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The Dalai Lama Speaks on Law

REBECCA R. FRENCH†

When the Dalai Lama spoke on September 20, 2006 in the Law Library of the State University of New York at Buffalo, his comments were an exciting, fresh insight into the nature of the law and legal processes. I remember leaving the room in his wake thinking that American law needed serious rethinking. Nevertheless, when talking to people later and re-reading the transcript, I found that many people did not recognize the innovative nature of his pronouncements. Why was this? When I began looking for reasons, I first discovered difficulties in our manner of asking and ordering the questions. There were several tangential discussions that occurred along the way and, of course, some misunderstandings. Sometimes we missed the central point of the Dalai Lama's responses. At other spots, it seemed that the impact of his thoughts remained hidden inside what was presumed to be a religious answer to a legal question. The resulting lack of clarity was more than just the typical irritation that comes with reading the printed transcript of an oral interchange.

This commentary is my attempt to make the radical meaning of his words available to others. When I sat down to work on the transcript, I found myself responding to, arguing with, and adding silently to everything that was said. As I reread his comments, listened to his talk endlessly on tape, and watched the DVD that came out a few months later, I began to compile a simple, ordered list of his comments that might answer certain key jurisprudential questions: How does he conceptualize the nature of law? How does he think a good lawyer should act? What did he say, if anything, about the way legal rules

† Roger and Karen Jones Faculty Scholar and Professor, State University of New York, University at Buffalo Law School. I would like to thank Jack Schlegel and Johanna Oreskovic for their contributions. This Article could not have been brought to completion without the very thoughtful insights of Betty Mensch. I dedicate it to my late father, James Mott French.
should be formulated? This commentary is the result of that effort. I have divided it into four subheadings: The Nature and Purpose of Law, Morality and the Legal System: Dirty Law, Religion and Law in Democracy, and Punishment and Violence.

After organizing and paraphrasing what I thought was important from the transcript, I began to add my own responses. Choosing how to comment on the selections was challenging. My assumption has been that the legal reader will know much more about legal terms than about the basic foundational concepts in Buddhism that provide the springboard for much of what the Dalai Lama said. My comments, therefore, have highlighted comparisons to Western jurisprudence while also supplying both Buddhist foundational concepts, and for illustration, examples from the operation of one Buddhist legal system, the Tibetan legal system pre-1960. I have only been able to cover a few subjects; his discussion of constitutions and free speech could easily be the basis of a separate article.

I. THE NATURE AND PURPOSE OF LAW

A. Nature of Law

Law exists for the protection of the people. Why do we protect people? Compassion. That’s my view.1

Most modern definitions of law in the West do not use the terms protection or compassion, and so this formulation by the Dalai Lama will surprise many. As he presents it, the first and foremost responsibility of the legal system is to procure and protect the happiness and well-being of the social body. While similar notions have been familiar to natural law traditionalism, now legal scholars and philosophers usually view law in terms of authority and rules. These terms are variously described as commands, backed by the threat of sanction, from a sovereign to whom people have the habit of obedience;2 as a set of legal norms

that must be obeyed; as a system of primary and secondary rules; as an interpretive endeavor for judges who are looking for goodness of fit and just solutions; and as the positing of socially acceptable rules combined with the actual practices of courts, law offices and police stations. None of these typical definitions includes the idea of protection of the populace through compassion.

This statement of orientation is not just the sign of a spiritual leader's temporal naïveté. As head of a state in exile, the Dalai Lama is familiar with the complexities of political life in a modern global economy. By refocusing the legal lens on the protection of the people, the Dalai Lama is asking that we see law as an instrument to promote, nurture, support, and assist human beings in their spiritual as well as temporal lives.

1. Compassion. Compassion (karuna) in Buddhism has a particular meaning central to the thinking of the Dalai Lama in the area of law. In Buddhism, particularly Mahayana Buddhism, compassion is a central focus, an all-consuming endeavor that is meant to become the most important attitude of each person. The rude, villainous boss, the unhappy whiner, the truly evil criminal are all as entitled to compassion as are family members and our most likable friends. Each person is expected to work at seeing every human being in his or her life with compassion.

Compassion is a function of understanding the objective metaphysics of Buddhism. When a Buddhist looks at the world, she sees suffering: all living beings are enmeshed in an inescapable web of causal relations with no known beginning or end. Within that cosmic web humans will experience happiness but also repeated loss and disappointment because of their attachments to the transient satisfactions of this impermanent world, especially including their attachment to the illusion of their own selfhood. The only escape from samsara, the endless cycles of rebirth, is the path of equanimity leading to enlightenment. From a deep comprehension of this


5. RONALD DWORKIN, LAW'S EMPIRE (1986).
metaphysical reality, true compassion will naturally arise for our fellow creatures to whom we are bound in this vast web of interconnection.

2. Active Participation. The Buddhist is expected not just to practice non-harming (ahimsa), but to be an active participant in helping other people in their suffering. The Jataka tales, stories of the previous lives of the Buddha illustrating the perfections (paramita), are filled with exemplary acts of compassion in which the Buddha constantly helps others even to his own detriment (in one, he gives up his own body so that others who are starving might eat).

Meditations in Tibetan Buddhism have been developed to cultivate compassion for others; a Mahayana Buddhist is expected to think of the situation of others before her own. While compassion is the wish that others not suffer or feel disquiet, love in the Buddhist context (maitri) is the wish that others be happy and the desire to make them happy. Another essential aspect of the active practice of compassion is wisdom (prajna), the ability to correctly discern any object and to understand the nature of reality.

