

Did the Bills Harm Tom Brady?

- *Overview of Temporal Comparative Account of Harm*

1. Abstract

Harm is a concept in philosophy that has been able to elude definition. Many attempts have been made to formulate a definition of harm, however they have all been futile. This has led many to question if it is even possible to define harm, or if we really even need a definition of harm? My answer to both of these questions is yes, harm is something that is worth caring about and has many practical implications in society today. The theories of harm that have been the closest thus far have been comparative accounts of harm, which compare different states of the agent undergoing the harm. The most common of these comparative accounts has been the counterfactual comparative account of harm. This approach has faced many problems like preemption, overdetermination, and omission. I argue the comparative account of harm is correct, but the wrong comparison is being made. Instead of a counterfactual comparison we should make a temporal comparison, and evaluate whether or not the agent has become worse off than he or she was before the harming event occurred. First I will use Bradley's model to sketch a brief definition checklist of harm. I will then briefly evaluate a general counterfactual theory of harm and illustrate why it falls short. Next I will pose the temporal comparative account of harm (TCA), and explain how it gets around the counterexamples that tripped up the counterfactual approach. Finally I will present some objections to TCA, and try to respond to them.

2. Criteria for Definition of Harm

So what features must an ideal theory of harm possess? Ben Bradley in his paper *Doing Away With Harm*, states many of these ideal features, which I will consider now.

1. Extensional Adequacy, a theory must pick-out things that harm, and exclude things that aren't harms. For example, if a theory entails me punching someone in the stomach doesn't harm him or her, then we should reject that theory.

2. Axiological Neutrality, a theory shouldn't presuppose any specific theory of well being. For example, if an account of harm presupposes hedonism, we should give the theory a red check.
3. Ontological Neutrality, a theory should entail that things other than people can harm us. For example, an attack by a cougar or being stampeded by elephants. Moreover, it must account for non-personal events as harms like earthquakes or tornadoes.
4. Amorality, a theory of harm shouldn't presuppose all harms are wrong or blameworthy.
5. Unity, a theory should be able to explain what all harms have in common.
6. Prudential Importance, a theory should entail harm is something worth caring about, or something that we should try to avoid.
7. Normative Importance, a theory of harm should explain why harm is something we should form ethical laws around.

3. Counterfactual Account of Harm

Now that we have an understanding of what we are searching for in an adequate definition of harm, we will turn to the counterfactual account of harm and see how it satisfies these conditions. The standard counterfactual account of harm states.

- A harms S if and only if S would have been better off had A not occurred.

A is meant to stand for any events, and S is the agent undergoing a harm. To illustrate this briefly imagine that the Bills are playing the Patriots and Mario Williams sacks Tom Brady, and breaks his leg, which ends his football career. In this case Mario Williams harmed Tom Brady because Tom Brady would have been better off, had Mario Williams not sacked him and broke his leg. In cases like these where there is one harm the counterfactual account of harms seems to do very well, and meet our intuition.

3A. Preemption

There are a few counter examples, the first we will examine are cases of preemption. Imagine again the Bills and the Patriots playing, and Mario Williams sacks Tom Brady breaking his legs. However, imagine if Mario Williams didn't sack Tom Brady, Kyle Williams would have in the exact same manner breaking his leg in the same exact way. In this case the counterfactual account of harm would have to say that Mario Williams didn't harm Tom Brady, since he wouldn't have been better off if the event hadn't occurred. This clearly seems incorrect. Mario Williams severely harmed Tom Brady breaking his leg and ending his football career. This costs Tom Brady extreme pain as well as millions of dollars since he will be unable to play again. It is clear that Mario Williams sacking Tom Brady is a harm to him, and any theory that doesn't yield that consequence is a major strike against it.

3B. Overdetermination

Another problem that the counterfactual account of harm faces is cases of overdetermination. These cases are similar to preemption cases, except there are two sufficient causes of a harm occurring simultaneously, instead of one preempting the other. Imagine again the Bills are playing the Patriots and dominating them. Both Mario Williams and Kyle Williams burst into the backfield at the same time and sack Tom Brady, breaking his leg and ending his career. The force of both hits were sufficient enough to break his legs by themselves. Once again the counterfactual account of harm would have to conclude that neither event was a harm to Tom Brady, since he wouldn't have been better off if either event hadn't occurred.

