

**Re: the case of the Spelincean Explorers**

**From: Woo Sung-yeol**

**1. What would happen when the defendants were rescued? Why?**

They were indicted for the murder of Roger Whetmore and sentenced that they were guilty of murdering Roger Whetmore. The judge then sentenced the defendants to be hanged, the law of Commonwealth permitting no discretion with respect to the penalty

imposed.

**2. Do you agree that this sentence is fair? Why?**

I don't agree to that sentence.

Important fact is x. We can find some liabilities that it is zero. I think that Whetmore thought that if they could wait just a week they could be rescued by the people outside. Maybe other defendants could not believe him, so they wanted to kill someone, but they got shocked and they could think normally. They might be insane. We know that they killed him because they thought that they had to kill someone and eat. Under the agreement, Whetmore might feel the same way. Furthermore, 10 people were killed when they tried to save the lives of defendants.

**3. IF you were a member of the Supreme Court, what would be your ruling,**

**Why?**

I can't find any law applicable to them. The law applicable to them is not the enacted and established law of the commonwealth, but the law derived from those principles that were appropriate to their condition. The law has its own logic, but we had never experienced this kind of things.

The purpose of criminal law is not on punishing the accused but on deterring men from crime. They were also in extremely bad condition and they could think logically or rationally. Though they believed that they were rescued after the radio contact, the defendants felt fear of death and were dying because of the fear. Mental fear was invincible enemy to them. Also, 10 people were killed during the rescue.

We have some clues that had killed him right after the radio contact. However, we don't not know that how bad the condition was. Nobody can predict and assert that they could go 10 days if they are normal human being.

The conviction should be set aside.

**4. How would you characterise your ruling from (Question 3? Why?**

**Social Science**

Sociological Jurisprudence is based on the belief that the law is human and therefore never absolute. We have to think over this case with the experience that we have seen. They were in bad condition both physically and mentally. We can't apply the statute to this case with logic, because human being had never experienced the case like this.

**5. Summarise each of the rulings above. Characterise each as one of the three interpretations of Law above and justify.**

**Truepenny, C.J.**

The statute, whoever shall wilfully take the life of another shall be punished by death, permits exemption applicable to this case and therefore, he believes, some form of clemency should be extended to these defendants. If this is done, then justice will be accomplished without impairing the spirit of the statutes.

**Foster, J.**

The defendants violated the statute, but every positive law itself should be interpreted reasonably in the light of evident purpose. The self defense can not be applied to this case. Roger Whetmore did agree with the proposal and he was not threatened by aggressors. If in the future any group of men ever find themselves in the tragic predicament of these defendants, the decision whether to live or die will not be controlled by the contents of the criminal code.

Under this case, these defendants are innocent of the crime of murdering Roger Whetmore, and that the conviction should be set aside.

**Tatting, J.**

The defendants were not subject to our law because they were not in a state of civil society but in a state of nature. It is absurd that these men were under a code of nature which this Court was bound to apply to them.

These men acted not only wilfully but with great deliberation and after hours of discussion what they should do.

This is unprecedented in the history of the tribunal, so I can't handle this case, because there are so many rooms to be considered. What would we have to decide if Whetmore had refused from the beginning to participate in the plan? Would a majority be permitted to overrule him? We don't know that others might conspire to bring about Whetmore's death, justifying their act by saying that he was in the weakest condition. Since I have been wholly unable to resolve the doubt that beset me about the law of this case, I declare my withdrawal from the case.

**Keen, J.**

Executive clemency can't be extended to these defendants because the conviction is affirmed. The important question is whether the defendants wilfully took the life of Roger Whetmore. These defendants did wilfully take the life of Roger Whetmore and they should be punished by death. In dealing with the exception, the question is not the conjectural purpose of the rule, but its scope. It is too clear for argument that this case does not fall within the scope of the exception, since Whetmore made no threat against

the lives of the defendants.

The process of the judicial reform: the first step is to divine some single purpose which the statute serves. The second step is to discover that a mythical **being** called the legislator overlooked or left some gap or imperfection in his work. Then comes the final and most refreshing part of the task to fill the blank thus created. It is not sure whether the statute making murder a crime really has a purpose in any ordinary sense of the term.

The conviction should be affirmed.

**Handy, J.**

This court should take account of public opinion. People's common sense should be applied to problems of law and government. Defendants are innocent of the crime charged, and that the conviction and sentence should be set aside.

**6. Which argument did you find most compelling? Why?**

**Foster, J.**

All of people in the cave were not in a state of civil society but in a state of nature, Roger Whetmore's life was ended by other defendants not in a state of civil society but in a state of nature. This has the consequences that the law applicable to them is not the enacted and established law of this commonwealth, but the law derived from those Principles that were appropriate to their condition. Under those principles, they were guilty of any crime.

