

## THE CASE OF THE SPELUNCEAN EXPLORERS:<sup>1</sup> 5 QUESTIONS IN THE PHILOSOPHY OF LAW

SARI KISILEVSKY  
CUNY Queens College  
Meet a Philosopher!  
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Five members of the Speluncean Society went exploring in a limestone cave in the Central Plateau of the Commonwealth of Newgarth when a landslide occurred and blocked the cave entrance. Their rescue proved much more challenging than anticipated. In addition to the initial rescue team, a temporary camp of workers, engineers, geologists, and other experts was established and workers worked on a rotating basis day and night for 32 days to try to remove the obstruction to the cave. Unfortunately, their work was frustrated multiple times by fresh landslides, killing ten workers in the process, and costing the Speluncean Society over 800 000 Frelars.

As the spelunkers approached the point of starvation (on day 20), they made radio contact with the rescue team and asked how much longer it would take to rescue them. Engineers estimated that the rescue will take another 10 days, assuming there were no new landslides. The spelunkers then described their physical condition to physicians at the rescue camp and asked whether they could survive another 10 days on their meagre provisions. The physicians responded that it was very unlikely. Communications broke off for eight hours.

When communications were re-established, Roger Whetmore, one of the spelunkers, asked whether they could survive another 10 days if they killed and ate a member of their party. The physicians reluctantly answered that they could. Whetmore then asked whether they ought to hold a lottery to determine whom to kill and eat. The physicians declined to answer. Whetmore requested a judge or religious leader to address the question. None were found.

The spelunkers turned off their radio. It was later learned that on the 23<sup>rd</sup> day, the spelunkers held a lottery using a pair of dice that they had found among their provisions, and that Whetmore had been killed and eaten by his companions. It was also learned that it was Whetmore who had first proposed the idea of eating one of their own so that the others may survive, and that it was he who brought around more reluctant members of the party. Casting lots to determine whom to kill was also his idea. At the very last minute though, Whetmore withdrew from the lottery, deciding to wait another week before taking such a drastic measure. The other members of the party, now committed, accused Whetmore of breach of faith and cast the dice for him. Whetmore conceded that the throw was a good one and that he had no objections to its fairness, but alas, the throw went against him and he was put to death and eaten by his companions.

Nine days later, the remaining members of the group were rescued and were charged with the murder of Roger Whetmore. The trial judge found them guilty under the statute prohibiting murder, which reads, "Whoever shall willfully take the life of another shall be punished by death." (NCSA (NS) §12-A) The case is now on appeal to the Supreme Court of Newgarth.

You are the judges on the Supreme Court of Newgarth. How should you rule?

5 Questions:

1. Should judges decide cases on the basis of "common sense" alone?
2. Or should they apply the strict letter of the law?
3. Is it ok for judges to interpret the law flexibly?
4. Or can they rewrite the law and carve out an implied exception?
5. What happens if judges just don't know what to do?

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<sup>1</sup> Lon L. Fuller, "The Case of the Speluncean Explorers," *Harvard Law Review*, Vol. 62, No. 4, February 1949