

# Case of the speluncean explorers philosophy essay



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A brief history on the case. The case of Speluncean Explorers v. Court of General Instances of the County of Stowfield (4300) is about five Speluncean explorers. The explorers were trapped in a cave after a landslide occurred blocking the entrance. After twenty days, these explorers sent distress messages to a rescue team. The explorers had no means to survive in the cave since they were running out of supplies, their rations and conditions would not support as doctors outside the cave informed them. Whetmore, one of the explorers spoke on behalf of the rest to the doctors and asked them if they would survive by eating one of their own, the doctors consented. Whetmore even went ahead by suggesting on throwing a dice to determine who was to be eaten. Later on, Whetmore was eaten. On the thirty second day, the survivors were rescued and were indicated of the murder of Whetmore. The four survivors were sentenced to death by the Supreme Court for the murder of one Roger Whetmore.

### Legal Theory

The legal theory or jurisprudence that is considered in this case range from the separation of powers as outlined in the notion of clemency. There is also the theory of natural law as explained by Justice Foster. Elements of positivism, the philosophical relationship between law and morality together with interpretation of statutes (the revealing of " gaps" in the statutes and the need to fill them) are also present. In addition to these we have the purpose(s) of statutes together with the use of precedents in play. The case also shows the need for making judgments in the manifestation of practicality and various aspects of self-defense. Justice Foster in his judgment would acquit the defendants. The Justice opinionated on two

profound reasons for acquittal: one is the application of natural law theory and two, the application and role of the statute. Justice Foster explained the theory of “ethical removal” from society which the case presents, and also his opinion that the court is toothless with regard to this case. The court appears to lack the ability to deliver a judgment on the contract made in the context of “natural law”. Looking at the role of the statute, Foster focuses on the spirit of law rather than the textual law itself, and cites two cases that are relevant to his approach. The cases however do not seem to lend much support to his opinion.

#### Foster's judgment

Foster in his opinion asserts that something of more significance is on trial and not just the fate of four men- the law of our Commonwealth. He believes that the law must not induce that the four explorers were murderers. The law declares them to be innocent of any crime at all premising on two independent arguments. First is the inapplicable nature of positive law of our Commonwealth with all its statutes and even precedents. Foster argues that this case should be based on the law of nature as posited by prehistoric writers in America and Europe. This implies that, when a man is in a situation where he has no other means of survival, the practicality of positive law disappears. This applies exactly in this case where one life is forfeited to save the lives others; the underlying basic premises of the entire legal jurisprudence should obviously lose its force and meaning. The explorers were living in an isolated world not experienced by outsiders. Thus, the law of nature is in action allowing the Speluncean explorers to make and implement their own laws and exercise their jurisdictions as in the

confinement of the cave. Foster argues that the life of one Roger Whetmore was taken in a state of nature and not in a state of civil society. Foster simply states that with regard to the underlying principles, the four men were not guilty. What they did was in accordance with an agreement proposed by Whetmore himself and consented to by all. They were in an extraordinary predicament that left them no choice but instead left them with the natural principles that govern men's relations.

Foster's second premise proceeds by overriding his entire explanation of the first premise. Foster (just for purposes of argument) states he is wrong in his argument that the predicament facing the four explorers excluded them from the force of our positive law. Here the assumption is that Consolidated Statutes power penetrates through the solid rock of the cave. These men in law had surely violated the statute that states that prohibits the willfully taking of the life of another man-murder. As seen in the case of Commonwealth v. Staymore, the defendant in this particular case had parked his vehicle parked for two hours in a parking zone, but a political skirmish occurred preventing him from taking his vehicle within the two hour limit. The court set aside the conviction of Staymore, even as his case was totally within the statute. This implies that usually Statutes should not be taken literal. A good example is the killing of a person(s) in self defense. The statute fails to mention anything about this exception, yet courts have set murderers free basing on this plea. The applicable statute here did not apply to self defense cases. When a man's life is threatened by another man, the threatened man naturally repels his aggressor. The same argument can be applied to the case of Commonwealth v. Speluncean Explorers. Foster argues

that a group of men finding themselves in a predicament such as the Speluncean explorers, it is obvious that the decisions of life and death will not be based on the contents of our law. Therefore, Foster renders the statute on self defence irrelevant to the case at hand. Foster's concludes that the defendants were innocent of the murder of Roger Whetmore, and the conviction should be set aside.

### An analysis of Foster's judgment

Justice Foster is right in presenting the argument that the Law of the Commonwealth is surely at stake especially if one tries to apply it on this particular case. Thus in order to analyze this case objectively, it is only right if the textual argument is set aside in so as to explore the aspect of prudence as a way of influencing the judges decisions. Carefully examining this case, it is wise to look at Justice Tatting rebuttal on Justice Foster's opinion. Justice Tatting refutes the argument that, the explorers were not in a "state of law" when they committed the murder. Justice Tatting's rebuttal is flawed for several reasons.

