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Cannibals at Common Law

A. W. B. Simpson

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ince the reign of Christopher Columbus Langdell of Harvard, the study of leading cases has become the typical method of legal education. Among the more entertaining old chestnuts is the case of Regina v. Dudley and Stephens, 1884, now approaching its centenary. Technically, it deals with the defence of necessity to a charge of homicide, and its counterpart in American case law is U.S. v. Holmes in 1842. The English case, however, has the particular distinction of involving not merely murder but cannibalism, for in it two sailors were convicted of killing young Richard Parker to eat him. The case decided that you must not do this, however hungry you are. Alexander William Holmes, the leading figure in the American case, was troubled not by hunger but by overcrowding: he was convicted of manslaughter for throwing a number of Irish emigrants out of a ship's boat after a shipwreck. Though involving in some ways a more horrible story, the decision has never achieved the preeminent status of its English counterpart.

Leading cases are not studied by lawyers primarily as historical events, but as weapons to use in legal argument, or as vehicles for educational discussion. In this article, I propose to look at the case of Dudley and Stephens as an event in nineteenth-century history. Fortunately, a mass of material has survived outside the law reports—in departmental files, in letters, in diaries, and even in oral tradition. There exist no fewer than seven original accounts of the voyage in Dudley's own hand and, as far as oral tradition goes, I have had the odd experience of talking to old Budge Frost, whose father, Jim, was to have gone as ship's boy but never did; in the family, if Jim reproved his children, they would reply: "They should have eaten you, Dad, you might have tasted better." Our enquiries into Dudley and Stephens will lead us into the strange world of the nineteenth century, when cannibals abounded.

First, and briefly, the facts of the case. Thomas Dudley was engaged to sail the yacht Mignonette from Brightlingsea in Essex to Sydney, New South Wales. The Mignonette was a registered vessel, 31 tons and 52 feet overall—about the same length as Gypsy Moth IV—and had been bought by Jack Want, a lawyer. Dudley and his wife, Phillippa, together with their four-year-old daughter, sailed her with the Frost brothers from Essex to Southampton, where she was pulled out for repairs. With some difficulty, he engaged a crew for the 14,000-mile journey—Edwin Stephens, mate; Ned Brooks, able seaman; Richard Parker, ordinary seaman. Richard, an orphan, was only 17—hence, a "boy," but not a cabin boy (cabin boys were domestics). The Mignonette sailed on 19 May 1884, expecting to make Sydney in 110 to 120 days, with calls at Madeira and Cape Town. In the South Atlantic, she met heavy weather, and on Saturday 5 July she was struck on the stern by a heavy sea and her planking sprang loose—she sank in five minutes or less. All four men escaped in a 13-foot open dinghy, but were quite unable to rescue any fresh water, and for food had only two small tins of turnips. Dudley thus describes the scene in his direct but unpunctuated prose:

to realise our position it was very bad sea like a mountain at times and water coming in faster than we could bail it out and night coming on it seemed our time was near but we must do the best we can and trust to God to take care of us and I feel sure he ruled the waves that night. . . . about 11 p.m. I should think by the moon a large shark came knocking his tail against our frail boat which made me think our time was near for him to be dining off our bodies, but I prayed that we might be spared to see all at home and if possible live a better life in the future. "Speared" phonetically produces his Essex dialect accent. Dudley did not confine himself to prayer—"the thought of a monster like him near us was not very agreeable I assure you after a few hits on the head from our ore he left."

"Our enquiries into Dudley and Stephens will lead us into the strange world of the nineteenth century, when cannibals abounded."

The disaster occurred midway between St. Helena and Tristan da Cunha, and they were off the steamship route and the usual track of sailing ships. Effectively, because of the set of the winds and currents, the nearest land was South America, two thousand miles away. Towards it they drifted, catching a small turtle and a very little rain water, augmented by the unpleasant expedient of drinking their own urine. Their position became

