
HOMICIDE AT THE LIMITS OF HUMAN AGENCY: NECESSITY, AUTOMATISM, AND LEGAL RESPONSIBILITY

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ABSTRACT

“Even a dog distinguishes between being stumbled over and being kicked.”

- Oliver Wendell Holmes

This article examines the contours of legal responsibility in homicide cases in which human agency has been impaired, focusing mainly on the defense of necessity and automatism, and particularly on the defense of sleepwalking. The discussion begins by tracing a detailed survey on key tenets of **legal guilt**, particularly fair opportunity as understood by **H.L.A. Hart** and **David O. Brink**, and examines necessity as a plausible partial defense by reference to *R v Dudley and Stephens (1884)*, *US v Holmes (1842)*, and *Re A (Children) (Conjoined Twins: Surgical Separation) (2001)*, in which survival needs challenge established taboos on intentional homicide. The discussion then shifts to automatism in the case of homicide by sleepwalking and critically discusses the jury verdict in *R v Parks (1992)* and the trial court verdict in *State v Falater (1999)*, and calls for tighter evidence-based rules directed at proper identification of genuine somnambulism by reference to the latest development in forensic science on sleep. By integrating doctrinal analysis and moral considerations, the paper proposes reforms aimed at just and fair apportioning of responsibility such that individual exculpation and protection to the community are balanced in such rare circumstances.

Keywords: necessity defense, automatism, legal responsibility, *R v Dudley and Stephens*, *R v Parks*, justifiable homicide, survival homicide, sleepwalking murder.

INTRODUCTION

A solitary boat in the vast stretches of the ocean, adrift with no direction. A catastrophic shipwreck, the cause of the situation. Four men: Ned Brooks, Edward Stephens, Richard Parker and Captain Thomas Dudley. Starvation and exhaustion pervade them. There is no option, Dudley decides. They pick lots but young and sick Richard Parker is not aware. Dudley and Stephens decide to kill the extremely frail and sick cabin boy for his flesh, and their survival. Brooks does not consent, nor does he participate in the killing of Parker. But Parker is dead, rather he is deliberately killed and it is his flesh that all three of the men consume for four days before rescue.

It was neither animosity nor the lust for bloodshed that led to Dudley and Stephens killing the cabin boy. It was imperative for them to satiate their hunger and the death of Parker was a tragic consequence of their primal desire to survive. Would it not be wrong of us, to expect those, marred by starvation, haunted by the specter of their own deaths, to behave like reasonable persons and uphold the moral dignities expected from the members of society? Yet, it would be cruel to disregard the brutal and immoral way a young man lost his life. The inhumane manner in which Parker was robbed of his future, with neither his consent nor knowledge does not deserve to be buried and forgotten.

Around a century later, far from the desolate oceans, in suburban Canada, a man named Kenneth Parks awoke, yet captive to slumber. He drove his car 23 km to the house where his in-laws resided. He then proceeded to stab his mother in-law to death and beat and nearly strangled his father in-law although he survived. It was he himself who reported his brutal crime to the police station, yet he seemed wholly unaware of his actions. With severed tendons in his hand whose pain he was not able to feel, he uttered the chilling line, *"I think I have killed some people . . . my hands,"* only then feeling the pain of several severed tendons. He had had a history of sleepwalking behavior in the past and was known to be under extreme stress. He had recently lost his job and was going to face embezzlement charges due to his gambling problems.

Both these cases illustrate the profound complexity of criminal culpability at the occurrence of homicide in extraordinary circumstances. Does killing to save your own skin constitute murder? Does it absolve the killer of guilt? On the other hand, should there be no justice for the one who was brutally stabbed and bludgeoned to death merely because the criminal was

sleepwalking? Should we let the victim's death go unpunished or let the perpetrators who fell prey to circumstances out of reasonable human control receive the wrath and full weight of the law? This paper aims to examine the moral and legal intricacies pervading legal responsibility in cases involving necessity and automatism.

RESEARCH OBJECTIVES

The overall goals of the research are:

In order to sketch the rudimentary precepts of legal responsibility for homicide and the importance of intentionality and fair opportunity in assessing guilt.

To assess the doctrine of necessity as a partial defense by examining how it works and how it fails in survival-motivated homicides in the common-law jurisdictions.

To examine the defense of automatism in cases of homicide and sleepwalking, evaluating evidence difficulties and the necessity for extended guidelines to confirm involuntary states.