First, the "state of nature" is part of the natural law and does not with positive law. It is the nature of man to survive if indeed survival is at stake. While in the cave, the four explorers actually entered into natural law after realizing that survival was at stake, they knew that their survival was based on eating the flesh of one of their own. It is clear that the very reason the explorers encountered the "state of nature" was because survival was at stake. It is important to understand the "state of nature" of the explorers. Justice Foster wrote that "A man whose life is threatened will repel his

aggressor no matter what the law may say.” Clearly the explorers’ lives were critically at stake. In an exercise of prudence one can argue that, when laws are made, enacted and enforced by men, there is a reason for the creation of any law. However, in as much as a man will break the textual law, he will not break the spirit of the law. Take the case of Commonwealth v. Staymore the defendant had broken the law by leaving his car parked for more than the required two hours as the statute stated. But, by carefully examining the real argument behind Staymore exceeding the parking hours limit of two hours one stumbles on the fact the defendant was prevented from removing his car from the parking lot due to the political demonstrations that had marred the streets. Applying the same reasoning in this case, the Speluncean explorers are not guilty of murder since the law is not applicable to unusual circumstances as seen in this particular situation.

However this case one can be easily refute the ruling on this case based upon mere “judicial activism”. There is need to apply common sense, which is lacking in the judgments delivered by many of the justices, Justice Keen and Truepenny. The apparent reason for the justices having to hear about this case and them having to write their opinion is ignited by dire need for survival by the men entrapped in the cave. If the case was about the death of five men due to starvation, a painful slow and wretched death, then would it not be our wish that at even at least four of the explorers in that cave could be rescued? The declaration here is that it is better that the four men were able to survive a grueling moment of pain and wait in the cave for more than thirty days, and it is prudent to console them and to let them carry on with their normal lives since they have already gone through enough trauma.

If these men had not taken such an action, the taking of one man's life then, the story today would be the tragic death of five men in a cave due to starvation. But, instead one man is dead and four are alive. It is important to seriously reflect on this issue, whether to have five human beings dead or to have one dead and four alive. The consensus here is that everyone has the right to life; the four explorers only did what was necessary to survive where death was seemingly inevitable. Foster's posed a very strong analogy which seemed to be self explanatory and natural. Justice Foster further explains his argument that if a there is a situation where the lives of ten men were at risk in an attempt to save five, is it natural to posit that, one man can be put at risk for the sake of four other men. Such a question requires an affirmative answer.

Justice Tatting on his side brings in a different analogy. He posits that, the idea of remaining silent by exercising prudence is a show of inconsistency since prudence is subject to reasoning. Tatting asserts that in by using logic, consistency can be maintained if a man found stealing bread to avoid starving to death guilty of theft. This analogy is strong and very scholarly but it presents a myriad of problems. First, the analogy in itself is not consistent with this case since the dynamics behind a free man, with a number of resources and placed outside in the world is fundamentally different from that of men who have no variety or options or to choose from. Since the man who robbed the convenient store for bread could just as easily apply for food stamps or even go to a church for food. For such a man did not have to resort to stealing, it is not the last option at least.

Reasoning with prudence as used when breaking the law happens when one has expounded on all other options exhaustively and no other way existed so as to allow the robbing of a convenient store for bread. For a 'real' thief one can safely make an assumption that, in Tattling's analogy the man caught stealing had not exhausted all the possible means available, therefore stealing is naturally wrong. The defendants in this particular case had fully exhausted every possible means, and were in such an urgent need for food that they resorted to eating one of their own just for mere survival. In regard to this, since the four men had no record to cannibalism, eating one of their friends was as a result of desperation for survival.

Another important argument is that of Justice Keen. Keen argues with in tandem with the question of self-defense role in decision making based upon the very circumstances facing the explorers. Justice Keen argues that since Whetmore had not threatened the lives of the four defendants it is wrong to argue that they were acting in self-defence. However, it is easy to disagree with Justice Keen according to Justice Foster's argument on this issue.

Whenever people conform to a law, they do so for a certain purpose or motive as the law becomes law. If one kills and does so in self-defense it is not murder. If it were murder then the law cannot be fully operational in a disincentive manner since it is only human nature that a man will choose life over death. Thus, the killing of Whetmore was in self defence because without were it not for his death, the four explorers would not have appeared in court. Moreover, the fact that Whetmore consented to his death does not make the defendants murderers, but more of an assisted suicide if proved so.

## Conclusion

Although the case of the Speluncean explorers is tragic and very devastating, the law should not fold its hands and allow murder to be committed due to the existence of the arms of natural law as positive law remains sound asleep. The defendants are in this case innocent of murder charges pressed against them.