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CRIME, CANNIBALISM AND JOSEPH CONRAD: THE INFLUENCE OF *REGINA V. DUDLEY* AND *STEPHENS ON LORD JIM*

*Allen Boyer**

Regina v. Dudley and Stephens,¹ decided just over a century ago, has become one of the most venerable decisions in the area of criminal law. In its day *Dudley and Stephens* was a *cause célèbre*. The case involved two castaway sailors who, after drifting for weeks in an open dinghy, killed and ate a shipmate in order to save their own lives. They pleaded that this action had been a “necessity,” but were immediately convicted of murder and sentenced to be hanged. Equally promptly, they were re-prieved. Society sympathized with them, even though it would not moderate the force of the ban on homicide. Generations of criminal law casebooks have made the case as familiar to contemporary lawyers as it was to the English public of 1884. The decision owes its notoriety not only to its sensational facts, but also to its legal eminence. *Dudley and Stephens* is the leading case on necessity as a defense to murder, and its appallingly rigorous holding has been hailed as “a dramatic illustration of the difference between utilitarian and deontological ethics.”²

Unlike other leading cases,³ *Dudley and Stephens* is more important in itself than for its progeny. It forecloses inquiry, brushing aside the subtle arguments and incremental distinctions suggested by the defense of necessity—the argument that men may act to save their own lives, ignoring the effect of their actions. Therefore, it amounts to a negative precedent, restraining rather than expanding legal doctrine.⁴ It gives an

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1. 14 Q.B.D. 273 (1884); *see also* *Regina v. Dudley and Stephens*, 14 Q.B.D. 560 (1885) (discussion of special verdict); *Queen v. Dudley*, 1 T.L.R. 29 (1884) (report of the trial at Exeter Assizes).

2. Williams, *A Commentary on R. v. Dudley and Stephens*, 8 *CAMBRIAN L. REV.* 94 (1977).

3. *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854) (contract damages limited by foreseeability); *Byrne v. Boadle*, 159 Eng. Rep. 299 (1863) (giving rise to *res ipsa loquitur*).

4. *See* Fuller, *The Case of the Speluncean Explorers*, 62 *HARV. L. REV.* 616 (1948) (a detailed survey of this ethical and jurisprudential terrain); Cross, “*Necessity Knows No Law*,” 3

absolute answer, in thunder, to a very difficult question. It upholds the letter of the penal code, and reads morality into the law in a way that the modern age dismisses as Victorian. If *Dudley and Stephens* is a leading case, it is not a seminal one.

The positive impact of *Dudley and Stephens* may be found in fiction rather than in jurisprudence. Among the officers of the British merchant fleet, in the year that *Dudley and Stephens* was decided, was a Polish emigre named Jozef Teodor Konrad Korzeniowski. In 1895, when he published his first novel, *Almayer's Folly*,⁵ he took the name of Joseph Conrad. Conrad was a Pole who wrote in English, a sailor who had retired to the country, an aristocrat who married a working-class girl whom he had hired to type his manuscripts. Throughout his fiction runs the theme of belonging—the issue of how an individual becomes identified with one group or separated from another. Some of the communities whose boundaries he charts are defined by racial lines (*Almayer's Folly*),⁶ or economic interest (*Nostromo*),⁷ or political allegiance (*Under Western Eyes*).⁸ *Lord Jim* is the story of a ship's officer who abandons a boatload of passengers, and later expiates this dereliction of duty by becoming the protector of an Indonesian tribe. In this novel, community is defined by a quasi-legal standard, the individual's duty to others, and the defining line is the criminal law. The evidence strongly suggests that in determining where this line falls—at what height the standard of conduct must be set, and why behavior is criminalized—Conrad was influenced by *Dudley and Stephens*.

I. STARTING POINTS

A. *Dudley and Stephens: The History of the Case*

On May 18, 1884, the yacht *Mignonette* sailed from Falmouth, England, bound for Australia. She was crewed by master Thomas Dudley, mate Edwin Stephens, able-seaman Ned Brooks, and ship's boy Richard Parker.⁹ After calling at the Azores, the ship headed into the South At-

U. TASMANIA L. REV. 1 (1968) (discussing the ethical and jurisdictional issues associated with *Dudley and Stephens*).

5. 11 J. CONRAD, *ALMAYER'S FOLLY*, in *COMPLETE WORKS* (1926).

6. *Id.*

7. 9 J. CONRAD, *NOSTROMO*, in *COMPLETE WORKS* (1926) [hereinafter *NOSTROMO*].

8. 22 J. CONRAD, *UNDER WESTERN EYES*, in *COMPLETE WORKS* (1926).

9. A.W.B. SIMPSON, *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* 38-39 (1984). This book provides an excellent treatment of the entire controversy from the perspective of both legal and social history.

lantic amid worsening weather. What happened next was summarized by the special verdict returned by the trial jury:

“[T]hat on July 5, 1884, the prisoners, Thomas Dudley and Edward [sic] Stephens, with one Brooks, all able-bodied English seamen, and [Richard Parker] also an English boy . . . 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 [one] 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 That they had no fresh water, except such rain as they from time to time caught in their oilskin capes. . . . 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 That on the 24th of July . . . Dudley proposed to Stephens and Brooks that lots should be cast who should be put to death . . . [and] 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 has 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 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, not 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 someone 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.¹⁰

Before the trial court at the Exeter Assizes, and again before the Court for Crown Cases Reserved, defense barristers raised one substantive argument. These facts did not amount to murder, it was claimed, because "there was an inevitable necessity that one life should be sacrificed in order that the other three might be saved, and that [the survivors] were justified in so doing in selecting the weakest."¹¹ Before the higher court, this rationale was buttressed with references to Sir James Fitzjames Stephen's *History of the Criminal Law*, Sir Francis Bacon, and Bracton.¹²

The Court for Crown Cases Reserved summarily rejected these arguments and found the defendants guilty of willful murder. Chief Judge Lord Coleridge opined:

Though law and morality are not the same . . . 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. . . .

10. *Regina v. Dudley and Stephens*, 14 Q.B.D. 273, 273-75 (1884).

11. *Dudley*, 1 T.L.R. at 33 (1884).

12. SIMPSON, *supra* note 9, at 235; *see also Dudley and Stephens*, 14 Q.B.D. at 277-78. The court also cited *United States v. Holmes*, 26 F. Cas. 360 (C.C.E.D. Pa. 1842) (No. 15,383), which involved sailors who threw passengers overboard to reduce the risk of their longboat being swamped.

The duty, in cases of shipwreck, of a captain to his crew, of the crew to the passengers . . . these duties impose on men the moral necessity, not of the preservation, 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.¹³

He continued, sternly, quoting Milton:

“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 deed 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

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 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.¹⁴

Moral necessity, upon which the court relies, is a concept directly opposed to physical necessity, the concept urged by the defense. Moral necessity, the court explicitly states, grows out of social bonds.¹⁵ Men sacrifice themselves in order to fulfill their duties to others. The defense counsel’s arguments, thus, deny the existence of social bonds, or more precisely, assert that these bonds dissolve at the margin in desperate circumstances. To accept the idea of physical necessity is to accept the idea that humans may legitimately kill and eat each other as soon as there is no other food available.

