

CHAPTER THIRTEEN

The Harm Of Death

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When, if ever, is death a harm to the one who dies? Epicurus notoriously argued that death is not a harm to its 'victim' (the *decedent*) because before death there is no harm and after death there is no victim.¹ This conclusion is conspicuously at odds with our prereflective—and, in most cases, also our post-reflective—intuitions. Numerous strategies have therefore been proposed to try to refute or avoid the Epicurean conclusion that death cannot be such a bad thing after all.²

In this paper I examine various attempts to answer the question: '*When* is death a harm?' before offering a suggestion of my own. There are at least four distinct approaches to this question which attempt to provide an answer to Epicurus's puzzle. First, there is the suggestion that death is *always* (or *eternally*) bad for the victim.³ Secondly it has been suggested that it is *before* death that it is bad for the victim.⁴ Thirdly there is a suggestion that it is *at the time of death* that death is bad for the victim.⁵ Fourthly there is the suggestion that there is no particular time at which death is bad for the victim.⁶ I will propose a variant of the fourth view—very roughly that there is no *definite* time at which death is bad for the decedent. We will however see that—with appropriate qualifications—death can be bad for the decedent nonetheless.

The Epicurean argument has been variously reconstructed. I suggest that it can be explicated as follows:⁷ (a) all harms occur at some time; (b) at all times a person is

either alive or dead,⁸ (c) being alive excludes the harm of death; (d) being dead excludes the possibility of harm; hence, (e) death is never a harm to the decedent; therefore (f) death is not a harm.

The first suggestion that death is *always* (or eternally) bad for the decedent attempts to block the Epicurean conclusion (f) by suggesting that there is something peculiar about the temporal character of the harm of death, thereby rejecting (a) and in consequence (d). Although I reject this approach, at least in its standard formulation, it does share common features with the fourth approach which I *will* defend. It will emerge that my own proposal also depends on a critical reevaluation of (a).

The second approach, in contrast accepts (a) and rejects (c). On this view, the misfortune of death is already antecedently attached to its subject. I will argue that this approach is mistaken. The third suggestion—that the time of death is *when* death is a harm—is defective because it fails to distinguish between two importantly distinct questions: (i) *At what time* does the harm of death occur⁹ and (ii) *When* is the subject of death worse off? This is a distinction which Feldman, who defends the first (eternalist) view, is quite clear about: "... we know precisely when the misfortune [of death] occurred... The present question is, rather, a question about when her death is a misfortune for her?"¹⁰

This ambiguity between (i) and (ii)—the time at which the harm occurs and the time (or period) when the subject is worse off—is a difference between when a harm *occurs* and when it *accrues*. Confusing or conflating these has serious consequences. While harms in the occurrent sense are naturally associated with *the time* at which an injury takes place, *being worse off* typically continues (or can continue) long *after* the injury. Therefore, even if we have a clear

answer to (i) this, in general does nothing to settle the metaphysical puzzle posed by (ii) which, I suggest, is the heart of the Epicurean challenge. The Epicurean challenge is to explain *when* death makes a decedent worse off than she or he would otherwise have been had she or he not died—not *when* does death make its subject worse off than she or he was prior to dying.

Feldman suggests that possible-worlds semantics can be used to explain the evil of death. Indeed the peculiar temporal character of the harm of death, for Feldman, is a consequence of the possible-worlds machinery to which he appeals in his explanation.¹¹ Value, for Feldman, is analysed in terms of preference rankings over possible worlds; the evil of death for the decedent is thus explained in terms of the value for the decedent of the nearest world in which she does not die. Values are thus understood as relations between abstract objects; hence Feldman's answer to the question of when the decedent is worse off is: *eternally*.

The unsatisfactoriness of the possible worlds analysis however becomes clear when it is applied to everyday harms. For example, when is Jane the peach farmer harmed by the hail storm?¹² Can we understand her harm by comparing her actual situation with that of her more fortunately located counterpart in the nearest possible world in which the hail storm does *not* occur? Surely not. While the harm clearly occurs *at the time of the storm* we must in this case, as in the case of death, distinguish between when the harm *occurs* and when the harm *accrues*. In the *occurrent* sense Jane is harmed by the storm at a definite time, but in the *accrual* sense her peachlessness is a persisting harm which is less easy to temporally locate. And it is this temporally vague sense of persisting harm, a common feature of many deprivations, which is germane to Epicurus's puzzle about death.