B. Lawyers

It is common sense that we should promote and pay more attention to the value of compassion and affection and a sense of care in the society through education. Then, I think, once we create that kind of society, then every person whether a lawyer, a religious person, a politician, an engineer, a scientist, an educator, that person will come from a society that is more compassionate and all the different professions will be humanized. . . . It depends on the individual. Individuals need sincere motivations, compassionate motivations, they need knowledge, a realistic outlook, and accordingly a realistic approach motivated by compassion.6

In Western philosophical terms, the Dalai Lama's description comes closest to the position of "virtue ethics." One can emphasize consequences and punishments at law, or rules designed to protect individual autonomy; or, as here, one can emphasize the substantive virtues and moral

requirements of a whole social system. Most Western legal systems currently emphasize the first two of these positions. In choosing the third, the Dalai Lama is placing virtue first. While there is no term for ethics in the Buddhist canon, a Buddhist notion of ethics is close to the idea of moral discipline (sīla). The Dalai Lama starts with the idea that the basic building block of a good society, the essential first step, is training each person to have a good moral character based in moral discipline. A sense of responsibility and a sense of service based on compassion and respect for others must be inculcated into children as part of their early socialization and later instilled during the professional training of adults. The goal is to create virtuous actors who will then use their shared wisdom to frame and carry out law. Thus, according to the Dalai Lama, a virtuous legal system depends upon virtuous lawyers and citizens; legal prohibitions alone, no matter how perfectly they reflect Buddhist doctrine, cannot by imposition create a virtuous society.

In a famous text, the Sigalovada-sūtra, the Buddha first presents the problems that arise from unethical behavior such as gambling, drinking, leaving home, cheating, and idleness. He then describes his vision for the social relationships necessary for a good society. They especially include the respectful relationships that should characterize the important pairs that make up society: students and teachers, husbands and wives, parents and children, friends, and employers and employees.

It is generally thought that the Buddha also outlined a set of five precepts to help the lay practitioner to develop his ethical virtue (panca-sīlani). Those precepts are: (1) non-injury including no killing of animals, (2) avoidance of theft and cheating, (3) avoidance of sexual misconduct, (4) no lying or untruthful speech, and (5) no consumption of intoxicants. These five precepts form the backbone of the legal system in every Buddhist state throughout history. The contrasting positive virtues to be cultivated are kindness and compassion, giving and non-greed, contentment in marriage and life, truthfulness and dependability, and present awareness and mindful conduct.

1. Motivation. The term motivation (cetana) is a key element in the Dalai Lama’s method, and it includes the motive for an act, the immediate intention to do the act to
fulfill the motive, and the actual thought that occurs during the action. For example, if a donor disrespectfully gives an unwanted object even to a grateful recipient, the result is bad karma for the donor. If a donor gratefully and generously gives something that he cannot spare, the gift, no matter how small, results in great karmic fruitfulness. To give with compassion, respectfully, at the appropriate time, with no reluctance in the heart and without harming others is to give with good motivation. The same motivation should inform the practice of law.

2. Service to others. The Dalai Lama is also emphasizing that socialization and moral training lie at the core of legal training and practice. He is professing a need for lawyers to act with sincere and compassionate motivation, to discern the true nature of every situation, and to use their knowledge, self-discipline, and sense of responsibility in service to others. Their motivation toward their clients is best when it is pure service: respectful, generous, appropriate, and without reluctance.

C. Legal Decisions

What about a situation in which a single father or a single mother is the only caretaker of some young children? Then, that parent is convicted of a serious crime, worthy of the death penalty. According to the law, that person has done something very wrong, but if you carry out the death sentence, the children will have no one to care for them. Then, you need compassion. 7

The Dalai Lama is asking us here to do something that we usually don’t do in our legal system: namely, take into account a larger context that includes family structure and neighborhood. He is pointing out that the process of allocating punishment must include providing good parents for the children since providing good parents for a child may have more social value over time than eliminating the parents from society.

The Dalai Lama’s emphasis on costs and consequence may appear similar to the approach known in the West as

7. App. B, infra p. 726; see also infra p. 732 (the Dalia Lama discusses the normal trajectory of a legal decision-making process).
Utilitarianism. Roughly stated, utilitarianism asks whether an act or rule will increase or decrease the general well-being, or, in other words, the happiness in society. This approach would appear to be similar to the process here described by the Dalai Lama. Utilitarians judge actions or rules by their potential to maximize good consequences and minimize bad consequences. This is a concept familiar in Western legal reasoning, encapsulated in terms such as "social welfare" and "the greater good." However, I wonder if this is the actual meaning of the Dalai Lama's words in the context of Buddhist presuppositions. Buddhist actions are not right simply because they lead to good consequences for a large number of people; they must be right in and of themselves.

1. Conditioned Arising. At the heart of Buddhist theory is the idea of Conditioned Arising (also called dependent origination, pratitya-samutpada). This is the principle that all mental and physical phenomena arise, move through a set of stages, and then degrade and fragment. This inevitable process can only be broken by following the steps outlined by the Buddha to achieve enlightenment. As a result of reincarnation, over and over, moving through birth to aging and on to death and then to birth again, everything is constantly changing and impermanent (anitya). All families, communities, environments and legal systems are also continually changing and impermanent.

2. Interdependence. While continually changing, each of us has also been born so many times in the past, hundreds of thousands of times, that in our past lives we have had familial and legal ties to literally every person we encounter on a daily basis (that is, we have been everyone's mother, brother, sister, father and son). As each of us has lived more than a thousand lives—as insects, hell beings, animals, and human beings—so each of us has also had a myriad of social and legal relationships with the persons with whom we now interact as lovers, instructors, waiters, bosses, infant daughters, sworn enemies, servants, and strangers. Buddhism, then, emphasizes interconnection, interdependence, and inter-being. The idea that everyone and everything has been affected by, is now affected by, and will be affecting every other person and thing as we continually change and reincarnate. One way to think
about it is as a large net of social interdependence. The Avatamsaka-sutra describes it as an endless net with a diamond at every knot; it is said that each person and animal in the net is a jewel that shines and reflects off other jewels in hundreds of different ways.

