations of greed, delusion and aversion impact the occurrence of crimes and problems in society and ways of dealing with conflicts? What is a Buddhist approach to transforming non-benefiting factors into benefiting ones? What ideas and concepts are already applied in restorative justice concepts and what further inspiration can be gained?

The next section will examine a Buddhist approach of transforming the three unwholesome roots of craving, aversion and delusion through developing their positive counterparts.

3.8.1. From Greed (Lobha) to Non-Greed (Alobha)

The Pali term ‘lobha’ can be translated with attachment, craving, desire or greed. It refers to the physical level of the attachment of sensual pleasures, but also to one’s ego. It is understood as a characteristic of a living existence.

“Real happiness is found within, and is not to be defined in terms of wealth, power, honours or conquests. If such worldly possessions are forcibly or unjustly obtained, or are misdirected, or even viewed with attachment, they will be a source of pain and sorrow for the possessors.” (Mahāthera 1998:242) Only when craving is eliminated, suffering ceases as well, according to Buddhist teachings. Narada Mahāthera describes craving as “a powerful mental force

latent in all, and [...] chief cause of most of the ills of life.” (Mahāthera 1998:243) He continues: “It is this craving, gross or subtle, that leads to repeated births in Samsāra and makes one cling to all forms of life” (Mahāthera 1998:243).

Craving and attachment are linked with the delusion of a self. One who perceives all without a self and ego does not feel attached to anything and is not craving. “As long as one is bound up by craving or attachment one accumulates fresh Kammic activities which must materialize in one form or other in the eternal cycle of birth and death.” (Mahāthera 1998:386) The way towards nirvana is to reduce craving and clinging. The etymology of the term nirvana means to stop or end craving (cf. Mahāthera 1998:386). That implies a realization of no- self. According to the dhamma, the self is a delusion that pretends that there is separation amongst living beings and things. As soon as there is consciousness about a self, the ‘other’ is created and craving and greed arises. When understanding oneself as a continuous becoming part of the web of relationships of an interconnected whole, consciousness about an ever-changing and non-static nature of all things may arise and lead to greater generosity.

Greed as Cause of Crime

How can people overcome craving and what impacts could that have on crimes in society and ways of dealing with problems? What could be potential changes in the society if craving and greed is reduced – that which is considered to be a main cause of crimes from a Buddhist perspective? How can greed be transformed into a wholesome mental formation?

As discussed above, attachment and craving and hence greed are inherently linked with a notion of self. Viewing oneself as part of an interconnected whole in continuous becoming in the samsara is different from perceiving oneself as separate entities. A more cooperative and less competitive way of dealing with each other may result when you treat others like a part of yourself. In families

the behavior with each other is conventionally in a cooperative form, compared to other settings where competitiveness rules. Thus, even if emotions of greed may arise, an overall willingness for cooperation and mutual support can be assumed.

A family – as a mythical image or also as (at least partially) experienced by a number of people – is a good example for illustrating a way of dealing with conflicts that is oriented towards repair: If a son or a daughter does something really harmful to his or her cousin, the desire for forgiveness and restoration may be stronger than revenge and punishment at some point. Why? Considering that the parties involved in the conflict are members of a family, they are relatives – they understand themselves as relating to each other – and there is usually a shared aim of keeping or restoring harmony within the group one belongs to. Surely it does not mean that there would be no conflicts in families, because everyone tries to take good care of each other.

It is important to note not only the destructive characteristics that might come together with the occurrence of a conflict, but also the positive ones, such as processes of learning, becoming more aware of one's own emotions, ways of dealing with certain problems, and so on. When the other conflict party is considered to be in the same group of 'we', the way people perceive the conflicts, conflict parties and options for dealing with conflict is different from the way they approach conflicts where another group is categorized as 'stranger'. If people understand themselves as relating to each other not only in families, but also in different settings of the society, an increased willingness for restoration of a harmonious state may arise and have affects even on a large scale.

If the criminal justice system is based on the notion that people relate to each other instead of being separate entities in a competitive field, the conventional approach to dealing with crimes would surely differ hugely from the status quo. If one imagines the dominant criminal justice system as one oriented towards benefitting the community in a manner described with the example of the

family, there would be less revenge and punishment, and more generosity in forms of forgiveness and healing-orientation. With such notions, greed may be transformed into its opposite – generosity for the benefit of the whole and for a part of it at the same time.

What would such a transformation mean if one imagines it not as taking place within an individual, but instead inside the state or the judicial system? What if the values and attitudes embedded in state structures change from craving and aversion to generosity and loving kindness? Perhaps structures and procedures with a stronger focus on those affected by the harm done and their needs will arise. Rather than causing more harm ‘in the name of justice’, a stronger orientation towards the common good can be developed. With responding to conflicts in ways other than creating harm by punishing the wrongdoers, the cycle of harm-doing can be stopped, according to the concept of karma. If the agent ‘state’ reacts to crimes with punishment and revenge, new karma is created that leads to creating similar future incidents again. In order to decrease greed and craving, generosity needs to be cultivated, as it is the positive counterpart.

3.8.1.1. Cultivating Generosity (Dana) and Forgiveness (Abhaya Dana)

‘Dana’ represents the counterpart to greed (lobha) and can be translated with generosity or giving. Cultivating dana decreases the prevalence of greed. It can be practiced through becoming aware of the own cravings and reconsidering what is really needed and what is unnecessary clinging. Through letting go of the clinging to supposedly needed things, greed is reduced.

Forgiveness (Abhayadana) is a form of dana that can be translated as ‘giving of fearlessness’. Forgiving can be described as a form of generosity relating to giving fearlessness to another person who has caused harm in some way. Forgiving is a crucial aspect in restorative justice processes. It cannot be planned or forced, for sure, but encouraged. Feelings of revenge may find their

source in anger, whereas feelings of forgiveness may find their source in loving kindness. Dhammahaso Hansa describes forgiveness to be “primarily developed by right Views and Right Thought which are the result of loving kindness (Metta), patience (Khanti) and the Five Precepts (Panca-sila)” (Dhammahaso n.y.:9). Generosity in the form of forgiveness may be expressed through speech or respectful gestures.

Dhammahaso further relates the practice of forgiveness after an offense and writes: “Forgiveness or Abhayadana is essential mental medicine for treating emotional illness by reducing or abandoning the negative reactions to an offense but increasing or fostering positive reactions such as taking the forms of compassion and generosity toward an offender.” (Dhammahaso n.y.:6)

Practicing forgiveness springs from loving kindness and compassion. Being able to forgive, especially after having suffered a lot of pain through an offense, requires inner strength and courage. Compared to solving a conflict or dealing with crimes through addressing the problem by revenge and inflicting punishment, forgiveness is more likely to result in a peaceful future, as loving kindness is increased and anger is decreased. If forgiving is possible for those involved in a conflict and they do, it may have positive effects for the future relationship aside from leading to reconciliation in the present.

