

HARM, CHANGE AND TIME

Alex made it clear he wanted no fuss, after his death. But his fans now plan to erect a statue in his home town. Beth left her body to the hospital for medical research. And then a second year student thought it would be a good joke to carve his initials into her thigh. Claire, always longing for children, was involved in a car crash during her pregnancy. Though she was declared brain dead, it seemed it would still be possible to bring the baby to term. Her husband knew she'd have wanted this, but nevertheless urged the doctors to switch off the machines.

Ought we to respect the dead? Is there ever reason for us to do as they wished? Can the dead be harmed by things we do, or fail to do? The questions are different. I'll focus on the last. Even if we give it a negative answer there still might be reasons, perhaps concerning the feelings of the living, to do as the dead would have wanted, or to show them proper respect.¹ The cases are different, too. It never occurred to Beth that this sort of thing might happen, and so she never expressed a view on its value. Both Alex and Claire made their positions, and their wishes, clear. But only Claire was actively engaged in bringing about some outcome; only she has her efforts undermined by posthumous events. Yet in another respect the case are the same. Suppose, even though nothing is said, that Beth wouldn't have wanted this apparent abuse to occur, indeed would have been horrified to know of it. So then in all three cases the deceased has desires or preferences, stated or not, concerning posthumous events. And these desires are clearly not trivial, or frivolous, or perverse. If the dead can ever be harmed then, surely, they are so in cases something like these.

I'll start with some general comments on harm, and then go on to identify three areas where there is some controversy as to whether harm occurs. Posthumous harm is the last of these, and I consider but in the end reject certain well-known accounts of how such harms might obtain. In the penultimate section I discuss the relations between these controversial areas.

¹ This suggests, of course, that it is possible to respect the dead, and that we might be clear what respect here involves. But I am agnostic on both points.

I

You drink too much, damage your liver, and give yourself a headache. You drive too fast, hit a bridge, and end up in a coma. You set out too late, with a wallet too full, and are attacked by a mugger, who leaves you bruised and penniless.

These are, I think, uncontroversial cases of harm. In each there is a *harming event* – drinking, driving, being attacked, and a *harmed state* – having liver damage and a headache, being in a coma, being bruised and penniless. In each case the event precedes the state. There may be a gap, as in the first case, or the one may abut the other. And the event causes the state to obtain, or is at least a prominent causal condition of its obtaining. The harmed state has the dominant role. It's because it leaves you in such a state that the event is a harming event.

What is it to be in a harmed state? In the cases here there is a significant fall in your level of wellbeing. You are less well off than you were, as a result of this event's having occurred. We shouldn't say, of course, that to be harmed is to be caused pain. There is pain involved in the first and last of these examples, but not in the second. Still, we might want to say, on the basis of these cases, that to be harmed is for your mental states to be adversely affected. It isn't painful to be in a coma, but it isn't pleasurable either. And I'm assuming your life, pre-crash was, and felt, reasonably good. So you're now getting less pleasure than previously. And we might want to say also, going on what we have here, that your being harmed involves your undergoing some intrinsic change. There needs, or so it might seem, to be some alteration within you, your body, your mind, and not merely in things outside of you. Even if your being harmed implies some relational change – say, people envy you less than they did – the change isn't merely relational. There's some difference inside.

Does harm always involve intrinsic change? The mugger leaves you bruised and penniless. Imagine then a cyber-thief, who prevents you from hearing of a lottery win, and siphons off the money into his own account. Or imagine that your boss thinks about but declines to give you a promotion. Perhaps it's tempting to say these people harm you, even though they bring about no change in your internal condition, and you're unaware of changes that could have occurred. They harm you, I suggest, in virtue of preventing some intrinsic change from occurring. Had you received the lottery win, you'd have enjoyed the extra money, and bought yourself cars and cruises. Had you been promoted, you'd have been accepted into the golf club. Whether you're caused pain, or deprived of pleasure, whether things get worse, or are prevented

from getting better, you're harmed either way.² Thus far, then, it seems that intrinsic change – its occurrence or non-occurrence – is a key component. Must it be so? Could you be harmed in virtue of undergoing a merely relational change?

Think about timing. A poisoner injects you with some substance that causes you pain only a week later. An enemy tampers with your car in such a way as to bring about your death, again a week later. Are you harmed before the aimed at bad effects occur? We're probably more tempted to say you are in the former case, where there is some internal, though undetected, change, than in the latter, where the change – your shift from owning a safe to an unsafe car – is only relational. Suppose now that these bad effects never obtain. Perhaps you die, of some unrelated matter, before the poison begins to work. Or perhaps you discover the faulty brakes, and have them fixed. Then, and I think this is clear, you weren't harmed, even if harm was aimed at, and you were almost harmed. If this is right, it further supports the suspicion that merely relational change isn't enough. And I'll say more about this in section III below.

What sorts of things can be harmed? You and I can, along with all the people we know. So too can animals, either by being caused pain, or, more controversially, by being deprived of pleasure. So too, I want to say, can plants, even though they experience nothing. I'm rejecting, then, both a narrow hedonist and a broader mental state account of what harm involves. Rather all and only those things that can be ascribed a level of welfare or wellbeing, all those things that might be said to have a good of their own can, I suggest, be harmed. Yet even if I want no general commitment to hedonism, it is perhaps not implausible to suggest that human wellbeing necessarily involves our having certain sorts of mental states, such that things cannot go well or badly for us in virtue of our physical condition alone.³

This is far from a complete account of harm. Yet there are here a number of key features. And even if incomplete, this model can be used as a starting point for discussing the alleged harms of death.

