

## 19. *Posthumous Harm*

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### 1. Introduction

Can an event that occurs after you are dead and gone benefit or harm you? Most people to whom this question is put, it is my impression, are inclined to answer in the negative. A recent paper on compensation for harms begins, “It is more or less uncontroversial that when we harm someone through wrongful conduct we incur an obligation to compensate her. But sometimes compensation is impossible: when the victim is killed, for example” (Karhu 2019, 222). Here the author takes it to be so obvious that a dead person can no longer benefit from an attempt at compensation that he can simply assert as much without comment, let alone argument.

Interestingly, however, two of the three main kinds of theory of well-being – theories that tell us what the ultimate benefits and harms are – are friendly to posthumous harm and benefit. One is *Desire Satisfactionism*, standard versions of which hold that it is bad in itself for people when their desires are frustrated, that is, when what they want to occur fails to occur. Most of us have desires about what happens after we die, for example concerning how our remains are treated. If Zed wants his remains to be cremated, and they are buried instead, his desire is frustrated. Desire Satisfactionism implies in its unrestricted form that Zed’s remains being buried is bad for Zed, or harms him, despite its occurring after he is dead and gone.

The *Objective List Theory*, a second main category of theory of well-being, can also allow for posthumous harm. On this view, there is a list of intrinsic goods and bads for a person, some of which will bear no necessary connection to positive or negative attitudes on the person’s part. Some may be such that whether an instance of them occurs for a person depends on events that occur after their death. To illustrate, many Objective List Theories maintain that knowledge is an intrinsic good; such theories might hold that *false belief* is the corresponding bad. Suppose that Christopher Walken dies this year believing that Quentin Tarantino will win an Oscar next year. Suppose Tarantino doesn’t win. Then Walken will have had one extra false belief, and thus one extra bad thing in his life, according to such a theory. And it is a bad thing whose existence depends on what happens after Walken is dead.

The third main category of theory of well-being according to the dominant taxonomy (Parfit 1984) is *Hedonism*, according to which only certain experiences – pleasure and pain – are of ultimate benefit or harm to people. Because people can’t have experiences after they are dead, Hedonism precludes the possibility of posthumous

harm. If someone is pre-theoretically inclined to view posthumous harm with suspicion, this should be seen by them as a point in favor of Hedonism.<sup>1</sup>

Although one way to figure out whether posthumous harm is possible is to figure out which theory of well-being is true and then apply that theory to the case of posthumous harm, the work on posthumous harm rarely proceeds in this top-down fashion. This is due in no small part to the fact that there is no consensus among philosophers on which theory of well-being is true. Thankfully, there are interesting arguments for and against the possibility of posthumous harm that don't assume the truth of any specific theory of well-being (though they may rule out certain theories). This chapter will explain and explore the most important of these arguments.

## 2. Preliminaries

### *a. Posthumous Harm vs. the Harm of Death*

An ancient question about death and well-being is whether death is ever bad for the person who dies. This is not our question. Our question is whether an event that occurs *after* a person's death can be bad for them. We won't explore the connections between these two questions other than to note that denying posthumous harm while accepting that death can be a harm is a coherent position. Hedonism rules out posthumous harm, as just explained, but is consistent with the leading account of the harm of death, according to which a person's death is bad for them just in case they would have gotten a better life had they not died that death.

### *b. Posthumous Benefit*

This chapter's title is "Posthumous Harm," but whether posthumous harm is possible presumably stands or falls with whether posthumous *benefit* is possible. We will move freely between both ideas.

### *c. Harming Someone vs. Making Their Life Worse*

Actually, though, posthumous "harm" may not even be the proper focus of our inquiry. Fred Feldman (1991) endorses the plausible idea that what it is for a state of affairs to be overall bad for a person is for the life the person would have gotten had it not obtained to be better than the life they actually got, in which that state of affairs obtains. Feldman

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<sup>1</sup> Ben Bramble (2016, §3) argues for Hedonism on just this basis. James Stacey Taylor (2012, ch. 3) argues against the possibility of posthumous harm by defending Hedonism. Certain impure forms of Hedonism, such as Fred Feldman's Truth-Adjusted Intrinsic Attitudinal Hedonism (Feldman 2004, 112), allow for posthumous harm of a certain sort. On this view, only pleasures are intrinsically good for us, but a pleasure's value is affected by whether its propositional object is true, which can depend on posthumous events. I am grateful to Anthony Kelley here.

is at pains to emphasize that this is just an account of when a state of affairs would be *bad* for a person – *not* of when it would *harm* a person. He stresses this because he is

inclined to suspect that the concepts of benefit and harm are in certain important ways different from the concepts of being good for and being bad for a person. One such respect might be this: it might be that it is impossible for a person to be harmed or benefitted by things that happen at times when he no longer exists. It is nevertheless still possible that something bad or something good for a person might occur at a time when the person no longer exists. (Feldman 1991, 217)

If Feldman’s suspicions are correct, the question that animates this chapter – *Can an event that occurs after a person’s death harm them?* – would *automatically* get a negative answer. That is a result worth knowing. However, a question only subtly different – namely, *Can an event that occurs after a person’s death be bad for them?* – would remain open, and might still receive an affirmative answer. This shows that we shouldn’t get too hung up on the concept of harm in particular. Even if, due to certain idiosyncrasies in the general concept of harm, posthumous harm is ruled out, so long as posthumous badness for a person is not similarly ruled out, our topic remains no less interesting and important.<sup>2</sup>

#### *d. The Afterlife*

The question whether posthumous events can harm us or be bad for us is of special philosophical interest only if there is no afterlife. If we continue to exist after death as subjects of experience, in heaven or wherever, then there are no distinctive puzzles of posthumous harm. Posthumous events would benefit or harm us in the normal way, say by causing us bliss or torment. Our discussion will thus be carried out under the assumption that there is no afterlife.