Arguably, mindful, compassionate regard for every jewel in the net is not reducible to the instrumentalist measure of fungible units called for by utilitarians. Similarly, true happiness for a Buddhist is achieved through the path toward enlightenment, not through the more worldly satisfactions that tend to be included in a Western utilitarian calculus.

D. The Interpretation of Rules

The Buddha did not formulate the 253 monastic rules for a fully ordained monk all at one time. It was an organic process. Initially, a set of rules was established and as new circumstances revealed certain problems, then that situation was addressed, and another rule was added. So, organically, the lists of rules grew. And in some cases, rules were created, but later as a result of some other situation, it had to be rewritten with later, new additions. This organic process suggests that one has to be very realistic about the needs of the situation in the context and adapt the code according to this.\footnote{8. App. B, infra p. 730.}

The Buddha is said to have taught and lectured for approximately forty-five years during which he decided, and then revised, many of the rules for the religious community he was creating. Therefore, the development of rules for a social body is an "organic" process that evolves and changes with circumstances. The original rules for a community, recorded from oral memory in the Vinaya at a later date, are over two thousand years old and considered sacrosanct in the Buddhist community.

The Dalai Lama is making three points about these rules: first, the Buddha, the originator of these rules, personally developed them over a long period of time, adjusting and revising them with the changes in the actual community. Second, he is said to have developed them
casuistically from cases that were presented to him one by one, and third, while the rules were written down and codified in the *Vinaya*, they still need to be understood in the current context and interpreted in light of those circumstances. So, while obeying the original rules, lawyers need to be sensitive to context and adapt legal rules to changing conditions.

II. MORALITY AND THE LEGAL SYSTEM: DIRTY LAW

A. Immoral Laws and Lawyers

Some lawyers try to prove that a person who did a crime, did not do the crime, or they try to prove that someone innocent is a criminal. When such things happen, it is dirty law. Exploitation in the economy through lying, that is also dirty. Using religion in the wrong way creates dirty religion. . . . Whether any human action or activity, will have a positive and constructive effect or not, depends on the actor's motivation.

The concept of "dirty law" is powerful. The Dalai Lama uses it to explain what happens when legal power is employed for purposes other than the truth. A person acting out of revenge, for example, should not be operating in our legal system. The emphasis on personal motivation is a constant element throughout Buddhist law. When lawyers act out of negative motivations such as greed, anger, hatred, personal interests, or fear, the law that they practice becomes dirty. Examples of dirty law are exploiting others, hiding the truth, acting for personal advancement, dealing corruptly, hurting others, and only trying to win; people who commit a crime and then try to avoid punishment, and people who try to prove an innocent person committed a crime, are also engaging in dirty law.

9. In terms of legal theory, the Dalai Lama is adopting the more sophisticated hermeneutic stance that interpretations are attempts to contextualize laws rather than a search for the one correct answer. This is another surprising position presented in his talk. The Dalai Lama is distinctly rejecting legal formalism.

1. *The Root Afflictions.* Dirty law comes directly from the root afflictions. In Buddhist philosophy, the six root afflictions (*klesas*) are the mental and emotional states that constitute the basis of all conflicts between parties and therefore cause all lawsuits. The six are: (1) ignorance and delusion, (2) desire, greed, and attachment, (3) anger and hatred, (4) pride and arrogance, (5) doubting the truth, and (6) false views that arise from delusions, such as clinging to the illusion of self, to the idea that all phenomena are permanent, and the belief that there is no karma. The first three of these are the most important, often termed the three poisons—ignorance (*moha*), desire (*raga*), and anger (*dvesa*). After these basic afflictions there is another set of twenty secondary afflictions, each with its own base root in the six. For example, holding a grudge and jealousy are both derived from the poison of anger. Of these three, Tibetans think that anger is the worst because we lose control of our minds when we are angry. Acts done under the influence of these negative mental states produce bad karma.

Note that this concept of dirty law would completely reorient our victim rights movement, or at least those aspects based on revenge, which is a negative motivation.\(^\text{11}\) This concept also implies that a society based on aggressive competition such as ours is promoting mental agitation concerning an object of desire and jealousy of others, both secondary *klesas* that will lead to conflicts and mental disquiet. Also, the desire to make money as the sole object in a lawsuit would be “dirty.”

2. *Truthfulness and Honesty.* In Tibetan law prior to 1960, the terms that were used in the legal system were truth and honesty, so that “dirty” as used here was the term “untruth.” Truth meant several things: the fact that both sides had agreed to a set of facts or factual consonance; fairness in procedure; fair judging; fair treatment; and fair results. Truth was used to describe personal standards for honesty, integrity, and sincerity. When a person was charged arbitrarily and not given an opportunity to present

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her case, Tibetans would say that truth had not been done in her case.\textsuperscript{12} A person who gets away with something illegal is an untruthful, a dirty person. If we have a legal system now that allows for bad motivations in actors without correction, we are producing dirty law that needs revision.