II

² A full account of harm would offer more detail here, distinguishing more clearly between temporal accounts – you are worse off than you were – and counterfactual accounts – you are worse off than you would otherwise have been. Arguably, the latter includes cases where you are better off than you were, but still not as well off as you should have been. The thief swaps his third prize ticket for your first prize ticket. See Hanser 2008 for good discussion.

³ One question, then, is whether it is possible to harm someone already in an irreversible coma.

Are we harmed by death? Like most, I believe that often we are. And the above model allows for this. There is, at least often, a harming event – a fall from a cliff face, a car crash, a malfunction in some critical organ – that leaves us in a harmed state or condition – being dead. Why harmed? Certainly there's a change, and an intrinsic change in our condition – we go from being alive to being dead. This may not cause us any pain, but, like the coma, it brings our pleasure levels, now and in the future, down to zero. So death, as many have suggested, is in such cases a privative evil. It's hard to think of anything that more obviously has a negative effect on our level of wellbeing.

As is well known, there is considerable resistance to the suggestion that death is ever an evil, or bad for us. This often involves an appeal to some sort of hedonism – as it doesn't feel bad to be dead, it isn't bad. But it doesn't feel bad to be a coma. We can agree that it's bad to be deprived of pleasure. So this objection can be countered. A different, though not altogether unrelated, objection holds that only existing things can be harmed, and that the dead don't exist. Both claims are contentious. Your mother drinks and smokes heavily in the months before you're conceived. Your life goes less well than it would have otherwise. It's tempting to say that you were harmed before you began to exist. But we might resist this, saying instead that a harming event occurred prior to existence, but that the harmed state came about only later. The sceptic about death's being a harm can sidestep all this, claiming only that you cannot be harmed once you cease to exist. But does death bring about non-existence? This is far from obvious. Most of us exist when dead, at least for a while, as bodies or corpses. But even if we deny this,⁴ still the sceptical claim needs more work. For death might seem to harm us precisely in bringing about our non-existence. Someone who did exist, and who was enjoying life, surely appears to be worse off, to have been harmed, in having life, existence and enjoyment all suddenly curtailed.

There's a further objection. Some insist that the dead have no level of wellbeing, and then claim that, because of this, they cannot be said to be worse off than when earlier at a positive level, and so cannot have been harmed by death.⁵ Why think this? It cannot be enough to claim, fairly uncontroversially, that they have neither a positive nor negative wellbeing level. Those in a

⁴ Joan Callahan, for example, suggest we might define 'A's death as 'the moment at which A ceases to exist..' (Callahan 1987 p.343). I assume she believes ceasing to exist comes earlier than it does on my account, rather than that death comes later. But it is well worth distinguishing here between those who think we are persons, and that persons cease to exist when, or in many cases before, they die, and those who think we are animals, and that they disappear with death. I reject both views. Personhood disappears then, but persons are not things. And there are dead animals.

⁵ See, for a recent discussion and partial endorsement of this view, Hanser 2008 p.437.

coma are in this position. So too are those whose measures of pleasures and pains are precisely balanced. There must be a distinction between no level and a zero level. Stones, clouds, fictional characters have no wellbeing level. But the claim that the dead are just not the sorts of things that can have a wellbeing level needs support. It may sit on the back of the claim that the dead don't exist. If not, I am at a loss as to where it comes from.⁶

III

Are we harmed by events of which we are, and remain, unaware? I'm never aware of your having poured poison into my drink, but certainly your doing this harms me – I'm ill for weeks afterwards. Kill me quickly, from behind, and I'm never aware of your assault – the harming event – or my being dead – the harmed condition. But I'm harmed nevertheless. So consider now a case where you're unaware of an allegedly harming event, and, in part because you're unaware, there is apparently just no difference made to your ensuing condition. Life continues exactly as it would had the allegedly harming event not taken place. Your partner is unfaithful, has an affair, and keeps it from you. First, you're never aware of this, but second, as it never makes for a difference in how she and others treat you – there are neither more nor fewer roses, or walks on the beach, or lazy Sundays – so it makes no difference to what you think or feel.

I'll call this *betrayal*, keeping always these special circumstances in mind.⁷ And I deny that you're harmed here. But, again, this isn't simply because I buy into hedonism, and hold that because you're not aware of what's happening, and so are not upset or distressed, then you're not harmed. Nor is it just because your mental life is unaffected. Plants can be harmed. But in this case, as envisaged, there is a thoroughgoing absence of intrinsic or internal change; it is neither caused nor prevented. In these circumstances it's hard to see how your welfare or wellbeing is any lower or worse than it would otherwise have been. And so it's hard to see how you can have been harmed.

Some might say, though hard, it's not impossible. You have certain beliefs – that your partner is faithful – that used to be true, but now are false. And you have certain desires – that she remain faithful – that are from here on unsatisfied. Herein lies the harm. But normally, having true beliefs and having ones desires satisfied are of evident instrumental value – they bring you to

⁶ See, for a fuller discussion of a similar position, Bradley 2009 pp. 98-111

⁷ See here Nozick 1971 and Nagel 1979, the latter reprinted in Fischer 1993

having good mental states. So they impact in straightforward ways on your wellbeing. Not in this case. So should we believe that these things are intrinsically valuable, good in themselves, even if not good for you? It's hard to believe this, but it is in any event irrelevant here. For we are wanting to explain how you can be harmed – how betrayal can be bad for you, not bad in itself or bad for the universe or some such. So it seems the thought has to be that the false beliefs, the unsatisfied desires, are in some less than evident way instrumentally bad: you are harmed, and presumably your wellbeing is adversely affected, even though there is no intrinsic change in your condition, nothing for doctors or psychologists to detect.⁸

I deny that you're harmed here. As there is no intrinsic change, so no harm occurs. But of course an opponent can view things differently. As you're evidently harmed in such a case so intrinsic change isn't necessary for harm to occur. We probably agree that there is such change in the uncontroversial cases given in the model above. Our disagreement is about whether divergence from the key characteristics of those cases can be taken this far.⁹

