

Making the Case for Necessity

What has to be true for a case of necessity to be successfully made?

One question to ask, right off the bat, is (surely) was what the defendants did really necessary? Remember the workers re-doubled their efforts and reached the spelunkers two days earlier than they had anticipated. Most states (in our country), however, merely require of a defendant who pleads necessity that he have a reasonable belief that he is in a situation of necessity. Take the following case, for an instance:

When John and Alice were students in college, they participated in an anti-war demonstration in May, 1968. There was a lot of pushing and shoving. Alice falls down and appears to suffer a severe spinal injury. Police officers try to arrest her but John implores them not to move her without a stretcher since he believes any movement will greatly aggravate her injury. The officers ignore John; he tries to stop them. They arrest him and charge him with disorderly conduct and interfering with police officers in the performance of their duty. It turns out that Alice has not suffered a spinal cord injury. John, however, reasonably believed that she was hurt and that moving her without a stretcher would only injure her further. Should John be found guilty of interfering with the police officers?

Most states would acquit John on the grounds that he reasonably believed that Alice was injured. How might this apply to the Spelunkers?

Then there is the question of whether it might be argued that the Spelunkers brought their situation on themselves and if they brought their predicament on themselves, should they (even) be permitted to defend themselves on grounds of necessity?

If it could be shown that they (perhaps) should have been a little more alert to the dangers of exploring the caves they chose to enter, or to the rain of pebbles and rocks as a sign of an impending landslide, they might not have had to resort cannibalism.

Did the Spelunkers behave recklessly by entering the cave in the first place? What if there were signs saying in clear, no uncertain terms: "Do Not Enter. Landslide Danger. Proceed at Your Own Risk."

Did the spelunkers bring their predicament on themselves?

If the answer is "yes," should they be allowed to plead necessity? What about the following cases, for examples?

(1) John and Alice go backpacking in the White Mountains. They have planned a day trip near Mt. Washington, but they lose their way. Night falls; a blizzard traps them. They stumble upon a cabin in the woods. It belongs to Henry. The door is unlocked. They enter and are saved from the cold. They help themselves to baked beans and coffee. They build a fire to stay warm. After ten days they are found by a search party. Should Alice and John be found guilty of misappropriating Henry's goods, his beans, his coffee, and his firewood?

(2) John, who always fancied himself as a bit of a playboy, borrows Alice's Jaguar for a joy-ride around town. While speeding down Main street, tape deck blaring, the brakes fail and he loses control of the car. The car is heading straight for an intersection where a group of 20 nursery school children are crossing with their teachers. He could let the car continue on its path or swerve into the bookshop on the corner where there is a salesperson in the window changing the window display. If he smashes into the group, he may only be charged with involuntary manslaughter. If he plows into the bookshop, he could be charged with voluntary manslaughter, perhaps even murder. John decides to run the Jaguar into the bookshop. He turns the wheel and crashes into the window display, killing the salesperson instantly. He is arrested and charged with voluntary manslaughter. He pleads necessity. If he had not crashed into the bookshop, he argues, many more people would have died. If you were the judge, would you find John guilty as charged?

It is tempting to think that John and Alice in the first case and John in the second case have courted their own disaster and so should not be allowed to invoke necessity as a defense. Shouldn't a defendant be completely blameless in order to be able to defend herself on grounds of necessity? What would happen in the first case?

Despite our feelings about the blameworthiness of the defendants, John and Alice are not likely to be convicted of misappropriating Henry's goods since reckless acts of misappropriation are not crimes, only intentional acts are. They are likely to be acquitted.

In the other case, John is likely to be acquitted of murder for driving into the storefront window on grounds of necessity, but he possibly might be convicted of manslaughter for driving recklessly in the first place, since his recklessness eventually resulted in someone's death.

With these precedents in mind, what do you think they imply about the guilt or innocence of the Spelunkers?

— See Katz, *Bad Acts and Guilty Minds*, Chicago, see pp. 8-81