To propose doctrinal refinements that promote consistency in judicial outcomes, informed by interdisciplinary insights from philosophy, medicine, and law, while contributing to scholarly discourse on impaired agency.

RESEARCH PROBLEMS

This investigation examines several significant challenges associated with assigning legal accountability for homicide within the context of human agency's boundaries. Initially, the strict prohibition of necessity as a total defense against murder in common law, illustrated by *R v Dudley and Stephens* and *US v Holmes*, disregards the ethical intricacies inherent in survival situations, which may culminate in excessive penalties despite the absence of malice. In medical settings such as *Re A (conjoined twins)*, the selective acknowledgment of necessity as a partial mitigatory factor uncovers inconsistencies. Furthermore, automatism related to sleepwalking homicides, demonstrated by the exoneration in *R v Parks* juxtaposed with the conviction in *State v Falater*, faces challenges due to **evidentiary uncertainties**, including obstacles in differentiating authentic somnambulism from simulated conditions or other impairments. More broadly, concerns arise regarding the ambiguity surrounding "fair opportunity" in extreme circumstances, the conflict between retributive justice and public

safety, as well as the absence of uniform, research-based guidelines for the forensic evaluation of sleepwalking, resulting in inconsistent judicial interpretations and the potential for miscarriages of justice.

RESEARCH QUESTIONS

In what ways do legal responsibility concepts such as *actus reus*, *mens rea* and fair opportunity relate to homicide committed by necessity or sleepwalking automatism?

How can the necessity doctrine be a partial defense to survival-related homicides and what doctrinal obstacles, as shown by *R v Dudley and Stephens* and *US v Holmes*, hinder extended recognition?

What are the evidentiary and classificatory difficulties in the application of automatism to homicide by sleepwalking as in *R v Parks* and *State v Falater*, and how may greater guidance strengthen findings of involuntariness?

To what extent can inter-disciplinary reforms incorporating forensic studies on sleep align legal results and moral responsibility and safeguard public interests?

RESEARCH METHODOLOGY

This research takes a qualitative, doctrinal approach, focusing on legal analysis and comparative jurisprudence to investigate necessity and sleepwalking automatism in homicide. Primary sources are common law judgments (e.g., England, Canada, and the United States) such as *R v Dudley and Stephens* (1884), *R v Parks* (1992), *US v Holmes* (1842), *Re A* (2001), and *State v Falater* (1999) and statutory provisions such as the Offences Against the Person Act 1861. Scholarly articles on criminal responsibility (e.g., Hart's *Punishment and Responsibility*, Brink's *fair opportunity model*), forensic studies on sleep, and articles from journals obtained through **JSTOR** and **HeinOnline** databases constitute secondary materials. The method is deductive, testing the hypothesis through legal precedents and complementing it with normative analysis of the ethical consequences.

LITERATURE REVIEW

1. H.L.A. Hart's *Punishment and Responsibility*¹

H L A Hart, a famous legal theorist discussed and postulated one of the essentials of crime: Punishment. He talked about how punishment is necessary for not just ensuring the suffering of the wrongdoer but to also ensure social security, deterrence and social reform. He combined both retributive and consequentialist views on punishment. His “*Mixed Theory of Punishment*” contains two levels. First is the **General Justifying Aim** which pertains to maintaining social order, deterring punishment and ensuring that the wrongdoer faces consequences for his act. Secondly, (and where he differs from the utilitarian approach) is his emphasis on the concept of ‘**retributive desert**’. Retributive desert referred to the concept of giving out punitive action only to those who were guilty of a crime. He believed that it was imperative to ensure that the true wrongdoers suffer for their actions. He also brought up the concept of fair opportunity, the wrongdoer must have had a fair chance to obey the law but chose to break it. He argues that excuses act as a moral filter so that “criminal law doesn’t become a system of terror”. However, there are a few critical gaps in his writing. He does not explain in detail, the concept of “fair opportunity”. It is widely regarded to be too vague and therefore creates ambiguity in judgements of extreme situations like *R v Dudley and Stephens*.

2. David O. Brink- *Revisiting Fair Opportunity: Ignorance, Injustice, and Control*²

David O Brink theorizes that Fair Opportunity is an intersection between moral psychology and criminal jurisprudence. He argues that every person should have **normative competence**. Normative competence, he defines, has two levels. There is cognitive competence which refers to the comprehension and knowledge of the moral rules and standards and their underlying reasons. Volitional competence refers to the ability to tailor your actions to adhere to the pre-existing moral standards. Only those who lack this competence are to be exempted from punishment. The wrongdoers are those who choose to willfully ignore the moral standards or those who give in to their morally unacceptable

¹ H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (2d ed., Oxford Univ. Press 2008).

