UNIVERSITY of SAN CARLOS
SCIENTIA • VIRTUS • DEVOTIO

POSITION PAPER: THE SPELUNCEAN EXPLORERS

Submitted to:

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Submitted by:

THE TWENTY AND FIVE LAW FIRM
LLB134N – EH305MC

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Let it be resolved that: The speluncean survivors should be found guilty of murder and should face a mandatory death sentence.

I. QUESTIONS PRESENTED (ISSUES):

The law is present in order to protect the right of each individual in the society. However, we believe that the law should never supersede morality. Since the law is exactly made to protect each and every person's moral value, which is life itself. The relevant issues below is a unique one since we will determine why the negative side of the refutably believes that the defendants should not be convicted due to our stand of morality and self-preservation.

The following issues are raised:

- **Whether or not the defendants fall under the jurisdiction of Newgarth?**
- **Whether or not the defendants should be convicted for the killing of Roger Whetmore?**
- **Whether or not the defendants' acts can be considered as an exercise of self-preservation?**
- **Whether or not the word "willfully…" is an ambiguous wording of the statute?**
- **Whether or not the word "another…" is an ambiguous wording of the statute?**
- **Whether or not Roger Whetmore acknowledged and gave his consent to the arrangement?**
- **Whether or not the defendants have any criminal intent?**
- **Whether or not the populace approach should be applied in the given case?**
- **Whether or not we can interpret the law according to its purpose and not as it was written?**
- **Whether or not the defense of self-defense is similar to self-preservation?**
- **Whether or not the Doctrine of Necessity can be applied to the case at bar?**

II. STATEMENT OF FACTS

The case of the Speluncean Explorers is about a group of five spelunkers or cave-explorers in the Commonwealth of Newgarth, who were trapped inside a Limestone cave caused by a landslide. On the failure of Roger Whetmore and his party to return to their homes, the Secretary of the Society was notified by their families and rescue parties were immediately dispatched by the Speluncean Society, however rescue efforts proved to be overwhelmingly difficult as fresh landslides would cover up any of the rescue team's progress. Moreover, when the rescue process was underway, ten (10) workmen who were engaged in clearing the entrance of the cave were killed.

As the five (5) men approached the point of starvation, they made a radio contact with the rescue team. Engineers on the team estimated that the rescue will take another 10 days. The men describe their physical condition and the rations they had taken with them to the physicians (medical experts) at the rescue camp and asked whether they can survive another 10 days without food. The chairman of the committee of physicians told them that there was little possibility of any of them surviving under the given situation. In turn, one of the spelunkers, Roger Whetmore asked whether they could survive another ten (10) days if they killed and ate a member of their party. The physicians reluctantly gave him an affirmative reply. He further asked whether they ought to hold a lottery to determine whom to kill and eat. But none of the physicians' present were willing to give them an answer. The trapped and starving spelunkers also asked if there was a judge or other official of the government amongst the rescue party who could answer their question, but no one at the rescue camp were willing to take on an advisory role on the matter. He also asked if there was any minister or priest that would answer the same, but none was found that would do so. Thereafter, no further messages were received from the spelunkers, and it was erroneously assumed that the electric batteries of the explorers' wireless machine had died, when in truth the explorers' had turned off their radio and sometime later on held a lottery by casting a pair of dice, killed the loser, which happened to be Roger Whetmore, and ate him, this happened on the 23rd day.

In a testimony given by one of the members of the group, which the jury accepted, it was stated that Roger Whetmore was the one who proposed that they might find the nutriment without which survival was impossible in the flesh of one of their own party. And it was also Roger Whetmore who first proposed the use of some method of casting lots. At first, other members of the group were reluctant to adopt such a desperate a procedure, but after the radio conversations they had with physicians in the rescue camp and the threat and fear of their impending death, they finally agreed on the plan proposed by Roger Whetmore, and after much discussion of the mathematical problems involved, reached an agreement on the method of determining the issue by the use of the dice that Roger Whetmore happened to have with him.

It is important to note that although Roger Whetmore expressly declared that he wanted to withdraw from the arrangement at the start as he had decided that he wanted to wait another week before embracing the said agreement, he nonetheless gave his consent and agreed to participate in the casting of lots when he expressly declared that he had no objections whatsoever to the fairness of the throw that was casted for him by one of the members of the party. The group was rescued on the 32nd day and after receiving medical attention and treatment from shock and malnutrition from the traumatic ordeal they went through, they were prosecuted for the

murder of Roger Wethmore and sentenced to death as per the law in Newgarth.

The defendants argued that to sentence them to death is unjust because of the difficult and unusual circumstance that they had to face. Defendants also argued that the Newgarth legislature could not have meant what it said especially in their given case because unfortunate cases such as theirs do happen from time to time, and it is presumed that the legislature is aware of them, and yet chose not to make an exception.