The ban on such feral behavior, in order to be effective, must be absolute. If such things happen only in desperate circumstances, then that is where the penalty must apply. The criminal sanction must buttress the individual will; we criminalize behavior that we ourselves might well commit in order to stiffen our resolve not to commit it.

13. *Dudley and Stephens*, 14 Q.B.D. at 287.

14. *Id.* at 288 (quoting J. MILTON, *PARADISE LOST*, bk. 4, lines 393-94).

15. See *supra* notes 13-14 and accompanying text.

B. *The Final Fiction: Lord Jim*

Lord Jim, in its first section, follows a young English merchant marine officer, referred to only as Jim, from his childhood as a parson's son to his signing-on as mate of the steamer *Patna*. The *Patna* is bound from Singapore to the Red Sea, carrying hundreds of Moslem pilgrims to Mecca. In the early morning hours, when only the crew are awake, her bow is ruptured by an unseen piece of flotsam. Jim goes below to inspect the damage. He finds that the only thing keeping the sea from pouring into the ship is the rust-eaten forward bulkhead—a flimsy, corroded metal sheet, already bulging under the pressure of the water.

The facts are less grisly than those of *Dudley and Stephens*, but the impending catastrophe is a thousandfold greater. Jim knows that the *Patna* has too few lifeboats for the people aboard. He also knows that if the pilgrims learned of the danger, they would panic, and swamp even those few boats. The only way to survive, it seems, would be to abandon the ship quietly and immediately. He looks at the sleeping pilgrims, "surveying the silent company of the dead," and thinks, "[t]hey were dead! Nothing could save them!"¹⁶ And while he stands among the helpless passengers, knowing that his life depends upon abandoning them, the other officers are taking direct action. Conrad shifts to what is happening on deck: "[T]hese others who had a very clear perception of the actual necessity were tumbling against each other and sweating desperately over that boat business."¹⁷

Whenever the word *necessity* appears in *Lord Jim*, it is charged with moral significance. Conrad associates it with motive, crisis, and choice—ultimately, with the division between the honorable and the criminal. Here he refers to the stricken *Patna*, using the word exactly as did Dudley and Stephens' barristers: to describe a situation in which men act to save themselves, disregarding the effect of their action on lives which seem inevitably doomed. The breach of faith to which Jim is tempted is actually greater than that committed in the case of the *Mignonette*. To save himself, Jim must ignore not only the general duty of one human to others, but a professional duty specifically seen by the Court for Crown Cases Reserved, the duty of a ship's officer to passengers. From this point of view, his actions are worse than those of Dudley and Stephens.

When Jim returns to the bridge, he finds himself alone except for the corpse of the ship's engineer, who has collapsed from a heart attack. The other officers, having already cast off, call out to the engineer to join

16. J. CONRAD, *LORD JIM* 86 (1924).

17. *Id.* at 95.

them. Succumbing to fear, and his belief that the ship is about to sink, Jim answers the shouts by leaping overboard. The boat picks him up as it drifts off into the night.

The rest of Jim's story is told by Marlow, Conrad's most-relied-upon narrator. The affair of the *Patna* has interested Marlow (and the rest of the seafaring community) because the *Patna* did not sink. Against all probability, the bulkhead held, and the ship was towed into port by a French gunboat. The *Patna's* officers are brought back to Singapore to face charges before a court of inquiry. When Marlow sees them come ashore, he is shocked that Jim, so obviously "one of us,"¹⁸ could have broken the maritime code. "I would have trusted the deck to that youngster," he thinks, "and, by Jove! it wouldn't have been safe. There are depths of horror in that thought."¹⁹

Marlow is not the only English mariner shocked by Jim's complicity in the scandal. At the end of the first day of the inquiry, Marlow is approached by Captain Montague Brierly. Brierly is one of the court's members. He notes that Jim "[is] a gentleman if he ain't fit to be touched,"²⁰ but continues:

This is a disgrace. We've got all kinds amongst us—some anointed scoundrels in the lot; but, hang it, we must preserve professional decency We are trusted. Do you understand?—trusted! Frankly, I don't care a snap for all the pilgrims that ever came out of Asia, but a decent man would not have behaved like this to a full cargo of old rags in bales. We aren't an organized body of men, and the only thing that holds us together is just the name for that kind of decency. Such an affair destroys one's confidence. A man may go pretty near through his whole sea-life without any call to show a stiff upper lip. But when the call comes²¹

18. *Id.* at 43. Marlow explains that Jim appeared to have that inborn ability to look temptations straight in the face . . . an unthinking and blessed stiffness before the outward and inward terrors . . . backed by a faith invulnerable to the strength of facts, to the contagion of example, to the solicitation of ideas. Hang ideas! They are tramps, vagabonds, knocking at the back-door of your mind, each taking a little of your substance, each carrying away some crumb of that belief in a few simple notions you must cling to if you want to live decently and would like to die easy.

Id. This is the first articulation of Conrad's moral absolutism, which will later be expressed by the French lieutenant and Captain Brierly. Marlow remembers a time when "necessity" had forced him to spend time among "bad company;" thus Conrad intimates that necessity is what puts a person in the company of rogues. *Id.* at 41.

19. *Id.* at 45.

20. *Id.* at 67.

21. *Id.* at 67-68.

Brierly's belief in this code is so strong, and the standard he sets is so strict, that he will sacrifice himself to it. A few weeks after the court of inquiry he commits suicide by leaping into the sea. The only possible explanation is that Jim's failure has destroyed Brierly's own confidence. He has seen in Jim someone like himself who failed, and he would rather end his own life than admit that he too might be susceptible to temptation.

The court of inquiry disqualifies Jim from serving as a ship's officer by canceling his mate's certificate. Marlow, however, befriends the young man. He even comes to sympathize with him. Later, in Sydney, he talks about what happened on the *Patna* with a French naval lieutenant who was on the gunboat that rescued the stricken ship. The French lieutenant, who assumed command of the *Patna* while she was being towed to safety, joins Brierly in refusing to condone Jim's actions. He explains why he boarded a ship that was on the point of sinking:

Brave—you conceive—in the Service—one has got to be—the trade demands it . . . Each of them—I say each of them, if he were an honest man—*bien entendu*—would confess that there is a point . . . for the best of us—there is somewhere a point when you let go everything (*vous lâchez tout*). And you have got to live with that truth—do you see? Given a certain combination of circumstances, fear is sure to come . . .

. . . Man is born a coward (*L'homme est né poltron*). It is a difficulty . . . But habit—habit—necessity—do you see?—the eye of others—*voilà*. One puts up with it. And then the example of others who are no better than yourself, and yet make good countenance.²²

Necessity is here again the crucial word; the French lieutenant recognizes that in desperate circumstances, men act under the impetus of necessity. He exorcises the word, however, by defining it so as to deny the possibility of moral failure. His equation "habit—necessity" identifies necessity not as extreme circumstances, but rather as conduct in those circumstances. Duty is habit, habit is necessity, therefore duty is necessity. As in the opinion in *Dudley and Stephens*, *necessity* involves self-sacrifice. It is a quasi-moral force, the pressure that makes possible grace.²³

22. *Id.* at 146-47. *Necessity* is used similarly in connection with a belief in Western ideals and "the order [and] morality of an ethical progress." *Id.* at 339. Only a belief in the necessity of such a progression, it is intimated, can sustain a moral commitment over time.