We will assume something stronger, in fact: that we stop existing entirely at the moment of death. That is stronger than the assumption that we stop existing *as subjects of experience*. On some views, we typically continue to exist for a time after death *as corpses*. In order to simplify the discussion, we will assume that that’s not true. This assumption makes the problems of posthumous harm more acute. That’s because one

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<sup>2</sup> Walter Glannon and Daniel Sperling, who endorse temporal accounts of harm, illustrate Feldman’s suspicion. According to Glannon, “when a person is harmed, she is made worse off than she was” (Glannon 2001, 138), and according to Sperling, “whether someone is harmed by an event is determined by reference to what she was before, and whether her position has improved or regressed” (Sperling 2008, 22). This view of harm may rule out posthumous harm if people don’t have a level of well-being (not even zero) at times at which they don’t exist, thus making it impossible to be worse off at such a time than one was at some previous time.

important source of them has to do with our posthumous non-existence, which implies that there is no subject there to be harmed.<sup>3</sup>

### 3. Why It Matters Whether Posthumous Benefit and Harm Is Possible, and a Related Argument for Posthumous Harm

The most familiar and obvious way to wrong someone is to wrongfully *harm* them. Some moral theories even imply a “no harm, no foul” principle whereby the only way to wrong someone is to harm them. Especially for these theories, a lot hangs on whether posthumous harm is possible. For if it is, here are some of the sorts of possible wrongful harms that may follow in its wake:

- defaming the dead
- ridiculing the dead
- breaking promises to the dead
- revealing secrets about the dead
- removing organs from the dead against their wishes
- doing research on the dead against their wishes
- performing autopsies on the dead against their wishes
- disturbing remains in the practice of archeology
- using a dead person’s gametes against their wishes to assist in reproduction
- releasing a dead artist’s unreleased works against their wishes
- ignoring a dead person’s will.

Our ability to harm the dead may also give us moral reasons or obligations *to do* certain things, such as

- punishing the dead.
- “cancelling” the dead.

And if we can benefit the dead, this may give us yet additional moral reasons to do certain things, such as:

- rewarding the dead
- honoring the dead
- helping to complete unfinished projects of the dead
- compensating the dead for mistreatment while alive.

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<sup>3</sup> Even if our assumption here is false, because we typically exist as corpses after death, the problems would remain for a restricted set of cases: those in which the death is so violent that there is no corpse. There is admittedly conceptual space for a view that we won’t have the physical space to discuss, the view that we typically continue to exist for a time after death as corpses, and only in such cases and over such periods of time is posthumous harm possible.

These are examples of ways of treating the dead whose normative status at least partly depends on whether posthumous benefit and harm is possible. They thus illustrate the practical and moral relevance of the possibility of posthumous harm. But the examples do something else too: they provide the basis for an interesting argument for the possibility of posthumous harm. They do this in part because, as Barbara Baum Levenbook notes, “There is generally less resistance to the claim that there can be posthumous wrongs – by slander, by betraying a deathbed promise, or failure to honor a contract, and so on – than there is to the claim that there can be posthumous harms” (Levenbook 2013, 194). Because the most familiar and obvious way to wrong someone is to wrongfully harm them, if the idea that posthumous wrongdoing is possible is intuitively compelling in its own right, this is good news for the idea that posthumous harm is possible. For it may be the best way to account for posthumous wrongdoing.

Although I have put the point in terms of harm-based *wronging*, advocates of this line of reasoning in favor of posthumous harm need only the claim that there are sometimes harm-based *reasons* to act with respect to dead people. Restricting the argument to posthumous harm, we might formulate it thus:

The Argument from Posthumous Reasons for Posthumous Harm

- P1. There are possible acts such that there is reason against doing them, and the reason is that they would harm some dead person.
- P2. If P1, then posthumous harm is possible.
- C. Therefore, posthumous harm is possible.<sup>4</sup>

On this way of formulating the argument, all of the action is in P1. Advocates of the argument need to produce an example that fits the description in P1. Such examples must be considered case by case.

It is intuitively compelling that we have normative reasons to behave in certain ways with respect to dead people. If Zed has made clear his wish that his remains be cremated, it is plausible that we have at least some reason to respect this wish. Indeed, it seems that we would be wronging Zed if we were to bury his remains instead. Is this because we would be harming him? Advocates of this argument say Yes, at least to some such cases. To decide this, we need to consider other possible explanations of the intuitive fact that we have reason to do things like honor Zed’s wish.

Such explanations are not far to seek. Perhaps failing to cremate Zed would be to violate his rights, to break a promise to him, to do something to his property without his consent, or to act on a non-universalizable maxim. It would certainly be to act against Zed’s wishes, and perhaps that fact, or one of these other facts, explains our reasons without also implying that we would be harming Zed. If so, then the Argument from Posthumous Reasons would be undercut.<sup>5</sup>

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<sup>4</sup> Arguments of this sort are put forth in Feinberg 1974, Feinberg 1984 (89), and Papineau 2012.

<sup>5</sup> Partridge (1981) accepts posthumous wronging while denying posthumous harm.

Although the idea of posthumous wronging is less counterintuitive to most than the idea of posthumous harming, some of the reasons to be skeptical of posthumous harm carry over to posthumous wronging, and possibly to other ways of having reasons regarding the treatment of dead people. For example, as we will discuss below, one major reason that people are skeptical of posthumous harm is that they think that a person needs to exist at a time in order to be harmed at that time. If you think that, you might also think that a person needs to exist at a time in order to have their rights violated at that time, or to be wronged in other ways at that time. This would cast doubt on P1.

Another challenge for the Argument from Posthumous Reasons can be filed under the category “one person’s *modus ponens* is another person’s *modus tollens*.” For those who find posthumous harm especially counterintuitive, if they are persuaded by advocates of the argument above that the only way to make sense of posthumous wrongs (and other reasons to act with respect to the dead) is to believe in posthumous harm, they may conclude from this not that posthumous harm is possible but that posthumous wrongs (and other reasons to act with respect to the dead) are impossible.