The defendants also presented two novel arguments in the case at bar. First, they argued that they were operating beyond the jurisdiction of Newgarth or any other legal system, not for the usual territorial reason, but rather, for a jurisprudential one. The defendants claim that their very survival demanded a course of action, the morality or legality of which is beyond the legitimate power of law to judge. The purpose of law is to facilitate cooperative social living and to maximize the fruits of that cooperation. Law, then, is predicated upon the possibility that cooperation will not only increase chances of mutual survival but will also yield additional benefits to all. Here, cooperation among all would only guarantee their mutual demise; thus, the logical predicate for law was absent. The purpose of law could not be to condemn these actions. Rather, it was both legal and moral for these trapped men to establish their own council and take whatever actions were necessary to assure the survival of the greatest number possible. This they did by agreeing to the procedures of the lottery.

Second, the defendants argue that even if the law applies, they are not guilty of the crime of murder because they acted in their own self-defense. The defendants argued that a killing is in self-defense, when the situation is such that one life must be taken in order to save one's own. Such killings are basically non-deterrable, there is no threat of punishment that could change the rational decision to kill. The purpose of our criminal laws against homicide is deterrence, but these acts were non-deterrable; hence, they were not crimes. There is no point in applying the criminal sanction of the law, and therefore, the law does not apply.

III. SUMMARY OF ARGUMENTS

We believed that the defendants should be acquitted because the statute which states that "whoever shall willfully take the life of another shall be punished by death" is not applicable in the case at bar and is not only morally unjust but also ambiguous.

As Justice Foster puts it, if this Court declares that under our law these men have committed a crime, then our law is itself convicted in the tribunal of common sense. The defendants when they decided to kill and eat Whetmore were as remote from our legal order as if they had been a thousand miles beyond our boundaries which means that the law is not applicable to them. The defendants have not cited any of the provisions dealing with justification or excuse because in the first place, they do not apply in their case. Furthermore, the legislature did not specifically prohibit the killing and eating of someone under these circumstances.

Justice Foster believes, as do we, in the maxim of Cessante Ratione Legis, Cessat Et Ipsa Lex, which means that the reason for a law ceasing, then law itself ceases and many laws are brought in to respond to situations that exists at the time of the law. He added that when a situation arises that which the coexistence of men becomes impossible, then the condition that underlies all of the judicial precedents and statutes will cease to exist.

Given the fact that the defendants were not in a "state of civil society" but in a "state of nature", the law applicable in this case is not the enacted and established law of the Commonwealth, but the law derived from those principles that were appropriate to their given condition. Hence, applying this principle, the defendants were not guilty of any crime. Furthermore, the wording of the Law of the Commonwealth should not be interpreted literally, instead a purposive approach of its interpretation should be given to the statute. An example of this is the exception given by the law to self-defense.

However, there is nothing in the wording of the statue that suggests this exception. The exception in favour of self-defense is not out of the words of the statute, but out of its purpose. When the reasoning of self-defense is explained, it becomes apparent that the same reasoning can be applied to justify the acts of the four defendants of self-preservation by means of taking a life. When a man's life is in endangered, as Justice Foster puts it, he will surely defend himself and repel his aggressor. And as what he added, when we look at the broad purposes of criminal legislation, we may safely declare that this statute was not intended to apply to cases of self-defense.

Justice Handy who had indirect knowledge that the Chief Executive will not grant clemency to the defendants should they be found guilty, appealed to public opinion and believed the defendants should be pardoned. Taking into account the publicity of the given case in national and international media as well as the polling data which shows that more 90% of the people believed that the men on trial should be pardoned. It is therefore very clear where the public stands is in this case.

Moreover, Justice Hardy does not believe in going against what the people want and takes on the populace appeal standpoint to preserve the accord between the judiciary and public opinion.

Some judges also raised the issue of judicial usurpation that whenever a court gives the meaning of its words that is not at once apparent to an

ordinary reader who has no better knowledge of the statute closely or examined the objectives it seeks to attain. Judges oftentimes resolve a case that is based on the plain meaning of the law disregarding the spirit of the law. We believed that in the case of the Speluncean Explorers, we should apply the spirit of the law.

Justice Handy further contend that government is a human affair, and that men are ruled, not by words on paper or by abstract theories, but by other men. He believed that when a ruler understands the cry the sovereign people, the government is ruled well but when that understanding is lacking, it is ruled badly. We agree with Justice Foster's contention because in the first place, law is made by the people and for the people. What would be the sense of the law if it is against the feelings of the masses? If we are to preserve between ourselves and public opinion a harmonious relationship, then we must consider not only what the law provides but also its effects to the masses.

Justice Handy stated that this is a solution that has more or less dominated our discussions and which the Chief Justice proposes as a way by which we can avoid doing an injustice and at the same time preserve respect for law. Judges in deciding cases should also not focus on their own interpretation of the statues because as what Justices Handy stated, they may get lost in the patterns of their own thought and forget that these patterns often cast not the slightest shadow on the outside world.

We are also one with Justice Handy that as we grow older, we become more and more perplexed at men's refusal to apply their common sense to problems of law and government, as in this truly tragic case of the Speluncean Explorers.

IV. ARGUMENTS

- **Necessity**

According to Justice Truepenny, the jury and trial judge dealing with the extraordinary case mentioned above followed a course that was not only fair and wise, but which was also the only course that was open to them under the law. The language of the statute in this present case permits no exception, setting aside sympathies which may incline the jury or the trial judge to make an allowance for the tragic situation in which these men found themselves.