² George P. Fletcher, *Basic Concepts of Criminal Law* (Oxford Univ. Press 1998).

desires regardless of being wholly aware of what they should or should not do in a situation.

3. Doctrine of Necessity- *Basic Concepts of Criminal Law by George B Fletcher*³

This book examines the history of defenses for homicide, including necessity, automatism, duress and insanity. It mentions one of the earlier forms of self defense accepted in common law, *Se Defendendo*. *Se Defendendo* stated that if one party refrained from fighting for as long as reasonably possible before resorting to defensive force, then he would not be executed but would still have to forfeit all his goods for the crime of slaying a man. Killing *Se Defendendo* was called excusable homicide.

It defined **necessity** as defense by stating that if a criminal act is committed using proportional or reasonable harm in order to prevent a greater imminent harm from happening, the person committing the preventive harm will be excused from liability. This is provided that; there was **no reasonable legal alternative** that could have been taken up. Although necessity is a valid defense and is widely used to exempt oneself from liability, it is very rarely accepted as a valid defense for homicide as killing an innocent human being for the sake of saving one's own life raises some profound ethical and moral dilemmas.

4. Automatism as a Defense

In the seminal works on automatism as a criminal defense, **J. Ll. J. Edwards**⁴ (1958) and **S. Prevezer and J. E. Hall Williams** (1962)⁵ provide a foundational analysis of its role in determining liability, particularly where unconscious actions undermine or directly negate voluntariness. Following **R v. Charlson** [1955] 1 W.L.R. 317, in which reckless violence attributable to cerebral tumor did not amount to insanity, Edwards accepts that automatism holds as a valid excuse if acts are involuntary and are similar to fits or hypoglycemia. By contrast, **R v. Kemp** [1957] 1 Q.B. 399 demonstrates insane automatism due to arteriosclerosis and supports a verdict of "guilty but insane" by virtue of recurrent risk. Edwards criticizes the burden of proof and notes that the prosecution must prove voluntariness beyond reasonable doubt and that the defense bears an evidential onus. He

³ David O. Brink, *Fair Opportunity and Responsibility* (Oxford Univ. Press 2021).

⁴ J. Ll. J. Edwards, *Automatism and Criminal Responsibility*, 21 *Modern L. Rev.* 375 (1958).

⁵ S. Prevezer & J.E. Hall Williams, *Automatism*, 25 *Modern L. Rev.* 227 (1962).

emphasizes the broader range of automatism than cognitive defect and supports reform of M' Naghten's cognitive approach.

5. Doctrine of Double Effect

The doctrine of double effect (DDE) pertains to circumstances in which an action results in harm as an unintended consequence rather than as a primary aim, offering a moral and legal framework for evaluating responsibility. Rooted in Thomistic ethics, it asserts that an action is considered permissible if the intended result is positive, the harm does not serve as a means to achieve that result, and the benefits surpass the detriments. In contexts of homicide, such as medical procedures or self-defense, DDE may provide justification for actions resulting in death occurring incidentally, for instance, during palliative care aimed at pain relief. Nevertheless, its applicability to cases of sleepwalking automatism remains insufficiently investigated; should a sleepwalker inadvertently cause death, DDE could advocate for acquittal by highlighting the absence of intent, although evidentiary hurdles related to demonstrating involuntariness continue to exist, requiring meticulous judicial examination to differentiate between authentic side effects and intentional actions.

DISCUSSION AND ANALYSIS

The analysis of the legal liability in homicide under the defense of necessity and sleepwalking (non-insane automatism) will be aided through the following case studies:

Regina v Dudley and Stephens (1884):

The facts of the case are fairly simple to comprehend. 4 men, the crew of the ship were stranded on a boat after a storm that wrecked their ship *Mignonette*⁶, equipped with two small cans of preserved turnips which lasted them three days. On the fourth day, they were able to catch a sea turtle which kept them alive for 8 days longer. The circumstances that the crew found themselves had deteriorated to the point that they were no longer able to find fish or aquatic beings to catch to satisfy their hunger. They survived on occasional rainwater and their own urine. Unable to quench his thirst, the youngest and most inexperienced out of the 4, the cabin boy Richard Parker drank the seawater that made him severely ill. At this point, over 8 days

⁶ Souhir Snoussi, R v. Dudley & Stephens Revisited: A Modern Perspective on Morality, Law, & Survival Ethics, 11 Int'l Educ. & Rsch. J. 1, 1 (Iss. 3, Mar. 2025).

