

Constitutional Law I

-The Speluncean Explorers

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

1. The rulings

1. Truepenny, C.J.

The statute "Whoever shall willfully take the life of another shall be punished by death." permits no exemption applicable to this case, however our sympathies may

incline us to make allowances for the tragic situation in which these men found themselves.

In a case like this the principle of executive clemency seems admirably suited to mitigate the rigours of the law, and if this is done, then justice will be accomplished without impairing either the letter or the spirit of our statutes and without offering any encouragement for the disregard of law.

2. Foster, J

At first, our 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.

They were not in a "state of civil society" but in a "state of nature". Therefore 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.

Secondly, 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 exception in favour of self defense cannot be reconciled with the words of the statute, but only with its purpose. The withdrawal of this situation from the effect of the statute is justified by precisely the same considerations to the case of self defense.

Therefore, these defendants are innocent of the crime of murdering Roger Whetmore, and the conviction should be set aside.

3. Tatting, J.

Under the code that implies these men were not subject to our law because they were not in a "state of civil society" but in a "state of nature", where the law of contracts is more fundamental than the law of murder, 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 cannot accept the 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 implied in the code. 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 "willfully" but with great deliberation and after hours of discussion what they should do. We encounter a forked path with each line of reasoning leading us in exactly opposite directions. I have been wholly unable to resolve the doubts that beset me about the law of this case, I declare my withdrawal from this case.

4. Keen, J.

The sole question before us for decision is whether these defendants did, within the statute of "Whoever shall willfully take the life of another shall be punished by death.", willfully take the life of Roger Whetmore. Though I do not like the fact that the written law requires the conviction of these defendants, 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. From the principle of 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. I merely observe that this principle has become a tacit premise underlying the whole of the legal and governmental order I am sworn to administer. As in dealing with the statute, so in dealing with the exception, the question is not the conjectural purpose of the rule, but its scope. The scope of the exception in favor of self defense 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. The issue of this struggle is regarding the complete default in the discharge of the judicial function: you simply cannot apply a statute as it is written and remake it to meet your own wishes at the same time. I therefore conclude that the conviction should be affirmed.

5. Handy, J.

The government is a human affair, and men are ruled not by words on paper or by abstract theories, but by other men. I believe that all government officials, including judges, will do their jobs best if they treat forms and abstract concepts as instruments, selecting from among the available forms those most suited to reach the proper result.

The most obvious advantage of this method is that it permits us to go complete our daily tasks with efficiency and common sense, and with the insight this philosophy gives us we can preserve the flexibility essential if we are to keep our actions in reasonable accord with the sentiments of those subject to our rule. When these conceptions are applied to the case before us, its decision becomes perfectly easy. According to newspaper polls, we have a clear view that the public feels that the defendants should be pardoned or let off with a token punishment. 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.

11. The interpretations

1. Truepenny interprets the law in a social science way on the ground that he said that the principle of executive clemency seems admirably suited to mitigate the rigors of the law.

2. Foster interprets the law in a social science way on the ground that he said that the truth is that the exception in favor of self defense cannot be reconciled with the words of the statute, but only with its purpose.

3. Tatting interprets the law in a social science way on the ground that he assumed that they must interpret a statute in the light of its purpose.

4. Keen interprets the law in a positivist perspective on the ground that he emphasized the supremacy of legislature.

5. Handy interprets the law in a social science way on the ground that he mentioned about appealing to the public opinion.

Review Questions

1. *What is law?*

A good working definition of the law is "the enterprise of subjecting human conduct to the governance of rules."

2. *What is the function of law?*

The function of the law can be defined as "to maintain a system of social control while facilitating social life."

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

(D) Morals

Morals refer to the generally acknowledged standards of society. Law cannot coerce social control to activities it does not define, but morals can enforce psychological coercion on such

activities.

(Z) Ethics

Ethics refer to moral standards of a higher degree, also assuming similar functions of social control as morals.

3 Tradition

Tradition differs according to each nation thus defines its distinctive form in each nation's legislation and life styles.

(I Culture

Culture is an integration of various aspects such as religion, tradition, habits of a certain people. Therefore, even the most primitive people have their respective cultures. This also acts as means of social control to legislation and life styles much like tradition.

5 Fashion

Fashion is habits of a certain period in time. Therefore, it only serves a function of social control according to certain periods in time, different from the criteria listed above.

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

(1) Natural law

In this view, law is derived from an absolute moral and ethical scheme. The focus of this kind of interpretation is the content of law. A good example of this would be the Ten Commandments.

(Z) Positivist perspective

In this view, a law is truly a law if it has the form of a law. The focus of this kind of interpretation is in the process of the law, and a good example would be the quote "A bad law is as

much a law as a good one." by Socrates. (3) Social science

In this view, the practicality of the results of the application of the law is to be considered as primary. The focus of this kind of interpretation is the pragmatism of the results. A good example of this would be consideration into special circumstances as in the case of Speluncean explorers.

5. *Socrates was convicted of sedition, specifically, corruption 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?"

In my opinion, Socrates strictly discerned law and authority and thought that law is interpreted and executed in different ways according to authority. Therefore, Socrates implied that it is the authority who makes a law good or bad, and emphasized the rejection of authority not the rejection of law itself.

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

In my opinion, Marijuana although viewed as more addictive than alcohol or cigarettes, do not differ that much in nature. Therefore, I think that sales and use of Marijuana must be left to the discretion of each individual. This might actually reduce misuse of Marijuana and its black market distributions especially to underaged minors and rather promote responsible usage as a preference or medicine.