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Posthumous Harm

Steven Luper, Trinity University

According to Epicurus (1966a,b), neither death, nor anything that occurs later, can harm those who die, because people who die are not made to suffer as a result of either. In response, many philosophers (e.g., Nagel 1970, Feinberg 1984, and Pitcher 1984) have argued that Epicurus is wrong on both counts. They have defended the *mortem thesis*: death may harm those who die. They have also defended the *post-mortem thesis*: posthumous events may harm people who die. Their arguments for this joint view are by now quite familiar, and there is no need to rehearse them here (for a summary, see Luper 2002). Instead, our topic is a third position, which carves out intermediate ground between the other two. The intermediate view takes the mortem thesis for granted, like the critics of Epicurus, but rejects the post-mortem thesis, like Epicurus himself. For Epicurus' project—the attainment of *ataraxia*, or equanimity—the intermediate view is almost useless (we are not tranquil if we regard death as a tragedy whose peculiarity is that it frees us from the possibility of any further misfortune); however, it is far more plausible than Epicurus' own position since it avoids his absurd claim that death cannot harm us, while retaining his view that events occurring while we are dead and gone cannot harm us. According to the proponent of the intermediate view, when we understand the harm death inflicts, we must reject the idea that events following death can be bad for us. The damage death itself does is so severe that people are not subject to harm by any subsequent events. Thus the intermediate view rests on the mortem thesis

together with the *immunity thesis*: death leaves its victims immune from posthumous harm.

The immunity thesis is quite plausible. Truly, once death is through with us, very little can be bad for us. However, this essay will show that the immunity thesis faces significant objections. Hence even though the mortem thesis is correct, the intermediate thesis is questionable. The point is important, because of the consequences of the view that posthumous events are harmless to us. One such consequence is that it is irrational to care how our reputations or personal projects will fare after we die. It also follows that keeping our bodies alive after our brains enter a persistent vegetative state is not beneficial to us. Moreover, there is a strong *prima facie* case for the view that others should feel free to set aside any instructions we might leave behind concerning the disposition of our material possessions.

Death

First a few words about the notion of death. It has become customary to distinguish among the event, state, and process of death, where the event of death is the event by which one (permanently) ceases to exist, the process of death is the illness or decline that causes the event of death, and the state of death is the condition of nonexistence caused by the event of death. This tripartite distinction is fine for many purposes, but misleading in one important respect: it can suggest that the event of death is instantaneous, since all of the events leading up to it can be included under the rubric, “process” of death. The notion that death is instantaneous, in turn, can foster the idea that death is just too quick to harm us. The impression is especially vivid if we insist, with Epicureans, that harm

consists in the presence in us of some unwelcome condition, such as a state of pain, and never in the mere absence or elimination of a welcome condition.

To see how we might arrive at the idea that a quick death does not harm us, consider the notion that death is truly instantaneous. Presumably, this means that, after the period of time when we are wholly alive, and before the period of time when we are not at all alive, no time passes. On this picture, it appears that death cannot find a time to harm us. After we are nonexistent it is too late for death to harm us, and while we are alive it is too early. However, if our nonexistence follows immediately after our existence—if *no* time passes between the two—then everything that happens to us must occur either while we are alive or after we have ceased to be. It seems impossible to wedge the harm of death in between, especially if we insist that harm entails the presence in us of an unwelcome, perhaps painful, condition. Hence the impression that death might happen so fast it cannot harm us.

The idea of an instantaneous death is coherent; it is possible to imagine something like it taking place, say in a science fiction tale about a death ray that takes one out, literally, in no time at all. However, there is no reason whatever to suppose that anyone has ever moved from being wholly alive to being not at all alive so quickly that *no* time occurred. It is obvious that, in the actual world, even the fastest deaths take time, and once we acknowledge this, it becomes obvious that we are fully alive when the transition of death begins, partially alive while it is underway, and not at all alive when it ends. It is also clear that, other things being equal, the decline of the processes that constitute life is a straightforward kind of harm, and so is the failure of our mental and physical capacities. True enough, it may not involve the presence in us of some unwelcome condition such as

pain. It is primarily a different kind of harm: it is the elimination of good conditions present in (or, rather, partly constitutive of) us; it is the cessation of our vital life processes and capacities and various goods these make possible.