Justice Truepenny's main argument is that the statue under scrutiny is not ambiguous and is plainly stated for applying the law rather than interpreting the law. At the face value, the language of the statute applies directly to what the defendants did to Roger Whetmore. Therefore, it leaves no room for doubt that following the existing law, it is only right to punish the defendants. Also, there is no question into the matter that the men on trial "willfully" took the life of Whetmore. It is an admitted fact that they did.

Furthermore, Justice Keen also believes that we now have a clear-cut principle, which is the supremacy of the legislative branch of our government. From that principle flows the obligation of the judiciary to enforce faithfully the written law, and to interpret that law in accordance with its plain meaning without reference to personal desires or individual conceptions of justice. Justice Keen also takes on a Positivists stand when he stated that it is not the court's duty to decide the morality side of the case, for it is not up to the court to decide what is "right" or "wrong".

In the same respect, Justice Kozinski also believes that the statute under which defendants were convicted could not be clearer. It provides that whoever shall willfully take the life of another shall be punished by death." These words are not unclear or ambiguous, and they leave no room for interpretation; they allow for no exercise of judgment. In these circumstances, a conscientious judge has no choice but to apply the law as the legislature wrote it.

Same as the three (3) Justices' mentioned above, Justice Sunstein also finds no ambiguity in the statute in its statutory terms. He therefore states that when text is clear, resort to purpose can be hazardous. He further states that the purpose of any statute can be defined in many different ways and at many levels of generality. And where the statute is not ambiguous, we must do our best to follow its terms, at least when the outcome is not absurd.

From Justice Sunstein's Textualists standpoint, he supports the conviction by noticing no absurdity will result to read the statue as such. The only reason to go against the reading of the text that supports the reading of conviction and death according to Justice Sunstein, is if the reading of the text produces conflicts or absurdities in the nature of law. In this case, no conflicts of law nor absurdities were produced from reading the law in its textual way. Therefore, the conviction of death must be upheld.

A. Unclear and Ambiguous Law.

The law is not clear because if it is clear, then willful killing by the executioner and the policemen to name a few will therefore qualify as murder and thus may result also to a punishment of death sentence. However, this is not the case because the law itself does not say so. As

what Justice De Bunkers believes, the defendants acted lawfully because the legislature did not specifically prohibit the killing and eating of someone under these circumstances. Under the rules of statutory construction, what is not expressly prohibited is necessarily allowed. The prohibition of the law in this case is generic and these general prohibition against willful killing is not enough. We should note that if the literal meaning of the statute is unclear, then we should resort to the spirit and purpose of the law. And the purpose of the criminal law in this case is to deter the commission of homicide or murder. But the crime here is non-deterrence. Hence, it is not applicable in the case at bar. The application is nor clear that the statute would apply, for example, to a police officer (or for that matter a private citizen) who kills a terrorist to protect innocent third parties - whether or not there is an explicit provision for justification or excuse in those circumstances.

According to Justice Sunstein, where the killing is willful, but necessary to prevent a wrongdoer from causing loss of innocent life, a mechanical or literal approach to this statute would make nonsense of the law. He added, a statute of this breadth creates a risk not of ambiguity, but of excessive generality - the distinctive sort of interpretive puzzle that arises when broad terms are applied to situations for which they could not possibly have been designed and in which they make no sense. He concluded that when the application of general language would produce an absurd outcome, there is a genuine puzzle for interpretation, and it is insufficient to invoke the words alone. And, the time-honored notion that criminal statutes will be construed leniently to the criminal defendant strengthens this point.

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Justice Sunstein believes that the victim's consent was withdrawn before the dice were thrown. And that the victim expressly said that he did not wish to participate in this method of deciding who would live or who would die. Therefore, if there was no consent to participate in the process by the victim, Roger Whetmore, then it can be said that it was an unconsented death. When that happens, the answer becomes clear that those who killed acted in violation of the statute.

B. Agreement and Consent Exempts Criminal Liability.

It was Roger Whetmore who first proposed the casting of lots. Other members of the group were reluctant to adopt such a desperate procedure at first, but after the radio conversations they had with physicians in the rescue camp and the threat and fear of their impending death, they finally agreed on the plan proposed by Whetmore and after much discussion of the mathematical problems involved, reached an agreement on the method of determining the issue by the use of the dice that Whetmore happened to have with him.

It is important to note that although Whetmore expressly declared that he wanted to withdraw from the/ arrangement at the start, he in the end nonetheless gave his consent and agreed to participate in the casting of lots when he expressly declared that he had no objections whatsoever to the fairness of the throw that was casted for him by one of the members of the party.

In a German case, Armin Meiwes, also known as the Rotenberg Cannibal, had an undesirable need for consuming human flesh since he was eight years old. As he grew older and his loved started to leave him his desire for consumption of human flesh grew as well. In his forty’s, he eventually met Bernd Brandes after Meiwes advertisements in the internet and eventually ate Mr. Brandes as stated in the facts Mr. Brandes gave his

consent to eaten and the court accepted it and only charged with Meiwes with five (5) years imprisonment for murder on demand but not on cannibalism. Which was then appealed and changed into life sentence but not death penalty.