23. Compare Hemingway's definition of courage as "grace under pressure." See J. MEYERS, HEMINGWAY: A BIOGRAPHY 189 (1985).

"[W]hat life may be worth . . . when the honour is gone," the French lieutenant tells Marlow, "I can offer no opinion."²⁴ Jim's life over the next few years is an attempt to answer this inquiry. He drifts farther East, leaving job after job as soon as he is recognized as the mate of the *Patna*. Eventually he finds himself in Patusan, on the coast of Borneo. Sponsored by a German trader named Stein, he organizes an oppressed tribe, the Bugis. The local tyrant, Sherif Ali, sends assassins to murder Jim, but Jim kills one and subdues the others. Accompanied by a native warrior, Dain Waris, son of the tribal headman, he leads the Bugis to victory over Sherif Ali. The tribesmen hail Jim as *Tuan*, which means Lord. Marlow leaves him standing on a jungle beach—a self-redeemed man, happy among and respected by the people whom he has liberated.²⁵

At the end of the novel, Jim's realm is disturbed by an English renegade, a murderous freebooter who calls himself Gentleman Brown. Brown personifies the criminal element; and his motive, significantly, is always *necessity*. Extorting provisions, for Brown, is "an absolute necessity."²⁶ Later, when Brown reviews his situation, Conrad writes: "Urged by an extreme necessity, he had come [to Patusan] to steal food, a few tons of rubber or gum maybe, perhaps a handful of dollars Now . . . he began to think of stealing the whole country."²⁷

Jim is away when Brown comes upriver, but the Bugis resist. They greet Brown with volleys of musket-fire, and besiege him and his crew on a hilltop. At this point Jim returns. He and Brown meet for a parley. Although Brown does not know Jim's personal history, his words strike home:

[H]e asked Jim, with a sort of brusque despairing frankness, whether he himself . . . didn't understand that when "it came

24. LORD JIM, *supra* note 16, at 148.

25. *Necessity*, significantly, is the word Conrad most often gives as a motive at major stages of Jim's march toward redemption. On the first page, Conrad describes Jim thus: "His voice was deep, loud, and his manner displayed a kind of dogged self-assertion which had nothing aggressive in it. It seemed a necessity . . ." *Id.* at 3. It is this self-assertion which keeps Jim from sinking into outlawry. It persists so strongly that eventually Marlow finds in it "something insolent." He changes his opinion, however, "[y]outh *is* insolent," he recognizes. "[I]t is its right—its necessity . . ." *Id.* at 236. When Jim raises the Bugis tribesmen to defend themselves against Sherif Ali, Conrad describes him as "preaching the necessity of vigorous action." *Id.* at 295. When Jim takes as wife a young native woman, Jewel, "the necessity of the moment" is part of what outweighs the lovers' fears. *Id.* at 311.

26. *Id.* at 357.

27. *Id.* at 366. Brown even hopes to make Jim his partner: "He could not imagine such a chap . . . refusing a help that would do away with the necessity for slow, cautious, risky cheating . . ." *Id.* at 369.

to saving one's life in the dark, one didn't care who else went—three, thirty, three hundred people” He asked Jim whether he had nothing fishy in his life to remember that he was so damnedly hard upon a man trying to get out of a deadly hole by the first means that came to hand And there ran through the rough talk a vein of subtle reference to their common blood, an assumption of common experience; a sickening suggestion of common guilt . . . that was like a bond of their minds and of their hearts.²⁸

Jim persuades the Bugis to let Brown depart, in exchange for the pirate's promise to leave Patusan and Jim's personal pledge to answer for Brown's conduct. This compromise leads to Jim's own death. While returning to his ship, Brown massacres a group of Bugis warriors. Among the dead is Dain Waris. Although Jim is warned of this disaster, and knows that the chief will seek to take his life in vengeance, he does not flee. He goes before the chief to accept responsibility, stating “I am come ready and unarmed,” and unflinchingly waits for the fatal bullet.²⁹

II. THE LINK BETWEEN MEMORY AND IMAGINATION

A. Overview

There is little ostensible similarity between *Dudley and Stephens*—between what happened in the *Mignonette's* boat and what was held at trial—and what happens in *Lord Jim*. A clear factual inspiration for the novel, in fact, is readily at hand. The fictional case of the *Patna* draws extensively on the case of the *Jeddah*. The *Jeddah* was an overcrowded pilgrim ship which in July 1880 sailed from Singapore for the Red Sea; her crew abandoned her at a moment when she seemed on the point of sinking, and falsely reported her as lost. Jim himself is apparently modeled on A. P. Williams, the *Jeddah's* first mate.³⁰

This does not end the inquiry, however, because Conrad was a meditative novelist. His books appear to follow facts closely. Their settings, unlike Queequeg's native island,³¹ can be found in the atlas, and their characters have real-life counterparts. Their pivotal incidents can be identified; Conrad provided many leads in the prefaces to his novels. Fact, however, was only the starting point. Conrad's treatment of an

28. *Id.* at 386-87.

29. *Id.* at 415.

30. See N. SHERRY, CONRAD'S EASTERN WORLD, 41-86 (1966).

31. “Queequeg was a native of Kokovoko, an island far away to the West and South. It is not down in any map; true places never are.” H. MELVILLE, *MOBY DICK* 45 (1925).

incident more reflects his meditation upon an event than it depicts the event itself. "Only in men's imaginations does every truth find an effective and undeniable existence," Conrad stated. "An imaginative and exact rendering of authentic memories may serve worthily that spirit of piety towards all things human which sanctions the conceptions of a writer of tales . . ." ³² He elaborated:

Fiction is history, human history, or it is nothing. But it is also more than that; it stands on firmer ground, being based on the reality of forms and the observation of social phenomena, whereas history is based on documents, and the reading of print and handwriting—on second-hand impression. Thus fiction is nearer truth. ³³

Conrad's biographer, Frederick Karl, has offered an explanation of his subject's esthetic orientation:

Conrad identified . . . with the tradition associated with Medusa and Perseus as the mythical explanation of art. That is, Perseus could only resist the terrors of Medusa's look without being turned to obsidian if he immunized himself by catching her image *reflected in a mirror*. The mirror suggest[s] a symbolic, imagistic, highly deceptive kind of art, in which reflection, refraction, distortion replace realistic presentation. ³⁴

Conrad's fiction is an amalgam of fact and interpretation. *Dudley and Stephens* influenced *Lord Jim* not because it gave Conrad the subject for his novel, but because the facts and outcome of the *Mignonette* case influenced his interpretation of what had happened aboard the *Jeddah*.

Dudley and Stephens does not exist *in vacuo*. The case of the *Mignonette* is related to the case of the *Euxine*, an earlier cannibal ship, and the case of the *Euxine* is related to the case of the *Palestine*—another ship which sank while traveling from England to the East, and on which Conrad was an officer. Nor is *Lord Jim* an isolated work. The novel itself contains a reference to cannibalism. It is related by character and locale to *Youth*, ³⁵ a novella in which the fictional ship *Judea* burns and sinks like the *Euxine* and *Palestine*. It is even more closely related to *Falk: A Reminiscence*, ³⁶ a short story in which cannibalism at sea is a central theme. The similarities between the fiction and fact reveal a con-

32. J. CONRAD, A PERSONAL RECORD 25 (1924) [hereinafter A PERSONAL RECORD].

33. J. CONRAD, NOTES ON LIFE AND LETTERS 17 (1924).

34. F. KARL, JOSEPH CONRAD: THE THREE LIVES 219 (1979).

35. 16 J. CONRAD, *Youth*, in COMPLETE WORKS 3 (1926).