3C. Omission

One final strike against the counterfactual account of harm is the problem of omission. The problem of omission is when someone fails to act and benefit someone leaving someone else worse off than they would have been if the had agent performed the action. There are many cases of people omitting actions that clearly do not constitute a harm, however the counterfactual theory of harm is forced to claim that they are harms. Imagine once again the Bills are playing the Patriots, the game just ended and the Bills won 24-10. Before the game Tom Brady found out Kyle Orton the Bills quarterback was his long lost brother and was planning to give him his \$100,000 game check when they shook hands after the game. However, Tom Brady was feeling like a sore loser after the tough loss and neglected to give Kyle Orton his long lost brother the \$100,000 check. Under the counterfactual account of harm they would have to claim Tom Brady harmed Kyle Orton by not giving him his

\$100,000 check since Kyle would have been better off if he had gotten the check. Tom Brady clearly didn't harm Kyle Orton though, he has no obligation to give Kyle Orton the check. Furthermore, Kyle's level of well being was incredibly high following the historic victory of the team. It seems like a devastating objection to claim Tom Brady harmed Kyle Orton by not giving him \$100,000, and for that reason we should abandon the counterfactual approach to defining harm. Now that we have examined these objections it becomes evident the traditional counterfactual approach to harm, doesn't satisfy criterion 1 extensional adequacy. It is unable to pick out things we would obviously identify as harms. Furthermore, it includes things we concretely want to claim aren't harming actions.

4. Temporal Comparative Account vs. Counterfactual Problems.

It is clear from our analysis above the counterfactual account of harm is past the point of no return, and unsalvageable. That doesn't mean we should abandon the comparative approach of harm as a whole. There is something that seems so close about the comparative approach. Harm seems intuitively comparative the essence of harm is to be made worse. This basic notion of becoming worse off is the basis for the temporal comparative account of harm. The counterfactual approach goes wrong when they compare the agent with how he would have been if the event had not occurred. An accurate account of harm should simply compare the agent with how he was before the event occurred to determine if there was a harm. We will call this the Temporal Comparative Account or TCA.

- A harms S at t if and only if A causes S to be worse off at t than S was before A occurred.

The same statement can be made for benefits as well it goes as follows.

- A benefits S at t if and only if A causes S to be better off at t than S was before A occurred.

Let us examine how this theory does against the simple example of Mario Williams sacking Tom Brady by himself. Under TCA we would accurately be able to claim Mario Williams sacking Tom Brady and breaking his legs is a harm because Tom is made worse off than he was before he was sacked. If we were to replace the symbols in the definition with the event of Tom Brady breaking his leg it would go as follows. A is underlined, and S is bolded.

- Mario Williams sacking Tom Brady harms **Tom Brady** because Mario Williams sacking Tom Brady makes **Tom Brady** worse off after the sack occurred, than he was before Mario Williams sacked him.

This formulation seems correct and moreover it seems to capture the essence of why Tom Brady was harmed, i.e. the breaking of his legs making him worse-off. Now let us examine how this theory of harm does with the hard cases of preemption, overdetermination, and omission that proved to be such problems for the comparative account of harm.

4A. Preemption.

Once again in the preemption case Mario Williams sacked Tom Brady breaking his legs. However, if Mario Williams didn't sack Tom Brady and break his legs Kyle Williams would have sacked Tom Brady broke his legs in the exact same way at the exact same time. This proved a problem for the counterfactual account because they were unable to say Tom Brady would have been better off if Mario Williams hadn't sacked him, since Kyle Williams would have sacked him in the exact same way. If they are unable to say that Tom Brady would have been better off if the event hadn't occurred, they are unable to claim Tom Brady was harmed.

TCA does not run into this problem. Whether or not Kyle Williams sacked Tom Brady is irrelevant to Tom Brady's level of wellbeing after Mario Williams breaks his leg. Tom Brady is still made worse off than he was before Mario Williams sacked him, and we can still conclude he is harmed. Furthermore, the justification and severity of Tom Brady's harming is the exact same in the preemption case as it is in the simple case. This meets our intuitions whether or not Kyle Williams would have sacked Tom Brady plays no role in determining the severity of his harm.

Let us examine another case of preemption where the harms are not identical, and a lesser harm preempts a greater harm. Imagine Bills Tight End Scott Chandler drops a game-winning touchdown catch and the Bills lose to the Patriots. This infuriates Bills coach Doug Marrone and he kicks Scott Chandler off the team. This harms Scott greatly, he loses millions of dollars and is unable to find another job. Now imagine if Doug Marrone didn't kick Scott Chandler off the team he would

have cut-off both his hands, so Doug would never be reminded of the hands that dropped the touchdown. Cutting Scott Chandler's hands off would have been much worse for him than simply cutting him from the team. Normal counterfactual accounts of harm are forced to say Doug Marrone kicking Scott Chandler off the team wasn't a harm to him. Furthermore they must say it was actually a benefit since he would have been worse off if they hadn't kicked him off the team.

