

Law and morality

Business, Decision Making



Law and Morality It is not an everyday occurrence that someone must decide the fate of another's life. The dilemma of making a decision that someone must die in order for the others to survive, can obviously be troubling. The process in which the termination of one's life may be easy to make, but to justify that decision is the most difficult one. This paper is given a situation in which a decision of taking one's life is essential. The situation is that a nuclear war has occurred, which has destroyed most of the centres of civilization. There are five people that are that have escaped death by finding their way to a nuclear bunker. These five people consist of a pregnant woman; an old man, who is a retired judge; two teenagers - a fourteen-year-old boy and a sixteen-year-old girl; and a young and healthy woman who is a doctor. They all have been there for fifteen days and they must remain there for an additional fifteen days before they can be rescued. The problem is that although there are five of them in the bunker, there is only enough food for four people to survive for the remaining fifteen days. Rationing the food will not be of any use, because all will die with such a plan. The only way for most of the survivors to live for the next fifteen days is for one to die. Somehow they have contacted an outside source to advise them on the questions of " Who shall die?", and " How should the decision of choosing the person be carried out?" These are all very difficult questions to answer, but something must be done. It is unlikely that someone will voluntarily allow someone to kill them so that the others may live, that is why another form of decision making must be allowed. The best way to do so is probably by that outside aid to suggest that they try drawing lots. For example whoever pulls the shortest straw is the one who dies. With no time

to procrastinate, this would seem the most time efficient and fairest way to choose who will die. Of course a reason must be provided to the person who had drawn the shortest straw, and that is the objective of this paper. This essay will explain how the decision will be made that will ultimately take one of the survivor's lives to save the remaining four people. From that explanation of the decision made, it will attempt to justify it. This paper proposes to explain and justify the decision by using legal tools such as Law and Morality, the Meta Rule, and The Doctrine of Necessity. The advice provided on how to carry out the unfortunate death of an innocent person may not be a "right" one, but perhaps it will be legally and morally justified. Law and morality play a large role here, mainly because there is a legal issue and a moral issue associated with the predicament. The reason law has a part in the situation is that after the decision is made, it will be examined legally and must be accountable for its consequences. Morality has its place too, because many will find it morally wrong to take one's life despite any justification. there is some connection between law and morality, but the two are clearly not identical. First, morality is only concerned with right or wrong, with the good and evil; law is concerned with lots of things on which there is no right and wrong - procedures for land registration, incorporation and so on. Second, morality is to some extent uncertain and a matter for each individual, law tries to be objective, written down in black and white and there for all to see. Third, morality often leaves things vague and subject to general principle, law goes into specifics. 1 From that description of law and morality, it is obvious how they relate to the issue here. When the time comes for one of the five people in the bunker eventually to die, it must be

legally justified. The reason for this is that murder is illegal, unless legally justified. 2 On the other hand, reasons for the killing must be provided to put to ease those who question the dilemma in accordance to morality. Since law and morality are equally important and both are evenly delicate when dealing with this issue, advising the survivors on what to do will not be easy. Pleasing everybody is impossible, whether it is examined from a legal viewpoint or a moral one. However, if the situation is analysed with both the law and morality issues in mind, there may be a chance that many will see some sort of vindication behind the decision to kill someone. One example that can probably create a good foundation to better explain the complexity of the given situation, is that of the case of R. v. Dudley and Stephens. A basic summary of the case is as follows: Thomas Dudley, Edward Stephens, another man by the name of Brooks, and Richard Parker, who was a boy in his late teens, were the crew of an English yacht. All four of them were cast away in a storm 1, 600 miles away from the Cape of Good hope. This boat was not supplied with any water or any food, except a few canned vegetables that lasted them a duration of three days. Being lost at sea, with no food or water, they needed to find some way to keep themselves alive so that they could live long enough for them to be rescued. Many days went by, and within that time they had not eaten or drank anything. Both Dudley and Stephens suggested to Brooks that someone be sacrificed to save the rest, Brooks disagreed, and they never told the boy of the idea. The next suggestion by Dudley and Stephens was that they should draw lots to see who should sacrifice their life to save the others, again Brooks refused and they did not let the boy in on the plan. Eventually the decision that if no

vessel were to come around the next day, they should kill the boy. This decision, yet again, came from Dudley and Stephens. Again Brooks disagreed and the boy was never consulted. A day passed and no vessel was in sight. Dudley went to the boy, who was sleeping, and killed him. They fed upon the body of the boy and drank his blood for the following four days when they were finally rescued. After being returned to shore Dudley and Stephens were brought to court, put on trial, and lastly sentenced to death by the court. This decision was eventually brought down to life imprisonment, but then they released Dudley and Stephens after six months.

