



**A brief overview of the case:** *Suppose you find yourself in a situation in which killing an innocent person is the only way to prevent many innocent people from dying. What's the right thing to do? This question arose in The Queen v. Dudley and Stephens (1884), a famous English law case involving four men stranded in a lifeboat without food or water. How should we judge the action of Dudley and Stephens? Was it morally justified or morally wrong?*

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## The Queen v. Dudley and Stephens

14 Queens Bench Division 273 (1884)

Criminal Law--Murder--Killing and eating Flesh of Human Body under Pressure of Hunger--"Necessity"--Special Verdict--Certiorari--Offence on High Seas--Jurisdiction of High Court.

A man who, in order to escape death from hunger, kills another for the purpose of eating his flesh, is guilty of murder; although at the time of the act he is in such circumstances that he believes and has reasonable ground for believing that it affords the only chance of preserving his life.

At the trial of an indictment for murder it appeared, upon a special verdict, that the prisoners D. and S., seamen, and the deceased, a boy between seventeen and eighteen, were cast away in a storm on the high seas, and compelled to put into an open boat; that the boat was drifting on the ocean, and was probably more than 1000 miles from land; that on the eighteenth day, when they had been seven days without food and five without water, D. proposed to S. that lots should be cast who should be put to death to save the rest, and that they afterwards thought it would be better to kill the boy that their lives should be saved; that on the twentieth day D., with the assent of S., killed the boy, and both D. and S. fed on his flesh for four days; that at the time

of the act there was no sail in sight nor any reasonable prospect of relief; that under these circumstances there appeared to the prisoners every probability that unless they then or very soon fed upon the boy, or one of themselves, they would die of starvation:

*Held*, that upon these facts, there was no proof of any such necessity as could justify the prisoners in killing the boy, and that they were guilty of murder.

INDICTMENT for the murder of Richard Parker on the high seas within the jurisdiction of the Admiralty:

At the trial before Huddleston, B., at the Devon and Cornwall Winter Assizes, November 7, 1884, the jury, at the suggestion of the learned judge, found the facts of the case in a special verdict which stated "that on July 5, 1884, the prisoners, Thomas Dudley and Edward Stephens, with one Brooks, all able-bodied English seamen, and the deceased also an English boy, between seventeen and eighteen years of age, the crew of an English yacht, a registered English vessel, were cast away in a storm on the high seas 1600 miles from the Cape of Good Hope, and were compelled to put into an open boat belonging to the said yacht. That in this boat they had no supply of water and no supply of food, except two 1 lb. tins of turnips, and for three days they had nothing else to subsist upon. That on the fourth day they caught a small [p. 274] turtle, upon which they subsisted for a few days, and this was the only food they had up to the twentieth day when the act now in question was committed. That on the twelfth day the turtle were entirely consumed, and for the next eight days they had nothing to eat. That they had no fresh water, except such rain as they from time to time caught in their oilskin capes. That the boat was drifting on the ocean, and was probably more than 1000 miles away from land. That on the eighteenth day, when they had been seven days without food and five without water, the prisoners spoke to Brooks as to what should be done if no succour came, and suggested that some one should be sacrificed to save the rest, but Brooks dissented, and the boy, to whom they were understood to refer, was not consulted. That on the 24th of July, the day before the act now in question, the prisoner Dudley proposed to Stephens and Brooks that lots should be cast who should be put to death to save the rest, but Brooks refused consent, and it was not put to the boy, and in point of fact there was no drawing of lots. That on that day the prisoners spoke of their having families, and suggested it would be better to kill the boy that their lives should be saved, and Dudley proposed that if there was no vessel in sight by the morrow morning the boy should be killed. That next day, the 25th of July, no vessel appearing, Dudley told Brooks that he had better go and have a sleep, and made signs to Stephens and Brooks that the boy had better be killed. The prisoner Stephens agreed to the act, but Brooks dissented from it. That the boy was then lying at the bottom of the boat quite helpless, and extremely weakened by famine and by drinking sea water, and unable to make any resistance, nor did he ever assent to his being killed. The prisoner Dudley offered a prayer asking forgiveness for them all if either of them should be tempted to commit a rash act, and that their