The regret for an untimely death cannot be satisfactorily explicated as a yearning for a possible world in which the decedent is present. It is rather a lament about the actual world from which the decedent is absent. Feldman's eternalist account fails to provide a satisfactory explanation of the misfortune of death. A continuing absence in the actual world is not explained (or mitigated) by the greater good fortune of a counterpart in some possible, but non-actual world.

The misfortune of death is problematic. It is not the same sort of deprivation as a crop loss or the loss of peace of mind caused by a headache. There is a straightforward question about *when* a death, or a storm, or a headache occur—each is marked by a definite datable event in time. But the straightforward answer to this straightforward question is not the answer to the interesting and vexing question: *when is the subject worse off?* The time of the storm is the time when Jane is *made* worse off. But that does not settle the issue of when she *is* worse off. Similarly, the time of death seems to be the time at which someone is *made* worse off through being deprived of life. The problem is that lifelessness is metaphysically puzzling in a way in which peachlessness is not.

This is the *missing subject* problem which precludes, or renders problematic, any straightforward assimilation of the deprivation of life—death—to other deprivations. The only way that this problematic character can be accommodated, Feinberg points out,¹³ is by either extending the notion of harm, making it broad enough to include death, or by providing some solution to the problem of the missing

subject. Feldman, in effect, tinkers with the notion of *harm* by providing an *eternal* sense which is broad enough in scope to accommodate death. Feinberg, on the other hand, tackles the problem of the missing subject.

Feinberg's account of posthumous harm is substantially based on the account of posthumous harm proposed by Pitcher. On Pitcher's account the subject of posthumous harm is the antemortem person.¹⁴ However, because it makes no sense to speak of posthumous *change* to the antemortem person, Pitcher maintains, and Feinberg agrees, that posthumous misfortunes must somehow already be antecedently attached to their subject. In Pitcher's words, "a shadow of misfortune" may be cast backward over a life.¹⁵

The antecedent truth that the misfortune *would occur* enables Feinberg to avoid the metaphysical solecism of backwards causation or changing the past. But it does this at the cost of a quasi-fatalistic account of human destiny, in which misfortunes are antecedently written into the antemortem person's future. According to Feinberg: "The fact of a person's death 'makes it true' that his antemortem interests were going to be defeated and to that extent the antemortem person was harmed too, though his impending death was still unknown to him."¹⁶

Feinberg's construal of the antemortem person as the subject of the harm of death (as well as other possible posthumous harms) leads him to construe the harmed condition as one which *already existed* before the occurrence of the event which we recognise as the cause of the harm.¹⁷ On this fatalistic conception, the future is fixed and determinate (though not necessarily *determined*) and whatever uncertainty may exist about each of our individual denouements is only a matter of present ignorance. Our lives, together with all their good and ill fortune are, on this

fantastic conception, already complete. Viewed *sub specie aeternitatis* the passage of time is no more than the progressive lifting of a veil of ignorance. This metaphysical conception, I suggest, is an extravagant price to pay for treating antemortem persons as the locus of posthumous harms.

But we do not have to make a choice between accepting *either* a changing past *or* the present existence of blighted interests inscribed in the book of fate with the mark of foreordained doom. Feinberg and Pitcher can salvage their intuition about posthumous harms *becoming true* of individuals by assimilating them to the class of so-called *Cambridge* changes. Certainly no *real* change can happen to an individual posthumously—but many things can happen that affect the interests of an individual beyond the span of their awareness and even beyond the span of their life.¹⁸ In particular, the *interests* of an individual can survive and extend beyond the span of that individual's biological life as part of her or his "moral estate".¹⁹ We can thus reconcile the intuition that the antemortem person is the subject of posthumous harms *without* supposing that the antemortem person is the subject of any actual change.²⁰ It can therefore be a genuinely open question whether someone is going to fare well or ill through and after their death just as (on any reasonable indeterministic conception) it usually is before.

Feinberg appropriates a useful distinction from Ross between the *fulfilment* and *satisfaction* of a preference or desire.²¹ A preference is *fulfilled* by the coming to be of what is desired. A preference is *satisfied* when the person who is the subject of the desire comes *to believe* that it is fulfilled. Fulfilment is an objective matter of fact while satisfaction is a subjective matter of belief.²² Satisfaction is a first-person perspectival matter whereas judgements about fulfilment adopt an impersonal and disinterested²³ third-

person perspective. Although, in general, we want our preferences to be satisfied as well as fulfilled, in matters of serious concern it is more important that they be fulfilled.

