



Sid Z. Leiman, Ph.D.

Dr. Sid Z. Leiman

The Ethics of Lottery

In 1969, the Selective Service System instituted a lottery for determining who would serve in the armed forces. In the same year, Robert Paul Wolff¹ suggested the establishment of a lottery for college admissions. In 1970, Paul Ramsey² and James Childress³ proposed lottery as the best method for the allocation of scarce medical resources. In 1972, James Abert⁴ suggested lottery as the best method for the allocation of federal grants. In 1977, Andre Hellegers⁵ proposed that entry into medical school be determined by lot. Clearly, the age of random selection is upon us.

Given the prominence of lottery in recent discussion, it is surprising how little has been written about the ethics of lottery. While a very rich literature exists—from Sumerian times down to the present day—with regard to lottery as a means of gambling and gaming, and as a means of divination, one seeks in vain a treatise on the ethics of lottery as a randomizing process for the allocation of scarce resources. Specifically, should a lottery be used in order to determine who will be the recipient of a transplanted heart? Shall lots decide matters of life and death?

The arguments for and against the use of lottery in matters of life and death are perhaps best viewed in the context of a real-life situation. In 1841, an American ship, the *William Brown*, set sail from Liverpool for Philadelphia. The ship struck an iceberg some 250 miles from Newfoundland and began to sink. Two boats were lowered. The captain, various members of the crew, and a passenger got into one of them, and, after six days on the open sea, were picked up and brought to land.

“Shall lots decide matters of life and death?”

The other boat was called the “long boat”; it was leaky and might easily be swamped. Into it jumped Alexander Holmes, a seaman on the *William Brown*, and the tragic hero of our episode. Holmes was joined by the first mate, seven other seamen, and thirty-two passengers—about twice as many as the boat could hold under the most favorable conditions of wind and weather. Just as the “long boat” was about to pull away from the wreck, Holmes, hearing the agonized cries of a mother for her little daughter who had been left behind in the panic, dashed back at the risk of instant death, found the girl and carried her under his arm into the “long boat.” The sailors rowed and the passengers bailed water, but the over-weighted boat, drifting between

blocks of floating ice, sank lower and lower as a steady rain fell on the sea. Then, after the first mate had twice given the order, Holmes and the rest of the crew began to throw the male passengers overboard. Two married men and a little boy were spared, but the fourteen remaining male passengers were cast overboard, and two women—devoted sisters of one of the victims—voluntarily leaped to join their brother in his death. The boat stayed afloat. The next morning Holmes spied a sail in the distance, exerted himself heroically to attract notice of the passing vessel, and eventually brought about the rescue of everyone left in the boat. When the survivors arrived in Philadelphia, Holmes was put on trial for manslaughter. In his charge to the jury, the judge stated that passengers must be saved in preference to all seamen except those who are indispensable for operating the boat. If no seaman can possibly be dispensed with, then the victims must be chosen from among the passengers *by casting lots*, provided—as was the case on the lifeboat of the *William Brown*—there was time enough to do so. The jury found Holmes guilty but recommended mercy. He was sentenced to six months imprisonment at hard labor, in addition to the nine months he had already spent in jail awaiting trial, and fined \$20 to cover the costs of prosecution. An appeal was made to President John Tyler, who refused to pardon Holmes, but agreed to remit the \$20 fine.⁶

“The lot puts an end to disputes and decides between powerful contenders.” (Proverbs 18:8)

At least four options presented themselves on the lifeboat:

1. It was possible to do nothing, i.e., simply let nature take its course. Either the boat would be sighted or all would die at sea.
2. It was possible to devise criteria for evaluating the social worth of those aboard, and then jettison accordingly.
3. It was possible to invoke a modified form of a survival-of-the-fittest ethic, i.e., the mighty overpowering the weak and evicting them.
4. It was possible to cast lots and jettison accordingly.

If we are to accept the verdict of the jury, Holmes' guilt lay in his adopting the third rather than the fourth option.