This example is once again no problem for my theory. Cutting Scott Chandler from the team makes him worse-off than he was before Doug Marrone cut him, and therefore he is harmed. It is irrelevant to the harm whether or not Doug Marrone would have cut his hands off. The only relevant comparison is the future state with the state prior to the harming event. So if we replace the symbols in TCA with event it would go as follows. A is underlined and S is bolded.

- Doug Marrone cutting Scott Chandler from the team harms **Scott Chandler**, because Doug Marrone cutting Scott Chandler from the team makes **Scott Chandler** worse off after Doug Marrone cut him from the team, than he was before Doug Marrone cut him from the team.

This formulation seems to capture the essence of why Scott Chandler was harmed, and arrives at the correct solution. It can be seen clearly that preemption cases pose no threat to TCA.

4B. Overdetermination

Now we will examine how TCA responds to overdetermination cases. Overdetermination cases are when there are two sufficient causes for an event. Imagine both Mario Williams and Kyle Williams burst into the backfield at the same time and sack Tom Brady, breaking his leg and ending his career. The force of both hits were sufficient enough to break his legs by themselves. The counterfactual account of harm would have had to conclude that neither event was a harm to Tom Brady, since he wouldn't have been better off if either event hadn't occurred. TCA faces no such problem since both events are sufficient causes for Tom Brady to break his legs both events harm him. TCA can accurately claim Mario Williams, Kyle Williams, or both Mario Williams and Kyle Williams sacking Tom Brady harm him since the all the events make him worse off than he was before the event occurred.

4C. Omission

The problem of omission is when someone fails to act and benefit someone leaving someone else worse off. We will again consider the example where Tom Brady didn't give his long lost brother Kyle Orton his \$100,000 game check. The counterfactual theory had to claim that Tom Brady harmed Kyle Orton since Kyle Orton would have been better off if Tom Brady had given him the check. It is clear though Tom Brady didn't harm Kyle Orton, Kyle's well being was extremely high following the historic victory, and Tom had no obligation to give him his check.

This poses no problem to TCA, Kyle Orton was not made worse off by not getting the \$100,000 check. His level of wellbeing just didn't rise further. Being made worse-off is the only relevant feature of harm and Kyle Orton was not made

worse off by not getting the check, and according to TCA therefore not harmed. TCA can say that Tom Brady failed to benefit Kyle Orton, since he would have made him better off if he had given him the check. However, there is no relation between failing to benefit and harming.

4D. Death

Death is perhaps the most important case that must be evaluated by a theory of harm. Before we examine how the TCA does against death, a few presuppositions must be stated. First we will assume the termination thesis, when you die you cease to exist. Secondly if you cease to exist then you have a well being of 0. The answer to how TCA deals with death is surprisingly simple and meets our intuitions. If you have a well being above 0 then death harms you, and if you have a well-being level lower than 0 death is a benefit. This seems to meet our intuitions if you are healthy and living a good life, and you suddenly drop dead of some freak accident then death is a great harm. Moreover, if you are terminally ill and suffering death is a benefit because it alleviates your suffering.

There are some counterexamples to this simple view of the harm of death, consider the following counterexample. There is a poor homeless man living in Buffalo with a wellbeing level of -5. He was once a great athlete. Now imagine further as a part of their help the homeless initiative the Buffalo Bills scout homeless people every year to sign to their football team. The homeless man decides to try out for the team, but on the way to the try-out he is struck by a bus and killed. If he wasn't struck by the bus he would have had a great try-out been signed by the Bills

went on to make millions of dollars, and live a great life. It seems the TCA approach would have to say in this case the homeless man wasn't harmed, although it clearly seems as if he was.

There are a few ways to respond this objection. The first is to simply bite the bullet. We are forced to say the homeless man getting hit by the bus benefited him. This seems plausible he was badly-off and suffering everyday and the bus did alleviate that suffering. We must claim it is irrelevant whether or not he would have become better in the future, death made him better than he was the moment before it occurred so it was a benefit.

A second response follows opposite reasoning we could build in another presupposition to our argument about death, which is when someone is alive they can't have a well being level below 0. So we would have to reject the claim that the homeless man had a well being level of -5. This may be a controversial claim and would entail everyone is harmed by death even the terminally ill patient in constant suffering. However, this still seems plausible when we die, death strips us of everything we have ever valued or loved. Even a terminally ill patient can have a well being level above 0 perhaps knowing they have a family that loves them cause them great joy. Even if they are old and without a family the simple pleasure of thinking gives them an intrinsic joy that death would strip from them. This view manages to get the homeless person example right, and will avoid any objections about terminally ill patients who chose to die, but medicine to cure their ailment becomes available shortly thereafter. The theory entails all of those patients were harmed by death.

