

What Verdict Would a Buddhist Juror Render in the Zacarias Moussaoui Case?

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On May 4th, 2006, a jury condemned Zacarias Moussaoui to life in prison without the possibility of parole. This was one of two possible fates that awaited the confessed al-Qaeda conspirator. The second option would have been a death sentence, but a unanimous decision necessary to initiate such punishment could not be reached by a jury of Moussaoui's peers, thus relegating Moussaoui to a life of near solitary confinement.

Moussaoui's case was fascinating in all respects. He is so far the only person tried with ties to 9/11; he openly confessed on the stand to being affiliated with the 9/11 plot and its conspirators (his defense team was put in the awkward position of declaring their client inept and delusional). Amongst many other nuances of the soap opera-like proceedings, Osama bin Laden declared that Moussaoui had nothing to do with the 9/11 scheme. However, the particulars of the case whilst intriguing, are of no concern to us in examining the particular questions put forth by this paper. And that is: how would a Buddhist juror have voted in the verdict of Zacarias Moussaoui had s/he been a member of the jury? Does a Buddhist's loyalty to spiritual precepts trump duty to civil law?

For argument's sake one should assume that a Buddhist would have no problem making it through the jury selection process for the Moussaoui trial. So in addressing the question at hand, one should ask: "Would a devout Buddhist be willing to sentence another person to death, knowing that such actions not only go against spiritual belief, but also may be returned in kind down the line – either in the current life or in the next (reincarnated) life?"

In answering these questions (for the purposes of this paper), the details of Moussaoui's trial and whether or not he was guilty of the crimes he was accused of, is neither here nor

there. We are only concerned with the perceptions a potential juror with a Buddhist mindset may have held when going into deliberations.

Moussaoui's life sentence (actually three consecutive life sentences), came only after a 'phase one' determination that Moussaoui was eligible for the death penalty sentence (Cassel 2006). This particular decision merits some attention in addressing our original question: would a Buddhist vote 'yes' in regards to the question of whether or not someone is *eligible* for the death penalty but, still be able to vote 'no' when the time comes to decide whether the said sentence should be imposed?

Moreover, what is the obligation for a Buddhist towards government imposed law? It is a recurring theme within Buddhist thought that the 'reality' surrounding us in fact is not real, but instead illusory, and therefore should be relegated to a 'lower plane' of existence. Just like most religions, Buddhism puts the law of man below that of 'God's Law', so to speak. A Buddhist sitting on the Moussaoui jury is thus confronted with the dilemma of choosing to obey the 'Law of the Land' or to follow his/her spiritual tenets. This predicament is especially confounding if the particular juror is also patriotic and feels external or moral pressure to bring at least some element of justice to someone responsible for the heinous attacks of 9/11.

Still, unless s/he is fully enlightened and living as a monk at a remote temple outpost, most Buddhists operate within the realm of 'reality', and thus not only follow the 'Law of the Land' but in nations with large Buddhist populations – Thailand, Sri Lanka, Vietnam, Japan, Bhutan, etc – they also create such laws. And yes, throughout time and even in the present some Buddhist nations have either used or still maintain the death penalty – e.g. Japan at one time did not practice capital punishment, but does today, whilst Cambodia has taken the opposite approach (Horigan 1996). And still other states may choose a mixed bag: Tibet's exiled government for example, has banned capital punishment outright but reserves the right to physical mutilation (in Lhasa only) as a punishment against treason – a penalty in itself that is not very compassionate or non-violent (Gov't of Tibet 1996). Also, in terms of civil law, Andrew Huxley of the University of London

in his paper shows us that Buddhist case law goes as far back as the third century BCE and indeed “for as long as there have been monks” (1999).

Accordingly, by following the law and determining whether or not someone is eligible for the death penalty (or any penalty for that matter), a Buddhist could conceivably not compromise his/her morals: “Essentially, according to Buddhist teachings, the ethical and moral principles are governed by examining whether a certain action, whether connected to body or speech is likely to be harmful to one's self or to others and thereby avoiding any actions which are likely to be harmful.” and “...a Buddhist is expected to observe the prevailing law in whatever country they live” (BDEA 2006). In other words an ‘up’ or ‘down’ vote on this particular verdict of eligibility for the death penalty, *largely* does neither harm nor benefit the juror, Moussaoui, or society as a whole. The real test comes when the juror has to then decide whether or not to have a helping hand in putting Moussaoui to death.