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According to Justice Tatting, the statute concerning murder requires a "willful" act. The man who acts to repel an aggressive threat to his own life does not act "willfully," but in response to an impulse deeply ingrained in human nature. Therefore, the said excuse of self-defense cannot be applied by analogy to the facts of the present case. Since the defendants according to him acted not only "willfully" but with great deliberation and after hours of discussing what they should do.

In the case of Commonwealth v. Valjean, the defendant was indicted for the larceny of a loaf of bread and his approaching starvation was offered as a defense. However, the court refused to accept the defense given. Hence, according to Justice Tatting if hunger cannot justify the theft of wholesome and natural food, then how can it justify the killing and eating of a man?

According to Justice Keen, in dealing with the statute and the exception, the question does not lie in the conjectural purpose of the rule, but its scope. The scope of the exception in favor 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. With that said, it becomes clear that the present case does not fall within the scope of the exception, since Roger Whetmore made no threat against the lives of these defendants, therefore their acts cannot be justified on the basis of self-defense.

Furthermore, Justice Easterbrook believes that allowing a defense of necessity creates a risk that people may act precipitately, before the necessity is genuine. Moreover, allowing a defense of necessity creates a second hazard: the very existence of the defense invites extensions by analogy to situations in which criminal liability should not be defeated.

C. Doctrine of Necessity

We believe that the doctrine of necessity will apply in this case for the reason that it is necessary for the defendants to consume the flesh of one of the members for the purpose of self-preservation. Moreover, the law has long recognized justifications when such actions are "necessary" to prevent a "greater harm." As clearly stated in Justice De Bunkers arguments, academic opinion is divided, and the weight of the American Law Institute is on the side of not limiting the defense as long as the killing is necessary and results in the saving of more innocent lives than are taken. The American Law Institute cited that "The principle of necessity is one of general validity.... It would be particularly unfortunate to exclude homicidal conduct from the scope of the defense. For, recognizing that the sanctity of life has a supreme place in the hierarchy of values, it is nonetheless true that conduct that results in taking life may promote the very value sought to be protected by the law of homicide. Suppose, for example, that the actor makes a breach in a dike, knowing that this will inundate a farm, but taking the only course available to save a whole town. If he is charged with homicide of the inhabitants of the farm house, he can rightly point out that the object of the law of homicide is to save life, and that by his conduct he has effected a net saving of innocent lives. The life of every individual must be taken in such a case to be of equal value and the numerical preponderance in the lives saved compared to those sacrificed surely should establish legal justification for the act. So too, a mountaineer, roped to a companion who has fallen

over a precipice, who holds on as long as possible but eventually cuts the rope, must certainly be granted the defense that he accelerated one death slightly but avoided the only alternative, the certain death of both. Although the view is not universally held that it is ethically preferable to take one innocent life than to have many lives lost, most persons probably think a net saving of lives is ethically warranted if the choice among lives to be saved is not unfair. Certainly, the law should permit such a choice."

Justice Easterbrook in his argument cited the risks of using the doctrine of necessity. First risk, allowing a defense of necessity creates a risk that people may act precipitately, before the necessity is genuine. Thus, if the law allows a starving mountaineer to break into a remote cabin as a last resort to obtain food – if, in order words, necessity is a defense to a charge of theft – it creates a risk that wanderers will break doors whenever they become hungry, even though starvation is far in the future. The parallel risk is that a hungry and poor person surrounded by food may decide to bypass the market and help himself to sustenance.

These risks are addressed by the rule that the evil must be imminent and the means, well, necessary; the departure from the legal norm must be (as with self-defense) the very least that will avert the evil. United States v. Bailey, 444 U.S. 394 (1980), employs this understanding to conclude that a prisoner under threat of (unlawful) torture by the guards may defend against a charge of escape by asserting that the escape was necessary to avert a greater evil, but the prisoner loses that defense if he does not immediately surrender to a peace officer who will keep him in safe custody. Second, allowing a defense of necessity creates a second hazard: the very existence of the defense invites extensions by analogy to situations in which criminal liability should not be defeated. That risk is met by the rule that all lawful or less hazardous options must first be exhausted.

A prisoner must report his fears to the warden before escaping; and if the warden does nothing, the prisoner must escape rather than harm the guard. United States v, Haynes, 143 F.3d 1089 (7th Cir. 1998), which held that a prisoner who poured boiling oil over his tormentor rather than trying to flee could not assert a defense of necessity, illustrates this approach. The difference between a mountaineer case, in which breaking into a cabin is permitted, and Commonwealth v. Valjean, which held that a poor person may not steal a loaf of bread from a grocer, is that the poor person could negotiate with the grocer, or get a job, or seek public or private charity. A mountaineer who lacks other options to find food and cannot negotiate with the cabin's (missing) owner, may break into the cabin because that is the last resource; theft is a lesser evil than death, though not a lesser evil than working.