This may appear correct at first glance death strips us from all of our abilities and powers to ever enjoy life or improve our situation. So perhaps it is correct to think that death is always a harm to us regardless of our situation. However, there are still some cases where death appears to be a benefit because it's the only way to alleviate suffering, when there is no hope of improvement in life. Imagine jealous back-up quarterback EJ Manuel has kidnapped star quarterback Kyle Orton, and has taken him to his evil back-up quarterback lair. EJ Manuel's evil lair is hidden deep beneath Ralph Wilson Stadium so Kyle Orton has no hope of ever being found and rescued. EJ Manuel subjects Kyle Orton to the most evil of all tortures making Kyle watch EJ's highlight tape over and over again. The pain of watching such a bad highlight tape is the equivalent of having acid poured into your eyes with the pain never ceasing. Kyle is trapped in EJ's lair for weeks and finally dies from the pain of watching the tape over and over again. It seems in this case it is clear Kyle Orton's death is a benefit to him since it alleviates his constant suffering, which there was no hope to recover from. However, if death is never a harm TCA cannot accurately claim Kyle's death is a benefit to him although it clearly is. Moreover, TCA must claim Kyle had a positive level of well being even though he was being constantly tortured for weeks straight.

This is a serious counterexample. There are many cases of torture and illness where we want to say death is a benefit to a person because it was the only way to alleviate their suffering. However, TCA cannot say this. The only way I can see TCA avoid this objection is by claiming that when you're alive you have the possibility of your situation improving no matter how small that probability may be. However,

when you're dead you no longer have that you can never become better off. The question of death is no simple question to answer. No matter what way you look at it you are left with some unappealing counterexamples. Simply biting the bullet and claiming the homeless man was not harmed may not be as serious of a counterexample as it first appeared in the grand scheme of things.

5. Objections

5A. Smoking EJ

The first counterexample states one can still become better off, while being harmed by something. Consider the following example, E.J. decides to pick up chain smoking after he is cut from the Bills. This chain smoking cause him to develop lung cancer 20 years later which harms him greatly. We clearly want to claim that choosing to smoke harmed E.J. However, imagine further that E.J. was at a dark place in his life when he picked up chain smoking, he was depressed after being kicked out of the NFL and his well-being level was only +2. Now imagine in the 20 years since then his life has improved drastically in some levels with exception to his lung cancer. However, his level of well being is still higher than when he started smoking, we will say its +5. It would appear TCA cannot accurately claim that the smoking caused E.J. harm since he is not made worse-off than he was before he started smoking. This may at first seem like a great problem, however a simple addition to our theory of harm can be made to account for this objection. The new definition of harm goes as follows.

- A harms S at t if and only if A causes S to be worse off at t than S was before A occurred, with some respect to his or her wellbeing.

This modification leaves us with a pro-tanto theory of harm to complement an overall theory of harm, which remains unchanged. A pro-tanto harm is a harm with some respect to your level of well being. Smoking caused E.J. a pro-tanto harm since it made him worse off with respect to his lung quality. However, it was not an overall harm since he was made better off than he was before he started smoking. This seems to be correct smoking, definitely harmed E.J. to some level it caused a severe decrease in his health and quality of life. However, it also led to a casual series of events that led him to become better off than he was before he started smoking, so we can say it benefited him as well.

So to summarize this theory has left us with two accounts of harm overall harm, and pro tanto harm. The definition of overall harm remains unchanged.

- Overall harm - A harms S at t if and only if A causes S to be worse off at t than S was before A occurred.

Now there is an additional theory of pro tanto harm, which we formulated above and I will state again for clarity.

- Pro tanto harm - A harms S at t if and only if A causes S to be worse off at t than S was before A occurred, with some respect to his or her wellbeing.

To evaluate whether or not an event is an overall harm or benefit it is rather simple. You just add all the pro tanto harms and pro tanto benefits together, and whatever the result is determines the overall harming value of the event.

5B. Preventive Harms.

There are many cases where people are prevented by someone from receiving a good. Not receiving the good doesn't make them worse-off than they were but it still seems clear they are harmed. Hanser sees this as a serious problem for the theory. He writes, "when someone suffers a preventative harm, however, he needn't come to be worse off than he was before. He may simply stay as he was. He may even come to be better off than he was before. There are thus many preventative harms whose existence the temporal comparison account cannot accommodate."¹ Consider the following example, the Bills Owner Terry Pegula is very happy with Kyle Orton's play lately and slips a check for \$1,000,000 in his locker. Jealous back-up quarterback EJ Manuel sees Mr. Pegula slip it in the locker and steals the check preventing Kyle from ever receiving it. Kyle never finds out about E.J.'s thievery, so he never becomes worse-off about the loss of the money. However, it still seems obvious that we want to say E.J. Manuel harmed Kyle he stole 1,000,000 dollars from him that would have made Kyle much better off. It appears under my account of harm we are unable to classify E.J.'s actions as a harm to Kyle, while they clearly seem like they are.

