



Gericault,
*The Raft of
The Medusa* (1819),
Louvre

Does “Necessity” Justify Cannibalism?

Philosophy of Law, *Spring 2015*

CUNY, Lehman College

Marcello Di Bello

Reading the British Case

Regina v. Dudley and Stephens (1884)

THE ILLUSTRATED LONDON NEWS

CONTAINING AT THE END OF EACH NUMBER A MAGNIFICENT ILLUSTRATION

SATURDAY, SEPTEMBER 25, 1881.

PRICE 6D. (REVENUE)
LONDON: PUBLISHED BY W. & A. KILGOUR.

No. 3178.—VOL. LXXX.

THE LOSS OF THE YACHT "HUNTER"—AND RETURN BY MR. EDWIN HENDERSON, THE BOAT.

See how the boat was driven to the shore.



Boating before the wind. When the dinghy was brought flying the boat was seen.

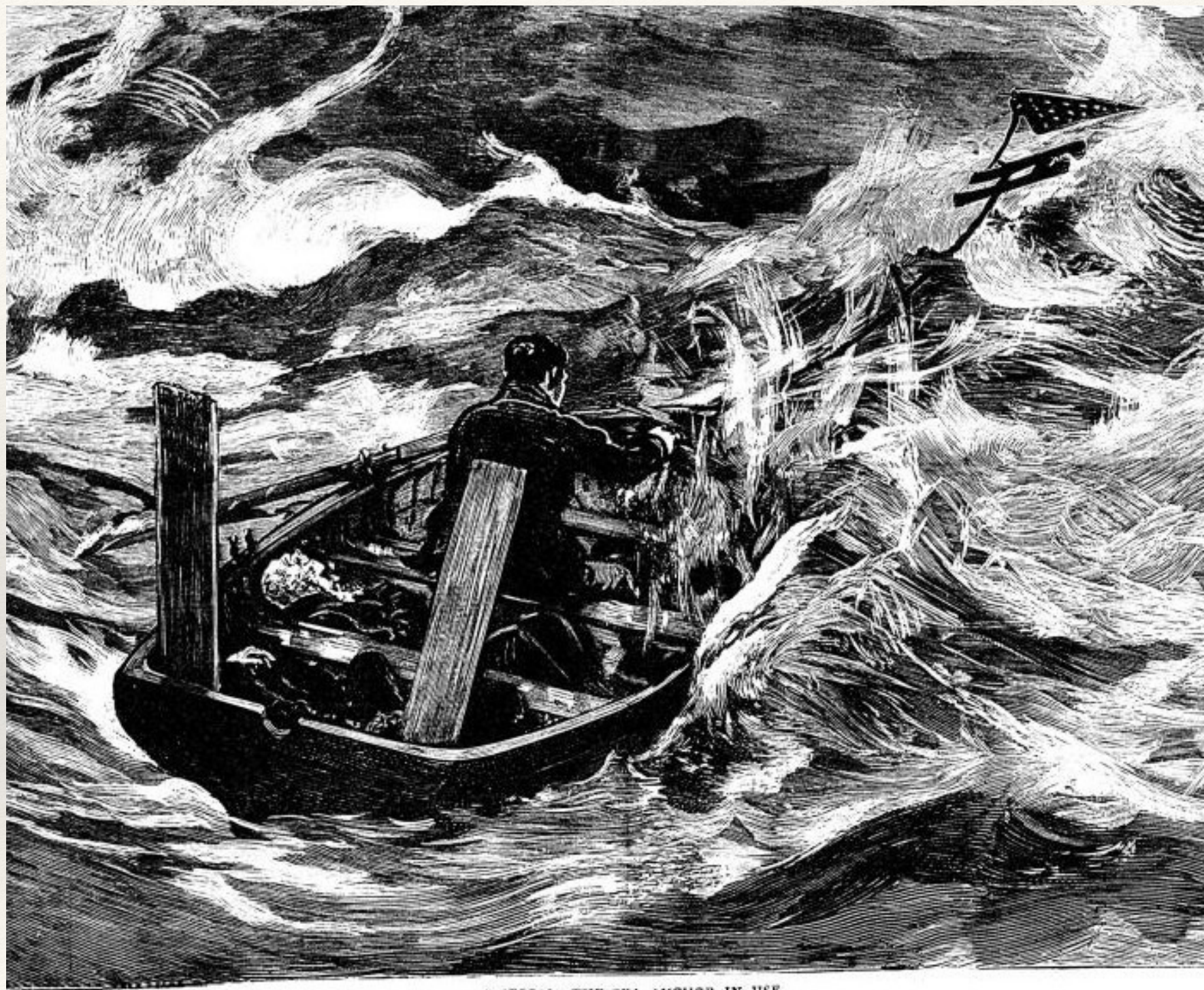
The front page of
a popular English
magazine at the
time

Facts of the Case

(the following are quotations from the court decision)

Shipwreck

That on July 5, 1884, the prisoners, Thomas Dudley and Edward [sic] 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 1,600 miles from the Cape of Good Hope, and were compelled to put into an open boat belonging to the said yacht.



A STORM : THE SEA ANCHOR IN USE

THE CREW OF THE YACHT "MIGNONETTE" IN AN OPEN BOAT AT SEA
FROM SKETCHES BY MR. STEPHENS, MATE OF THE "MIGNONETTE"

Without Food and Water in the Ocean

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 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 remains of 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.

Killing the Boy?

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 to consent, and it was not put to the boy, and in point of fact there was no drawing of lots. That on the day the prisoners spoke of their 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.

Indeed—Killing the Boy...

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



Rescued

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 port of Falmouth, and committed for trial at Exeter.

Details to Keep in Mind

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 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.

No Reason to Kill the Boy

That assuming any necessity to kill anybody, there was no greater necessity for killing the boy than any of the other three men.

Would You Convict Dudley and
Stephens of Murder?

The Decision of the Court



No “Necessity” to Kill

Now it is admitted that the deliberate killing of this unoffending and unresisting boy was clearly murder, unless the killing can be 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.

Law and Morality

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 preservation, but of the sacrifice of their lives for others ...

It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life.

Examples from the Romans and the Christians

Necesse est ut eam, non ut vivam, is a saying of a Roman officer ... 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, 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.

The Dangers of Invoking “Necessity”

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 necessary to kill him than one of the grown men? The answer must be "No"

Mercy?

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.

Temptation Is Not an Excuse

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.

The Verdict: *Guilty of Murder*

It is therefore our duty to declare that the prisoners' act in this case was willful 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.

Variations on the Case

What If the Decision to Kill the Boy
Was by Lot?

What If the Boy Consented?