5. Summarise each of the rulings above. Characterise each as one of the three interpretations of Law and Justice

Truepenny, C.J.

"Whoever shall willfully take the life of another shall be punished by death." This statue doesn't permit any exemption applicable to this case; however, in a case like this the principle of executive clemency seems suited to mitigate the rigours of law. Truepenny thinks some form of clemency have to be extended these defendants, and then justice will be accomplished without impairing either the letter or spirit of our statues and without offering any encouragement for the disregard of law.

This ruling is based on Positivist Perspective and Social Science. First, the defendants were guilty of murdering Roger Whetmore, so the statue has to apply this case strictly This is view of Positivist Perspective. Second, after the conviction, the executive has to consider clemency for the tragic situation. This is based on Social Science.

Foster, J.

Foster 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. He rests this conclusion on two independent grounds.

The first of these rest on the "the law of nature. 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. At the time Roger Whetmore's life was ended by these defendants, they were, to use quaint language of 1 glh_century writers, not in a "state of civil society" but in a "state of nature." What these men did was done in pursuance of an agreement accepted by all of them and first proposed by Whetmore himself Since it was apparent that their extraordinary predicament made inapplicable the usual principles that regulate men's relations with one another, it was necessary for them to draw, as it were, a new charter of government appropriate to the situation in which they found themselves.

The second ground proceeds by rejecting hypothetically all the premises on which Foster has so far proceed. Centuries ago it was established that a killing in self defense is excused. The truth is that the exception in favour of self defense cannot be reconciled with the words of the statue, but only with its purpose. The true

'liat'on of the excuse of self defense with the statute making it a crime to kill
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another is found in the following line of reasoning. One of the principle objects underlying any criminal legislation is that of deterring men from crime. A man whose life is threatened will repel his aggressor, whatever the law say. Looking to the broad purposes of criminal legislation, we may safely declare that this statute was not intended to apply to cases of self

defense. If we read this statute intelligently it is apparent that it does not apply to this case. These defendants are innocent of the crime of murdering Whetmore.

Foster's view is based on Natural Law. He asserts that when our positive law couldn't be applied to the particular situation, the law of nature has to be applied.

Tatting, J.

As Tatting analyses the opinion rendered by Foster, he finds that it is shot through with contradictions and fallacies. Let's begin with Foster's first proposition: these men were not sub ect to our law because they were not in a "state of civil society" but **in** a "state of nature". It is 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. 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 - for though Foster passes over in convenient silence the effect of Whetmore's withdrawal, this is the necessary implication of his argument.

Let's see the second part of Foster's opinion, in which he seeks to show that the defendants did not violate of the propositions. Here the way, instead of being clear, becomes misty and ambiguous, though Foster seems unaware of the difficulties that inhere in his demonstrations. Now the familiar explanation for the excuse of self defense 'ust 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. What shall be the scope of the exception? Here the

men cast lots and the victim was himself originally a party to the agreement. What would we have to decide if Whetmore had refuse from the beginning to participate in the plan? Would a majority be permitted to overrule him? Or, suppose that plan were adopted at all and the others simply conspired to bring about Whetmore's death, justifying their act by saying that he was in the weakest condition.

To Tatting, it is a matter of regret that Prosecutor saw fit to ask for an indictment of murder. If we had a provision in our statues 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.

Tatting's view is base on Positivist perspective.

Keen, J.

The sole question for decision is whether these defendants did willfully take the life of Roger Whetmore. The exact language of the statute is as follows: "whoever shall willfully take the life of another shall be punished by death." Any candid observer, content to extract from these words their natural meaning, would concede at once that these defendants did "Willfully take the life" of Roger Vvlhetmore. Foster does not like the fact that the written law requires the conviction of these defendants. Neither does Keen, but he respect the obligation of an office requires him to put his personal predilections out of my mind when I come to interpret and apply the law of this commonwealth..

There was time in this Commonwealth when the 'udges did in fact legislate freely, but that days are behind us. Now, there is the supremacy of the legislative branch of the government. From that principles 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.

Foster has penchant for finding holes in statutes, the more holes they have in them the better he likes them. In short he doesn't like statutes. As in dealing with the statute, so in dealing with exception, the question is not the conjectural purpose of the rule, but its scope. 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 Vvhetmore made no threat against

the lives of these defendants. Keen concludes that the conviction should be affirmed.
Keen's view is base on Positivist perspective

Handy, J.

Handy has never been able to make other Justices see that goverm-nent 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. Handy believes that all government officials, including judges, will do their jobs best if they treat forms and abstract concepts as instruments. The obvious advantage of this method of government is that it permits us to go about our daily tasks with efficiency and common sense.

Other justices in their coy decorum have seen fit to pass over in silence, although they are just as acutely aware of them as Handy is. The first of these is that this case has aroused enormous public interest, both here and abroad. About ninety percent expressed a belief that defendants should be pardoned or le off with a kind of token punishment. Other 'ustices will horrified by the suggestion that this court should take account of public opinion. They will tell you that public opinion is emotional and capricious, that it is based on half-truths and listens to witnesses who are not subject to cross-examination. But let's look candidly at some of the realities of the administration of the criminal law. When a man is accused of crime, there are four ways which he may escape punishment. One of these is determined by a judge that under the applicable law he has committed no crime, which takes place in a rather formal and abstract atmosphere. But look at the other three ways in which he may escape punishment. A decision by the Prosecutor not ask for an indictment, an acquittal by the Jury, a pardon or commutation of sentence by the executive. Can anyone pretend that these decisions are held within a rigid and formal frame work of rules that prevents factual error, excludes emotional and personal factors, and guarantees that all the forms of the law will be observed?

