

Interpretation of the contracts



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I Lon Fuller's *The Case of the Speluncean Explorers* is a hypothetical case, a thought experiment composed of perfect scenarios presenting jurisprudence of different schools. The 14 judges argue against each other with various legal grounds to acquit or convict the defendants. Their disputes dominantly focus on three points. The first issue is whether or not a judge should discriminately apply the letters of the law, and whether or not discretion is allowed in order to achieve legal purpose. Then comes to the dispute about if contract theory can stand in this case and how this contract should be understood.

The third point lies in necessity defense which some judges hold to acquit the defendants. In light of the history of Newgarth and the peculiar context in the explorers' story, contract theory stands out among all these disputes. The plots in this case are so well organized as to satisfy all possible legal discussion. The most fundamental elements in this case are summarized as follows: 1. This state was founded by survivors after a natural calamity, the Great Spiral, based on a social contract. 2. Five explorers including the killed Roger Wetmore were caught in a cave with insufficient food to sustain them until rescue.

And their health condition and the environment had been thoroughly assessed by experts outside. Those five explorers consulted if they could kill a person for food, but received no advice. 3. It was Roger Wetmore that initially proposed that they tossed to decide who should be killed for food. Before enforcement, Wetmore changed his mind, suggested to postpone the plan aforesaid but encountered the objection of the rest four explorers, one of which eventually tossed on behalf of Wetmore with his acquiescence.

II Justice Foster first proposes the idea of contract in this case, and he takes the view that all statutes and judicial precedents are inapplicable here and that this case is instead governed by “ the law of nature”. His ground rests on a premise that positive law is predicated on the coexistence in society, and the defendants were not in a “ state of civil society” but in a “ state of nature”. Justice Tatting strongly opposes the proposition of “ state of nature”, because he thinks there is no sign of a shift from “ the state of civil society” to “ the state of nature”.

Besides he believes the judges of this country have not been authorized to exercise the law of nature. Second, Justice Tatting points out that the law of nature proposed by Justice Foster is odious as the law of contract is stronger than the criminal law in that legal system. It is almost a universal principle that contract law is limited to private benefit and is invalid when it violates public interest. Justice Springham revises partly the opinions of Justice Foster and agrees with him mostly. Springham restates the legal principle that law should be suspended if applying it serves no end of the law.

Additionally he declares that people no longer have obligation to the law when contractual foundation is absent, which can be regarded as a necessity defense. In the last part Justice Bond shows his support for the contract theory since he believes in the sufficiency of contract to establish a sovereign state at least in the Commonwealth of Newgarth, and furthermore he holds if Foster had lived up to the theory implicit in his phrase, “ new charter of government,” instead of adding a state of nature at the same time, Foster’s contract theory would not have encountered Tatting’s rhetorical questions.

III It is not difficult to conclude from above that among all propositions of Justice Foster “ the state of nature” is much criticized. Let alone Tatting, even Springham and Bond who support the contract theory here have some disagreements with Foster’s thesis on certain point. There is not any problem with the idea of the state of nature per se. Instead it is not acceptable to assume “ social contract” in the absence of “ the state of nature”.

Historically and logically a state of nature is the underpinning of social contract, or else any one could release himself by the form of social contract, which is unacceptable at the first sight with our common sense. Besides, after close scrutiny to the theory of social contract of modern times, the same conclusion can be reached that the “ state of nature” and the “ social contract” are inseparable. Typical scholars, such as Thomas Hobbes,

John Locke and Jean-Jacques Rousseau, inevitably discuss these two ideas when it comes to social contract. And in this case aforesaid the desperate situation where the defendants and Wetmore were in is a state of nature, which is a premise of a new social contract. When scholars of modern times mentioned the “ state of nature” they were referring to a survival condition prior to the establishment of a political state, and social contract the contract which people enter to establish such a political state.

But there were disparities among Hobbes, Locke and Rousseau. From the viewpoint of Hobbes the state of nature is horrifying and miserable and *Homo hominis lupus*. Hobbes wrote in *Leviathan* that: From the difference of one another, there is no way for any man to secure himself so reasonably as anticipation; that is by force, or wiles, to master the persons of all men he can so long till he see no other power great enough to endanger him: and

this is no more than his own conservation requireth, and is generally allowed (Hobbes 95) .

The state of nature in Locke's mind is comparatively nice, and he assumed that: To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man (Locke 192). Rousseau yearned for the state of nature, and he regarded people in the state of that as beasts, which acted out of biological instinct and became social men because of corruption (Rousseau).

In the natural state of Hobbes, men with considerable difference in strength and wisdom fight against each other for the insufficient resources (Hobbes). But in that of Locke, all men are induced inherently to love others, and natural resources far exceed the need and capability of utilization (Locke) . Thus there are no decent reasons of a war. As for Rousseau, he declaims that men in this state are simple and easily contented; hence they live in harmony (Rousseau). Theory of social contract has long been questioned due to its fictionality.

Alasdair Macintyre acutely pointed out that people claimed that men lived based on a certain social order in pre-society; that is a depiction of natural men with conceptions deriving from our social life (Macintyre). Fortunately in the present case, the foundation of Newgarth was actually on a contractual ground, which had set a solid justification for the application of social

contract. Thus in the situation of Newgarth, the nature of law has been clearly defined under social contract historically and logically.

Here the state of nature evidently refers to any condition where remedies in a civil society are unavailable and the contractual purposes of facilitating and improving men's coexistence are to fail by any means. That is to say, contract theory commences from natural state and suspends with the emergence of social contract. And that is the right situation the explorers had been in when they were caught in the cave. Justice Foster is the first one to get aware of that point. He holds that the explorers were in a state of nature where they were bound by natural law and drafted their social compact.

But the excessive judgments after this conclusion have messed up his original arguments. Justice Springham is a pseudo-proponent of social contract, who as a matter of fact has undervalued contract theory in that he mistakes contract theory as on the same level with necessity defense, which is actually on a lower level. However, Justice Bond has realized the paradox of Justice Foster and sticks to social contract thesis alone, which could not be exempt from such questions as if this compact was still valid when Wetmore regret.

It is inefficient of Justice Foster to acquit the defendants with the argument of natural state together with that of social contract. And the contract theory of Justice Bond incurs questions. From that we see the reasonable approach to apply contract theory in the present case, which is to stress state of nature without social contract. It is the case that “ state of nature” and “

social contract” are closely related in contemporary social contract theory. But a state of nature does not necessarily result in a social contract.

In this case it is irrelevant whether or not the explorers had formed a new compact, and it is again irrelevant whether or not this new compact is valid. Judges in this case do not have judicial power over issues beyond the law. Once it is declared that the explorers were in a state of nature they could be justly exclude form the jurisdiction of the Commonwealth of Newgarth. Purpose of law has been invoked by several judges to acquit the defendants. And dissenting opinions can be summarized easily as doubts about the real purpose of law.

However, these questions could be cleared up without too many efforts under the system of contract theory. In the contractual legal system of many countries, frustration of contract is applied as a means of remedy when for whatever reason it later becomes impossible to for one party to perform their obligations. And in many cases, if a contractual purpose is still possible to be fulfilled is a matter of discretion. Since the law of Newgarth derives from a social contract, it is spontaneous to consider the same mechanism when frustration of law occurs.