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Religiosity and the Invocation of Law in the Conversation with the Dalai Lama

DAVID M. ENGEL†

The Dalai Lama's visit to UB Law School carried genuine symbolic importance. In this colorful and crowded event, one of the foremost religious leaders of our era sat in a law library with a group of legal specialists to talk about constitutionalism and the rule of law. A person some view as sacred calmly and thoughtfully discussed the central features of a legal framework that could limit his own authority within the Tibetan polity.

Those of us who participated in the conversation with the Dalai Lama felt acutely aware that his efforts run counter to much of today's discourse about law and religion. Religious devotees, policymakers, and members of the general public typically perceive secular legality in tension with or even in opposition to religion. For example, Carol Greenhouse, in her classic study of a predominantly Southern Baptist community in Georgia, described a shared understanding that overt conflict and the invocation of law were to be avoided because they threatened the integrity of the society as a whole. Prayer offered a preferred approach to the problem of dispute resolution. Members of this community viewed religion and law as mutually exclusive, and they assumed that the truly religious person would reject law even when he or she suffered a wrong.¹

I have encountered a similar perspective in my own community-based research on injuries and the use of tort law, both in the United States and in Thailand. In a rural Midwestern American community, ministers, priests, and members of their congregations expressed the view that religious people do not sue when injured, because the

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1. See CAROL J. GREENHOUSE, *PRAYING FOR JUSTICE: FAITH, ORDER, AND COMMUNITY IN AN AMERICAN TOWN* (1989).

invocation of law is inconsistent with religious teachings.² Some personal injury lawyers also believe this to be true. An American Trial Lawyers Association (ATLA) manual cautions that prospective jurors should be screened for their religious views during *voir dire*, since a devout juror is likely to believe that the plaintiff's misfortune represents the will of God. Such jurors, it is said, tend to condemn personal injury litigation because they think it violates fundamental religious precepts.³

In predominantly Buddhist Thailand, interviewees perceived a similar tension between secular law and their religious belief. Ordinary people who suffered injuries thought that the pursuit of a legal remedy would merely compound the bad karma that produced the injury in the first place. A devout Buddhist, in their view, should focus her attention on meritorious action in response to an injury and should forgive the injurer rather than aggressively pursue compensation.⁴ The Thai interviewees' actions were consistent with their words. None of them invoked the law after suffering serious injury caused by the careless behavior of another, and few of them in their injury narratives even hinted that their mishap might be characterized as a legal violation.

The injured people I interviewed in Buddhist Thailand referred to their belief in karma to explain why they seldom took any action—judicial or extra-judicial—against their injurers, even in cases where they clearly felt that the injurer had wronged them and they had suffered a serious loss as a result. In their view, the root cause of the injury was their own improper behavior earlier in this life or in a prior life. Accordingly, the proper solution to an injury was to perform meritorious acts, to manifest a generous and

2. See DAVID M. ENGEL, *The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 LAW & SOC'Y REV. 551, 571 (1984) (“[One minister] argued that external problems such as personal injuries were secondary to primary questions of religious faith. He told me, ‘[I]f we first of all get first things straightened out and that is our relationship with God and is our help from God, all of these other things will fall into order.’”).

3. See David A. Wenner, *Jury Bias*, in ATLA'S LITIGATING TORT CASES § 35.23 (2003).

4. See DAVID M. ENGEL, *Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand*, 30 LAW & SOC. INQUIRY 469 (2005).

compassionate spirit, to reject an attachment to material rewards, and to forgive the injurer. Pursuit of compensation would merely result in continued suffering in this life or in future lives.

Although my research has focused on injuries, the same karmic explanations and emphasis on selflessness and forgiveness rather than an embrace of the law appear applicable in many other conflict situations. Interviewees described a broad range of rights violations for which they believed the appropriate response to be law avoidance. It is safe to say that ordinary people in Thailand very often view Buddhism and law in oppositional terms. The invocation of rights is problematic for them and represents a moral failure, just as it did for Greenhouse's Southern Baptists. People who assert rights are selfish and egotistical, and their aggressive response will surely cause more trouble down the road. The law of karma is, in their view, at odds with—and superior to—the law of the state.

When the Dalai Lama addressed this issue in our conversation, he seemed to express only a qualified support for the individual who responds to wrongdoing with self-restraint rather than by invoking rights. He did agree that it would be best to “exercise one's self-discipline and compassion.” Many disputes can be resolved without resort to the law and, he added jokingly, lawyers could be put out of business by this kind of virtuous and disciplined response to wrongdoing.

Yet the Dalai Lama also seemed concerned to reserve a space for legal recourse in his vision of a Buddhist society governed by the rule of law. The law of karma, he observed, should be respected and Buddhist discipline should be valued, but “sometimes people use karma as a way of excuse.” This, he implied, is improper. Karma should not rationalize inaction or passivity when one's rights are violated. The Dalai Lama appeared to disapprove of the perspective adopted by nearly all of my interviewees, both American and Thai. He did not agree with them that the assertion of rights is necessarily a rejection of religious values. He implied that they were mistaken in their belief that pursuit of a legal remedy will invariably produce bad karma and lead to further suffering. He appeared to suggest that law could properly be used by virtuous people if they were unable to obtain justice through a more restrained and conciliatory process of negotiation.

The Dalai Lama did not explain how a victim of wrongdoing could be certain that he or she had reached the point when self-abnegation should give way to legal mobilization. Yet he clearly viewed law as an extension of religious practice and not as a contradiction of it. His position in this regard is entirely consistent with his effort to emphasize the rule of law in his Buddhist polity. Yet the devil is, quite literally, in the details. It is plausible to understand him to mean that an undisciplined and premature resort to law would indeed be a violation of Buddhist teaching. Compassion and self-restraint are fundamental values, and disputants should understand that many conflicts are the result of delusion and attachment. In the society he envisions, however, the assertion of rights does have a place and does not in every instance indicate greed, egotism, and attachment. The role of rights and the desirability of legal recourse in a Buddhist polity remain somewhat uncertain in his vision. When does the attempt to protect individual interests through secular law contradict the pursuit of selflessness and piety and when might it actually advance religious goals? The Dalai Lama was not willing to provide easy answers to one of the most challenging dilemmas of our age.