**B. Moral versus Legal Reasoning**

*In principle, from the Buddhist point of view, one needs to be sensitive to the individual contexts so, sometimes you have contexts where the benefit to the individual has to be weighed against the wider implications of the actual society, the wider community. Also one has to take into account the damaging effects of a particular cause of action as opposed to the benefits the individual will reap. Or the benefits to the community have to be weighed against the damage to the individual. The main point is not to confine your evaluation purely to a single situation but rather look at its broader implications.*\textsuperscript{13}

This was one of the most compelling and difficult areas of discussion. A question was posed by a legal practitioner who gave the Dalai Lama a classic ethical problem in the law: what should he do in a conflict between individual morality and larger societal rules? Western philosophy has wrestled with this issue in several forms, including theories of civil disobedience and natural law.

The Dalai Lama responded that a larger set of rules that had been formulated for lawyers, such as the Model Code of Professional Responsibility, could definitely take precedence if it protects the community in general. If the rule that binds the lawyer has been developed to protect the community, the lawyer will have to refrain from doing what he feels ethically compelled to do and follow a rule that has already balanced the damaging effects for the individual against the benefits to society. Here, the idea of protection of the society is emphasized again. The position of the Dalai Lama is perhaps surprising for some because it appears to

\textsuperscript{12} See \textsc{Rebecca Redwood French}, \textit{The Golden Yoke: The Legal Cosmology of Buddhist Tibet} 137-38 (1995).

\textsuperscript{13} App. B, \textit{infra} p. 731. He also discussed the critical debating skills and training in logic of the monks as a form of reasoning. \textit{See infra} p. 727.
contradict the strong emphasis in Buddhism on individual morality; here, process or system values seem to supersede an ethics of individual substantive virtue.

C. Tolerance

There is a concept called misplaced toleration or misplaced forbearance. When a politician is pursuing selfish ends and has a damaging effect on the whole community as a whole and people continue to tolerate that, that will be characterized as a misplaced tolerance or toleration. Compassion can be misplaced, and also forbearance.14

The Dalai Lama is taking a strong stand for seeking out the truth and correcting damaging situations. Tolerance—in the sense of learning to coexist, avoiding bigotry, and allowing variation—is based on good motivation and compassion for others. By contrast, indifferent toleration of another's pain and hardship is not. If one is granting permission to a person or group to injure one's community without cause, or ignoring those afflicted by trouble or pain then one is misplacing tolerance.

1. Victim Rights. At law, having compassion (karuna) or tolerance for actions based on negative emotions is misplaced compassion. For example, having compassion for the victim of a crime who is filled with hatred for the perpetrator is misplaced compassion. Having compassion for both the perpetrator and the victim as human beings is true compassion. This does not mean that the perpetrator should not be punished, but that the punishment should be designed to help the perpetrator improve her life. Similarly, the victim should not respond with revenge, but be given the tools to rebuild her life and community ties after the crime.

2. Victim Compensation. The Tibetan legal system prior to 1960 had an extensive system for victim compensation which helped the victim, neighbors, employers, relatives, the local religious community, and the greater community to absorb and respond to a criminal act.

Compensation was distributed at the end of a criminal trial to many parties not considered important in the American system. For example, in cases where death resulted, the widow received many payments based on her income loss, her grief, loss of marriage, food requirements for the family, funeral expenses, and offerings for her temple. The employer and landlord were compensated. Children received maintenance payments and food as well, and the widow’s in-laws received a “sorry payment” for their loss. The basic concept was to set things right financially, emotionally, cosmologically, and spiritually, so that the tear in the community could be repaired rapidly. In contrast, American forms of victim compensation rarely encompass the wider range of harm to the family and community.\textsuperscript{15}

D. Material Well-Being in Society

\textit{Economic motivation is very powerful and we cannot expect people not to be personally motivated by economic gain. Also without money, there is no progress. Even Buddhist monks who are aiming for Nirvana in their day-to-day life, they need money. And I think from the Buddhist viewpoint, is really a matter of balance. . . . But to just think only about money and forget other sort of values, this is a mistake. So, individuals and human society need money and material facilities and at the same time they also need some internal values. . . . Ultimately, compassion, serving others, helping others, is in my own interest. I am part of this. Even with the life of a hermit, I am part of humanity. If all of humanity faces some serious problems, even a hermit will suffer so it makes sense to think of the well-being of others. If society is happy, I will be happy and get the maximum benefits. So to develop compassion is ultimately in the best interest of oneself.}\textsuperscript{16}

When he escaped from the Chinese invasion of Tibet to India in 1959, the young Dalai Lama was faced with the enormous problem of feeding, housing, and providing work for the tens of thousands of Tibetan refugees who followed him into exile. As a consequence, he is fully aware of the importance of material and physical well-being and has

\textsuperscript{15} See \textit{supra} note 11 for a more extended discussion of these ideas.

\textsuperscript{16} App. B, \textit{infra} pp. 733-34.
devoted much of his life to procuring adequate material support for Tibetans. He has often pointed out that material security is an important basis for all societies because one cannot expect a good society or legal system without economic health for the population. And he is also following directly the teachings of the Buddha. In the Digha Nikaya, the Buddha comments that a society must be free of poverty to be harmonious, just as it requires regular and frequent assemblies, harmonious meetings, and honoring elders, women, and religious figures.17

The Dalai Lama’s next point is profound: promoting the well-being of others is ultimately in one’s own self interest. Within our web of moral and physical interconnection, it is impossible to live a good life unless the people around you are also experiencing a good life. Your life will be affected in myriad ways if a percentage of the population is poor, discontented, and suffering. If society is functioning well, you will be happy and get the maximum benefits from society. Therefore, you must think of the welfare of others. In this way, compassion for others is always ultimately in one’s own best interest.