IV

Might we be harmed after death? Death itself can, I've said, harm us, but can there also be posthumous harms? Given the model, it might at first seem that any such harms will involve an event affecting a person some time after he's died and bringing him then into a harmed state. But it is, according to George Pitcher, obvious that 'no one would want to argue seriously that a post-mortem person can be harmed after his death'.¹⁰ Death reduces us, he says, to at best mere lumps of inert matter, a mouldering corpse, or dust. We are, in this condition, simply beyond harm. So posthumous harms, if there are any, need to be differently construed. Before going on to look at

⁸ I say 'presumably' as someone might argue that in cases where harm doesn't involve intrinsic change, it doesn't then affect wellbeing. How wellbeing is best construed is then at issue. I'll sidestep all this, however, and simply assume, throughout, that wellbeing is implicated whenever harm occurs.

⁹ There is a further argument for harm's having occurred in this case that should be mentioned. Your partner, most will agree, does something wrong. It is tempting to say that when someone does wrong someone or something is wronged. And then it is tempting, further, to say that if someone is wronged, then they are harmed. Both moves can be resisted. There can be victimless wrongs. I might do wrong in wantonly destroying a garden without doing wrong to anyone or anything. And there can be harmless wrongs. I might break my promise to you, and so wrong you, without causing you any harm.

¹⁰ Pitcher, 1984, and also in Fischer 1993 p.162

Pitcher's positive account it's worth asking whether things here are really as clear as he makes out. And there are at least three points that should be further discussed.

Notice, first, that Pitcher seems not to want to hold either that we, the sorts of things we are, or that persons disappear with death. The term *person* isn't being used to indicate some non-physical thing, and nor is it suggested that human beings or animals cease to exist when death occurs. So far as harm is concerned I am, when dead, the wrong sort of thing, rather than no thing at all. A corpse cannot flourish, or be ascribed a level of wellbeing. It has no desires, interests or other of the mental states commonly implicated in accounts of human harm. If I become such a person, turn into such a thing,¹¹ then I can no longer be harmed. Like a statue or wax doll a corpse can be damaged, and damaging such a thing might cause harm to people who for some reason or other care about it, but damage and harm are distinct. So scepticism about posthumous harm, as visited on post-mortem persons, is apparently well placed.

Yet Pitcher is perhaps over-confident here. Millions will argue, and argue seriously, that as well as the body, there is the soul to take into account. We might with death cease to breathe, and to walk the earth, but we continue to exist, and in a sense to live, in some disembodied state. Believe that, and you'll find posthumous harm unproblematic. In the way suggested earlier, a harming event, say, destroying my reputation on earth, will bring me into a harmed condition, and make me worse off, in heaven.

The millions may just be wrong, and their arguments no good. But it's worth noting that a not unrelated position seems often to be thought more philosophically respectable. Thus James Rachels contrasts someone's biological and their biographical lives, Shelly Kagan distinguishes between a person, and that person's life, and Thomas Nagel puts it thus:

There are goods and evils that are irreducibly relational; they are features of the relations between a person, with spatial and temporal boundaries of the usual sort, and circumstances that may not coincide with him either in space or time. A man's life includes much that does not take place within the boundaries of his body and his mind, and what happens to him can include much that does not take place within the boundaries of his life. These boundaries are commonly crossed by the misfortunes of being deceived,

¹¹ There's an ambiguity here, with both change in essential and accidental properties covered by such terms. See also the discussion below of ante-mortem and post-mortem persons. In brief, though it's strong either way, the argument against posthumous harms is probably stronger if it's held that with death I cease to exist, and am replaced by something else, than if it's held I continue to exist, but in a different condition.

or despised, or betrayed. (If this is correct, there is a simple account of what is wrong with the breaking of a deathbed promise. It is an injury to a dead man. For certain purposes it is possible to regard time as just another type of distance) ¹²

Perhaps it isn't clear exactly what this means. Nagel seems to invoke a threefold distinction – there are the familiar spatio-temporal boundaries to your body and mind; there's the larger thing, your life, with its boundaries; and then there are things that can happen to you even beyond these boundaries. Though it's hard to pin down the detail, the general thrust, I take it, is in the direction of holding that undiscovered betrayal, posthumous harms and the like do impact on you, even if in non-obvious ways.

All three writers appeal to the somewhat Aristotelian idea¹³ that we can properly assess how things went for a person only some time after their death, not just because we need time to reflect, but because somehow things are still going for that person for some time after death. And if enough sense can be made of this extended notion of self, of who or what I am, such that my confines are not the confines of my body, nor of the time and place that body is alive, then posthumous harm is in a more straightforward way back in business. For given this broader construal, outer events and inner states are related, temporally and causally, as we might expect. There is, for this larger entity, for me more generously construed, intrinsic change. And, as we have interests and wellbeing, so we can talk of the changes here as harmful. Such, at least, is a route that some will find tempting. Though I'll never endorse it I will need to mention it again later.

Suppose we agree that I am, post-mortem, no more than a corpse. Consider now a fiction. A clever scientist has discovered a remedy for PVS. An evil scientist prevents its proper deployment. This evil scientist harms those in PVS, by standing in the way of their recovery. Similarly with death. Unless we define death as a permanent end to existence, or life, or consciousness, then it should appear that it is at least logically possible, or conceptually possible, and maybe also physically possible, that the dead should be revived. So even supposing you turn

¹² In Fischer p.66. And see Kagan 1994, Rachels 1986. See also Callahan: '... it might be argued that I am spread over time after the death of my body and the cessation of my consciousness.....' 1987 p.348.

