

Common Law 124, 131 (1984). To prevent a lesser-evil defense from becoming a license to perpetrate evil, the necessity must be powerful and imminent — again following the self-defense model. But the prosecutor did not argue that the speluncean explorers should have looked for another exit from the caverns, and the jury found that a committee of medical experts had informed the men trapped in the cave that if they did not eat, then there was “little possibility” of their survival until day thirty. The danger that a necessity defense would lead people to magnify (in their own minds) the risk they are facing, and to overreact, did not come to pass. On the facts the jury found, all five very likely would have died had they passively awaited rescue. They acted; four lived. Putting these four survivors to death would be a gratuitous cruelty and mock Whetmore’s sacrifice. The judgment of conviction must be reversed.

STUPIDEST HOUSEMAID, J.*

No superior wants a servant who lacks the capacity to read between the lines. The stupidest housemaid knows that when she is told “to peel the soup and skim the potatoes” her mistress does not mean what she says.

Supra, at 1858–59 (Foster, J.)

I. THE TRUTH

“O’yeah, O’yeah, O’yeah.” Now comes the “stupidest housemaid” to clean up the mess the white folks have made. Of course the convictions should be reversed. The stupidest housemaid don’t know nothin’ ’bout the rule of law. Of all the pretty things she’s seen in the Big House she ain’t never run cross that. But she knows what she thinks is right. That is the basis of her judgment. As it is the basis of all the other judgments as well. The housemaid the onliest one stupid enough to admit it. Maybe ’cause she got the least to lose.

They call these things opinions for a reason. In the stupidest housemaid’s opinion, the government should not stand a person on a platform, tie a rope around his neck, and then kick the platform out from under him. And invite guests to watch him vomit blood. In the first place, who but the stupidest housemaid gone be left to scrub the blood out the city square? She good at cleaning up white folks’ ugly messes, but it hard work and it take a long time.

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Second, what the point? The government should kill people to prove that killing people is wrong? It don't make no sense to the stupidest housemaid. She know she sposed to separate the punishment from the crime but she cain't. She shouldn't. And most importantly she don't have to. Because, for once, she the judge! And so she won't. The conviction is reversed because the stupidest housemaid think the death penalty is wrong. It so ordered.

But it ain't over. Doing day work in the courthouse the stupidest housemaid watches the judges in their chambers. She know they reach they decisions exactly the same way that she just did. They decide what result they want. Then they "interpret" the law to get that outcome. They "opinion" ain't nothing but a big fantasy to explain they climax. But the stupidest housemaid different: she a squirrel that go right to the nut. So she gone tell the truth about her decisionmaking process. She reverse the conviction cause she do not feel what the defendants did was wrong. Maybe if she did she could "interpret" an excuse for the government to break necks.

But she sposed to write an opinion! So maybe the stupidest housemaid try that analysis foreplay and see if it get good to her. Her fantasies good as anybody's. Look here.

II. THE ANALYSIS

First of all, the stupidest housemaid would like to thank God, without Whom none of this would be possible. A "crime" is an expression of the moral condemnation of the community, or at least the jury, or, at least in this case, the judge. On her knees the stupidest housemaid prayed to God. God answered "I find nothing to condemn. Haven't you read Exodus? I told Pharaoh to let my people go. When he would not, I killed all the firstborn sons in the land. That changed Pharaoh's mind right quick. So when I consider these spelunceans and how they dealt with the obstacle they encountered on the way to their own promised land, all I can say is you gotta do what you gotta do. If life is holy — and it is — it is better that one person died rather than five."

Having determined no moral culpability in the defendants' actions, the stupidest housemaid finds no practical reason to punish them either. Certainly there is no justification from deterrence. People who believe that they are going to die immediately will not be prevented from saving they own lives by the threat of dying ultimately. The stupidest housemaid knows that if she found herself in the position that the spelunceans encountered she would have grabbed a butcher knife and commenced to stabbing with the quickness. Most anybody would. In *Regina v. Dudley and Stephens*, 14 Q.B.D. 273 (1884), Lord Coleridge, considering a similar case, voted for conviction saying, "We are often compelled to set up standards we cannot reach ourselves, and

to lay down rules which we could not ourselves satisfy." How very traditional, to support a law with which one has no intention of complying. The stupidest housemaid says "later for that bullshit."

The remaining justification of punishment — incapacitation — fails as well. There is no need to incapacitate these men because hopefully they will have more sense than to go poking around caves again without taking the appropriate precautions. And if they do, they will assume the risk that they might meet the same demise as their lost brother Whetmore. The stupidest housemaid knows that the law cannot stop a billionaire from trying to fly around the world in a hot air balloon. Rich men gone do what they want to do, regardless of the consequences. And when they finally reach they goal, they gone be lauded as heroes.