However, if what we have just said is true, it is not difficult to assign a temporal location to (by far the most serious) part of the harm associated with death: it happens at precisely the same time as death itself. Death, and the harmful decline for which it is responsible, occur simultaneously. And this remains true no matter how quickly death occurs. What an ever-speedier death changes is that the harmful decline of our capacities happens faster and faster; nonetheless, if we can make sense of an instant death, we can also make sense of it instantly harming us in this way. In itself, the elimination of life is harmful no matter how quickly it occurs. From the standpoint of reducing our suffering, a quick death is better than a slow one, but a speedy death destroys our vital capacities just as effectively as a slow one.

Philosophers influenced by Epicurus will reject our suggestion that death is a sequence of events in which life wanes until it is gone. They will say that death is something that happens after any such sequence occurs: it is the very last step into oblivion, and the extinction of the final burning ember is not harmful. (J. Feinberg, following Levenbook 1984, goes so far as to define death as “the first moment of the subject’s nonexistence,” which makes death, in effect, a posthumous event!) In taking this view, they bolster the Epicurean suggestion that death “is not something that ever coexists with the dying person for the time required for it to have a directly harmful effect on him (Feinberg 1984).” They create the impression that the mortem thesis rests on the post-mortem thesis, so that, to defeat the former, all we need to do is defeat the latter.

Let us resist the Epicurean stratagems. Admittedly, taking the final step into the void is not especially bad. (Taking it might even be our best alternative if we are suffering.) But that is because by then almost all of the damage is done. Life, and the things it makes possible, is already nearly completely gone. It is counterintuitive to define death as the final step of the series in which we lose life, and exclude, for instance, the step just before the last, when we have already lost 99.9999% of our capacities, or the step before that, when we have lost 99.9998%. Moreover, anyone asking whether death is a bad thing is asking whether *losing life* is a bad thing, not whether, having nearly completely lost life, it is bad to lose the very last of it.

We can now turn to the intermediate view, according to which death, but nothing thereafter, can harm us. Let's illustrate how it can be defended on the basis of a rather simple-minded form of hedonism that supports the immunity thesis. Then we can consider a more serious defense.

Hedonist Defense

Suppose we take the position that things are bad for us only if, and insofar as, they cause us increased pain or reduced pleasure. (This is to be distinguished from Epicurus's own view that harm consists solely in increased pain.) Then we can defend the mortem thesis, since, all things being equal, the sooner death comes for us, the less pleasure we will experience in the course of our lives. We can also support the immunity thesis. No events subsequent to death can do, even in part, what death has done to perfection: it brings our pleasure level down as far as it can go. At the same time, it destroys our ability to feel any pain at all. (And, obviously, posthumous events cannot reach into the

past, when we existed, to affect our levels of pleasure and pain, for no events can causally affect earlier states of affairs.)

This hedonistic argument is useful because it illustrates how proponents of the intermediate view might support their main point: while two sorts of events might harm us under various circumstances, the one might render the second incapable of harming us. For example, a vandal may harm you by (1) irreparably sanding away the images that are expertly painted on the canvas of your cherished painting, or (2) burning your painting, but if the vandal does the first of these things your artwork is valueless to you, and the vandal does you no further harm by burning your painting. In a similar way, as the immunity thesis avers, the possible complaints against posthumous events are rendered moot by the harm caused by death itself. The harm death does is straightforward in hedonistic terms: it eliminates our capacity to experience pleasure; it prevents us from ever again enjoying ourselves. It leaves nothing but a corpse. But because death leaves only a corpse, there is no further harm a posthumous event can do us, at least as far as the hedonist is concerned.

However, this defense of the immunity thesis is implausible given its weak hedonistic moorings. Nearly all theorists reject the hedonist criterion of harm as overly narrow. Many things harm us without boosting our level of pain or reducing our level of pleasure. For instance (Nagel 1970), we are harmed if we contract a disease that painlessly destroys our mental capacities and leaves us in the mental condition of a contented infant. And (Nozick 1971) we are harmed if betrayed by a friend whether or not we ever find out or suffer as a result. Such examples raise the possibility that

posthumous events may harm us even though death prevents them from affecting our level of pain or pleasure.