36. J. CONRAD, FALK: A REMINISCENCE, in FALK, AMY FOSTER, [AND] TO-MORROW (1916) [hereinafter FALK].

nection. Biographic and textual evidence supports the same conclusion. It is very unlikely that Conrad did not know of *Dudley and Stephens*. Close analysis of his writing—starting from his use of the word *necessity*, and his recollections of being in London during the week the decision was handed down—suggests that the case weighed on his mind over the months he spent writing the novel.

The existence of the relationship, ultimately, may be demonstrable only because of the complexity of the proof. Two transactions which are apparently unrelated—one factual, one fictitious—are linked by a series of interim relationships. Showing that the case and the novel are related is like a geometry exercise in which, by working from congruence to congruence across a snarl of angles and tangents, one can establish that line AB parallels line WX.

B. *Dudley and Stephens as a Test Case*

Dudley and Stephens did not attain its notoriety by accident. Its severe holding can be explained theoretically (as the conclusion dictated by deontological ethics) or historically (as the inevitable verdict of a Victorian court)—but these interpretations are misreadings because they are incomplete. Professor A.W.B. Simpson, in *Cannibalism and the Common Law*, has demonstrated that *Dudley and Stephens* represents result-oriented jurisprudence in its most deliberate and manipulative form.³⁷ The opinion which seems so unimaginative, so blindly literal, is in fact an attempt to shape social policy. *Dudley and Stephens* was a case in which an example was made. It still resounds today because it was sounded as a clarion call: the Court for Crown Cases Reserved intended that their decision should be discussed in every fo'c'sle in the British merchant fleet.

Over the centuries preceding 1884, a species of survival cannibalism developed which was euphemistically described as “the custom of the sea.”³⁸ The custom held that when a boat of castaways ran out of water and provisions, they would select one of their number to be killed and eaten by the rest. This selection was made by drawing lots. Such anthropophagous behavior occurred only in desperate circumstances, but it was not infrequent.³⁹ Simpson has shown that the grim ritual was enacted, in

37. SIMPSON, *supra* note 9, at 195-270.

38. See generally *id. passim*.

39. Without modern navigation and weather equipment, ships sank or were disabled far more often than in this century, and before radio there was no way to send an SOS. Because ships were wooden, and no system of government inspection existed to ensure that they were

full or summary form, at least fifteen times between 1820 and 1899.⁴⁰ The motif of cannibalism colored ballads' harrowing tales of survival at sea, and W. S. Gilbert even spoofed the subject with a spright series of quatrains about a ship's crew who ate each other until only one survived.⁴¹

The custom of the sea had always been a grim practice, but by the 19th Century it had acquired sinister overtones. Survivors of cannibal ships invariably reported that lots had been drawn. Appallingly often, however, the chosen victim was the weakest member of the group; or the youngest, or an outsider (a slave, a passenger in a longboat full of sailors, or a Spaniard among Englishmen). As Simpson observes, "[a] suspicion recurs; the lot mysteriously falls on the obvious victim."⁴²

The British government, responsible for the world's largest merchant fleet, had an interest in suppressing the custom of the sea. *Dudley and Stephens* offered the opportunity to outlaw the practice by declaring that it was premeditated murder. This explains the decision's vociferous language and the unmitigated severity of the penalty imposed. The desire to lay down a precedent also explains the case's unusual procedural posture. The special verdict returned by the jury was a little-used device, viewed as archaic even in 1884.⁴³ Its use was suggested by

properly provisioned, it was easy for castaways to drift until their food and water ran out. See SIMPSON, *supra* note 9, at 106-09, 119.

40. *Id.* at 125-39, 258-70. One of the most gruesome and repetitive chapters in the history of the criminal law is chapter five of *Cannibalism and the Common Law*. *Id.* at 95-145. From the South Pacific to the Canary Islands, from the Florida Straits to the frozen coast of Newfoundland, the grisly pattern recurred. Simpson concludes: "[T]here was nothing whatever secret about the matter. What sailors did when they ran out of food was to draw lots and eat someone." *Id.* at 140. "[O]bviously these recorded cases represent merely the tip of the iceberg." *Id.* at 122.

41. *Id.* at 140-44. Other writers who dealt with the custom of the sea, Simpson notes, included William Makepeace Thackeray and Edgar Allan Poe. *Id.* at 143-44. In Poe's *The Narrative of Arthur Gordon Pym*, the victim's name (by incredible coincidence) is Richard Parker. *Id.* at 144. Survival cannibalism touches literature tangentially at another point; lots were drawn and a man killed and eaten among the survivors of the New England whaler *Essex*, which in 1820 had her side stove-in by a harpooned whale. Simpson discusses the connection between this incident and Herman Melville's *Moby Dick*. *Id.* at 125. More recently the practice has inspired Monty Python. Monty Python, *No Sign of Land*, on ANOTHER MONTY PYTHON ALBUM (Buddah Records 1972).

42. *Id.* at 124.

43. *King v. Hazel*, 168 Eng. Rep. 287 (1785), was the most recent case in which a special verdict had been returned. See SIMPSON, *supra* note 9, at 209. Indeed, Sir James Fitzjames Stephen, writing only a year before, had stated, "[s]pecial verdicts have now gone almost entirely out of use, having been superseded by the establishment of a court called the Court for Crown Cases Reserved." 1 J. STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND 311 (1883).

the trial judge, Baron John Walter Huddleston—a suggestion so extraordinary that it deserves explanation.

Huddleston argued to the jury that entering a special verdict would both spare the jury the pain of having to convict Dudley and Stephens and hear the death penalty pronounced, and also allow a higher court to decide the intricate questions involved.⁴⁴ Huddleston seems to have been motivated, however, by two reasons he did not make clear to the jury. One was that the special verdict, by making the defendants' guilt a matter of law, foreclosed the possibility of jury nullification. Conversely, the matter was left to the judges, who knew what the unsettled state of the law required. The other reason was that using the special verdict ensured that the case would produce a binding precedent. A simple murder trial at the Exeter Assizes, no matter how shocking or controversial its elements, would not have bound other English courts. A special verdict, however, would be ruled upon by the Court for Crown Cases Reserved, a special appellate court whose decisions carried precedential value.⁴⁵

C. *The Missed Precedent: The Case of the Euxine*

The British authorities were particularly anxious to pursue the case of the *Mignonette* because ten years previously they had lost a similar opportunity to outlaw the custom of the sea. This had grown out of the sinking of the *Euxine*, which sank on August 5, 1874, in the South Atlantic, three days after her cargo of coal had spontaneously ignited.⁴⁶

One of the *Euxine's* lifeboats, commanded by Second Mate James Archer, lost contact with the others. On November 3rd, a Dutch ship deposited Archer and four other survivors in Batavia in the Dutch East Indies. They related that after twenty-two days adrift, and a storm which had drowned two men and swept away their remaining provisions,

44. *Queen v. Dudley*, 1 T.L.R. 29, 33 (1884).