Regardless of the losses. Were it up to her, the stupidest housemaid would forbid the government from sending workmen to rescue any explorers who find themselves lost due to their own folly. Here's a killing that would make a nice prosecution. Her brothers were among the ten who died to rescue the four who survived. And everybody having fits and conniptions about whether the four explorers should be punished for the death of the fifth speluncean. Ain't nobody uttering a damn word about whether the law should avenge the killing of the workmen. Oh the government sent the families a plaque commemorating the sacrifice of true and faithful servants. But the prosecutor explained the law didn't fit right around the concept of crime and punishment for their deaths. Seemed to the stupidest housemaid like the criminal law was made to protect the spelunceans, not the workmen.

There was, hundreds of years ago, another justification of punishment: rehabilitation. This justification died in the last part of the twentieth century, in part because of the Negroes: they were difficult and expensive to rehabilitate and it was pleasurable to punish them. Accordingly, there is no need to consider here whether rehabilitation would be an appropriate reason to punish the speluncean defendants because no jurisdiction, including Newgarth, now recognizes rehabilitation as an appropriate justification.

All right, how they end it? What is the magical incantation you supposed to put at the conclusion? Oh yeah, here it go: "For the foregoing reasons, the convictions must be reversed."

III. THE WHOLE TRUTH

Wheel! That was fun! Habit forming, even. The stupidest housemaid start to like the smell of her own shit. But for real, even her own words just a bunch of sound and fury, signifying nothing. Leastways they do not signal a rule of law. Because the stupidest housemaid knows that the rule of law is a myth, something rich white folks made

up to keep everybody else from taking they stuff. Poor and colored folks sposed to shut up when the law tells them they cain't have what rich people have. They sposed to believe it ain't the rich folks making up shit — it's the rule of law.

But the law can often be argued every which way but up. And when a judge decides a hard case all he doing is choosing the argument he like the best. Or sometimes choosing his own argument instead. If he chooses another result, that would suit the law just as well. So in any case it ain't no "neutral" decisionmaking. The judge chooses, not interprets, and he chooses based on the result he wants. And the Supreme Court of Newgarth ain't never gone choose law to favor the poor and colored folks — at least not to the point that the rich white folks' richness and whiteness is threatened. They might, if they feeling expansive, put a stupid housemaid on the Supreme Court. But rich white folks gone handle they business. They gone protect their interests.

So that why it works out well for some people that there just ain't no rule of law. But even if folks wanted to follow one rule to get justice in every case, they couldn't. Laws made by human beings ain't that smart. Including the Newgarth murder statute. The stupidest housemaid don't care what All Knowing Bell Curve Topping white man thought them up, thirteen words ain't gone hold the just answer to every case, and nobody can believe that they do. For example, soon as the stupidest housemaid read the words, "Whoever shall willfully take the life of another shall be punished by death," she think, "Oh good. Now some of these trigger happy cops riding 'round shooting black and Hispanic folks in the line of duty gone get they just deserts." Then come to find out that ain't what the law means. The stupidest housemaid asks, "ain't that what it say?" "Yeah," rule of law shout back, "but that ain't what it mean."

Oh. So how you sposed to know what it mean? That old cracker Justice Foster say even the stupidest housemaid know how to read between the lines. Sometimes Miss Ann say fetch me *B* when she mean fetch me *C*. You bring her *B*, your ass gone get whipped, and what Miss Ann actually said ain't gone make a damn bit of difference. So old man Foster right about one thing: when you the servant on the bottom, you better learn how to read the mind of the master on the top. It's a survival skill. And knowing what the stupidest housemaid know, ain't one police officer who kills in the line of duty ever gone be hanged by the government, even though that what the law call for. 'Cause the law don't mean what its words say it mean. It mean what the judge say it mean. And Hallelujah, Stupidest Housemaid the judge right now!

She not the only judge, however. The stupidest housemaid ain't got too much to say about the opinions of the other judges, 'cause, for real, they opinions don't matter any more than hers. Onliest thing

that matters is they votes. So what we got? Two judges say the government should break necks, and four say the government should not, leastways not no speluncean necks. The non-breakers of necks prevail.

It funny though — all these masters of the legal universe and they couldn't agree on whether shit stinks. But they all write so pretty. They all persuade the stupidest housemaid. They all right about the law. They all wrong about it too.

Justice Kozinski onliest one say follow the words of the statute, 'cause they "clear." *See supra*, at 1876 (Kozinski, J.). Okay, so after he kill the speluncean, he gone kill the executioner? He gone kill the police officer who shoots in the line of duty? He gone kill the self-defender? 'Cause the law tell him to? He imply he will, but the stupidest housewife say that's a damn lie.

Justice Sunstein say follow the law less the outcome so "peculiar and unjust" it seem "absurd." *Supra*, at 1884 (Sunstein, J.). Just how you sposed to know what is "peculiar" and "unjust" and "absurd" the good Justice don't directly say. He do say if you kill a terrorist to save the "innocent" that's cool, but if you kill a speluncean to save your ownself you go directly to jail. *See id.* at 1885, 1888. Ok. But then he add if you kill a speluncean as part of a plan that the speluncean agreed upon, then you don't go to jail. *See id.* at 1889. Well he say you might not. He say that punishment in that case "conceivabl[y]" would be absurd. *See id.* I guess it depend on what the judge decides. That's cute, but what it got to do with the rule of law?

