

Death, posthumous harm, and bioethics

James Stacey Taylor

If pressed to identify the philosophical foundations of contemporary bioethics, most bioethicists would cite the four-principles approach developed by Tom L Beauchamp and James F Childress,¹ or perhaps the ethical theories of JS Mill² or Immanuel Kant.³ Few would cite Aristotle's metaphysical views surrounding death and posthumous harm.⁴ Nevertheless, many contemporary bioethical discussions are implicitly grounded in the Aristotelian views that death is a harm to the one who dies, and that persons can be harmed, or wronged, by events that occur after their deaths. The view that death is (typically) a harm to the one who dies infuses, for example, the debates over abortion and euthanasia, while the view that persons could be harmed or wronged after their deaths informs much of the debate over, for example, policies for the posthumous procurement of transplant and the ethics of research on the dead.

In *Death, Posthumous Harm, and Bioethics*, I argue that we should reject this cluster of influential Aristotelian thanatological claims, and instead endorse a trio of views that together constitute what I term full-blooded epicureanism: That death is not a harm to the person who dies, and that persons can neither be harmed nor wronged by events that occur after their deaths. After defending full-blooded epicureanism, I argue that it can be used to illuminate various contemporary bioethical debates, including those concerning posthumous organ procurement, assisted posthumous reproduction, medical research on the dead, and posthumous medical confidentiality.

I begin by arguing that posthumous harm is impossible. The standard account of posthumous harm—that developed by George Pitcher⁵ and Joel Feinberg⁶—is based on the view that a person is harmed when her interests are thwarted. Since a person's interests can be thwarted after her death, she can, on this view, be harmed antemortem by events that occur after she dies. This account of how posthumous

harm is possible fails, for Pitcher and Feinberg fail to show that they can avoid the Problem of Backwards Causation: that their view seems committed to holding that an interest-thwarting event in the future can cause an event that lies in its past (harm to the antemortem person). Pitcher and Feinberg argue that their view does not entail backwards causation, since persons can undergo Cambridge changes—changes that are based on conceptual, rather than causal, relationships. While this is true (a person can acquire the property of being a grandmother after she dies, eg, without requiring backwards causation), the properties that are associated with Cambridge changes are disanalogous from that of harm. Unlike harm, these are 'definitional' properties: properties whose application conditions are uncontroversial. Harm, however, is not a definitional property such as this. Thus, the mere fact that definitional properties can be attributed to persons on the basis of Cambridge changes does not show that harm can be similarly attributed on the basis of conceptual relationships. This does not show that posthumous harm is impossible—merely that we have no reason to believe in it. To undermine further support for the Solonic view that posthumous harm is possible, I then argue against the major alternative accounts supporting its possibility offered by Barbara Levenbook,⁷ Dorothy Grover,⁸ Daniel Sperling⁹ and Paul Griseri.¹⁰ With these critical arguments in place, I argue that posthumous harm is impossible, by defending a hedonistic account of well-being, on which a person is harmed by an event if it adversely affects the experiences that she has. Since an event that occurs after a person's death cannot affect her experiences, posthumous harm is impossible.

While there has been much philosophical discussion of posthumous harm, there has been little discussion of the question of whether the dead can be wronged. Possibly, this is because these questions are often conflated; possibly it is because it is often taken to be axiomatic that it is possible to wrong the dead. This is unfortunate, since, as I argue, the few attempts that have been made to show that the dead can be wronged all fail.

The dead, then, cannot be harmed, and we have no reason to believe that they can be wronged. Yet could death itself be a harm to the one who dies? While endorsing hedonism renders posthumous harm impossible it does not preclude the possibility that a person could be harmed by her own death, for one might hold that a person's death could harm her by adversely affecting her experiences through depriving her of future good ones. In defending a version of Epicurus' argument that death is not a harm to the one who dies, I argue that the most prominent attempts to show that a person's death could harm her through depriving her of the goods of life (developed by Thomas Nagel,¹¹ Fred Feldman,¹² Ben Bradley¹³ and Bernard Williams¹⁴) fail. Briefly, Nagel, Feldman and Bradley all offer examples in which a person is deprived of the goods of life by an event that makes her life go worse than it would have otherwise done. These examples thus fail to show that death is a harm to the one who dies for the harmful events they focus on are disanalogous with death, which eliminates the person who dies as a bearer of states of value. And while Williams shows that it might be rational for a person to avoid death, this does not show that death could be harm, for persons could rationally avoid states of affairs that are not harms to them if the alternative states of affairs that are accessible to them have greater value to them.

Death, then, is not a harm to the one who dies, nor can the dead be harmed or wronged. This full-blooded epicureanism has important implications for the various debates within bioethics that address either end-of-life issues (such as suicide, abortion and euthanasia) or the ethical treatment of persons' bodies after they die. And while it will not on its own determine the conclusions that should be drawn in them, it supports the bold dismissal of many prominent arguments offered in the context of the bioethical debates to which it is relevant—including all of those that are based on claims concerning harming and wronging the dead.

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