¹ Hanser, *Metaphysics of Harm* pg. 429

The best way to respond to this first objection is simply biting the bullet. We simply claim Kyle wasn't harmed by E.J. since he never became worse off, the severity of the action in this case exaggerates the wrongness of the action. The fact the E.J. Manuel infringed on Kyle Orton's rights makes us want to claim E.J. did something harmful. However, that is not the case just because E.J.'s actions are morally wrong it doesn't entail they were harmful. There are many cases where people are prevented from receiving a good that we don't consider harms. Imagine that my favorite sweets are Bills Brownies, which I believe are only sold at Bills games. Anytime I get a chance to eat these brownies they give me incredible joy, and improve my level of wellbeing. Now imagine there is actually one gas station in Buffalo that sells these brownies, and I stop at that gas station. However, right before I got to that gas station Hungry Harry was just there and bought the last Bills Brownie. I go to the gas station get my gas, and continue on with my day. Not getting the brownie never effects me or makes me worse off. In this case we would clearly want to say Hungry Harry didn't harm me by buying the last brownie.

The difference between the E.J. Manuel and the Hungry Harry case is not the harm done. In both cases Kyle and I would have been better off if the agents hadn't acted. The difference is the wrongness or blameworthiness of the actions. It is safe to say Hungry Harry didn't harm me by taking the last Bills Brownie. It then follows that E.J. Manuel didn't harm Kyle Orton by stealing the \$1,000,000 from him. The difference in the two actions is the wrongness or blameworthiness of E.J.'s actions. E.J. stealing the money was wrong because it violated Kyle's rights to his money, and

was done with bad intent. His actions were not wrong because they harmed Kyle, since Kyle was never made worse off.

5c. How much Before

TCA claims A harms S at t if and only if A causes S to be worse off at t than S was before A occurred. It seems like an infinite possibility of times can be plugged into the definition above. Matthew Hanser believes this is a serious problem for TCA he writes, “the temporal comparison account holds that harm consists in a person's being less well off than he was at some earlier time and there are innumerable earlier times with respect to, which this comparison can be made.”² Hanser believes the possibility of these infinite comparisons is a problem for TCA.

I do not see an infinite possibility of comparisons as such a serious problem. The ambiguity of temporal comparisons forces us to say Mario Williams harmed Tom Brady compared to how he was 25 years ago, 35 years ago, even 40 years ago. This may sound like an unappealing consequence, however it is not. The statement Mario Williams sacking Tom Brady harms him because it made him worse off than he was 35 years ago is true, we just don't talk about harms in that way.

In fact I argue a theory claiming Mario Williams sacking Tom Brady harms him because it made him worse off than he was 35 years ago is not only a small bullet to bite. It is the actually correct consequence, and if a theory doesn't yield this result it would raise a major red flag. Harms don't expire consider the chain smoker example again. Chain-smoking harmed E.J. Manuel because it made him worse off

² Hanser, *The Metaphysic of Harm*

than he was 20 years ago. For illustrative purposes imagine each cigarette lowers his level of well being by .01, and E.J. smoked 5 cigarettes yesterday. It is true that smoking harmed E.J. because it made him worse off than he was 20 years ago. It is also true that smoking harmed E.J. because it made him worse off than he was yesterday. However, when we talk about harms we say smoking harmed E.J. because it made him worse off than he was 20 years ago, but that doesn't mean that the statement smoking harmed E.J. because it made him worse off than he was yesterday was false. The same is true of the Mario Williams case, when we talk about harm we say Mario Williams harmed Tom Brady because he caused him to be worse off than he was before the sack occurred. However, it is also true that Mario Williams harmed Tom Brady because he made him worse off than he was 25, years ago, 35 years ago or even 40 years ago.

This begs the question what if Mario Williams sacking Tom Brady didn't make him worse off than he was 10 years ago? What if Tom Brady was in an equally bad state? Consider the Mario Williams breaking Tom Brady's legs example once again. However, imagine Tom Brady actually broke his legs 10 years earlier in the same exact way. We will call this point in time t_1 , and we will call the most recent time Mario Williams broke Tom Brady's legs t_2 . The time t_1 occurred before t_2 occurred, and Tom Brady was just as badly off as he was after t_2 's occurrence. He was in an identical state of having broken legs. So it would seem we would have to say that Mario Williams sacking Tom Brady didn't harm him because it didn't make him worse off than he was before t_2 , because he was in the same bad state relative to his harm at time t_1 .

