

7-1-2007

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James L. Magavern
Magavern & Grimm, LLP

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Recommended Citation

James L. Magavern, *Universal Compassion and the Lawyer's Duty*, 55 Buff. L. Rev. 691 (2007).
Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol55/iss2/13>

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Universal Compassion and the Lawyer's Duty

JAMES L. MAGAVERN†

The question of greatest interest to me in the conversation with His Holiness the Dalai Lama was what we as lawyers and citizens can learn from a great spiritual leader of our time and from the ancient and highly developed religious and philosophical tradition he represents. More particularly, to what extent and in what ways can we bring the principle of universal compassion to bear on the workings of our legal system here in the United States? And especially, are we not legally and ethically bound by special obligations to particular people, communities and organizations arising from the roles and relationships in which we find ourselves, even when those obligations may require action inconsistent with the principle of universal and impartial compassion as directly applied to the situation at hand? For example, does His Holiness recognize a special obligation on his own part to the Tibetan people, a special obligation of parent to child, citizen to nation and local community, elected legislator to constituency, member to church and congregation, officer or employee to charitable, civic or business organization, or attorney to client? And are such special obligations justified implicitly in a fundamental moral value of loyalty, or merely instrumentally, as incidents of institutional arrangements considered conducive to the general welfare in the long run?

In certain of his comments, His Holiness seemed to suggest that, at least ideally, our actions should be guided by direct and impartial application of the principle of universal compassion, without regard to any such special obligation. Although he identified himself first as a human being, second as a Tibetan, and only third as a Buddhist, he justified his service in the Tibetan struggle for national freedom in terms of preservation of Buddha Dharma and

† Counsel, Magavern, Magavern & Grimm, LLP; Adjunct Professor of Law, University at Buffalo Law School; LL.B. University of Buffalo, 1959.

implementation of compassion, presumably universal compassion. As to lawyers, he characterized as "dirty law" an effort by a lawyer to prove that a client did not commit a crime when the lawyer knows the client is guilty. American lawyers would agree that they cannot properly present evidence known to be false, but not that they should not strive to get a guilty client acquitted by invoking failures of proof, applicable privileges, exclusionary rules of evidence, etc. Interestingly, His Holiness remarked that monks are trained in debate to be able to prove that something not the case is the case and vice versa. When a lawyer is torn between legal rules and what she feels to be her moral duty in a particular case, his Holiness said at one point, she should "weigh the benefits to the individual against the wider implications of the action for the community and society."

Despite these remarks, though, His Holiness made clear his belief that in an imperfect world we must be guided by specific rules and principles of law that may require action we might consider inconsistent with the fundamental principle of universal compassion if applied directly to the particular case. He firmly advocated separation of religious and political institutions. Although universal compassion is a fundamental principle of Buddhism, His Holiness advocated it as a secular principle, derived from characteristics of human nature. He commented that the Buddha did not formulate a fully ordained monastic legal system, that the rules of the monastic system evolved in an organic process in response to problems revealed by new circumstances, that the rules must be adapted realistically to the needs of the situation, and—of particular relevance to the present discussion—that the Buddha did not address the problem of how to manage society. His Holiness accepted the need for harsh punishment and violence when necessary to protect others, provided that the motive is not revenge or hatred, but compassion. Asked about the ethical dilemma faced by a lawyer when the duty of confidentiality to client conflicts with the urging of compassion to the victim's family, His Holiness advocated consideration of the broader social implications as weighed against individual concerns, but deferred to legal experts and the legal system to provide the answer.

Thus, I believe, His Holiness sees universal compassion

as a secular principle having direct application in the creation of laws, but not necessarily in their application. He referred repeatedly to the gap between rich and poor. In the spirit of universal compassion, we should strive to narrow that gap by changing our laws of taxation, employment relations, public health and environmental justice, public education, and social services. In that endeavor, lawyers, as citizens or as representatives of altruistic citizen organizations, can contribute expertise in the workings of legal institutions and in the drafting of laws responsive to the needs and characteristics of society in that time and place. In the administration of law, universal compassion should no doubt influence many discretionary decisions. Nevertheless, even if laws are designed to serve the cause of human dignity and welfare in the long run, the legal system will necessarily incorporate rules that produce harsh results in particular cases, and it will impose special obligations requiring people to act at times in contradiction to the ideal of impartial compassion. As lawyers and as individual human beings, we necessarily act within an existing social and legal order and our own web of relationships. Legally, and ethically as well, we must respect special obligations arising out of those relationships.