¹³ I say 'somewhat' as Aristotle considers Solon's suggestion without fully endorsing it..

into a corpse, a dead thing, the evil scientist might, in keeping you dead, harm you, not now by causing a deterioration, but by preventing an improvement, in your level of well being.¹⁴

Yet even if things are not quite as straightforward as Pitcher makes out these reservations are, in practice, not powerful. We should probably accept that distinctively post-mortem persons cannot, in fact, be harmed. But there is still a third point to be explored. For notice as well the apparent redundancy in talking of what might happen to a post-mortem person after death. Surely all that happens to such persons happens at such a time? And surely all ante-mortem persons are affected, changed, benefitted or harmed, only when alive? But if Pitcher's formulation does some real work then there is perhaps more to it than this.

There are two components here. First, there is the contrast between post-mortem and ante-mortem persons. Pitcher isn't alone in making this distinction.¹⁵ But we should take care not to interpret this as suggesting that there are two separate things, or sorts of things, that can be harmed. Rather there is just the one thing, the one person or human being, who is first alive, and later dead. Take Beth's case. Many will think it clear both that she is harmed by the activities of the medical student and that the harm occurs when the carving takes place. But do these people further insist that it is the post-mortem person rather than the ante-mortem person who is harmed? That is much less clear.

Second, we might, by combining this distinction between the ante- and post-mortem states of a person with the event/state distinction in harming come up with a fourfold scheme. Can a person post-mortem be harmed by either ante-mortem or post-mortem events? Pitcher will say no. I think this is right, even if not quite so obviously right as he suggests. Can we ante-mortem person be harmed by either ante-mortem or post-mortem events? So far as ante-mortem events are concerned the answer here is yes: the clearest cases have us harmed when alive by events occurring when alive. But Pitcher is going to want to insist, further, that, the ante-mortem

¹⁴ This is, however, a claim that Luper (2008, p.133) says is 'silly'. His position appears to be that the dead are *unresponsive* – their wellbeing cannot rise or fall. They contrast, then, with those in a reversible coma, who are responsive, and can be harmed by our preventing a return to consciousness. But if one grants that neither the worst coma, nor death is necessarily irreversible (and Luper allows the fiction of life-restoring machines), then responsiveness is wider ranging than he wants to admit.

¹⁵ Joan Callahan appeals to it in criticising his account. It is objectionable, she holds, in suggesting that some sorts of ante-mortem counterparts of the dead, rather than the dead themselves, are the subjects of posthumous harm. '...when we say we feel sorry for Smith because of some posthumous event, we generally do mean it is the *dead* Smith we feel sorry for, even if...we are confused about this'. (1987 p.346)

person can in some sense be harmed by events occurring post-mortem, after his death. So we should move now to his positive account.

V

Pitcher rejects the basic model. He offers in its place an account wherein the ante-mortem person, the person before death, is in some way adversely affected even while alive by certain events taking place posthumously, after death. He isn't alone in this. Joel Feinberg also holds that a living person's harmed condition can predate posthumous activity that somehow bears on that condition's obtaining.¹⁶ Steven Luper, now in a number of places, tells a similar story.¹⁷ And there are several others.¹⁸ But for brevity I'll refer to it simply as the Pitcher account.

It can be seen as deriving from and then attempting to remedy a perceived weakness in its rival. If someone is to be harmed after their death, then the question is raised, exactly who or what is around to receive harm at that time? There is either nothing, or at least not the right sort of thing, to which harms can be attributed. This *subject problem* is, I've suggested, perhaps not quite as obviously taxing as is often suggested. But the Pitcher account solves it with great effectiveness by suggesting that the harmed person is a very evident flesh and blood and living subject of the ordinary kind, whose wellbeing takes a dateable fall, during their life, in very much the ordinary way.

There is a downside, and the adoption of such a strategy introduces the *timing problem*: unless we are to invoke backward causation – never a good move – how can events occurring posthumously, after death, affect someone earlier, before they die? The answer has two parts. Most of us have desires, interests, preferences that range beyond our lives, and are neither fulfilled nor defeated¹⁹ at the time of our deaths. Further, if these are fulfilled then normally this impacts positively on our wellbeing, if they are defeated, then the impact is negative. And now posthumous events can bring it about that these desires etc. are or are not fulfilled, even after our

¹⁶ See Fischer pp.184-5.

¹⁷ Luper 2002, 2004, 2008

¹⁸ In virtue of this widespread support Douglas Portmore (2007) goes so far as to describe this now as the standard account of posthumous harm.

¹⁹ I am using just the terms *fulfilled* and *defeated* throughout. There is a good deal of terminological variation in the literature, with talk in various places also of *satisfaction*, *frustration*, *thwarting*, *formation*, *removal*. There are both historical and exegetical reasons for this, all of which can be set aside here.

deaths. But we are not harmed when these posthumous events take place, at a time when our very existence is at the least moot. Rather, harm occurs earlier, when we acquire these desires and interests that will later be defeated. Later events, as Pitcher puts it, *make it true* that we are harmed at an earlier time. And the relation here, he insists, isn't problematic. It doesn't involve backward causation.

That there is something amiss here is a suspicion widely held. It might be suggested, however, that Pitcher's position is nevertheless surprisingly resilient. James Taylor thinks this. And in a recent paper²⁰ he attempts to defend the account from a number of criticisms that have been made against it. Even though he is in part successful,²¹ there are still, I believe, respects in which this Pitcher account is untenable. I need now, through this and the following section, to give the account more detail and to point to its shortcomings.

