

## *Life, Death, and Harm: An Austro-Aristotelian Account*<sup>1</sup>

"The world began when I was born  
And the world is mine to win."<sup>2</sup>

"I will not die, it's the world that will end."<sup>3</sup>

### **I. Introduction**

Is death a harm? Can the dead be harmed? We are tempted intuitively to answer yes. Death robs us of life and puts to a final end our striving after our goals. When someone, after he has died, has his reputation sullied we tend to think he has been harmed. Aristotle, in his *Nicomachean Ethics* (1100a10-30), observes that it seems we cannot with perfect confidence call a man fortunate until some time after his death: “[F]or 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.”<sup>4</sup>

Yet if we look deeper into these questions, we run into problems. If a person is dead, who is it that can be the subject of harm? As George Pitcher (1984) remarks, “post-mortem persons...are...just so much dust; and dust cannot be wronged [or harmed]” (161). Anyone who believes in posthumous harm and/or that death is a harm must meet

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<sup>1</sup> By Aristotelian here is meant not a strict explication of Aristotle’s own thoughts on these issues but that the ideas expressed exist within a broadly Aristotelian framework without departing so far from Aristotle on fundamentals as to warrant adding the prefix neo-.

<sup>2</sup> Excerpt from Badger Clark's poem, "The Westerner."

<sup>3</sup> Unknown source: thought to be an ancient Greek philosopher (possibly Epicurus?); often cited fondly by Ayn Rand; see further, Chris Matthew Sciabarra, *Ayn Rand: The Russian Radical* (University Park: Pennsylvania State University Press, 1995), p. 387 n. 47. This and the previous epigram are not meant to be taken literally or solipsistically.

<sup>4</sup> Aristotle goes on to weaken the justification of this popular opinion to near negligibility, however. See chapters ten and eleven of Book One for his discussions on death and posthumous harm.

Epicurus's formidable argument:

Accustom thyself to believe that death is nothing to us, for good and evil imply sentience, and death is the privation of all sentience,...Death, therefore, the most awful of evils, is nothing to us, seeing that, when we are, death is not come, and when death is come, we are not. It is nothing, then, either to the living or to the dead, for with the living it is not and the dead exist no longer. ("Letter to Menoeceus," cited in Fischer 1993, 121)

When we die, we cease to exist (at least as living, sentient beings) and can no longer experience anything. Death, then, seems to lack a subject who can be harmed by it. By extension, it seems the dead cannot be harmed because there is no subject who can be harmed by posthumous events.

While primarily metaphysical and metaethical in nature, these questions about death and harm have practical real-world implications. If death is not a harm, is it wrong to kill someone painlessly and without their knowledge? Is killing really as bad as we tend to think it is? If the dead cannot be harmed, why then should we care about or respect their reputations, wishes, claims, obligations, wills, and contracts?

Contemporary philosophers have lined up on both sides of this debate. Those defending the positions that death can be a harm and/or that the dead can be harmed tend to accept our intuitions as essentially correct; they seek to justify philosophically our intuitions, but must avoid the problem of the subject. Which side one takes, and how one defends it, will have important consequences for ethical, political, and legal theory and practice. To be sure, those who take the Epicurean view still tend to condemn killing as well as things popularly thought of as wronging or harming the dead, but have to find new reasons for doing so.

The debate has thus far been inconclusive. The anti-Epicureans have failed to

offer a satisfactory refutation of the Epicurean argument. Yet Epicureanism seems to have morally unacceptable consequences. My view is that death *can* be a harm, but the dead *cannot* be harmed. I do not see any way around the insuperable fact that after death there is no longer any subject who can be harmed by posthumous events. However, I argue in this essay that the event of death (as opposed to the state of being dead) *can* be a harm and that it has a subject. I argue that death can only be understood in the context of life. Life is temporally and logically prior to death. The life of man *qua* rational being should be the standard of value by which we judge whether or not death is or can be a harm for a person. Moreover, I argue that the argument Epicurus offers for why we should be indifferent to death is fundamentally flawed because it rests upon a number of logical fallacies. And finally, I argue that although Epicurus's argument is fundamentally flawed, his intention – to sway people from an irrational fear of death – is a good one and can be reformulated on the basis of a rational life as the standard of value.

