

A Positivist Judge

- the case is difficult b/c of the circumstances BUT the law itself and the facts are very clear
- a strict literal interpretation appropriate

- ↳ planned and deliberate = murder
- ↳ admission to both elements by Weiss
- ↳ the law does not create any exceptions or list any circumstances under which the law does not apply
- ↳ Hak discussed and consented to the murder as evident in the admission

- a judge must enforce the law as it exists, not change it based on interpretations
- ~~the role of gov't is to change or make new law~~

An Idealist / Naturalist Judge

- purpose of law is to protect individuals from injustices
- any positive/written law that undermines or contradicts natural law is not valid
- natural law is the pursuit of true justice
- looking at the facts only limited courses of action available

↳ all reasonable courses of action would result in the death of Martin

↳ must the law demand that you kill yourself to obey the letter of the law rather than prematurely end the life of a person certain to die

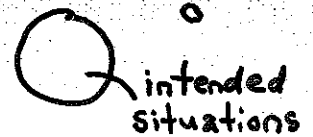
↳ no harm was done to Martin

↳ according to natural law, Hak and Weiss acted to preserve their own lives

* principles of reason and logic must prevail

A Realist Judge

- important in a judgement to consider both ① letter of the law (meaning) ② intent of the law (purpose)
- given this, it is important to consider the circumstances in which the law was meant to function
- no dispute that guilty win the letter of the law, BUT, question is... does the conviction serve the purpose of the law AND whether or not the law was created to include these specific circumstances at issue
- PURPOSE of homicide laws = punishment & deterrence
- the law cannot apply to situations outside of situations in which the law was intended to apply
- do Hak and Weiss constitute a threat to public safety
- all three fully aware of risks
- situation an unpredictable event that left expedition as a society of three cut off from society as a whole
- law as it was written never intended to include such circumstances — NO SOCIAL PURPOSE GAINED BY applying the law to this situation



Truth & The "Rashomon Effect"

General Rule - in most legal systems, the function of law and trials is to determine or find the truth

Rashomon Effect - the effect of subjective perception on truth and recollection

- outcome of effect on "finding the truth" about an event ... different but equally plausible accounts of that event are argued/observed

Rashomon (1950) Kurosawa - crime witnessed by four individuals who claim four mutually contradictory accounts

Questions that surface from film

- ① who is telling the truth?
- ② Can we ever know the truth? If not, is that problematic?
- ③ Is there an objective truth to events?
- ④ How does this reality impact one's ability to judge and the function of judgement in society?

Themes in Film Study

- ① Speech & silence (who has a voice in the film, who is silent/silenced?)
- ② Community & Isolation (who are "insiders" and who are "outsiders" or "outlaws"?)
- ③ Development & Change (who or what changes/remains the same?)
- ④ Legal Relevance (how do ideas of truth/justice/legal theory play out?)
- ⑤ Community of Judgement (who is being judged, by whom, and for what? what role does judgement play?)
- ⑥ Does the film get the job done? (Is the film effective in delivering its message? Why, why not?)