

Answer to the Speluncean Society Case

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

1) Justice will be realized.

2) I will start from the concept of the justice. There are many ways to define the Justice. One definition of Justice is giving someone his/her own share, which is made by his/her contribution. Another definition is equal distribution of wealth. And there are many more definitions of the Justice. Then, What is justice? It is changing notion. When a communist talked about justice, it contains the notion of absolute equality. And when a capitalist did, it contains the notion of relative equality, which means each person will be rewarded for his own efforts or ability. I am talking about the relative meaning of the justice. It will change with the times and places. its meaning of the eastern countries is different from western. Now in this case, we would have many evidences that the Justice would be realized if they were rescued. First of all is that the efforts of the ten workmen who were killed in clearing the entrance would be rewarded. Their result of effort will be maximized when they were rescued. Second, This case aroused enormous public interest. About 90% expressed a belief that the defendants should be pardoned or let off with a kind of token punishment. Almost everybody would feel that the justice is realized when the defendants were rescued. It is court who should change the concept of the justice. Time has changed, but courts have old laws, which could not predict this kind of tragic event. So they should find the right way to apply these outdated laws.

2. Do you agree that this sentence is fair? Why?

1) This sentence is not fair.

2) Newgarth Uniform Statutes, Section 12-A regulates that "whoever shall willfully take the life of another shall be punished by death." It is apparent that they took the life of another. But I will focus on the term "willfully" . The meaning of willfully is intentionally or deliberately. Did the defendants have the will to kill Roger Whetmore? Only the sane can have a will. I could not find many facts that they were insane. But they were in shock when they were rescued. We could know this from the fact that they stayed in a hospital where they underwent a course of treatment for malnutrition and shock. They were in the dark cave for 23 days with no nutrition. And when Whetmore talked about the consumption of the flesh of one of their number, everybody agreed on the way. Is it possible for a sane person to agree to eat a person with possibility that he himself can be a victim. And they were members of a Speluncean Society. I can not assume that they were totally sane when they decide the tragic event. Under these circumstances, how they intentionally or deliberately conspired to kill. So It is unfair to

sentence the defendants to be hanged assuming that they were totally sane when they kill the victim.

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

1) Conviction should be set aside.

2) The Practicality of the results of the application of the Law is to be considered as primary. The legislative purposes of the criminal law are to provide an orderly outlet for the instinctive human demand for retribution (*Commonwealth v. Scape* (4285)), or to provide for

the rehabilitation of the wrongdoer (*Commonwealth v. Makeover* (4283)). In this case, the result of the application of the Law is punishment by hanging. By doing this, we can achieve the first purpose. However we have no necessity to provide a rehabilitation of the defendants because their crime was not a result of willful killing. They were not sane when they commit a crime. Even if we assume that they were sane at that time, rehabilitation can not be achieved if they were hanged. And we can say that they were in a condition named "force majeure" They had no choice when Whetmore proposed the way to survive. Even if there were a choice, they had no rationality to decide the other way. They were in such a shocking condition. And as we see from the case *Commonwealth v. staymore* (4276) if a person violate a statute out of the reason that he cannot anticipate, he will not punished even though the case fell squarely within the wording of statue. If we talk about the practicality of the results of the application of the law in this case, we will have no practicality if we hang the defendants. The life of ten workmen will not be rewarded. And the punishment will not make any contribution to maintain a system of social control while facilitation social life. On the contrary the punishment will put the society in discomfort. We know that about 90%of the citizen expressed a belief that the defendants should be pardoned or let off with a kind of token punishment.

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

- 1) I understand the law from the view of social science.
- 2) I think that the practicality of the results of the application of the Law is to be considered as primary. Social phenomena change rapidly. But usually the law is outdated. That is why the lawyer should find a new way to apply the law. It is lawmakers who create the law, but the law, especially constitutional law, can not be easily revised. And it is almost impossible to regulate the all the events in a written form. That is why our law is written in a ambiguous form sometimes. Therefore considering the practicality of the results of the application of the law could be the way to promote the appropriate application of the law. This also will meet the purpose of the law.

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

1) Truepenny, C.J.

Ruling: The conviction should be affirmed

Summary: The jury and the trial judge followed a course that was not only fair and wise, but the only course that was open to them under the law. He proposed to his colleagues that they follow the example of the jury and trial judge by joining in the communications they have addressed to the Chief Executive.

@ Characterization: Positivist Perspective, Social Science

(t Justification: This could be a way to accomplish the justice without impairing either the letter or the spirit of the statutes and without offering any encouragement for the disregard of law.

2) Foster, J

Ruling: The conviction should be set aside.