What lots have in their favor is fairness. They make equals out of all the participants. No one assumes greater risk or derives greater benefit until after the lots have been cast. Moreover, the casting of lots removes the onus of a possible murder charge against any one man. After all, the lot, and not a particular individual, decides who will be jettisoned. Scripture too appears to lend its consent, for “the lot puts an end to disputes and decides between powerful contenders.” (Proverbs 18:18) And was not Jonah cast overboard precisely because the lot fell upon him?

The moral arguments, however, do not all point in the same direction. If one were to mount the case against the casting of lots in matters of life and death, it might take the following form:

1. The casting of lots remains the most arbitrary and least meaningful of methods in determining who should live and who should die. Surely, when the stakes are so high, one should appeal to reason sooner than to random selection.
2. Indeed, as soon as it is admitted that reason dictates that those seamen necessary for the survival of the others are exempt from the lottery, one admits that reason takes precedence over lottery. If so, why not follow the dictates of reason throughout? Lots make equals out of a group of unequals. Surely a 90 year old senile man, who in any event will die within several months of rescue, should not be given the same opportunity for life as a 6 year old child! Since the goal is to lighten the boat, reason dictates that weight ought to be a factor in deciding who goes overboard. Yet the lots would make equal a 300 pound man and a 30 pound child. Assuming the boat was holding 300 pounds more than it could carry safely, the lottery might dictate that 10 children go overboard instead of one jolly giant! What price fairness?

3. The lottery vitiates the measurement desirability of life, a value we take very seriously. Some aboard the ship may value life more than others. This ought to be taken into account whenever allocating a scarce resource.
4. Fairness argues that lottery is an attempt to put the weak and the strong on the same footing. Why is such a lottery any more moral than the natural lottery which made some on the boat weaker and others stronger? What is it about dice that makes them morally superior to genes? According to first-hand accounts, Holmes' selection on the lifeboat was just as random as any lottery. He threw over only those males who were in closest proximity to him.
5. It is claimed that randomization removes the onus of guilt from any one party. Is this true? Someone has to cast the victim overboard. Is the executioner any less guilty after the lots have been cast? He cannot be compared to a court executioner. There, a guilty party forfeits his life; here, an innocent party, whose only error was to win first prize in a lottery, loses his life.
6. Lots are a form of contingent consent. One consents to being cast overboard if the lot falls on him. In common law and in American law, consent is no defense in homicide. If A con-

“What lots have in their favor is fairness.”

sents to B's killing him, B may not kill A with impunity. Why should the casting of lots aboard a lifeboat allow anyone to cast an innocent person overboard?

7. Presumably, the life of whoever refuses to join in the casting of lots would be inviolable. What if he consented initially, then withdrew his consent after the lots were cast? Is breaking a promise sufficient reason to cast someone overboard against his will?
8. Most would agree, I suspect, that we may take the life of an aggressor, if necessary, in self-defense. In such cases, the potential victim identifies a voluntary aggressor, whose life may be taken in self-defense. Less certain would be the propriety of taking the life of an involuntary aggressor in self-defense. A favorite paradigm of the moralists is the case of the three mountain climbers roped together and climbing a mountain. Two of them fall over a ledge and dangle in space. The other, unable to pull his companions to safety, is slowly losing his grip on the mountainside, with the inevitable consequence that all will plunge to their deaths. May the safe mountain climber cut the rope, thus accelerating the deaths of the others while saving his own life? Many would permit this, since the two dangling climbers are

doomed in any event. They involuntarily are threatening the life of the safe mountain climber, and he may defend himself, if necessary, by accelerating their deaths. *But on the lifeboat, there are no identifiable aggressors, voluntary or involuntary.* How does the casting of lots suddenly transform one or more persons into aggressors? This is patently artificial and unfair in that it consigns persons to death for no fault of their own; nor—in contrast to the case of the dangling mountain climbers—has the situation in any natural way identified those persons as involuntary aggressors.