## **II. The Contemporary Debate**

In this section, I will briefly sketch the contemporary debate in order to reinforce the difficulties of the issues involved as well as to highlight the novelty of my account presented in subsequent sections. Due to space constraints I cannot go into extensive detail. However, I will present some of the more prominent examples. In general, the accounts offered by anti-Epicureans have suffered from one or more of at least three important defects. First, they tend to uncritically accept our intuitions and attempt to justify them without examining their validity. Second, they tend to involve elaborate

attempts to evade the Epicurean argument rather than attacking it head on. And third, they fail to clearly define the ambiguous concepts of life, death, value, and harm.

The Feinberg-Pitcher account, which is perhaps the most prominent anti-Epicurean position, attempts to prove that posthumous events can harm the dead. The Feinberg-Pitcher account begins with Joel Feinberg's first attempt (1977) to define harm as set-back interests. Feinberg attempted to show that the dead could be harmed by posthumous events if these events thwarted the interests they held in life. Feinberg was forced by the logic of his own argument, however, to argue that interests could continue to exist after a person's death and that it is these detached interests that are harmed by posthumous events. It is now widely recognized that Feinberg's original argument suffers from, among other problems, two related and fatal flaws: it relies upon detached or free-floating and thereby reified interests, and as a consequence it fails to avoid the problem of the subject. At this point, Feinberg has not been successful in showing us just who is the subject of the harm of death and posthumous events.

In later attempts, both Feinberg (1993) and George Pitcher (1993) incorporate Feinberg's account of harm as set-back interests with Pitcher's distinction between ante-mortem and post-mortem persons. The Feinberg-Pitcher account holds that the person harmed by posthumous events is the ante-mortem person, *i.e.*, the person at some stage of his life. This seems to allow Feinberg and Pitcher to avoid the problem of the subject. However, this solution presents Feinberg and Pitcher with another problem, that of backward causation, for it looks like posthumous events are working causally backwards in time to harm the living person. In attempting to avoid this problem they make the

counterintuitive and paradoxical claim that the harm done to an ante-mortem person harms him not retroactively when the event occurs after his death but before his death because it was *going* to happen. The person is in a harmed condition the moment he invests in an interest that will be set back in the future. Feinberg and Pitcher argue that the harmful posthumous event simply makes it true from a synoptic perspective that the unfortunate person is in a harmed condition from the moment he invests in a doomed interest. Ironically, the Feinberg-Pitcher account reinforces the position that only the living can be harmed (Callahan 1987), but this does not concern Feinberg and Pitcher so long as they can prove the existence of posthumous harms. However, the Feinberg-Pitcher account is not only counterintuitive but it also seems to rob harm of its teeth.

Barbara Baum Levenbook (1984), not satisfied with the Feinberg-Pitcher account, redefines harm as a loss that is bad for the loser. One such harm is the loss of the function of experiencing life. If we can say that someone loses this vital function of experiencing life at the moment of death (and she thinks we can) and this is a harm, even though he ceases to exist at that moment, then there is no problem ascribing losses to him at times shortly or long after his death. But it seems that Levenbook has not really avoided the problem of the subject. Levenbook undermines her argument when she concedes “an appearance of paradox in the claim that someone who does not exist now may lose something now” (413). If the loss, the subject who loses his life, and death (*i.e.*, the ceasing to exist) do not all coincide, then Levenbook has not shown us a subject who can suffer harm. My argument in section five below, that death does indeed have a subject, bears some similarity to Levenbook's but is in certain respects crucially different.

Levenbook's attempt to prove posthumous harm (*i.e.*, that the dead can be harmed) also fails. Even if it is true that death has a subject to whom losses (and thus, harms) can occur, it does not follow that the dead can be harmed because after death there is no longer any living subject who can experience harm. However, Levenbook's use of the term loss, combined with the fact that something lost must be lost *by* something or someone, raises the specter of another problem that the Epicurean argument seems to entail (Ruben 1988, Bradley 2004). If it is illegitimate for Levenbook to claim that something which does not exist can lose life or mental function because something which does not exist cannot possess the life or mental function to be lost, then to what can we ascribe the possession and loss of other properties such as reputation? For that matter, to what do we ascribe the property of being dead? The answer must be to either make a distinction between different kinds of properties (*e.g.*, real vs. Cambridge properties) or between different kinds of existents. I address this issue also in section five below.

