

**To: Professor Kim Moo Sang**

**From: Jung Won Lee**

**Re: The Spelunker Case**

**Date: 8 November 1999**

1) Summarise each of the rulings above. Characterize each one as one of the three interpretations of Law above and justify.

**Foster, J.**

The law of the Commonwealth of the Newgarth declare the defendants to be innocent of any crime. The five members being physically separated from the rest of society, the condition that underlies all our precedents and statutes has ceased to exist, i.e. *the* positive law of the Commonwealth no longer applied. They therefore had reverted to a state of nature' and had to devise a new form of contract or agreement to regulate their internal order. If the lives of the workmen sacrificed in the process of rescue could be justified in the name of law, the behavior of the defendants should be pardoned in the same context. Even if the Consolidated Statutes were to apply to these unfortunates, the statute has not been violated in spirit, if in letter. Positive law should be interpreted reasonably, being a social contract. Take for instance the case of self-defense, which, although in violation of the words of the statute forbidding murder, can be reconciled with the purpose. Criminal legislation exists primarily to deter crime. The contents of the criminal code simply do not apply to the defendants. One must not be fidel to a statute unintelligently. The defendants are therefore innocent and the conviction should be set aside.

**Tatting, J.**

I failed to differentiate between and keep separate the emotional and intellectual responses to the case before me, deciding the case on the basis of a convincing and logical demonstration of the result demanded by our law has eluded me. If the defendant had indeed reverted to a 'state of nature', precisely when did this transformation occur? The function of the judges in this case is to administer the laws of the Commonwealth, not the principles of natural law. Indeed, the law of contracts does not overem'de natural law. It is the doctrine of the legal world that murder is a 'wilful' act. The defendants not only acted wilfully but pursuant to great deliberation and discussion. Just as precedents state that hunger does not justify theft, murder is inexcusable. The stigma of murder, i.e., the literal meaning of the statute forbidding murder might have been deterrent enough. Still, to allow one exception to the statute raises myriad problems as to the precise extent of such pardon. Application of the law should follow a coherent and rational principle of reasoning. There being no statute forbidding cannibalism, the defendants should not have been indicted in the first place. I withdraw from the decision of the case.

**Keen, J.**

As a private citizen, the defendants have suffered enough and should be pardoned altogether. Governmental and judicial functions are to be kept entirely separate. The role of the judge is the impartial application of the law of the land, not pronouncements upon personal conceptions of morality. The natural meaning of the statute, the 'wilful taking of life', holds true in this case. The moral and the legal aspects of the case should be segregated. The obligations of the legal office necessitate the separation of ethics and the law. The 'purpose' of the law does not override the express provisions of the law. The legislative branch of government is obliged to enforce the written law faithfully, and to issue interpretations on a non personal basis. The role of the judiciary is subservient to that of the legislature, and therefore serves the purposes of litical science. judges are to work with the statute as it is, instead of improvising and gap-filling. Forbidding murder does not in itself denote the underlying presence of a purpose, rather, it is the collective conviction of humankind as reflected in our statute. The state may monopolise, for the state is supreme. The purpose of the statute is impossible to fathom. Rather, it is the scope of the statute that is crucial. The written law should be adhered to faithfully. Law is the creation of the representatives that people elect and the role of the judiciary is to expand judicial dispensation based upon that body of law. The judicial office should function as subsidiary to the legislature, and consistently at that.

**Handy, J.**

The crux of the problem is what ought to be done with the defendants and as such, remains as the domain of practical wisdom within the context of human realities, instead of abstract theorizing. Men being ruled by other men, government must remain humane and in tune with the feelings and conceptions of the masses, based on understanding. The judiciary, however, tends to lose touch with the common man due to tortured over analysis. Forms and abstract concepts are instruments, not the purpose. Procedures and principles should be accommodated to reach the proper result. -nationalization of the law enables efficiency and common sense. The will of those being subjected to our rule should be accommodated by our flexibility to ensure the continuance of our government. The case has generated enormous public interest, and the public demands the pardon of the

defendants. A reasonable and decent accord overrides the written law. Principles of statutory constructions do not ensure the discovery of the truth and rational consideration. The legally relevant cannot be examined exclusively in any given case. Common sense should govern problems of law and government. The defendants are innocent of the crime charged and the conviction and sentence should be set aside.

## 2) Which argument did you find most compelling? Why?

I agree with the opinion of judge Foster. The defendants sought out the opinions of the physicians, the judges, the government officials, the ministers and the priests of the society to which they belonged, on the merits, medical, legal and moral, of the course of action they were to undertake subsequently, which would not only involve the matter question of their survival, but also of their conscience, integrity and dignity as a human being. However, they were turned down most unceremoniously. They were forsaken by

### <Review Questions>

#### 1) What is law?

Law is the set of regulations binding the actions of a group of people within a specific territory, under uniform governance, in a defined historical context.

#### 2) What is the function of law?

The law, as the sub element of society along with economics, exists to guarantee the survival of the abovementioned group of people. Moreover, law is meant to bestow upon that group a degree of predictability.

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

Compulsory education enables the indoctrination of the ruled according to the logic of the dominant.

Taxation enables the regulation of economic activities of the ruled by the government. Birth control is implemented in order to make predictable the growth rate of society. judiciary acts to impose order on the actions of the members of society.

The prison system acts as the deterrent to committing crime.

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

Natural Law approaches mankind from a moral and philosophical viewpoint. Inner conviction of what is right and wrong should guide individual action, *e.g.*, all murder is wrong.

Social Contract approached mankind from an economical standpoint. Law bestows predictability, thus maximizing profitability, *e.g.*, corporal punishment (a form of murder) may be wrong, but is necessary to ensure the competitiveness of society.

Political Science approaches mankind from a political vantage. Consensus is the ultimate, *e.g.*, corporal punishment is fully justifiable so long as it is based on popular consent.

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'?**

The action of the followers, that of bribing the guards, was an act of asserting their authority over those guards, for they were exercising financial control in the very act of monetary transaction for the service to be rendered. Socrates might have been aware that escaping would not have been possible via other means. Authority and law are not to be used interchangeably. Authority is more often unjustifiable, whereas the law, more often than not, is created to pay lip service to concepts of 'justice'. The application of the law is a separate matter altogether.

Socrates, in espousing the rejection of authority, was in fact praising the individual, and as such was not advocating 'away with the government!'

**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.** Natural Law would proclaim that the use of all drugs is wrong and should therefore be illegal.

remains

Social contract would argue that the use of drugs is detrimental to health (hence lowering productivity) and therefore should not be made legal.

Political Science would reserve value judgment, the emphasis being laid on the consensus of the society in question.

the order governing them which they had allegedly taken part in constructing and therefore had to create anew a social contract on which to base their mortal existence. The Supreme Court of the Newgarth cannot therefore find justification for indicting the criminals, even less sentencing them to be hanged.