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increasingly desperate, and eventually, probably on 24 July, Dudley killed Richard Parker, with the agreement of Edwin Stephens. Brooks took no part, but passively acquiesced. On a number of earlier occasions, Dudley had proposed the drawing of lots, but the others had not agreed. All three men then ate the boy, and on 29 July, they were rescued by the German sailing barque *Mocetzuma*. Dudley’s own account is a classic: “on 24th day as we were having our breakfast we shall call it Brooks who was steering shouted a sail true a sail it was we all prayed the stranger would be directed across our path.” He recorded how “their hearts were in their mouths” lest the ship should pass by, but it didn’t, and they were landed at Falmouth in Cornwall, England, on 6 September. Much other detail of their ordeal survives but is not relevant to this article. On landing, Captain Dudley and his men, after a frantic exchange of telegrams between Falmouth and London, were arrested and charged with murder; but on 18 September, Brooks was discharged and became a prosecution witness. Dudley and Stephens were soon released on bail, and in November stood trial before a judge, Baron Huddleston, and jury at Exeter. There the jury, at the instigation of the judge, found a special verdict, setting out the facts and leaving it to the court to decide whether the men were guilty of murder. In 1884, this procedure had long been obsolete: it was specially revived for the occasion. By various procedural devices, probably improper, it was contrived to bring the case before a bench of five judges (constituting the Queen’s Bench Division) in London in December, and argument principally turned on whether the killing had been justified by necessity (the principal procedural objections, though known, were not raised). The Lord Chief Justice, Lord Coleridge, and his colleagues ruled against the men, who were then sentenced to death (Coleridge did not, however, don the black cap). Later, the death sentence was reversed, and after some days the men were pardoned on condition of serving six months’ imprisonment without hard labour. They came out of Holloway Prison on 20 May 1885, a year and a day after the voyage had begun, and largely vanished from history.

There are many puzzling and curious features of the Case of the *Mignonette*, as it was known at the time, features that are not illuminated by the law reports. Let me instance some of them. Who were these men? Why did they take on so hazardous a journey? Why was the peculiar procedure employed to bring the case before the Queen’s Bench Division? It has never been used since and had never been used in precisely the same form before. Why is the well-known judicial opinion of Lord Coleridge the only example in this period of an opinion with pretensions to literature? Why were Dudley and Stephens allowed out on bail—a quite unprecedented act in a murder case at this time? Why did Lord Coleridge not don the black cap when pronouncing sentence? What became of the men afterwards? One immediate source of information is, of course, newspapers—the Case of the *Mignonette* naturally filled the world’s press. But at first, at least, this material, which is voluminous, raises two further questions.

The first is this: why, as is quite apparent from press accounts, was public sympathy almost entirely on Captain Dudley’s side? From the moment the men landed at Falmouth, they were viewed not just with sympathy, but with positive admiration—they were heroes. Captain Dudley himself, when released on bail, travelled up to London to meet his wife, Phillippa, at Paddington station; men took off their hats as he passed. It is not the sort of reception a British cannibal murderer could look forward to with any composure today, even in postpermissive Britain. Even the trial judge sang Dudley’s praises—“a man of exemplary courage.” The mayor of Falmouth was threatened with murder for issuing the warrant for his arrest; Mr. Dankwerts, who prosecuted for the Crown in the preliminary hearing, was told that his life would be in danger if he secured a conviction at the Exeter Assizes. And, incredibly enough, Daniel Parker, Richard’s eldest brother, formally and publicly forgave Captain Dudley in open court, shaking him warmly by the hand. There is much other evidence of the same kind, and large sums were raised publicly to pay for Dudley and Stephens’s defence. In the press, there were few dissenting voices.

The second question concerns the strange lack of cyness exhibited by all three men. Under the Merchant Ship-
vided endless entertainment and interest, particularly as ships, like aircraft, possess the ability to kill large numbers of people at the same time. We all still remember the loss of the Titanic, but many of the more celebrated nineteenth-century disasters are largely forgotten—the Atlantic, which hit Nova Scotia in 1873, killing 562 of 933; the Princess Alice, which sank in the Thames in 1878 with a death roll of around 400; and the Cos-patrick, an emigrant ship, which burned in 1874, leaving a mere four out of 500 to tell the tale. A huge literature recounted and celebrated these and other disasters in paintings, woodcuts, prose, and poetry. The best horror stories were frequently commemorated in street ballads. As well as sinking, sailing vessels not infrequently ran out of provisions, or became waterlogged hulks on which food could only be had by diving. As for the sailors, they were portrayed partly as heroes and partly as drunk-en, stupid, and sometimes vicious villains. Elaborate philanthropic activities, partly reinforced by law, endeavored both to save them from the sea and to redeem them from their degenerate ways. Such men, in the aftermath of marine disasters, could well resort to cannibalism, the survivors eating their dead shipmates, and numerous cases of this kind were featured in the press and in general literature. When the Nottingham Galley sank in 1710, the crew ate the carpenter, a heavy plethoric man, forty-seven years of age, and of dull vis¬lains. Elaborate philanthropic activities, partly reinforced by law, endeavored both to save them from the sea and to redeem them from their degenerate ways. Such men, in the aftermath of marine disasters, could well resort to cannibalism, the survivors eating their dead shipmates, and numerous cases of this kind were featured in the press and in general literature. When the Nottingham Galley sank in 1710, the crew ate the carpenter, a heavy plethoric man, forty-seven years of age, and of dull vis¬lains. Elaborate philanthropic activities, partly reinforced by law, endeavored both to save them from the sea and to redeem them from their degenerate ways.