45. SIMPSON, *supra* note 9, at 208-09. To ensure that Dudley and Stephens could not be acquitted, Baron Huddleston also committed a troubling series of procedural irregularities. See generally *id.* at 195-223. He inserted the passage about Dudley's prayer to preclude the possibility of an insanity acquittal; the special verdict thus outflanked the M'Naghten Rule by showing that Dudley knew what he was doing and did not consider the act rash. This nicety was not explained to the jury. *Id.* at 214. Huddleston also added the clauses concerning the *Mignonette's* English registry—penning them in after the verdict had been returned and the jury dismissed—in an attempt to ensure the court's jurisdiction. *Id.* at 218.

Earlier commentators had suggested that Huddleston used the special verdict to renovate appellate procedure by "undermin[ing] the restriction limiting the Court of Crown Cases Reserved to questions of law." Note, *In Warm Blood: Some Historical and Procedural Aspects of Regina v. Dudley and Stephens*, 34 U. CHI. L. REV. 387, 397-98 (1967).

46. The following account of the case of the *Euxine* is digested from Simpson, *supra* note 9, at 176-93.

they had followed the custom of the sea. The sailor on whom the lot had fallen—three times in a row, Archer claimed—had been the youngest and smallest survivor, an Italian youth who spoke little English. Only a few hours after the killing the remaining five men were rescued.

The survivors told their story in depositions taken by the British consul in Batavia. They were immediately taken to Singapore, where the colonial governor had them charged with murder.

Proceedings were initiated, but they eventually foundered. While the defendants were being held in Singapore, their depositions had been forwarded to the Board of Trade in London. Duplicates were available in Singapore, but these were not admissible as evidence, and the consul in Batavia (who could have testified) declined to come to Singapore. Additional problems with hearsay, the admissibility of accomplice testimony, and the need for corroborative evidence also hampered the prosecution, and a final problem arose over venue. The feeling in Singapore was that trying the case in Britain would both reduce the risk of acquittal and ensure that the verdict received due attention. The British Colonial Office, however, decided to pursue the prosecution in Singapore. When the proceedings there collapsed, and it was decided to try the case in Britain, the moment had passed. The popular furor had died down. To try the case at home might have embarrassed an influential member of parliament, the owner of the *Euxine*. The Imperial German government, moreover, had retained a lawyer for the man who had actually done the killing, a seaman from Cuxhaven in Lower Saxony. The defendants were quietly released soon after they had stepped ashore in London.

A figure who had been heavily involved at the Singapore end of the *Euxine* prosecution was Captain Henry Ellis, Master-Attendant of Singapore. As Master-Attendant, Ellis was what Conrad called a “deputy Neptune”—a figure holding supreme authority over the ships and sailors that called at Singapore. This role involved him with the *Euxine* case. The survivors of Archer’s boat were delivered to him; it was he who referred the case to the colonial attorney general and sent the depositions to London. When the evidentiary problems emerged, it was Ellis whom the prosecution offered as its only witness. Having once been a castaway himself, Ellis was not unsympathetic to the defendants. Speaking of the custom of the sea, he stated, “[a]bout twenty or twenty-five years ago these cases were most common. I have never heard of men being punished for so doing.”⁴⁷ His reluctance to condemn the practice was part of the reason the *Euxine* prosecution collapsed.

47. *Id.* at 185-86.

Ellis is an important part of the proof. Conrad patterned on him a fictional character, Captain Elliott, who appears in *Lord Jim* and hovers barely off-stage in *Falk*. Ellis' literary role arises from his professional role. The Master-Attendant of Singapore did not only investigate maritime scandals; he also engaged officers for British ships. It was in this capacity that Ellis gave Conrad his only sea command, the captaincy of the barque *Otago*.⁴⁸

D. *Cannibalism in Conrad: Falk and Lord Jim*

Of all Conrad's work, "Falk: A Reminiscence"⁴⁹ is the only one in which cannibalism comes to the forefront. "Falk" is set in a Southeast Asian city, an upriver seaport which can be identified as Bangkok. Its unnamed narrator is apparently Marlow.⁵⁰

As the story opens, the narrator is trying to have his ship towed downriver to the open sea. At this he is stymied by the local tugboat captain, a Scandinavian named Falk, who mistakenly believes that the narrator is his rival for a woman's hand. The woman is the niece of a German master-mariner named Hermann.

The narrator clears up the misunderstanding and agrees to help Falk win Hermann's approval. Falk has earlier muttered cryptically, "I have been unfortunate once."⁵¹ Aboard Hermann's boat, he makes clear what this misfortune was: "Imagine to yourselves . . . that I have eaten man."⁵² Hermann is appalled and outraged, and all but throws Falk off his boat. "According to [Hermann's] ideas," the narrator states, "no circumstances could excuse a crime—and certainly not such a crime. This was the opinion generally received. The duty of a human being was to starve."⁵³ To such remonstrances, Falk can only reply, meditatively,

48. See Sherry, *supra* note 30, at 195-205. In *Lord Jim*, Captain Elliott administers the first reproof, a severe tongue-lashing, to the captain of the *Patna*. *Lord Jim*, *supra* note 16, at 39. In *Falk*, the Master-Attendant appears as the "British Consul" who had appointed the narrator to take the charge of the ship "after a man who had died suddenly." J. CONRAD, FALK: A REMINISCENCE, in TYPHOON & OTHER STORIES 153 (1924). *The Shadow-Line*, a largely autobiographical account of how Conrad took command of the *Otago*, confirms this figure was indeed Ellis. J. CONRAD, THE SHADOW-LINE, in 17 COMPLETE WORKS (1926).

49. FALK, *supra* note 36.

50. KARL, *supra* note 34, at 512. The story's opening sequence, in which a group of ships' officers eat dinner overlooking the Thames and, reminiscing about their days at sea, think of man's savage past, anticipates the opening of *Heart of Darkness*. 16 J. CONRAD, HEART OF DARKNESS, in COMPLETE WORKS 45 (1926).

51. FALK, *supra* note 36, at 101.

52. *Id.* at 117.

53. *Id.* at 123.

"[s]omebody had to die—but why me?"⁵⁴

To the narrator Falk reveals the full story. Ten years earlier, he had served on a steamer whose propeller shaft snapped during a voyage to New Zealand. The ship drifted south until "the edge of the polar ice-cap rose from the sea and closed the southern horizon like a wall."⁵⁵

Discipline vanished. The crew despaired; some went mad and took their own lives. Finally, the ship's carpenter suggested "the last sacrifice."⁵⁶

[W]ith my head full of preconceived notions as to how a case of "cannibalism and suffering at sea" should be managed [the narrator states] I said—"You were then so lucky in the drawing of lots?"

"Drawing of lots?" he said. "What lots? Do you think I would have allowed my life to go for the drawing of lots?"

Not if he could help it, I perceived, no matter what other life went.⁵⁷

The carpenter tries to kill Falk; Falk escapes, and stations himself where he controls the ship's water supply. After a night of waiting, the two men shoot it out, and Falk kills the carpenter. Thereafter, on "that dismantled corpse of a ship floating on a grey sea ruled by iron necessity," the living consume the dead.⁵⁸ Eventually the other sailors die off, of starvation and cold, until Falk is the one survivor.