“Do you really feel that lots require discussion? What is a lot anyway?”

Cicero

9. The justification for taking life on the lifeboat is the saving of life. It is argued that two or more lives are better than one, and so we sacrifice the few in order to save the many. This is questionable theologically (assuming life to be of infinite value, and the prohibition against taking innocent life to be absolute) and philosophically (see Taurek's⁷ recent study).

10. It is by no means clear that Scripture would lend its consent to the casting of lots on the lifeboat. While it is true that the Justice who presided at the Holmes trial adduced Scripture (specifically, the Book of Jonah) as supporting the casting of lots, the cases of Jonah and the *William Brown* are hardly analogous. Jonah was guilty of a capital offense and readily admitted his guilt. He requested that he be cast overboard. Moreover, Scripture presupposes that the efficacy of the casting of lots is assured by God. *He* will see to it that the lot falls on the guilty party. Indeed, this is the typical view of lottery in Scripture, both in Hebrew Scripture (cf. Joshua 7:10 ff.) and in the New Testament (cf. Acts 1:24). In a modern, secular and pluralistic lifeboat community, however, there are no guilty parties. Nor were there any on the *William Brown*.

In the light of the above, Cicero's remarks of old are as illuminating as ever:

“Do you really feel that lots require any discussion? What is a lot anyway? It belongs virtually in the same category as ‘guess-the-fingers,’ knucklebones and dice. In all these games audacity and luck win, not reason and thought.”

Should lots have been cast on the *William Brown*? Well, suppose you, your spouse, your parents, and your son and daughter (six persons altogether) are on a sinking ship. The ship can hold no more than five persons if it is to remain afloat. All moveable objects, except for food rations and drinking water, have been jettisoned. What would you do?

CPR Expands Degree Program

Planners in developing countries around the world must often work in an "information vacuum," since demographic figures are often inaccurate or even nonexistent. Realizing that Georgetown University has a responsibility to third world nations, the Kennedy Institute's Center for Population Research has welcomed international guests here to study the latest demographic techniques and theories in order that they be well qualified to develop and expand demography programs in their own nations.

Since graduating the first M.A. recipient in 1970, the Center for Population Research has seen its former students go on to jobs in Ethiopia, Brazil, Sri Lanka, Indonesia, and other nations, as well as to positions with such international and national organizations as the World Bank, the Peace Corps, the Agency for International Development, and the United Nations. This academic year there are 28 students enrolled in the Demography Degree Program and six of them are from foreign countries: four from Latin America, one from Italy and one from Nigeria.

The Center for Population Research has now embarked upon a cooperative program with the U.S. Bureau of the Census in its International Statistical Programs Center (ISPC), under the auspices of the Agency for International Development (AID). In this new program, third world students will be trained in demographic statistics by the ISPC concurrently with the Georgetown Demography Degree Program. In this way, students can complete the ISPC training and earn Georgetown University's M.A. in Sociology (Demography) degree in 18 months.

Expectations are that this cooperative program will include 8-10 students per year, coming primarily from African Nations.

1. Robert Paul Wolff, *The Ideal of the University*, Boston: Beacon Press, 1969, pp. 140-144.
2. Paul Ramsey, *The Patient as Person*, New Haven: Yale University Press, 1970, pp. 239-275.
3. James Childress, "Who Shall Live When Not All Can Live?" *Soundings* 53(4):339-355, Winter 1970.
4. James Abert, "Since Grantsmanship Doesn't Work, Why Not Roulette?" *Saturday Review*, 21 October 1972, pp. 65-66.
5. Andre E. Hellegers, "A Lottery For Lives?" *Ob. Gyn. News*, 12(7): 20-21, 1 April 1977.
6. The account of the sinking of the *William Brown* is drawn mostly from Edmund Cahn, *The Moral Decision*, Bloomington: Indiana University Press, 1966, pp. 61-62.
7. John M. Taurek, "Should Numbers Count?" *Philosophy and Public Affairs* 6(4): 293-316, Summer 1977.