The Harm as Deprivation Defense

Let us construct a more plausible case for the intermediate view. We can divide the defense into two parts. First comes the argument for the mortem thesis, then the argument for the immunity thesis.

The first task is relatively easy, for we can rely on the standard argument for the claim that death is harmful. It starts with an assumption we can call the *preclusion view of harm*, according to which an event harms us if it prevents us from having something that would be good for us. (More precisely, it harms us if it prevents us from having some good and fails to provide a benefit that fully compensates for the lost good.) Here “having something” means either attaining or retaining it. Given our assumption, we can show that death is potentially bad for us:

1. Other things being equal, an event harms us if it prevents us from having (attaining or retaining) something that would be good for us (this is the preclusion view of harm).
2. Death sometimes prevents us from having things that would be good for us.
3. So sometimes death harms us.

Some comments about the view of harm underlying this argument are in order.

First. The preclusion view allows for at least two different kinds of harms: *destruction harms* and *preclusion harms*. The former involve the destruction of good conditions present in us, such as knowledge or abilities. Death deals us destruction harms

when it annihilates living processes and abilities such as the capacity to know and love our families, and when it ends our existence as living beings. In large part, it is because death is responsible for such destruction harms that we deplore it. Death also deals us *preclusion harms*, which prevent us from acquiring goods, as when one dies just before marrying the love of one's life.

Second. As we will understand the preclusion view, an event E that ensures that we will not have some good G has not necessarily prevented us from having G, and might never prevent us from having G, for our having G might have been out of the question all along, due to factors having nothing to do with E. That is, it is possible that, even if E had not occurred, we still would not have had G, and in that case it is not accurate to say that E prevented us from having G. Spelled out, then, the preclusion view of harm says that an event E harms us if there is a good G such that, first, if E were to occur, we would not attain or retain G, and second, if E were not to occur, we would (or at least might) attain or retain G.

Third. Our assumption speaks of a thing's being *good for* us, yet the notion of goodness is highly controversial. According to some theorists, the good should be given an objectivist analysis, because the claim that an item is good for us cannot be reduced to claims about the individual's subjective point of view. Other theorists develop a subjectivist analysis of the good; some, for example, will say that there is ultimately no way to understand goodness apart from the subjective standard of desire. A thing's being good for us simply reduces to its capacity to satisfy (one of) our desires, or our most important desires (which constitute the point of our main activities, or are involved in our identities), or perhaps those of our important desires that survive some sort of rational

scrutiny (Brandt 1979). Subjectivists will be disinclined to speak of goods we in no sense desire, while objectivists will be comfortable in speaking of goods we fail to desire.

Fortunately, there is no need to resolve these contentious issues. In deference to both camps, we can assume that there are two ways an event E might benefit us as well as two corresponding ways it might harm us, and leave to the side the issue of whether the one collapses into the other. On the one hand, E might benefit us by enabling us to have a good, or harm us by preventing us from having a good. On the other hand, E might benefit us by satisfying a desire, or harm us by preventing the desire from being satisfied.

So much for the mortem thesis. The next step is to defend the immunity thesis.

Let us begin by acknowledging that our grounds for the mortem thesis seem to *support* the post-mortem thesis. In fact, many theorists (Nagel 1970, Feinberg 1984, Pitcher 1984) defend both theses on the basis of the preclusion view of harm, for posthumous events as well as death seem capable of preventing us from attaining things that would be good for us. So, offhand, it appears impossible for us to defend the immunity thesis if we support the mortem thesis on the grounds we have given.

But perhaps the appearances are misleading. Even if we accept the preclusion view of harm, perhaps we can still show that the harm death deals us prevents any later events from harming us. There might be two reasons posthumous events are unable to do further damage.