If the issue is left to the Chief Executive, he will refuse to pardon these men or commute their sentence. Public clamour usually operates on him in the reverse of the effect intended, he is firmly determined not to commute the sentence if these men are found to have violated the law.

Keen concludes that the defendants are innocent of the crime charged.

Keen's view is based on Social Science.

Review Question

1. What is law?

Truepenny thinks the law has to apply the case strictly, but some form of clemency have to be extended, and then justice will be accomplished without impairing either the letter or spirit of law and without offering any encouragement for the disregard of law Foster is saying that when the positive law couldn't be applied to the particular situation, the law of nature has to be applied. Keen's assertion is that the obligation of the judiciary enforces faithfully the written law in accordance with its plain meaning without reference to our personal desires or our individual conceptions of justice. Handy suggests that law should take account of public opinion

2. What is the function of law?

A good working definition of the law is the following: "the enterprise of subjecting

human conduct to the governance of rules." In a similar vein, 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? I)Ethics

Ethics also called Moral Philosophy, the discipline concerned with what is morally good and bad, right and wrong. The term is also applied to any system or theory of moral values or principles. Every society has its ethics and ethics operates as social control. When people do something, they consider ethics because they can decide their behavior morally good and bad, right and wrong according to ethics.

2) Culture

Culture is the integrated pattern of human knowledge, belief, and behavior. Culture, thus defined. consists of language, ideas, beliefs, customs, taboos, codes, institutions, tools, techniques, works of art, rituals, ceremonies, and other related components. Thus culture operates as social control in all parts of society. The

development of culture depends upon human's capacity to team and transit knowledge to succeeding generation

3) Tradition

Every society has their own tradition, so people in each society follow their tradition. If one breaks tradition in his society, he will be condemned by his family, company and other members, He has to follow tradition, thus tradition operates as social control.

4)Habit

Habit is any regularly repeated behavior that requires little or no thought and is learned rather than innate. A habit - which can be part of any activity, ranging from eating and sleeping to thinking and reacting - is developed through reinforcement and repetition. Reinforcement encourages the repetition of a behavior, or response, each time the stimulus that provoked the behavior recurs. If one in certain society keeps rule as habit, he will keep the rule forever without any other additional notice. Thus, habit can be social control.

5)Manners

We always have to keep manner when we meet other people, eat food, see movie, and so on. If one doesn't keep manner when meeting others, he will be condemned and nobody wants to contact him. He will be alone. Thus manners operates as social control.

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

1) Natural Law

The legal system is to reflect fundamental and absolute principles of justice that are inherent in human life. 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. Murder is inherently wrong because it is universally regard as a bad act. Natural Law can be contrasted with conventional laws, such as the age of majority. Think of Ten Commandments. The focus of this kind of interpretation is content of law.

For example, in Foster's ruling, at the time Roger Whetmore's life was ended by these defendants, they were, to use quaint language of 19' century writers, not in a "state of civil society" but in a "state of nature." What these men did was done in pursuance of an agreement accepted by all of them and first proposed by Whetmore himself Since it was apparent that their extraordinary predicament made inapplicable the usual principles that regulate men's relations with one another, **it** was necessary for them to draw, as it were, a new charter of government appropriate to the situation in which they found themselves.

2) Positive Perspective

A law is truly a law if it has the form of a law, in that it can be enforced. A bad law is as much a law as a good one. The existence of law is one thing: its merit or demerit is another.(John Austin) Think of "the Letter of the Law.' In this interpretation of the law, the focus is on the process of the law.

For example, in keen's ruling, Keen said that Foster does not like the fact that the written law requires the conviction of these defendants. Neither does Keen, but he respect the obligation of an office requires him to put his personal predilections out of my mind when I come to interpret and apply the law of this commonwealth.

3) Social Science

The practicality of the results of the application of the Law is to be considered as primary. Consider the precedent setting case of Brown vs. Board of Education (1954) which found that racially segregated schools were illegal. This decision was based on the sociological studies which showed that Blacks learned more in integrated schools than in segregated schools, and therefore the existing law was unfair and had negative results. 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.

For example, Handy has never been able to make other justices see that government is a hwnan 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. Handy believes that all government officials, including judges, will do their 'ohs best if they treat forms and abstract concepts as instruments.

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The obvious advantage of this method of government is that it permits us to go about our daily tasks with efficiency and common sense.

5. Socrates

Socrates's attitude toward the law comes from Positive Perspective. According to Positive Perspective, a law is truly a law if it has the form of a law, in that it can be enforced. A bad law is as much a law as a good one. And also Socrates thought that he had to follow the law even though the law was bad and wrong.

Socrates had his basic tenet, "Reject authority", but when he was sentenced to death he didn't reject the law. It means that Socrates thought authority is different from the law. In my opinion, the difference is this, several people can have authority and they can use it for themselves, but law will apply equally despite having authority or not.

6. The legalization of Marijuana

The legalization of Marijuana is currently a controversial issue. Some people say that Marijuana should be legalized. On the other hand, many people believe that Marijuana should not be legalized.

Let's see the arguments about the legalization of Marijuana. First, in view of natural law, Marijuana is not universally regarded as bad thing, so it can be legalized. Second, in view of social science, smoking is worse than Marijuana, but smoking is legalized. Therefore, Marijuana should be legalized. Finally, in view of Positivist Perspective, Marijuana is Junk and bad for people, so the law prohibits Marijuana. There **is** no reason Marijuana should be legalized.

I also agree with view of Positivist perspective that Marijuana should not be legalized.

The Case of the Speluncean Explorers

To: Constitutional Law I
Re: The Case of the Speluncean Explores
Date: November 15, 1999
From: Kim, **Sung-Jin** (9611348)