

Drinking Urine and Eating Livers, or “Oh no! What now?”

by Andrew Oberg

Regret is a complicated, sticky thing. It can either be used in reference to our behavior or our situations, although typically when we say that we regret something (or that we don't) we do mean what we've done, or, more likely, what we haven't done but wish we had. We describe feelings of a sense of sorrow, disappointment, and/or loss, pointing to the past to explain that emotion at present. It's a troubling “what might have been”, a haunting specter that we carry around with us, that we find very difficult to exorcise (for some of us, anyway), and that clouds our current judgments and interactions with others. Perceptive readers will notice something else in play here; if we just add a sense of transgression to our feelings of melancholy and failure then this same description could be applied to another emotion: guilt. Like regret, guilt too is a remorseful “what might have been”, an “if only”, tying up the present with the past, following after us and making the hairs on the back of our necks stand on end, though we don't dare to turn around and look at it. Regret and guilt get mixed up inside us, often overlap, and lead us to talk about them in ways that don't make it clear just what we mean. It's true that the former is usually employed when we wish we'd done something differently and the latter when we wish we hadn't done something that we did, but as we'll see a little later on, even this doesn't make the case cut and dry. But maybe we're overly confusing things. Guilt, after all, carries with it a sense of responsibility, of having committed a wrong, whereas regret doesn't. Or does it? If regret is usually about what was left undone, can we be responsible for that not done? If we should have acted but we didn't, do we really think of that as being an offense?

To approach this in a somewhat roundabout way, consider the highly influential 1884 case of *Regina v Dudley and Stephens*, which involves not a failure to act but acting under duress and the question of mitigating circumstances.¹ After their ship sunk en route to Australia in the South Atlantic, Tom Dudley, Edwin Stephens, Edmund Brooks, and Richard Thomas Parker found themselves adrift in a rowboat with two tins of turnips, no water, and no hope for rescue anytime soon. At just seventeen years old Parker was the youngest of the group, and perhaps due to his inexperience he found himself unable to resist temptation and after fifteen days of waiting for a vessel of some kind to happen upon them (and a week of imbibing his own urine) he gave in and started drinking seawater. He quickly became terribly ill and looked close to death, lying near comatose at the bottom of the boat and causing the other men to begin

discussing how they might save themselves at his expense. Four days later Dudley took matters into his own hands with Stephens' consent (Brooks demurred) and stabbed the young man in the neck, killing him and enabling the rest of the survivors to quaff down his still warm blood, eat his liver and probably also his heart. (I have no idea how accurate this is but the sailors appear to have thought that if Parker were allowed to die of natural causes first his blood would have been spoiled for consumption. Also, although Dudley's statement mentions cutting out Parker's heart it doesn't directly state that they ate it; certainly desperation colored the entire affair.) A further five days later the men were finally rescued, brought back to England and appeared before the court. What is remarkable about this case is that it is the first time that shipwrecked men were charged with a crime for what they had done to survive, and indeed in this case notwithstanding the circumstances Dudley and Stephens were convicted of murder (Brooks acted as witness against them) with the sentence of death by hanging. This was later commuted by Queen Victoria but the two did serve six month prison terms, and ever after the notion that there can be no justification for the taking of a human life (excepting cases of self defense, wartime, etc.) entered into the Common Law. Think, though, what the results would have been had Parker cut himself badly enough that he needed a tourniquet and, rather than assist him, Dudley and Stephens simply allowed him to die.ⁱⁱ In the Anglophone sphere – in this area quite different from European law – the two men would never even have been charged with anything. Based on this, we might think that we don't actually consider a failure to act as being a wrong; it should be pointed out, however, that so-called Good Samaritan laws, which do hold individuals legally responsible for not helping those in need, have been implemented into some Anglo-American law codes and that US law in general has moved away from judging an actor solely on resultant harm to judgments of the actor's ethical blameworthiness,ⁱⁱⁱ a question, of course, of intention. Although in this alternative scenario where they let Parker die Dudley and Stephens would not have been held legally at fault, there surely would have been some people then, and possibly more now, who would find them morally at fault, and we can guess how the men may have felt about themselves afterwards in this substitute history. (In the real scenario, in which the men did take action, they described themselves later as "mad wolves" and stated that they could not have been acting within "right reason"^{iv}). Where does this leave us? With the realization that we do, in fact, consider the non-execution of a deed to be potentially transgressive, depending on the intention involved; that is, the willful not doing of the act. Regret, in its typical usage to highlight a thing not done, does therefore seem at times to carry the weight of wrongdoing that we apply to guilt. We determine of ourselves that we should

have done something that we didn't. We let ourselves down, and we feel bad about that.