Aside from the Feinberg-Pitcher account a number of philosophers have offered different versions of a deprivation account of harm. They conceive of harm as depriving us of goods we otherwise would have had. A deprivation account of harm, as it is traditionally understood, involves evaluating possible lives in counterfactual worlds. Thus, the harm of death is supposed to be accounted for with the goods we otherwise would have experienced had we not died. Deprivation accounts suffer from problems such as how to calculate and compare values across possible lives (see below) and the thorny issue of reasoning about counterfactual worlds. The primary problem for a

deprivation account of the harm of death, however, is establishing when the harm of death occurs. Others have provided detailed critiques of several deprivation accounts of harm. I can only briefly mention the most prominent examples of deprivation accounts. Fred Feldman (1992) has argued that the harm of death is eternal, it lasts from the moment it begins on into eternity. Thomas Nagel (1993) and Harry Silverstein (1993) have argued that the harm of death is timeless. Ben Bradley (2004) has attempted to improve Feldman's account by arguing that a person is harmed by death only during the time he otherwise would have been alive. None of these deprivation accounts avoids the problem of the subject, for an Epicurean could always reply that there is no longer any subject for the harm. A proponent of a deprivation account must either show that there *is* such a subject or provide a compelling account of the nature of a kind of harm that does not require the existence of a living being to be affected by it. I do not think that any deprivation account of which I am aware has satisfied either of these counts. Deprivation accounts cannot overcome the problem of the subject without robbing harm of its teeth and/or adopting a strained timeless or eternal conception of harm.

Some have conceded the Epicureans their argument and accepted that there is no subject who can be harmed by death and posthumous events. Those who do so, such as Joan Callahan (1987) and Ernest Partridge (1981), have to find new reasons for the immorality of murder and respect for the dead. Both Callahan and Partridge offer consequentialist accounts, primarily for maintaining our existing political and legal institutions. Callahan points out rightly that many legal claims once held by the dead, such as to property (*e.g.*, estates, businesses, physical objects, etc.), often pass down to

their heirs. Violations of these claims would then be harms to the new holders of the claims. Beyond this, however, Callahan argues that the wishes of the dead may often be worth carrying out or protecting in their own right. I do not dispute this.

Partridge explicitly offers a social contract account. He argues that our political and legal institutions are valuable to the living. If the failure of the living to respect the dead, to keep their promises and fulfill their contracts with them, becomes widespread our institutions would cease to be valuable to us. For example, if the living habitually violated the contracts and wills made with or by those now dead, they could not expect that their own contracts and wills will be respected after they die. The arguments presented by Callahan and Partridge suffer from three major defects, however. First, Callahan and Partridge do not even attempt to show how their arguments can account for the immorality of murder and cannot show anything more than its illegality. Second, both fail to account for the commonly held belief that the dead themselves should be respected and not just their wishes should those wishes turn out have desirable outcomes. Must this belief stand or fall with the truth or falsity of harm to the dead? Third, neither account offers a compelling reason not to violate our political and legal institutions when it is to our benefit and when we can get away with it without destroying the institutions themselves. Why not murder someone if no one will find out? Similarly for promises, contracts, wills, etc., made with those now dead. Consequentialist accounts can only tell part of the story.

Steven Luper-Foy (1993), and more recently Warren (2004), attack the Epicurean argument more directly. They attempt to undermine the Epicurean argument by



illustrating the extremely undesirable negative consequences to which an Epicurean is committed. Epicurus encourages us to be indifferent toward death because it cannot harm us. They argue that to be consistently indifferent to death we would have to forego all of the desires and values that make life worth living. The consistent Epicurean would have to lead a severely impoverished life. Luper-Foy makes this argument by distinguishing between different types of desires. Escape desires establish conditions under which life is so bad that death is preferable. One can adopt desires whose satisfaction is fulfilling or unfulfilling. Dependent desires depend on our activities for achievement, while independent desires do not. Conditional desires are such that, for example, if I remain alive I will desire x. Fulfilling desires can only be satisfied while alive. Dependent desires cannot be held beyond one's death on the Epicurean-hedonic account of value. Yet dependent fulfilling desires are the ones that make life worth living. An Epicurean is left merely with escape, conditional, independent, and unfulfilling desires. For example, an Epicurean mother could, at best, value her children's welfare only on the condition that she is still alive. She cannot care what their fates will be after she dies. She would have to be indifferent to her own death as well. And it seems she would have to choose death over an extremely painful life, since even on the Epicurean view pain is to be avoided.

