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## Buddhism, Punishment, and Reconciliation

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# Buddhism, Punishment, And Reconciliation

Charles K. Fink<sup>1</sup>

## Abstract

One important foundation of Buddhist ethics is a commitment to nonviolence. My aim in this paper is to work out the implications of this commitment with regard to the treatment of offenders. Given that punishment involves the intentional infliction of harm, I argue that the practice of punishment is incompatible with the principle of nonviolence. The core moral teaching of the Buddha is to conquer evil with goodness, and it is reconciliation, rather than punishment, that conforms to this teaching. I argue that a commitment to nonviolence requires not only that we refrain from inflicting intentional harm, but that we refrain from inflicting unnecessary harm, and that this has important implications concerning the practice of incapacitation. I analyze the concept of harm and argue that the Buddhist understanding of this notion leads to the conclusion that none of the standard justifica-

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tions for punishment are compatible with the principle of nonviolence, properly understood.

As it is commonly interpreted, the first precept of Buddhism involves a commitment to nonviolence (*ahiṃsā*).<sup>2</sup> This is understood, first and foremost, as a commitment not to *kill* any sentient being intentionally. But it is also understood, more broadly, as a commitment not to *harm* any sentient being intentionally, and it is this broader understanding of nonviolence that is crucial to appreciating the implications of the first precept with regard to the treatment of offenders. Given that punishment involves the intentional infliction of harm, it follows that punishment is incompatible with the first precept. I develop this argument in what follows and try to show that reconciliation, as an alternative to punishment, best captures the Buddhist spirit of nonviolence.

### Alternatives to Punishment

Punishment involves the infliction of harm—typically, some form of suffering. This by itself is morally problematic, but what renders punishment especially problematic is that it involves the *intentional* infliction of harm.<sup>3</sup> The retributivist, for example, believes that offenders should be punished simply because they deserve to suffer, as an end in itself. Whether punishment is an effective means to crime reduction is, for the retributivist, beside the point. The deterrentist believes that offenders

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<sup>2</sup> The first precept is a vow never to kill any sentient being: *Pāṇātipātā veramaṇī sikkhāpadam samādiyāmi*. It is commonly understood as a commitment to nonviolence. Intentionally killing a sentient being breaks the precept; intentionally harming one, we might say, fractures it (cf. Harvey *Ethics* 69).

<sup>3</sup> For a thorough defense of the claim that punishment involves the intentional infliction of harm, see Boonin (12-17). For a full analysis of the concept of punishment, which I do not give here, see Boonin (Ch. 1) or Zimmerman (Ch. 1).

should be punished as a means to an end: either to deter them from repeating their criminal offenses (specific deterrence) or to deter the public from criminal behavior (general deterrence). In either case, the thinking is that offenders should be made to suffer, deliberately, for their crimes.

With this in mind, it is clear that punishment should be distinguished from the following practices, which are sometimes employed, if not as alternatives, at least as supplements to punishment:

(1) *Incapacitation*. Offenders are “incapacitated” when they are prevented from repeating their criminal offences. This may involve incarceration, but there are other methods of incapacitation, depending upon the nature of the offense. Drunk drivers can be incapacitated simply by having their automobiles impounded. Sex offenders can be incapacitated through the use of anti-androgen drugs. Electronic surveillance, such as ankle monitoring, is an alternative to incarceration for a wide range of offenses. Regardless of the method employed, incapacitation is not a form of punishment because, even if offenders suffer from the restrictions imposed upon them, the aim in imposing these restrictions is not to make them suffer but rather to protect the public. The harm done, if any, is an unintended side effect. (For comparison, patients with infectious diseases are sometimes quarantined, but to isolate patients from the public is not to punish them, because the aim in quarantining patients is not to make them suffer but rather to protect the public. Institutionalizing the criminally insane does not count as punishment for the same reason.)

(2) *Restitution*. Unlike fines, enforced restitution is not intended to make offenders suffer but rather to repair or “make whole” the victims

of crime.<sup>4</sup> For this reason, restitution, like incapacitation, is not a form of punishment.

(3) *Rehabilitation.* Rehabilitation differs from punishment because the aim of rehabilitation is not to harm offenders but rather to correct their criminal tendencies and reduce recidivism. Far from harming them, rehabilitation, if successful, benefits offenders by improving their character. (Later, however, I will distinguish between punitive and non-punitive rehabilitation because there are those who believe that punishment, or even “eye for an eye” retribution can serve as a rehabilitative method.)

