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Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the *Mignonette* and the Strange Legal Proceedings to Which it Gave Rise

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CANNIBALISM AND THE COMMON LAW: THE STORY OF THE TRAGIC LAST VOYAGE OF THE *MIGNONETTE* AND THE STRANGE LEGAL PROCEEDINGS TO WHICH IT GAVE RISE. By *A.W. Brian Simpson*. Chicago: University of Chicago Press. 1984. Pp. xiii, 353. \$25.

Unlike Mark Twain, reports of Richard Parker's death were hardly exaggerated. Parker, it will be remembered, served as what was to be the last supper for the crew of the *Mignonette* — Captain Tom Dudley, mate Edwin Stephens, and seaman Ned Brooks — after they were shipwrecked in the South Atlantic. The four had survived for nineteen days on a turtle and a two-pound tin of turnips, hardly an appetizing thought even in this era of fast-food cuisine. When it appeared that all four would perish from hunger and thirst, Parker, who lay near death, was selected as the victim to be sacrificed in the hope that the other three might survive to be rescued. Indeed, they were picked up by a passing ship five days later, only to be returned to England where Dudley and Stephens were arrested, tried, and convicted for murder on the high seas, in what has come to be one of the most celebrated criminal cases of modern history.

Professor A.W. Brian Simpson weaves together an impressive array of detail from seemingly unrelated historical sources to piece together the background of the case. A professor of law at the University of Kent, Canterbury, Professor Simpson is obviously equally at home in the library and at sea, for he combines his knowledge of maritime custom and lore with historical and legal scholarship to produce this truly captivating account.

The *Mignonette* was a small yacht built primarily for fishing, and an occasional race. It was manned by a crew of four as it set off for Sydney, Australia, to be delivered to its new owner. The ship was lost in a storm in the South Atlantic, and sank on July 5, 1884, leaving the crew to drift aimlessly in an unprovisioned lifeboat thirteen feet long and four feet across. The route taken was purposely outside the normal shipping channels, because the smaller *Mignonette*, like other yachts that had made the trip before her, was safer in the relatively calmer seas along the periphery of the Atlantic. This made the likelihood of being rescued by a passing ship even more remote than it would otherwise have been.

Tradition had it that once a ship had sunk the crew no longer owed obedience to the captain; nevertheless, Dudley remained in charge of the long boat, not by virtue of his rank but because of his knowledge of the sea and his personal qualities of leadership. Under his direction, the crew rigged up a makeshift wind anchor that kept the dinghy from being swamped by the high waves, and helped them drift with the

prevailing currents. The four survived off a carefully rationed can of turnips for the first few days, and on July 9 they caught a turtle which sustained them for another week or so. Thirst was a more serious problem than hunger, and by July 13 the men had begun to drink their own urine. On about July 20, Richard Parker, the young cabin boy, drank a large quantity of sea water which made him violently ill, and he quickly slipped toward death, lying in the bow of the boat in a near-comatose condition.

Although the facts of the case appear relatively simple and straightforward, Professor Simpson goes into great detail in explaining their implications for the men in the long boat. He draws upon sailors' lore and custom of the sea, based on common sense knowledge of the day, to recreate what must have gone through the men's minds as they drifted helplessly in the middle of the Atlantic. For example, he demonstrates that the common belief at the time was that to drink sea water, even in small amounts, was tantamount to suicide. This was to become an important consideration in the crew's attitude toward the delirious Parker: "[G]iven the beliefs of the time as sailors, they must have thought that Richard Parker was now doomed" (p. 60).

Another critical feature of the custom of the sea in nineteenth century England was the fact that "survival cannibalism" (as opposed to "ritual" cannibalism), although not widespread, was certainly practiced in cases of shipwreck on the high seas, and would have been well known to the experienced seamen aboard the *Mignonette*. Much of Professor Simpson's historical background for the trial of Dudley and Stephens is devoted to a study of such survival cannibalism in the nineteenth century, both at sea and on land. He recounts in somewhat gruesome detail the accounts of other shipwrecks, the results of which tend to indicate that what Dudley and Stephens and Brooks had done was both expected and accepted among their contemporaries. For example, an earlier shipwreck/cannibalism case involving the *Brig Caledonia* ended with the rescue of several crew members who survived by killing and eating the remainder of the crew. "It does not appear to have occurred to anyone to bring any legal proceedings against the master, Captain David Cock, and what was left of his crew of 12. . . . [T]he Bristol *Mercury*, which also printed the story (reporting two killings), helped to organize a subscription for the sailors . . ." (p. 128).