III. RELIGION AND LAW IN A DEMOCRACY

A. Union or Separation of Religion and Law

Religion is related to the individual, democracy is related to society. I now firmly believe that the institutions of religion and the institutions of secular society should be separate.... The Buddhist monastic community has very democratic principles. There is an explicit statement that the authority should not be rested in the single individual or person but rather in the community of monks.... When a monastic rite is performed such as an ordination, one monk stands up and first informs the congregation such and such rite is being performed today, are you in agreement? And then later on, he reconfirms that there is an agreement for the conducting of this particular monastic rite. So, this suggests that there is a

democratic principle underlying the monastic institutions.\(^1\)

The US model of the separation of church and state has been adopted by the Dalai Lama as both an ideal for the good of society and as a suitable model for Tibetan society itself. This is an important move for a religious leader, and he has made this statement unequivocally in public before. After he first escaped from the Chinese troops on the plateau, he was involved in drafting the first Government-in-Exile constitution. Because the exiles were planning on a rapid return to the plateau of Tibet, the preamble stated that the government should be developed according to both the principles of Buddhism and the principles of democracy. For the second constitution thirty years later, the Dalai Lama advocated the separation of church and state in a secular democracy.\(^1\)

The Tibetan understanding of democracy is rooted in the egalitarian politics of the original Buddhist monastery. The Buddha himself decided that the community of monks should be egalitarian. Although many were hoping to replace him as the leader of the movement when he died, instead he announced that all followers must put their trust not in another leader but in three things: the Buddha, the community of monks (sangha), and the teachings of the Buddha (dharma). Buddhists have interpreted the Buddha's decision as trying to avoid hierarchical institutional development and a succession of leaders similar to the much later development of the position of Pope in Catholicism. As a consequence, a central ideal in a Buddhist monastery is that no one monk should be more important than any other, although actual practice may vary greatly from the ideal.

B. Religious Actors in the Law

*Monks should disassociate themselves from party politics. The involvement with a national struggle is a different kind*
of politics. In the Tibetan case, national freedom is very much related to the preservation of Buddha Dharma as well as freedom and individual liberty. So, I consider my service in the Tibetan national freedom struggle to be part of my practice of Buddha dharma; it is serving others by practicing and implementing compassion. But I will never touch party politics . . . . There is great damage when a lama joins one political party because some of his followers, even some members of his own monastery, may have a different view of that political party. This creates great difficulties and complications, and I feel, great damage to the image of Buddha dharma . . . . In a very poorly educated community with no history of democratic practice or elections, the people rely more and more on the lama. So, I think a good lama really serves a community, and bad lama exploits it. 20

As a prince, the Buddha was born to great wealth and political power in his small kingdom in what is now Northern India. He was trained to govern, to run an administration, discern political arguments and make decisions. After he married and had a son, he chose to leave behind his personal and political commitments, to reject the power and wealth that they entailed, and to lead the life of a wandering ascetic. There are several scenes in the description of his leave-taking that are poignant: giving up his jewelry and clothing, cutting his hair, and taking on a simple robe. This part of the story of the Buddha indicates the removal of the religious seeker from political strategizing, confrontation, and decision making. This is the kind of party politics that the Dalai Lama is addressing in his warning that monks should not be involved in politics.

Representing Tibet on the global stage, on the other hand, he sees as representing the form of Buddhism that was cradled on the plateau for more than thirteen hundred years. For the Dalai Lama, the Tibetan struggle for freedom is a commitment to preserving and advancing Buddhism, a religion that has been under siege for many years with the advent of communism and dictatorship in several countries throughout Asia.

His distinction between two types of politics is connected to the idea of motivation. If a political official is purely motivated to help others achieve a better education,

or reduce taxes, then he or she has a compassionate motivation as a leader. If his service is necessary under these circumstances, a monk can engage in politics. However, advocacy by a monk for a political position that will bring power and wealth to him or his group only is not good. Actions based on negative motivations—a leader’s ego, desire, greed, opposition to others—are bad. Therefore, as the Dalai Lama explains, representing a group for its benefit is good, while party politics is bad.

C. Moral Training for Lawyers

On a human level, there is a foundation of basic human good qualities that are universal, that everybody has, east or west or south or north. I think on that level, the values and the appreciation for these values are also the same. For example, a Tibetan community may also be a Buddhist community, which would make it a special environment. . . . It is not necessary that the training be Buddhist. That is too narrow. As I mentioned earlier, it is on a human level.21

The Dalai Lama appears to be taking the natural law position that some moral values are universal, that is, rooted in the very nature of being human. By using the phrase “basic good human qualities,” the Dalai Lama is also reaffirming the position that all human beings are basically good.

Not surprisingly, some commentators suggest that Aristotelian ethics are the closest to Buddhism within the Western philosophical tradition. Aristotle introduced eudaimon as the highest end of human life, a flourishing of human potential rooted in a well schooled moral discipline designed to perfect the natural human virtues. A good act is not good just because it has a beneficial effect on others; it is good because it reflects good character and is consistent with the highest ends of human life. Both Aristotelian ethics and Buddhist ethics “aim at human perfection by developing a person’s knowledge and character....”22

22. Peter Harvey, An Introduction to Buddhist Ethics 50 (2000).
D. Karma

The concept of karma depends very much upon one's individual understanding. If one's understanding of karma is quite good, then the concept of self-discipline will arise on the basis of respecting karma. However, sometimes people use karma as an excuse. When people use it as excuse for inaction, they say "this is my karma."23

In Buddhism, right choices result in good karma while an illegal or immoral act results in bad karma. The cause of an illegal act committed by a human being can be either received karma from a previous life or an intentional choice made during this lifetime. The punishment of an illegal act in this life might occur either in this life or in a future life.