had passed without a single morsel of food and Captain Dudley proposed the idea of drawing lots to decide who would sacrifice their life for the others. Brooks dissented and the idea of drawing lots was dropped. Parker, aged about 17-18, extremely frail and sick had gone into a near comatose state. At this point, the crew had been stranded alone in the sea for 18 days. No signs of rescue seemed prevalent and it was certain that all 4 of them would die if they went on with hunger for any longer. So, in order to obtain both flesh and blood from Parker, he was held down by Stephens as Dudley muttered a prayer and stabbed him in the jugular vein.

Defense's arguments:

Arthur Collins QC, the defense, based his defense on the primary argument that the Defense of Necessity should be applicable to this case. This paper will now discuss two of the strongest arguments put forth in his arguments:

1. Collins cited the infamous case of *United States v Holmes (1842)*⁷ and argued that the American precedent should apply to this English case. In *Holmes*, following the shipwreck of *William Brown*, a few of the crew members, one of whom was Holmes threw around 14-16 passengers overboard in the fear that the lifeboat would sink. The Courts rejected the defense of necessity in this case emphasizing that the situation was neither immediate nor overwhelming and nor was there no other reasonable alternative course of action that could have been taken. The Court held that it is imperative for all ordinary means of self-preservation to be unviable in the face of **immediate** danger for it to constitute necessity. It also pointed out that there was an absence in the picking of lots to choose who would be sacrificed, which would have ensured some amount of fairness in a rather unfair circumstance. This, the Jury stated, implied that Holmes and the other crewmen acted under the belief that they had the right to choose and pick whose life was more worthy than the rest.

Collins contrasted this case with Dudley and Stephen's plight. He argued that all means of survival were already exhausted- they had survived on the tiny rations as long as they could, they then hunted a sea turtle and upon finding no other food remained hungry for over 8 days. The possibility of rescue seemed near impossible and Parker was most

⁷ United States v. Holmes, 18 U.S. 412 (1842)

likely to die first.

2. Various philosophical theories were brought up to justify that legal obligations need not be upheld in dire circumstances. He argued that in such life-threatening situations, man returns to the **state of nature**, and is not able to exercise any thought of legality, rather he is driven by the primal urge to survive.

Judicial Decision:

Lord Chief Justice Coleridge, heading a 5-judge bench articulated that there was no legal precedent that justified one to kill to save one's own skin with the exception of self-defense. He also pointed out that if such a situation arises, it is legally accepted that sacrificing oneself is considered over sacrificing someone else's life. He emphasized that an individual had no right to determine the value of another person's life⁸ ("Who is to be the judge of this sort of necessity?")

Dudley and Stephens were held guilty of murder and were sentenced to death. However, the royal prerogative was enforced and Dudley and Stephens were sentenced to six months of imprisonment. This commutation was caused partly due to the public sympathy for the survivors of this tragic circumstance and partly due to the extreme necessity faced by the crew on addition to the helpless and near- dead state of the victim.

ANALYSIS:

It is observed that while the Queen Bench upheld the legal standard of necessity not being an acceptable defense to murder, it was noted that the murder did not occur due to malice, but merely due to a desire to survive. Essentially, it set the precedent to ensure that necessity should not be held as a valid justification to take a person's life while still showing mercy and consideration to the precarious situation Dudley and Stephens found themselves in. This, however, raises a major concern with regards to the consistency of the application of necessity as a defense to homicide. In the *Re A (Conjoined Twins) 2000*⁹ case, two twins Mary and Jodie were conjoined from birth. While Jodie was relatively healthy but Mary was entirely dependent on Jodie's circulatory system to survive. Doctors suggested separation to save Jodie's life,

⁸ G.E. Minchin, *Regina v Dudley & Stephens Anatomy of a Show Trial*, 11 Open J. Pol. Sci. 434 (2021).

⁹ *Re A (conjoined twins)* [2001] 2 WLR 480

despite knowing that Mary would die as a result. The defense of necessity was used to grant the medical procedure, despite the opposition of the parents. The defense of necessity seems to be wholly dependent on the interpretation of the judges. There is no consistency in the way the courts approach the defense of necessity. It could be argued that necessity is a legal formality to be upheld while still giving major concessions to the extreme situations of necessity. Would it not be arguably beneficial to create a legal safeguard in the defense of necessity to reduce liability in the case of dire and life-threatening situations?