3.8.2. From Delusion (Moha) to Non-Delusion (Amoha)

Delusion is inherently linked with craving; it is the underlying state of craving: “Ignorance is shown as the past cause that conditions the present; and craving, the present cause that conditions the future.” (Mahāthera 1998:333) Sayādaw describes the relationship between ignorance and craving as following: “Ignorance leads to craving, which develops into attachment. Craving and attachment stem from the desire for pleasure [...]” (Sayādaw 1982:7) In Buddhist teachings ignorance or delusion are seen as the conventional state of being (cf. Sayādaw 1982:7). Delusion means not being able to see clearly and

not being aware of truth, the truth of existence as described in Buddhist terms: suffering, impermanence and no-self.

A main aspect of ignorance is not being able to see the interconnectedness between things. Regarding all living beings and things as separate entities that exist independently from each other instead regarding them as part of a whole is seen as the main delusion. Delusion also refers to not understanding the Four Noble Truths: suffering, the causes of suffering, its cessation and the way to cessation (cf Sayadaw 1982:7).

[W]hen a man is caught up in these illusions he perceives, thinks, and views incorrectly: He perceives permanence in the impermanent; satisfactoriness in the unsatisfactory (ease and happiness in suffering); self in what is not self (a soul in the soulless); beauty in the repulsive. (Nyanaponika Thera 1981:7)

From a Buddhist perspective, seeing things as they really are, means understanding the truth of nature; understanding dependent origination and the interrelatedness between everything; and viewing all phenomena in the light of impermanence, dissatisfaction and no-self.

Ignorance as Cause for Harmful Actions

Following the Buddhist understanding that regards ignorance as the basis of suffering and as the most destructive mental state; it is worth discussing its potential implications for harmful behavior in society. What might be most relevant in terms of a social justice perspective is the identification of one person as ‘I’ or ‘self’ that creates a separation from ‘the others’. Based on that dualistic perspective a desire arises to benefit that ego which mainly is expressed through desire and clinging.

Thera Piyadassi underlines the Buddhist assumption of ignorance being the source of all unwholesome actions in society (cf. Piyadassi 2008:6). “All conceivable wrong notions are the result of ignorance. Independently of this crowning corruption no evil action, whether mental, verbal or physical, could be performed.” (Piyadassi 2008:6, emphasis in original) Understanding the causes for both moral and harmful actions as being rooted in mental states, the

aim in Buddhism is to overcome ignorance and see things as they really are in order to reach the aspired non-dual state of nirvana. Understanding the interconnection between things would be a crucial step towards understanding the truth (cf. Gnanarama 2000:94). Theresa Der-Ian writes: “With the awakening to the interdependent reality, selfish compulsive responses will be replaced by loving-kindness, compassion, sympathetic joy, and equanimity. On the behavioral level, one practices peace daily by observing the Five Precepts.” (Der-Ian 2006:91)

3.8.2.1. Cultivating Clear-Mindedness

Clear-mindedness or non-deludedness represents the opposite to the state of delusion. In Buddhist teachings that state is characterized by not knowing or by ignoring what is called the ‘truth of existence’: dissatisfaction, no-self, impermanence. Through increasing awareness of these states, situations can be understood more clearly. Many Buddhist concepts suggest practicing mindfulness, such as the Five Ennobling Virtues, the Eightfold Path, and meditation practices. Mindfulness is a way of doing things; a non-judgmental awareness of the present moment that can be applied to whatever one is doing, whether at work, while eating, in the way of dealing with nature and environment, or in other settings. Through cultivating clear-mindedness, delusion decreases. Mahāsī Sayādaw writes:

Delusion blinds us to reality only because we are unmindful. Unmindfulness leads us to believe in the illusions of a man, a woman, a hand, a leg, etc., in the conventional sense. We do not know that seeing, for instance, is merely a psychophysical process that arises and vanishes, and that it is impermanent, unsatisfactory, and not-self. (Sayādaw 1982:7)

The aim in Buddhist teachings is to become free from delusion which is the path leading to the cessation of suffering and towards nirvana. “Constant mindfulness of the arising and passing away of phenomena leads to insight into their characteristics of impermanence (anicca), unsatisfactoriness (dukkha), and no-self (anaā).” (Sayādaw 1982:3) Viewing situations with clear understanding provides the basis for eradicating unwholesome mental formations arising from that delusion. For instance, greed and anger would be formations that would be understood as arising from delusion, according to Buddhist teachings.

3.8.3. From Aversion (dosa) to Non-Aversion (adosa)

Hatred is the disposition towards ill-will or resentment that is so destructive in relationships. When we find ourselves thwarted, feelings of anger and resentment arise and we start to see the offending party as a bad person, that is *dosa*. The term does not refer to the feeling of anger itself but to the more complex attitude that shapes our understanding and choices. (McConnell 1995:56)

A Buddhist perspective understands the negative states of aversion, hate or ill-will as underlying harmful behavior. Understanding the other party as bad person relates to the discussion about labeling persons due to their behavior, as discussed above in chapter 3.6.2. on the Buddhist concept of no-self.

Nyanaponika Thera describes the characteristic of hatred as follows:

Hatred has the characteristic of savageness, like a provoked snake. Its function is to spread, like a drop of poison, or its function is to burn up its own support, like a forest fire. It is manifested as persecuting like an enemy that has got his chance. Its proximate cause is the grounds for annoyance (*āghāta-vatthu*). (Nyanaponika 1999:22)

Expressing anger or hatred in harmful ways can be painful for oneself and others. Most people are aware of that destructive characteristic of anger and often try to deny that feeling. Instead of trying to get rid of the anger by suppressing it, the question that is relevant in the context of conflicts is how to find ways of dealing with it constructively. How can anger be transformed into a state that is more beneficial and less destructive? How can the roots of anger be addressed in order to reach real transformation?

Thich Nhat Hanh suggests treating one's own anger with love and care, like a younger brother or sister (cf. Thich Nhat Hanh 1987:40).

In Buddhism we do not consider anger, hatred, greed as enemies we have to fight, to destroy, to annihilate. If we annihilate anger, we annihilate ourselves. [...] [Y]ou do violence to yourself. If you cannot be compassionate to yourself, you will not be able to be compassionate to others. (Thich Nhat Hanh 1987:40)

Following this thought, behaving with loving kindness towards oneself and towards aspects of oneself that may not be immediately likeable is recommendable and will provide the basis for behaving with loving kindness towards others as well. Developing loving kindness as the antidote to aversion decreases anger towards self and others. "At any time in this world, Hatred

never ceases by hatred, [b]ut through non-hatred it ceases. This is an eternal law.” (Wannapok 2011:8)

3.8.3.1. Cultivating Loving Kindness (Metta) and Compassion (Karuna)

[...] [A] person who has fully integrated loving-kindness and compassion has transcended the three poisons. For such a kind, gentle, and compassionate person, the upheaval of aggression has ceased. Gentleness and compassion cannot coexist with aggression and hatred toward others. (Karthar n.y.)