(4) *Reconciliation.* If you and I are friends, and I have wronged you in some way, there are steps I can take to earn your forgiveness and restore trust in our relationship. Even if a society consists largely of strangers, it is nonetheless a cooperative arrangement based on trust, and crime represents a violation of trust. If I have committed a crime, there are steps I can take to earn forgiveness, restore trust, and recapture my good standing in society. This is what is meant by “reconciliation.” Reconciliation differs from punishment because the aim of reconciliation is not to harm offenders but rather to restore the bonds of trust that hold society together. For this reason, reconciliation is sometimes referred to as “restorative” (as opposed to “retributive”) justice.<sup>5</sup>

But are these practices truly non-punitive? Incapacitation, in particular, is not uncommonly classified as a punishment (or as a rationale for punishment). This is understandable. To harm people is to make them worse off than they would have been otherwise, at least in the short run. And one way to make people worse off is to deprive them of

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<sup>4</sup> Aside from the good done for the victims of crime, Boonin (264-267) argues that enforced restitution can serve as an effective method of criminal deterrence.

<sup>5</sup> For a compact introduction to restorative justice by one of the founders of the movement, see Zehr. For a discussion of restorative justice from a Buddhist perspective, see Loy. For discussion from an interfaith perspective, see Magnani and Harmon.

their freedom. If offenders are incapacitated, they are intentionally deprived of their freedom (or, at least, of their full range of freedom) and are hence intentionally harmed.

How, then, is incapacitation not a form of punishment? In responding to this, some clarification is needed. For a form of treatment to count as punishment, it must not only be harmful, it must be intended as harm; it is in this sense that punishment involves the intentional infliction of harm. It is true that when offenders are incapacitated, something harmful is intentionally done to them (insofar as depriving people of their freedom is harmful). But this is also true when patients with infectious diseases are quarantined to protect the public, yet this does not count as punishment. Even if patients suffer from their social isolation, this is unintended. The harm done, if any, has nothing to do with protecting the public. In the same way, when offenders are incarcerated to protect the public, the emotional suffering they endure has nothing to do with achieving this goal. Although incarceration is harmful, it is not intended as harm. Contrast this with the practice of deterrence. When offenders are incarcerated to deter crime, the emotional suffering they endure is a necessary feature of the practice; otherwise, incarceration would not be an effective method of deterrence. In this case, incarceration is not only harmful, it is intended as a harm. Similar comments apply to the other practices mentioned above, which are sometimes, mistakenly, considered punitive.

What are the ethical implications of the first precept with regard to the treatment of offenders? Does this principle necessarily rule out punishment? To answer these questions, we must situate the principle of nonviolence within the context of Buddhist ethics and clarify what it means to “harm” someone in the relevant sense.

### Buddhist Ethics and the Principle of Nonviolence

The Buddha's moral message is simple, but powerful. "Overcome anger by peacefulness: overcome evil by good. Overcome the mean by generosity; and the man who lies by truth" (*Dhammapada* 223). In following the Buddhist path, one employs this strategy to uproot the three mental defilements (*kleśas*): greed, aversion, and delusion. To uproot greed, one practices generosity. To uproot aversion, one practices loving-kindness. To uproot delusion, one studies the *Dharma*. In essence, Buddhist morality is simply an extension of this strategy for self-purification to one's dealings with others. On the negative side, this means that one should refrain from actions that arise from unwholesome states of mind—that is, from greed, aversion, or delusion. On the positive side, it means that one should base one's conduct, in word or deed, on wholesome states of mind—the contraries of the three *kleśas*. Ideally, all of one's actions are traceable back to the underlying desire to promote the good of others and to alleviate their suffering.

It is not entirely clear how to categorize Buddhist ethics, or even whether it can be categorized, but there is something approaching a consensus among scholars that Buddhist ethics is best understood as a type of virtue ethics (cf. Keown *Ecology*).<sup>6</sup> Whether or not it fits the Aris-

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<sup>6</sup> Generally speaking, scholars are divided on whether Buddhist ethics should be interpreted as a form of virtue ethics or as a version of consequentialism. Yet, in Damien Keown's opinion, "there is a growing consensus among scholars . . . that Buddhist ethics bears a greater resemblance to virtue ethics than to any other Western theory" (*Ethics* 25). Of course, there are arguments on both sides of the controversy. Charles Goodman has recently mounted an impressive defense of the consequentialist interpretative model. We might note, however, that the model defended by Goodman borrows key elements from virtue ethics. Specifically, Goodman defends "character consequentialism," which takes virtue to be among the intrinsic goods that moral conduct seeks to promote. "Since . . . Buddhists consider character traits to be intrinsically morally important," he writes, "they will regard effects on character as among the more important consequences of our actions" (187).