Of course the jury did decide that Zacarias Moussaoui was eligible for the death penalty. The tone and direction of the conversation and debate that took place within the jury room is left to speculation. Presumably, the jurists conducted their civil duty without bias or personal prejudice toward the defendant and weighed the merits of the case against him in determining if he would die by execution, or would live out the rest of his life in prison. Again, for the sake of argument, let us assume that all facts and factors presented in the case led to a logical conclusion: that Zacarias Moussaoui should by the letter of the law be handed a death sentence. What then is the moral duty of the Buddhist juror? Is it to abide by the law and follow the verdict to its logical conclusion? Or is the juror to put spiritual belief in certain Buddhist teachings ahead of the ‘Law of Man’, take a stand as perhaps the lone hold-out for declaring the death penalty verdict and thus render a life sentence imposition?

In order to understand the juror’s predicament one must have knowledge of the principles behind Buddhist reasoning for forgiveness. Of course, just as in Christianity there is a myriad of sects within Buddhism. The thoughts in this paper reflect the general

overarching themes of Buddhism as a whole. A frontrunner among these ethical standards is the notion of *karma*. In Western parlance this Buddhist truth is often ‘arrogantly’ invoked with the simple maxim of: “what goes around comes around”. While this idiom highlights the gist of the meaning behind karma, it does not capture the complex essence of how karma is perceived within the Buddhist tradition. Thanissaro Bhikkhu explains the role karma plays in the human condition: "Beings are owners of their actions, heirs of their actions, born of their actions, related through their actions, and have their actions as their arbitrator" (1996). Joy Mills, in an introduction to an anthology devoted to the subject, describes karma simplistically as “action which ever turns upon itself in reaction” (1987).

What one must keep in mind when considering the ramifications of positive and negative actions in regards to karma, is that the reactions to these deeds may not only be doled out in the present life, but also will become part of the life experience in reincarnated lives and indeed may help in determining which life form one may return to earth through transmigration. Mills chose her words carefully when she included ‘ever’ in her explanation of karma. In other words, a major negative action such as sentencing another sentient being to death will have serious negative repercussions in the next life, either through assignment of a particularly rough experience to live out, or worse, by dictating that this person may be reincarnated in a form of life less than that of human. No matter what the outcome, a Buddhist’s ultimate goal is to achieve full enlightenment (Nirvana), akin to the Christian ideal of Heaven. Be it harmful consequences of a major or minor sort, the devout Buddhist realizes that s/he will be set back considerably in their pursuit of Nirvana with each immoral act. Squashing a bug or stealing property is one thing, but sentencing a fellow human being to death is a ‘whole new ball game’. The redemptive period of such a severe action could take a very long time, perhaps multiple reincarnations. Such thoughts would remain fixed in the back of the mind of any serious Buddhist, perhaps especially within the mind of a juror with the ability to allow or deny a death penalty sentence.

One cannot overstate the value Buddhist tradition puts upon the tenet of not killing other living beings. One only needs to look at the vast number of texts and precepts that put focus on the topic: the four Pali *Nikayas*; the first of the ten courses of unwholesome action (*akusala-kamma-patha*); the third element in the Buddha's eightfold path; the first of five precepts in the rules of training (*sikkhapada*), etc (see Gethin 2004 for a lengthy and more thorough, but surely not exhaustive, look on this topic).

Furthermore Buddhists are wont to initiate programs that engender not only compassion but also facilitate rehabilitation: "Compassion fosters a deep respect for the dignity of all forms of life. The lives of convicted criminal defendants do have value. ...Capital punishment is anathema to rehabilitation. One obviously cannot rehabilitate a dead inmate" (Horigan 1996). Enough said.

Still jurors are not the individuals who deal the final death blow to any death row inmate. The deed is left to the doctor administering the lethal injection, or the soldier pulling the trigger, or the officer flipping the switch. The direct deliverance of death to an individual leaves the juror in such a sentencing with relatively "cleaner" hands. Does this technicality then render the Buddhist free from any potential repercussions? The answer is a definitive 'No'. The *Dhammapada* is an ancient Indian anthology of poetical and spiritual verses that many Buddhists look to for guidance in everyday living. The translations from the original Pali are various but the themes and dictates remain constant: Chapter 10 of the *Dhammapada* clearly states that "...all are fearful of death. ...Neither kill nor get others to kill," a sentiment that is repeated in the final chapter. The scripture continues in said chapter (26):

"Shame on a brahman's [sic] killer.
More shame on the Brahman
whose anger's let loose."

