

1 A Duty to Die

The job was dangerous, no doubt about it. John Henry Want, an Australian lawyer, had purchased the *Mignonette*, a fifty-two-foot pleasure yacht, and needed a crew to sail it from England, down the coast of Africa, around the Cape of Good Hope, and across the Southern Pacific to Australia. The vessel was small for the open ocean, and much could happen in the fifteen thousand miles between England and Australia. The task was not for the faint of heart, but weighing against the risks was the handsome price to be paid to the person with the courage to claim it. Captain Thomas Dudley took the job and assembled a crew for the voyage.

Captain Dudley chose Edwin Stephens to be his first mate, and Edmund Brooks as the only other member of the crew. For a cabin boy, Captain Dudley took on Richard Parker, an orphan of seventeen. Young Richard had never before left the shores of England; but without a family to support him, he needed to learn a trade to make a living, and so he signed on with Captain Dudley for a chance at a better life and a bit of adventure on the high seas.

As the intrepid crew boarded the *Mignonette* on May 19, 1884, and cast off from the shores of Southampton, scarcely could they have imagined in their most tormented nightmares the unspeakable horrors that awaited them at their journey's end.

The trip proceeded without notable event as the tiny crew guided their vessel into the Atlantic, down the coast of France, across the equator, and around the West Coast of Africa. They made good time, with fair winds and sunny skies. All signs pointed toward a successful and uneventful voyage. Then the weather turned.

On July 5, forty-seven days into the journey, a gale gathered behind the *Mignonette*. Thus far, the weather had been a friend, and Captain Dudley was determined to stay out of the clutches of foul winds. He ordered the crew to press forward at full speed to stay ahead of the gale that whipped the waters behind them. By evening, by all appearances, the Captain's efforts succeeded. The waters were calm and the wind settled. Captain Dudley could breathe easy. Fortune had smiled on them again. They had outrun the storm.

Captain Dudley and his crew were about sixteen hundred miles off of the Cape of Good Hope, the southernmost point of Africa. Soon, they would round the Cape, and then it would be a straight shot to Australia, where payment awaited them for their services. Everyone had worked hard to escape the gale, so Captain Dudley decided that his crew had earned a rest. He directed the crew to stop the ship for the night. The crew heaved to, arresting the ship's forward motion by setting the sails in opposition to each other so that the force from one sail counteracted the force from the other. Everyone looked forward to a peaceful night's sleep under starry, southern skies. They didn't get it.

While the crew slept, a massive wave reared up and towered over the small sloop. For someone watching from afar, it might have looked like a giant fist hovering over a table, ready to pound. And pound it did. The water crashed down on ship and crew with crushing force. The lash of the sea punched a hole in the side of the ship. The *Mignonette* lurched violently to one side. Water rushed in. The *Mignonette* sagged under the weight of the waves that lapped hungrily over its bow. The sea had come to claim it.

Captain Dudley immediately recognized that the *Mignonette* was lost. He gave the order to abandon ship. There was no time to gather supplies. The *Mignonette* took on water ever more quickly and settled deeper and deeper into the waves around them. The crew scrambled onto a tiny lifeboat only thirteen feet long. The lifeboat had no mast and no sail and only

two oars to propel it. It offered no shelter from the sun, the wind, or the rains. The flimsy boards that held it together were thin and weak. The small skiff was not the ideal place to fly to for safety, but it had one thing possessed by nothing else in the world of the terrified crew: it was not sinking, and at that panic-filled moment, that was all that mattered.

The lifeboat pushed away from the larger vessel just in time. The stunned sailors could only watch in horror as the sea, whipped by the wind, rose up and swallowed the *Mignonette*, dragging it toward the bottom of the ocean. The time from when the wave struck the *Mignonette* to the time it disappeared below the surface never again to see the light of day must have felt like a lifetime, yet only five minutes had passed.