souls might be saved. That Dudley, with the assent of Stephens, went to the boy, and telling him that his time was come, put a knife into his throat and killed him then and there; that the three men fed upon the body and blood of the boy for four days; that on the fourth day after the act had been committed the boat was picked up by a passing vessel, and the prisoners were rescued, still alive, but in the lowest state of prostration. That they were carried to the [p. 275] port of Falmouth, and committed for trial at Exeter. That if the men had not fed upon the body of the boy they would probably not have survived to be so picked up and rescued, but would within the four days have died of famine. That the boy, being in a much weaker condition, was likely to have died before them. That at the time of the act in question there was no sail in sight, nor any reasonable prospect of relief. That under these circumstances there appeared to the prisoners every probability that unless they then fed or very soon fed upon the boy or one of themselves they would die of starvation. That there was no appreciable chance of saving life except by killing some one for the others to eat. That assuming any necessity to kill anybody, there was no greater necessity for killing the boy than any of the other three men. But whether upon the whole matter by the jurors found the killing of Richard Parker by Dudley and Stephens be felony and murder the jurors are ignorant, and pray the advice of the Court thereupon, and if upon the whole matter the Court shall be of opinion that the killing of Richard Parker be felony and murder, then the jurors say that Dudley and Stephens were each guilty of felony and murder as alleged in the indictment."

The learned judge then adjourned the assizes until the 25th of November at the Royal Courts of Justice. On the application of the Crown they were again adjourned to the 4th of December, and the case ordered to be argued before a Court consisting of five judges.

Dec. 4. ...

Sir H. James, A.G. (A. Charles, Q.C., C. Mathews and Dankwerts with him), appeared for the Crown.

With regard to the substantial question in the case--whether the prisoners in killing Parker were guilty of murder--the law is that where a private person acting upon his own judgment takes the life of a fellow creature, his act can only be justified on the ground of self-defence--self-defence against the acts of the person whose life is taken. This principle has been extended to include the case of a man killing another to prevent him from committing some great crime upon a third person. But the principle has no application to this case, for the prisoners were not protecting themselves against any act of Parker. If he had had food in his

possession and they had taken it from him, they would have been guilty of theft; and if they killed him to obtain this food, they would have been guilty of murder. ...

A. Collins, Q.C., for the prisoners.

The facts found on the special verdict shew that the prisoners were not guilty of murder, at the time when they killed Parker but killed him under the pressure of necessity. Necessity will excuse an act which would otherwise be a crime. Stephen, Digest of Criminal Law, art. 32, Necessity. The law as to compulsion by necessity is further explained in Stephen's History of the Criminal Law, vol. ii., p. 108, and an opinion is expressed that in the case often put by casuists, of two drowning men on a plank large enough to support one only, and one thrusting the other off, the survivor could not be subjected to legal punishment. In the American case of

[The United States v. Holmes](#)

, the proposition that a passenger on board a vessel may be thrown overboard to save the others is sanctioned. The law as to inevitable necessity is fully considered [p. 278] in Russell on Crimes, vol. i. p. 847, and there are passages relating it in Bracton, vol. ii. p. 277; Hale's Pleas of the Crown, p. 54 and c. 40; East's Pleas of the Crown, p. 221, citing Dalton, c. 98, "Homicide of Necessity," and several cases . . . . Lord Bacon, Bac. Max., Reg. 5, gives the instance of two shipwrecked persons clinging to the same plank and one of them thrusting the other from it, finding that it will not support both, and says that this homicide is excusable through unavoidable necessity and upon the great universal principle of self-preservation, which prompts every man to save his own life in preference to that of another where one of them must inevitably perish. It is true that Hale's Pleas of the Crown, p. 54, states distinctly that hunger is no excuse for theft, but that is on the ground that there can be no such extreme necessity in this country. In the present case the prisoners were in circumstances where no assistance could be given. The essence of the crime of murder is intention, and here the intention of the prisoners was only to preserve their lives. ...

Dec. 9.

The judgment of the Court (Lord Coleridge, C.J., Grove and Denman, JJ., Pollock and Huddleston, B-B.) was delivered by LORD COLERIDGE, C.J.

The two prisoners, Thomas Dudley and Edwin Stephens, were indicted for the murder of Richard Parker on the high seas on the 25th of July in the present year. They were tried before my Brother Huddleston at Exeter on the 6th of November, and under the direction of my learned

Brother, the jury returned a special verdict, the legal effect of which has been argued before us, and on which we are now to pronounce judgment.