Talk of posthumous harms is doubly misleading. Neither the onset of a harmed state, nor, will it seem, a harming event, occurs posthumously. The allegedly harmed person doesn't undergo any alteration or deterioration of his condition after his death. All such change occurs earlier, in life, when the interests are acquired which are later defeated. And it is far from clear that there are, posthumously, any genuinely harming events. Certainly there are posthumous activities – the slander, the scarring – but there is reason to think a harming event causes or brings about a harmed state, and that someone responsible for the event is at least often responsible for the harm that ensues. Neither condition is in place here. Joan Callahan in effect makes just this point. If you harm me posthumously, but this is understood in Pitcher's terms, with my ante-mortem rather than the post-mortem self identified as the victim, then, she objects, you can be held responsible for this harm even before you perform the allegedly harming activity. Indeed, you might be responsible for this harm even before you are born. And this is absurd.²²

Taylor agrees, but insists that no such conclusion is warranted. You can only be held responsible for what you do from the time at which you do it. There is no warrant, on the Pitcher account, for thinking responsibility predates the relevant activity. Yet this only shelves the problem. And perhaps Taylor fails to see that Callahan would agree with him here. It's precisely

²⁰ Taylor 2008. It should be noted that defending Pitcher against certain criticisms isn't defending Pitcher *tout court*. As he makes clear in 2005, for example, Taylor is overall disinclined to accept there are posthumous harms.

²¹ His analyses and criticisms of accounts offered by Waluchow and Lamont are two instances of this.

²² Callahan 1987 p.345

because you can't be held responsible for harming me until, at the earliest, you act, that you can't have harmed me until then. But I am allegedly harmed much earlier, before you act, and perhaps before you are born. So it's hard to see what you do as constituting a harming event at all.

Let's have some more detail. Yanni begins to care about his posthumous reputation at t1. He dies, and some time after this, at t2, Zak ruins his reputation. We can agree with Taylor that Zak can only be held responsible for this ruining, charged with it, called to account for it, at or after t2. There was no ruining before this time. But there's supposedly some harming to consider. When, and by whom, was Yanni harmed? If at t1, and by Zak, then surely Zak is responsible for the harming from t1 on. If at t1, but what we have here is self harm, then Zak is off the hook, and this, whatever else it is, isn't a case of posthumous harm after all. If he's harmed at t2, just when his reputation is ruined, and by Zak, then we're back with a version of the basic account, and its attendant difficulties in explaining how a posthumous person can be the subject of harm. Taylor might insist there's no need to embrace the first option, but neither of those remaining is any the more attractive. And the problem here is perfectly general. If A does *x* to B at t2, then B can't already have been *x*'d, in the appropriate way, at t1²³. If B has already been *x*'d, before t2, then A can't *x* him, in the appropriate way, at t2.

Pitcher, and friends of his account, thinks this oversimplifies. Later events can bear on earlier events. And there is more than ordinary causation to take into account. Bush, drunk on power, has himself made Emperor. After his time, his son will inherit the crown. Farewell the republic. These events, occurring after his death, *make it true* that Reagan is the penultimate President of the United States. There is nothing suspect here, and no more than a whiff of backward causation. Even so, it has been thought less than obvious how it links to the situation involving harm. As Mark Bernstein observes, this case looks to be in some ways anomalous.²⁴ Taylor agrees that something more than time-based or sequential properties is needed. And, drawing on an example first given by Dorothy Grover he seeks to widen the scope of the *makes it true* formulation.²⁵

Mary shoots Jim. He shoots back. She dies, Then he dies. Events that occur posthumously, after her death – Jim's dying – make it true that she is a killer. But even if *being a*

²³ It has to be allowed, of course, that for many values, B might have been *x*'d in a different way, prior to A's *x*ing him.

²⁴ Bernstein 1998 pp.58-67

²⁵ Taylor 2008, p.193. And see Grover 1989 pp.336-337

killer appears to be a more standard property, and closer to *being harmed* than does *being the penultimate*....., still it isn't clear what the moral is supposed to be, or whether, in the end, it's close enough. To kill is to harm,²⁶ and I can make a first point more clearly by swapping the terminology in this way. Jim's being harmed at t3 makes it true that Mary, who died at t2 is a harmer. The harming event – the shooting at t1 – and the harmed state – being dead at t3 – stand in their ordinary relation. But what we want is support for the contention that a later harming event can make it true that someone was earlier harmed. And we're not yet there. A second point is closely related. Jim here is harmed in familiar ways – his level of wellbeing falls as a result of certain intrinsic changes – and he is harmed, surely, by others – there is neither temptation nor pressure to suppose that he harms himself. Thus far, then, we are getting no real help with grasping the Pitcher view.

There is, however, a further point. When does Mary become a killer? When does she kill Jim? There are no clear answers to these questions. Some will say when she fires the fatal shot, others will say only when Jim dies. Suppose we opt for the first answer. Then posthumous events make it true that she is, while alive, and from a dateable time, a killer. And now this does look interestingly analogous to the Pitcher account. So too, perhaps, does a revisiting of a point I made earlier: assuming eventually they do, then you are harmed, in virtue of swallowing poison, even before bad effects become noticeable. So your later dip in wellbeing makes it true you were harmed at the earlier time.

But we're far from home. First, I allow this earlier harm merely as loose talk – it's the sort of thing we might say, and be permitted to say, in such circumstances. But nothing hangs on it. Similarly with Mary – we might say she kills either when she shoots, or when he dies. In both cases the underlying facts are perfectly clear, and it is to those we appeal when settling dispute. Second, in the poisoning as in the shooting the harming event precedes both the initial and the final harmed condition (firing before both wounding and death, administering before both swallowing and hurting), and in the end the victim suffers a familiar and recognisable fall in wellbeing. So even if these cases suggest one minor alteration to the basic model – we might sometimes say that harm occurs before the salient intrinsic change occurs – they are silent on alterations concerning timing. But Pitcher needs something along these lines.