Developing loving kindness and compassion in oneself naturally decreases mental states of anger or hatred. In Buddhist teachings it is a main aspiration to practice loving kindness and compassion for all living beings. Also Gregory Kramer stresses the diminishing effects for the occurrence of hatred by practicing loving kindness: “Hatred cannot coexist with loving-kindness; it dissipates and is not replenished if we supplant thoughts rooted in anger with thoughts rooted in love.” (Kramer 1997:3)

Imagining a criminal justice system being based on thoughts rooted in love makes sanctions for the sake of revenge obsolete. Based on that understanding, either causing more harm or understanding justice as being achieved when the harm-causer suffers in a similar way like those harmed, does not make sense. Instead, supplanting thoughts rooted in anger with thoughts rooted in love would bring the resonating effects in terms of attracting corresponding consequences of present actions.

An opportunity for self-development through developing compassion and loving kindness can be seen in the state of suffering. Vinh Ha describes the role of suffering as “a powerful way to develop compassion” (Ha 2008:3). On the way of overcoming suffering, experiencing it brings greater understanding for its reasons. That awareness provides the best opportunity to transform suffering and strengthen positive virtues such as compassion. “Its [compassion] chief characteristic is the wish to remove the sufferings of others.” (Mahāthera 1998:424)

Wishing others to be relieved from their suffering may sound like an altruistic act. What are the benefits for oneself of increasing compassion and loving kindness? Thich Nhat Hanh describes one's own benefits through developing compassion for others: "To develop understanding, you have to practice looking at all living beings with the eyes of compassion. When you understand, you love. And when you love, you naturally act in a way that can relieve the suffering of people." (Thich Nhat Hanh 1987:15) If the true feeling of love is the source, then compassionate behavior arises out of a natural willingness. Then, responding to other people's suffering with love and compassion can contribute to both ones' own and others' wellbeing. Mahāthera illustrates the characteristics of compassion by drawing on the mythical image of a loving mother:

Karunā has the characteristics of a loving mother whose thoughts, words, and deeds always tend to relieve the distress of her sick child. It has the property of not being able to tolerate the sufferings of others. Its manifestation is perfect nonviolence and harmlessness – that is, a compassionate person appears to be absolutely non-violent and harmless. (Mahāthera 1998:247 f.)

Compassion counteracts cruelty and grief. With compassion one understands the situation and feelings and naturally acts in harmless ways in order to cure that suffering.

3.9. A Buddhist Approach to end Suffering in Relation to Restorative Justice

The above describes a Buddhist way to end suffering; mainly the mental formations are addressed as they are seen as the causes of suffering. These need to be eliminated in order to solve the suffering or the problem. Relating this Buddhist approach to restorative justice implies that a real transformation can only happen if the core of the problem is addressed, namely the mental formations of craving and attachment. The emphasis on addressing the roots of the problems is clearly illustrated through the suggestion of developing the positive counterparts to the harmful mental formations. This stresses the general Buddhist approach of responding to problems in non-violent forms and choosing means resonating with the aspired ends.

Relevant aspects for restorative justice include addressing the root-causes of the problem rather than responding to a superficial level of only dealing with the symptoms. Restorative justice focuses more strongly on addressing the root causes of problems than retributive practices. Future-orientation and the element of responsibility reflect that focus in restorative justice. A Buddhist view strongly emphasizes the responsibility of a single person of being in charge of changing oneself. This reflects one of the basic assumptions in Buddhism: change begins with oneself. From a Buddhist point of view, through becoming aware of the negative mental formations and developing the positive counterparts to them, the causes of the problem will decrease and fade.

How can these ideas support or inspire restorative justice? The next chapter will take a closer look at using mindfulness as a tool for developing awareness of negative formations as the root causes of problems and crimes in society, and for letting them go.

3.9.1. Mindfulness as a Tool

The emphasis on the mind is inherent in most Buddhist concepts such as understanding the negative mental formations of greed, hatred and delusion (*kleshas*) as main causes for suffering (cf. Mahathera 1986:7). According to this, at the roots of suffering are the mental formations and not the actual situation itself. That applies to conflicts as well: outside conditions trigger inner processes that create feelings. John McConnell writes: “The Buddha taught that the causes of conflict are essentially spiritual and psychological.” (McConnell 1995:97) He further notes: “When mindfulness is introduced into the situation, the hold of delusion, hatred and greed is weakened and the process of transformation into the *kusala-mula* -- renunciation, compassion and wisdom -- begins.” (McConnell 1995:97)

With applying mindfulness one becomes aware of the mental processes of constructing reality. *Papanca sanna sankha* (perceptual mental proliferation) describes the process of how a subjective reality is formed: inputs from contact

with an external situation go through mental processes of categorization and labeling, accompanied by reinforcing feelings. Awareness about the single steps forming this seemingly given reality brings greater understanding to the situation and more flexibility to react. Furthermore the awareness allows questioning one's own categorizations and interpretations of reality and provides the openness to understand the position and interests of the other parties.

“By seeing more deeply the web of causal chains, we can use meditative mindfulness to short circuit the feelings of anger and fear as they arise in our daily lives.” (Sivaraksa, Yuk 2004:61) With awareness of negative feelings, the opportunity arises to let them go. This is particularly important relating to the root causes of doing harm. One form of training mindfulness is through practicing meditation.

3.9.2. Meditation

Meditation practice can serve as an instrument that helps increase awareness of invisible internal processes and developing mindfulness in various situation of life. Many practitioners describe meditation as the way leading to true inner peace. In line with the understanding that peace is created in every moment, Dhammhaso Hansa understands the practice of meditation as reaching true peace (cf. Dhammhaso n.y:7). He refers to two aspects of meditation: one is the value of experiencing the moment consciously through concentrating on the breath through which “we will be aware and understand everything as it is” (Dhammhaso n.y:7). Understanding everything as it is implies refraining from labeling or judging things, situations or people or categorizing them as good or bad, but understanding things just as they are. The practice of doing so is called ‘mindfulness’: “It is that mode of consciousness in which you meet experience with awareness, without judgement or pretence.” (McConnell 2007:10)

The second aspect he mentions is that concentrating on one thing at the time in meditation helps to make the mind calm and peaceful – the mind's state of true

happiness (cf. Dhammahaṣo n.y.:7). Based on that definition of peace as created from inside, Dhammahaṣo suggests meditation as an effective way towards peace and writes: “It is not difficult to seek true peace, because it dwells within our mind.” (Dhammahaṣo n.y.:8)

Dzogchen Ponlop describes that training mindfulness through meditation aims to address four levels: body (*kayasati*), feelings (*vedanasati*), mental processes (*cittasati*) and mental objects (*dhammasati*) (cf. Dzogchen Ponlop 1996:16). ‘Mental processes’ means one’s awareness about consciousness and inner processes. ‘Mental objects’ refers to the “recognition of the interdependent relationship of our mind and the phenomenal world” (Dzogchen Ponlop 1996:16). The latter reflects the notions of the powerful nature of the mind in forming one’s reality and explains the focus of Buddhist meditation practices on increasing one’s inner stability. John McConnell points out: “We can live reality in ways that enmesh us in stress, conflict and suffering, or we can live the same set of circumstances in ways that lead to healing, peace and happiness.” (McConnell 2010:14)

If happiness is created from inside, then even if the external conditions may be ranging from what conventionally is labeled as ‘good’ to ‘bad’, one can deal with those without getting disconcerted. That kind of happiness is what is often described as true happiness within Buddhist literature and other sources. It is a kind of happiness that cannot be destroyed quickly through changing some outside conditions, but instead helps to deal with all kinds of external factors that come along without losing inner stability. With such inner stability it may be easier to deal with whatever conditions coming along and it might influence the view of and reactions to sickness, offences, insults or other harmful circumstances.