In the case of Queen v Dudley and Stephens, Thomas Dudley, Edward Stephens and two other gentlemen, Mr. Brooks and Richard Parker were cast away in a storm on the high seas and was compelled to put into an open boat that had no supply of food or water. After the group had been without food for seven days and without water for five days, Dudley and Stephens, the defendants spoke to Brooks about sacrificing the victim, Parker to save the rest. Mr. Brooks disagreed, and the victim was not consulted. Dudley suggested that if no vessel was in sight the next morning that they would kill the victim. The next day no vessel appeared, so Dudley with the concurrence of Stephens killed the victim. The three remaining castaways fed upon the victim, Parker for four days at which time a passing vessel rescued them. When they returned to England, Dudley and Stephens (but not Brooks) were charged with murder. In what was known as a "special verdict", the jury set out the facts of the case. They found that there appeared to Dudley and Stephens every probability that unless they killed the boy, or one of

themselves, they would die of starvation.

This case is very similar to the case of the Speluncian Explorers wherein the parties resorted to cannibalism in order to survive their present circumstance and in the act of self-preservation when no food and water was available. The Doctrine of Necessity was also used in the said case as a defense. But while the two sailors were sentenced to death, it was afterwards commuted by the Crown to six months' imprisonment, due to a public outcry.

In the case of *United States v Holmes*: On March 13, 1841, the William Brown left for Philadelphia; had 17 crew and 65 passengers mostly Scotch and Irish emigrants on board. On the 19th of April, 250 miles southeast of Cape Race, Newfoundland, the ship struck an iceberg at ten (10) in the evening. The captain, second-mate and seven other members of the crew plus one passenger clambered into the jolly boat and 41 persons rushed willy-nilly into the long boat having 32 passengers and 9 crews remaining on board. Within almost two hours of the accident on the iceberg, the ship went down, and 30 passengers went down with the ship when it sank, mostly children were left behind.

On the next day, the captain ordered a mate, Mr. Holmes, to take charge of the long boat before the two boats parted company; between the long boat and the jolly boat, the longboat was in fairly good condition but it had not been in the water for a long time, which resulted to it leaking, and caused people on the boat to panic. Moreover, the boat was crowded, and people were starting to doubt its capabilities of holding because of the weight of the passengers. The situation became one for desperate need for survival, which resulted to the crew pushing passengers out of the boat to lessen the weight without battling an eye, even if the passenger was a child.

Several passengers who survived that fateful Tuesday night filed a complaint against the crew with Philadephia's District Attorney. Holmes, who was the only crew member then in the city, was arrested and charged with the murder and was convicted of the lives that were thrown.

"One man decided the fate of the others, no dice were cast or lots drawn."

In the case of the Speluncian Explorers, the defendants present were in a desperate situation to live being trapped inside the cave for more than a month and all agreed that one of them must be sacrificed for "self-preservation". A dice were casts and consent were present while in the case of U.S. v Holmes, one man decided the fate of other without consenting on whether they are fine with the idea or not on the grounds of murder and was convicted.

On the case of the Speluncian Explorers, the killing of Roger Whetmore were inside the boundaries where a dice were cast, an awareness between the people who were present and the intent of commencing an act on the means of "self-preservation" were all present. We disagree on the punishment of death by hanging on the defendants for there was a said agreement.

In fairness to Holmes, it should be noted that the facts of the case did not offer a defense to draw lots and one man decided the fate of the others without consenting others.

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According to Justice West's opinion on the case at bar, is that the legislature here could not have passed a statute authorizing the killing of Roger Whetmore under the circumstances, because to do so would have

posthumously withdrawn from Whetmore the right to equal protection of the laws. Presumably, she also believes it would have been a denial of equal protection for the Attorney General not to prosecute the defendants or for the Chief Executive to grant them a pardon, because each of these actions (or inactions) would deny Whetmore (and future Whetmores) the protection of law when they need it most.

Justice West's argument is the purpose of the law, is not contract, but the protection of rights, which is the right to equal protection under the law. The enjoyment of equal protection by the state from the private aggression of others - particularly homicidal aggression - is the essence of what distinguishes a society living under the rule of law from a society living under the whimsical dictates of a state of nature. The point of the rule of law is essentially to create and then protect the individual's right not to be so treated and to sanction he conduct of the group or individual who attempts to do so.

D. Equal Protection Clause

The point of law is to protect all, equally, against the wrongful private aggression of others. Indeed, it is only within the umbrella of such equal protection and the individual rights that guarantee it that contractual freedom and contract law yield any benefits at all. If the purpose of the law is to protect all, then why can't the court give equal protection to the defendants in this case.

As pointed out by Justice West in his argument, the defendants are surely right that contract, and the protection of social gain that it facilitates, is at the center of a great deal of our law but that body of law is only intelligible once the more fundamental right of equal protection against private assault is secured. To quote his argument, "an individual may exploit his natural talents and strengths in whatever way imaginable in securing gains through contract. What he may not do is exploit his strength – whether the source of that strength be a natural inheritance, a cultivated talent, or the strength of numbers – in such a way as to violate the rights of others. The most central of those rights is, unquestionably, the right not to be killed, consumed, enslaved, or violently attacked for the benefit of his brothers. The individual has the right to expect the state to protect him against exactly this form of exploitation."