#### 4. The Argument from Unfelt Harms for Posthumous Harm

The most important argument in support of the possibility of posthumous harm was alluded to by Aristotle:

both evil and good are thought to exist for a dead man, as much as for one who is alive but not aware of them; e.g. honours and dishonours and the good or bad fortunes of children and in general of descendants. (Aristotle, c. 330 BCE, Bk. 1, Ch. 10)

This argument from unperceived or unfelt harm to posthumous harm is found throughout contemporary work on posthumous harm, as early as Feinberg 1974 (59-60).<sup>6</sup> Here is one way to put it:

##### The Argument from Unfelt Harm for Posthumous Harm

- P1. It is possible for an event to be bad for someone even if it has no effect on their experience (in other words, unfelt harm is possible).
- P2. If it is possible for an event to be bad for someone even if it has no effect on their experience, then it is possible for an event that occurs after a person’s death to be bad for them.
- C. Therefore, it is possible for an event that occurs after a person’s death to be bad for them.

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<sup>6</sup> It’s also found in Feinberg 1977 (305-308), Parfit 1984 (495), Feinberg 1984 (88-89), McMahan 1988 (38), Thomson 1990 (319), Boonin 2019, Frugé 2022b, and perhaps Pitcher 1984. Boonin 2019 uses the term ‘unfelt harm’.

a. P1: Denying the Experience Requirement

P1 is the denial of the Experience Requirement, a well-known doctrine in the theory of well-being:

The Experience Requirement:

An event can be good or bad for a person only if it affects their experience.<sup>7</sup>

Considered on its own, the Experience Requirement has intuitive pull. “How could something be of genuine benefit *to the person*,” Shelly Kagan asks rhetorically, “if it never ‘touches’ her, if it never alters the person at all?” (Kagan 1992, 186).

But the Experience Requirement faces powerful counterexamples. Thomas Nagel notes that the view “that what you don’t know can’t hurt you,” a colloquial way of stating the experience requirement, implies “that even if a man is betrayed by his friends, ridiculed behind his back, and despised by people who treat him politely to his face, none of it can be counted as a misfortune for him so long as he does not suffer as a result” (Nagel 1970, 76). We can assume that the man never suffers because these events never affect his experience. Kagan himself elaborates on Nagel’s example and dubs it the case of *the deceived businessman* (Kagan 1994, 311).

A possibly even more famous putative counterexample to the Experience Requirement is Robert Nozick’s *experience machine*:

Suppose there was an experience machine that would give you any experience you desired. Super-duper neuropsychologists could stimulate your brain so that you would think and feel you were writing a great novel, or making a friend, or reading an interesting book. All the time you would be floating in a tank, with electrodes attached to your brain. (Nozick 1974, 42).

Between a life on the experience machine and an experientially identical life in the real world, where these experiences are by-and-large veridical, many people judge that they would be better off in the latter life, despite the fact that they wouldn’t be able to tell which life they were in. This judgment conflicts with the Experience Requirement. If any counterexamples to the Experience Requirement succeed, P1 of the Argument from Unfelt Harm is established.

In the face of such counterexamples, some philosophers hold steadfast in their support of the Experience Requirement, sometimes even turning the argument above

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<sup>7</sup> The Experience Requirement should be understood as saying that an event can be good or bad for a person only if it *makes a difference* to their experience, in the sense that had the event not occurred, their experience would have been different.

into an argument *for* the Experience Requirement *from* the impossibility of posthumous harm.<sup>8</sup>

*b. P2: From Unfelt Harm to Posthumous Harm*

According to Joel Feinberg, “the law rarely presumes ... that a dead man himself has any interests ... that can be injured by defamation, apparently because of the maxim that what a dead man doesn’t know can’t hurt him” (Feinberg 1974, 59). This suggests that, for some people, the only thing standing in the way of accepting posthumous harm is the Experience Requirement. Such people would accept that

P2. If it is possible for an event to be bad for someone even if it has no effect on their experience, then it is possible for an event that occurs after a person’s death to be bad for them.

If you say that the only thing standing in the way of your accepting posthumous harm is the Experience Requirement, you are saying that rejecting the Experience Requirement is sufficient for accepting posthumous harm.

But in fact there are reasons to be skeptical of posthumous harm even on the assumption that there is unfelt harm. The most important such reason is the *Problem of the Missing Subject*. Epicurus presented it as a problem for the view that death can be bad for the one who dies, but it carries over to posthumous harm. To put it Epicureanly, posthumous events are nothing to us, seeing that, when we are, posthumous events have not come, and, when they have come, we are not. The rough idea is this: harm requires a subject; after a person dies, there is no subject; thus, after a person dies, there is no harm.

This Epicurean argument against posthumous harm makes use of what Jeff McMahan calls the Existence Requirement, which he formulates as the view that “a person can be the subject of some misfortune only if he exists at the time the misfortune occurs” (McMahan 1988, 33). This principle must be interpreted properly. There is no plausibility to the idea that a person must exist at the same time as any event that *causes* a bad thing to happen to them, or that is *instrumentally* bad for them. If a company dumps toxic waste near the home where Jules will be born in two years, their doing this might harm Jules even though he didn’t exist when they did it. The doctrine needs to be restricted to intrinsically bad states of affairs:

The Existence Requirement:

An event is intrinsically bad for some subject at some time only if the subject exists at that time.

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<sup>8</sup> Partridge (1981) does that; see also Bramble 2016 (§3). Other advocates of the Experience Requirement in the posthumous-harm literature include Callahan (1987, 349), Sumner (1996, 126–28), Glannon (2001), Bradley (2009, ch. 1), and Taylor (2012). For discussion see Belliotti 2011 (10–16).



It follows from the Existence Requirement together with our assumption that we stop existing at death that no event that occurs after our death can be intrinsically bad for us. This in turn plausibly implies that no event that occurs after our death can be instrumentally bad for us either.<sup>9</sup>

There are four ways that defenders of posthumous harm try to deal with the Problem of the Missing Subject. The standard way, which we can call *Antemortemism*, maintains that harmful posthumous events reach back into the past, so to speak, and bring the harm to their victims back when they were still alive. This approach adheres to the Existence Requirement, since the subject is harmed before death, when they still existed. An approach that we can call *Postmortemism* adheres to the truistic-sounding idea that posthumous harms harm us posthumously. That is, the time at which we are made worse off is after we are dead. Because the Existence Requirement also sounds truistic, some Postmortemists are moved to posit some of kind posthumous entity to fill the hole left by the missing person, a sort of surrogate welfare subject. Other Postmortemists simply reject the Existence Requirement and are content to hold that harms can occur at times at which there is no subject of harm. This second version of Postmortemism is the third possible way of dealing with the Problem of the Missing Subject. The fourth is *Atemporalism*, according to which events that occur after a person is dead can be bad for them although there is no time at which they are bad for them. This solution obeys the Existence Requirement trivially. We'll touch on each of these responses to the Problem of the Missing Subject in what follows.

