

THE SPELUCEAN EXPLORERS

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5. Summarise each of the rulings above. Characterize each as one of the three interpretations of law above and justify.

Truepenny, C.J.- The language of our statute is well known. "Whoever shall wilfully take the life of another shall be punished by death."N.C.S.A.(N.S.)12-A. This statute permits no exemption applicable to this case, however our sympathies may incline us to make allowance for the tragic situation in which these men found themselves. I think we may therefore assume some form of clemency will be extended to these defendants. If this is done, then justice will be accomplished without impairing wither the letter or the spirit of our statutes and without offering any encouragement for the disregard of law.

Foster, J.- I do not believe that our law compels the monstrous conclusion that these men are murderers. I believe on the contrary, that it declares them to be innocent of any crime. The first of these grounds rests on a premise that may arouse opposition until it has been examined candidly. I take the view 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." I conclude, therefore, that at the time Roger Whetmore's life was

ended by these defendants, they were, to use quaint language of nineteenth-century writers, not in a "state of civil society" but in a "state of nature." Every proposition of positive law itself, whether contained in a statute or a judicial precedent, is to be interpreted reasonably, in the light of its evident purpose. The statute before us for interpretation has never been applied literally. One of the principle objects underlying any criminal legislation is that of deterring men from crime. Looking therefore to the broad purposes of criminal legislation, we may safely declare that this statute was not intended to apply to cases of self defense. I therefore conclude that on any aspect under which this case may be viewed these defendants are innocent of the crime of murdering Roger Whetmore, and that the conviction should be set aside.

Tatting, J.- Under the provisions of this code further more, such an agreement once made is irrevocable, and if one of the parties attempts to withdraw, the others may take the law into their own hands and enforce the contract by violence. I can neither accept my brother's notion that these men were under a code of nature which this Court was bound to apply to them, nor can I accept the odious and perverted rules that @ would read in that code. Now the familiar explanation for the excuse of self defense just expounded obviously cannot be applied by analogy to the facts of this case. These men acted not only "wilfully" but with great deliberation and after hours of discussion what they should do.

Keen, J. - To put it bluntly, my brothers do not like the fact that the written law requires the conviction of these defendants. Neither do I, but unlike my brothers I respect the obligations of an office that requires me to put my personal predilections out of my mind when I come to interpret and apply the law of this commonwealth. The process of the judicial reform requires three steps. The first of these is to divine some single "purpose" which the statute serves. The second step is to discover that a mythical being called "the legislator," in the pursuit of the imagined "purpose," overlooked or left some gap of imperfection in his work. Then comes the final and most refreshing part of the task, which is, of course, to fill in the blank thus created. Now the scope of the exception in favour 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. I conclude that the conviction should be affirmed.

Handy, J.- I believe that all government officials, including judges, will do their best if they treat forms and abstract concepts as instruments. We should take as our model, I think the good administrator, who accommodates procedures and principles to the case at hand, selecting from among the available forms those most suited to reach

the proper result. Now when these conceptions are applied to the case before us, its

decision becomes, as I have said, perfectly easy. Now I know that my brothers will be horrified by my suggestion that this court should take account of public opinion. No one regrets more than I the necessity for relying in so important a matter on information that could be characterized as gossip. I must confess that as I grow older I become more and more perplexed at men's refusal to apply their common sense to problems of law and government, and truly tragic case has deepened my sense of discouragement and dismay. I conclude that the defendants are innocent of the crime charged, and that the conviction and sentence should be set aside.

INTERPRETATIONS OF LAW

Truepenny interprets the law in social science way because he said that the principle of executive clemency seems admirably suited to mitigate the rigours of the law and propose 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. He also said that if some form of clemency would be extended to these defendants justice will be accomplished without impairing either the letter or the spirit of our statutes and without offering an encouragement for the disregard of law.

Foster, J. interprets the law in social science way because he said that they were not in a "state of civil society" but in a "state of nature" and every proposition of positive law itself is to be interpreted reasonably, in the light of its evident purpose. He also said that the statute before us for interpretation has never been applied literally

Tatting, J. interprets the law in positivist perspective law way. The reason is that he stated that "under the provisions of this code further more, such an agreement once made is irrevocable, and if one of the parties attempts to withdraw, the others may take the law in their own hands and enforce the contract by violence."