I have a brief and simple response to this objection, 'who cares?' This may sound intuitively unappealing but I do not think it is a serious consequence. TCA is accurately able to classify Tom Brady breaking his leg as a harm at every relevant comparison. In my opinion if Tom Brady isn't worse off than he was 10 years ago than he wasn't harmed. It does not matter if we don't consider someone harmed at every single temporal comparison. What is important is that we considered them harmed at the relevant temporal comparisons. Evaluating every single temporal comparison to find an incorrect instance of harm is the philosophical equivalent of evaluating every single 'what could have happened' for the counterfactual approach. Any advocate of the counterfactual approach would tell you it doesn't matter what could have happened. The relevant comparison is between what would have happened and what did happen. The same is true TCA it doesn't matter if an agent isn't harmed relative to an event 10 years ago. What is important is the agent is harmed relative to the event that caused the harm.

5D. Can a Harm become a Benefit

It seems like under this account of harm the value of an event can shift from a harm to a benefit over a period of time. However, it should be impossible for the same event to have to both benefit and harm someone. To consider this imagine the Bills vs. Patriots game again. Imagine the Patriots jump out to an early lead and are winning 10-0. It seems the Bills and their fans are harmed by the Patriots and the game at this point, the score of the game is making them worse-off. Now imagine the Bills storm back and win the game 24-10, it is clear the game was a benefit to the

Bills players and fans. The whole value of the Bills game changed from a harm to a benefit.

The point that is shown here is that although it is clear the value of the entire game shifted from a harm to a benefit, the value of the Patriots beating the Bills 10-0 didn't change from a harm to a benefit. That specific event still remains a harm. The Patriots winning 10-0 was just a smaller event that was a harming feature in a larger beneficial event. We determine 'what events are' through arbitrary labels, for example the Bills playing the Patriots is an event. This event is made up of thousands of smaller events, which I will call mini-events that have their own harming value. The Bills playing the Patriots isn't some fundamental primitive event it is an event, defined by humans comprised of millions of mini-events. For example, every play within the game is a mini-event of the event the 'Bills Patriots Game.' Throughout the game some plays(mini-events) are beneficial to the Bills and some plays (mini-events) are beneficial to the Patriots. The overall value of these mini-events determine the whole value of the event that we arbitrarily labeled. This leaves it subject to change at anytime during the event more mini-events can happen that shift the overall value of the event from a harm to a benefit, until the event has ended. The value of these mini-events never change in value, and this is the important feature and no contradiction arises.

Let us consider another example E.J. Manuel has a cold, which has lowered his level of well being to a 2. We will call this point in time t_1 . He then takes some medicine that makes him feel nauseous and sore, which lowers his well being level down to a -5, call this time t_2 . A few hours later he begins to feel much better and his

level of well being jumps up to a +10, call this time t_3 . It seems at t_2 taking the medicine harmed him, but at t_3 it benefited him. I see no problem in saying this the medicine made EJ feel worse at t_2 , this pro tanto harmed him since it made him worse off in some respect than he was before he took the medicine. Then E.J. felt much better at t_3 so taking the medicine was a pro tanto benefit to him at t_3 , since he was better off in some respect than he was at t_2 . Since the medicine made E.J. better off overall from t_1 to t_3 taking the medicine was an overall benefit to him. I see no contradiction in this and believe TCA yields all the correct in this example.

5E. The Drowning Quarterback

There are many cases where an agent fails to act, and we want to think their failure to act constitutes a harm. However, TCA only accounts for harmful events it doesn't classify non-events or actions as harms. This is the opposite problem of the omission. Consider the following example, EJ Manuel sees Kyle Orton drowning in a shallow pond. He could easily jump in the pond and save the Kyle, however EJ chose not to and lets Kyle drown and die. At first glance it seems clear that we want to say EJ harmed Kyle by letting him drown. However, TCA cannot say this because EJ didn't not cause Kyle to drown and be worse-off, EJ merely failed to benefit him by saving his life and let him drown. Somewhat controversially I think this is correct EJ did not harm Kyle. This doesn't mean his actions were not despicable and impermissible, it just means he was not the harming agent. There is no harmonious relation between harm, wrongness, and blameworthiness it is much more complicated. TCA still claims that E.J.'s actions are wrong and blameworthy

however, they are not harming. Whoever or whatever caused Kyle to drown is what harmed the him.