Luper-Foy instead argues in favor of a limited form of Epicureanism in which we take into account the limits of a normal lifespan for our time period, and other limits imposed by impossibilities, when forming our desires. By not committing to desires that are impossible to fulfill we can avoid some of the pain and disappointment that accompanies life and death. I find Luper-Foy's argument as a whole persuasive but not

conclusive. He gives us reasons to find the Epicurean position undesirable, but he fails to show how and why it is wrong and, more importantly, why death can be a harm. This is, I think, why Stephen Rosenbaum (1993b) is able to plausibly reply that being indifferent to death does not mean one cannot value life. Rosenbaum points out that Epicurus himself was not indifferent to life, indeed, that Epicurus valued life. Luper-Foy might retort that Epicurus was apparently not a consistent Epicurean, but Rosenbaum attempts and, I think, at least partially succeeds in showing that on the terms of Luper-Foy's argument Epicureans can hold desires that can make life worth living. Rosenbaum argues that we can value our life while alive yet not disvalue death, because while alive we can experience pleasure and pain but while dead we cannot experience anything whatever.

### **III. What Is Wrong With the Epicurean Argument**

In this section I will show that the Epicurean argument logically commits Epicureans to being indifferent to both life and death, and that such indifference is praxeologically impossible and unstable. This difficulty, however, is merely the symptom of a more fundamental error in the Epicurean argument which is that it rests upon a number of logical fallacies. With the proper standard of value it can be shown that one can rationally and coherently disvalue death, and that on such grounds death can be shown to be a harm.

First, complete indifference to death is praxeologically impossible. Praxeology, the *a priori* general science or theory of human action, is “the formal analysis of human action in all of its aspects” (Rothbard 2004, 299).<sup>5</sup> It is the distinctive method of the

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<sup>5</sup> For a full explication and defense of praxeology and *a priori* ontological disciplines in general, see

Austrian School of Economics. “The concept of action [defined as purposeful behavior] involves the use of scarce means for satisfying the most urgent wants at some point in the future” (72). Praxeology deals with the “formal implications of the fact that men use means to attain various chosen ends” (74). Thus, praxeology is *not* concerned with the *specific concrete contents* of men's actions and so should not be confused with psychology (how and why men form values and pursue certain ends) or ethics (what ends men should pursue). Men act in order to exchange a less satisfactory state of affairs for a more satisfactory state of affairs. Action is a necessary feature of human existence, for, as living beings, men must continually act in order to maintain and further their lives. “Life is a process of self-sustaining and self-generated action” (Rand 1961, 121). Life is contingent. Continued life requires continued action. If man does not act in a contextually appropriate manner to sustain his life (by acquiring necessary food, water, shelter, security, etc.), then he will perish. Prolonged inactivity can lead to death (though *purposeful* inaction can be thought of as a special kind of action).

*The fundamental alternative, then, that all men face is that between life and death.* All the myriad alternatives that men face in practice are variations on and presuppose this fundamental alternative. For a living being death is in principle always a possibility, however remote, as well as an alternative choice for action. That the desires,

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Rothbard (1951; 1997a, b, c; 2004), Mises (1999, 2002, 2003), Hoppe (1995), Yates (1996), Long (2003c; 2004a, b; 2005a, b), Smith (1884; 1990; 1996a, b), Grassl and Smith (1986), Hülsmann (2003), Mulligan and Smith (1986), Schuhmann and Smith (1985), Husserl (2001), Reinach (1981, 1983), Johnsson (2005), and Younkins (2005). It should be noted that *a priori* here is meant not in a Kantian but rather in an Aristotelian sense. If pressed, I would say that the *a priori* propositions of praxeology are *roughly* similar to Kant's *synthetic a priori*; they are not mere analytic truths or tautologies, but rather are both logically necessary and empirically meaningful. As Reinach (1983) put it: “This apriori character does not mean anything dark or mystical, it is based on the simple facts which we just mentioned: every state of affairs which is in the sense explained general and necessary is in our terminology apriori” (5).