## 5. Justifying Unfelt and Posthumous Harm Subjectively

The Argument from Unfelt Harm holds that unfelt harm is possible, but it doesn't say how. Any advocate of the argument owes us an account of this, which will also serve as their explanation of how posthumous harm is possible.

There are two main kinds of account: Subjective and Objective. Subjective accounts explain how unfelt and posthumous harm are possible by appealing to satisfied or frustrated pro- or con-attitudes on the part of the harmed person. Objective accounts appeal to some non-attitude-involving bad.

On Desire Satisfactionism, a leading theory of well-being, only one thing is intrinsically good for people, the satisfaction of their desires, and one thing intrinsically bad, their frustration. A desire – that it stop raining, say – is satisfied just in case its object obtains, or is true, and frustrated otherwise. Crucially for our purposes, the Experience Requirement is false on standard forms of Desire Satisfactionism. That's because a person's desire can be satisfied or frustrated without it affecting their experience. This is the Desire-Satisfactionist explanation of the possibility of unfelt harm. When the deceived businessman's wife secretly cheats on him against his wishes, he suffers an unfelt desire frustration, and thus an unfelt harm, on this account.

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<sup>9</sup> Philosophers moved by the Problem of the Missing Subject to reject the possibility of posthumous harm include Partridge (1981), Callahan (1987), and Ott (2012).

The corresponding account of posthumous harm is similar. Most of us have desires for what happens after we are dead. If Zed wants his remains to be cremated but they are buried instead, his desire is frustrated, and this is bad for him, on this theory. This is how posthumous harm is possible on this,

The Desire-Frustration Account of Posthumous Harm:

A state of affairs posthumously harms some subject when and because it (i) obtains after the subject is dead and (ii) frustrates a desire of the subject.

When Zed's remains are buried, this frustrates his desire that they be cremated and thus posthumously harms him, according to the Desire-Frustration Account.

Other Subjectivist accounts of posthumous harm are available, such as accounts that appeal to the frustration of *values* or *aims* rather than desires, or those that appeal to the satisfaction of *aversion* (which happens when something that one is averse to comes about) rather than the frustration of desire. But the Desire-Frustration Account is the standard Subjective account. In fact, it is *the* standard account of posthumous harm.<sup>10</sup>

You don't need to be a full-blown Desire Satisfactionist about well-being to accept the Desire-Frustration Account of Posthumous Harm. Simply believing that desire frustration is *among* the basic bads is sufficient. Even an Objective List Theorist of well-being can accept a Subjectivist account of posthumous harm, so long as they include suitable attitudinal bads on their list. Because the Desire-Frustration Account is committed only to the claim that desire frustration is *sufficient* for harm, it avoids some popular objections to Desire Satisfactionism, which claims that desire frustration is also necessary for harm.

*a. Defective Desires*

But there are objections to the sufficiency claim. One holds that desire frustration is insufficient for harm on the grounds that the frustration of desires for stupid or immoral things is not bad for us. A person might want to spend their life counting the blades of grass on certain lawns (Rawls 1971, 432; Papineau 2012, 1092) or might want to light a cat on fire for fun (Harman 1977, 4). These may be good counterexamples to the idea that desire frustration is sufficient for harm, but they don't really threaten the desire-frustration approach to posthumous harm, because one can simply restrict the view in a way that excludes the objectionable cases but keeps in typical posthumous cases. For example, one might hold that the frustration of desires *for things unworthy of desire* isn't bad for people, and thus formulate the account to exclude them (Papineau 2012). Because many of the things that people want to occur after they are dead are in no way unworthy of being wanted, this modified account will still deliver posthumous harm.

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<sup>10</sup> Advocates of the Desire-Frustration Account of Posthumous Harm include Pitcher (1984), Feinberg (1984, ch. 2), Luper (2004), Scarre (2013), Boonin (2019, esp. ch. 3), Dorsey (2018), and Frugé (2022b). Portmore (2007, 27), Bradley (2009, 42), and Taylor (2013, 636) refer to it as the standard account.

*b. Remote Desires, and a Desire Satisfactionism Unfriendly to Posthumous Harm*

Other things that people want, while not stupid or immoral, seem too remote from their lives to affect their welfare. "Suppose," writes Derek Parfit,

I meet a stranger who has what is believed to be a fatal disease. My sympathy is aroused, and I strongly want this stranger to be cured. We never meet again. Later, unknown to me, this stranger is cured. On the Unrestricted Desire-Fulfillment Theory, this event is good for me, and makes my life go better. This is not plausible. (Parfit 1984, 494)

Parfit recommends that Desire Satisfactionists modify their theory to exclude desires that are not about the subject himself or his own life. This restriction seems compatible with posthumous harm because, intuitively, while the stranger's being cured is not about Parfit, how Zed's remains are treated is about Zed. An alternative possible response holds that what is sufficient for harm in the ballpark of desire frustration is *aim* frustration. It is no aim of Parfit's that the stranger be cured, but it is in the relevant sense an aim of Zed's that his remains be cremated simply because he does something to bring that about (he makes his wish known).

Interestingly, some Desire Satisfactionists find the idea of posthumous harm counterintuitive enough that they modify their theory to avoid it. Just as Parfit thinks the stranger's being cured is too remote or disconnected from his life to be a benefit to him, Desire Satisfactionist Mark Overvold thinks the same of events that occur after one's death. "It is hard to see how anything which happens after one no longer exists can contribute to one's self-interest," writes Overvold (1980, 108). He proposes that the only desires whose satisfaction or frustration is intrinsically good or bad for you are those for events that can occur at a time only if you exist at that time. Since any event that occurs after your death is an event that can occur when you don't exist, the frustration of a desire for a posthumous event is never bad for you, on Overvold's Desire Satisfactionism.