There is another interesting response to this objection, and this is to claim that some omissions are causes. Imagine Doug Marrone falls to in love with coaching the Bills and forgets to feed his kids for a week, and they die. It seems in this case we want to say Doug Marrone not feeding his kids caused them to starve, and therefore say Doug Marrone caused his kids to starve. We want to say this despite the fact that Doug didn't commit any actions he only omitted them. If we viewed acts of omission in this way we could claim EJ harmed Kyle because he didn't try to save him, and it caused him to drown. However, if we accept this view of causation this would lead us back into the initial problem the counterfactual approach had with the problem of omission. This was the example where Tom Brady didn't give Kyle Orton his 100,000 game check, and we correctly concluded this non action didn't harm him. The first problem of omission seems to constitute a harm at least intuitively, and the second clearly does not. To me the difference in the actions is not the harm done, but the wrongness or blameworthiness of the actions. The ambiguity of omission and causation, leaves us with unappealing consequences on both sides when deciding whether the events of harmful or not. This leads me to lean back towards the first response when dealing with harms of omission; I believe TCA correctly doesn't classify any acts of omission as harmful. What instead makes the actions 'wrong' or 'bad' is something else entirely.

5F. Slowing the Suffering

There are many cases where someone is harmed making them worse off than they were before. However, if the agent hadn't acted the person would have been worse off to a much higher degree. The following example follows the form of the, "doctor patient" example presented by Alastair Norcross in his paper *Harming in Context*.³ Imagine the Bills are playing the Patriots, and in a hopeless situation. E.J. Manuel is playing and their chances of winning are quickly vanishing. They are losing 24 – 0 at the end of the first quarter. This score line is a great harm to the Bills fans. Doug Marrone benches E.J. Manuel and puts Kyle Orton into the game. Kyle Orton cannot salvage them game, but he can slow the suffering of the loss. The Bills go onto lose 38 – 0. The fans suffering continues to slowly rise as the second half drags on and they endure the embarrassing loss. However, if Doug Marrone didn't bench E.J. Manuel for Kyle Orton then they would have gone onto lose 100 – 0. TCA implies implies that Doug Marrone harmed the Bills by putting Kyle Orton in the game because it made the fans worse off than they were before he entered the game. However, Norcross wants to say Marrone didn't harm the Bills fans at all. Instead he benefited the fans greatly because they would have experienced much more harm and suffering if they had to watch E.J. Manuel play the rest of the second half.

³ *Harming in Context*, Albert Norcross pg. 149-150. "Consider a case involving a doctor, named 'Doctor' and a patient, named 'Patient'. Call this case Doctor: Patient is terminally ill. His condition is declining, and his suffering is increasing. Doctor cannot delay Patient's death. The only thing she can do is to slow the rate of increase of Patient's suffering by administering various drugs. The best available drugs completely remove the pain that Patient would have suffered as a result of his illness. However, they also produce, as a side-effect, a level of suffering that is dramatically lower than he would have experienced without them, but significantly higher than he is now experiencing. So the result of administering the drugs is that Patient's suffering continues to increase, but at a slower rate than he would have experienced without them. The very best thing she can do has the consequence that Patient's suffering increases. That is, after Doctor's action Patient is suffering N amount of suffering as a direct result of Doctor's action, and N is more than Patient was suffering before the action.

Albert Norcross believes this is a devastating objection to TCA he writes, “Clearly, we can’t simply compare Patient’s(the Bills fans) welfare before and after a particular action. Doctor(Doug Marrone) has made Patient (the Bills fans) better off: not better off than he was, but better off than he would have been. We compare levels of welfare, not across times, but across worlds. Doctor(Doug Marrone) has benefited Patient(the Bills fans), because she has made Patient(the Bills fans) better off than he would have been had she done something else. Even though Patient(the Bills fans) is now suffering more than he was, he would have been suffering even more, if Doctor(Doug Marrone) had done anything else instead.” Norcross’s example was about a Patient and Doctor so I put the subjects of my example in parenthesis to make his statement relatable to the present dilemma.

At first glance this appears to be a tough counterexample for TCA, but I’m not so sure that’s the case. I don’t think there is anything wrong with claiming Doug Marrone harmed the Bills fans by placing Kyle Orton in the game since it made them worse-off. It is irrelevant that the Bills fans would have been much more worse-off if E.J. Manuel was left in the game. They are left worse-off in both cases and therefore harmed in both cases. You can imagine the following conversation taking place after the game.

Bills Fan’s Wife: “Hey honey how was the game?”

Bills Fan: “That one really hurt baby it was a tough loss.”

Bills Fan's Wife: "I see, but aren't you grateful Doug Marrone took E.J. Manuel out of the game? I heard it would have been much worse."

Bills Fan: "No not at all, I hate that Doug guy. It doesn't matter what it could have been, the way the team played out there today genuinely harmed me."

Bills Fan's Wife: "You mean you don't think Doug benefited you by taking E.J. Manuel out of the game and slowing the suffering?"

Bills Fan: "Are you crazy?! Pain is pain baby I don't care what it could have been the game today was harmful no matter how you spin it."