In claiming that, at least with respect to important matters, fulfilment is more important than satisfaction we are privileging the third-person perspective. If I want it to be the case that *p*, and am offered a choice (by my local malevolent demon) between (i) *p* but (mistakenly) I do not believe it, and (ii) not-*p* but (mistakenly) I believe it, then if I am serious about my preference I will naturally reject the blandishments of egoistic gratification contained in option (ii). Certainly desires cannot be posthumously satisfied (or frustrated), but if we are serious about something then it is *fulfilment* that matters, and our concerns may well extend beyond the span of our lives. This point is demonstrated most clearly in cases where agents surrender their lives to *fulfill* a desire—and through their heroic sacrifice ensure that the desire, although fulfilled, *cannot be satisfied*. Recognising that our serious preferences are concerned with fulfilment rather than satisfaction helps to explain our intuitions about how the interests of an individual can be posthumously harmed.²⁴

Feinberg and Pitcher correctly identify the antemortem person as the subject of the posthumous harms, and in particular the harm of death. However, they wrongly suppose that in order to be genuine harms, these posthumous harms must somehow be *prefigured* in the lives of their subjects.²⁵ However it is not necessary to accept such a fatalistic view in order to accept an account in which the antemortem person is the subject of posthumous harms. Provided that due metaphysical caution is exercised, there is no need for Feinberg and Pitcher to fall prey to any form of fatalism. There is good reason to reject this part of the package.

Both the eternalist view of Feldman and the quasi-fatalistic account of Feinberg and Pitcher should be rejected. What about Lamont's alternative proposal that the misfortune of death be located at the moment of death? This proposal also faces fatal objections. Lamont's account begins by addressing the right question: *when is death a harm?* However this is quickly replaced by the significantly different question of "the time at which the harm occurs".²⁶ But an answer to the latter question cannot settle the problem of *when a subject is worse off*. If that were so then death would turn out to be an ephemeral or momentary harm. But that cannot explain our concern with deprivations in general, and the deprivation of life in particular.²⁷ The Epicurean challenge is to provide an answer to the question: *when is death bad for the decedent?*—and that, as we have seen, is a quite different issue to the matter of *the time* at which the harm occurs.

Lamont is also critical of a view, which he attributes to Nagel, that there is "no time" at which a person is harmed by death. This raises the question of the temporal location and duration of the supposed misfortune of death to which I now turn. While Lamont's interpretation of Nagel on this point is seriously flawed the errors are instructive.²⁸ First of all, Nagel is addressing the question of *when* the supposed misfortune of death can be ascribed to a subject—rather than Lamont's question of when the supposed misfortune *occurs*. Secondly, Nagel is not claiming, as Lamont suggests that the harm of death occurs "at no time." What Nagel actually says is that the misfortune "cannot be so easily located" as the temporal location of the subject of the misfortune,²⁹ and that, moreover, various misfortunes can occur outside the boundaries of the subject's life.³⁰

That is *not*, however, the same as claiming that the misfortune of death occurs at no time (or endures through no period). It is to say, rather, that there need be no sharply localised position in time for this misfortune. I think that Nagel is exactly right about this and I will further elaborate this view below. Lamont however argues that if there is *no definite time* at which a harm occurs then there is *no time* at which a harm occurs and if there is no time at which a harm occurs then no harm occurs.³¹ Thus he attributes to Nagel the extraordinary and counterintuitive view that no criminal negligence can be ascribed to acts which cause harm through delayed action. But Lamont's supposed counterexamples in fact *substantiate* Nagel's point that some harms occur *without* a precise temporal location—and they are clearly not atemporal or eternal harms either.

Lamont objects that Nagel "needs an argument to block the implication that if there is no time at which Henry's victim is harmed, then there is no time at which Henry harmed his victim".³² But Nagel *has* addressed this point satisfactorily with his identification of the "mistaken assumption about the temporal relation between the subject of a misfortune and the circumstances that constitute it".³³ The mistaken assumption is precisely the supposition that a loss or misfortune must (like the subject of the loss or misfortune) have a well-defined spatial and temporal location.

I have already suggested that a fundamental problem with Lamont's *at death* proposal is that it construes the harm of death as an ephemeral and momentary matter. There is also the further problem that the harm of death, on Lamont's account, fails to differentiate between early and later death.³⁴ But, intuitively, the death of Frank Ramsey at the age of twenty-six is more regrettable than the death of Bertrand

Russell at the age of ninety-eight. Ramsey, clearly, was deprived of more *praemia vitae* than Russell.³⁵ Lamont's *at death* proposal, however, provides no clue as to how this intuitive difference is to be explained.