R v Parks (1992)

The circumstances of the case are complex and enlightening. On May 24, 1987, 23-year-old Canadian Kenneth Parks drove 23 kilometers to his wife's family's residence in Scarborough to disclose his gambling addiction and upcoming charges of embezzlement the following day. However, during a night of violent sleepwalking, he beat his wife's mother to death with a tire iron and tried to strangle his wife's father, who remained alive with major injuries and provided testimony later for Parks' defense. Interestingly, Parks had damaged tendons in his hands but did not experience the feeling thereof until when he went to a police station to report the crime and said, in effect, "I think I have killed some people... my hands." Specialists attributed this to stress stemming from job loss and gambling debts and a family predisposition to parasomnias. Sleepwalkers tend to attack perceived dangers and most likely describe how he reacted to the approach by his mother-in-law as somehow suggesting an involuntary behavior brought forth by a threat perception at a subconscious level.

Defense Argument:

The defense, led by counsel, relied on automatism, asserting Parks' actions were involuntary due to sleepwalking. This paper will discuss two key arguments:

1. Medical evidence and other polysomnographic evidence and expert testimony established stress-induced somnambulism and was similar to *Hill v. Baxter* [1958] 1 Q.B. 277 in which unconsciousness did exclude liability. The defense suggested this was non-insane automatism and did not constitute a "disease of the mind" for the M'Naghten Rules and had low recurrence risk.
2. Psychological evidence highlighted Parks' unawareness, evidenced by self-inflicted

injuries and his father-in-law's support, contrasting with conscious intent. His drive to confess post-episode reinforced the absence of mens rea, framing the act as a somnambulistic reflex to a perceived threat.

Judicial Decision:

In *Parks v. R.*, Chief Justice Lamer and the Supreme Court of Canada reaffirmed Parks' acquittal by categorizing sleepwalking as non-insane automatism. The court held the Crown did not establish voluntariness beyond reasonable doubt by highlighting the outside prod (stress) and low risk to public safety. Lamer distinguished this case from *R v Kemp* [1957] 1 Q.B. 399, in which arteriosclerosis created constant jeopardy and warranted detention and gave predominance to absence of intent above foreseeable risk of harm.

This is in stark contrast to the Scott Falater case:

On January 16, 1997, Scott Falater, a resident of Arizona, fatally stabbed his wife 44 times with a diving knife before submerging her in their backyard pool after she disturbed his sleep, which he reportedly interpreted as a threat. Observers reported witnessing him systematically striking her, assessing her pulse, and persisting in the assault until she was lifeless, followed by his actions of cleaning a finger wound and concealing evidence within a Tupperware container. Notwithstanding his documented history of sleepwalking and occupational stress, his intentional conduct—cleaning blood and hiding the weapon—implied a degree of agency. Testimony from experts regarding somnambulism was provided; however, the intricacies of his behavior complicated the defense's argument.

In the trial court, the jury found the husband, Falater, guilty of first-degree murder and sentenced him to life imprisonment. The judge affirmed the rejection by the jury of the defense of sleepwalking, once more finding the systematic assault—44 stab wounds, pulse-checking, and evidence-hiding—as indicative of intent. Contrary to *Parks*, the court deemed not sufficient evidence of involuntariness and placed greater emphasis on the preplanned behavior than on medical testimony and expressed disbelief in the defense's credibility.

CONCLUSION:

This paper has examined the nuanced boundaries of legal liability in homicide cases where human agency is impaired, focusing on the defenses of necessity and sleepwalking automatism.

The analysis of *R v Dudley and Stephens* (1884) and *R v Parks* (1992), supplemented by comparative analyses of *US v Holmes* (1842), *Re A (Conjoined Twins)* (2001), and *State v Falater* (1999), highlights the inconsistency between moral exigencies and legal rules. The rejection of necessity as a complete defense in survival situations underscores a rigid adherence to the right to life, tempered by judicial compassion, while the restricted recognition in clinical situations signals an uneven standard. Within the context of sleepwalking automatism, the acquittal in *R v Parks* contrasts sharply with the conviction in *Falater*, and consequently illuminates evidentiary challenges and a lack of standard forensic practices. Enveloping H.L.A. Hart's theory of fair opportunity and David O. Brink's theory of normative competence, this scholarship urges reforms—like evidence-based criteria for sleepwalking and a structured defense of necessity—toward balanced judgments of guilt. Such findings enhance prevailing scholarly debates, encouraging a balanced methodology that protects both the rights of the individual and the interests of society.