²⁶ I want to insist on this, even while allowing some force, and more humour, to Feinberg's comment: 'If a murderer is asked whether he has harmed his victim, he might well reply: "Harmed him? Hell, no; I killed him outright!"', in Fischer 1993 p.172

I doubt he can have it. For there seems to be a critical distinction to take into account. Someone can become a killer, or the last in a line, or an uncle, or a cuckold, or the most famous playwright of his day, in virtue of relational changes alone.²⁷ So it isn't surprising that causal and temporal links are dispensed with. But you can't die, or become a playwright, or a father, or a lover in virtue of only such change. Intrinsic change is needed. And I want to insist that it's the same with harm. To be harmed is to change (or be prevented from changing) inside. This can happen only when you exist. And it can be made to happen only by events occurring when you exist.

An objection leads to a very general point, one that links everyday and posthumous harms. Pitcher might maintain you are changed inside when you acquire those interests later to be defeated. Indeed, but are you harmed then? If we insist on this then it seems we shouldn't say the mugger harmed you when he attacked you and took your wallet. Rather the harm occurred when you acquired an interest in spending this money. Nor should we say that you are harmed when terrorists blow up your plane, but again that the harming takes place earlier, when getting to New York becomes important to you. All this seems to demand a fairly severe overhaul of the justice system. And similarly elsewhere. Your partner doesn't harm you by betraying you, with harm occurring – even though you don't know it – when the betrayal begins, but you are harmed some time before, just when you first start to care so much about her. And here a similar overhaul in the way we think about family life. Nor can it be right to preserve the differences here, thinking that only in posthumous cases does the harm occur when the interests are formed. If the thief steals your wallet just before you die you're harmed then, but if he waits until just after, the occasion for harm might shift back years. This need for a global revision to the basic model, one that I imagine we're mostly reluctant to make, constitutes a serious shortcoming in Pitcher's account.

VI

A problem for posthumous harms has been in sustaining the right sort of relation between harmers and the harmed, or between harming events and harmed states. But maybe there's some

²⁷ I don't mean, of course, that intrinsic properties are wholly irrelevant here. To become a famous playwright one needs first to write some plays.

progress still to be made – some mileage in the *makes it* true formulation – if we relax on this and consider more broadly how the later can play on the earlier.

Pitcher does just this. Berkeley's son dies young. And this is bad for Berkeley. But what is bad for him is not simply this early death and its aftermath, the grief that it causes. Nor is it, in addition, just his anticipation of this death, with its attendant distress. There's more:

...surely if his friends knew, though Berkeley did not, that his son was fated to die young, they would have felt very sorry for Berkeley – and not just because there would eventually be the tragedy of his son's death but also because *then* (i.e., *before* his son's death) there was a grave misfortune in Berkeley's life. What was it? It was the fact that his adored and adoring child, so full of promise, was going to die young.²⁸

So there's a 'shadow of misfortune'²⁹ hanging over Berkeley's life, well before the event responsible for this, his son's untimely death, actually occurs. How long before? Even if we can't precisely fix the time, it goes back at least to when caring about his child's wellbeing became one of Berkeley's important interests. The general lesson to be learned here, then, is that the right assessment of even a section of someone's life, of how things are for them at some time, is modulated by events occurring after that time.

The details of the lesson, however, are not so easily drawn out. Is the idea that Berkeley has already suffered a misfortune, or just that he stands in misfortune's shadow? Suppose the former. This is because his son's early death will occur. And of course it's tempting to say that he's unfortunate because he will then be harmed and thus, as this implies, that he's not been harmed yet. Feinberg reveals himself sensitive to the infelicities of speaking of harm here, and suggests we might instead think of someone in Berkeley's case, or indeed someone whose lifetime plans will be posthumously defeated, as doomed rather than harmed.³⁰ Pitcher's talk of fate is similarly inclined.³¹ None of this clearly helps. First, if we use these somewhat archaic terms, the intention, usually, is to suggest the unavoidability, the at least conditional necessity, of

²⁸ Fischer 1993 p. 166

²⁹ Pitcher uses this phrase, and the closely related 'shadow of harm' repeatedly. See especially pp.166-7.

³⁰ In Fischer, pp. 186-188. The suggestion isn't made terribly clearly, however, with Feinberg variously suggesting both that one is harmed, or perhaps only partially harmed, when one (or one's cause or interests) is doomed, and that one is harmed at or after death.

³¹ Notice too that although in the end positioned on the other side, Callahan seems curiously sympathetic to some of this: '...it does make sense to think that a person inevitably headed for disaster is already in a harmed state', 1987 p,345

certain outcomes. They imply determinism. But determinism isn't featured in the discussion so far. Even if Berkeley's son will predecease him, even if it will turn out that so and so is the penultimate president, still it may not be true that these things are bound to happen, or inevitable. So talk of doom, or destiny or fate isn't obviously appropriate.

There are further difficulties in trying to connect together the two threads in Pitcher's account. Suppose we agree, whether or not there's any sense in which this is inevitable, that there is some sense in which Berkeley is unfortunate, even now, in that his son will predecease him. Even when? Surely he's unfortunate – bad times are ahead – not only from but before the time at which he is strongly interested in his how his children fare. His schoolfriends know – don't ask how – that he will grow up, get married, have children, begin to care about them, find himself needing to bear their untimely deaths. They might feel sorry for him already. But of course the Pitcher analysis dates the onset of posthumous harm to precisely the time – not before – that important interests are first acquired.³²

What might we accurately say about this time? It isn't unfair to suggest that in acquiring such interests people make themselves susceptible, vulnerable to harm, put themselves at risk of its occurring. If you avoid commitments you can make yourself safe, even if you won't have much of a life. And there is in this some recognisable sense in which, even though you don't harm yourself, you take some responsibility for the harm that later occurs. I care too much about money, not enough about dark nights, and the mugger attacks and harms me. Had I done things differently I wouldn't be nursing a sore head today.