In this passage, the Dalai Lama is challenging the way in which karma is understood in most Buddhist legal systems by contrasting simple versus deep understandings of karma. A deep understanding of the action of karma is very difficult because it involves knowing everything that has affected, and will be affected by a particular act. Very few people have a deep understanding of karma; such understanding would involve perceiving what aspects of one's life are due to karmic effects and therefore deserve acceptance and what aspects can be changed. This would also require a full knowledge of all previous rebirths, the karmic weight of all actions taken in this life and the good or bad qualities and results of those actions. As a consequence, it is unlikely that an individual will know enough about his karma to make a decision such as whether or not to bring a lawsuit on the basis of karma. In that case, karma is just being used as a rationale not to move forward.

1. Fatalism and Karma. Furthermore, the Buddha made a point to distinguish between fatalism (niyati) and karma. Fatalism, in his view, is the belief that people have no capacity to create their own destiny, that they do not have freedom of choice, and that everything that has happened to them is due to fate. A correct understanding of karma, on the other hand, includes the role of personal choice and does not presume that every event results from

fate alone.

Nevertheless, despite the Dalai Lama’s caution, in many Buddhist legal systems, karma can play the following roles: (1) it can act as a rationale for non-accusation or (2) non-punishment by the decision maker, (3) it can inhibit a victim from taking legal action, (4) expand that response, or (5) be the reason that the criminal receives that particular punishment.

2. Impermanence. Karma is based on another essential idea in Buddhism, impermanence (anitya). As we have seen, for Buddhists the world is not static but constantly changing. Humans want to hold on to sensory pleasures, wealth, power, love, and good ideas, but these will all change just as negative aspects of life continue to change. Endless transformations are the norm, not permanent institutions and relationships. A lawyer’s karma, then, works throughout this transmigration and rebirth, this continual cycling of birth and death. A legal decision is just one moment in a ceaselessly shifting universe that provides no respite from its own internal engine of karmic consequences. If any part of a legal action is derived from a negative motivation such as anger or greed, then at least part of the effect will be bad karma. Engaging in purposeful conflict by promoting the position of one client against another, therefore, must be done with good and compassionate motivations in order for the lawyer’s actions to result in good karma and a better rebirth in the next life.

IV. PUNISHMENT AND VIOLENCE

A. Punishment of Criminals

The Buddha’s teaching is that you must punish not out of feelings of revenge or hatred but out of compassion. In some cases, unless you provide a harsh treatment, that [criminal] will continue harmful activities which are actually harmful to himself or herself. Therefore, out of a sense of concern, [the judge] orders a [punishment] to stop [the criminal from] doing that kind of action. So, it looks similar but essentially there are big differences: one wrathful action is taken out of genuine compassion, one out of hatred. When the [punishment] is out of hatred and revenge, it is totally negative. . . . People will be more restrained in their behavior
if they know what the legal consequences will be if they do certain things. 24

Here the Dalai Lama is directly following the teachings of the Buddha. The first goal must be to provide a sufficient living for everyone in the society in order to prevent poverty which is a breeding ground for crime. The second step is to create a legal system in which the punishments are based on compassion and a desire to help the criminal to forgo future criminal actions. The third step is to create punishments that are clear to the society and, for the serious offenders, harsh.

As we have seen in part II.D above, the material well-being of the entire society is essential. In the fifth section of the Digha-nikaya in the Buddhist canon, the Buddha states that the origin of most crime and violence in a society is inequality of resources. No matter how severe, no punishment will stop crime that is caused by hunger and poverty. Therefore, the Buddha states, the best way to eliminate crime is to build a healthy economy and assist people in providing for their own security. Farmers should be given seeds and fertilizer, small merchants should have loans, those who cannot work need retirement funds, and the poor should be exempted from taxes. The Buddha ends by pointing out that people should be free to pick their own jobs. It is also important to note that financial well-being is required for learning and disseminating the teachings of the Buddha (dharma).

1. Philosophy of Punishment. Several sociologists have advanced the notion that punishment programs are indicators of the moral life of a society. Émile Durkheim characterized punishment as “a moral phenomenon operating within the circuits of the moral life, as well as carrying out more mundane social and penal functions.” 25 Western philosophical reflections on punishment provide four basic rationales each connected to its own moral perspective and its own form of treatment, namely retribution, deterrence, incapacitation, and rehabilitation.


Retributive justice allows for a punishment that is proportionately equal to the severity of the criminal act, a form of *lex talionis* or "measure for measure." A more recent approach to retribution states that the punishment should be proportional to the unfair advantage gained by the criminal. If retribution however, chiefly involves the motivation to harm another it would not be generally acceptable in Buddhism. Deterrence theory focuses on preventing the defendant from any future criminal acts, and incapacitation, thought by some to be a subset of deterrence, removes the offender from society so that he will be unable to commit crimes. In the above quote, the Dalai Lama is using the language of deterrence for serious offenders. Several Buddhist societies practice deterrence but few have had the desire or the facilities to incapacitate on the scale practiced in the U.S.

2. Rehabilitation. Rehabilitation, the rationale for punishment closest to the ideals of the Buddha, and mentioned in other contexts by the Dalai Lama, is a treatment theory in which human beings are viewed as capable of change and restoration to society. In the past fifty years there has been a definite move away from rehabilitation and toward the other three approaches, with the exception of faith-based prison rehabilitation programs. If the motivation behind such faith-based programs is to prevent further illegal actions and turn the offender to religious practice and moral discipline, their approach would be similar in nature to the Tibetan goal that criminals need to turn to the dharma and seek enlightenment. A recent entry into the field of punishment, restorative justice, emphasizes cooperation between victim and offender in repairing the harm that has occurred to both. Given the emphasis on compassion, this is very similar to the position of the Dalai Lama and the aforementioned victim compensation system in Tibet pre-1960, discussed in part II.C.2.