totalitarian mold, Buddhist ethics is certainly inward-looking in its approach to morality. Moral questions are settled, not by considering one's actions from an external point of view, but by examining one's underlying motives and intentions. Good, wholesome, or skillful actions (*kaśala karmas*) are those that manifest or reinforce wholesome states of mind; bad, unwholesome, or unskillful actions (*akaśala karmas*) are those that manifest or reinforce unwholesome states of mind. Love and compassion, obviously, are good motives. Hatred, envy, greed, and pride are bad ones. The intention to alleviate someone's suffering is a good intention. The intention to inflict suffering is a bad intention. For an action to have moral worth, it must be well-motivated and well-intentioned. But this is not enough; it must also be wise. For example, the Buddhist argument against euthanasia is that, even if the practice is well-motivated (by compassion for the patient) and well-intentioned (aimed at ending the patient's suffering), it is still a foolish practice because, in the round of *saṃsāra*, euthanasia simply postpones the patient's suffering rather than ending it, and it may well make matters worse for the patient in his or her next life.<sup>7</sup>

The Buddha defined "karma" as an act of will, as the volition that lies behind an act of body, speech or mind. "It is will, O monks, that I call karma; having willed, one acts through body, speech or mind" (*Āṅguttara*

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<sup>7</sup> In connection with euthanasia, Peter Harvey writes that "To advocate death on the grounds of compassion would be seen [from a Buddhist standpoint] as an unwholesome act rooted in delusion, so that the compassion involved was unwise" (*Ethics* 296). He points out that "there is no guarantee that even a good person will have a pleasant rebirth in his or her next life" and that "if the suffering of a sick person is due to karma, then killing him or her is unlikely to end the suffering, as the karmically caused suffering will continue after death until its impetus is used up" (297). Not all scholars, I should mention, agree with this analysis. Rupert Gethin (178-185) argues that the basic Buddhist objection to euthanasia, at least from a Theravāda perspective, is that the practice is rooted in aversion rather than in delusion—specifically, aversion towards the patient's suffering. He provides textual support for this, which is worth considering. But if it would be wrong for a physician to euthanize a patient because the act would be rooted in aversion to suffering, then it would be wrong for a physician to practice medicine *at all* for the same reason.



*Nikāya* III 415).<sup>8</sup> Whether an act is good or bad critically depends on what the agent *wills* to do. This seems to imply that to harm a sentient being unintentionally is not bad karma, even if the harm done is predictable. Peter Harvey cites as examples: crushing sugarcane “when one knows, or strongly suspects, that it contains worms” and “driving a car on a hot day when it is very likely that many insects will be killed” (*Ethics* 53). Many scholars accept this implication, and there is much in the canonical literature to support it. There is, for example, the *Kurudhamma Jātaka*, which, according to Harvey, emphasizes the idea that “unintended harm to others should not be counted against one, and it is not wise to agonize over such matters, such as a king who ceremonially fires arrows in the air, and losing track of one, worries it might have landed in a lake and killed a fish” (*Intention* 2). It is often observed that Buddhist ethics and Jain ethics, though they share much in common, differ in this crucial respect. According to Jainism, even unintentionally harming a sentient being, such as accidentally stepping on an insect, is bad karma.

This analysis is plausible if it is taken to mean that the unintended but foreseeable consequences of an action have no bearing on whether the act is *karmically* bad (or bears bitter fruit). The Buddhist understanding of the metaphysics of karma and the mechanism by which karma comes to fruition differs significantly from that of Jainism. But is it plausible to say that the unintended but foreseeable consequences of an action have no bearing on whether the act is *morally* bad? Suppose I decide to practice archery in my backyard, even though my property borders a playground. If a child is struck and killed by a stray arrow, does this not “count against me” because it was not my intention to kill the

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<sup>8</sup> The word translated here as “will” is *cetanā*. According to Keown’s entry in *A Dictionary of Buddhism*, the term denotes “the conative psychological functions of intention, volition or motivation” (51). Hence, karma is understood as the act of *intending* or *willing* to bring about a certain result.

child? Suppose I repeatedly miss the target, killing one child after another. Would it be “unwise” for me to agonize over these unfortunate incidents?

In sorting this out, we might begin by noting that Buddhist ethics, in a reversal of utilitarianism, does not say that an act is good or bad because it has good or bad consequences, but that an act has good or bad consequences (specifically, good or bad *karmic* consequences) because it is good or bad. The moral value or disvalue of an act depends upon the internal states of the agent, not upon the external consequences of the deed. It may be, then, that a harmful deed is *karmically* bad only if the harm done is intended (because of the mechanism by which karma, both good and bad, bears fruit); still the deed may be *morally* bad because of its inherent nature.<sup>9</sup> Suppose that, in a celebratory mood, I fire my gun into the air, not taking into account that the bullet will eventually fall back to earth possibly injuring or killing someone. It may be that this possibility never occurred to me, in which case I am acting negligently, not bothering to take into account the possible consequences of my action. Or it may be that I am well aware of this possibility but fire my gun anyway. Clearly, I am doing something wrong, and I could not excuse my carelessness by saying that I did not intend to harm anyone. I am doing something wrong whether or not I *intend* to harm someone, and whether or not I actually *do* harm someone.