value system, or particular value scale of an individual in any given context may make death an undesirable, or the least preferred, alternative does not alter this essential necessity. As an alternative choice for action, death might be an end or the means to some other end or (at least implicitly) something to be avoided.<sup>6</sup> If death is to be sought as an end, employed as a means, or even purposefully avoided, it must be valued or disvalued by the actor. Moreover, it must be valued more or less than other alternative ends and/or means. Value is a trilateral relationship involving an individual valuer and two possible alternatives (Mises 2003, xxxvi). Equally ranked alternatives, *i.e.*, alternatives between which one is indifferent, cannot be alternatives for choice. Someone who is completely indifferent to death, *i.e.*, indifferent to death and all its possible (life) alternatives, would be incapable of acting at all.<sup>7</sup> Taken literally, in its strongest sense, the Epicurean dictum that 'death is nothing to us' entails complete indifference to death. It might be objected that the Epicurean can simply be indifferent to death in and of itself and irrespective of any alternatives to it. This, however, will not get the Epicurean what he wants. If the Epicurean argument is to have the result Epicurus intended, to sway us from fearing death, the dictum 'death is nothing to us' must be understood in a manner that is relevant for action. If the Epicurean is indifferent to death only when it is considered in isolation from other possible alternatives, then that indifference to death is not relevant for action.<sup>8</sup> Thus, complete indifference to death is praxeologically impossible.

This means that to be capable of action there must be one or more alternatives that

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<sup>6</sup> For the sake of simplicity I simply use death for death-as-a-means, but in actuality death-as-a-means always includes a particular method (out of any number of methods) of bringing about one's death.

<sup>7</sup> cf. Rand (1990), pp. 32-35.

<sup>8</sup> Indeed, it is not really clear what indifference of this sort could possibly mean or how it could be meaningful.

the actor values more or less than death. Let us now imagine an Epicurean who is being horribly tortured and relax the conception of indifference to death employed in the previous paragraph. Instead of being completely indifferent to death the Epicurean is only *mostly* indifferent to death; suffering is a strong disvalue for him and he desires that his suffering end but he is indifferent to all other alternatives to death. He wants to end his suffering, but how? It might be argued that he could choose death as a mere means, rather than as an end, in order to achieve something he values more than suffering, *i.e.*, not suffering; he is indifferent to how he achieves this goal. In a choice between suffering and death, he is not preferring death over suffering but rather not suffering over suffering. There are, however, alternative means besides death that can result in his goal of not suffering. He could continue to suffer for a time in the hopes of being rescued or until he can attempt an escape. He could give in to his captors or bribe them. And so on. Being indifferent, how is he to choose between these life alternatives and death as the means to ending his suffering?

The Epicurean could allow chance, the flip of a coin, to decide his course of action. Even then, however, whatever the Epicurean eventually decides, and he must eventually decide, one of the alternatives will have been ranked higher than the others on his value scale. His preference will be demonstrated in his action. Whatever his demonstrated preference, death will have been given a higher or lower ranking on his value scale than one or more of its alternatives. Moreover, simply by virtue of its usefulness in achieving his desired end, death-as-a-means is necessarily revealed as having positive value for the Epicurean: means acquire derivative instrumental value in

virtue of their employment in the attainment of valued ends.<sup>9</sup> Again, what is of interest here is “preference *as revealed through choice* and not...the *psychology* of preferences” (Rothbard 2004, 311; emphasis in original). The *a priori* discipline of praxeology is fundamental and logically prior to empirical psychology. We must be careful to avoid psychologism here. Any valid empirical-psychological theory of valuation must of essential necessity be grounded in the *a priori* laws of praxeology and phenomenological psychology. By whatever chain of reasoning and valuation a person's preference is arrived at, that person's preference is demonstrated in action; he would not have chosen it if he had not, in the final analysis, for whatever reason, preferred it. Any such theory that does not begin from this *a priori* truth is groundless.