John McConnell describes his own experiences with applying mindfulness-meditation to dealing with his suffering from an eye-disease that was diagnosed to hardly have any chances of healing. In the beginning he thought: “If only I can get rid of the eye-problem, then I can be happy.” (McConnell 2007:13)

After some time and meditation practices he changed his mind state about the disease: “If I can be happy, then I can work with my eye-condition.” (McConnell 2007:13) This experience relates to the inner stability that may be gained through meditation practice and lets one be less affected by outside conditions. This could be helpful to deal with sensual conditions that are largely interpreted as negative, for happiness becomes something that is created from inside and not from outside. Rather than making the outward conditions responsible for the own inner state, the inner can have a huge impact on the outside state.

John McConnell managed to get rid of his eye-disease and he explains it with a sense of inner harmony that he was able to develop through practicing meditation and that helped him to be released from the disease (cf. McConnell 2007:14). That example stresses the importance of how people think about the challenges they are facing and the impact of changing the thoughts to end suffering. Through mindfully observing negative emotions such as greed, anger, hate, or revenge, one can become aware of the invisible mental processes creating them. Only with awareness is transformation possible. The insight that not the external conditions, but the internal mental processes have created the feelings and are thus the causes for the suffering, provides a basic foundation for developing a non-violent attitude towards problems and conflicts.

3.10. Peace through Peaceful Means

“Overcome the angry by non-anger; overcome the wicked by goodness; overcome the miser by generosity; overcome the liar by truth.” (Buddharakkhita 1985:58)

In a Buddhist understanding the way to peace is through peace itself. Compared to the dominant understandings of peace focusing on the external dimension, a Buddhist perspective emphasizes the internal level as well (cf. Dhammahan 2006:6f.). Hence, inner peace and outside peace cannot be separated in that understanding. Fighting for peace is a contradiction in itself as the process is

considered to be of equal value than the outcome from a Buddhist point of view. Thus, the ends do not justify the means, from a Buddhist perspective.

Using anger in order to address unjust situations would not lead to the desired outcomes. Bhikkhuni Dhammananda, the first fully ordained female monk in Thailand, says: “We cannot solve anything by anger. Anger doesn’t lead us anywhere. It is more difficult to practice compassion and loving kindness. That is the goal of Buddhism.” (Bhikkhuni Dhammananda qtd. in Rasicot 2007: 20) Her view on the uselessness of anger in confronting problems, and the value of compassion and loving kindness on the other hand, highlights the Buddhist approach of developing beneficial mental formations for oneself for the sake of general benevolence for everyone. Creating peace in oneself, thus, would bring peace into different settings of life. Theresa Der-Ian writes:

The view of peace as a collective product is well in line with the Buddhist worldview based on the principle of dependent origination which emphasizes the mutual influence of all the elements involved in any situation. With this interdependent frame of reference, Buddhists would prefer a holistic view of peace, instead of peace in separate contexts such as schools, families or the environment. (Der-Ian 2006:93f.)

Der-Ian describes her understanding of peace as a collective product directly linked to the notion of an interrelated nature and mutual influence of everything through which the need to integrate peace in different contexts arises. She stresses the dynamic character of peace as a current process rather than something static that once is reached would not change again.

The approach of achieving peace only through peaceful means is inherent in Buddhist core concepts such as karma, no-self and dependent origination. Sivaraksa explains the reason for choosing peaceful means from a Buddhist point of view with the notion of karma: “For Buddhists the law of karma reminds us that when faced with violence we should not react violently.” (Sivaraksa, Yuk 2004:63) As future karma is created in every moment, harmful actions of the present will result in the corresponding outcomes in the future. Even if the intention is a future-oriented desire for peace, it does not justify the intentional act of causing harm in the present.

Gnanarama's statement about the meaning of the intention of one's action supports Sivaraksa's point: "Since Buddhism is specific with regard to moral value of an action, motive and intention of an action are evaluated with reference to righteous or unrighteous means adopted in performing an action." (Gnanarama 2000:138 f.) According to that, whatever the motivation is, volitional harm-causing in the present automatically determines one's future karma in correspondence. With the understanding of the mind as crucial factor in forming people's behavior and actions, a Buddhist perspective understands real change happening if there is internal transformation of the mind. Through personal transformation, the social environment will be affected as well.

Self-transformation impacts the social level according to *paticca-samuppada*: the interdependence and interrelatedness amongst all beings and things. Sustainable change and transformation happens both in the internal formations of a subject as well as outside. Making peace in oneself, affects the others, too. 'Oneself' hereby refers not only to one person such as the wrongdoer, the harmed or the judge, but also to systems or institutions such as the criminal justice system or schools. With transformation of internal structures, change also occurs in the outside world. What changes may occur if the internal structures and procedures within the criminal justice system are increasingly resonating with the aspired harmonious future state? Chapter 3.11. takes a closer look at ways of incorporating this Buddhist idea in the internal structures from the perspective of a state.

3.10.1. Nonviolence (Ahimsa) as Basic Tenor

As guiding principle throughout Buddhist teachings, non-violence reflects the approach to create peace through peaceful means, as discussed above. The Pali word 'ahimsa' means non-harm, non-violence or non-force and describes the ethical principle of not harming other living beings. According to that principle, all forms of violence, whether of physical, verbal or emotional nature, should be refused, including refraining from reacting harmfully when one is confronted with violence. Mahinda Deegalle stresses that there is no room for violence in

the basic tenets of Buddhism (cf. Deegalle 2003:123). Hence, in order to end violence, one should refrain from doing harm – even if for the sake of defense – and increase loving kindness and compassion instead.

Ven. Hansa Dhammhaso writes: “[...] [I]n the present world, whenever human beings and societies conflict with each other they resort to violence; instead, they should resolve the problem by using reconciliation rather than violence as a tool in order to manage conflict; ‘peace’ is the best alternative way.” (Dhammhaso n.y.:6) Responding to harm done with ‘peace’, especially in cases of violent attacks, leaves the question open if that can be effective in stopping violence. At the same time, the question could be raised if violence can be an effective way.

