



On the *Speluncean Explorers* Dilemma

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D'Amato (1980) tells the story of five explorers who set off on an excursion, and while they are in a cave, the only entrance to that cave is sealed off by a landslide. They are trapped there until they run out of food and understand from the rescuers they manage to contact that they would not survive. When one of the explorers, Whetmore, asks if cannibalism might help them last longer, and he is told that it would give them around 10 more days to live. Whetmore then proposes a toss to determine who should die so the rest of the survivors would feed off of him. With seven more days to spare, they decide to do the dice toss except that the explorer who had proposed it now decides that he does not want to take part in it. The remaining four explorers then decide to toss the dice on his behalf and it determines that he is the one who should go, and so they kill him and eat his flesh. A week later, they are saved but charged with his murder. Three law professors are asked to weigh in on the case, and it is part of Professor Wun's argument that I will reflect on here.

He begins by emphasizing how the law and morality are inseparable and tries to argue that what happened to Whetmore was murder because it was immoral, and I am not sure I agree with the premise of his argument. Not every illegal act is immoral and not every legal act is moral. Cheating on a girlfriend or boyfriend is immoral, yet not illegal, for example. If he believes that the four surviving explorers should be charged with murder, then he should base his argument on how killing Whetmore was against the law and intentional, as opposed to an accident, not on how it was a crime because it was immoral.

Perhaps the reason why Professor Wun's argument is shaky is that he does not have one to begin with. He is trying to prove that in the case of the explorers, murdering Whetmore was immoral because it was against his will—had Whetmore killed himself, it would have been more acceptable for them to eat his flesh--or because they did not wait long enough to see if they would be saved. But murdering Whetmore will always be immoral and, incidentally, illegal. Killing Whetmore, or anybody else for that matter, would never be acceptable. Even if they had waited the ten days before they killed him, it would have still been immoral to take a life.

I also wonder why Professor Wun was too obsessed with intentions. He believed the explorers had much more to gain from killing Whetmore than he did when he withdrew. He neither harmed anyone nor helped himself by withdrawing, he believes, while they needed him to take part to raise the odds in their favor. Regardless of why he did what he did, what Professor Wun should be thinking of is the outcome: Whetmore did not choose to take part in the toss; the dice was tossed against his will, and he died as a result. Those are the facts at hand.

If we open that can of worms, we might never get our answers. The truth is that we will never know what really happened since one party died. Those who survived could have even decided to kill him without the dice toss since he was the one who came up with the idea of the toss to begin with. They could have decided to punish him and might have then deliberated and decided on the statement they would make when they were released. In that case, it would have even been worse because he would not have been given a fair shot at survival. They may even have held a grudge against him for a while and decided that would be a good time for revenge. We will never know what really happened. I do not believe going down that "intention" road added to his argument. I would have expected a law professor to deal more with facts than intentions. Yes, the law allows for mitigating circumstances, but I do not believe it is necessarily because of moral choices or intentions, unless it is proven that killing him was an accident.

Professor Wun's argument only started to make sense to me when he discussed the law and how it makes no excuses for necessity, especially when I believe "necessity" is a very elusive concept myself. In the case of our explorers, for example, who defines necessity? It was necessary for the explorers to survive, but was it not necessary for Whetmore to live too? He then lost me again when he referred to the purpose of the statute. Although I appreciate what he means when he explains how the statute is there to prevent similar crimes from occurring in the future and not because we revel in dwelling on past crimes, especially when they cannot be undone, I do not understand the bearing the purpose of the law has on enforcing it. If I fail to understand the purpose of a law, am I then not obligated to observe it? And isn't deterring criminals and regulating behavior the purpose of any law? What makes this argument then more meaningful?

In class, one of my classmates wondered why, instead of killing one another, they did not think of eating one of their body parts or even someone else's, like an arm or a foot. They would have then stood a better chance of surviving and they would not have had to resort to murdering anyone. I am surprised that eluded Professor Wun, especially with his rant about the property-for-life analogy.

References

D'Amato, A. (1980). The Speluncean Explorers: Further Proceedings. *Stanford Law Review*, 32(3), 467-485.