When the Peggy ran out of provisions (1765), the cat was divided into nine pieces, and a dead sailor was eaten who, "used with the utmost economy," lasted for 10 days. Nineteenth-century cases include the Nautil¬lus in 1807; the Medusa (1816), which gave rise to the famous picture by Géricault now in the Louvre (Le Radeau de la Méduse); and the whale ship Essex (1819-20), the source of Melville's story Moby Dick. A long list can be continued right through the nineteenth century, the latest case I have noted being that of a Norwegian vessel, the Drot, in 1899. Indeed, in the same year as the case of the Mignonette, survivors from an American pilot vessel, the Turley, operating from Philadelphia, admitted to eating a Norwegian apprentice named Swanson. In fact, they had probably killed him as well. For, in addition to incidents involving eating those who had died naturally, numerous cases are documented in which men killed their shipmates in order to eat them. The Drot involves such a case, and many examples are recorded, the earliest of which took place at some point between 1626 and 1641 off the island of St. Christopher (St. Kitts) in the Caribbean. This was the only previous incident referred to in the legal argument in the case of the Mignonette.

One notable example involved a vessel called the Francis Spaight. This ship was named after a merchant in Limerick, Ireland—the firm still exists there. She carried emigrants from Ireland and brought timber back. She left St. John's, Newfoundland, on 24 November 1836, with a crew of 18. On 3 December she broached to, and after Captain Gorman had succeeded in cutting her rigging, she righted herself completely waterlogged. The sailors had virtually no food or water and no way of obtaining any. Fifteen men survived, clinging to the hulk. After enduring horrible conditions for 16 days, on 19 December the captain proposed that lots should be drawn among the four boys, who had no families, to see who should be killed. One of the four, O'Brien, was blindfolded, and, as a sailor drew the lots, O'Brien was made to call out a boy's name. When he called out "on myself" the death lot was drawn. The cook, who was responsible for the provision of food, was ordered to kill him; he refused. It was pointed out that it was his duty, and if he refused he would be killed. His attempts failed, at which point O'Brien offered to kill himself; his attempt also failed. I shall spare you further details—he was killed, and so was one other adult sailor and another boy. The sailor was, in fact, dying. Eleven survivors were rescued by the American vessel Agenoria on 23 December (they indicated their plight by waving severed hands and feet) and landed at Falmouth on 6 January 1836. They eventually returned to Limerick, and the Francis Spaight was towed to safety and continued to operate for some years in the emigrant trade, whose horrors are well known. So, Dudley, Stephens, and Brooks were not the first cannibals to land at Fal¬mouth.

I have notes of numerous other cases, from the Dolphin (1759) to the Drot (1899), and in virtually all of them where killing took place lots were said to have been drawn. It strains credulity to suppose that in all these cases lots were actually drawn, or were fairly drawn, just as it is quite possible that in other cases in which killing was not admitted, death was anticipated by sailors desperate for drink, who feared that they would not obtain blood from one who died naturally. That is why Richard Parker, who was dying anyway, was killed, as Brooks later explained to the press. Accounts of the drawing of lots reflect the idea that this was the proper or appropriate course of action—the right thing to do. This idea has even survived in oral tradition; I have had it explained to me by relatives of Richard Parker that the only reason why Dudley and Stephens were tried was that they cheated—they did not follow the approved prac­tice, which was to draw lots.

An extensive literature illustrated and reinforced this belief. In addition to popular reports, there were stories aimed at the educated public, the most striking examples being Moby Dick and Edgar Allen Poe's The Narrative of Arthur Gordon Pym, first published in 1837—here, incredibly, the fatal lot is drawn by Richard Parker. Also aimed at such an audience was W. G. Gilbert's Yarn of the Nancy Bell, first published in 1866. More significant from a practical point of view, folk ballads on the subject were well known to sailors in all maritime countries. In variant forms, what is essentially the same ancient ballad turns up in England as "The Ship in Distress," in France as "Le petit navire" or "La courte paille," in Portugal as the "Ship Catherine," and in Catalonia as "The Cabin Boy," and there are Scandinavian variants, too. A pastiche of this ballad, based on the Breton version, was written by Thackeray—Little Biller; or, The Three Sailors of Bristol City, first published long before the case of Dudley and Stephens. There were other ballads, composed in more recent times on the same theme. One very common one tells the story of the whale ship Essex. Another deals with the loss of the brig George in 1822, when one Joyce Rae was eaten by her husband, a detail which added a certain piquancy to a routine procedure. He claimed prior rights in the corpse arising out of the marriage, a principle of family law now obsolete.
This popular literature (augmented by ballads written about the *Mignonette*), together with the tales of the sea that sailors told each other, ensured that there was general understanding of what had to be done on these occasions. Properly conducted, cannibalism was legitimised by a custom of the sea, and it was this custom of the sea that came before the court in 1884. W. Arens, in a recent book *The Man Eating Myth*, has argued that cannibalism, as a socially accepted practice, is a myth; he exempts from his scepticism “survival” cannibalism. I should argue that maritime survival cannibalism, preceded by lot drawing and killing, was, in fact, a socially accepted practice among seamen until the end of the days of sail. It is not an exception to his thesis, but a counter example.