He added that "more important, if less obvious, than the limits on contract that are implied by the priority of the individual's right to protection against violence, are the limits this principle places on actions or inactions of the state. A state may not decide, for good reasons, bad reasons, or no reason, simply to withdraw its protective shield from the vulnerable lives of some individual or group, leaving that individual or group to the mercies of his or her stronger co-citizens. Nor may a state decide not to extend its protection. A state may not decide, for example, to proceed with the execution of a wrongly accused criminal defendant out of the belief that such an execution might prompt a serial killer to stop killing children. Even if such a belief is fully justified – even if the state knew that the true killer would in fact stop killing after the execution in order to reinforce the false societal belief that the correct killer had been identified – such an execution of an innocent person would nevertheless be an intolerable violation of the accused's right to equal protection of the law. Nor may a state decide not to protect a particular group – for example, poor people who live in dangerous neighborhoods – against private violence and aggression, even for the reason that to provide such protection threatens an exceedingly high number of policemen's lives. Nor, of course, may a state decide not to protect a subgroup – a racial or sexual minority, for example – against

violence out of a habitual, unconscious, or calculated attempt to enable a favored group to secure the exploitative gains or benefits that might follow from a withdrawal of such protection. Such scapegoating is inimical to the system of rights that is at the heart of our rule of law. Indeed, it is no exaggeration to say that the core meaning of the rule of law is precisely that scapegoating – whether for noble or ignoble reasons and whether prompted by state or private calculations of benefit and loss – is paradigmatically illegal. As citizens of a society governed by the rule of law, we should not deny to any individual or group of individuals the state's protection against private violence in situations in which that violence is intended to secure benefits to – or even the survival of – the favored. All individuals have the right to be protected against violence, including violence that is premised upon the moral calculation that the sacrifice will save more lives than it will stake."

Therefore, the negative side finds no merit on this case and is not necessary to convict the defendants of the crime of murder and thus, the defendants should be acquitted and not face a mandatory death sentence.

- **Beneficiality**

A. To the working men who sacrificed themselves to save the explorers and to their corresponding families

Not punishing them with death penalty by hanging would give meaning to the men who had sacrificed their lives to get these explorers out of the cave, including Whetmore. To further elaborate the argument, let us bear in mind that ten working men had been killed in the process of removing the rocks that covered the cave due to the landslide, they did everything they could just to save these men who had been trapped in the Limestone cave for almost a month. Thus, convicting these explorers to death would make the sacrifice of the said men useless. Their efforts would be rendered meaningless. They would leave their family with nothing, only heart ache and despair. Moreover, these men will be considered heroes; and their families would be given honor, and their sacrifice would be talked about for many generations. One of those who imparted her opinion was the Stupidest Housemaid, a family member of one of those men who died, stated that the government sent the families a plaque commemorating the sacrifice of true and faithful servants. This means that the government considered these men as heroes.

Furthermore, not convicting the defendants with death penalty would greatly benefit the explorers themselves as their lives would be spared, they wouldn't have to go through another horrible situation wherein their lives would be put on the line. According to Justice West, the explorers took desperate measures in order to survive given the desperate circumstances that they were in and that they have already suffered tremendously from their ordeal, this view is also supported by Justice Keen.

Although Justice Keen affirmed the decision of the court in the end which was to hang the explorers, however, it is important to note that in his capacity as a private citizen he believed that these explorers have already suffered more than enough to pay for any offenses that they may have committed. Penalizing the explorers to death when they have already been through a lot is like putting salt to the wound, and makes the difficult situation even worse, than it already is.

B. It promotes social welfare and utilitarianism

The four defendants used "necessity" as justification for their actions. According to Justice Easterbook, society should recognize the agreement made between the explorers when they were trapped inside the cave, such that it promotes social welfare, through the use of the necessity defense. The defense is about making decisions, in spite of it being hard, for the sake of the survival of the majority. Like other lesser-evil justifications, necessity is openly utilitarian. And as Justice Tatting supposes, "self-defense may reflect uncertainty about the ability of the law to affect conduct by those imminent fear of death." In this present case, all of five explorers were in great danger, with death looming in the horizon. And the people, namely the rescuers, the physicians and other members of the rescue party confirmed that they were all likely to die of starvation before they were going be rescued. Given their situation, the explorers were left with not much choices, as their only chance of survival depended on the fact that they have to kill one of them in order to save four. Or for all of them to wait for their death, in which all five (5) lives will be lost.

Negotiation, actual or potential, offers a solid ground and sound basis for defense that promotes public welfare If a defense actually promotes public welfare, then people who are not yet exposed to the peril would agree that the defense should be accepted. Supposing the explorers had stopped on their way to the cave to discuss what they would do in case they become trapped for certain they would choose or opt to wait as long as possible for recue to come. However, in the case when the recue party should come late it would not be impossible to fathom that they would think to consume one of their members in the event of starvation.

Given the circumstance, it therefore follows that the explorers would prefer the agreement that they made which each other that which would increase their chance of survival. This case should be likened to a group of rock climbers who agree to rope themselves together when scaling or descending mountains and cliffs, while on one hand the rope may save a life by stopping ones fall, they also face the risk of getting dragged down with the other when one slips by agreeing to rope up each member exposes himself to a chance of death in case one of their members mess up or make a mistake in exchange of the protection he receives from his own errors. Each member accepts the risk of death to reduce the total risk that they would face. Furthermore, each member agrees that in case one's fall threatens the lives of the others, the rope may be cut down in order to save the majority. What happened in the cave after the landslide is similar to the case mentioned above, one had to be sacrificed so that others could live.