This illustrates an interesting methodological point: that the simple top-down approach to determining whether posthumous harm is possible, whereby we first independently figure out the true theory of well-being and then apply it to the case of posthumous harm, may be something of a mirage. For in order to figure out the true theory of well-being, we may first need to know what to say about posthumous harm. Some method of reflective equilibrium is more realistic (see Knight 2023).

*c. Changing Desires*

Richard Brandt asks us to

Suppose my six-year-old son has decided he would like to celebrate his fiftieth birthday by taking a roller-coaster ride. This desire now is hardly one we think we need attend to in planning to maximize his lifetime well-being. Notice that we pay no attention to our own past desires. (Brandt 1979, 249)

Brandt's example suggests that if a person had a desire in the past that a certain thing happen now, and the person no longer has that desire, then frustrating it is harmless. Brandt wasn't thinking about posthumous harm, but, because such desires appear in all cases of posthumous harm putatively explained by desire frustration, Brandt's case of changing desire poses a serious challenge for the Desire-Frustration Account of Posthumous Harm. Any desire that you have for what happens after you are dead is a desire that, when that time comes, you will no longer have. The issues raised by changing desires are among the most philosophically rich in the whole topic of posthumous harm.

One natural response to Brandt's case is to place a temporal restriction on one's desire-frustration principle. Such a principle might hold that the failure of some desired event to occur at some time is bad for the subject only if the subject still wants the event to occur when that time comes. If I want it not to be raining tomorrow during the match, its raining during the match is bad for me only if, during the match, I still want it not to be raining. This *Concurrentist* view might be the right solution to the Problem of Changing Desires, but it is bad news for posthumous harm. When the time comes to cremate Zed, he won't still have a desire to be cremated, and so Concurrentism will imply that we do him no harm by burying him instead.

A solution friendlier to posthumous harm makes use of the concept of desires that are conditional on their own persistence. Many of our desires are conditional, for example on the weather: I want to go for a walk later, but only if, when later comes, it is not raining. Some of our desires are conditional on themselves, that is, on their own persistence: I want to go for a walk later, but only if, when later comes, I still want to go for a walk. Plausibly, it would be of no benefit to me to go on the walk, nor a harm not to go, if this condition is not met. More generally, when it comes to desires about the future that are conditional on their own persistence, their frustration is bad for the subject if and only if the desire is still there when the time comes to satisfy it. Assuming that Brandt's son's desire was conditional on its own persistence, this view delivers the desired result that he suffers no harm when he doesn't ride a roller-coaster on his fiftieth birthday.

This view will also say that if a future-directed desire is *not* conditional on its own persistence – that is, if the subject wants the object of the desire to obtain even if the desire is gone when the time comes for the object to obtain – then it *is* bad for the subject if the object doesn't obtain. This is just what the defender of posthumous harm wants and needs. For desires while one is alive about what happens after one is dead, the very desires that figure in desire-frustration explanations of posthumous harm, are not conditional on their own persistence. No one wants their remains to be cremated

only if, when the time comes to cremate them, they still want them to be cremated. In this way, advocates of the Desire-Frustration Account hope to secure posthumous harm while avoiding the result that Brandt's son suffers any harm by not riding a roller-coaster on his fiftieth birthday.

But is it plausible in general that the frustration of past desires that were not conditional on their own persistence is necessarily harmful? Suppose that on the son's fiftieth birthday we learn that his long-abandoned desire was *not* conditional on its own persistence. If he had been asked at age six, "Would you like to celebrate your fiftieth birthday by taking a roller-coaster ride even if, on that day, you no longer want to?," suppose that he would have answered with a resounding "Yes!" Advocates of the Desire-Frustration Account are committed to saying that, in this case, he *would* be harmed if he were not to ride a roller-coaster. To be sure, it may not be an *overall* harm; perhaps his aversion to riding today is strong enough that it is in his overall interest not to ride even on the view under discussion. But still, though some deny it, it seems implausible to claim that it is *to any extent* a bad thing for him not to ride today. As Brandt puts it, "This desire now is hardly one we think we need attend to in planning to maximize his lifetime well-being."

A third response to the Problem of Changing Desires maintains that a past desire can be ignored if the reason the subject no longer has it is simply that they changed their mind. The son's past desire can be ignored on this view, but the desires of the dead cannot, because the reason a dead person no longer has some desire is *not* that he changed his mind; it is that he is dead.

This idea is friendly to posthumous harm, but it does not seem entirely adequate. Suppose the son lost his roller-coaster desire not because he changed his mind but because he hit his head. It still seems that we can ignore it on his fiftieth birthday.

The fourth and final response that we'll consider appeals to time bias. Brandt notices that, when deciding what to do at some time, we pay no attention to desires that we no longer have about that time. If this is justified, one natural explanation, unfriendly to posthumous harm, is that frustrating such desires is harmless. But an explanation friendlier to posthumous harm is possible. It is that frustrating such desires is a harm, but a harm that can be rationally ignored. This is because it is a harm that would be occurring in the past, and past harms a subject might have suffered have no bearing on their present reasons. There is independent evidence for this idea, such as in our intuitive reaction to Derek Parfit's ingenious case *My Past and Future Operations* (Parfit 1984, 165). Parfit is a patient who learns that he either *had* a painful ten-hour-long procedure yesterday or *will have* an equally intensely painful but only one-hour-long procedure tomorrow. Memories of either procedure will be erased, and all else is equal. Intuitively, Parfit should prefer that he had the ten-hour-long procedure yesterday, even though it is a much greater harm; and he should bring that state of affairs about over the other one if somehow he could.

This enables the Desire-Frustration Account to handle the roller-coaster case, but the victory may be pyrrhic, because now posthumous harm, while real, may no longer matter. If we frustrate Zed's desire to be cremated, while this will add a harm to his life

while he was alive, it is a harm that we can ignore when deciding what to do on Zed's behalf, because it is a harm that has no bearing on anyone's present reasons for action.