Summary: He does not believe that our law compels the monstrous conclusion that these men are murderers. On the contrary, that it declares them to be innocent of any crime. He rests this conclusion on two independent grounds.

The first of these grounds is that the enacted or positive law of this Commonwealth, including all of its statutes and precedents, is governed instead by what ancient writers in Europe and America called "the law of nature." When a situation arises in which the coexistence of men becomes impossible, then a condition that underlies all of our precedents and statutes has ceased to exist. When that condition disappears, then the force of our positive law disappears with it. This has the consequences that the law applicable to them is not the enacted and established law of this commonwealth, but the law derived from those principles that were appropriate to their condition. He has no hesitancy in saying that under those principles they were guiltless of any crime.

The second ground is that one of the most ancient bits of legal wisdom is the saying that a man may break the letter of the law without breaking the law itself. Every proposition of positive law itself is to be interpreted reasonably, in the light of its evident purpose. Centuries ago it was established that a killing in self defense is excused. There is nothing in the wording of the statute that suggests this exception. But the exception in favor of self defense is not out of the words of the statute, but out of its purpose. When the rationale of the excuse of self defense is thus explained, it becomes apparent that precisely the same reasoning is applicable to the case at bar.

@ Characterization: Natural Law and Social Science

(I Justification: When we consider a case taken place a mile beyond territorial limits of a state, no one would pretend that the law of the state was applicable to the case. This means that law is not absolute, and that the positive law is predicated on the possibility

of men's coexistence in society. When a situation arises in which the coexistence of men becomes impossible, then a condition that underlies all of our precedents and statutes has ceased to exist. When that condition disappears that the force of our positive law disappears with it and the law of nature works.

Self defense is not out of the words of the statute, but out of its purpose. Even though there is nothing in the wording of the statute that suggests self defense, the exception of self defense is accepted. The same reasoning can be applicable to the case at bar.

3) **Tatting, J.**

Ruling: Withdraw from the case

Summary: He can not accept the first part of Justice Foster's argument because it is a code in which the law of contracts is more fundamental than the law of murder.

On the second part, It is true that a statute should be applied in the light of its purpose, and that one of the purposes of criminal legislation is recognized to be deterrence. The difficulty is that other purposes are also ascribed to the law of crimes. It has been said that one of its objects is to provide an orderly outlet for the instinctive human demand for retribution. *Commonwealth v. Scape*. It has also been said that its object is the rehabilitation of the wrongdoer. *Commonwealth v. Makeover*. Other theories have been propounded. Assuming that we must interpret a statute in the light of its purpose, what are we to do when it has many purposes or when its purposes are disputed? The familiar explanation for the excuse

of self defense cannot be applied by analogy to the facts of this case. These men acted not only "willfully" but also with great deliberation and after hours of discussion what they should do.

It is a matter of regret that the Prosecutor saw fit to ask for an indictment of murder. If we had a provision in our statutes making it a crime to eat human flesh, that would have been a more appropriate charge. If no other charge suited to the facts of this case could be brought against the defendants, it would have been wiser not to have indicted them at all. Since He has been wholly unable to resolve the doubts that beset him about the law of this case, He declared his withdrawal from the case.

@ Characterization: Positivist Perspective, Social Science

(k Justification: Lawyer is not a lawmaker, lawyer can only interpret the law. if the law define clearly what is crime, lawyer can not interpret the law beyond its letter.

4) Keen, J.

Ruling: The conviction should be affirmed

@ Summary: Executive clemency is a question for the Chief Executive, not for us. I therefore disapprove of that passage in the opinion of the Chief Justice in which he in effect gives instructions to the Chief Executive as to what he should do in this case.

He wish to put to one side is that of deciding whether what these men did was "right" or flwrong, "wicked" or "good." That is also a question that is irrelevant to the discharge as a judge swom to apply, not my conceptions of morality, but the law of the land. The sole question before us for decision is whether these defendants did, within the meaning of N.C.S. A. (N.S.) § 12-A, willfully take the life of Roger Whetmore. Now I should suppose that any candid observer would concede at once that these defendants did "willfully take the life" of Roger Whetmore. There was a time in this Commonwealth when the judges did in fact legislate very freely. But we now have a clear-cut principle, which is the supremacy of the legislative branch of our government. From that principle flows the obligation of the judiciary to enforce faithfully the written law in accordance with its plain meaning without reference to our personal desires or our individual conceptions of justice.

The scope of the exception in favor of self defense as it has been applied by the Court is plain: it applies to cases of resisting an aggressive threat to the party's own life. It is therefore too clear for argument that this case does not fall within the scope of the exception, since it is plain that Whetmore made no threat against the lives of these defendants.

@ Characterization: Positivist Perspective

(t Justification: A law in the form of a law can be enforced if it is a good law or a bad one. And lawyer should think of the letter of the law not the personal moral. And the process of the judicial reform requires steps.