An alternative which I think is much more plausible incorporates elements of several of the accounts already considered. First we should accept Feinberg's view (shared by Pitcher, Nagel and ultimately by Lamont) that it is the *antemortem* person who is the subject of the harm of death. But *when* is the decedent worse off? Not eternally. Feldman's explanation is unhelpful. As we noted, the regret for an untimely death cannot be satisfactorily explicated as a yearning for a possible world in which the decedent is present; it is rather a lament about the actual world from which the decedent is absent.

Nor does the misfortune occur *before* death. We should reject Feinberg's (and Pitcher's) suggestion that posthumous harms and deprivations are somehow prefigured in the destiny of the future decedent. Destiny is not a destination to which we travel but a story which we make up as we go along. Lamont's alternative suggestion that the misfortune be located at the moment of death is also unsatisfactory because it transforms death into a momentary and ephemeral harm.

But nor does the misfortune occur *at no time*, and on my reading (in antithesis to Lamont's) Nagel does *not* say that there is *no time* at which the harm happens. Rather, it may be difficult, or impossible, to give the harm a precise temporal location. To say that there is no precise or *locatable* time at which harms occur is not to say that there is no time at which they occur.

Consider the untimely death of Frank Ramsey. His loss of *praemia vitae* deprived the antemortem Ramsey (and the world of philosophy) of the many possible continuations of that brilliant life. But there is irremediable indeterminacy and vagueness about just *which* course of development Ramsey's life might have taken.³⁶ Ramsey's death was a misfortune without question, but one whose shape and temporal boundaries it is impossible to delineate with precision. The temporal location of the harm of Ramsey's untimely death, I suggest, is the time when Ramsey might otherwise have lived.³⁷ It is a great tragedy, but a tragedy of the twentieth century, not the nineteenth or the twenty-first. We can achieve no more than this vague delineation of the temporal location of the harm of Ramsey's untimely death and we would be well advised to follow the wisdom of Aristotle on this point and seek no more precision here than the subject matter allows.³⁸

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Endnotes

¹ Epicurus (1926). Lucretius (1982, Book III, 828-1092) reproduces the Epicurean argument.

² Like many other commentators I set aside problems concerning the harm of *dying* as a separate issue.

³ Feldman (1991) defends this approach.

⁴ Feinberg (1984). Feinberg credits Pitcher (1984) as the source of this approach.

⁵ Lamont (1998) defends this approach.

⁶ Nagel (1979) defends this position.

⁷ This is a *metaphysical* interpretation of the argument which depends crucially on the posthumous nonexistence of the decedent. An alternative (though clearly related) interpretation is *epistemic* and concentrates on the fact that death is the permanent cessation of awareness—that is, death is an *experiential blank*—for the decedent.

⁸ The metaphysical complications of prenatal nonexistence which relate to the ontological status of merely possible persons are not relevant here.

⁹ The first question concerns a relatively unproblematic *occurrent* sense of harm explained below. Jack Li also alludes to this ambiguity in his distinction between the questions (i) "when does the harm event of death happen?" and (ii) "when does P's being harmed by death happen?" (Li 2002: 92) Li and I however differ sharply in our answers to the question of *when* (in my terminology) the misfortune of death *accrues*. Li argues that the misfortune of death for the antemortem person accrues *before* death, whereas I argue below that it accrues *after* death.

¹⁰ Feldman (1991: 320-321).

¹¹ Feldman (1991: 310-318)

¹² This example is taken from Lamont (1998: 199-200)

¹³ Feinberg, (1984: 175)

¹⁴ It is implausible, as Pitcher argues, to construe the post-mortem "person" as a possible subject of harm. Posthumous mutilation, for example is not a harm to the remains of the antemortem person, though it will very likely affect the *interests* of the antemortem person, as well as relatives and friends, through the failure to treat the memory of the antemortem person with appropriate dignity and respect.

¹⁵ Pitcher (1984: 166)

¹⁶ Feinberg, (1984: 187-188). Moreover according to Feinberg "the harmed condition began at the moment he [the antemortem person] first acquired the interests which death defeats." (Feinberg 1984: 186). For an excellent prophylactic to the blandishments of fatalism see Ryle (1954: Ch. 2)

¹⁷ On this point once again Feinberg follows the fatalistic conception of Pitcher. This fatalistic conception of individual destiny in which death (or other posthumous harm) is already prefigured is nicely articulated in Taylor's delightful fable about Osmo's death in an aviation disaster antecedently recorded in a book of fate. See Taylor (1983: Ch 6)

¹⁸ That there are interest-affecting events beyond our life-spans is a claim upon which Feinberg, Pitcher, Lamont and many others all agree.