There is much more to consider on the time-bias response to the Problem of Changing Desires. For one thing, even if Parfit should prefer that he suffered for ten hours yesterday rather than will suffer one hour tomorrow, it is debatable whether third parties should also prefer this. For another, while future bias may be rational when it comes to felt harms like pain, it is less obviously rational for other sorts of harm, including desire frustration. For yet another, even if past harms matter less than future harms of equal magnitude, they still may matter somewhat. If any of these ideas is correct, defenders of the Desire-Frustration Account may be able to believe not only in posthumous harm, but also in its normative significance. However, it may be at the cost of biting the bullet about the roller-coaster case and rejecting Brandt's intuition that his son's "desire now is hardly one we think we need attend to in planning to maximize his lifetime well-being."<sup>11</sup>

#### *d. The Timing Problem, Antemortemism, and the Problem of Backward Causation*

A certain issue in the theory of well-being bears heavily on the Desire-Frustration Account, though not a lot has been written explicitly about this connection. For theories of well-being that include desire satisfaction and frustration among their intrinsic benefits and harms, a question arises concerning cases in which a desire and its object fail to overlap temporally (as in, e.g., Brandt's roller-coaster): *at what time* is the subject benefitted or harmed in such cases, if at all?

The two simplest answers are the *Time-of-Object View*, on which the harm of a frustrated desire in such cases occurs at the time of the object (that is, at the time the object would need to occur for the desire to be satisfied), and the *Time-of-Desire View*, on which the subject is harmed at the time of the desire. This relates to whether advocates of the Desire-Frustration Account should accept *Postmortemism* – the view that when a posthumous event harms a dead person, they are harmed after death – or *Antemortemism* – the view that they are harmed while alive. If Zed's remains are, against his wishes, buried rather than cremated, then on the Time-of-Object View, Zed is harmed at the time that his remains are buried, even though he doesn't exist then. Postmortemism follows. On the Time-of-Desire View, the burying of Zed's remains, though it occurs after his death, harms him before his death, when he held the desire to be cremated. Antemortemism follows.<sup>12</sup>

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<sup>11</sup> For more on the Problem of Changing Desires in the context of posthumous harm see Luper 2005, Portmore 2007, Boonin 2019 (73-92), and Asker 2024.

<sup>12</sup> Harriet Baber (2010) defends the Time-of-Object View and Dale Dorsey (2013) the Time-of-Desire View. Duncan Purves (2017) defends a third option, *Fusionism*, on which the time of benefit is the mereological fusion of the times of the two entities (desire and object), and Eden Lin (2017) defends a fourth option, *Asymmetrism*, on which the time of benefit is always the later of the two entities. The implications of Asymmetrism in its simple form for posthumous harm are the same as those of the Time-of-Object View; both are forms of Postmortemism and violate the Existence Requirement (unless a postmortem entity can be identified to serve as the subject of harm). Fusionism is also in tension with the Existence Requirement,

Unless a postmortem entity can be identified to serve as the subject of harm, the Time-of-Object View violates

The Existence Requirement:

An event is intrinsically bad for some subject at some time only if the subject exists at that time.

And there are objections to the Time-of-Object View not having to do with posthumous harm. Consider a case in which a person's desire occurs after the time of its object. Suppose that Fabienne became a baseball fan recently, and of the Los Angeles Dodgers in particular. She learns that the Dodgers had played in the World Series in 2018. She forms a desire for them to have won it. In fact, they did not win. According to the Time-of-Object View, Fabienne's failing to get what she wants in this matter was bad for her *in 2018*, even before she wanted it. These seem like serious problems for the Time-of-Object View, and thus for one prominent way to be a Postmortemist.<sup>13</sup>

The Time-of-Desire View delivers a more plausible verdict about the case of Fabienne the new Dodger fan but is less plausible in cases in which the desire precedes its object, such as Brandt's roller-coaster. The problem there, as we saw, is simply the idea that harm occurs in that case *at all*, if the son doesn't ride the roller-coaster on his fiftieth birthday, when he no longer wants to. Furthermore, as Steven Luper (2012: 328) notes, "when people desire something ... they typically just do not think they have gotten what they want until [its] truth maker occurs." But because having a desire at some time entails existing at that time, the Time-of-Desire View respects the Existence Requirement. For this reason, advocates of the Desire-Frustration Account of Posthumous Harm tend to be Time-of-Desire Antemortemists and hold that, in cases of posthumous harm, the victim suffers the harm while alive. If Zed wants his remains to be cremated, but they are buried, this act of burying them reaches back into the past, as it were, and harms Zed while he was alive, at the times at which he held the desire to be cremated.<sup>14</sup>

For this reason, critics accuse advocates of the Antemortemist Desire-Frustration Account of believing in backward causation. This, *the Problem of Backward Causation*, applies to any Antemortemist account of posthumous harm. It combines with the Existence Requirement to present an interesting dilemma for advocates of posthumous harm:

A Dilemma for Posthumous Harm

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since it implies that a person can suffer a harm over some duration of time even though they don't exist over that entire duration of time. Precisely to obey the Existence Requirement, Lin offers a modified version of Asymmetrism that builds in the Existence Requirement (Lin 2017, 181); this view implies that posthumous harm is impossible.

<sup>13</sup> This sort of Postmortemism is accepted by Baber (2010, 262-264) and Wilkinson (2011, 39-40).

<sup>14</sup> Advocates of the Antemortemist Desire-Frustration Account include Pitcher (1984), Feinberg (1984, ch. 2), and Luper 2012.

- P1. If posthumous harm is possible, then the subject is harmed either postmortem or antemortem.
- P2. The subject is not harmed postmortem (because this would violate the Existence Requirement).
- P3. The subject is not harmed antemortem (because that would imply backwards causation).
- C. Thus, posthumous harm is impossible.

As Raymond Belliotti puts it, “advocates of posthumous harm are seemingly trapped between the Charybdis of free-floating, detached interests and the Scylla of retroactive attribution” (Belliotti 2011, 87)

But I don’t think Antemortemism is committed to an objectionable form of backward causation. Since George Pitcher’s seminal treatment (Pitcher 1984), Antemortemists have claimed that the relation of backward influence that they are committed to is no more objectionable than that contained in cases like the following. Suppose Mia is smoking a cigarette today. She announces, “I am quitting smoking for good; this is the last cigarette I will ever smoke.” Whether that is in fact the last cigarette she will ever smoke of course depends on future events. Thus, if, in five years, Mia yields to temptation and smokes another cigarette, her doing so has, in some sense, an effect on the past. It makes it the case that today’s cigarette was not her last cigarette. But this kind of backwards truth-making is just that, and not some form of causation. It is made possible simply by the fact that we are able to make claims about the future, and thus claims whose truth depends on what goes on in the future relative to the making of those claims.

