The case of the Speluncean Explorers

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Question 1.
After the rescue of the defendants, and after they had completed a stay in a hospital, they were indicted for the murder of Roger Whetmore. The judge then sentenced the defendants to be hanged, the law of Commonwealth permitting no discretion with respect to the penalty imposed.

Question 2.

'I'he death penalty imposed upon the defendants has an undeniable righteous basis to be executed because the act of murdering committed by them could not be given any excuses, although taking the severe environment they had had to face into the consideration. 'I'hey had done their private execution so willfully and deliberately, that what they had done is beyond the excuse of self defense. I agree that they are guilty.

Question 3.

The key to solve this case, I think, could be focused on the two question by which we can decide and estimate an adequacy of sentence imposed an them-. the first question is when the landslide accursed; the second one is whether all the members in the cave knew an accurate conception of time proceeding as same as that of people outside.

Question 4.

My own ruling is based upon fact findings relying on the positivist perspective.

Before the dice were cast, Whetmore declared that he withdrew from the arrangement, as he decided upon reflection to wait for another week before embracing an expedient so frightful and odious. On the day of killing, Day 23, he actually wanted to wait another week before killing anyone. Why a week exactly, especially if they were already close to death by starvation? If when landslide occur-red is the same day they entered cave, then the predicted date of rescue would be exactly one week from the date on which Whetmore wanted to wait a week. Whetmore's picking a week suggests strongly that the landslide occurred just after they entered the cave during the same day. It

shows that Whetmore knew the exact day of landslide occurring to wait the rescue from outside, counting days going through accurately. No wonder that the severe environment surrounding them caused sharing informations when the landslide occurred; how many days they ad left over till the rescue entered and so on. Therefore, All the member in the cave knew that 7 days from then on they would be rescued, for which ordinary human could survive without food by medical reference. They, however, took the life of Whetmore.
All in all. I conclude the conviction should be attired.

Question 5.

True penny

True penny, as chief justice, has a ruling very ambiguous and sordid. He concedes that the language of his state is well known saying "who ever shall willfully take the life of another shall be punished by death"N.C.S.A(N.S) § 12-A, while suggesting that in a case like this the principle of executive clemency seems admirably suited to

mitigate the rigors of the law. He seems not to stand on clear and distinct stepping stone analyzing this case such as allegedly point view of natural law, positivist perspective or social science.

Foster

For himself, He doesn't believe that the law compels the monstrous conclusion that these men are murderers. He believes, on the contrary, that it declares them to be innocent of any crime resting an two independent grounds, either of which is of itself sufficient to justify the aquittal of these defendants. The first one of these rests on a premise that may arouse opposition until it has been examined candidly. He takes the view that the enacted or positive law of this Commonwealth, including all of its statutes and precedents, is governed instead by "the law of nature." The second ground proceeds by rejecting hypothetically all premises on which he has so far proceed. Therefore, he concedes that when the rationale of the excuse of self defense is thus explained, it becomes apparent that the same reasoning is applicable to this case at bar. He seems to consider both sides of natural law and positivist perspective in the end. He concludes that on any aspect under which this case may be viewed these defendants are innocent of the crime of murdering Roger Whetmore.

Tatting

Analyzing the opinion. just rendered by Foster, he finds that it is shot through with contradiction and fallacies. It is a code in which the law of contracts is more fundamental than the law of murder. It is a code under which a man may make a valid agreement empowering his fellows to eat his own body. If one of the parities attempts to withdraw, the others may take the law into their own hands and enforce the contract

by the violence - for though Foster passes over in convenient silence the effect of Whetmore's withdrawal, this is the necessary implication of his argument. lie insists that the familiar explanation for the excuse of self defense obviously cannot be applied by analogy acted not only "willfully" but with great deliberation and after hours of discussion what they should do. He says however, that when he feels himself inclined to accept the view of Foster, he is repelled by a felling that Foster's argument are intellectually unsound and approach mere rationalization; On the other hand, when he inclines toward upholding the conviction, he is struck by the absurdity of directing that these men be put to death when their lives have been saved at the cost of the lives of ten heroic workmen. Then he concludes his withdrawal from this case. He seems to stand on the positivist perspective inclining a little bit towards the dip of natural law because he fully concedes and gives his assent to sentence those defendants to death in accordance with the provision of N.C.S.A(N.S) § 12-A but he also demands to consider the workmen's lives cost.

Keen

Keen should like to begin by setting to one side two questions which are not before the court: the first one of these is whether executive clemency should be extended to these defendants; the second that he wishes to put aside is that deciding whether what the those defendants did was "right" or "wrong," "wicked" or "good."
Because of different sphere in making a decision, he says the first question is for Chief Executive and the second one should go to the morality. As in dealing with the statute, so in dealing with purpose of the rule, but its scope, he insists. It is therefore too clear for argument that this case does not fall within the scope of exception, since it is plain that Whetmore made no threat against the lives of those defendants, he adds.
All in all., he concludes that the conviction should be affin-ned in accordance with the provision of N.C.S.A(N.S) § 12-A, though considering the exception of self defense. Keen seems to stand on the basis of positivist perspective because he distinguish rigorously the aspect of the morality and the law, he put a side two questions expanded before, thinking they are not in scope of the legal enclosure.

Flandy

flandy has never been able to make other judges see that government is human affair, and that men are ruled, not by words on paper or by abstract theories, but by other men. He believes that all government officials, including judges, will do their jobs best if they treat forms and abstract concepts as instruments. People should take as their model, he thinks, 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. The most obvious advantage of that method of government is that it pen-nits people to go about daily tasks with efficiency and common sense, he insists. Therefore, he concludes unavoidably that the defendants are innocent of the

crime charged in accordance with public clamor showing a belief that they are pardoned or let off with a kind of token punishment.
He seems no doubt to stand in a point of social scientific view because he follows and believes public common sense.

Question 6.

'I'he fact that legal and moral norms vary from place to place and from one historical period to another lies in part behind a persistent theme in the philosophy of law: the search for unchanging norms that are universally valid. Clearly, the most certain way of establishing such norms would be to base them on widely observed facts, such as man's social propensities or ubiquitous importance of kinship in social organization, which supposedly reveal something fundamental about the nature of man and his adjustment such category of facts has for two millennia been associated with the concept of natural law. This concept has many version, the principal of which are outlined in the historical survey. It has always been possible to trace a mainstream of natural law thought, flowing from Aristotle's promise that the nature of any creature, from which obligations must be derived, is what it will be in its fullest and most perfect development. To derive a universal natural law, however, it would be necessary to demonstrate some "universal conscience" of all mankind. But natural lawyers faced with the fact that men's consciences do not coincide explain that conscience may err and reason be corrupt. Considering in this case of the Speluncean Explorers that the deficiencies of natural law perspective, it would not be inevitable to give the defendants excuses to let off with a kind of token punishment or being pardoned. Actually they took the life of others willfully and deliberately. That means they violated the positive law prevalent on which our society obtains a right trajectory with preventing the situation of anarchy. Furthermore, it is undeniably certain that the positive law has the power to penetrate five hundred feet of rock and impose themselves upon these starving men huddled in their underground prison. Therefore, the conviction should be affin-ned as keen's ruling.