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<sup>9</sup> Some evidence that an action can be morally good or bad without correspondingly being karmically good or bad is provided by the *Upāyakaśālya Sūtra*, discussed by Williams (145) and Gethin (188-189). The *sūtra* relates the story of how the Buddha, in a previous life, killed a man to prevent him from murdering 500 others (themselves bodhisattvas), thus not only sparing these people their lives but also sparing the man rebirth in hell. This was a self-sacrificial act, and the Buddha was prepared to be reborn in hell for the crime. This did not come to pass, but the deed did bear bad fruit. Much later, the Buddha’s foot was pierced by a thorn, apparently as a karmic consequence (greatly attenuated, we are lead to think, by the Buddha’s vast store of merit). The Buddha’s conduct was meritorious, at least from a Mahāyāna perspective, and yet it bore bad fruit, implying that an action may be morally good even though it may be (in some respects, at least) karmically bad.

In Jain ethics, the great vow of *ahiṃsā* is understood first and foremost as a commitment to *carefulness* (cf. Sharma). In fulfilling this vow, one takes whatever steps are necessary to avoid harming any sentient being, whether intentionally or unintentionally. By failing to do so, the vow is broken, whether or not any sentient being is actually harmed. Although Jain mendicants might take this to extremes—wearing hoods over their heads to avoid inhaling gnats—a commitment to carefulness seems to better capture the spirit of nonviolence than a mere commitment not to inflict *intentional* harm.

There is some evidence that early Buddhists accepted this broader conception of nonviolence. Buddhist monks, following the example of Jains, often strained their drinking water to avoid ingesting small organisms (cf. Keown *Ethics* 15). The Buddha himself directed his monks, who routinely relocated, not to travel during the monsoon season so that they would not accidentally crush insects underfoot (cf. Chapple 54). Reckless behavior was also explicitly condemned (cf. Harvey *Vinaya* 276). One case mentioned in the canonical literature concerns a monk who sat on some rags, accidentally killing a child lying underneath. Another case concerns monks throwing a stone down Vultures Peak, unintentionally killing someone below. In both cases, the judgment was that the monks were at fault.

This broader conception of nonviolence—as a commitment to carefulness—is independently more plausible, especially within the context of virtue ethics. Suppose a physician can effectively treat a patient with one of two medications, X and Y. Both medications have bad side effects, but the side effects of X are much worse than those of Y. In the narrow conception of nonviolence, it is irrelevant whether the physician prescribes either X or Y, because the physician would not be acting with the intention of harming the patient. The foreseeable but unintended side effects of the medication have no bearing on how the physician's

choice is to be evaluated. In the broad conception, however, these side effects should be taken into account. Clearly, it would be negligent for the physician to prescribe either medication without even bothering to consider its possible side effects. It would be grossly careless or callous for the physician to prescribe X knowing that its side effects are much worse than those of Y. In either case, the physician's behavior would be morally bad and contrary to the principle of nonviolence, broadly understood. In general, actions describable as "reckless," "negligent," "careless," or "callous" fall into this category.

The Buddha urged us to radiate loving-kindness toward all sentient beings, and reckless, negligent, careless, or callous behavior is certainly antithetical to loving-kindness. Realistically speaking, no one can live a completely harmless life, but one can try to minimize the harm done. On the broad conception, a practitioner of nonviolence not only refrains from intentionally harming others, but also from causing excessive, gratuitous, or unnecessary harm. A good intention may excuse causing foreseeable harm (as when a physician prescribes a medication knowing that it will have bad side effects), but only when the harm done does not exceed what is necessary to bring about the good intended.

This conception of nonviolence has important ethical implications concerning the practice of incapacitation. For example, it might be argued that the state is *always* justified in incarcerating violent offenders so long as this is done with the intention of protecting the public, and this is so even if such offenders could be incapacitated by means of electronic surveillance. This is true on the narrow conception of nonviolence, but not on the broad conception. Protecting the public is a good intention, but it does not excuse incarcerating offenders if public safety can be achieved by less harmful means. Another implication is that execution cannot be justified as a method of incapacitation, assuming that imprisonment is always an option. And even imprisonment under brutal

and dehumanizing conditions, as is the current practice, is unjustified, given that these conditions are unnecessarily harmful. In general, a method of incapacitation is truly nonviolent only if it inflicts the least amount of harm necessary to incapacitate offenders.