David Loy describes the emphasis on nonviolence within Buddhist traditions as based upon the psychological insight that violence breeds violence (cf. Loy 2000:154). “This is a clear example, if anything is, of the maxim that our means cannot be divorced from our ends. There is no way to peace; peace itself is the way.” (Loy 2000:154) According to the law of karma peace attracts peace whereas violence attracts violence. The logical consequence is to choose one’s own behavior in ways that resonate with the aspired state. From that point of view, peace is the only possible way to achieve peace; counter-violence, punishment and revenge cannot be justified. Sivaraksa suggests creating a culture of peace:

The actual state of peace, like violence, is a manifestation of all our actions in building culture and social structures. So it is a very essential and active process to right now build cultures of peace. For example, putting messages of peace and reconciliation on our television shows rather than ones of violence and revenge. (Sivaraksa, Yuk 2004:55)

Media distribution of topics focusing around peace initiatives and reconciliation may contribute to creating a culture of peace. Providing examples of initiatives dealing with problems in peaceful and non-violent ways in different social settings may have huge impacts in promoting such behavior, in contrast to repeated demonstrations of a ‘fighting approach’. Creating such a culture of peace relates both to prevention and to dealing with present conflicts and crimes in society. Sivaraksa writes: “While creating a culture of peace is the most important thing and prevention is better than cure, we still need to be able to

respond to violent situations in creative nonviolent ways.” (Sivaraksa, Yuk 2004:73) Ken Jones stresses the aspect of serving as role-model: “Buddhist non-violent social action (*avihiṃsa*, *ahiṃsa*) seeks to communicate, persuade and startle by moral example.” (Jones 1981:19, emphasis in original)

3.11. The State as Actor – Creating Peaceful Structures

The Buddhist approach of changing oneself could be understood as applying not only to a person, but to different agents in society such as a group or institution or system like schools or the criminal justice system. The latter refers to the state as acting subject. The way of acting has affects on other parts of the interconnected whole according to the principle of dependent origination.

It is common to regard the state as an entity that bears responsibility for creating peace in its environment, of ensuring the wellbeing of all parts of society. One now could, at least by way of metaphor or analogy, regard the state as a subject that ought to try to create peace within itself, i.e., within the state apparatus and state structures, first. Whatever principles are embedded and practiced in state structures internally will automatically be passed on to society at large. So the subject whose internal peace is to be looked into here is that of ‘we’ as the state.

Van Wormer describes many laws as expressing ‘organized anger’ that needs to be confronted and provided with alternatives (cf. Van Wormer 2008:256). “We are angry that people use drugs. We pass mandatory sentencing laws to express our anger. We rationalize that prisons are rehabilitative in the face of much evidence to the contrary.” (Van Wormer 2008:256) She further argues that restorative justice must confront anger and proposes an alternative to anger and retribution in order to change the (criminal justice) system (cf. Van Wormer 2008:256f.). She suggests “that patience, tolerance, and compassion, as taught by the Dalai Lama can be developed as theory and practice” (Van Wormer 2008:256f.). This suggestion refers to the very basic approach of the state as an actor and its internal structures.

Questions may be raised to find out about the discrepancy between how we act as state institution and what the outcomes we wish to achieve are. Can the internal structures of the state be created more peacefully? Are there still violent practices and motivations? As the agent state, we can look at and become aware of aspects of delusion, greed and aversion. When do we act for the sake of keeping control or power? How much do we as the state follow what is called the delusion of a self from a Buddhist point of view? When does the state act in ways that serves society as a whole and when does it act to strengthen its ego?

3.11.1. State and the Ego

Just as an ego of one person is regarded as destructive and as a hindering delusion from a Buddhist viewpoint, so it is for the institution state. Conventionally the state is perceived as something separate from community members, a kind of higher instance with the authority of making decisions that seem to be unchangeable from a civil society point of view. As an individual, that feeling of being excluded from decision making processes by state institutions is understandable, as the hierarchical structures are practiced in order to maintain state authority. However, the state as a constructed mechanism is at the same time what should be representing the people.

What is called a delusion of self in Buddhist terms may relate to the state, through its need to define itself by its territory and need to uphold and defend these constructed borders. Another aspect that may relate to the 'ego of the state' is the desire to control and have power over people that live within these borders. The attachment to borders, territories and craving for control and power is linked to greed and aversion which often lead to conflicts with other states. Following this thought, the delusion of self of the state leads to using violence and suppression against other states, which are regarded as separate entities. That may seem quite shocking, considering the state's duty to create structures that enable a peaceful co-existence for the community.

When linking the violence and harm caused by the state to the delusion of self in Buddhist terms, the practical implication for the state is to develop clear-mindedness. If letting go of identifying the state with its name or territory, the necessity to uphold borders and territories as well as authority diminishes. These attachments can be revealed through practicing mindfulness as agents of the state. It means to consciously look at and confront internal formations that strengthen a sense of self. A helpful way to do this may be to reflect upon decisions made, laws institutionalized and economic or political relationships with other state actors. Are we acting out of the intention to serve society or to preserve the state, as an end in itself? Do we focus on the purpose of providing structures that empower and serve society, or do we enforce certain behavior of people, in order to make them conform to what we believe a state needs to look like, due to patterns of thinking we have learned. How much meaning do we give the outside look of a state, and how much value to the inside structures and relationships?

How can a justice system be designed in ways that eliminate violence and suppression in its own state structures and practices, and create outside peace through being peace, as suggested in the Buddhist teachings? How can state structures be more strongly oriented towards the benefit of all beings, rather than acting based on craving for power or resources or attachment to its role as a self?

These questions refer to an instrumental level of the state and how its institutions can be used most effectively. Rather than holding on to ideas of how a state should look like, the structures and its potentials to serve its duties could be the focus. Such prioritization would allow a greater flexibility and openness to ideas, rather than stubbornly following old patterns. For instance, laws could be adjusted and changed in order to better meet the needs of society. Tolerance towards 'the others' might be increased when the state is not attached to defining itself.

Practical implications from Buddhist ideas may refer to decreasing ignorance of the state, which implies ceasing to defend its identity as a state, as often seems to be done in procedures within the criminal justice system. When crimes are regarded as violations against laws and the state, instead of people and their relationships, this may be a good example of the state being under the delusion of ego, and of the consequences. Furthermore, delusion and ignorance may be seen to refer to denying the interrelated nature of components of a system. Rather than focusing on the act of the crime as a symptom that makes the underlying problem visible and trying to eliminate it, system thinking would be more adequate. If the state considers all the elements involved in the problem, instead of denying them, a more comprehensive healing process could be reached.

Relating to the focus of Buddhist concepts of transforming oneself first, a suggestion for the state as an actor may be to reduce suppression and violence within the own structures and practices first, so that suppression in society decreases as well. Where do we as a state take a position of control, enforcement and coercion? If a state acts as a role model for society, using coercion and violence, there seems to be no need to be surprised if violence is an often occurring problem in society. Another implication from Buddhist concepts relates to increased attention to the reasons of suffering. Revealing the causes of crimes provides the opportunity for transforming the mental formations at the roots of the conflict, instead of singularly addressing the symptoms through inflicting punishment.