Complete indifference to death has already been shown to preclude the possibility of action, which, for any being that acts, means that complete indifference to death is praxeologically impossible. Relaxing our conception of indifference to death even only slightly shows indifference to death to be praxeologically unstable.<sup>10</sup> The same ultimately holds if we continue to relax our conception of indifference to death. We could continue to shrink the sphere of available life alternatives to which, vis-à-vis death, our Epicurean is indifferent, but to do so would be to move us increasingly farther away from the Epicurean position that 'death is nothing to us'. All this is not to say that indifference is not an important concept in psychology and even moral psychology. It *is* possible to be indifferent between two or more equally attractive or unattractive alternatives, although

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<sup>9</sup> The fact that something can be both an end-in-itself and a means to another greater end does not pose a problem to the foregoing analysis, but rather enriches it. I pass over this phenomenon for simplicity, brevity, and clarity of presentation.

<sup>10</sup> This praxeological argument against indifference to death is an adaptation of Murray Rothbard's (2004) refutation of the case of Buridan's ass used by indifference theorists in economics, p. 309-11.

in the face of such indifference even the flip of a coin can allow the actor to establish a preference between otherwise equally ranked alternatives. The foregoing analysis merely demonstrates that death cannot of essential necessity be 'nothing to us'. The strong or literal version of the Epicurean argument proves to be impossible to realize and weaker versions seem to require an external criterion by which the proper scope of one's indifference to death is to be determined (presumably Epicurean hedonism; see below). Only the strong or literal version of the Epicurean argument absolutely precludes fear of death, however, since otherwise an actor could value some alternative more highly than death and therefore have reason to fear death.

The praxeological account given thus far relies upon a subjective, or agent-relative, theory of value in which values are ranked on an ordinal scale. It might be thought that Epicureans could avoid the praxeological critique if they explicitly employ cardinal value theory and reject ordinal value theory. An Epicurean might attempt to show that a theory of ordinally ranked agent-relative value is false, but he would also have to establish the truth of his own cardinal value theory. With cardinal value theory, the values of things are quantitatively measured in absolute intensities. An Epicurean might argue that death can be given a positive, negative, or zero valence with zero signifying indifference, a positive number signifying a certain value or benefit, and a negative number signifying a certain disvalue or harm. Even cardinal value theory will not save the Epicurean argument, however, because the fundamental alternative that all living beings face – that between life and death – must still be taken into account in ascribing values. If death is independently ascribed a perpetual zero valence or nonvalue,

meaning that one must be completely indifferent to it, then its alternative(s) – life and everything that depends upon it – must also be ascribed nonvalue. Otherwise, the call to be indifferent to death is meaningless: one could still fear death even if it did not have a negative valence, for the drop in value between alternatives with positive valence and the alternative with zero valence (death) would still be cause for alarm and avoidance.<sup>11</sup> If the valence ascribed to death is allowed to vary with varying contexts, *i.e.*, if indifference to it is less than complete, so that the sphere of available alternatives to which one is indifferent with respect to death is delimited or allowed to vary, then death is not 'nothing to us' and the possibility of fearing death is left open. The praxeological critique still holds: complete indifference to death is praxeologically impossible and indifference to death is praxeologically unstable.

Even if the foregoing argument is unconvincing, the arguments provided by Luper-Foy (1993) and Warren (2004) on the necessary poverty of an Epicurean lifestyle are persuasive, and in any case there are powerful reasons for thinking cardinal value theory to be implausible. Cardinal value theory presupposes that values can be quantified, measured, and added up. It also assumes that value is perceivable in continuous, infinitely small increments. Rarely does a cardinal value theorist bother to define just what is meant by a value-unit, what the quantitative standard is by which these units will be measured, how specific quantities of value-units are to be assigned to various things of value, how the quantity of value-units assigned by moral agents to things is to be measured, etc.

The following illustrates the difficulties, usually overlooked, that a cardinal value theorist faces. How are we to assign without arbitrariness a specific value, such as -2 or

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<sup>11</sup> Again, used in this sense, indifference or the claim that 'death is nothing to us' hardly seem meaningful.