Through the night, the stunned crew clung to their skiff for dear life. As dawn spread over the sky, the four men took stock of their situation. It wasn't pretty. In the rush to abandon the *Mignonette*, the crew had saved themselves but little else. They had no water. They had no food, with the exception of two one-pound tins of turnips. The sun beat down upon them mercilessly, and the lifeboat offered no shade in which to take refuge from the relentless rays. The lifeboat kept the men above water but provided little else.

For three days, the four men rationed the turnips until their provisions were exhausted. The meager meals did little to blunt the hunger gnawing on their stomachs and did nothing to quench the thirst that tore at their throats. All the while, they searched the horizon for any sign of a passing ship, their only hope of rescue.

On the fourth day, their spirits rose as they encountered a bit of luck. A small turtle had made the mistake of swimming too close to the skiff. The turtle's mistake was the men's great fortune. They captured the turtle and nibbled away at it for a few more days, hoping that this little bit of nourishment would preserve them until help arrived or at least until they could find more food.

But help did not arrive. Nor did any more food. By the twelfth day of the ordeal, every scrap of the turtle had been licked clean. Every day, hunger, heat, and exhaustion threatened to overwhelm the men and drive them to collapse. Thirst was the worst. The only freshwater they had was made up of the drops of rain they could catch in their oilskin capes. Lack of water wreaks havoc on the senses. Hallucinations are not uncommon,

and judgment is clouded. The days dragged on; and despite the crew's best resolve, their situation became more desperate and more hopeless.

A week wore on without food. Five days passed without water. On the eighteenth day adrift at sea, Captain Dudley came to a grim conclusion. They were not all going to make it. Already, the four men were on the brink of death by dehydration. Even if the rains fell, starvation loomed not far behind. Nothing short of immediate rescue could save them from this dark reality, but two and a half weeks had passed without sign of ship or sail anywhere on the horizon. With no supplies to sustain them, the hapless crew was eyeball-to-eyeball with death, and death wasn't blinking.

On the eighteenth day of the ordeal, Captain Dudley and First Mate Stephens approached Brooks, the third member of the crew, with a startling suggestion. Not everyone had to die. If one of their number were sacrificed, the rest could be saved—at least for a while, maybe long enough for a ship to cross paths with their lifeboat. Brooks caught their meaning. "One of their number" meant the boy.

At a callow seventeen, Richard Parker was by far the youngest member of the crew. He had no experience with the sea. This had been his first voyage. He was a cabin boy, not a sailor. He had no father and no mother. No wife waited for him in England; no child depended on him for support. What's more, his health was fading fastest among the group. In his inexperience and desperation, Parker had made the mistake of drinking water from the sea to slake the thirst that was driving him to madness. As the sailors could have told him, the salt from the seawater only hastened his dehydration and brought him that much closer to the brink. Death would take them all, of that there was no doubt, but it would start with the boy; on this, all three men agreed. What difference would a few days of semi-conscious, delirious life mean to the boy? For the rest of the crew, those days could be the difference between life and death.

Brooks recoiled with horror at the radical suggestion and refused to listen to Dudley and Stephens. No more was said among them, and the topic was dropped. No one said anything to Richard Parker. The hunger and thirst continued.

On the nineteenth day, Captain Dudley could endure no more. He corralled Stephens and Brooks and, in whispers, proposed that they should cast lots. The loser would save the others with his own death. It was the

only way. How often in life is one man called upon to sacrifice himself for his fellows? In war it is an everyday occurrence, a noble duty. Necessity had driven the men into a fight for their lives as desperate as any faced by the most beleaguered soldier. The hour for sacrifice had come. One had to die, lest all perish.

Stephens concurred with Dudley's grim assessment of their circumstances and saw no course other than the one the captain proposed. Brooks demurred. Dudley and Stephens sympathized with Brooks's reluctance and tried to win him over. No one had wanted things to come to this, but here they were, on the precipice of death, with only this slim reed upon which to hang all hope. Brooks remained firm in his dissent.