First, death precludes our having *any* subsequent goods, and later events cannot preclude our having goods that are already out of reach. We can attain or retain a good only while we exist, so whatever takes away our existence harms us by depriving us of the opportunity to have goods. This death itself does. But nothing that occurs after we

die will stop us from having a good since death has already done that job. For example, it would be good for us if we were to become smarter or morally better, and bad for us to die and lose this opportunity, but nothing that occurs after we die will have any impact on our intellectual or moral progress.

Second, it seems plausible to say that the (permanent) removal of a desire either (a) thwarts it or (b) ensures that it cannot be harmfully thwarted. Either way, since death removes *all* of our desires, subsequent events cannot harm us: they cannot thwart desires that are already thwarted, and the remaining desires do not matter. Let's spell this argument out in a bit more detail, starting with case (a).

The notions of 'satisfying' and 'thwarting' a desire can use some clarification. As to 'satisfying': it is particularly important to notice that satisfaction need not involve gratification. To satisfy the desire for, say, X is to realize X, not necessarily to gain pleasure upon realizing X. If, on a dare, you conceive, and satisfy, a desire to leap into boiling water, you will have satisfied your desire, but gained no gratification thereby. As to 'thwarting': a desire is thwarted if it is never either satisfied or voluntarily given up before satisfaction becomes impossible (Luper 1996, p. 30). A desire we willingly abandon through the normal processes, perhaps after rational deliberation, can no longer be thwarted. When people cease to desire to pursue some career because other options prove more compelling, or because onlookers persuade them that other careers are more desirable, their desire is not thwarted. But when, against their wills, their desire is removed by drugs or some form of brainwashing, it is almost always thwarted. (What if someone manipulates you, against your will, so as to make you desire something far *less* than before? We might well count such manipulation as a way of thwarting your desire;

but even if we do not, we will consider it harmful for others to manipulate us so as to cause us to care less about the things we want.)

We can now see that, often, what (permanently) removes a desire thwarts it, by ruling out the possibility of its being satisfied (Luper 1987, p. 271). Consider three examples. First. Suppose that you badly want to become a brain surgeon, and have a real prospect of becoming one if you dedicate yourself completely to the effort. But one night an enemy pours an elixir into your ear that completely eliminates your desire. In so doing, your enemy ensures that you will not satisfy the desire, and then any further roadblocks to your becoming a surgeon become moot. One might argue that death does something comparable vis-à-vis most of your desires: it thwarts them by removing them, with the consequence that later events cannot thwart the thwarted desires. Second. It is (somewhat) bad when death stops you from enjoying playing chess, yet you are not harmed if, after you die, the game is banned, ensuring that you could not play even if you were still alive with a healthy desire to play. And third. It is unfortunate for you if death ends your effort to be the first person to swim across Lake Michigan; nonetheless, you are not harmed if, after you die, someone else is first to make the swim.

Case (b) involves desires that are capable of being thwarted after they have been removed. It seems possible to argue that the thwarting of a desire after the desire is removed is not harmful on the grounds that we can be harmfully deprived of something only during times when we desire it. The thought is that satisfying, at time t , the desire to have some item A would be good for us (and the thwarting, at t , of the desire for A would be bad for us) only if, at t , we desire A . This suggestion, which we can call the *preferential condition* for harm (and benefit), will force us to modify the preclusion view

of harm slightly. We must say that an event harms us if, at time t , it prevents us from having some item that we desire at t . But given the modified view, together with the preferential condition for harm, it seems reasonable to conclude that, while death can harm us by removing (and simultaneously thwarting) our desires, posthumous events cannot harm us even if they thwart desires death fails to thwart yet takes away.

Response to the Harm as Deprivation Defense

As to the first part of this defense of the intermediate view, we have no complaint: we grant that death can harm us by precluding our having goods or by thwarting our desires. What about the second part, concerning the immunity thesis?

The arguments for the immunity thesis relied on two main assumptions: first, anything that takes away our existence deprives us of any further opportunity to attain goods or to be deprived of them, and second, anything that takes away our desires thwarts them or ensures that they cannot be harmfully thwarted. Are these assumptions correct?