B. Death Penalty

*I think the death sentence, also cutting of limbs, should be prohibited. I am one of the signatories to the Amnisty International Movement to put an end to the death penalty. As I mentioned earlier, the Thirteenth Dalai Lama abolished*
it. That was as act of compassion.\textsuperscript{26}

The first Buddhist King (\textit{chakravartin}) was Asoka, head of the Mauryan empire (reign: 268-232 BCE) and a convert to the religion after years of bloody warfare. His legacy provides a strong example of a religiously disciplined Buddhist political leader. The principle of \textit{ahimsa}, or non-injury, was central to his philosophy, and some scholars think that he stopped the practice of torture, released prisoners, and abolished the death penalty. To disseminate his philosophy, he set up carved stone edicts all over the subcontinent, many of which are still standing. In his "Sixth Rock Edict" he stated, "No task is more important to me than promoting the welfare of all the people. Such work as I accomplish contributes to discharging the debt I owe to all living creatures to make them happy in this world and to help them attain heaven in the next."\textsuperscript{27}

The history of the relationship between Buddhism and the death penalty varies by country. For example, in the Koryo period of Korean history (935-1392 CE), Buddhism flourished and Buddhist monks were successful in having the death penalty abolished. Currently Korea, Japan, Burma, and Thailand have the death penalty. There are ninety people on death row in Japan.

C. Use of Violence

\textit{Theoretically speaking, violence is a method. Whether the use of this method can be justified or not depends entirely on the [individual actor's] motivation and research [into the circumstances]. This was true in the Buddha's own life; in a story about a previous life, he implemented violence in order to bring greater benefit to a greater number of people and to save their lives.}\textsuperscript{28}

Given Buddhist principles of non-violence, this statement by the Dalai Lama may seem surprising. The very first precept of the Buddhist Monastic Code is a

\textsuperscript{26} App. B, \textit{infra} pp. 722-23.

\textsuperscript{27} \textsc{The Edicts of Asoka} 38 (N.A. Nikam & Richard McKeon eds., N.A. Nikam & Richard McKeon trans., 1966).

\textsuperscript{28} App. B, \textit{infra} p. 726.
restriction on injuring or killing others; killing a human results in permanent expulsion from the order whereas killing an animal requires expiation. Non-injury and non-violence to others (ahimsa) is therefore a key value, and the first precept, of right-livelihood. The reasoning is that violence breeds more violence. By calming the mind, one can institute the practice of non-violence and compassion for other sentient beings. The Dalai Lama is famous for his rigorous position against war with any group, even the Chinese. Based also on sections of the Buddhist canon such as the Samyuttanikaya, it is safe to say that the Buddha and the Dalai Lama are strongly against individual violence of any kind and support the principles of non-violence and peace. The Buddhist justification for the state’s violent punishment of criminals is left open here.

The story that the Dalai Lama is recounting here comes from the Upaya-kaushalya Sutra, a Mahayana Buddhist text that’s name literally means ‘skillful means.’ Traveling on a ship with many others, the Buddha was a merchant with wares to sell in a new country. Due to his omniscience, the merchant was able to discern that a thief on the boat was planning to kill the captain an act which would lead to the death of everyone on the boat. Before the thief could take action, the merchant stabbed him with a knife and killed him to save the lives of everyone on the boat. While this is an act of extreme violence, here again the special qualities of the Buddha, such as a deep understanding of karma and the future, allowed him to know the best thing to do. In other words, murder is justified because it is the Buddha acting. As explained in the section on karma above, it is very unlikely that any one of us, as unenlightened individuals, would know the future and therefore, the correct actions to take in the present. It is only with omniscient foresight that the merchant was able to turn an act of violence into an act of compassion.

Presumably most officials who impose violent punishment in the name of the state are not fully enlightened. Perhaps their actions can be justified by their compassionate motivation to contribute to the welfare of both society and the criminal herself. Interestingly, this justification is an early version of the many that have been

29. See Part III.D.
advanced in the West, as a Christianized culture, similarly, has struggled to explain in religious terms the always problematic legitimacy of legal coercion.

CONCLUSION

The Dalai Lama's visit began a multi-disciplinary conversation on Buddhism and law that will undoubtedly expand and grow in the coming years. His ideas are an important and needed catalyst for rethinking the modern legal systems within which we currently function. In summing up his visit, several essential points can be made about his approach and its relationship to other areas and disciplines.

To begin, the Dalai Lama often represents the original ideas of the Buddha when he presents his views on law. While this point may not be surprising, it is fundamental to his thinking; he processes every question through an internally constructed set of values and ideas from the original Tripatika canon, from Mahayana and Vajrayana Buddhist texts and commentaries, and from his own esoteric teachings as the head of a major group of Tibetan Buddhists. When the Dalai Lama gives an example, it is from the sutras or the Jataka tales or the monastic code, Vinaya, or from the practices of monastic communities. In this sense, he is a religious representative who cites religious texts for many of his ideas about law.

Second, the Dalai Lama is also speaking through a background and a cosmology that is Buddhist, and by this, I mean, a set of concepts such as conditioned arising, interdependence, root afflictions, monastic forms of egalitarianism, right livelihood, samsara, duhkha, nirvana, karma, impermanence, mental equanimity, and non-violence. Although explained cursorily in the text, those concepts are only part of a larger integrated philosophical and religious system that has its own dynamic hermeneutic. As a result, it is common for people from cultures other than Tibet to grasp what he is saying from a position within their own cultural rubric. While this is precisely what he hopes for—that his message will strike a chord with others—it does not mean that a scholarly comprehension of his ideas has taken place. Understanding fully how his interpretation comes out of its Tibetan
Buddhist and historical background is a larger endeavor for another venue.