Indeed, in the nineteenth-century imagination, cannibals abounded. Among “savages,” particularly in Africa and Polynesia, the practice was thought to be endemic, and elaborate and slightly ludicrous taxonomies were constructed. Hastings’s *Encyclopaedia of Religion and Ethics*, just outside our period, includes as categories: “cannibalism from morbid affection—eating the dead out of sheer love,” and, my own favourite, “cannibalism through sheer gluttony, the worst of all,” a vice attributed to the Fangs in West Africa. Nearer home, there were eccentric cannibals, like Liver-Eating Johnson, who ate the livers of Crow Indians on principle in revenge for the killing of his wife in 1846, and numerous cases of survival cannibalism—the best known being the case of the Donner Party in 1846–47, around which numerous myths have arisen. But references to the drawing of lots are rare in such cases, and those reduced to cannibalism—like the members of the modern Uruguay rugby football club, which survived an air crash in 1972—did not possess a common culture like that of the Atlantic seafarers in the great days of sail.

Cannibalism also occurred, or was said to have occurred, on a number of Arctic and Antarctic expeditions. The most notable scandal about such an expedition happened to coincide, more or less, with the Case of the *Mignonette* in 1884. In that year, the U.S. Navy, with some smugness, rescued a U.S. Army arctic expedition, or what was left of it, from Cape Sabine. This expedition, led by Lieutenant Adolphus Washington Greely, had gone north in August 1881, and then vanished. On 22 June 1884, seven survivors of the original party of 25 were rescued at death’s door (one subsequently died). The bodies of some of the others were brought home for burial; the survivors, including Greely himself, for a hero’s welcome. On 12 August, the *New York Times* published a sensational story of a cover-up. In fact, it was claimed, the bodies returned were largely dummies, and one was of a man who had been shot for stealing and then eaten. Grisly autopsies partially confirmed all this, and a major scandal ensued. It filled the American and foreign press just before the survivors of the *Mignonette* arrived in England. Precisely what did go on has never been satisfactorily established, though there is no reason to believe that Lieutenant Greely, who died as recently as 1935, had any hand in it. The Navy story admitted the use of bodies as shrimp bait only, but the evidence plainly establishes cannibalism.

In view of what I have said, you may wonder at the paucity of trials of cannibal murderers before 1884. In fact, there were at least two such completed trials; but, in both, the claim that the killing was justified by necessity was never made. Instead, the cases were treated as involving questions of self-defence. The earliest concerns the only recidivist cannibal I know of—Alexander Pearce. An Irishman, transported to the hideous penal colony at Macquarie Harbour in what is now Tasmania, he twice escaped, first in 1822 and again in 1823. On the first occasion, he had seven companions. They survived by killing and eating each other in turn until Pearce and one Robert Greenhill alone survived, and a feeling of mutual suspicion not unnaturally prevailed between them. Pearce killed Greenhill, allegedly to prevent Greenhill from killing him. On this occasion, he was not charged with murder but simply returned to the penal colony. In 1823, he again escaped in company with one Thomas Cox, whom he killed and ate. For this he was tried and convicted of murder, and executed. The motive was apparently not starvation on this occasion—Cox was killed in a quarrel, so the question of necessity never arose at the trial. There were hints, however, of the myth that once you start eat-
ing people the habit is hard to break. Pearce’s skull, curiously enough, ended up in the collections of the University of Pennsylvania. More recently the celebrated Colorado cannibal and mountain man, Alfred Packer, was said to have murdered and then eaten his companions (for whom he was guide) in 1874; he was tried and convicted of murder in 1883 and, when this trial was declared invalid, again tried for manslaughter arising out of the same incidents, in 1886. His defense was that he, like Pearce in 1822, was defending himself from being killed and eaten.