Does this contribute anything of value to posthumous harm? There are two respects in which the answer is negative. First, those who are and those who aren't later harmed are, before this harm occurs, equally vulnerable. What the Pitcher account needs, however, is to pick out some difference, at the interest-acquiring time, between the avoiders and the victims of a posthumous defeat. It needs something of significance to be made true earlier, by later events. Vulnerability isn't helping here. Second, contrast the cases where the son, although in both subject to an early death, dies first before, second after his father. Only in the first case is Berkeley stricken by grief. We might well think the difference is significant. Just as my having

³² Perhaps Luper is similarly unclear about when such harms are incurred: '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'. 2004, p.70. But surely 'her will is to be ignored' is true before, and not merely while, she has these wishes.

interests ends with death, so too does my being vulnerable to harm, in relation to those interests. There is no post-mortem equivalent of mugging.

All that is secure, then, is a pair of fairly modest claims. We might well feel sorry for someone who we know will be harmed. It is unfortunate, a pity, something to be regretted, that there are bad times ahead. And someone might, in virtue of their activities at some dateable time, open themselves up to harms occurring. This vulnerability, or susceptibility to harm will then persist until, in relevant ways, circumstances change.

VII

Posthumous events can, in a straightforward way, intersect with various of the concerns that you once had. Someone might, after your death, destroy your reputation, damage the painting you left behind, dissect your still intact body, dismantle all the work you put into ensuring your project's success. There is neither a timing problem nor any mystery about change – the event occurs before the altering of the thing's condition and interacts with, alters it, in ordinary ways. The paintings, the corpse, undergo significant internal change. There's at worst only a little strain in making the same point about a reputation. And we can add, as before, that the prevention of such change might also be countenanced. If you wanted your body to be cremated and yet someone prevents this, then, again in ordinary ways, there's a defeat or frustration of your concerns.

But is there harm in any of this? Are you in any sense made worse off? Two possibilities have been considered, first, that your ending with death is straightforward but that there can be posthumous harms of a somewhat mysterious kind, second that the harms themselves are unproblematic, with your ending both later and more obscure than often it seems? So, should we think things become worse for Alex when or because the statue is erected, that Beth is harmed when or because the student toys with her cadaver, or that Claire suffers when or because the fetus isn't brought to term? Some say yes, others say no. I'm with the others. Yet disputants will agree about much of the detail here – Beth wouldn't have wanted this, and were she to know she'd be distressed; the student acts inappropriately, risks offending large numbers of people; and so on. So just where is the disagreement? Are there real issues here or is there, as some will suspect, in the end merely a quibble about words? Let me suggest two areas where, as I see it, the harm deniers have the upper hand.

First, I can appeal to the standard model. Posthumous harms, however they are construed, diverge from this. And I say that divergence is significant. Although people talk often enough about posthumous harms, they've mostly not thought this through, and they vaguely and confusedly suspect that Beth is somehow aware of and displeased by what is happening. These are empirical claims, and behind them is another – competent and well-informed speakers just don't talk of harm here.³³ My opponents must either disagree about the facts, or offer reasons for extending or reforming the language. It's hard to imagine what those reasons could be.

Second, I can raise questions about harm's importance. Surely, other things equal, we should try to prevent it, or at least regret its occurrence. But consider the following case. Creatures not unlike us are found on a distant planet. They all die but, as they would have wished, their art and cities remain. Decades later these are threatened by atmospheric change. Should we think these people, though dead, will be harmed if these remains of their culture are destroyed? If so, then surely we should attempt to prevent this destruction, for their sakes, even at some cost to ourselves. I suspect not many will think this, even though many would think we should help, were the 'people' there still alive. And this suggests we don't really believe that harm is occurring. Again, my opponents must disagree. And it isn't clear how effectively they can do that.³⁴

VIII

Finally, I want to revisit the relations between posthumous harm and some of the other contentious areas mentioned above.

³³ I am serious about this. Certainly we'll say what the student did was terrible, insist that we shouldn't speak ill of the dead, feel some unease in breaking deathbed promises; and certainly all this gives harm theorists something to get their teeth into. But just as we don't ordinarily much speak of hurting the dead, so too for harming them.

³⁴ Either they'll say, simply, that we should intervene, or they'll propose a distinction between demanding and undemanding harms; those with which we should be concerned and others we might legitimately ignore. Plants, I said, can be harmed, with their flourishing impeded, their level of wellbeing reduced. Still, it is unclear that we ought to care about this, that we should impose costs on ourselves to help plants. In contrast, it seems clear we should bear some cost to prevent harms – unhappiness, pain, distress – occurring to human beings and other animals. Harming plants is bad for them, but it might not be bad that such harm occurs. Harming animals is not only bad for them but it is bad that there are such harms, bad in itself, or bad for the universe, or whatever. And so it may be said that even if we shouldn't concern ourselves with so-called posthumous harm this isn't enough to show that such harm cannot occur. It might, like plant harm, be of this lesser variety. Suppose that is so. Still a substantive point remains: what we can do to the dead is deeply different from what we can do to the living.

Many writers have insisted that death and posthumous harm stand or fall together – either both can harm us or neither can.³⁵ This is surely wrong. Even if there appears to be something in the Epicurean view, and something to be explained about the contrasts between death and pain, still the differences between the living and the dead are such that it's highly plausible to suppose we're typically harmed by undergoing that degree of change.

In contrast, the relation between posthumous harms and cases involving undiscovered ante-mortem harms is close. How close? Most of us think there is some relation, but many see the latter as less troublesome, and employ them, in this context, as a sort of softening up. This can easily seem legitimate. With betrayal there is little difficulty in supposing that harming events and harmed conditions bear their ordinary relation to each other, with the betrayed person's condition deteriorating when or after the harming event – the betrayal – occurs. Nor is there any subject problem here – the betrayed person clearly exists when and after the harming occurs. It looks, then, as if posthumous harms are more controversial.