Frustrated by Brooks's refusal, Dudley and Stephens dropped the idea of casting lots and turned their arguments to the boy, whose sleeping body could be their salvation. Think of their families, argued Dudley and Stephens. The sailors had wives and children. What would those innocents do when their husbands and fathers who supported them were swallowed by the sea? The boy was an orphan. Who would miss him if he failed to return? Every death is a tragedy, but if someone had to die, whose death would matter least? Again, no one spoke a word of this to Richard Parker.

The three men came to no agreement that day, but Dudley warned that if no vessel were seen by the next day, the deed would have to be done. The men returned to their watches and waited.

The next day dawned. It was July 25, the twentieth day since the *Mignonette* sank, the tenth day the men had gone without food. No ship could be seen anywhere in the wide expanse of ocean that was their watery prison. The time had come, Dudley decided, to act.

Once again, Dudley approached Stephens and Brooks. The plan was outside the bounds of all morality, but their dire situation was outside the bounds of all endurance. Survival was at stake. Should one die or should all? Dudley needed to know where the other men stood. Stephens agreed to the killing. Brooks did not. Dudley told Brooks that he might want to take a nap on the far side of the lifeboat. Brooks moved aside and did not interfere.

Dudley made his way to where Richard Parker lay semiconscious, near the back of the boat. Dudley towered over the boy. Parker's body was thin,

his skin almost translucent. The boy did not move, probably because he could not. He was utterly helpless.

Dudley said a short prayer. He prayed for forgiveness and asked that all their souls might be saved. He withdrew his knife. He spoke to Richard Parker. "Your time has come," he whispered, and found he had nothing more to say. Words were meaningless. All that mattered was the knife. Captain Dudley slit Richard Parker's throat, killing him.

The three men fed upon Richard Parker, the boy's body and blood nourishing and reviving the fading frames of his former shipmates. Four days later, a passing vessel found the lifeboat. The three men were alive, but just barely. The ordeal at sea was over.

But the ordeal for Dudley and Stephens was not quite done. Dudley had killed a boy, and Stephens had concurred in the act. The two were charged with murder. In their defense, they claimed that they were driven to the deed by the most extreme necessity imaginable. It is beyond dispute, they argued, that a person may lawfully kill another in self-defense to preserve his or her own life; and in that lifeboat, in those circumstances, their lives were in as much mortal danger as any person had ever faced. If they had not taken the action they took, they would all be dead, including Brooks, who took no part in the killing, and Parker, who was their sacrificial lamb. Had they stayed their hands and let Parker die on nature's schedule as he was bound to do, the boy would be just as dead, the only difference being that the three other members of the crew would have been his companions in death. While the killing was deeply sad and regrettable, the two men argued, the extreme necessity of the situation had justified it.

Dudley and Stephens rested their case. To the charge of murder, they claimed the defense of justifiable homicide. The question is now put to you. How would you rule?

HOW THE COURT RULED

No one could argue that the ordeal on the lifeboat had not pushed Dudley and Stephens to the furthest extremes of human suffering. For nearly three weeks they were baked by the sun by day and chilled to the bone by night. They had no food and little water. Every day their hopes of rescue

faded further. These circumstances were, as the reviewing court put it, “appalling, loathsome, harrowing,” more than enough to break even the strongest among us.

And yet Dudley and Stephens took the life of an innocent boy. Richard Parker had done nothing to them. He had not threatened them with a weapon of any kind. He had not put their lives in danger. He was a cabin boy with no authority or command. He did not bring on the storm or conjure the wave that sank the *Mignonette*. He did not take more than his share of the meager supplies aboard the lifeboat. He did just what the other men did: he hoped for rescue and waited to die.

Richard Parker’s death did not guarantee the survival of the other members of the crew. For twenty days there had been no sign of any other vessel on the sea. The crew might have been picked up the very day they did the deed, in which case Parker’s death would have been wholly unnecessary. The crew might never have been picked up, in which case Parker’s death would have saved no lives.