Further implications could surely be considered in more detail. However, the sources of inspiration for a justice system examined above already demonstrate that a Buddhist approach to justice can be assumed to be a restorative rather than a retributive one. Instead of causing harm through using violence such as punishment, the main principles of restorative justice aim to address root causes and focus on participatory processes highlighting community affectedness. Creating the means as similar to the ends as possible is another implication from Buddhist ideas for designing a justice system oriented towards serving the

needs of society. Thich Nhat Hanh describes that approach with the term ‘being peace’ (cf. Thich Nhat Hanh 1987:9).

3.12. Bridging the Gap between Means and Ends

Reducing the gap between means and ends is to act in accordance with the aspired future results. This is the way to achieve the desired states already in the present, according to Buddhist teachings. If it is the aim of a state to create peace in society, peace should be practiced in the present. State mechanisms are not created ad hoc. Rather, their creation is a long process which allows for reflection upon possible reactions and for taking the time to decide on what seems to be the way of dealing with crimes that is most in line with our ideals. This is an advantage of a system that enables choosing wisely how we as society want to deal with conflicts. Because there is enough time to make decisions, these decisions need not suffer from the same shortcomings that spontaneous emotional acts might do. Instead decisions can be made based on our ideals. If a system is oriented towards our ideals and we can act in accordance to them in the present, then the status quo already represents a state that is closer to the aspired state compared to choosing means that are out of tune with our ends. Inflicting pain and violence seems far from achieving peace and harmony. If peace should be created, it is not through using violence, but through being peace oneself.

Considering the role model-effect, a justice system that incorporates the above examined ideas of Buddhism might have peace-promoting effects in different fields of society. In the light of mutual affectedness and interrelatedness, other institutions and systems such as structures in schools and workplaces might also be inspired to orient their internal structures more strongly towards non-violence and compassion.

3.13. Dialogue and Spiritual Friendship as Way to Solve Conflicts

Sulak Sivaraksa points out that structural violence in society cannot be stopped by hating the oppressors, but through seeing them as friends and establishing dialogue (cf. Sivaraksa, Yuk 2004:38). Taking a position of opposition in dealing with problems implies seeing the other party as enemy, and hardly allows establishing constructive dialogue leading to taking measures of healing and repairing harm done.

The Dalai Lama pleads for establishing dialogue instead of using violence and refers to the assumption of interdependence and interconnectedness:

The rest of the world is actually part of your [...] own home. Under that new reality, destruction of so-called enemy is actually destruction of yourself. So, through war, through violence, you cannot achieve what you want. Conflict, different opinions always happen. The only thing is through dialogue in the spirit of reconciliation that is hope to achieve genuine lasting world peace. (Dalai Lama 2007, min 41:45 - 42:36)

The view that harming others is harming oneself at the same time reflects the understanding of interrelatedness and no-self; the separation between self and others is understood as a main cause of problems.

The Buddhist concept of Kalyanamitra, translated with spiritual friendship or admirable friendship underlines the approach of using peaceful means for solving problems. In relation to conflicts, the concept suggests regarding the conflict partner as friend rather than as enemy. What implications does the approach of spiritual friendship have for dealing with crimes and problems in society? Can a 'friendship approach' be developed in dealing with crimes and if so, how?

The way people view conflict situations and the parties engaged are the results of often unconscious processes within the mind, as mentioned above, in a process of perceptual mental proliferation (*papanca sanna sankha*). Making these mental processes of creating reality visible provides the opportunity to decide more consciously what kind of approach one wants to choose: one that is based on enemy images and encourages the desire for revenge, or one that is based on loving kindness and encourages the desire to reconcile. Regarding the other party as friend provides the necessary preconditions for establishing

peaceful dialogue, in contrast to viewing them as enemies. This can be seen in relation to how the conflicting partners see each other, but also to how the state as actor perceives the conflicting parties. Choosing to see conflict parties as friends rather than enemies implicates the need to support them rather than fight them.

A justice system that is in line with the concept of spiritual friendship aims to help the wrongdoer to eliminate the internal formations of suffering that lead to the harmful behavior. In other words, it aims to support the wrongdoer in confronting the roots of the actions and taking responsibility in order to address the roots of the crime and thereby prevent further problems in the future. Bhikkhu Bodhi explains: “In spiritual friendship we are concerned with the other person not because of the ways that person satisfies us, but because we want to see the other person grow and develop in the direction of greater wisdom, greater virtue, greater understanding.” (Bhikkhu Bodhi 2012:37)

With an encounter on a friendly and non-judgmental basis the wrongdoer may be more willing to talk freely and openly about what happened when approached with true loving kindness and compassion. If labeled ‘guilty’ from the very beginning, an enemy image is created and it may encourage the wrongdoer to justify or explain the behavior strategically in order to avoid further judgement or punitive sanctions.

What would the structures of the state look like, in the role of a spiritual friend that provides space for healing and growing for all involved? How much corresponding behavior of the participants in the procedures may be attracted? How does the role of the state relate to the Buddhist ideas of self-transformation and its impacts on a social level?

3.14. Loving Kindness and Compassion in dealing with Conflicts and Crimes

How can the cultivation of compassion and loving kindness be related to the aspiration of restorative justice approaches, of repairing harm done? “Compassion is [...] necessary to the Buddhist concept of justice.” (Miller 2008:8) Developing compassion comes with an understanding of not only the symptoms, but also the causes of a crime. Focusing on the root causes is a main point when social issues and conflicts should be addressed sustainably. The suggestion of reacting to harm and committed crimes from a Buddhist point of view is indeed the cultivation of compassion and loving kindness, practicing patience and forgiveness.

“It [compassion] is the Buddha’s medicine for cruelty, for how can one harm others when one has seen how much they suffer already?” (Mills 1999:122) Causing harm to the other, who is assumed to be suffering already, is pointless from that perspective. Instead, cruel behavior would require a compassionate response in order to be answered effectively.

The 14th Dalai Lama suggests dialogue as the way to respond to disagreements within society and further explains that through the development of compassion and affection, useful self-confidence and willpower can be gained (cf. Dalai Lama 2007, min 37:37 – 38:01).