The point can be put in terms closer to home. If Zed dies tomorrow, his desire today that his remains be cremated counts as a frustrated desire just in case his remains are not cremated. Thus, whether his desire today has a certain feature (being frustrated) depends on what happens in the coming days. This is due simply to the mundane fact that it is a desire about the future.

James Stacey Taylor, a posthumous-harm skeptic, agrees that this sort of backwards truth-making is generally innocuous, but he claims that work remains for Antemortemist defenders of posthumous harm. They have to show that the sort of backwards-facing truth-making relation *involved in harming in particular* is similarly innocuous (Taylor 2012: 13-15).

I think they can. Setting aside complexities already discussed concerning possible modifications of the principle, advocates of the Antemortemist Desire-Frustration Account accept a principle like the following: *if S has at t a frustrated desire, then, in virtue of this, S is harmed at t*. When Zed’s remains are buried postmortem, this makes it the case that Zed’s antemortem desire that his remains be cremated is frustrated. So far, all parties should agree that this is innocuous. But the next step is no less so. It simply applies the italicized principle above to what has been innocuously established (that Zed’s antemortem desire that his remains be cremated is frustrated).



Doing so yields the result that Zed is, in virtue of the frustration of this antemortem desire, harmed antemortem.

Nor need this involve the apparently incoherent notion of “changing the past.” Antemortemists can and often do say that it was *true all along* that Zed was harmed antemortem in this way, although we didn’t know it until his remains were being buried – just as it was true all along that that was not Mia’s last cigarette, although we didn’t know it until five years later.<sup>15</sup>

Joan Callahan objects to Antemortemism on the grounds that perpetrators of blameworthy posthumous harm – Zed’s negligent mortician, say – would be blameworthy at the time of the harm, well before they did anything wrong, which Callahan finds difficult to accept (Callahan 1987, 345). But, as Belliotti (2011, 64-65) points out, it’s not clear why Antemortemists can’t just hold the view that blame is assignable only after the harmful act occurs, even if the harm that the act gives rise to occurs before that.

Although the Problem of Backwards Causation does not seem like a significant problem for the Antemortemist Desire-Frustration Account, the account is committed to the Time-of-Desire View, which does face serious challenges.

## 6. Justifying Unfelt and Posthumous Harm Objectively

An Objectivist defense of posthumous harm is also possible. Recall Aristotle’s suggestions that being dishonored and having one’s children be badly off are themselves bad for people, or Nagel’s suggestions that being betrayed by one’s friends, ridiculed behind one’s back, and despised by people who treat one politely to one’s face are themselves misfortunes for people. Neither philosopher said that the badness of these things is dependent on their being unwanted or in some other way disvalued by the person for whom they are supposed to be bad. If they are indeed intrinsically bad and are not in that way dependent, then they are objective bads for people. Many such bads can occur after one is dead. They thus make posthumous harm possible.

Kant may have been endorsing an Objectivist account of posthumous harm – and an Antemortemist one at that – when he wrote, “Someone who, a hundred years from now, falsely repeats something evil about me injures me right now” (Kant 1797, 112n). Objectivist accounts of posthumous harm are defended more recently by Paul Griseri (1987) and Barbara Baum Levenbook (2013). On Levenbook’s view, *being degraded* is intrinsically bad for people. She defends this by appeal to a case in which a woman is sexually abused while in a coma. Levenbook argues further that the sexual abuse of a corpse likewise degrades the person whose corpse it is and is thus a case of posthumous harm. Levenbook wishes to “steer clear of the metaphysical debate over when a

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<sup>15</sup> Feinberg (1984, 91) explicitly endorses the “true all along” view; Pitcher (1984, 187) also appears to hold it. This view is committed to the idea that contingent claims about the future have truth values when they are made. Rejecting this idea means that an antemortem desire about a posthumous time gains the property of being satisfied or frustrated only once that posthumous time has come to pass. This view may have serious problems, but being committed to backwards causation is not one of them.

posthumous harm occurs" (Levenbook 2013, 191), but that question is legitimate and indeed one of the most important challenges to the belief in posthumous harm. If no satisfactory answer can be given, it may be reasonable on these grounds to reject the possibility of posthumous harm.

The positing of any particular objective good or bad tends to be more controversial than the belief in the familiar subjective goods or bads. So one easy way to object to an Objectivist account of posthumous harm is simply to reject the putative objective bad. There is also a popular general reason to be skeptical of the very possibility of objective welfare goods and bads: the resonance constraint. As Peter Railton famously puts it, "what is intrinsically valuable for a person must have a connection with what he would find in some degree compelling or attractive, at least if he were rational and aware. It would be an intolerably alienated conception of someone's good to imagine that it might fail in any such way to engage him" (Railton 1986, 9). Arguably, Objective accounts of posthumous harm are in this way intolerably alienated.

Many of the issues discussed in the context of the Argument from Unfelt Harm and of the Desire-Frustration Account – the Problem of the Missing Subject, the Existence Requirement, Antemortemism vs. Postmortemism, the Problem of Backward Causation, and the Dilemma for Posthumous Harm – arise for Objectivist accounts of posthumous harm.