At times the stories are particularly revolting, as when a woman passenger on the *Francis Mary* learned of the death of her betrothed, the ship's cook, and "shrieked a loud yell, then snatched a cup from Clarke (mate), cut her late intended husband's throat, and drank his blood, insisting that she had the greatest right to it" (p. 127). At other times, the author's sense of humor provides relief (for one can only

approach such a topic with a healthy dose of humor), as when he describes an incident of cannibalism: "The only alternative, potatoes, had unhappily run out, and there was nothing else to be had on board" (p. 118). But ultimately the point is driven home with force that cannibalism was, if not common, at least a "normal" practice among survivors of shipwrecks on the high seas.

Yet another aspect of the case, one upon which legal proceedings might have turned (but in the end did not), was the selection of Parker as the victim. It was Captain Dudley who killed young Parker, although surely he would have died soon on his own. The point of killing him before he died a natural death was to save as much blood as possible to drink. But why Parker and not one of the others? Indeed, it was later argued by some that this "social Darwinist" approach was the ultimate immoral act, and that had the four chosen a victim by drawing straws or by some other random method it would have constituted a more "civilized" approach that the courts would have sanctioned. Although Dudley had earlier suggested that lots be drawn, this was never carried out. The author argues convincingly that the decision to kill Parker was a rational one, based not only on his physical condition and the belief that he would die no matter what, but also on the important consideration that Parker was a seventeen-year-old orphan, whereas Dudley and Stephens were both family men whose death would condemn their wives and children to a lifetime of destitution. Brooks was apparently a bachelor, although the evidence is unclear on that point.

Thus it was that upon their return to England, the trio was initially received with a heroes' welcome, and were somewhat shocked by their subsequent arrest. Indeed, their arrest would not have occurred at all if they had not willingly related the story of their survival, including the killing and eating of Richard Parker. At first, they assumed that their arrest and hearing before a local magistrate were merely to provide official exoneration of criminal guilt for what they had done. So, also, must the victim's brother have viewed their act, for he visited the three in jail, and again at their trial, and departed after a pleasant chat by shaking their hands and wishing them well. Throughout his description of the legal proceedings in the case of *Regina v. Dudley & Stephens*,¹ Professor Simpson continuously points up the contrast between the popular attitude toward the men and that of the legal establishment, which had tried but so far failed to impose a land-based morality on maritime custom.

The prosecution of Dudley and Stephens was itself an illustration of the conflicting values surrounding the case. At first, there was a problem in the presentation of evidence, for Dudley's confession could not be used against the other two survivors in court. Eventually, a

1. 14 Q.B.D. 273 (1884).

deal was struck with Brooks, who was chosen because of his lower rank and his apparently passive participation in the killing (although he was admittedly an avid diner). Another curiosity illustrating the court's difficulty in dealing with the defendants was the release of the two men on their own recognizance, something virtually unheard of in a capital case. Professor Simpson finds little hostility toward them, even in Richard Parker's home town. He pulls together a variety of sources of information, including letters to the editors of newspapers, ballads sold on street corners, even the personal correspondence of family members, all of which bolster his conclusion that public opinion did not hold Dudley and Stephens out to be criminals. At least among the seafaring population of southwestern England, the attitude was that "[i]f properly conducted, cannibalism was legitimated by a custom of the sea; . . . survivors who had followed the custom could have a certain professional pride in a job well done; there was nothing to hide" (pp. 144-45).

Before going into his analysis of the trial of Dudley and Stephens, the author makes a rather lengthy diversion through a series of legal cases involving first cannibalism, and then the necessity defense. In the former, he focuses on the well-known Donner party and on the legendary Alferd Packer, the "Colorado man-eater," who set out as a guide for a party of prospectors in Colorado and showed up some eight weeks later, alone, with a full belly and a full wallet. He then examines the necessity defense as it arose in the American case of the *William Brown*² and the wreck of the English ship *Euxine*. The necessity defense was put forth on behalf of Alexander Holmes, a sailor on the *William Brown* who threw some of the passengers overboard to lighten the load in the life boat. Eventually he was tried on one count of manslaughter and convicted, although the jury recommended mercy. The case is noteworthy because it accepted in principle the defense of necessity, holding that under such circumstances the proper selection of victims should be at random by drawing lots. In the case of the *Euxine*, three long boats set out from the burning ship; two safely reached a nearby island, but the third, with eight crew members aboard, was separated. When it was finally sighted by a passing ship, only five of the eight were left — two had drowned when the boat capsized, and a third had been killed and eaten. No prosecution of the survivors was ever commenced.