To write about cannibalism among castaway sailors, and then to use *necessity* in describing their situation, suggests that Conrad was not unaware of the issues raised in *Dudley and Stephens*. Hermann's outburst also indicates Conrad's awareness of those issues. To say that no circumstances can excuse criminal behavior, to hint that this view is a social and moral tradition, and to proclaim that a castaway's duty is to starve—this condenses the opinion of Lord Coleridge. These similarities are even sharper and more suggestive in *Falk* than in *Lord Jim*.

Conrad wrote *Falk* in the same burst of writing that produced *Lord Jim*. He finished *Lord Jim*, after seventeen months of work, in late July 1900.⁵⁹ By October, while the first reviews were appearing, he was at

54. *Id.* at 120.

55. *Id.* at 135.

56. *Id.* at 140.

57. *Id.* at 131.

58. *Id.* at 144. The phrase, "iron necessity," appears twice within four paragraphs.

59. KARL, *supra* note 34, at 502.

work on *Falk*.⁶⁰ This natal connection strengthens the link suggested by both works' use of the term *necessity*; it argues that the concerns which clearly shaped the short story also shaped the novel. The signal connection, however, is theme. Although cannibalism figures more briefly in *Lord Jim* than in *Falk*, the point at which Conrad introduces it gives it central importance.

Marlow is not the only spectator at the court of inquiry who is interested in Jim's fate. As Marlow leaves the Singapore courthouse, he is accosted by an Australian named Chester. Chester had never been particular about how he made money: "He had been pearler, wrecker, trader, whaler . . . anything and everything a man may be at sea, but a pirate."⁶¹ His ethic is unkindled opportunism: "You must see things exactly as they are," he repeats constantly.⁶²

Chester wants to hire someone to help him mine guano on an isolated island in the Walpole Reefs. It is a hazardous venture: "Rocks, currents, no anchorage, sheer cliff to lay to, no insurance company would take the risk."⁶³ The man whom he hires will have to spend months on a bare, waterless, guano-covered rock, keeping armed watch on a gang of mutinous coolies. Chester thinks Jim is the ideal man for the job. "He is no earthly good for anything," he tells Marlow. "He would just have done for me."⁶⁴

Chester's partner in the venture is Captain Robinson. "Old Robinson. Yes; *the* Robinson,"⁶⁵ he whispers to Marlow.

Cannibal?—well, they used to give him the name years and years ago. . . . A shipwreck on the west side of Stewart Island; that's right; seven of them got ashore, and it seems they did not get on very well together. Some men are too cantankerous for anything . . . don't see things as they are—as they *are*, my boy! And then what's the consequence? Obvious! . . . [A] boat of Her Majesty's ship *Wolverine* found him kneeling on the kelp, naked as the day he was born, and chanting some psalm-tune . . . Alone? Of course.⁶⁶

As Chester speaks, he is joined by Robinson—a deaf, senile, "emaci-

60. *Id.* at 505. Apparently the actual writing (as distinguished from planning) began in January 1901. *Id.* at 512.

61. LORD JIM, *supra* note 16, at 161.

62. *Id.* at 162.

63. *Id.* at 164.

64. *Id.* at 167.

65. *Id.* at 162.

66. *Id.* at 162-63.

ated patriarch" with bleary eyes, who leans decrepitly on an umbrella, "ready to subside passively into a heap of old bones."⁶⁷

Robinson and Chester, by Conrad's standards, have sunk almost as far as men can go. They are men who will do anything, to themselves or to others, in order to profit or survive. Their partnership creates a synergism of evil. The reputation of each is blackened by the other's presence; Robinson's anthropophagism is linked to Chester's amorality in a peculiarly sinister way. The moral nadir, Conrad thus indicates, is found where cannibalism prevails. The presence of Chester and Robinson at the courthouse door shows just how dangerous it can be to yield, however briefly, to the pressure of necessity. The cynic and the cannibal assume that someone who abandoned his fellow man, someone who abandoned the stricken *Patna*, must be someone like themselves. Fortunately for Jim, Marlow is present to warn them off. Otherwise, in his desperate state of mind, Jim might have accepted their employment, and his temporary disregard of moral and professional scruples might have hardened into the callousness that possesses Chester.

E. *Parallels Between Fiction and Fact*

Both *Dudley and Stephens* and *Lord Jim* examine the issue of whether necessity can justify the rupture of the social bond. Both conclude that it cannot. Conrad's approach to the problem of extreme peril at sea—his analysis of the concept of *necessity*—is so similar to the analysis found in *Dudley and Stephens* that it suggests a link. He deals with the same issue and gives it the same name; he raises in his characters' discussions the same viewpoints raised at trial. In *Falk*, the similarities to the case of the *Mignonette* are even more apparent. To show that this resemblance goes beyond affinity, that it represents actual influence, requires evidence that Conrad knew of the case of the *Mignonette*. Direct evidence is unlikely to be forthcoming, but the circumstantial evidence is very strong.

Conrad knew enough about similar cases to know that lots were customarily drawn in a "case of 'cannibalism and suffering at sea.'"⁶⁸ He thought enough of Master-Attendant Ellis of Singapore to use him as a character in three separate works. Norman Sherry has demonstrated that Conrad knew Ellis well enough to pattern one minor character, an old friend of Captain Elliott, on an old friend of Ellis'. Sherry finds that Conrad's fictional Master-Attendant represents "an excellent example of

67. *Id.* at 163-66.

68. See *supra* note 57 and accompanying text.

Conrad's use of scattered gossip . . . to create a substantial fictional figure."⁶⁹ Given this familiarity, it is likely that Conrad would have heard of Ellis' role in the *Euxine* prosecution: cannibalism at sea is more likely a topic for harbor scuttlebutt than a man's past friendships. Many events in Conrad's life, moreover, would have disposed him to remember a scandal like that of the *Mignonette*.⁷⁰

The shadows of the *Euxine* and *Mignonette* overhang the one occasion on which Conrad was forced to abandon ship. In 1882, he sailed from England as second mate on a collier named the *Palestine*. On March 11, 1883, off the coast of Sumatra, the crew discovered that their cargo of coal had spontaneously ignited. Three days later they had to take to the lifeboats, and after landing in Sumatra were taken on to Singapore. While this loss clearly parallels the sinking of the *Euxine*,⁷¹ the fatal voyage of the *Palestine* is also linked to the last voyage of the *Mignonette*. Before sailing, the *Palestine* had spent eight months being refitted in Falmouth harbor—the port from which the *Mignonette* sailed, and to which Dudley and Stephens were returned. Even though Conrad apparently passed much of this time in London, the connection would have added an ironic piquancy to news of the *Mignonette* case.⁷² Conrad's treatment of this experience, in his novella *Youth*, suggests that he did draw such a connection. In *Youth*, Conrad steers close to virtual autobiography. The fictionalization is so transparent that the *Palestine* becomes the *Judea*, and his account of the sinking faithfully follows the

69. SHERRY, *supra* note 30, at 205.

70. Conrad seems to have been unusually sensitive to alimentary taboos. In *A Personal Record*, published when he was fifty-five, he devoted three full pages to one awful childhood memory: learning that his uncle, during Napoleon's retreat from Moscow, "once upon a time had eaten a dog." A PERSONAL RECORD, *supra* note 32, at 32. He began:

It is a good forty years since I heard the tale, and the effect has not worn off yet. I believe this is the very first, say, realistic story, I heard in my life; but all the same, I don't know why I should have been so frightfully impressed. . . .