In a nutshell, the explorers agreed that the death of one was a lesser evil than the death of five. And this established the principle of mutual protection by individual sacrifice amongst them.

C. Serve as a call to the legislative to act

Situations such as these are reoccurring, for example in the case of "self-defense and defense of others in Jewish law: the rodef defense" wherein at the time of the Nazi holocaust of the WWII, a group of Jews who were hiding from the Nazi's killed a crying baby to prevent the Nazi's from discovering their hiding place and subsequently killing them all. The vast majority of comparable cases resulted in acquittal or decisions not to prosecute the defendants or the accused, or they were pardoned.

According to Justice Easterbook, the legislature in a civilized society could have written a clear, positive law explicitly prohibiting starving people from killing one of their number in order to save the rest. That is, if they had any intention to deem the act of the defendants be prohibited by law. And since similar cases are reoccurring and therefore not unique, the State could have easily enacted laws that would prevent such acts from happening. The actions committed by the defendants was not something new that it would be impossible for the drafters to not have any knowledge about it. Therefore, provisions of law could have been easily provided and enacted against the acts of the defendants, had they so wished to, but alas, they did not. In order to prevent similar situations from happening in the future, the legislature could also begin to enact laws to address this problem.

D. Court can decide whether necessity defense is part of law

This situation gave the court the opportunity and the power to decide whether the necessity defense could be or can be part of law, as well as set the necessary parameters thereof. This will serve as a precedent and shall therefore guide the court on how to decide a case that are similarly classified in the future.

- **Practicability**

A. Common sense

In every rule there is always an exception

This widely accepted maxim in the application and interpretation of law is a proof that common sense has vital role in making laws realistic. Exceptions are employed because codified laws cannot simply include all the possible scenarios. In system of application of laws, Judges are not only obliged to apply the literal meaning of the black letter, but more importantly the logic and the common sense behind every enacted law.

Justice Handy clearly elaborated this point when he said that the case should be decided on practical wisdom and human realities, and not on an abstract theory and that the men are ruled, not by words on paper or by abstract theories, but by other men. They ruled well when the rulers or legislators understand the feelings and conceptions of the masses. The mere fact that widely law observes exceptions in its applications solidifies this claim.

The exceptions are not employed without reason. One can infer that these exceptions, which are clearly stipulated in the black letter laws, emanate from the wisdom of the legislature. Thus, common sense or what we can also call as practical wisdom is the basis in creating and enforcing laws.

All of us, situated in this honorable chamber, will surely agree that in order for laws to be effective and efficient in maintaining a peaceful and prosperous community laws should be practical and realistic. The intricacies and complexities of human affairs tell us that having all possible circumstances covered by a codified black letter law is plainly impossible. Allowing the judiciary to interpret the law in favor of the justice and equity is simply practical.

Rule of Law, therefore, rule of practical wisdom

If laws are based on practical wisdom, then in upholding the rule of law, one is not just employing the meaning of the black letter laws, per se, but, clearly, the practical wisdom behind the creation and the ratification of such law.

Therefore, if we abandon practical wisdom in deciding circumstantial cases, such as the case at bar, we do not only abandon the rule of law, but also the very essence of the existence of law, which, in the words of Justice Foster, is the preservation of humane and civil coexistence of men.

If we look into the situation of the defendants keenly, we can say that there the primary concern of the imprisoned community of five individuals was to survive. Man, at such point whereby its very existence is endangered, is designed to ingeniously employ the common sense ingrained to him by his Maker just to survive.

It is crystal clear that such category falls squarely to the case at bar. The defendants' act, which is found to be criminal and unjustifiable by the by the Court of General Instances of the County of Stowfield, was justly employed to avoid an impending greater disaster, which, in this case, all of them will die if they did not consume the flesh of one of their members. The rescue efforts, which cost the government of Newgarth ten lives of its rescuers, and by standards of practical wisdom, which the statutes are based on, the said result would surely be judged futile and pointless.

Furthermore, let me elucidate you as to why it practical to acquit the defendants. First, how can you impute individuals, who, collectively, took the only possible action that could preserve their lives, in the absence of any other option.

Common sense dictates man to enter into social contract

Under the Social Contract theory, man, under the state of nature, has enters an agreement amongst each other in order to preserve life and property. The pact which the explorers entered into is classified to be Pactum Unionis type of agreement, under social contract theory, whereby man sought to preservation of his life by adhering to mutual respect and good faith to live harmony as a community.

Thomas Hobbes, one of the first modern philosophers, adhered to the concept of contract as means of self-preservation. In his work Leviathan, Hobbes argued that self-preservation, which the law of nature, induced man to seek and follow harmony, and keep faith in doing so.

Thus, as Hobbes argued, self-preservation is an inherent reflex to every sane person and must be deemed sensible. Self-defense, an act which conforms to the man's nature of self-preservation, is considered to be a justifiable circumstance. Hence, the court adheres to law of nature when it decides to acquit a person who needed to kill his aggressor in order to preserve his life. He will be acquitted by the fact that he is was simply acting out of the call of nature, which is to preserve his very existence.