As you can see from the dialogue above it is clear the Bills fan feels harmed. The fact that it could have been much worse doesn't eliminate the fact that a harm occurred. In the Doctor case discussed in the footnote above this answer does not appear as intuitively appealing. The doctor greatly reduces the amount of suffering the patient would have endured had he not given him the medicine. So, it seems wrong to say the doctor harmed the patient. However, if we think it is right to say Doug Marrone harmed the Bills fans in the first case, it follows to say the doctor harmed the patient in the second case. The doctor's harm was justified and he was not blameworthy. However, that doesn't entail that a harm didn't occur. Once again let us imagine how the conversation between the doctor and patient would take place.

Doctor: “It looks like we have a no-win situation here sir. I can either give you some medicine that will harm you a little or I can do nothing, which will harm you a lot.

Patient: “What do you mean doc what’s going on?”

Doctor: “Well you have a disease that is going to cause you to suffer slowly, and die. Your suffering will begin in 15 minutes, and it will be intense. However, if I give you this medicine I will harm you a little now, and your suffering will be much less intense.”

Patient: “This is too bad doc, I guess you can give me the medicine and harm me to a lesser intensity now.”

Once again examining the issue linguistically it seems to suggest the doctor is harming the patient by giving him the medicine, since it will cause him some suffering. Norcross is viewing wrongness and harm, as they are one in the same. Any event that directly makes an agent worse-off than they were before the event occurred, constitutes a harm regardless of how they would have been in the future. Therefore, both the patient doctor example and the Bills loss example are correctly classified as harms, and not devastating counterexamples to TCA.

7A. Evaluation

Before I conclude this paper I think it would be useful to look back and see how TCA stacks up against Bradley's 7 desiderata for harm I stated at the beginning of the paper.

1. Extensional Adequacy, TCA picks out things that are harms it is able to get the somewhat difficult cases of preemption and overdetermination correct without issue. I believe it also gets cases of omission correct as well even if some of those cases contradict our intuitions. Moreover, none of the objections presented left the theory devastated. There are still some questions TCA needs to answer, but I believe have shown TCA doesn't have any knock down objections that should make us abandon the theory all together.

2. Axiological Neutrality, TCA gets a green check for this as well, it doesn't presuppose any theory of well being.

3. Ontological Neutrality, correct again to be harmed is to be made worse off; TCA doesn't factor in intent or moral motive when classifying harms. Meaning, it can conclude we can be harmed the same way be personal and impersonal events.

4. Amorality, correct again TCA separates wrongness and blameworthiness from harming, so it does not presuppose all harms are wrong.

5. Unity, correct again the one simple fact all harms have in common is they make the agent worse off than he was before.

6. Prudential Importance, correct again people don't want to become worse off than they were, which entails we should try to avoid being harmed or causing harm.

7. Normative Importance, this one may at first appear skeptical, above we classified a few cases of events that clearly seems wrong as non harms, and some actions that didn't seem wrong as harm. This takes away form the normative importance of harm, but I'm not sure that's an important thing. Consider this excerpt from Feit's paper, *Harms by Omission*, "Moreover, it is not clear that we should take every harming action to be prima facie wrong. In other words, it is not clear that the mere fact than an action is harmful provides a moral reason not to do it. For example, suppose that Dakota chooses a romantic partner, Skyler, which causes Sidney – who cares deeply for Dakota – much suffering. It's implausible to think that the fact that choosing Skyler is harmful to Sidney provides Dakota with a moral reason to refrain from choosing Skyler. Or, to take another example, I might plant some shrubs to which my neighbor has an allergy. It is not clear that my gardening activities are prima facie wrong even if they significantly harm my neighbor. In any case, no plausible normative principle would forbid me to plant the shrubs on my property."⁴ This is meant to illustrate the point harms occur all of the time, and there are many

⁴ Neil Feit, *Harms by Omission*

instances in which the harm carries no normative importance. So we can conclude missing this principle in Bradley's desiderata for harm isn't to much of a red flag.

8A. Conclusion

Harm is a complex concept no matter what theory we accept we are left with consequences that are less than ideal. The temporal comparative account has often been dismissed quickly when considering serious theories of harm. In this discussion of TCA I have attempted to highlight both the positives of the theory as well as some challenging counterexamples. My hope is this paper will begin to open the door so that temporal comparative accounts of harm are given more consideration in philosophical discussion. Harm seems to be intuitively something that makes us worse off than we were, and the temporal account of harm accurately captures that intuition.

References

Bradley, Ben. "Doing Away with Harm." *Philosophy and Phenomenological Research* 85.2 (2012): 390-412.

Feit, Neil. *Harms by Omission*. N.p., n.d.

Hanser, Matthew. "The Metaphysics of Harm." *Philosophy and Phenomenological Research* 77.2 (2008): 421-50.

Norcross, Alastair. "Harming In Context." *Philosophical Studies* 123.1-2 (2005): 149-73. Web.