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Comparing Plato's conception of harmony to a Supreme Court decision

In this Blawg, I will attempt to do a little philosophizing by comparing Plato's conception of justice to a Supreme Court ruling in *R v Myers*¹. The object of this exposition is to compare Plato's conception of justice, that is, harmony, to a case from the Supreme Court that tries to bring agreement between s.525² of the Criminal Code of Canada and s.11(e)³ of the Charter. I will use this comparison to agree with Chief Justice Wagner's decision as one that is harmonious, and thus, Good.

Plato's Conception of Justice

Plato's argument made out in *The Republic* is often misunderstood as him arguing for an "ideal city." This view mischaracterizes what Plato is saying, as it removes his "city in speech" allegory from the overall argument about what justice is and how one can obtain it⁴. Plato uses the City in speech as a tool to aid in finding Justice. Instead of arguing through dense abstractions, Plato made a simple, large representation, the city, that he could use to find justice in and then impart into a smaller representation, the individual. His goal was to show how much happier the just individual was than the unjust person, thus proving Goodness is inherent in Justice.

¹ *R v Myers*, 2019 SCC 18.

² *Criminal Code of Canada*, R.S.C., 1985, c. C-46.

³ *Canadian Charter of Rights and Freedoms*, s 11, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

⁴ Antonis Coumoundouros, "Plato: The Republic", online: Internet Encyclopedia of Philosophy <https://www.iep.utm.edu/republic/> [<https://perma.cc/7K7U-XKRS>].

Just as a city has differing classes/faculties, so does an individual. The argument is that a city that fosters harmony between its ruling, protecting, and manufacturing classes would be just. Thus, harmonization throughout a person's reason, desire, and spirit faculties (tripartite soul) would create justice and happiness in the individual. Keeping this argument in mind, I want to analyze the Supreme Court's ruling in *R v Myers* against it.

Justice in *R v Myers*

R v Myers produces a simple example of a small area of administrative law diverging from its statutory obligations, thus diverging from the overseeing principles of the Charter, which guide and shape our legal system to produce a most just result.⁵

The case concerns the state of pre-trial detention administration in Canada as laid out in s.525 of The Canadian Criminal Code (CCC), supplemented by sections 515(10), 520, and 521 of the CCC. The current state is dissonant with the perceived intention of the legislature. Chief Justice Wagner undertook the task of harmonizing the process throughout Canada, as it leaves open the possibility for people being detained longer than necessary, and in some cases, pleading guilty to offences they're innocent of.⁶

The current approach leaves setting a pre-trial hearing at the discretion of Judges who uses an "unreasonable delay standard" to determine if a hearing is necessary.⁷ Within this approach, Judges *may* implement a pre-trial hearing but are not *required* to do so. This process amounts to a

⁵ *Myers*, *supra* note 1 at para 22.

⁶ *Ibid*

⁷ *Ibid* at para 16.

judge, if he/she decides to, looking for the mythological unreasonable delay (aka, whatever the judge thinks is reasonable on any given day) to decide if the accused should be released or not. Without evidence pointing towards an unreasonable delay, the judge can choose not to hold a hearing, resulting in possible prolonged incarceration. This effect has a likely abhorrent result: prolonged incarceration increases induced guilty pleas, essentially laughing at the Charter's requirement that only the morally culpable be punished. The Supreme Court resolved this issue by creating a new standard, bringing the administration of justice in line with the Charter by implementing guidelines that ought to be followed.

The sitting justice, Wagner C.J., imposed a new approach under s.525. Instead of giving judges discretion to decide if a pre-trial hearing is necessary, a judge must now set a hearing date following 30 days of detention for summary offences, 90 days of detention for indictable offences, or 90 days detention in general.⁸ This imposition is placed upon those who currently maintain custody over the accused, usually the jailer.⁹ The custodian must submit an application to a judge, immediately following the required time limits after the accused was initially seen before a judge and detained. Subsequently, the judge *must* submit an immediate date to review the detention¹⁰ and ask whether *continued detention*¹¹ is justified in accordance with s.515(10) of the CCC, which lays out guidelines for continuing detention. At the hearing, unreasonable delay is not a threshold to be used anymore, nor was it ever. The necessity of the detention in accordance with s.515(10) now takes

⁸ Myers, *supra* note 1 at para 35.

⁹ Myers, *supra* note 1 at para 34.

¹⁰ Myers, *supra* note 1 at para 39.

¹¹ Myers, *supra* note 1 at para 46.

precedence at the review. At the conclusion of the trial, the judge is required to give reasons for why the accused must further be detained or not.¹²

The end result of Wagner's decision is a new standard to be used that ensures no one is denied reasonable bail without just cause, in a timely manner. I believe the initially approach was adopted by lower courts because of the immediacy it offered them. However, ease of administration is not a standard that should be ever adopted; the costs are too extreme. The new approach, though it places a larger burden on the courts, creates a most just result by bringing the ruling class (The Charter and the Constitution), the protecting class (the judiciary system), and the manufacturing class (the citizens/accused) in line with each other. In conclusion, R v Myers harmonizes the common law with the Charter and the citizenry, matching Plato's conception of justice, thus making its decision Just and Good.

¹² Myers, *supra* note 1 at para 63.