

1. **What would happen when the defendants were rescued? Why?**

The defendants would first get medical care and then would be put on trial for what is labeled in the cave. To be more exact the death of Roger Whetmore since a person's, death, cannot be overlooked.

2- **Do you agree that this sentence is fair? Why?**

Yes, All the facts were open, and the decision of the judge was not reached in an illegal manner.

3- **If you were a member of the Supreme Court, what would be your ruling? Why?**

The defendants are guilty for the murder of Roger Whetmore. The defendants were under extreme circumstances to be sure, but, this does not excuse them from the violation of the commonwealth laws. Making an agreement which permits them to control someone's life be interpreted by the law of the commonwealth. The fact Whetmore actually withdrew from the "iremen" and that Whetmore did not threaten the defendant, in the invitation, shows that the defendant, forcefully took Whetmore's life with him.

4. **How would you characterize your ruling from question 3? Why?**

My ruling would be characterized by natural positive law and critical legal studies. Although the law must be obeyed no matter what, it is based on certain natural law, and there must be exceptions by intention for that age,

5. **Summarize each of the rulings above. Characterize each as one of the three interpretations of Law above and justify-**

True @j

Truepenn agrees, to the ruling of the trial court that, the defendants, are guilty of murder and in turn supports the court's communication to the Chief Executive to ask for clemency of the ruling.

Truepenn, argues that the ruling was fair and was the only course that was open to them under the law. He adds that the statute "Whoever shall wilfully take the life of another shall be Finished by death" permits no exemption to the case but sympathies may permit, --i @. How @ince.

He believes that if this is done, justice will be accomplished without impairing either the letter or the spirit of our statutes and without offering encouragement for the disregard of law.

Since Truepenn focuses on keeping with the status quo, he takes the positivist Perspective. Truepenn is allowing no exception for the law. He is saying that the law is the law and it must be obeyed.

Foster-j

Foster disagrees with the trial court's ruling, that the defendants are guilty for the murder of Roger Whetmore. He believes that the defendants are innocent of any crime whatsoever.

The first argument he gives is that our positivist law is not applicable to the situation that the defendants were in inside the cave. He says, that the defendants were in a state of nature, not in a state of civil society therefore, the established law of the Commonwealth is not applicable to their condition. They needed a new charter of government appropriate to the situation in which they found themselves, and under that charter, the defendant, are guilty of an, crime.

In his second position Foster assumes that the defendants are under the effect of the law of the Commonwealth. However, he argues, that although the defendants did violate the law, that

restricts the willful killing of man, it does not break the law itself. The statute must be interpreted in the light of its purpose. How people may act at times of life-threatening situations is not controlled by the contents of the criminal code. Foster gives the example of self-defense in arguing "that the statute never been applied literally. As killing in self-defense is excused although the state does not state it, the situation the defendants were in cannot be applied by the statute either.

Foster takes the view of social science. He says, that every proposition of

the law itself, whether contained in a statute or a judicial precedent is to be properly

interpreted reasonably in the light of its evident purpose. It is focusing on the pragmatism of the results. It would be impractical to apply the Positive law of society to the defendants in the cave and it would also be unpractical to apply the statute to the defendant, in the situation of life and death.

Foster starts his statement by arguing against Foster's opinion. "That the code the defendants made in the cave is odious and therefore cannot become the basis of law. Secondly, the point is that

the statute, that the purpose of criminal law is to

has more than deterrence. He argues that Foster's application of self-defense to this case can not be applied since the men acted deliberately and after hours of discussion. That is, to Foster, we should not make an exception of the case. The scope of the exception into the statute for this case is not brought up. Thatting himself, though, withdraws from the case.

Thatting does not seem to take any strong view since he **raw, not made** any argument, himself.

Keenan J

Keenan starts out, by setting aside two questions, which are not before this Court. Those are whether executive clemency should be extended to the defendants. And the

second is that the court's object is not to apply conceptions of morality, but the law of the land.

He goes on to point out that the sole question before the court is whether

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the defendants did, within the meaning of N.C.S.A.(N.S.)12-A, wilfully take the life of Roger Whetmore, Keenan says that anyone could see that the defendants did so.

Keenan says that the intention in dealing with the statute is not the conjectural purpose of the rule, but its scope. Deterrence is a purpose that has already been much considered over in interpretation, The scope of the exception in favour of self-defense applies to cases of resisting an aggressive threat to the person's own life, But it is plain that Whetmore made no threat against the lives of these defendants.

Keenan takes the Positivist Perspective. He focuses on the wording of the law and does not allow nor interfere with the court's judgment in interpreting the

Keenan believes that government is a human affair and that forms and abstract concepts are just instruments. He argues that the question before the court is of practical wisdom and of human realities. Therefore, Keenan believes that the decisions the court makes are controlled in some way by the public opinion. And in this case in particular, since 90% of the public believe that the defendants should be pardoned or let off with a kind of token punishment, and due to common sense, the defendants are innocent.

Keenan takes the Social Science view. Sociological jurisprudence is based on the belief that the law is human and therefore never absolute. It emphasizes the humanity of law and the practicality of the application of law as primitive.