5) Handy, J.

Ruling: The conviction should be set aside.

Summary: The problem before us a question of practical wisdom, to be exercised in context, not of abstract theory, but of human realities.

The most obvious advantage of treating forms and abstract concepts as instruments is that it permits us to go about our daily tasks with efficiency and common sense. Now when these conceptions are applied to the case before us, its decision becomes perfectly easy. This case has aroused enormous public interest. One of the great newspaper chains made a poll of public opinion on the question, "what do you think the Supreme court should do with the Speluncean explorer?" About ninety per cent expressed a belief that the defendants should be pardoned or let off with a kind of token punishment. It is perfectly clear, then, how the public feels about the case.

Characterization: Social Science

'@ Justification: Government is a human affair, and that men are ruled, not by words on paper or by abstract theories, but by other men. They are ruled well when their leaders understand the feelings and conception of the masses. They are ruled badly when that understanding is lacking.

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

- 1) The argument of Justice Handy is most compelling
- 2) The function of the law is to maintain a system of social control while facilitating social life. In this case if we sentenced the defendants to be hanged, it will be against the function of the law because almost every person thinks that law is not like that. So we should consider the practicality of the results of the application of the law as primary.

<Review Questions >

1. What is law?

Lon Fuller said that definition of the Law is "the enterprise of subjecting human conduct to the governance of rules." But the law is not the only technology for social control but it include: morals, ethics, culture, tradition, habit, manners, and fashion, not to mention clandestine operations and information control practiced by today's corporate class. And the understanding of the law can be characterized in three basic ways: Natural Law, Positivist Perspective and Social Science.

2. What is the function of law?

The function of the Law can be defined as maintaining a system of social control while facilitating social life or as a systematic way to resolve disputes between individuals.

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

- 1) Prevent the crime: Laws regulate what is crime and what punishment shall criminals get when they commit a crime.
- 2) Guarantee social security: Police and Armed Forces protect the citizen against the illegal trespass.

- 3) Protect the individual right: Laws regulate the right of individual and enforce it.
- 4) Guarantee the free trade between persons: To make economy work well, law will guarantee the free trade between persons
- 5) Secure social order: To prevent the chaos of a state, law will regulate the order.

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

- 1) Natural Law: In our country persons who commit a crime against their own parents will get graver punishment. This means that the legal system is to reflect fundamental and absolute principles of justice that are inherent in human life.
- 2) Positivist Perspective: Socrates voluntarily drank the poison, which was his sentence, even though his followers had bribed the guards to facilitate his escape: Socrates died willingly rather than broke the law. If we do not observe the law only because it is bad, the result will be social chaos.
- 3) Social Science: We will face many written contracts when we want to buy a car or to buy insurance. Despite the written letters, social needs sometimes ask the other interpretations to realize the social justice.

5. Socrates was convicted of sedition, specifically, corrupting the youth of Athens because of his basic tenet, "Reject authority." Although he pleaded innocent of the charges, he was sentenced to death. He voluntarily drank the poison, which was his sentence, even though his followers had bribed the guards to facilitate his escape: Socrates died willingly rather than break the law, even though he maintained his innocence. Given that he was the wisest man in Greece, what do you think his attitude toward the law was? What then could he have meant by the dictum, "Reject authority?"

I assume that "Reject authority" might be followed by "within the law or by legal procedure" If nobody would reject the authority, there will be no development. But, If nobody follows the law, the society will be ruined by disorder. Therefore I can assume that when Socrates talked about "Reject authority" his purpose was not a revolution or a treason. But his purpose was the expansion of a thought or change of the society where he belongs with the law observed.

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.

- 1) I do not agree to legalize the marijuana.
- 2) Arguments

* Natural Law: The natural law is derived from an absolute moral and ethical scheme. It was our moral not to smoke before elderly person several decades ago. It is needless to say that marijuana was forbidden from our moral and ethical scheme. That means we never had a natural law of smoking marijuana in public or in private. @ Positivist Perspective: The law which exists in Korea do not permit smoking marijuana. On the contrary we regulate it as a crime. Therefore smoking marijuana **is** a crime unless the law revised and permitted the smoking it. @ Social Science: Smoking is harmful to the health of a person especially the younger generation and women. There is no saying that marijuana is. In America many young children get involved in drug traffic. They could be potential criminals because they lose the opportunity to get educated. Even though some countries legalized marijuana, they usually do not legalize the marijuana traffic with children. And some countries set an area for smoking marijuana. From the economic point of view, if all citizen smoke marijuana, the productivity of the nation might sharply decline. Therefore the argument is scarce to legalize the marijuana.