Dudley and Stephens clearly felt both guilty and regretful about taking young Parker's life and then feeding on his body, despite the severity of their situation. Even if Dudley hadn't cut open his neck – and if Stephens hadn't supported him in this – but rather kept a sharp eye on Parker and the instant he died set about harvesting his blood, liver, and heart, we can bet their feelings would have been much the same. Would Dudley have felt less guilt for not delivering the killing blow? Surely he still would have had his guilt over cannibalism. Stephens too. Wouldn't they both regret not having done things differently, or at least that things hadn't turned out differently? And where does Brooks fit into all of this? He ate and drank of Parker's body just like the others, and then when faced with criminal charges testified against his two former colleagues who had acted to save his life. Would he only have felt regret? Only guilt? It must have been a bit of both.

But this is far too complex a situation, I hear some of you protesting. Normally regret and guilt are much clearer than that. Think of a young girl who has the chance to study abroad but turns it down because she's nervous, worried about feeling homesick, concerned about how much it will cost, that she doesn't speak the language, etc.; when she looks back at that decision she'll only feel regret, not guilt. I would counter that if later in life she did indeed decide that that was a bad choice then she'd also feel like she failed herself, she did the wrong thing by not going, and she carries at least some of the responsibility for that (granting that there will always be extraneous circumstances): a sure sign of guilt. How would she talk about her choice? "I wish I had gone to X when I had the chance!", "How could I have wasted such a good opportunity?", "What was I thinking?" and the like. Her regret and her guilt would be all jumbled up inside her, and we can't blame her for not parsing out all the details when she tells us about it.

Okay fine, my interlocutor continues, how about this: A woman breaks out of her cell in a POW camp and just before she exits the compound a guard happens upon her and reaches for a gun. She swings the piping she used to get free, knocks the gun onto the ground, springs on top of it, rolls over, takes aim and shoots the guard squarely in the face. A huge mess of blood and brains but she is free. Years later, recalling this incident, she feels guilty for having killed the guard (after all, she didn't need to shoot to kill, and that guard probably had a family, maybe a lover, maybe even kids too) but no regrets. She'd do the same again in a hurry. But would she? She's already admitted guilt, she wishes she hadn't done things exactly as she did; wouldn't she also have some regret? Even if we only think of regret in its most limited way of sorrow, disappointment, loss over that not done there's still plenty of room for regret here. Why

hadn't she aimed differently? Why didn't she turn a different way between the buildings? Couldn't she have timed the escape better? If she is feeling guilt about this episode in her life then I don't see why, in looking back on it, she wouldn't have some regret too.

Regret and guilt are not the same, and the above is not meant to argue that they are. Rather, the two emotions frequently overlap each other, come in tandem, or follow directly one from the other. It's no wonder that we have trouble speaking about them with words that are fully transparent; it's hard enough just trying to think our way between them. Whether we're feeling regretful, guilty, or both though is something that we can be grateful for. As hard as these two may be, they can help us as we move forward in our lives, decide what to do now from what we did or didn't do then, and talk to others about their lives and what they might want to do (or not do). Being human carries the blessing of being able to reflect on and learn from our pasts, even if it pains us that we can't change them. We may experience time in one direction but we can keep an eye on all three. And that is a skill none of us should regret learning.

Notes

ⁱ The story of the case, its aftermath, and legal result may be found here: Lloyd Duhaime, "Cannibalism on the High Seas: the Common Law's Perfect Storm", *Duhaime.org: LawMag*, August 20, 2011. <<http://www.duhaime.org/LawMag/LawArticle-1320/Cannibalism-on-the-High-Seas-the-Common-Laws-Perfect-Storm.aspx>>. Accessed April 21, 2015.

ⁱⁱ This hypothetical was put forward by Kathleen M. Ridolfi in her paper discussing Good Samaritan laws and the idea of a legally enforced duty to rescue: "Law, Ethics, and the Good Samaritan: Should There Be a Duty to Rescue?", *Santa Clara Law Review* 40:4 (2000), 957-970.

ⁱⁱⁱ *ibid.*

^{iv} Duhaime, *op. cit.*