The court rejected war as an appropriate analogy for Dudley and Stephen’s situation. War is a service imposed upon people by the nation. This was a private homicide to achieve a private end, the saving of their own skins. Dudley and Stephens urged the court to accept that they had a duty to preserve their own lives, but the court rejected this as well. True, without the killing of Richard Parker, the other men might have died, but turning the sailors’ war analogy against them, the court stated, “To preserve one’s life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man’s duty not to live, but to die.”

Dudley and Stephen’s killing of Richard Parker was not, in the court’s words, “devilish.” They were honest men, who, when driven to an extreme, gave in to a temptation that, if we are honest with ourselves, we would be hard pressed to say for certain that we would be able to resist. But if the law were to allow people to kill for their private benefit when they feel that extreme necessity compels it, the door would swing wide open to the dangers of “unbridled passion and atrocious crime.”

Dudley and Stephens commanded the sympathies of the court, but nevertheless, the court felt the facts were clear enough. Dudley and Stephens had taken the life of a person who was not threatening them at

the time. That was not self-defense, but murder, no matter how extreme the circumstances they faced when they made their fatal choice. The verdict was guilty. The men would have to pay for their crime.

Did the court get it right or wrong? You decide.

REFLECTIONS

A case like *Dudley and Stephens* challenges us to put ourselves on that same raft, trapped in the open ocean, with no rescue in sight and hunger and thirst gnawing away at our lives, and to ask ourselves the terrible question: what would we have done if it had been us on that boat? Without experiencing what those men experienced, we can only speculate how we would have acted if confronted with the same horrible choices.

The judges who sat in judgment over Dudley and Stephens had the inestimable luxury of full bellies and comfortable beds and were free from the dread that their strength would give out and that their last breath could be taken at any moment, far from family and friends, in a cruel sea that would indifferently swallow them whole with no remnant or marker, as if they had never existed at all. What could the judges know of the rightness or wrongness of an act in a situation that they could at best but dimly imagine, never mind fully comprehend?

Fortunately for would-be adventurers, the tragic end of poor Richard Parker is far from the norm; but at the same time it is hardly the only case where men and women trapped in impossible circumstances turned to the unspeakable, but apparently not-so-unthinkable, choice of feeding on their fellows. The Donner party waylaid by a snowstorm on an isolated peak in the Sierra Nevada is one. The Uruguayan rugby team stranded on the Andes when their plane went down is another. The crew of the shipwrecked French frigate *Méduse*—vividly and horrifyingly captured in the *Raft of Medusa*, a painting by the French romantic painter Théodore Géricault—is another. With so many examples of how far people will go to fight for their survival, the court's condemnation of Dudley and Stephens has a whiff of the armchair quarterback.

From the point of view of philosophers and ethicists, there may be no one correct solution to the moral dilemma of the men on the lifeboat.

Instead of thinking of yourself as one of the crew, imagine that you could observe the disaster unfold from above the drifting skiff, and that you could move the people below like pieces on a chessboard. Would you sacrifice one piece to save three others, or would you gamble all four on a hope—no matter how remote or unlikely that hope might be? Approached this way, the case of *Dudley and Stephens* can be thought of as a real-life example of the classic ethical dilemma known to philosophers as the trolley problem.

The trolley problem goes something like this: A trolley careens out of control toward a group of five people stuck on the track in a stalled car. Their doors are jammed shut. They are helpless and terrified and will surely die when the hurtling trolley smashes into their defenseless vehicle. But there is good news. A nearby switch will change the trolley's course from one track to another. All that has to happen is for someone to pull that switch. But there is bad news too. On that other track stands one person who is unaware of the trolley's approach. There is no time to warn this person to get out of the way. If the switch is pulled, this one person, an innocent bystander, will be killed before he or she even knows what is happening. Would you pull the switch to save the five people at the price of condemning the one person to death? Should you?