“When you are full of self-confidence then you reach out to others. So, affection or compassion really brings inner strength. Inner strength, self-confidence [leads to] reduced fear. Reduced fear [leads to a] more calm and peaceful mind.” (Dalai Lama 2007, min 38:32 – 39:08)

Through the development of compassion not only the social environment can benefit, but also inner strength and a peaceful state of mind can be gained for oneself. Behavior out of compassion may be more likely to be mutually enriching rather than sacrificing. In a similar way Kramer describes the benefits

for both sides from cultivating loving kindness: “Loving-kindness makes the mind more pliable, counteracts the judgments that arise as we become more perceptive about ourselves and others, and brings us beyond our selfishness.” (Kramer 1997:3) The aspect of judgement is also interesting in that context. Mahāthera describes blaming and judging not as noble virtues: “The praiseworthy he praises without malice, the blameworthy he blames judiciously, not with contempt but out of compassion.” (Mahāthera 1998: 481) The mythical image of ‘the loving mother’ may prove helpful when one is trying to image how such a compassionate way of being might look like. A person with compassion will not judge a person who has done something wrong, but try to help that person to understand and make things good again, just like the loving mother in that mythical image would support her child. Such empathetic joy or gladness for others is opposed to feelings of jealousy: “Gladness is to rejoice with others over their successes, gains and happiness. It overcomes the grudging attitudes to others and the jealousy which may arise on hearing of others’ joy.” (Mills 1999:122)

Unconditional love and support like that enables people to orient their actions of responding to harm done towards supporting the wrongdoer in transforming her- or himself, rather than towards fighting or taking revenge, which would cause additional harm for self and others. “Loving-kindness means we understand the feelings and needs of other people. We are encouraged to take positive action when we are presented with an appropriate opportunity to help those who are in need.” (Dhammabaso n.y.:6) What might be forms of manifestation of such a standpoint in regard to crimes and violations made? Instead of simply imprisoning someone, establishing dialogue and trying to understand the causes of the harm done before taking further measures might be one of the forms. Furthermore, Hansa Dhammabaso describes loving kindness as being like a “bridge that builds harmony between human beings and societies”. (Dhammabaso n.y.:6)

4. Conclusion

Having examined selected Buddhist ideas in relation to restorative justice, we can conclude that there are parallels in the underlying assumptions and similarities in the value backgrounds. Both Buddhist teachings and restorative justice understand reality based on the notion of interrelatedness. Regarding crimes and conflicts as affecting not only those directly involved, but the community and society as well, restorative justice approaches see participation as one of their main principles.

The notion of an interrelated nature of existence of everything suggests focusing on repair and healing after harm done, instead of inflicting further harm through measures aiming to punish the wrongdoer for the sake of revenge. Responding to violations through inflicting additional harm does not make sense when assuming interrelatedness, as it would affect all parts of the web of relationships. Processes of healing and repair would thus not be supported through punishment, but through transforming the root causes of the problems. From a Buddhist point of view, such root causes are seen in unwholesome mental formations such as anger, greed and delusion. A Buddhist method for addressing these inner formations at the core of the problem is to cultivate their positive opponents: loving kindness and understanding, generosity and clear-mindedness. Acting out of the unwholesome states would increase suffering rather than leading towards release from it, whereas the cultivation of wholesome states would lead towards the cessation of suffering, according to Buddhist teachings.

The concept of karma emphasizes the role of intention of behavior. According to karma, intentional harm-causing – even if the motivation is to act beneficially or to serve the greater good – would beget resonating harmful outcomes. According to basic Buddhist teachings, peace can only be reached by peaceful and nonviolent means. Considering that aspect, punishment as

behavior of intentional harm-causing attracts more harm rather than healing. Inflicting punitive measures in order to harm the wrongdoer for his or her behavior cannot be justified from a Buddhist point of view. As restorative justice approaches urge to establish dialogue and leave the conflict and its solution-finding processes to the people concerned, Buddhist main principles and ideas of interconnectedness, non-violence and karma support these principles and may even indicate the need for broader community integration and participation.

Self-transformation takes on an important role throughout Buddhist teachings: instead of changing others, one needs to make change in oneself. This does not necessarily exclusively refer to single persons, but can also be applied to larger groups in society or to the state. How can we as the state let go of unwholesome mental formations and cultivate inner structures resonating with the desired characteristics of society, peaceful and respectful coexistence? In order to increase wholesome inner conditions Buddhist ideas suggest cultivating mindfulness as a tool for becoming aware of one's inner processes and thereby enabling change.

Both restorative justice and Buddhist teachings emphasize the aspect of responsibility. Restorative justice focuses on accountability in terms of obligations of the wrongdoer in contributing to repairing the harm done. Buddhist teachings can be described as mainly referring to a collective responsibility, looking at a broader level. As explained by the doctrine of dependent arising, Buddhist teachings suggest viewing conflicts with regard to their causal conditioning. In this perspective, all parts of the web were somehow co-responsible for creating the conditions in which the crime could be committed by the perpetrator. Following this thought, further inspiration from Buddhist teachings for restorative justice may refer to widening the participation of solution finding processes in terms of providing structures that enable and encourage 'outside' persons to contribute with their resources to the healing process, even if they are not directly involved in the conflict.

That may provide the opportunity to respond to the needs of those harmed more effectively than exclusively requesting measures of reparation from the wrongdoer who is held accountable for his or her behavior. This more comprehensive approach requires structures where those contributing to repair are not – also not implicitly – labeled as ‘guilty’, but appreciated and valued for their generosity and their efforts for the benefit of the community. From a Buddhist point of view, generosity is a virtue that counteracts greed and thereby leads to ending suffering of those cultivating it. If taking the concept of karma seriously, actions for the wellbeing of the community lead to beneficial results for both those contributing resources and for the society at the same time. While in the retributive criminal justice system focus is put on revenge, restorative justice prioritizes the element of repair. Examples of already existing structures enabling such contributions of community members include restorative circles and family group conferences.

Another aspect of inspiration can be found in the Buddhist basic assumption of no-self. If taking no-self seriously, actions need to be based on a notion of oneness rather than separation. This understanding is closely linked to the doctrine of dependent origination assuming mutual dependency and interrelatedness of all phenomena. Assuming causal relatedness and mutual dependency has significant effects on the approaches to dealing with conflicts and to handling crimes, compared to a worldview based on the notion of separated entities. A Buddhist understanding of no-self states that such separation between an ‘I’ and an ‘other’ is an illusion. When conflicts occur, a Buddhist mindset suggests trying to create healing for all involved, rather than blaming and punishing the wrongdoer to intentionally cause pain. Practical implications for restorative justice may refer to the use of the language as one influential aspect of creating meaning and reality. Using terms such as ‘wrongdoer’ and ‘those harmed’ instead of the labels ‘victim’ and ‘offender’ may counteract the increase of role ascriptions. It may help to move away from judging a whole person and towards focusing on the behavior. According to the Buddhist concept of karma, past actions created the consequences of harm that

occur in the present, and the present behavior is decisive for creating either a peaceful or a problematic future state.

Creating Cultures of Peace

Buddhist teachings emphasize creating an environment in which problems are prevented beforehand. The Eightfold Path and meditation practice may serve as practical advice. The Eightfold Path as a guide to developing positive virtues of morality, wisdom and concentration is directly linked to society, whereas meditation can be practiced for gaining personal growth and inner stability that is also seen to be indirectly linked with the social sphere. The potential contributions to cultures of peace through developing and strengthening wholesome virtues may be tremendous concerning reduced crime rates and harmful behavior in society. Also reactions to harm done might significantly change with an increased restorative milieu: from violent forms of punishment and taking revenge into forms of healing and repair in order to meet the needs of those harmed and to address the problem at its roots.

Further research could be conducted on the Buddha's reactions in specific conflict situations based on the main Buddhist scriptures of the tripitaka. For instance the angulimala sutra illustrates the transformation of a serial killer, the conflict about the water shortage of the Rohini river or the quarrel at Kosambi describe the Buddha's reactions in the conflict situation. How do these and other stories of the Buddhist scriptures resonate with restorative justice approaches and serve as further inspiration? Further academic research would be required to investigate these questions.

