



## JACK'S DETAINMENTS AND SUBSTANTIVE AND PROCEDURAL LAW

With the rise of Jack's leadership, the boys on the island slip further away from the rule of law. Jack, in particular, acts on his own whims with no established rules governing his behaviour.

Jack's detainment of boys on the island illustrates this point. First, think back to how Wilfred was tied and beaten in Chapter 10:

*"He's going to beat Wilfred."*

*"What for?"*

*Robert shook his head doubtfully.*

*"I don't know. He didn't say. He got angry and made us tie Wilfred up. He's been"—he giggled excitedly—"he's been tied up for hours, waiting—"*

*"But didn't the Chief say why?"*

*"I never heard him."*

*Sitting on the tremendous rocks in the torrid sun, Roger received this news as an illumination. He ceased to work at his tooth and sat still, assimilating the possibilities of irresponsible authority. (p. 176)*

As the situation with Wilfred suggests, Jack is using authority in arbitrary and unfair ways. This continues in Chapter 11, with Jack's apprehension of Samneric:

*"Grab them!"*

*No one moved. Jack shouted angrily.*

*"I said 'grab them!'"*

*The painted group moved round Samneric nervously and unhandily. Once more the silvery laughter scattered.*

*Samneric protested out of the heart of civilization.*

*"Oh, I say!"*

*"—honestly!"*

*Their spears were taken from them.*

*"Tie them up!" (p. 198)*

In democratic societies that follow the rule of law, arrests and detainments would not take place in this way. Generally speaking, to be arrested a person has to:

- have committed,
- be believed to have committed, or
- be believed to be planning to commit a crime.

And when a person is arrested, certain procedures must be followed. These concepts illustrate the ideas of substantive and procedural law.

### **SUBSTANTIVE LAW**

Substantive law, simply defined, is the substance of a law. It defines an offence.

For example, take impaired driving. It is an offence under Section 253(1) of Canada's *Criminal Code*. It states, in part:



*Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,  
(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or  
(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.*

Note how the above example defines the terms of impaired driving. This is what makes it a substantive law.

### **PROCEDURAL LAW**

If a person is in violation of a substantive law, such as driving while impaired, then certain concepts of procedural law must be followed. As its name suggests, procedural law is the process that must be followed when administering and enforcing laws.

For example, if a person is being arrested for impaired driving, the police must follow certain procedures for arrest, including:

- identifying themselves as police officers
- telling the person that they are under arrest
- telling that person why they are being arrested
- making it clear that the person is not free to leave.

Note how the above example defines the procedures the police must follow. This is what makes it procedural law.

### **SUBSTANTIVE AND PROCEDURAL FAIRNESS**

Fairness is integral for safeguarding the rule of law in a society.

Substantive fairness involves laws being made public and applied equally to all citizens. For example, recall that Hammurabi's Code was written so that all could know the law. This reflects the idea of substantive fairness because writing laws down helps to ensure that the public knows what the laws are. As well, when laws and their punishments are written down, judges had a record of what the law prescribes and its corresponding punishment. This helps ensure that all citizens who break the law can be dealt with using the same set of rules.

Procedural fairness means that the processes of applying the law are clearly identified and consistent with human rights spelled out in the *Charter of Rights and Freedoms*. If these processes are followed, this ensures that all citizens are treated equally and their rights are respected.

### **BACK TO THE ISLAND**

It is probably fair to say that there is no substantive or procedural fairness under Jack's rule. Substantively, it appears nobody—including Wilfred—seemed to know what law had been violated that led to Wilfred's detainment. Procedurally, the apprehension of Wilfred and later Samneric seemed to follow no defined procedure, at least not to the extent of what we have in Canada today.

Without substantive and procedural fairness on the island, the rule of law cannot exist.

## **CONSIDER**

1. The boys created some substantive laws under Ralph's rule, such as all cooking taking place at the signal fire. Can you think of any instances where they created procedural laws?
2. Look back to Piggy's second-last sentence: "Which is better—to have rules and agree, or to hunt and kill?" (p. 199).
  - a) Why is it better to have rules?
  - b) Are there limits to how many rules there should be?
  - c) Is there any point to creating rules if substantial or procedural fairness is not followed?

## **FOR FUTURE READING**

As the story concludes, what events illustrate a complete breakdown of rationality and the rule of law on the island?