6. Which argument did you find most compelling? Why?

I found that Tatum's argument, the most compelling. Tatum's argument of the code the defendants made in the case was quite compelling. The fundamentality of the law of contracts and the law of murder, the validity of the code, the effect of the withdrawal of Whetmore from the agreement etc was a good argument in illustrating the idea that the defendants must be innocent. The defendants were under extreme circumstances to be sure, but this does not, excuse them from making a **Fair** agreement which deals with someone's life. The fact that Whetmore actually withdrew from the agreement and that Whetmore did not threaten the defendants in any way shows that the defendants do not have an excuse for (An being convicted of murder.

## Review Questions

### 1. What is law?

Law is a rule enacted or customary **ii** a community and recognized as commanding or forbidding certain actions. In a nutshell, law is "the enterprise of subjecting human conduct to the governance of rules." (from Fuller)

### 2. What is the function of law?

The function of law can be defined as: "to maintain a system of social control while facilitating social life." The law's functions are a systematic way to resolve disputes between individuals

### 3. List five forms of social control and describe how they operate?

**Information control:** Information can be controlled in various ways. The government can limit the amount or certain kind of information from the public by censoring the media. **Content-control**, what goes on the front page, what is shown, should be aired on tv or the radio is only one part of information control. As the people become more of their rights (the constitution guarantees freedom of the press) and as the world relies more on technology, limiting information from the mass public is becoming more difficult.

**Morals/ethics:** Moral, are concerned with the goodness or badness of human character or behavior, **oi** with the distinction between right and wrong. **In** this way morals fact to control ultimately how we behave. Although **rating** what is good and bad may vary, from person to person there exists a certain universal standard of what is right or wrong. Going against this affects the deep rooted feelings of our morality and thus acts as a deterrent against behavior unsocially. **Tradition/culture:** Tradition is a belief, custom, opinion that is handed down to posterity, and which controls our social behavior as well. The way we think and act is unconsciously controlled by these customs that have been rooted in our minds. Although tradition is not as forced upon us as before, it is still a part of our lives which requires obligations and rituals.

**Fashion:** Fashion, in whatever form it may be, is what controls the events of modern life. When a certain fashion is aroused, the youths who generally are the most glib, are able to follow it to the full. The way they talk, behave or dress are all part of that sea, of fashion.

**Manners, habits:** The way we act may be just form of habits we have required over the years. Just because we have a habit of doing something for such a time, it may be very uncomfortable or unnerving to suddenly stop doing. Habits in this way operate in directing us to lead our lives in a certain form, day by day.

### 4. Describe three views of the law and indicate the focus of each. Illustrate each view with an example.

**Natural law:** The view of natural law expects the legal system to reflect fundamental and absolute principles of justice that are inherent in human life. Legal principles,

rather than be the product of should be derived from an absolute moral and ethical scheme. Therefore murder is inherently wrong because it is universally regarded as a bad act. The focus of natural law is on the content of

**Positivist Perspective:** In the Positivist Perspective, a law is truly a law if it has the form of a law. Therefore, even a bad law is, in fact, a law, as long as it is a good one. "The letter of the law" is important in this view. The focus is on the process of the law.

**Social Science:** The scientific validity of the results of the scientific study of the Law is to be

derived as primary. Sociological Jurisprudence is based on the belief that the law is con-

human and therefore never absolute. It is based on experience. **riot** logic. In the case of *Liowri vs. Board of Education* (1954) the court found that racially segregated schools were illegal on the basis that it learned more in integrated schools than in segregated schools. The focus of Social Science is on the pragmatism of the results.

**5. What do you think Socrates's attitude toward the law was? What then could**

**he have meant by the dictum, 'Reject authority'?**

Socrates viewed the law in the Positivist Perspective. The verdict sentencing him to death, though control to fact, while that of a legitimate court and must therefore be obeyed. Socrates, argued that one ought never to do wrong (even in response to the evil committed by

another) by, It is wrong to disobey the law. Hence, one ought never to disobey the law. So since avoiding the sentence of death would be an act of disobedience of the state, it follows

by the Athenian jury would be an act of disobedience of the state, it follows

Socrates ought not to disobey the law. Socrates's dictum on rejecting authority seems to be out of line with his attitude toward the law, but Socrates was willing to disobey what he felt was an unjust law, yet he was also willing to accept the consequences of his actions.

**6. What do you think of the legalization of Marijuana? Give three arguments, pro or con, using the three perspectives as discussed in class. Define each perspective and show why each argument fits its perspective.**

Marijuana should not be legalized because the law should not allow such a part of society to be allowed freely. This argument comes from the view of natural law which focuses on the legal principles reflecting fundamental and absolute principles of Justice that are inherent in human life.

Marijuana should be legalized to decrease the misuse of it. If it were legalized, the government would decrease and the government would be unable to control the flow of marijuana and help to people who are addicted. This argument is based on social science. Under this view, the existing law must be abolished if it has negative results and the interpretation of law should be based on experience.