¹⁹ I have appropriated this felicitous phrase from Feinberg (1984: 179)

²⁰ The metaphysical distinction between *virtual* (or *Cambridge*) change and *actual* (sometimes called *Oxford*) change is important for defending the intelligibility of the claim that one can be the subject of harm *after* one has ceased to exist. For a more extensive discussion of the distinction between *virtual* and *actual* change see Godfrey-Smith (1980).

²¹ Ross (1939: 300)

²² Lamont (1998: 205) misattributes this distinction to Feinberg, and more seriously mischaracterises *satisfaction* in terms of a subject *knowing* (rather than *believing*) that the desire is fulfilled. This seriously weakens the usefulness of the distinction because it is no longer possible to speak of a desire being *satisfied* but not *fulfilled*, as well as *yice versa*. The distinction is thereby disabled as a means of sharply separating the metaphysical and epistemic issues which are of vital importance in providing a satisfactory reply to Epicurus.

²³ That is, not self-interested.

²⁴ Feinberg (1984: 181-182) presents several cases which provide persuasive support for the Aristotelian view that certain events constitute posthumous harms; see *Nicomachean Ethics*, Book 1, Ch. 11.

²⁵ The Feinberg-Pitcher model for locating harms has other bizarre consequences. Lamont points out that applied to a delayed action case this analysis "involves the very counterintuitive claim that a murderer harmed his victim twenty years (or whatever) before he killed her" (Lamont 1998: 204-205).

²⁶ Lamont (1998: 198). This shift is of the last importance; it occurs in the third paragraph of his paper.

²⁷ Cases which involve lapsing into a persistent vegetative state—which separate personal death from bodily death—are perhaps less *metaphysically* puzzling, though equally tragic. Consider the case of Karen Quinlan, who became permanently comatose (through injury and perhaps pharmacological mishap) in April 1975 and died ten years later in June 1985 at the age of thirty-one. Was Quinlan harmed when she lapsed into the coma or when she eventually died, or both? Whichever view you take it seems implausible to treat her misfortune as merely momentary.

²⁸ Lamont (1998: 207-209)

²⁹ Nagel (1979: 67)

³⁰ Nagel (1979: 66). Lamont agrees with Nagel on this point.

³¹ Lamont (1998: 208)

³² Lamont (1998: 209)

³³ Nagel (1979: 66)

³⁴ Lamont (1998: 198) claims, reasonably enough, that late deaths may be premature, and therefore harms, but why we regard an early death as a greater misfortune than a later one, *ceteris paribus*, remains a mystery on his account. There are further problems trying to accommodate the harm of early death arising from the fact that we need to consider not just existing preferences whose satisfaction is denied by death, but also preferences which decedents *would have acquired* if they had lived.

³⁵ The Quality Adjusted Life Year (QALY) and the Disability Adjusted Life Year (DALY) scales used in medical resource allocation decisions are necessarily imprecise attempts to quantitatively estimate the differences in *praemia vitae* ("joys of life") which would be foregone by death in particular cases. In a situation in which life-saving or life-sustaining medical resources can be allocated *either* to a twenty-six year old *or* a ninety-eight year old QALY and DALY estimates will, inevitably favor the younger patient unless quite extraordinary circumstances prevail. In most clinical situations allocation decisions will of course be much less straightforward. For further discussion of these and related issues see Small (2002).

³⁶ We can of course imagine horrible continuations of Ramsey's life from which his early death seems a fortunate deliverance. I have deliberately ignored this possibility.

³⁷ This is one way of articulating some of Nagel's expansive if cryptic concluding remarks about what we recognise as harm, and what is to be regretted, being linked to "what can naturally be hoped for," which must be understood in terms of some "natural condition" for the human race; Nagel (1979: 68-69). That is obviously relevant in comparing Ramsey's life with Russell's, or the parallel cases of Keats and Tolstoy which Nagel discusses.

³⁸ This is a revised version of a paper delivered at a symposium (with Julian Lamont): "Epicurus and the Harm of Death," at the Australasian Association of Philosophy (New Zealand Branch) Conference, held at the University of Waikato in November 1998. I am grateful to discussants at this and other forums who have suggested improvements to the paper.