The evidence that the self-preservation is widely accepted in the Commonwealth of Newgarth is fact that there was public upheaval of around ninety percent of the population who believed that the defendants should be acquitted. This corroboration from the public is an unarguable indication that the act is justifiable in human terms. In natural limitations known to man, or otherwise known as the application of common sense, such act is justifiable.

The citizens of Newgarth, upon consulting to the inherent concept of common inherently imbibed unto them, collectively, resigned to the fact that under the limited nature of the circumstance the defendants only acted out of necessity and not out of willful desire and intent to kill Whetmore, which is a vital element of murder.

Therefore, the explorers' act was done out of thorough consultation with their common sense and should be judged by employing the same common sense that sought to preservation of life, and not otherwise.

B. Consequence

The end result of the ordeal, which was to survive and come out alive, was the goal of the defendants in the commission of the act. Thus, it must be believed that they were certainly mindful of the consequences of their actions, which brings me to my second point.

It is, by law of nature, right to say that every action has its consequence. Thus, a mover of any action must be judge according to the consequence he had in mind upon the commission of such action.

In fact, consequence is an unequivocal consideration in act every legislation. The legislature by enacting death penalty, for instance, is indirectly dictating the actions of the citizenry. The institutionalization of death penalty serves as a deterrence.

This is an observed principle in law, wherein legislative intent is after of the effect or the consequence of an enacting a law. Consistent with such principle of consequence employed by the legislature, the defendants deliberately committed the act with the belief that the such undertaking will yield to a 'lesser evil' result.

If the honorable court will decide in convicting the defendants and thereby sanction to impose death penalty on them, the result would be, without any doubt, impractical and unsound decision if we look at the bigger picture of the ordeal that the defendants, the judiciary, and the State of Newgarth is facing.

The defendants have been greatly traumatized by the experience of eating the flesh of their co-explorer just to survive. Certainly, that was a disdainful act for them. However, they were just forced to do so, as it was the only option possible under the natural limitations present at time of the commission of the act.

Furthermore, imposing the capital punishment on them is deemed impractical as ten lives of rescuers, resources, and efforts of the Newgarth government were sacrificed just to save them. In the end, provided that they were hanged, all the efforts gained nothing.

The State of Newgarth is only left with bodies of rescuers and criminals to bury. All of the families involved, such the families of the rescuers who died, family of Roger Whetmore, and families of the surviving, but are going to be hanged by the state, are going to end the ordeal with a burial.

And most importantly, the death of Roger Whetmore would turn out to be futile, contrary to his envisioned result when he proposed the controversial plan with his co-explorers. An action that will result to a total loss is, undoubtedly, impractical.

Therefore, if there are lives that could still be salvaged, if we have and still can, then we should. As that is the essence of government's act to employing law, which to secure the life, liberty, and prosperity of its people.

V. THE CONCLUSION/PRAYER FOR RELIEF

After analyzing the arguments with regard to the killing of Roger Whetmore, we concluded that the defendants be acquitted. As what Justice Keen said, the sole question before us for decision is whether these defendants did, within the meaning of N. C. S. A. (N. S.) § 12-A, 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." If we sentence these defendants to death, are we not willfully killing them also? Then, what would be the difference of the killing Roger Whetmore and killing these defendants by execution. You see, this law is ambiguous. We cannot just state that it is the law so everyone must abide when clearly even our laws are unclear. Even the justices go beyond the meaning of the law and not relying on its plain meaning. Justices oftentimes consult precedents to decide a case. Justice Foster clearly explained it when he said that 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.

When we are in a state of dilemma and we're left with no choice, isn't it that we will do everything we can just to survive? Even Sunstein, J. admittedly said that the victim was not a wrongdoer, and he did not threaten innocent persons in any way. His death was necessary only in the sense that it was necessary to kill an innocent person in order to permit others to live, in other words, for self-preservation. This case is rare that although some justices compared this to previous cases, there is actually no exact case that could be used to rule on this matter.

We are with Justice Foster when he said that he does not believe that the law compels the monstrous conclusion that these men are murderers and that the enacted or positive law of this Commonwealth, including all of its statutes and precedents, is inapplicable to this case, and that the case was governed instead by what ancient writers in Europe called the "law of nature" which were already explained above.

Ten (10) lives were already lost in the process of rescuing these men. If we might ask as per Justice Foster, did not the engineers and government officials who directed the rescue effort know that the operations they were undertaking were dangerous and involved a serious risk to the lives of the workmen executing them? Ten lives had already been sacrificed to save the lives of five imprisoned explorers, why then are we told it was wrong for these explorers to carry out an arrangement which would save four lives at the cost of one?

Justice Tatting even said that putting these men to death is absurd when their lives have been saved at the cost of the lives of ten heroic workmen. He added that if we had a provision in our statutes 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, even Justice Tatting said that it would have been wiser not to have indicted these men at all. As what Justice Keen said, these men deserve to be pardon altogether, since they have already suffered enough to pay for any offense they may have committed. Therefore, with all these arguments, we conclude that the defendants should be acquitted.

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