. . . .
 . . . I have lived on ancient salt junk, I know the taste of shark, of trepang, of snake, of nondescript dishes containing things without a name—but of the Lithuanian village dog, never! I wish it to be distinctly understood that it is not I, but my grand-uncle Nicholas . . . who, in his young days, had eaten the Lithuanian dog. I wish he had not. The childish horror of the deed clings absurdly to the grizzled man. I am perfectly helpless against it.

Id. at 32-35.

71. Simpson notes that the *Palestine* "[sank] in much the same way as the *Euxine*," and that "[i]t is even conceivable that Conrad met Archer." Apparently this would have occurred on Conrad's arrival in Singapore, "which Peter [James?] Archer of the *Euxine* would have visited again in 1883." SIMPSON, *supra* note 9, app. D. *But see id.* at 193 (Archer's return visits to Singapore were in 1882 and 1884). Simpson concludes that Conrad "must surely have heard the story of the *Euxine*, but *Falk* has no obvious connections with it." *Id.* at 323.

72. KARL, *supra* note 34, at 208.

sequence of events. Significantly, however, the fictionalizing elements of the work link it to the tales in which cannibalism figures. The story is narrated by Marlow, and the crew land not in Sumatra but at Bangkok.⁷³ These identities of narrator and locale associate the story, and the actual sinking, with *Lord Jim* and *Falk*.

F. Conrad's Knowledge of the Case

A reasonable English mariner would have heard of *Dudley and Stephens*—indeed, the government intended that every mariner should have heard of the case. Conrad showed himself much more alert and sensitive than his fellow seafarers. He kept abreast of crime and scandals, particularly when they involved the sea.⁷⁴ He seems, additionally, to have read every newspaper that crossed his path. He applied for his first seaman's berth in response to an advertisement in the *Evening Standard*,⁷⁵ and in his early days at sea he was reading the *Daily Telegraph*,⁷⁶ as well as various Scottish papers.⁷⁷ His reading later expanded to include (especially when his works or those of friends were being reviewed) the *Pall Mall Gazette*, *Illustrated London News*, *National Observer*, *World*, *Glasgow Herald*, *Weekly Sun*, *Newcastle Chronicle*, *Le Review des Deux Mondes* and *Le Figaro*.⁷⁸

Newspaper coverage of the *Mignonette* case began as soon as Dudley and Stephens landed at Falmouth.⁷⁹ It crested during November and early December 1884, at the time of the murder trial and the decision by the Court for Crown Cases Reserved. Britain's newspapers, through

73. *Id.* at 212. Karl has concluded that this novella "comes the closest of any of [Conrad's] fiction to reproducing earlier experiences." *Id.*

74. *Nostramo* is based on the actual theft of a boatload of silver bullion, as the introduction to that novel makes clear; *The Secret Agent*, likewise, is based on an actual attempt to dynamite the Royal Observatory at Greenwich. NOSTROMO, *supra* note 7; 13 J. CONRAD, THE SECRET AGENT, in COMPLETE WORKS (1926). Just as *Lord Jim* is factually based on the case of the *Jeddah*, so *The Secret Sharer* draws upon an incident involving the famed clipper *Cutty Sark*. In both cases, a ship's officer who has unintentionally killed a seaman abandons his ship and swims to shore. See SHERRY, *supra* note 30, at 253-69; 19 J. CONRAD, THE SECRET SHARER, in COMPLETE WORKS 91 (1926).

75. KARL, *supra* note 34, at 185, 222; 1 THE COLLECTED LETTERS OF JOSEPH CONRAD 13 (F. Karl & L. Davies eds. 1983) [hereinafter 1 COLLECTED LETTERS].

76. 1 COLLECTED LETTERS, *supra* note 75, at 12.

77. Roughead, *Conrad on Crime: A Note of Admiration*, 40 JURID. REV. 250, 250 (1928).

78. 1 COLLECTED LETTERS, *supra* note 75, at 123-24, 203, 213, 221, 229, 271, 277.

79. Dudley and Stephens returned to Falmouth on September 6, 1884, and were arrested that same afternoon. On September 8th the *Times* carried the story. The *Times* (London), Sept. 8, 1884, at 9, col. 5. Throughout September the *Times* and the *Daily Telegraph* printed vigorous exchanges of letters to the editor, including one from Dudley himself. SIMPSON, *supra* note 9, at 87-89, 202-03, 250-53.

news stories, editorials, and letters to the editor, referred to the case on almost a daily basis.⁸⁰

Conrad, during these weeks, was in an excellent position to follow the controversy. He spent this time in London preparing to take an examination to qualify as a chief mate. He returned from the East on October 27, 1884 (having made the voyage as second mate on the ship *Narcissus*). On November 17th he sat for, but failed, the chief mate's examination. He retook the test and passed on December 3rd. Thereafter he remained in London until April, when he sailed for Singapore aboard the ship *Tilkhurst*.⁸¹

While Conrad was in London, the *Mignonette* case was causing such a furor that Madame Tussaud's, that barometer of Victorian notoriety, put on display a waxwork likeness of Captain Dudley.⁸² Two days after Conrad's chief mate's examination, the *Times* printed the arguments of counsel and the court's decision to hold the prisoners guilty; five days later Conrad would have had available, in the same paper, the text of the opinion. The *Daily Telegraph* covered the case and devoted an editorial to it on December 10th.⁸³ Particularly interesting, moreover, is what Conrad's favorite paper, the *Evening Standard*, argued on December 15th:

It is far better in the interests of morality that DUDLEY and STEPHENS should spend the next six months in prison than that they should at once return to their homes to be . . . treated almost as heroes. They are men deeply to be pitied, scarcely to be censured, and with strong claims to be forgiven; but it must be remembered that they have already been forgiven much, and that if the distinction between right and wrong is to be preserved by the Law, it will not do for morality to regard temptation as an excuse for crime.⁸⁴

Summing up, the *Standard* used a critical word: "[o]nce let any

80. The *Times*, for example, reported on the indictment returned by the grand jury on November 4th. The *Times* (London), Nov. 4, 1884, at 3, col. 6. The paper not only covered the trial, but printed an editorial which examined the concept of "necessity." *Id.*, Nov. 7, 1884, at 10, col. 1. In December, the *Times* reported the arguments made to the Court for Crown Cases Reserved. *Id.*, Dec. 5, 1884, at 3, col. 3. The ultimate decision, reported in full, provided material for yet another editorial. *Id.*, Dec. 10, 1884, at 3, col. 2. Simpson lists 27 periodicals, not including the *Daily Telegraph*, which carried the story. SIMPSON, *supra* note 9, at 329.

81. KARL, *supra* note 34, at 220-22.

82. SIMPSON, *supra* note 9, at 248.

83. *Id.* at 252.