Such accounts make especially salient the Atemporalist alternative to Antemortemism and Postmortemism. In discussing the harm of death rather than posthumous harm, Nagel claims "that while [a] subject can be exactly located in a sequence of places and times, the same is not necessarily true of the goods and ills that befall him" (Nagel 1970, 77). Take being ridiculed behind one's back, which can occur after one is dead. While Kant would evidently say that if posthumous ridicule is a bad thing for a person, it harms them while alive, nothing in Objectivist accounts of posthumous harm requires this Antemortemist position. And there is a special problem for Objectivist Antemortemist defenses of posthumous harm. This is the problem of *which specific antemortem time* is the time at which the living person is harmed. Subjectivist Antemortemists have a ready-made answer to this question: the time of the desire (or other relevant attitude). Suppose, however, that someone never cared whether they were ridiculed behind their back, but, because Objectivism is true, it is nevertheless intrinsically bad for them for this to happen. In any *non-posthumous* case of ridicule, the natural thing to say on the question of when a victim of ridicule is intrinsically harmed is *at the time of the ridicule*. But this is an uncomfortable thing to say in posthumous cases, due to the plausibility of the Existence Requirement. The Problem of the Missing Subject is in this way more acute for Objectivists, since Antemortemism is less plausible in the case of objective posthumous harms.

Enter Atemporalism. One Atemporalist position is that *all* welfare goods and bads are atemporal. So, although people are harmed, there is never a time at which a person is harmed. This view can agree that *the events that are or constitute the intrinsic harms* – a behind-the-back ridiculing, say – occur at particular times. Whenever

someone ridicules someone, of course this occurs at some particular time. The thing that has no temporal location is this event's *harming* its victim. The event does harm them, but there is no time at which it harms them. Unfortunately, this principled view that all welfare goods and bads are atemporal has no plausibility. Headaches are obviously intrinsically bad for people, and, just as obviously, they are intrinsically bad for people at the time that they are happening.

Another view is that only some welfare goods and bads are atemporal. Perhaps those that are both objective and non-experiential, such as behind-the-back ridicule, are atemporal, while subjective and/or experiential goods and bads benefit or harm us at times. This view is better than the last, but it fails to accommodate the plausible idea that, when an objective non-experiential bad like ridicule occurs while the victim is alive, the victim is harmed at the time of the ridicule.

A third Atemporalist possibility takes its cue from this and holds that the only welfare goods and bads that are atemporal are those that are objective, non-experiential, and *occur posthumously*. Thus, while most instances of ridicule are intrinsically bad for their victims at the time of the ridicule, those that occur after the victim is gone still harm the victim, but at no particular time. This is a coherent position, but, it is fair to say, dubiously *ad hoc*.<sup>16</sup>

## 7. Postmortemism

Joel Feinberg's 1974 paper, "The Rights of Animals and Unborn Generations" may contain the first extended discussion of the topic of posthumous harm in the entire history of Western philosophy. Although Feinberg later embraces the standard Antemortemist Subjectivist line, in this and another paper from the 70s, he endorses Postmortemism.

Postmortemists are generally not content simply to deny the Existence Requirement. They take it so seriously, in fact, as well as the Problem of Backwards Causation, that they are moved to posit a postmortem entity to *be* the harmed subject. For Feinberg, that entity is a person's "interests":

if we consider that the true subjects of harms are interests, and that interests are harmed by thwarting or non-fulfilment ... we can think of posthumous harms as having subjects after all. (Feinberg 1977, 308)

But in his 1984 book, Feinberg recants and endorses Antemortemism. His concern with his earlier Postmortemism is metaphysical:

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<sup>16</sup> For a defense of Atemporalism about the harm of death, which may aid the Atemporalist about posthumous harm, see Johansson (2012).

I no longer wish to say that these interests themselves are the “true subjects of harm,” because that suggests a bizarre ontological reification, as if each interest were a little person in its own right. (Feinberg 1984, 83)

Moved by the Problem of Backward Causation, committed to the Existence Requirement, and less deterred by metaphysical scruples, Daniel Sperling posits an entity of his own, which he calls the “Human Subject.” The Human Subject “always exists and its existence is temporal,” yet it “does not exist in a physical or material way. Instead, its existence is logical or non-material” (Sperling 2008, 36).

Also motivated by the Existence Requirement and the Problem of Backward Causation and appreciating the need for a posthumous subject of harm, Raymond Belliotti appeals to the subject’s *life*, which, because Belliotti means biographical rather than biological life, plausibly exists for longer than the subject himself. If Zed’s remains are buried, it is plausible that this event is a part of Zed’s biography or biographical life. Belliotti maintains, however, that diminishing the value of a person’s life posthumously is not the same thing as harming the person posthumously, and that the latter is strictly speaking impossible, since there is no subject there to be harmed (Belliotti 2011, ch. 6).

Most recently, to allow for posthumous harm, Christopher Frugé puts forth the view that when we die, although we stop existing as concrete beings, we continue on indefinitely as abstract objects (Frugé 2022a).

Views like Sperling’s and Frugé’s face daunting challenges. Will I literally become the posited posthumous entity? If Yes, how is that possible? Even if it is somehow possible, why believe it actually happens? If it is not possible, then when this entity is harmed posthumously, does it follow that *I* am harmed posthumously? If Yes, how so, given that I don’t exist posthumously? If No, then how has the possibility of posthumous harm been secured? Also, how can the sorts of entities posited by Sperling and Frugé even be harmed, given that they don’t appear to be welfare subjects at all (for one thing, they are not conscious)? Finally, even if these entities could do the normative work assigned to them, why think that they are real anyway?<sup>17</sup>

Partly due to such difficulties, Frugé now prefers the less common form of Postmortemism endorsed by Harriet Baber (Baber 2010, 262-264; Frugé 2022b). On this view, events that happen after a person’s death can be bad for them, and bad for them after death, even though neither they nor any suitable surrogate subject exists after death. This view thus rejects the Existence Requirement.

## 8. Conclusion

This essay has not covered all of the interesting issues raised by the topic of posthumous harm.<sup>18</sup> But it has touched on enough to reveal the richness and

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<sup>17</sup> For discussion of some such challenges for this sort of Postmortemism, see Wilkinson 2009 (532-533) and Taylor 2010 (729-730).

<sup>18</sup> One is Benjamin Kultgen’s argument that the belief in posthumous harms leads to a sort of repugnant conclusion (Kultgen 2022). Another is Aristotle’s idea that posthumous events, while they may harm us,

complexity of the topic, and the difficulty in knowing whether posthumous harm is, in the end, real. Given the question's practical import, this is unsettling.<sup>19</sup>

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harm us much less than do similar events that happen during our lifetimes (Aristotle c. 330 BCE, bk. 1, ch. 10).

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