Professor Simpson then returns to analyzing the legal proceedings against Dudley and Stephens, having provided the background for the cases that would be cited in the opinion of the court. He discusses the management of the trial by Baron Huddleston, and looks in depth at the reasoning behind the initial decision to seek a special verdict from the jury in order to preserve the issue for consideration by a higher

2. *United States v. Holmes*, 26 F. Cas. 360 (C.C.E.D. Pa. 1842) (No. 15,383).

court. The special verdict had not been used in England in ninety-nine years; however, Huddleston feared that a decision by a single judge sitting alone in assize would not carry sufficient weight to overturn the custom of the sea and the proposed defense of necessity. In fact, the special verdict was ultimately written by Huddleston himself and adopted by the jury as their own.

Professor Simpson also delves into the reasoning of the defense counsel in seeking total exoneration of his clients rather than a conviction of the lesser charge of manslaughter, which would probably have brought a sentence of no more than three months. It was assumed from the beginning of the trial that upon conviction, the defendants would be granted clemency and would not have to serve a jail sentence, let alone suffer the death penalty. That they ultimately spent six months in jail was a surprise to all, although again there is every indication that the authorities took a schizophrenic approach to the pair, refusing them a pardon yet granting them a waiver of prison rules restricting visitors, outside communication, and meals other than standard prison fare.

In the final chapter of the book, the author traces the fate of the three seamen following the trial, including Dudley's death from the plague in Sydney in 1900. He adopts a position clearly sympathetic to Dudley: "I can only hope that this fuller explanation of the historical background to the tragedy of the *Mignonette* may at least help to make brave Tom Riley Dudley a more understandable human being" (p. 299). His treatment of Stephens is less sympathetic, and he is surprisingly neutral toward the antihero Brooks.

Having sung the praises of Professor Simpson's book, it is nevertheless appropriate to point out its shortcomings (of which there are but few). In spite of the captivating style, the reader must put up with mountains of ponderous detail, made more difficult to digest by the way it is pieced together. Not infrequently, a paragraph of detailed references to related facts and events will run on for a full page or more without relief, and at times one finds a paragraph more than two pages long. Stylistically, the writing is at times hard to follow, as in chapter 5 where the author jumps rather abruptly from a discussion of shipping disasters to a study of publicly acknowledged acts of cannibalism. Here he throws in brief mentions of a variety of studies of cannibalism, even managing to link the practice to remote ancestors of President John Kennedy. It is this extreme fascination with detail, coupled with a failure to provide linking sentences and transitional paragraphs, that causes the reader some consternation. While granting the author his decision not to use footnotes, one wonders if that might not be a better way to treat such minutiae.

One thing Professor Simpson does not do is to go beyond the historical evidence to relate it to a theory of criminal punishment. If, as

he contends, the trial of Dudley and Stephens was orchestrated to allow the British court to inject its sense of morality into the prevailing custom of the sea, he begs the question as to whether this was a proper function of the justices on the Queen's Bench, particularly in light of the public support for such custom. In denying Dudley and Stephens the justice which was their due — as the author strongly suggests was the outcome of this trial — was the court justified by a higher moral imperative? Professor Simpson is unfortunately silent on these questions. One would also welcome a broader discussion of the role of deterrence in the case, particularly since the author acknowledges in several places that the outcome of the trial was: (1) misunderstood by the laymen of the day who believed the conviction resulted not because Parker was killed, but because he was not selected by drawing lots; (2) not likely to reach the population of seamen whom it might have been intended to deter from such activities in the future; and (3) not likely to deter anyone faced with the alternatives of certain death from starvation, or the possibility of a trial and a subsequent brief term in jail.

Still in all, law professors the world over will cherish this book as background material or simply as fascinating reading. And those law students ingenious enough to track it down will have a potent weapon in their hands when their professor asks the classic sequence of hypothetical questions drawn from the case of Dudley and Stephens.