Incidents like the killing of O’Brien in the aftermath of the wrecking of the Francis Spaight, though no secret at the time, did not lead to any legal proceedings, nor was anything ever done about the supposed villain of the Donner Party story. At a time when more people lived on the frontier, such incidents were both more understandable and less likely to end in court. In some instances there were technical difficulties as to jurisdiction (this, for example, was one of the reasons given for the refusal to court-martial Lieutenant Greely, though he requested a court-martial), and, of course, there were immense practical difficulties in bringing frontiersmen before courts and collecting satisfactory evidence. The principal witnesses were often, by then, digested.

In addition to the two cases I have mentioned, I know of two other attempts before 1884 to bring to trial those who had killed, arguably at least, under necessity—cases, that is, involving the same point of law as the case of Dudley and Stephens.

The earliest concerned the loss of the ship William Brown in 1841, and led to the trial of Alexander William Holmes. She was an American ship from Philadelphia, engaged in the emigrant trade, and she left Liverpool on 12 March carrying 65 passengers and a crew of 17, bound for Philadelphia. Most of the emigrants were Irish, but there was one Scots family. On 19 April, she struck an iceberg and began to sink. Her two boats were incapable of holding all those on board, and 31 were left to drown as she went down. All the crew and remaining passengers were disposed in the boats. Captain Harris, together with the second mate, seven sailors, and one passenger, was in the jolly boat; the first mate, William Rhodes, eight sailors (including Holmes), and 33 passengers were left in the 22-foot longboat. The two boats remained together overnight, but the captain next morning set off under sail for Newfoundland. Having suffered severely from frostbite, he was rescued by a French lugger six days later. Before he left, Rhodes pointed out to his captain that his boat was unmanageable, and mentioned the possibility of drawing lots and throwing passengers overboard; the captain indicated this should be a last resort. The following evening, the sailors consulted together and decided to throw some of the passengers overboard; this began at the mate’s order, but he took no active part. Those who actually jettisoned passengers—16 in all—were Charley Smith; Alexander Williams, alias Alexander William Holmes (a Finn); John or Joseph Stetson; and Henry Murray. There was no resistance—the passengers were half-naked and freezing—but some pleading, including an extraordinary exchange between one Charles Conlin and Holmes:

“Holmes, dear, you won’t put me over.”

“Charles, you must go.”

Shortly after the last passenger had been thrown overboard, Captain Bell in an American vessel, the Crescent, sighted the boat and, at considerable risk, rescued the survivors. They were eventually landed at Le Havre in France.

There the American and British consuls—Messrs. Beasley and Gordon—investigated the matter and on 16 May issued a joint statement which concluded: “Throughout the affair we have not discovered any fact capable of drawing down blame upon any one whatever.” Two of the passengers, James Patrick and James Black, also signed, with the sailors, an account entered in the Crescent’s log. That appeared to be the end of the matter.

All this appeared in the English press. There was a protest by “Homo” in the Times at the “uncivilised nature of the act”; it was what might be expected “among the savage and heathen inhabitants of the South Seas.” The story enraged the foreign secretary, Lord Palmerston, who read of it in the press. He was particularly angry that British subjects had been jettisoned by foreigners. So copies of the depositions of the survivors were sent for in London (where they still remain in the Foreign Office archives), and Mr. Gordon was instructed to have the sailors brought to trial in France, and severely rebuked. But by then it was all too late—sailors and survivors had left Le Havre. The emigrants, aided by a subscription, set off for Philadelphia, which they reached by July 13. So too did some of the sailors—certainly Francis Rhodes, Charley Smith, William Miller, and Alexander William Holmes, of whom Rhodes had ordered the action and Smith and Holmes had taken an active part. Captain Harris and the second mate, Walter Parker, also arrived there. For reasons I have been unable to discover, only one man—Holmes—was brought before a grand jury, on 18 October 1841, and charged with murder and, obscurely, larceny. The grand jury found two true bills for manslaughter only, and Holmes was eventually tried in April 1842 for killing one Francis Askins. No doubt the outraged feelings among the Irish community in Philadelphia led to the prosecution, and I suspect that Holmes was the only one who did not get away in time. At his trial, the survivors divided—Bridget McGee, Mary Carr, Sarah Carr, Ann Bradley, and Julia McCadden appearing for the prosecution; Jane Johnson, Eliza Lafferty, and the four members of the Scots family, the Edgars, appearing for the defence. Of the prosecution witnesses, Mary Carr, Julia McFadden, and Bridget McGee had in Le Havre signed depositions exonerating the sailors. In the event, Judge Baldwin’s careful charge recognised the legality of killing after drawing lots in cases of true necessity, and of sacrificing passengers only if sailors were essential to survival. There was a conflict of evidence, however, as to how necessary Holmes’ actions had been, and the jury found against him. He was sentenced to six months’ imprisonment with hard labour, and President Tyler refused him a free pardon.