3 The case of R v. Dudley and Stephens is very similar to that of the one being looked at in this essay. In both cases, each group of people do not have enough or any food to survive long enough to be rescued, someone must die in order for the rest to survive, and both situations have legal and moral repercussions. Both Dudley and Stephens had understandable reasons to kill the young boy in order to survive, and could have escaped being sentenced to death if they had done one thing, consulted the boy. By not consulting the boy, an argument can be formulated to prove that they should have never released Dudley and Stephens from their first sentence of death. The boy never consented to his life being taken away from him, but if he were consulted and provided a reason to why he must be killed then perhaps Dudley and Stephens could have avoided any type of punishment. It is probably safe to assume that the boy would have not wanted his life to be taken away from him, and Brooks obviously rejected all of Dudley and Stephens' suggestions, therefore it is apparent that some method of solving disputes was in order. So is the case with the five people in the bunker.

Although they are in a dilemma of who and how someone should be chosen to die. Unlike Dudley and Stephens, these five people were able to reach an outside source to aid them with their problem. First of all, this outside source can offer them a method of solving their disputes by administering the Meta Rule. The way in which the Meta Rule operates is as follows, " Disputes are resolved by the decision of one or more persons, once arguments from each side of the issue have been put." 4 An outside aid is ideal in such a predicament, because they can offer an objective review of the situation and listen to all the arguments made by those in the bunker; this a process that is called *Audialteramparten*, which in Latin means " to hear both sides." It is important that the decision-maker hear both sides and that the decision-maker also be a generalist. 5 The reason for this, is that by listening to both sides they can know all the concerns that the people in the bunker have, and by being a generalist they can be impartial to the situation, thereby making a rational and fair decision. By imposing the Meta Rule, this outside source can make a decision, and according to the Meta Rule, this must be carried out. Whether or not the decision is " wrong" does not matter, it is imperative and necessary that one be made to resolve the dispute of who, how, and why someone must die. The doctrine of necessity is a very important notion to this case, because it is necessary that someone die in order for the remaining four survive. " ' Necessity knows no law,' it is often said. In other words, you can't be held legally liable for an act you had to do." 6 This is what the people in the bunker must remember, and this will legally justify the decision to kill someone. Morally, whether the decision was " right" or " wrong," can be argued till the end of time, but there is no time to

accommodate a moral debate. All that is left to do now, is to draw lots and find out who is going to have to die for the others to live. " When the selection has been made by lots, the victim yields of course to their fate; or if they resist, force may be employed to coerce division." 7 As harsh as it may sound, if necessity has no legal standing in this situation, it should not stand in any other case. In other words, necessity has been used as an argument to justify one's actions in other cases and is accordingly justifiable in this circumstance. Making a decision on the situation without examining it with knowledge of law and morality, the Meta Rule, and the doctrine of necessity would make it even more difficult to find a rational reason why one of the five people in the bunker should die, let alone justify it. Law and morality illustrated how sensitive a situation such as this can be, and how difficult it is to make a pure legal decision when morals are a large part of everyone's lives. The Meta Rule showed that even when the courts are not present to facilitate a case, there is always another method of resolving disputes legally. Finally, the doctrine of necessity explained why some forms of action are necessary and must be taken and applied to a given condition. It is unfortunate that there are cases in which people, whether or not they know each other, must kill someone else to save their own life. It must be even more disturbing, rather than unfortunate, for a person to sacrifice their life for the welfare of another, nevertheless it is noble. Perhaps this goes to show that when it is absolutely necessary to kill someone in order to preserve one's own life, murder is always justifiable. Works Cited 1 Patrick Fitzgerald and King Mc Shane. Looking at Law: Canada's Legal System. 4th ed. (Ottawa: Tri-Graphic Printing Ltd.) 1994. Pg. 3. 2 Carleton Dept. Of Law Casebook

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