The first assumption does capture an important fact, namely, that *few* goods are made available to us by events that occur after we cease to exist; events that occur while we are alive determine whether we will acquire or lose most goods. Included among these goods are abilities, such as the gift of powerful vision, which would be destroyed were death to take away our existence; obviously, nothing that happens later could make us unable to retain the vision we have already lost. Also included are projects that cannot succeed unless we carry them to fruition. Typically, *personally defined* projects, or projects we define in terms of ourselves, are like this (these do not exhaust the ‘dependent goals’ discussed in “Annihilation” (Fischer 275)). For example, suppose we want to

write a great novel, or to be the first to swim across Lake Michigan. (These are personally defined projects since what we want is that *we* should write a great novel, and that *we* should be the first to swim the lake.) Suppose, too, that it would be good for us to complete our project. Truly, events occurring while we are alive determine whether we will attain these goods; if something (permanently) takes away our existence it prevents us from completing projects which, by their very nature, only we can complete.

Nevertheless, some goods can be made available to us by events that occur after we cease to exist, and we may be harmed by events that deprive us of these goods. By way of illustration, consider something we might as well call an *impersonally* defined project, to contrast it with the personally defined projects discussed earlier. Suppose that what we want is that some project, say that of curing lung cancer within ten years, *be* completed (whether or not we ourselves are responsible for its coming to fruition). This might be an endeavor in which we personally have a great deal at stake; perhaps we initiated it, and have invested into it a great deal of time and energy. So it would be good for us if the undertaking were successful, and bad if it were not. (Let us add that we might understand a project under both personal and impersonal definitions: perhaps one wants to cure cancer oneself but, failing that, one wants it cured by someone.) Even if we are deprived of existence, subsequent events might bring it about that lung cancer is cured, or that it is not cured. We will not be responsible for the success that is good for us or for the failure that is bad: that will be out of our hands. Instead, the good success or bad failure will be brought about *for* us.

Nor are impersonally defined projects the only goods that can be made available to us by events that occur after we cease to exist. Retaining a good reputation after we die is a further example; so is having our wills honored by our heirs.

Apparently, then, there are intuitively plausible examples of goods we can be robbed of by events that take place after we no longer exist, and hence plausible examples of posthumous harms. However, it is possible to resist the conclusion that these are genuine cases of posthumous benefit and harm. Resistance can be motivated by the *timing puzzle*, which is a difficulty concerning the dating of good things and bad things for which posthumous events are responsible. We have seen that much of the harm associated with death occurs at the same time as death. The harm (or benefit) death itself brings about at the very time it occurs is not puzzling. But when does an event occurring after we are gone benefit or harm us? The idea that posthumous events harm or benefit us seems mysterious, since it is hard to understand when we incur the relevant harm or benefit. (Either we incur it before death, at the time of death, or later; but the first two answers seem to be ruled out by the presumption that an event cannot harm us before it occurs, and the third answer seems ruled out by the presumption that an event cannot harm any item while that item is nonexistent.) Unless we can solve the timing puzzle, it will be tempting to dismiss as illusory our examples of posthumous harm and benefit.

More than one response to the timing puzzle is possible, but the best is Pitcher's, and it is persuasive. According to Pitcher, we receive the harm or good associated with a posthumous event while we are alive. To explain how this works, let us distinguish between a direct and an indirect harm. Let us say that an event that is responsible for our

coming to be in a bad condition is an indirect harm, while the bad condition itself is the direct harm. For example, if we set a bomb to go off fifty years later, maiming a man who is not yet alive, we have indirectly harmed the man, and the injuries sustained by the man are direct harms. On Pitcher's view, posthumous events can only be indirect harms. The corresponding direct harms are certain facts about us that come to hold by virtue of the posthumous events that occur much later. If, for instance, Sarah's final wishes are ignored, the proposition 'her will is to be ignored' is true of Sarah while she has these wishes; indirectly, she is harmed by the activities of those who set aside her will, but the corresponding direct harm is its being true of her that her will is to be ignored. She incurs this harm *while* she has her final wishes. In sum, posthumous events that harm us do so indirectly. Partly because of these events, 'certain desires of ours will be thwarted, certain goods unattained' is true of us, and its *being* true of us is the direct harm for which the corresponding posthumous events are responsible. We incur this direct harm precisely when 'certain desires of ours will be thwarted, certain goods unattained' is true of us.