The second attempt—this time unsuccessful—to bring sailors to trial in a cannibal case occurred in 1874, and involved a number of British government departments. The Euxine, a collier, caught fire on a voyage carrying coal to Aden and was abandoned on 9 August in the South Atlantic. She was then 850 miles from St. Helena. Two boats reached the island, the captain navigating. The third boat parted
company and, under the command of the second mate, James Archer, failed to locate the island and turned left for South America. With the sailors already on short commons, their position was bad. On 27 August, the boat capsized three times, and the five survivors, who righted it next morning, were then in a desperate condition, having lost food, water, sails, and navigational instruments. On Monday, 31 August, it was proposed that lots be drawn; they were, three times, and on each occasion the fatal lot fell on an Italian boy who spoke little or no English. He was called Francis Shufus—a corruption of an Italian name. This story conforms to a pattern—the lots are repeated, the result is always the same, the odd man out is selected. After an interval for prayer, a German sailor, August Muller, killed him. Shortly afterwards, Shufus having been partly consumed, they were rescued by a Dutch ship, the Java Packet, which landed them in Batavia in the Dutch East Indies. There, like Dudley and Stephens, they gave a full and frank account to the British consul, Mr. Fraser, and signed depositions.

From Batavia they were taken to Singapore, arriving by the Namao on 16 November. There it was at first decided to take no further action. This decision was communicated to the Board of Trade in London by a letter that arrived in January 1875. But on 20 November, the governor of Singapore had learned of the case and became uneasy. He put the men under police surveillance and ordered that they should at least come before a court, and not simply be set free. He informed the Colonial Office in London of this. He was somewhat suspicious about the lottery; he suggested that the men ought to be sent to England, where the legality of their actions could be properly considered, and a really significant legal precedent established. The Colonial Office thought this proposal to send them to England was illegal; they must be tried on the spot. They cabled appropriate instructions to the governor. So in January 1875 the men were brought before the police magistrate in Singapore, Captain Douglas, who eventually committed them for trial before a judge and jury there. But, even at the preliminary enquiry before the magistrate, it soon became clear that the prosecution case was in a mess. The men's depositions were not in Singapore—they had been posted home from Batavia to London. There were copies, but these were ruled inadmissible as evidence. There were no witnesses available from Batavia—the sailors of the Java Packet would not cooperate, and the acting consul obstinately refused to come over to give evidence. He was so unenthusiastic that it was difficult to get him even to answer letters. In Singapore one Mr. Ellis was a reluctant witness to a statement by Archer that Muller had killed the boy; there were no other available witnesses to any kind of confession. One sailor was persuaded to turn Queen's evidence, but eventually the conclusion was reached that the case was so weak that it was better abandoned. It was felt probable that the jury would acquit, and the idea would then spread among seamen that a court had actually approved the custom of the sea.

In London, where the deposition eventually arrived, this view was approved. The Board of Trade file is
minuted by the official concerned, Thomas Gray: “It is not likely that any jury would convict, and if a court of law were to stamp this custom with clear authority, it might be made a pretext for getting rid of troublesome people. I should be inclined to leave it alone.” The papers were then passed to the Home Office. Meanwhile, in Singapore, the men had been kept in custody and placed on a British ship to be brought home for trial in England. The Colonial Office, which regarded this procedure as illegal, heard too late to stop it—the ship had left. So, in typical manner, the baby was cunningly passed by an embarrassed Colonial Office to the Board of Trade, who passed it to the Home Office. The men eventually arrived in London in July 1875, but no proceedings were ever taken. By then, what little legally admissible evidence had existed had dispersed. The Home Office file is unluckily lost. The voluminous papers that do exist make it quite clear that the point of a prosecution was felt to be to secure an authoritative declaration as to the illegality of the custom of the sea. The Colonial Office and, by implication, Home Office were in favour of this; the Board of Trade was opposed. This conflict of departmental attitudes still existed in 1884. The background to the American case appears to have been quite different. There is no evidence of any official desire to outlaw the maritime custom, and this perhaps explains why the American case accepted the custom, while the British case took the opposite view.

I have now given you some of the background to Dudley and Stephens, and it explains many of the peculiarities of the decision. The prosecution was backed by the Home Office in order to condemn, publicly and solemnly, the custom of the sea. It was vital therefore that the legal point not escape because of sympathy for Dudley. This was a serious risk, particularly because he was not some ordinary sailor, but a very well known gentleman—a professional yacht captain. Yachting at the time was a highly prestigious, expensive, and glamorous form of conspicuous expenditure. In 1884 in Britain there were 58 yacht clubs, and Hunt’s Yacht List listed 3,219 sailing yachts, including 395 schooners; yachts included very substantial vessels. They were mainly sailed by professional crews.