-2.3, to death or anything else? Can we really be certain that we value death at exactly -2 or any other specific quantity of value-units? The problem worsens when we attempt to compare the value of two different things. Assuming we can ascertain that we value death at exactly 0 and not suffering at exactly +2, what does it mean to say that we value not suffering 2 value-units more than death while remaining indifferent to death? It does not seem possible to quantify values, much less to total them up or determine the exact magnitude of difference between the degree to which we value one thing over the degree to which we value another.

To cardinal value theory it can be objected that “[h]uman action and the facts on which it is based must be in observable and discrete steps and not infinitely small ones. Representation of utility [or, more generally, value] in the manner of the calculus is therefore illegitimate” (Rothbard 1997c, 222). Murray Rothbard, in his seminal essay *Toward a Reconstruction of Utility and Welfare Economics*, argues further: “On [praxeological,] demonstrated preference grounds, cardinality must be eliminated. Psychological magnitudes cannot be measured since there is no objectively extensive unit – a necessary requisite of measurement. Further, actual choice obviously cannot demonstrate any form of *measurable* utility [value]; it can only demonstrate one alternative being preferred to another” (221; emphasis in original). Rothbard continues:

Measurement, on any sensible definition, implies the possibility of a unique assignment of numbers which can be meaningfully subjected to all the operations of arithmetic. To accomplish this, it is necessary to define a fixed unit. In order to define such a unit, the property to be measured must be extensive in space, so that the unit can be objectively agreed upon by all. Therefore, subjective states, being *intensive* rather than objectively extensive, cannot be measured and subjected to arithmetical operations. And utility [value] refers to intensive states. Measurement becomes even

more implausible when we realize that utility [value] is a praxeologic, rather than a directly psychologic, concept.”<sup>12</sup> (230; emphasis in original)

Cardinal value theory succumbs to an untenable psychologism, attempting to impose a forced construction on psychological phenomena while ignoring the things themselves as they are revealed in mental and physical action. There not only lacks an extensive unit for measurement but when it is considered that value is a trilateral relationship between the valuer and two possible alternatives, and that an actor's value scale is dependent upon and can change with his specific circumstances of time and place, there is also no common denominator that could be used in such measurement (Mises 2003, xxxvii). The assignment of a specific or even a rough quantity of *value-units* to a thing is entirely arbitrary and meaningless. We cannot really say in cardinal terms of absolute intensities how much we value something in itself. At most we can roughly say that we value one thing (a little, a lot, much) more or less than another thing in a given context, *i.e.*, by comparison of relative intensities. The thing we value most highly will be ranked first on our *ordinal* value scale. Whatever we value less highly will be ranked second, third, and so forth.<sup>13</sup> Moreover, the Epicurean, because he is committed by his hedonism to an agent-relative account of value, cannot escape from the arbitrariness of an agent-relative cardinal value theory into an agent-*neutral* cardinal value theory.<sup>14</sup> Interestingly, a number of anti-Epicureans have explicitly attempted to employ cardinal value theories

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<sup>12</sup> On the generalizability of Austrian economic utility theory to value theory in general, see Mises (2003); Smith (1996), Chapter 9: Christian von Ehrenfels II: On Value and Desire; the work of Ehrenfels; Grassl and Smith (1986); and Long (2005a). On the issue of measurement and units of measurement, see also Rand (1990), pp. 7-9, 31-35, 84; Long (2005b, 312n. 7); Grassl and Smith (1986), Ch. 2; and Smith (1996) on Ehrenfels, pp. 290-292.

<sup>13</sup> cf. Rand (1990), pp. 33-34.