84. The *Evening Standard* (London), Dec. 15, 1888, reprinted in SIMPSON, *supra* note 9, at 252.

system of jurisprudence accept the pleas of necessity, and Society would drift back into a 'struggle for existence' almost as brutal as that which goes on in a South American forest."⁸⁵

Conrad could have drawn upon any of these sources. That he did draw upon some source for this period is suggested by a curious snippet of allusion. The Marine Department of the British Board of Trade held its examinations at the London docks, not far from the Tower of London. Of the three examinations he passed there, Conrad remembered at greatest length the second—the one he passed in December 1884. It was a difficult test: the examiner placed him aboard a hypothetical ship, then damaged the vessel and encumbered it with heavy weather, another ship on a collision course, and finally a lee shore with outlying sandbanks. Conrad stammered his way through the simulation exercise for forty minutes before the examiner was satisfied: "I escaped from the room thankfully—passed! Forty minutes! And again I walked on air along Tower Hill, where so many good men had lost their heads, because, I suppose, they were not resourceful enough to save them."⁸⁶

One crucial passage in *Lord Jim* sounds the same tone. On the final day of Jim's trial before the court of inquiry, Marlow finds himself "irresistibly impelled to go and see his head roll off."⁸⁷ The punishment will hardly be that severe, he knows. Nonetheless, while sympathizing with Jim—perhaps because he sympathizes with Jim—he regrets that the tone of the court of inquiry does not comport with the severity of the criminal law.

The real significance of crime is in its being a breach of faith with the community of mankind, and from that point of view he was no mean traitor, but his execution was a hole-and-corner affair. There was no high scaffolding, no scarlet cloth (did they have scarlet cloth on Tower Hill? They should have had), no awestricken multitude to be horrified at his guilt and be moved to tears at his fate—no air of sombre retribution.⁸⁸

In a novel which examines when and why behavior is criminalized, this passage assumes particular importance. By explicitly defining crime as a breach of the social bond, it revisits the central issue of *Dudley and Stephens*, whether individual interest can override the bonds of common humanity. It also demonstrates that Conrad, when writing *Lord Jim*,

85. SIMPSON, *supra* note 9, at 251.

86. A PERSONAL RECORD, *supra* note 32, at 116-17.

87. LORD JIM, *supra* note 16, 156-57.

88. *Id.*

carried in the back of his mind a recollection of London during December 1884. The fate of ships that had sailed from Falmouth; the memory of a trial, a hypothetical testing to be paired with a fictional proceeding; the counterpoint between the award of one officer's certificate and the cancellation of another—all these connections indicate the link.

III. CONCLUSION

Falk shows that Conrad would not condemn a man merely for violating a social taboo, and *Lord Jim* is a novel-length statement of belief in the possibility of repentance and redemption. Conrad condemned, however, those men who had broken faith with the human community—who had pursued their own interests heedless of the harm they did to others. This is why, in Marlow's words, a criminal is no longer "one of us." Such renegades might be ivory-hunters who looked on Africans and thought "exterminate the brutes," or sadistic thugs (with political pretensions) who killed for both the czarist police and the anarchist underground. In *Lord Jim* the category includes merchant officers who abandon their passengers in order to save themselves.

When one appreciates Conrad's concern with the concept of necessity—and, from a study of *Dudley and Stephens*, the context in which he examined the term—one sees the full rigor of his moral vision. Jim's death, this reading shows, was not the result of a tactical blunder. It was the result of a moral relapse. Conrad reiterates in *Lord Jim* what Dante taught in *The Inferno*, that one must not take pity on the damned.

Throughout the novel, Jim's progress from fall to redemption has been measured by his relationships to a series of minor characters with whom he is paired. When he leaps from the *Patna*, answering calls to the dead ship's engineer, he assumes the place of a dead man—a figurative action made literal by the professional disgrace and social ostracism which follow. Chester, who appears at the court of inquiry, embodies one alternative open to Jim, now a complete outcast: Chester represents complete corruption, an alternative which Jim does not take.⁸⁹ Jim does

89. Conrad drives the point home two chapters later. Chapter 15 ends with Jim in limbo at the end of the court of inquiry, with even Marlow on the point "of wishing him to the devil, or on Walpole Reef at least." *Id.* At the start of Chapter 16, Marlow looks ahead to what Jim became: "The time was coming when I should see him loved, trusted, admired, with a legend of strength and prowess forming round his name . . ." *Id.* at 175. On the next page, Marlow reveals what happened to Chester: vanished in the Pacific, "the only news having a possible bearing upon the mystery of his fate [being] the news of a hurricane which is supposed to have swept in its course over the Walpole shoals, a month or so afterwards." *Id.* at 176. This juxtaposition shows that Chester's way, unlike Jim's slow path towards redemption, led quickly to self-immolation.

not flee from Patusan, and shoots his would-be assassin. By killing this anonymous tribesman he opens a place for himself among the Bugis. Dain Waris, the warrior at whose side Jim wins the title of *Tuan*, is another of these twins: his prowess amplifies Jim's legend.

The last character with whom Jim is paired is Gentleman Brown. Brown, like Chester, represents a course of conduct. He appears wretched, but he is actually more dangerous. Chester's wrongdoing was incidental to his plans; he had been, Conrad points out, everything but a pirate. Brown actually *is* a pirate. Chester was unscrupulous, but Brown acts on positively evil principles: murder and theft are his *modus vivendi*. He has abstracted and concisely formulated this criminal ethic. Whereas Chester "saw things as they were," amorally but vaguely, Brown's motive has been crystallized in one word, *necessity*.

Conrad dramatizes his moral absolutism through Jim's treatment of Brown, this creature of necessity. What is to be done with men who have broken faith with the human community? The Bugis understand only retribution. Their outlook is uncomplicated by emotion, self-doubt, or studied analysis. They know that Brown is dangerous; accordingly, they seek to destroy him. Differences in race and religion make it easy for them to feel no kinship with Brown's freebooters. When Jim meets Brown, however, he knows that he and the pirate are of common blood. He is also aware of the power of temptation, of necessity, and conscious of his own actual and latent shortcomings. Brown's words unwittingly play on these feelings.

Jim lets Brown go. By showing that disaster follows, Conrad himself adopts the view urged earlier by Captain Brierly and the French lieutenant. Sympathy, he argues, cannot be allowed to interfere with retributive justice. To show leniency toward Brown means accepting necessity as a legitimate motive—which means condoning Brown's actions, which span the dark spectrum from vice to massacre. Retribution is a harsh code. The Bugis are virtuous, but uncivilized and sometimes savage, and the same code destroys Brierly and has hardened the French lieutenant. Nonetheless, there is no acceptable alternative. To believe in the common humanity of men who have broken the social bond is to betray oneself. Even if one acknowledges that one shares personal failings with men who do evil, to accommodate the criminal element is to give in to it.

Jim makes such a compromise and thereby destroys himself. Within Conrad's fictional universe, a realm whose natural law is its creator's pessimism, such destruction is inevitable. The sign of Jim's redemption is that he chooses to pay the penalty. The ethic upon which he acts is

that described by Lord Coleridge. Not just because he answers with his life for Brown, but also because he thereby carries out to the last degree his obligation to the Bugis, Jim's self-sacrifice acknowledges moral necessity.