If you are counting noses in order to decide, five is more than one; so maybe you would pull the switch. But if you do so, you—the person who changed the course of the trolley and directed the hurtling mass of metal destruction at a person who was otherwise safe from harm—become the instrument of that person's death, a person who is completely innocent, a person who never agreed to the sacrifice you have unilaterally demanded. What has given you the power of life and death over this unsuspecting soul?

On the other hand, if you cannot bring yourself to take a single life even to save five, then maybe you do not pull the switch. In that case, events take their course, as if you had never been there. The one person lives, and the five perish. These five are equally innocent (let us assume) and also have not asked to die on those train tracks. They are victims of pure chance. Does it clear your conscience that the deaths of the five are accidental, not the deliberate act of another person, even though you could have saved them had you been willing to pay the price or, more precisely, make the one person on the other track pay the price?

The trolley problem is fascinating because it can be endlessly debated. The problem puts into opposition two classic, philosophical schools of thought. Utilitarians generally seek the greatest good for the greatest number, and so sacrificing one to save five will almost always be considered just. In contrast, Kantians generally consider it immoral to use a human being as a means to an end, and so sacrificing a person to save others will almost always be considered unjust.

If you found the trolley problem easy because of the utilitarian calculus, that one should obviously be sacrificed to save five, consider the case of organ transplants. Five people wait in a hospital for lifesaving organ donations, needing, collectively, a liver, two kidneys, a lung, and a heart. You happen to be in the hospital, and you happen to have healthy kidneys, lungs, liver, and heart. A transplant surgeon approaches you with a startling observation. If she harvested your organs, the lives of these five others would be saved. True, you would die, but the surgeon offers by way of consolation the fact that by sacrificing one (in this case you), she can save five. In this scenario does utilitarian justice lose any of its appeal?

While these ethical debates are fascinating, the judges in *Dudley and Stephens* did not have the luxury of toying with hypothetical questions and leaving them unresolved. In *Dudley and Stephens*, the court avoided the knottier conundrums by deciding the more prosaic question of whether what happened on the lifeboat fit the legal definition of murder—the intentional taking of another person's life. While the morality of the case may be tantalizingly uncertain, the facts were not in doubt. Captain Dudley, with the assent of Stephens, slit Richard Parker's throat and Parker died. The knife did not slip by accident. No compulsion forced Dudley's hand, other than a desire to save his own life. Dudley and Stephens intended to end Richard Parker's life, and they did so. Was that an intentional taking of another person's life? It was. The definition of murder settled the question.

Legally then, Dudley and Stephens could escape conviction only if they could mount a defense to excuse their conduct. Self-defense is a justification for taking another person's life, and so the court addressed this defense with another comparably prosaic question: did the killing fit the definition of self-defense? Self-defense is permitted to protect one's own life (or the life of another) from a person who is threatening it. There was

no question that Dudley and Stephens were in mortal peril. Heat, cold, hunger, and thirst circled the men like wolves closing in for the kill. But was Richard Parker threatening their lives? No, he was not. So self-defense did not apply.

Dudley and Stephens exquisitely illustrates how in legal disputes philosophical questions take a backseat to simpler—some might say simplistic—questions about the definitions of legal terms. In this way, the law differs from philosophy and ethics. The judge's duty is to apply the rules that the law has established. Sometimes, these rules are a poor fit, but that does not change the duty of the court.

It is interesting to consider how the court that condemned Dudley and Stephens might have ruled on the trolley problem. We can't know for certain, of course, but if Dudley and Stephens were not justified in taking Richard Parker's life to save three lives (their own plus Brooks's), it would seem that this court, at least, would likely have ruled that pulling the switch to alter the course of the runaway trolley would be an act of murdering the person on the other track. True, the motive in pulling the switch would be to save lives, not to take the life of the person on the switched track, but Dudley and Stephens' motive was also to save lives. Killing Richard Parker just happened to be the only means they could think of to do that.