It's important to repeatedly note that the theoretical scriptures and teachings of the Buddhist philosophy not necessarily resonate with the actual practices or structures in societies influenced by Buddhism. Sometimes the gap between the conceptual and the practical level might be huge. Likewise, elements that are found in Buddhist teachings may be found in other traditions and different philosophical strands as well. For instance, the principle of non-violence or

ahisma can be found in Jainism and Hinduism and other traditions apart from Buddhism. However, similarities in the underlying assumptions and notions of restorative justice and Buddhist teachings suggest that the latter can serve as valuable inspirational source for the further development of restorative justice.

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6. Appendix

6.1. Abstract

Restorative justice describes approaches of conflict transformation that focus on repairing the harm done and addressing the needs of those violated. Restorative justice procedures are applied within the criminal justice system, in other institutionalized settings such as schools as well as in informal contexts. Among the most well-known programs are: mediation procedures, family group conferences and restorative circles. Restorative justice has been traditionally used in various communities and cultures, and does not represent an entirely new movement. While some authors describe restorative justice as a revitalization of already existing forms of dealing with conflict, others stress the aspect of a shift in paradigm. This thesis examines how the assumptions underlying restorative justice resonate with concepts and ideas found in Buddhist teachings.

Selected Buddhist concepts are analyzed and related to restorative justice principles in order to gain an insight about potential further inspiration from Buddhist teachings. Mutual interdependence, no-self, impermanence and non-violence represent Buddhist core ideas that significantly influence peoples' worldview and notions of reality. How can these basic ideas be consistent with underlying understandings of restorative justice? Where are similarities and parallels? What further inspiration can be gained from Buddhist teachings?

The core principles of restorative justice include the focus on repair, encounter, participation, empowerment, responsibility, transformation and social re-integration. This thesis examines how these principles are consistent with core elements found in Buddhist teachings and argues that Buddhist ideas constitute a valuable source of inspiration for restorative justice approaches. With its emphasis on non-violence, compassion, loving kindness and generosity, Buddhist teachings refer to both individuals and social systems at the same time. The Buddhist concepts of dependent origination, no-self and karma, as

well as the understanding of reality and the values embedded in them may have the most relevant implications for restorative practices dealing with conflicts and crimes.

6.2. Zusammenfassung

Restorative Justice beschreibt jene Zugänge der Konflikttransformation, die auf die Wiedergutmachung eines zugefügten Schadens und die Bedürfnisse der Geschädigten in den Mittelpunkt stellen. Restorative Justice Verfahren werden im Strafsystem, in anderen institutionalisierten Kontexten wie in Schulen, aber auch im informellen Rahmen angewandt. Zu den bekanntesten Programmen zählen: Mediation, Family Group Conferencing und Restorative Circles. Wiedergutmachende Praktiken in der Konfliktbearbeitung wurden bereits in verschiedenen Gemeinschaften und Kulturen traditionell verwendet und stellen keine völlig neuen Erscheinungen dar. Während einige AutorInnen Restorative Justice als eine Wiederbelebung von existierenden Formen des Umgangs mit Konflikten beschreiben, betonen andere den Aspekt des Paradigmenwechsels. Die vorliegende Arbeit befasst sich mit den zugrunde liegenden Annahmen von Restorative Justice, und wie diese mit Konzepten und Ideen aus der buddhistischen Lehre übereinstimmen.

Ausgewählte buddhistische Konzepte werden analysiert und in Verbindung zu Restorative Justice Prinzipien analysiert, um Einblicke über mögliche Inspiration aus der buddhistischen Lehre zu erlangen. Wechselseitige Abhängigkeit, Nicht-Selbst, Unbeständigkeit und Gewaltfreiheit repräsentieren buddhistische Kernideen, welche bedeutenden Einfluss auf die Weltansichten der Menschen und deren Auffassungen von Realität haben. Wie können diese Grundideen mit den zugrunde liegenden Verständnissen von Restorative Justice einhergehen? Wo gibt es Ähnlichkeiten und Parallelen? Welche weitere Inspiration kann aus den buddhistischen Lehren gewonnen werden?

Die Kernprinzipien von Restorative Justice beinhalten den Fokus auf Wiedergutmachung, Begegnung, Partizipation, Empowerment, Verantwortung, Transformation und soziale Re-Integration. Diese Arbeit untersucht wie die Prinzipien mit Kernelementen aus der buddhistischen Lehre übereinstimmen und argumentiert, dass buddhistische Ideen eine wertvolle Quelle der Inspiration für Restorative Justice Zugänge darstellt. Mit der Betonung auf

Gewaltfreiheit, Mitgefühl, liebende Güte und Großzügigkeit, beziehen sich die buddhistischen Lehren gleichzeitig auf Individuen sowie auf soziale Systeme. Die buddhistischen Konzepte zu bedingtem Entstehen, Nicht-Selbst und Karma, sowie das übermittelte Verständnis über die Realität und darin eingebettete Werte, liefern möglicherweise die relevantesten Implikationen für restorative Praktiken im Umgang mit Konflikten und Kriminalität.

6.3. Curriculum Vitae

Carina Dorothea Pichler

Born on 15th June 1988 in Wolfsberg/ Carinthia



Education

2008-2013: International Development Studies, University of Vienna
2007 – 2008: Environmental Systems Sciences Studies, Karl
Franzens-University in Graz
2002 – 2007: Institute of higher Education for Economic Professions
Degree with excellent success

Professional Experience

2012 March-October Grain GmbH, Business Service Administration; Vienna
2011, Nov-2012, Feb Amnesty International, Section Campaigning, Vienna
2011, June-Sept. Baan Doi – Home and Healing Center for Children, Mae
Sai, Thailand
2010, August SCI – Service Civil International, Youth Exchange
Youth Group Leader, Savigno, Italy
2010, July World AIDS Conference; IAS, Vienna
2010, February Tshimologo Stimulation Centre – Botswana Red Cross

2008 April–2009 Feb Tobacconist-shop, Vienna, part-time
2007 Association ‘Bunter Schmetterling’, Website

2006, August Federal State Hospital, Wolfsberg, full-time
2005, July-Sept Tubex, Administrative Work, part-time

Languages and additional Experiences

English: fluently spoken and written
Italian: good
Thai: conversational (spoken)

Excellent EDV skills European Computer Driving License
Peer Group Mediation Training, 20 hours

Conferences

16th-18th Aug. 2013 Transforming Conflict - Buddhist inspired ideas for
personal and social change, Center for Applied Buddhism, Berkshire, England

Publications

2013: A Buddhist way of Drug Rehabilitation in Thailand -
Approaching Drug Addiction with Loving Kindness: An
Interview with Phra Maha Narong Chaiyatha. ASEAS -
Austrian Journal of South-East Asian Studies, 6(1), 195-
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