It is clear from these two statements alone from this exalted text (Bikkhu 2003) that not only is killing at the personal level disavowed, but causing another to do the same in the individual's stead is also sacrilegious. Once again a devout Buddhist runs into another spiritual roadblock if s/he is considering sentencing another human to die.

Thus after only briefly skirting the essence of Buddhist texts, general practices and teachings on civil law and killing, it is clear that the imposition of a death sentence in a civil (or any) case would be nearly impossible for a serious Buddhist to endorse. Utilizing the case of Zacarias Moussaoui is just a mechanism to get the larger point across: that Buddhism and capital punishment cannot be harmonized. But this case is unique in that the jury first had to decide whether or not Moussaoui was eligible for the death penalty and if so, decide if he should actually be given such punishment.

Furthermore Moussaoui's option of a death sentence, is interesting to focus on for our purposes, not only because it is a topical issue but because the attacks on 9/11 cut deeply into the patriotic and humanistic psyche of most Americans – whether in or near New York and Washington, DC or as far away as the California coast. In a nation where the death penalty is regularly used (through various medium, death and violence have become commonplace), there would have been little collective mourning for the death of Moussaoui had he been sentenced so by the jury of his peers. The United States is a nation that individually and collectively practices the mantra “an eye for an eye.” “For the murder of one or more people, the murder of the perpetrator is required to ‘balance’ the ‘scales of Justice,’ and bring the equation of life and death back to some point of human equilibrium. It is admittedly an odd equation since for the original death we do not offer the reversal of this fact...” (Lichtman 2004). A juror on this particular case could be forgiven for feeling overwhelmed by the push and pull of his or her personal morality against national sentiment for justice for the 9/11 atrocities. And so while an American Buddhist juror should not necessarily be singled out as having a more complex set of parameters to work within, one can at least be more sympathetic to his plight simply by understanding both his sometimes conflicting religious temperament and domestic policy.

It is of course possible that a Buddhist would not withhold a guilty verdict knowing full well that the death penalty would be invoked. Ultimately however, if a Buddhist juror had misgivings about the karmic reaction or spiritual repercussions of sentencing someone to death (that the perceived gains of doling out justice or revenge would somehow outweigh

or counter any negative effects of such actions), s/he would still have to contend with yet another Buddhist principle that would certainly prevent aiding in the death of Moussaoui: *Dharma* is yet another Buddhist principle that when loosely defined teaches righteousness and fairness... and mercy.

References

Bhikkhu, Thanissaro. 1995. *Cula-kammavibhanga: The Shorter Analysis of Action*. Somerville, MA: Access to Insight. (www.accesstoinsight.org)

Bhikkhu, Thanissaro. 2003. *Dhammapada: A Translation*. Barre, MA: Dhamma Dana Publications, Barre Center for Buddhist Studies.

Buddha Dharma Education Association, Inc. 2006. *Basic Buddhism Guide*. "Buddhist Ethics." Tullera, Australia: BuddhaNet. www.buddhanet.net.

Cassel, Elaine. 2006. "Defending the Zacarias Moussaoui Sentence: Why the Phase One and Phase Two Verdicts Were Consistent, and Why the Sentence was the Right One." *Findlaw*. May 8.

Gethin, Rupert. 2004. "Can Killing a Living Being Ever be an Act of Compassion? The Analysis of the Act of Killing in the Abhidhamma and Pali Commentaries." *Journal of Buddhist Ethics*. Vol 11.

Government of Tibet in Exile. 1996. "Tibet: Proving Truth from Facts." London: Office of Tibet (official office of His Holiness the Dalai Lama). Feb. 2. www.tibet.com.

Horigan, Damien P. 1996. "Compassion and Capital Punishment: A Buddhist Perspective on the Death Penalty." *The American Journal of Jurisprudence*. Vol. 41. Notre Dame Law School (Natural Law Institute).

Huxley, Andrew. 1999. "Buddhist Case Law on Theft: the *Viniitavatthu* on the Second *Paaraajika*." *Journal of Buddhist Ethics*. Vol 6.

Lichtman, Richard. 2004. "Kevin Cooper." *ZNet*. Feb. 12. <http://www.zmag.org/content/showarticle.cfm?ItemID=4973> last accessed 20/09/2006.

Mills, Joy. 1987. "Foreword." *Karma: The Universal Law of Harmony*. Hanson, Virginia and Rosemarie Stewart, Ed. Wheaton, IL: The Theosophical Publishing House.