The flavour of the yachting world is caught by a letter in 1885 from “Enquirer” in Hunt’s Yachting Magazine: he was worried about his costs. He explained that he did not run a large yacht, merely a “snug little yawl” of 80 tons, on which, for a 20-week season, he employed a captain, a mate, a steward, a cook, and five sailors. This cost him £1,000, a very substantial sum in 1885, and this was, he was assured, about right. The leading yacht crews came from a very few villages and, indeed, families. Dudley, Brooks, and Parker all belonged to this world. Tom Dudley had been mate of the Fiona, the leading racing yacht in the early 1870s; Ned Brooks had served for several seasons under the celebrated Captain O’Neill. Little Dick Parker was the son of old Chick Parker of Itchen Ferry, a yacht captain, and his family were to become particularly well known as sailors on the kaiser’s yacht Meteor. One of them is today sailing master of Sir Edward Heath’s yacht.

Edward Stephens alone was not a yachtsman. He had enjoyed a prosperous career as an officer in the Union Line, which sent steamers to South Africa. Unhappily, his career had collapsed in 1877 when he was first officer on the European. This ship was approaching the English Channel in bad weather, and Stephens was responsible for gross navigational errors that led him and the captain to believe the ship had passed safely by the Île d’Ouessant, the western extremity of France. Not long before he went off watch, Stephens remarked to the captain, “We must be a long way from land.” A quarter of an hour later, while he was still on the bridge, he heard the lookout give the traditional cry of “breakers ahead,” and a few minutes later the European hit the Basse Meure Rock and sank. The captain lost his certificate for gross and culpable negligence. Stephens, acting under the captain’s orders, was not censured, but the Union Line never employed him again. Though holding a master’s certificate (Tom Dudley only held a mate’s), he found difficulty in getting work, and decided to try to emigrate. This was why he shipped on the Mignonette; like the other four men, he had a yachting job arranged in Sydney.

The risk that the jury would simply acquit Dudley and Stephens was a real one, and, in that case, the critical legal decision would never be taken before a really authoritative bench of judges. So, from the start, it was made clear that nothing was going to happen to them—hence the grant of bail, and broad hints of a free pardon. The lawyers were quite happy to be kind to Dudley and Stephens, as long as they got their leading case condemning the custom of the sea. The jury’s special verdict was Baron Huddleston’s idea. He drafted it himself, and the original draft, with various modifications suggested by counsel, still exists. He was what is known as a “strong judge,” and he talked the jury into acquiescence by telling them that the only alternative was for them to find the men guilty of murder. It was far fairer to them to agree on the facts (which he said, were not in dispute) and spare themselves the odium of finding these brave men guilty of murder. The text was cunningly devised to exclude any finding that they had acted under necessity. The relevant passage merely says, “If there was any necessity, there was no more necessity to kill the boy than anyone else.” The defendants’ counsel did not agree to this, but neither did he strenuously disagree. He merely said that he was powerless to agree; no formal consents were possible in a criminal case. He was in fact the leader of the Western Circuit, and a leading counsel was essential to lend real authority to the case. He argued the question of necessity, but failed to raise certain procedural objections, no doubt because it did not seem in the interests of his clients to do so—the price of a pardon was essentially acquiescence in the produc-
tion of the leading case. And so, after much procedural muddle, the lawyers got their leading case, and the moral grandeur of the occasion called for literary grandeur in the opinion, which is one long purple passage. The savage, barbarous practice of cannibalism was roundly condemned, and the custom of the sea denounced as a blasphemous appeal to God to sanction killing. The men, shaken by the ordeal, were sent off to Holloway Prison as the most comfortable prison available, and everyone waited for the free pardon to be announced. There then occurred a curious hitch.

The home secretary at the time was Sir William Harcourt, and he turned awkward. The judges, he said, had announced that the men were murderers, and he therefore proposed to take the judges seriously and commute the death sentence to indefinite imprisonment. This caused consternation behind the scenes, and it took some time to talk him into the token fixed sentence of six months' imprisonment. This solution came from his son, who acted as his private secretary; the son's diaries survive and recount the whole story. Petitions to reduce the sentence further were resisted, though prison rules were relaxed in the men's favour. Most press comment was reasonably favourable, though some papers pointed out what a farce the whole business had been.