Keen J. interprets the law in positivist perspective law way. From the principle, which is the supremacy of the legislative branch of our government, 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. Therefore he stated that he observer merely that this principle has become a tacit premise underlying the whole of the legal and governmental order he had sworn to administer.

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REVIEW QUESTIONS

1. What is law?

Definition of the law by Lon Fuller is the enterprise of subjecting human conduct to the governance of rules. What I think the law is that it is kind of a contract between citizens to organize a society. Therefore every law has its own cultural background, which means that it reflects its customs and cultures.

In the Speluncean Explorers case, I agree with what Foster, J. said about different society. When the explorers was secluded from society in the cave, they made kind of a contract to cast a lot to kill one of them and eat him. If it happened in Commonwealth it would be a crime. But it happened in the cave which is totally different society and followed by their law, whether its content proper or not, that I believe they should not be punished.

2. What is the function of the Law?

The function of the Law is to maintain a system of social control while facilitating social life. I believe facilitating social life is more important than social control because law can be misused to suppress people's rights. Throughout Korean history, there were times when legislature made unjust law to facilitate their acquisition of political power which was a hindrance to democracy.

In Speluncean Explorers case, Commonwealth law which state that who kills someone willfully will be hanged can be justifiable. But in the cave, five people made a deal to cast a lot to sacrifice one of them to save four. And I think it really facilitates social life because sacrificing one is better than all of them dying of starvation.

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

Morals can control society in the way that it can reach the area which law cannot control. People who steal something is not a criminal until he is caught that law cannot always do justice to society. But the thief can be deterred by his morals that after his stealing he wouldn't sleep peacefully.

Tradition can also control society more efficiently than law does. I believe, except several tradition, most cultures ask their people to live according to justice. That is people feel tradition more familiar than law that it is true sometimes that people tend to live by tradition regardless of the law

Clandestine operations controls society that Adam Smith mentioned about invisible hands. At primitive stage, society seems to be in disorder. But later as naturally it forms a ordered society by means of needs.

Culture is another way of controlling a society that the law is the reflection of culture. When legislative makes a law, they have to reflect its own culture that culture is a basis for the law.

Ethics would control a society. A person acts against ethics would be condemned by people who live with him that later days people tends to live in compliance with the ethics.

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

NATURAL LAW- Proponents of natural law do not believe that legal principles should

be the product of reasoning. Rather, they believe that law is derived from an absolute

moral and ethical scheme. For example in natural law murder can not be excused

because people's moral and ethical scheme regard it as unlawful. The focus of this

kind of interpretation is the content of law.

POSITIVIST PERSPECTIVE- A law is truly a law if it has the form of a law, i.e., it can be enforced. John Austin said that the existence of law is one thing and its merit or demerit is another. In this interpretation of the law, the focus is on the process of the law. The example would be prohibition of smoking in Singapore. It may be suppress people's rights to smoke, but people cannot smoke because the statute says so.

SOCIAL SCIENCE- The practicality of the results of the application of the Law is to be considered as primary. Sociological jurisprudence is based on the belief that the law is human and therefore never absolute. It is based on experience, not logic. In this interpretation of the law, the focus is on the pragmatism of the results. In Speluncean Explorers case, in positivist perspective way they should be hanged, but in social science way they should not be punished because they were in the extraordinary situation.

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?"

Socrates attitude toward the law is that he views the law as positivist perspective way. No matter what the content of the law is, people should live by it. Therefore he thought that only way of repealing the law is to overthrow the government and make a new justifiable law.

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.

I am against the legalization of Marijuana because the law forbid it and people's morals and ethics are against it. But its use can be justified in medical use and rehabilitant usage.

The first argument can be viewed as a positivist perspective in the way that it applies exactly what the law says. The second one is viewed in natural law way that it considers morals and ethics, and the third as social science because it considers patient who need narcotics to relieve his pain and criminals who have already been addicted to the drugs that the only way of bringing them back to the society is to reduce the dosage of drugs as rehabilitation program.