### **Understanding the Nature of Harm**

Good motives are typically paired with good intentions and bad motives with bad intentions. But is this always the case? According to one Buddhist text, the *Ārya-satyaka-parivarta* or “Noble Discourse of the Truth Teller,” a righteous ruler “with compassion should root out wicked people just as a father disciplines a son” (Harvey *Ethics* 348). As a parent, I might be motivated by compassion to punish my son. My immediate intention would be to make my son suffer; otherwise, the punishment would not be effective. But if I am motivated by compassion, my ultimate intention will be to benefit my son in some way. If I punish my son, am I acting with the intention to “harm” him in a sense that conflicts with the first precept? The simple answer is that my immediate intention is to harm him but my ultimate intention is to benefit him. But this answer is too simple. To harm someone is to make that person worse off than he or she would have been otherwise. Although I might harm my son in the short run, in the long run he might be better off. The question, then, is whether I “harm” my son in the relevant sense only if I make him worse off in the long run (on balance or all things considered). If so, then assuming that my son is, on balance, better off as a result of being punished, then I do not harm him (in the relevant sense) by punishing him. In fact, my action would be meritorious because it would be well-motivated, well-intentioned, and wise.

There are reasons for accepting this interpretation. Theravāda Buddhism characteristically regards the precepts as moral absolutes (cf.

King 73). It is said that *arahats* have internalized the precepts so completely that it is *impossible* for them to harm someone intentionally, to lie, to steal, or to break any other precept (cf. King 37). Mahāyāna Buddhism, on the other hand, notoriously allows for exceptions under the banner of “skillful means” (*upāya-kausālya*). Yet even when exceptions are permitted, it is clear that the overarching aim is to benefit all sentient beings so that no one is *ultimately* harmed. To consider one important example, Asaṅga argues that the precepts may be violated—even the precept against killing—but only when the intention is to benefit *all* those affected. One of his examples concerns killing a robber who is about to commit mass murder:

Accordingly, the bodhisattva may behold a robber or thief engaged in committing a great many deeds of immediate retribution, being about to murder many hundreds of magnificent beings—auditors, independent buddhas, and bodhisattvas—for the sake of a few material goods. Seeing it, he forms this thought in his mind: “If I take the life of this sentient being, I myself may be reborn as one of the creatures of hell. Better that I be reborn a creature of hell than that this living being, having committed a deed of immediate retribution, should go straight to hell.” With such an attitude the bodhisattva ascertains that the thought is virtuous or indeterminate and then, feeling constrained, with only a thought of mercy for the consequence, he takes the life of that living being. There is no fault, but a spread of much merit. (Tatz 70-71)

The deed is meritorious because the bodhisattva, motivated by compassion and guided by wisdom, acts with the intention to benefit both the robber and his intended victims. Asaṅga does not permit utilitarian balancing—that is, harming one sentient being for the purpose of achieving

a greater net benefit for others—or at least none of his examples suggests that he does. However, it would be too hasty to conclude that no Buddhist of historical stature permits it. Charles Goodman quotes Śāntideva who writes that a bodhisattva is at fault if “he does not cause small suffering and depression to arise as a way of preventing great suffering and depression” (90). Goodman interprets this as an endorsement of utilitarian balancing. But, as Goodman acknowledges, Śāntideva elsewhere specifically wishes to harm no sentient being. “Let there never be harm to anyone on account of me” (99).

How are Śāntideva’s conflicting claims to be reconciled? One possibility is this. The bodhisattva vow is to ferry *all* sentient beings across the ocean of *saṃsāra* to the further shore of *nirvāṇa*, and some of the practices undertaken for the purpose of fulfilling this vow may harm sentient beings, but only in the short run. In the long run, one is able to benefit *all* sentient beings by becoming a bodhisattva. In the long run, then, *all* sentient beings are benefitted by one’s bodhisattva practices, which means that no one is *ultimately* harmed. If this is correct, then Śāntideva does not permit utilitarian balancing. The difference between Śāntideva and Asaṅga on this score is simply that Śāntideva adopts a more far-ranging perspective, taking into account the distant goal of liberating all sentient beings from the round of suffering.

These considerations suggest, not only that it is always wrong to inflict intentional harm, but that to “harm” someone in the relevant sense is to make that person worse off in the long run (on balance or all things considered) than he or she would have been otherwise. This has two important implications concerning the ethics of punishment. One is that it is morally unacceptable to punish an offender as an end in itself or as a means to benefitting others, thus ruling out both retributivism and general deterrence. Another is that punishment may be acceptable when it is calculated to benefit the offender in the long run. This implies

that specific deterrence *may* be acceptable, assuming that offenders are, on balance, better off as a result of being successfully deterred from committing crimes.