The special verdict as, after certain objections by Mr. Collins to which the Attorney General yielded, it is finally settled before us is as follows. (His Lordship read the special verdict as above set out.) From these facts, stated with the cold precision of a special verdict, it appears sufficiently that the prisoners were subject to terrible temptation, to sufferings which might break down the bodily power of the strongest man and try the conscience of the best. Other details yet more harrowing, facts still more loathsome and appalling, were presented to the jury, and are to be found recorded in my learned Brother's notes. But nevertheless this is clear, that the prisoners put to death a weak and unoffending boy upon the chance of preserving their own lives by feeding upon his flesh and blood after he was killed, and with the certainty of depriving him of any possible chance of survival. The verdict finds in terms that "if the men had not fed upon the body of the boy they would probably not have survived," and that, "the boy being in a much weaker condition was likely to have died before them." They might possibly have been picked up next day by a passing ship; they might possibly not have been picked up at all; in either case it is obvious that the killing of the boy would have been an unnecessary and profitless act. It is found by the verdict that the boy was incapable of resistance, and, in fact, made none; and it is not even suggested that his death was due to any violence on his part attempted against, or even so much as feared by, those who killed him. Under these circumstances the jury say that they are ignorant whether those who killed him were guilty of murder, and have referred it to this Court to [p. 280] determine what is the legal consequence which follows from the facts which they have found.

There remains to be considered the real question in the case - whether killing under the circumstances set forth in the verdict be or be not murder. The contention that it could be anything else was, to the minds of us all, both new and strange, and we stopped the Attorney General in his negative argument in order that we might hear what could be said in support of a proposition which appeared to us to be at once dangerous, immoral, and opposed to all legal principle and analogy. All, no doubt, that can be said has been urged before us, and we are now to consider and determine what it amounts to. First it is said that it follows from various definitions of murder in books of authority, which definitions imply, if they do not state, the doctrine, that in order to save your own life you may lawfully take away the life of another, when that other is neither attempting nor threatening yours, nor is guilty of any illegal act whatever towards you or any one else. But if these definitions be looked at they will not be found to sustain this contention. ...

Now, except for the purpose of testing how far the conservation of a man's own life is in all cases and under all circumstances an absolute, unqualified, and paramount duty, we exclude from our consideration all the incidents of war. We are dealing with a case of private homicide,

not one imposed upon men in the service of their Sovereign and in the defence of their country. Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be [p. 287] justified by some well-recognised excuse admitted by the law. It is further admitted that there was in this case no such excuse, unless the killing was justified by what has been called "necessity." But the temptation to the act which existed here was not what the law has ever called necessity. Nor is this to be regretted. Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. 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. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble case of the Birkenhead; these duties impose on men the moral necessity, not of the preservations but of the sacrifice of their lives for others, from which in no country, least of all, it is to be hoped, in England, will men ever shrink as indeed, they have not shrunk. It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life. "Necesse est ut eam, non ut vivam," is a saying of a Roman officer quoted by Lord Bacon himself with high eulogy in the very chapter on necessity to which so much reference has been made. It would be a very easy and cheap display of commonplace learning to quote from Greek and Latin authors, from Horace, from Juvenal, from Cicero, from Euripides, passage after passages, in which the duty of dying for others has been laid down in glowing and emphatic language as resulting from the principles of heathen ethics; it is enough in a Christian country to remind ourselves of the Great Example whom we profess to follow. It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case the weakest, the youngest, the most unresisting, was chosen. Was it more [p. 288] necessary to kill him than one of the grown men? The answer must be "No" -

"[So spake the Fiend](#) , and with necessity,  
The tyrant's plea, excused his devilish deeds."

It is not suggested that in this particular case the deeds were devilish, but it is quite plain that such a principle once admitted might be made the legal cloak for unbridled passion and atrocious crime. There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe on individuals, to leave it to the Sovereign to exercise that prerogative of mercy which the Constitution has intrusted to the hands fittest to dispense it.

It must not be supposed that in refusing to admit temptation to be an excuse for crime it is forgotten how terrible the temptation was; how awful the suffering; how hard in such trials to keep the judgment straight and the conduct pure. We are often compelled to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation to be an excuse, though he might himself have yielded

to it, nor allow compassion for the criminal to change or weaken in any manner the legal definition of the crime. It is therefore our duty to declare that the prisoners' act in this case was wilful murder, that the facts as stated in the verdict are no legal justification of the homicide; and to say that in our unanimous opinion the prisoners are upon this special verdict guilty, of murder. [n. 1]

THE COURT then proceeded to pass sentence of death upon the prisoners. [n. 2]

Solicitors for the Crown: The Solicitors for the Treasury.  
Solicitors for the prisoners: Irvine & Hodges.

1. My brother Grove has furnished me with the following suggestion, too late to be embodied in the judgment but well worth preserving: " If the two accused men were justified in killing Parker, then if not rescued in time, two of the three survivors would be justified in killing the third, and of two who remained the stronger would be justified in killing the weaker, so that three men might be justifiably killed to give the fourth a chance of surviving." - C.

2. This sentence was afterwards commuted by the Crown to six months' imprisonment.