Should we believe, then, that these differences are significant? Taylor thinks so.³⁶ He contrasts two cases; A, in which a woman's central project collapses, but unknown to her, a month before she dies, and B, in which the collapse occurs about a year later. The difference in timing, he insists, makes a difference. She is harmed in A, but not in B. Why? Because even though her level of wellbeing is apparently the same in both cases, even though in neither does she subjectively experience harm, her life is affected, and for the worse, when the relevant events occur before, rather than after her death.

There are two complications. First, Taylor envisages here a case where the woman dies ignorant of the collapse because, presumably with good intentions, her friends deceive her about what has occurred. She is, he says, 'harmed by the combination of her ill fortune and her friends' deceit'.³⁷ It seems as if some weight is attached to this second component, but this isn't, I think, fully explained. Second (and this may be connected with the first point) we might ask, about this worse life, worse than what? Taylor explains: '...the life this woman *actually* leads..... is in some respects worse than the life she *would have* led were (some of) her interests not to have

³⁵ Feinberg insists that 'Either death and posthumous harms both alike can be harms, or neither can', in Fischer p.174. See also McMahan, in Fischer pp.241-2.

³⁶ Taylor 2005

³⁷ p. 317

been thwarted by her friends' deception.'³⁸ Now certainly we can imagine a life where, instead of being deceived, one learns an uncomfortable truth, and benefits as a result. But that isn't the relevant comparison. We have to weigh two cases where, for the subject, things are physically and psychologically the same, and where differences are restricted to matters elsewhere. So we have here to compare Case A with Case B, and not with a variant that results in the woman having different beliefs and experiences. And now if we do make just this comparison then the suggestion that her life in A is worse is, I think, not yet made out. If she is unharmed by a posthumous collapse, why and how does an earlier collapse bear adversely upon her?

The cases Taylor explores, along with the emphasis on deception, derive from Feinberg.³⁹ Jeff McMahan discusses a somewhat similar example where deception is absent. But he comes to a different conclusion:

Consider again the case of the person whose life's work collapses while he is on holiday on a remote island. Suppose we agree that the fact that his life's work has come to nothing is a misfortune for him. On reflection, it seems hard to believe that it makes a difference to the misfortune he suffers whether the collapse of his life's work occurs shortly before he is killed to shortly afterwards.⁴⁰

Here too the victim isn't susceptible to ordinary harm. And McMahan wants to suggest that as undiscovered ante-mortem collapse is bad, so too is posthumous collapse. Mere timing can't make a difference. This seems right. Appeal might be made here to Nagel's point about the two kinds of distance. If harm can occur when perpetrator and victim are in different and wholly unconnected places, so surely it can occur when they are in different and similarly detached times. Suppose we go the Pitcher route, holding that we are harmed when interests, later to be defeated, are first acquired. Then this man is harmed whenever the collapse occurs.⁴¹ Suppose instead we think that the collapsing and the harming are simultaneous. If we think, as well, that

³⁸ p. 316

³⁹ Feinberg, 'Harm to Others' in Fischer pp.181-2

⁴⁰ McMahan, 1988, and in Fischer, p.240. The argument here is directed against what McMahan calls the Existence Requirement – we need to exist in order to be harmed. As we are harmed whenever the collapse occurs, so that requirement is false. But it may be that there's a confusion here of necessary and sufficient conditions – we need more than the former to want to agree that undiscovered collapse, occurring while the man is alive, is bad.

⁴¹ This oversimplifies. Those who argue that, having worked hard to save them, I might be harmed by the extinction of tigers in, say, the first decades after my death often still believe I am beyond harm if this occurs thousands of years into the future.

biography outlives biology, then again, he is harmed in both cases. Either way, whether this man is dead or alive now seems to be an irrelevant detail.

I am, then, in full agreement with this pairing of the cases. If you think this man is harmed when alive, so too should you think he's harmed when dead. If you think a woman can harm her man by having even a fully concealed affair elsewhere, then you should think the student harms Beth by cutting in to her dead body. But my intuitions are the reverse of McMahan's – as it's hard to see that he is harmed if his business collapses after he dies, so too, as mere timing can't make a difference, should we doubt that any harm results from an earlier collapse. As, more generally, I deny that there are posthumous harms so too do I doubt that there are undiscovered ante-mortem harms.

The point here invites a reappraisal of the difficulty with posthumous harms. Like many, I've emphasised the timing problem – how can we be harmed ante-mortem by events post-mortem? Yet it should by now be clear that this serves only to bring into focus the underlying and considerably more general problem – how can we be harmed by events that simply don't impinge upon us? Post-mortem events leave us just as we were. But many ante-mortem events similarly leave us just as we are.

IX

I offered a model of harm, derived from what I take to be some uncontroversial cases. That model implies that harm involves either some adverse change in the victim's internal condition, brought about by ordinary causal interactions, with harming events preceding, and bringing about a harmed state, or the prevention of some beneficial change, similarly brought about. Posthumous harms, however they are construed, demand some substantial deviation from this model. Either we preserve, after a fashion, ideas of impact and change but have now only a confusing account of causation, or we keep faith with timing, but give up, more or less, on change. But, I've argued, there is neither need nor justification for any of this. As with the likes of betrayal, so we can always properly describe, and often legitimately complain about, cases of supposedly posthumous harm without having to assimilate them, via tendentious linguistic revisions, to the more standard cases. The model survives.⁴²

⁴² I should like to thank Stephen Holland, Gary Kemp and James Taylor for their always useful comments on earlier drafts of this paper.

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