In assessing this possibility, it is important to distinguish specific deterrence from punitive rehabilitation (to be discussed shortly). The ultimate goal in both cases is the same: to prevent offenders from repeating their offences. The difference is that *punitive rehabilitation* accomplishes this goal by improving the character of an offender, whereas *specific deterrence* accomplishes this goal by instilling fear in an offender. Offenders are deterred from committing crimes because they fear punishment, and they fear this because they have firsthand experience of what it is like to be punished.

The deterrence system is not designed to improve an offender's character because there is no moral value in refraining from crime because one fears punishment. Fear, unlike love or compassion, is not a morally good motive and confers no moral value upon an action. According to Buddhism, virtuous character is the accumulated result of all the good deeds that we do, and good deeds must be well-motivated.<sup>10</sup> It can certainly be wondered, then, how specific deterrence benefits offenders. Offenders are certainly harmed, at least in the short run. But if this leads to no moral improvement, how are they benefitted in the long run? It is better for *other* people if offenders do not repeat their crimes. But assuming that offenders refrain from crime for no reason other than fear, how are *they* better off? To say that offenders are better off because they won't be punished again begs the question, for the problem is to explain how punishment is *ever* justified.

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<sup>10</sup> "Hold not a deed of little worth, thinking 'this is little to me'. The falling of drops of water will in time fill a water-jar. Even so the wise man becomes full of good, although he gather it little by little" (*Dhammapada* 122).



It might be argued, as Goodman (Ch. 9) does in his defense of specific deterrence, that wrongdoing has bad karmic consequences, and even if people refrain from wrongdoing only out of fear, they are still better off in the long run. One response, of course, is that we cannot take the doctrine of karma for granted, especially not if we wish to engage non-Buddhists in a constructive dialogue about the ethics of punishment. But considered independently of this doctrine, it is difficult to see how specific deterrence benefits offenders. Moreover, even if we grant the doctrine, it is by no means obvious that it does. Whether or not one's bad karma comes to fruition depends upon one's future choices. Bad karma can be diluted or altogether nullified (through the accumulation of merit), and so one cannot take it for granted that specific deterrence will have its intended effect. (It is significant that Asaṅga's example of meritorious killing, mentioned earlier, concerns someone about to kill buddhas and bodhisattvas, something that, according to Buddhist orthodoxy, is an act of "immediate retribution" *guaranteed* to throw the offender into a hell realm. Murdering ordinary folk, like you and me, does not necessarily have this outcome, as illustrated by the tale of Aṅgulimāla.<sup>11</sup>) Without assuming the doctrine of karma, it would seem that specific deterrence does not benefit but rather harms offenders, in which case it is not well-intentioned. Assuming the doctrine, specific deterrence may be well-intentioned, but foolish. In either case, it is indefensible within the framework of Buddhist ethics.<sup>12</sup>

Rehabilitation is commonly seen as an alternative to punishment, and this is how I have characterized it. But there are those who see rehabilitation as the goal of punishment. When parents punish their children, their usual intention is to help their children to become better

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<sup>11</sup> For further discussion of this last point, see Loy (149-151).

<sup>12</sup> One further bit of evidence against Goodman's defense of specific deterrence is provided by the *Mahāparinibbāna Suttanta*, discussed by Saddhatissa (92-95). The text identifies four motives on which one should *not* act, one of which is fear (*bhaya*), including fear of punishment (*daṇḍabhaya*).

people in the long run by making them suffer in the short run. According to some philosophers, this is how society should view punishment. R. A. Duff argues that “punishment should be understood as a species of secular penance that aims not just to communicate censure but thereby to persuade offenders to repentance, self-reform, and reconciliation” (xviii-xix). By making criminals suffer for what they have done, they appreciate the moral gravity of their crimes, experience remorse, and become better people.

There is some support for this view in the Buddhist literature. The “Noble Discourse of the Truth Teller,” discussed by Peter Harvey (*Ethics* 347-348), portrays the righteous king as punishing the wicked for the purpose of reforming them. “In punishing people,” Harvey writes, commenting on the text, “his aim should be to convince them not to neglect their obligations so that they ‘might become good persons again’” (347). There is also the interesting story of Hariti, discussed by Charles Goodman (175-176). Hariti was a demonic figure notorious for kidnapping and killing small children. The Buddha, with a view to awakening in Hariti empathetic understanding, kidnapped one of her own children. Hariti, filled with rage, confronted the Buddha. According to Goodman, “The Buddha then pointed out that her feelings of rage and distress were just like those experienced by the human mothers whose children she had killed” (175). Now that she fully appreciated the moral gravity of her crimes, she was overcome with remorse and “accepted the Buddha’s request to cease her wicked deeds and become, instead, a divine protector of children” (175). The moral of the story is clear. If offenders are to empathize with their victims, they must understand what it is like to be treated as they have treated their victims. And one way in which offenders can be brought to understand this is by subjecting them to the same sort of treatment. “Eye for an eye” retribution can thus be seen as an effective means of awakening empathic understanding in offenders.