Third, the Dalai Lama is from a culture that had its own legal system prior to 1960 and many of his remarks, although not highlighted in the choices for discussion here, reflect the Tibetan legal system prior to the Chinese takeover. There are numerous examples of these carryovers from what was a Buddhism-inspired legal system. Only a few of the entries above indicated some of these influences, the section on truthfulness and honesty, see supra part II.A.2, victim compensation, see supra part II.C.2, and karma in Tibetan law, see supra part III.D.

Fourth, the Tibetan Government-in-Exile located in Dharamsala, India and headed by the Dalai Lama is a fully functioning, constitutionally structured body of over 100,000 refugees. The community has diligently recreated in India every major cultural, social and political institution of Tibetan society to preserve and also to reconstitute itself for an eventual return to the Tibetan plateau. A large part of this process has been the construction of a modern democratic state within another state, a government-in-exile with its own schools, judiciary, territorial reservations, religious institutions, parliament, cabinet, industries, welfare, and health systems. As the leader of the Tibetans, the Dalai Lama has listened, learned and implemented significant political changes through constitutional reform for over forty-five years. This article did not highlight the constitutional dimensions of his work discussed during the conference and presented in Appendix B, but they are significant. Many of his comments, therefore, are based on the actual experience of developing a modern, functioning democratic state-within-a-state from a quasi-medieval theocratic base. Therefore, the Dalai Lama’s conception of law is now Western as well as specifically Buddhist and Tibetan.

What then is the model of law that the Dalai Lama presents? The Dalai Lama was quite definite on several points:

1. Protection and Compassion as the Basis of a Legal System. This was a central theme throughout the talk and

30. See FRENCH, supra note 12.
it comports with his general view on the role and position of any human in society. Treating others with compassion is essential to the functioning of society and a central requirement in Buddhism. Writ large, this requirement means that the legal system is an instrument of compassion that provides for the protection of the people through law. Compassion in Buddhism implies an active focus on relieving the suffering of others.

2. Dirty Law. The Dalai Lama was also clear about "dirty law"—any legal actions derived from bad motivations. Acting out of revenge, hatred, a desire to hurt someone else, fear, or greed, for example, would result in actions that are dirty. These motivations contaminate the whole legal process.

3. Moral Character of the Lawyer. Lawyers need sound ethical training in the moral values which, according to the Dalai Lama, are shared by all cultures and religions. Families, schools and society need to train each child to have a good character. This social discipline is more important than the specific content of law. After legal training, lawyers should be able to approach each case with good motivation, knowledge, self-discipline, and a sense of responsibility.

4. Misplaced Tolerance. Similarly, it is bad to allow a negative situation to exist without taking action to oppose it. One possible interpretation is that the Dalai Lama is questioning directly the modern liberal state's tolerance for the inequities and immoralities it allows in the name of democracy, capitalism and tolerance. To allow a segment of the population to be poor and uneducated or to be disproportionately incarcerated is misplaced tolerance. Here, he is implicitly questioning the legal distinctions between commission and omission, and the whole tradition of "negative" liberty, by stating that we must actively participate in changing these circumstances.

5. Material Well-Being for the Population. Although it should not be a sole end in itself, sufficient wealth for all to live a reasonable life should be a goal for all societies.

6. Constitutional rights such as Freedom of Speech and Separation of Religion and State. The Dalai Lama is a
strong advocate of constitutionalism, democracy, church/state separation, and human rights, including freedom of speech. While this part of his talk was not reviewed in the above pages, the transcript in Appendix B makes this commitment clear. He stated in this conference that monks should dissociate themselves from party politics. On the other hand, he viewed his role as the representative of the Tibetan people not as a form of party politics, but as advocacy for the benefit of a community, justified by compassionate motivation.

These points of emphasis will of course suggest Western corollaries. If wrenched from its context in Buddhist metaphysics, compassion as applied by the legal system may be hard to imagine in the West except as some form of utilitarianism. As a standard it would then rest uneasily with the precise ethical rules and disciplines which the Dalai Lama believes should shape all of human life, including the legal system. This emphasis on substantive virtue, which seems at least somewhat akin to the tradition of medieval Catholic Aristotelianism, suggests, to the Western mind, a model of society that could be difficult to sustain without shared moral values combined with both a shared religious narrative and a relatively authoritarian social structure.

Theorists of the early medieval Catholic model sought to subsume difference, ease contradiction, and blend diversity into a single all-embracing unity. That unity was shattered by the pluralism unleashed during the Reformation, and by the Enlightenment's emphasis on individual autonomy. The Tibetans, remarkably, seem to have absorbed some of the legal results of that shattering (for example, church/state separation, constitutionalism, and a conception of individual rights) without having passed through centuries of struggle and also without surrendering their commitment to disciplined virtue in individual and social life. Their approach is serenely pragmatic: add what works, remove what doesn't.

In this process, the Dalai Lama has served as an exemplary figure, a "natural aristocrat" in the older Aristotelian terminology. His life has been a model of the compassionate and open approach that he has advocated, and his praxis an exercise in moral/political virtuosity. Of course, modern Madisonian constitutionalism is a concession to the fact that virtue too often dissolves into
faction and the appearance of natural aristocrats is perhaps not as certain and predictable as we might hope. However, we have before us the example of a refugee community which was brutally uprooted and suddenly cast adrift in a modern Westernized world, but which nevertheless retains a flourishing and resilient identity even while adapting to dramatic change. Its success is worth our study.