Tom Dudley did emigrate, but fate reserved a curious end for him. I recently located in Southampton a lady who is a distant relative, and she lives not far from relatives of Richard Parker. She was told the story when she was, as she put it, regarded by her mother as old enough to hear these things. In 1900, bubonic plague hit Sydney, and Tom Dudley was its first victim. His corpse was then subjected to indignities as gross as any that befell poor Richard Parker. Bathed in diluted sulphuric acid, and wrapped in many layers of sailcloth, it was taken by water for burial in grave 48 in the Quarantine Station on the South Heads of Sydney Harbour. The family regarded it all as divine retribution, and I fear his son also carried the curse—he ended in a lunatic asylum. Edwin Stephens died in 1914, and there are stories that he too went mad. Ned Brooks continued to work as a yachtsman until his death in 1919. In 1906, he found himself working on a yacht with a nephew of Richard, and they fell to talking about the affair. Ben Parker wrote an account of this meeting, and I persuaded the family to allow me access to a copy. Brooks then said that sham lots were in fact drawn to select Richard Parker—the custom of the sea had been followed in letter if not in spirit. I suspect this to be true. In Essex, Southampton, and Falmouth, where the story is still remembered, I learned why the yacht sank. Her timbers were rotten, and Dudley had been too economical in repairing her before the voyage; repairs were limited to the replacement of some planking. Under stress the screws holding the new planking pulled out, and she rapidly filled.

No later case involving the custom of the sea, or its much less well established counterpart on land, ever arose in the common law world. Norwegian sailors who drew lots after the loss of the Thelka in 1893 were extradited for trial in Oslo, but, after appearing before the juge d'instruction, they were pardoned by royal decree; their memoir is article 47 of the Norwegian Penal Code, the Penal Code Commission of 1885 having taken the view that no crime was committed by men in such circumstances. What happened to the Norwegian survivors of the Drot in 1889, I have yet to discover. Presumably, sailors continued to follow the custom of the sea until the end of the days of sail, but kept quiet about it. The lawyers got the leading case, but whether anyone took much notice of it, I personally doubt.

The cannibals who were fortunate enough to be tried achieved some immortality through the legal proceedings. Many others are now forgotten: thus nobody today has heard of cannibal James Archer of the Euxine, who ended his days quietly in Dundee as a ship's captain. A book has been written about Alexander Pearce, however, and his skull is, as I have said, preserved in a museum in Pennsylvania. Dudley, after a short stay in the waxworks in London, fell into relative oblivion except as the name of a leading case until Donald McCormick attempted to rescue him in a colourful book, Blood on the Sea, published in 1962. This includes the mythical tale of his romance with Otilia Ribeiro, an orphaned transvestite Portuguese flower girl, who took part in a bizarre attempt to reenact the crime, herself playing the part of "Ricardo Parker." In this account, Dudley cooks a morsel of his buttocks, musing to himself as he prepares to serve this to Otilia: "buttocks and beans, he laughed to himself. Yes, that would be the supreme sacrifice, the one act that would obliterate the crime." It is a work in which imagination has been employed to supplement the evidence.

But the only cannibal who has been a real folk hero is Alferd Packer, the mountain man. At his first trial in 1883, he was convicted and sentenced to death in solemn terms, but the version that circulated, invented by one Larry Nolan, a saloon keeper who attended the trial and gave evidence against him, was different: "Stand up Packer, you voracious man-eating son of a bitch. There were six Democrats in Hinsdale County, and you've been and gone and eaten five of them."

Retired in 1886 for manslaughter, he was sentenced to 40 years' imprisonment. He persistently appealed, with success; but eventually a press campaign by Mrs. O'Bryan—"Polly Pry" of the Denver Post—led to his being paroled on 7 January 1901. A kindly old man, who suffered severely from epilepsy, he died in 1907. But since then his memory has been kept alive—for example, by a ritual exorcism of his ghost, employing a goat borrowed from the local zoo, which took place in 1943 and was photographed for Life Magazine; by the opening of the Packer Memorial Grill in 1968 at the Law School of the University of Colorado; by the Packer Wilderness Cook Book; by an appalling film; by books; by Packer Day at the Mining School in Denver. There are two serious books about him, and the author of the most recent one, Judge Ervan F. Kushner, petitioned the Colorado Clemency Board for a posthumous pardon, a request denied, however, by Governor Richard Lamm. If you go to Denver to the Waxworks Museum, you can still see Packer chomping away in the fireplace, though the figure is not a good likeness. If you follow the instructions and press the adjacent button firmly, you can hear the wind howling over Lake San Christobal as it did in the winter of 1874, and sense a little of the world of the frontier in which the nineteenth-century cannibals lived and provided us lawyers with such entertaining leading cases.

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