Assuming that punitive rehabilitation benefits offenders in the long run, the argument can be made that the practice does not harm offenders in the relevant sense, and so does not conflict with the first precept. There is something to this argument, but, before passing judgment, there are three objections to be weighed in the balance. First, it is by no means obvious that punishment, especially “eye for an eye” retribution, will have its intended effect. Returning evil for evil may teach wrongdoers what it is like to be treated as they have treated their victims, but such treatment is just as likely to provoke resentment as it is empathetic understanding. Thus, punitive rehabilitation might be criticized as foolish. Second, it is by no means obvious that punishment is the only way to “get through” to some people. If there are non-punitive ways of communicating censure to offenders and persuading them to repent of their crimes, then punishment is unnecessarily or excessively harmful. Thus, punitive rehabilitation might be criticized as callous. Finally, it may be wondered whether the end justifies the means. If I learn that my wife has had an affair, would I be justified in brutalizing her as a way of communicating censure and persuading her to repent of her infidelity? Would I be justified in having an affair myself to awaken in her empathetic understanding? Are we justified in lying to liars, stealing from thieves, raping rapists, and torturing torturers so that we might help them to empathize with their victims? A Mahāyānist *might* condone such practices under the umbrella of “skillful means,” but this would seem to conflict with the core moral message of the Buddha: to conquer evil with goodness.

### **Reconciliation**

I have argued that there are nonviolent alternatives to punishment: incapacitation, compensation, (non-punitive) rehabilitation, and reconciliation. Of course, we need not choose among these alternatives. In fact,

reconciliation, as it is commonly understood and practiced, incorporates the other three. Crime represents a violation of trust, and incapacitation (which may or may not involve incarceration) is justified until trust is restored.<sup>13</sup> As a condition for the restoration of trust (and hence for the restoration of an offender's full range of freedom), an offender can be given the option of completing the reconciliation process.

A commonsensical way of understanding this process is as follows. If I have wronged you in some way, you can demand that I take responsibility for what I have done and in this way I earn your forgiveness. In broad outline, I meet this demand if: (1) I acknowledge and confess the wrong I have done; (2) I am sincerely remorseful for my behavior; (3) my remorse is proportional to the seriousness of my offense; and (4) because I am remorseful, I apologize for my wrongdoing, vow never to repeat this behavior, undergo whatever change in character is necessary to sustain this vow, and make full restitution. Of course, this does not guarantee that you will forgive me, but if I complete this process, I will nevertheless have *earned* your forgiveness and whatever resentment you might still harbor toward me would be completely unjustified.

Naturally, there are objections to the reconciliation model, both practical and theoretical. The reconciliation process requires that offenders be remorseful for their crimes. But how does one invoke remorse in hardened criminals? The process requires that the victims of crime be compensated for their losses. But is compensation always possible? How, for example, can the victims of murder or rape be compensated? To

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<sup>13</sup> But not in all cases. Many studies have concluded that assessments of "dangerousness" are inaccurate most of the time and tend to over-predict the actual risk of future criminality (cf. Golash 33-36). According to Deidre Golash, "The best that has been done so far is one false negative [incorrect identification as nondangerous] and eight false positives [false identifications as dangerous] for every true positive [correct identification as dangerous]" (34). If such predictions are used as a basis for incarceration, this means that eight out of every nine people deemed to be too dangerous to remain within society are unnecessarily (and, hence, unjustifiably) incarcerated.

complete the process, offenders must earn the forgiveness of their victims. But aren't some crimes unforgiveable? Or suppose, as in the case of murder, there is no victim whose forgiveness *can* be earned. What then? These are serious questions, and it is unclear whether they can be answered to everyone's satisfaction. The question I want to take up in the remainder of this paper, however, is whether the reconciliation model supports the goals of Buddhist practice.

The reconciliation model, as I have characterized it, might be viewed as a secularized version of the religious practice of the "four opponent forces" taught by Tibetan Buddhism (cf. Gyatso). The four forces are: the force of regret; the force of reliance; the force of remedy; and the force of resolve. To apply the force of regret is to generate a heartfelt sense of regret concerning some specific wrongdoing. The force of reliance involves taking the three refuges and generating the mind of enlightenment (*bodhicitta*). The force of remedy involves the performance of meritorious deeds undertaken for the purpose of purifying the karmic imprints of the wrongdoing, the merit of which is dedicated (as a form of spiritual restitution) to those harmed by one's wrongdoing. Finally, to apply the force of resolve is to generate the firm determination never to repeat the wrong done. It is said that there is no negative karma that cannot be purified through the practice of the four opponent forces. Seeking forgiveness is also emphasized in the Theravāda tradition, and reconciliation (*paṭisāraṇiya*) is formalized in the canonical literature (cf. Harvey *Ethics* 247-249).