It is also possible, however, that the court might have found differences between the lifeboat and the trolley problem that would have led it to a different outcome. For example, Dudley and Stephens killed Richard Parker for their own personal gain: saving their own lives. In the trolley problem, the person who pulls the switch has no personal stake in the outcome other than a desire to save five lives, albeit at the price of another person's life. The court was very concerned that if it condoned Dudley and Stephens's act of killing Richard Parker to save their own lives, it might inadvertently open the door to all manner of crimes that one person or another thinks is necessary to saving his or her own life. Another possible difference is that the trolley is certain to kill the five people on the one track, while the court in *Dudley and Stephens* speculated that the death of the crew was not completely certain because rescue could, theoretically, have come at any moment.

Are those differences important? Are there others that might change the outcome? Answering those questions is the very heart of what judging

is about and the first step toward figuring out for yourself how would you rule.

EPILOGUE

In nineteenth-century England, the penalty for murder was death; and so the prisoners Dudley and Stephens, having been duly convicted, were condemned to die by hanging. But Dudley and Stephens did not die on the gallows.

In acknowledgment of the extreme suffering that led Dudley and Stephens to commit their crime, the court added to its judgment a recommendation for mercy. At the time, the queen of England had the power to commute a criminal sentence (a power shared in modern America by the president of the United States and by the governors of the individual states regarding crimes within their respective jurisdictions); and through the action of the queen's advisers, the sentences of Dudley and Stephens were reduced to six months in prison. On May 20, 1885, a year and a day after they first set sail on the *Mignonette*, Dudley and Stephens were released from jail. They were free men, but they would never be the same again.

.

Questions

1. Are there any circumstances where killing a person who is not directly attacking you should not be deemed murder? Consider the following hypothetical cases. Concerned that the collective weight on a lifeboat might lead the boat to sink and cause all aboard to drown, three passengers throw a fourth off the boat. Murder? Does it matter how certain it was that the lifeboat would sink? Would it matter how the ejected person was chosen? For example, would choosing by lots be better than choosing by, say, weight or by relative weakness? What role does consent play? Next consider what difference it would make if the extra person were not on the boat but in the water trying to get on the boat. Would it be murder to prevent the fourth person from coming on the lifeboat if the other three feared that the new person's weight would cause the lifeboat to sink? Would it be murder to refuse to allow a person onto a lifeboat to avoid adding another mouth to feed from the small provisions on board and a concern that provisions

might run out sometime in the future? What if there were ample provisions and the fear of running out was unreasonable?

2. Was the six-month sentence that was ultimately imposed on Dudley and Stephens just? Should it have been more or less severe? How should the right punishment, if any, have been determined?

3. Brooks was not charged with murder, because he served as a witness for the prosecution. According to his own account, Brooks opposed Captain Dudley's plan to sacrifice Richard Parker but did nothing to stop it. After the killing was done, Brooks survived by partaking of Parker's body just like his shipmates. Should Brooks, through his inaction and acquiescence, be considered guilty of any crime?

4. Consider the trolley problem and programming self-driving cars. Imagine a self-driving car is winding its way down a narrow mountain road when it makes a hairpin turn only to discover five children on the road taking pictures of the scenery. The car's navigation system determines that the only way to avoid a collision that will kill the five children is to drive itself off the cliff and kill the driver. The navigation system also determines that if the car hits the children, all the children will die, but the driver will not be harmed. Should the navigation system be programmed to kill the driver and save the children or kill the children and save the driver? If you had the choice of buying a self-driving car with one system or the other, which would you buy? If you could choose the navigation system to install in other people's cars, which would you choose? If other people had the power, which navigation system do you think they would choose for you? Compare your answers with those found by social scientists Jean-Francois Bonnefon, Azim Shariff, and Iyad Rahwan.¹

Read It Yourself

Regina v. Dudley and Stephens, 14 QBD 273 DC (1884).