Strictly speaking, then, the living and not the dead are harmed by posthumous events. By the time we are dead, the (direct) harm for which a posthumous event is (indirectly) responsible has already been received.

Now consider the second assumption used in defense of the immunity thesis. According to this assumption, anything that takes away our desires thwarts them or ensures that they cannot be harmfully thwarted. Like the first, this second assumption has its elements of truth. Many desires *are* thwarted when removed. If something (permanently) removes our desire to finish a project only we can complete, it thwarts that

desire. To remove our desire to write a great novel is to thwart it. Clearly, a person with a desire of this sort can be harmed by death, but, other things being equal, subsequent events will not compound the misfortune. (Using Pitcher's suggestion, we can put the point this way: because of Sarah's death itself, 'her desire to write a great novel is to be unsatisfied' is true of Sarah, and this is a direct harm.) Among those desires that are not thwarted when removed, there are also two groups of desires that cannot be harmfully thwarted after being removed. First, there are desires we voluntarily abandon, like the childhood ambition to be a fireman, or a poet (Parfit 157). These desires cannot be harmfully thwarted because, being given up, they cannot be thwarted at all. Second, there are desires that are conditional on their own persistence (Parfit 151). That is, for some items A, satisfying, at t, the desire to have A is not good for us, and failing, at t, to satisfy the desire to have A is not bad for us, unless, at t, we desire to have A. The most obvious examples are items that are beneficial to us only insofar as we *enjoy* satisfying the desire for them. Such goods can be grasped in hedonistic terms. Having—or lacking—licorice does not matter to us if we do not like to eat it. We can be harmfully deprived of the *desire* for such items, since we will have lost a way of amusing ourselves, but it is plausible to say that we can be deprived of the items themselves only during times when we desire them. Remove the desire, and you eliminate any subsequent possibility of harmfully thwarting it.

However, not all desires are thwarted when removed, and not all desires are incapable of being harmfully thwarted after being removed. There are intuitively plausible examples of harm brought about by the thwarting of desires we no longer have, and there is a good explanation of when we undergo such harm. The point may be

illustrated using examples we discussed earlier. Consider an impersonally defined project, our interest in which is not purely hedonistic, such as the timely discovery of a cure for cancer: even if, against our will, something removes our desire that lung cancer be cured, thus ending our efforts toward that end, subsequent events might bring it about that our desire is satisfied. So removing it need not thwart it. What is more, events occurring after it is removed might be harmful. For someone who wants an impersonally defined project to succeed, posthumous events can be damaging in their own right. It might be occurrences that follow death, rather than death itself, that determine that the project will fail. As to *when* we are harmed by our project's demise, the best explanation is Pitcher's: 'one's desire that there be a timely cure for cancer is to be unsatisfied (yet never voluntarily given up)' is not made true of one by one's death; however, it might be made true of one in part by subsequent events. In that case these events harm indirectly. Directly, we are harmed while it is true of us that our desire that there be a timely cure for cancer is to be unsatisfied.

There are other examples of harm brought about by the thwarting of desires we no longer have. Most of us care specifically about what will happen after we die. We want our reputations to remain unsullied after we die. We want the executors of our wills to honor our instructions. And we do not want our bodies kept alive after our brains are dead. Death will not thwart these desires, but posthumous events might well, and if they do, we are harmed.

Conclusion

We have seen that posthumous events cannot harm us in some of the ways death can. For example, unlike the latter, the former are never responsible for destruction harms, which are significant sources of fear since these are entailed by our annihilation as living beings. We have also seen that death can be responsible for many preclusion harms for which posthumous events are therefore not responsible. In particular, the former, and not the latter, end most of our projects. Nevertheless, the immunity thesis is not entirely true: death does not leave us unsusceptible to further harm. Posthumous events may interfere with our impersonally defined projects. And they may thwart desires concerned specifically with what will happen after we die.

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