The reconciliation model, then, *seems* to support the goals of Buddhist practice, but there is a possible source of conflict. The model assumes not only that it is appropriate for offenders to be remorseful for their crimes, but that it is appropriate for victims to resent offenders. Resentment is recognized as appropriate, first, because it is an expression of self-respect. To be victimized by crime is to be treated as a thing

rather than as a person. Crime can and typically does inflict physical or emotional suffering upon the victim, but it is also a communicative act. It communicates to the victim that he or she is not a person but a thing to be used or abused. To resent the offender is to counter this communication with an affirmation of one's inherent worth as a person. Secondly, resentment is appropriate because, without it, there is no forgiveness. To forgive an offender is to relinquish one's resentment toward the offender. If it is appropriate for an offender to earn the forgiveness of his or her victim, then it must be appropriate for a victim to resent the offender.

Yet the Buddha urged his followers not to harbor feelings of resentment, anger, or ill-will toward anyone. The following passage from the *Kakacūpama Sutta* (*Majjhima Nikāya* I 3.1) is representative of the Buddha's teaching:

If men speak evil of you, this must you think: 'Our heart shall not waver; and we will abide in compassion, in loving-kindness, without resentment. We will think of the man who speaks ill of us with thoughts of love, and in our thoughts of love shall we dwell. And from that abode of love we will fill the whole world with far-reaching, wide-spreading, boundless love'.

Moreover, if robbers should attack you and cut you in pieces with a two-handed saw, limb by limb, and one of you should feel hate, such a one is not a follower of my gospel.<sup>14</sup>

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<sup>14</sup> Quoted by Juan Mascaró in his introduction to the *Dhammapada*. In the Theravāda tradition, radiating loving-kindness is believed to affect positive change, not only in oneself, but also in others. For discussion, see King (152-157) and Gethin (185-187).

If there is no forgiveness without resentment, and if there is no place for resentment in Buddhist ethics, then there would seem to be no place for forgiveness either.

In thinking about this, it is important to realize that whether or not people *should* feel resentment toward those who abuse them, they typically *do*, and it is this resentment that the Buddha counsels his followers to put behind them. Ideally, people would not harbor feelings of ill-will, no matter what the provocation; but given that people do, it is essential that they let go of these feelings. In his *Visuddhimagga* (IX 14-39), Buddhaghosa guides his readers through a number reflections designed to resolve feelings of resentment. At one place, he writes:

Suppose another, to annoy,  
Provokes you with some odious act,  
Why suffer anger to spring up,  
And do as he would have you do?

If you get angry, then maybe  
You will make *him* suffer, maybe not;  
Though with the hurt that anger brings,  
You certainly are punished now. (IX 22)

Śāntideva devotes an entire chapter of his *Bodhi-caryāvatāra* to the cultivation of patience (*kṣānti*) as an antidote to anger. He encourages his readers to reflect as follows:

Those who harm me come against me,  
Summoned by my evil karma.  
But they will be the ones who go to hell,  
And so it is myself who bring *their* ruin.

Because of them, and through the exercise of patience,  
 My many sins are cleansed and purified.  
 But they will be the ones who, thanks to me,  
 Will have the long-drawn agonies of hell.

Therefore I am *their* tormentor!  
 Therefore it is they who bring me benefit!  
 Thus with what perversity, pernicious mind,  
 Will you be angry with your enemies? (VI 47-49)

According to Śāntideva, whatever evil befalls me, whatever misfortune I experience, is the karmic result of my own past actions. If I had not done evil in the past, I would not experience evil in the present. For this reason, it is irrational for me to blame my enemies for the evil they inflict upon me.

To forgive someone is to relinquish one's feelings of resentment toward that person, and Buddhism abounds with practical advice on how to accomplish this. The reconciliation process supports this goal. The victims of crime may or may not be persuaded by the reflections of Buddhaghosa or Śāntideva, but they can and should forgive those who have *earned* their forgiveness. It would appear, then, that the reconciliation process, if successful, benefits *all* those affected by crime. It benefits the victims of crime insofar as it compensates them for their losses and, even more importantly (at least from a Buddhist perspective), resolves their feelings of resentment. It benefits offenders because it promotes moral improvement and expiates past wrongdoing. Hence, reconciliation supports the goals of Buddhist practice and conforms to the principle of nonviolence, both in letter and in spirit.



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