Justice West be making up stuff also. She go on and on 'bout the beauty of the rule of law and how in this case it means those spelunceans should be convicted. *See supra*, at 1893–95 (West, J.). Then she have the nerve to add, "[h]aving rejected the defendants' contentions, it is nevertheless clear" to her that the spelunceans should not be executed. *Id.* at 1897. She pick and choose the parts of the rule of law she like. So to hang the defendants would be "unjust." Apparently we ain't sposed to measure justice by what the legislature decided — we sposed to have a hearing about "mercy." The stupidest housemaid feels Justice West's pain, but sisterfriend, let's be real: you doing politics and religion here, not law. So take a deep breath and put that rule of law baggage down — it will set you free.

Justice Easterbrook done discovered some contract the speluncean made to share risk. *See supra*, at 1916 (Easterbrook, J.). The stupidest housemaid looked all over the Newgarth law books, but she ain't found no contract exception to the murder law. Even so, Easterbrook say killing the spelunceans would be "gratuitous[ly] cruel[]." *Id.* at 1917. So I guess he calling his boys Kozinski and Sunstein — who voted to break the spelunceans' necks — "gratuitously cruel." Ironic thing is Easterbrook is the main one claim to be applying science to

reach his result. So it seem if Easterbrook gone talk about his boys, he should call them stupid, not cruel. But he right. Kozinski and Sunstein ain't dumb — they just mean. And when Easterbrook call them cruel, he simply proves the stupidest housemaid's point and does what all the other justices do: religion, not science. They use words like "absurd" and "unjust" and "cruel" as an excuse to do as they damn well please.

The stupidest housemaid could trash her own opinion just as well. She claim she totally opposed to the death penalty but then she cite God's offing the Egyptians to prove that killing ain't necessarily wrong. She claim she don't like the Newgarth punishment for murder, but she also say she tried to get it applied to the people responsible for her brothers' deaths. Stupidest Housemaid re-read her opinion and she think she out to lunch when she wrote that shit. But at least she open about her purpose. She never claimed she was doing anything but politics.

IV. NOTHING BUT THE TRUTH

So what it all mean? Two things about the law: it can be argued both ways in hard cases; and, in the hands of rich white men, it can be a real bitch. Take the Declaration of Independence and the Constitution of the United States. Please.

You want to see a rebuke to the principle of rule of law, just look right there. Declaration of Independence say "all men are created equal," The Declaration of Independence para. 2 (U.S. 1776), and Constitution say bring in all the niggers you want as slaves until 1808. Then stop and just breed them. See U.S. Const. art. I, § 9, cl. 1. Thomas Jefferson is writing about freedom and liberty and fucking his slave and selling their children. There are schools named after this man where they teach you about the rule of law. The Fourteenth Amendment say every citizen has the right to equal protection of law, see U.S. Const. amend. XIV, § 1, and in *McCleskey v. Kemp*, 481 U.S. 279 (1987), the Supreme Court say if some citizens receive the death penalty cause they black, what the hell can we do? Shit happens. See *id.* at 314-19.

It scare the stupidest housemaid, but she can look at the Fourteenth Amendment and read *Plessy v. Ferguson*, 163 U.S. 537 (1896), and think that opinion is rightly decided. It seems correct. The rationale make sense. Hell, Chief Justice Rehnquist said the same thing when he was a law clerk. But then to the relief of the stupidest housemaid, the *Brown v. Board of Education*, 347 U.S. 483 (1954), opinion make sense too. It seems right also. So much for the rule of law. And that scare her too.

Why? Because it is true that it would be useful for the rule of law to exist. It may even be true that the servant needs a rule of law more

than the master. But the stupidest housemaid knows that her needs and the way the world works are two different things. As necessary as it might be, the rule of law does not exist. Don't take it out on the stupidest housemaid. It ain't her radical assault on truth, it's the truth itself. When Pythagoras announced that the world is round, people fussed at him too. They said the world was easier to navigate if it was flat.

The pitifulest thing is that the main ones believing in the rule of law are the ones getting screwed by the myth of it the most. The stupidest housemaid finds those jurors who surrendered their power to this Court might be just a little more stupid than she. What this Court know any better than they? Why should its "opinion" be more respected? If you on the bottom, and you get a little bit of power, you ought to have more sense than to give it right back.

The stupidest housemaid laughs, considering how the chickens have come home to roost. White folks been sacrificing the lives of people of color for centuries — for the white folks' greater good. First they put them in ships and now they put them in cages. Reservations. Detention Centers. Send them back to Mexico, or the greedy killing fields. But when white folks sacrifice white lives for the greater good, it's a big confusing problem.