<sup>14</sup> Even if he could, agent-neutral value theory has its own difficulties to overcome; in addition to the Austrian economists, see the work of Ayn Rand (1964) and Eric Mack (1989).

against the Epicurean argument; it is now obvious why such attempts must fail.<sup>15</sup>

Although some (inconsistent) Epicureans may value life, I will now show that they are nevertheless committed to not valuing life, to being indifferent to life, because they are committed by their own argument to being completely indifferent to death. Any ethical theory, if it is to be coherent, must, on pain of infinite regress, have an ultimate value or *end in itself* that serves as the standard of value by which we judge the value of all means and lesser (instrumental or constitutive) ends.<sup>16</sup> Epicureans use death as their standard of value in their argument that we should be indifferent to death while alive and, consequently, they are committed to using death as the standard of value for life. The alert reader may rightly stop me at this juncture and point out that Epicureans are hedonists, and as hedonists they hold pleasure as their standard of value, which requires at least indirectly valuing life. As I will demonstrate, this objection is too quick.

It will be useful at this point to have another look at the specific argument Epicurus made:

Accustom thyself to believe that death is nothing to us, for good and evil imply sentience, and death is the privation of all sentience,...Death, therefore, the most awful of evils, is nothing to us, seeing that, when we are, death is not come, and when death is come, we are not. It is nothing, then, either to the living or to the dead, for with the living it is not and the dead exist no longer. ("Letter to Menoeceus," cited in Fischer 1993, 121)

There appears to be two parts to Epicurus's claim here. The first is that death should be nothing to the living because for the living it has not yet come, but as we have seen death is for the living an ever-present possibility and alternative for action. It is precisely

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<sup>15</sup> See Feldman (1992) and Bradley (2004) for examples.

<sup>16</sup> Cf. Aristotle, *Nicomachean Ethics*, Book I, Chapter 2, 1094a18-22, and Ayn Rand, "The Objectivist Ethics," in *The Virtue of Selfishness*, p. 17.

*because* death has not yet come for the living that death is relevant for action. That death has not yet come for the living is, in and of itself, no more a reason to be indifferent to it than the fact that I am not currently feeling pain or that my car has not been stolen is a reason for me to be indifferent to the possibility of feeling pain or having my car stolen. The first part of the claim must then derive its force from the latter part of the claim – that death is nothing to us because when we are dead we no longer exist and cannot be harmed by death.

Superficially, the Epicurean argument thus far seems consistent with hedonism, but I will now show why it is not. It is one thing to say that the *dead* are not harmed by being dead because *they* no longer exist. However, to apply this fact to how we should live and how the living should view death is not only to commit a non sequitur but also and more importantly it necessitates reifying death by ascribing intrinsic nonvalue to death and treating it as one's standard of value. To understand why this is the case it must be understood that in order to conceptualize death we must first conceptualize life. Just as we cannot conceive of nonexistence without first conceiving of existence, so we cannot conceive of death without first conceiving of life. *Nonexistence does not exist*; it is merely an abstraction, a derivative concept that “can be formed or grasped only in relation to some existent which has ceased to exist” (Rand 1990, 58). The concept of death, like nonexistence, is a derivative concept; it is the cessation or absence of life. Death is a special kind of nonexistence that applies to formerly living beings.

Again, it might be objected that an Epicurean does not treat death as his standard of value because he is a hedonist and for him death is a nonvalue. But the Epicurean does

and this is precisely the problem. The Epicurean moves from the uncontroversial fact that death is not a value or a harm for the dead because they do not exist to claiming that that nonvalue should be the criterion – the *standard* – by which we evaluate death while we are alive. It is claimed that we the living should be indifferent to death because it has no positive or negative value for we the living, and death *has* such a nonvalue for we the living because after we die we will no longer exist to hold values or be harmed by death. To repeat, it is claimed that (a) the nonvalue that death has for the *dead* is (b) the proper standard that the *living* should use to evaluate death. This line of reasoning gets things conceptually backwards. It is also to commit a non sequitur: (b) does not follow automatically from (a), not even on a hedonic account of value. More fundamentally though, it also involves committing a variation of the 'reification of the zero' fallacy – the reification of nonexistence or, in this case, of death – which it must do in order to ascribe intrinsic nonvalue to death and treat it as a standard of value.<sup>17</sup> To stand Epicurus on his head, death does not exist for either the living or the dead, because for the living it has not yet come and the dead do not exist, therefore intrinsic value or nonvalue cannot be ascribed to death, much less can death be used coherently as one's standard of value;<sup>18</sup> the Epicurean argument *as it stands* nevertheless requires Epicureans to use it as such.

With death – a nonvalue for Epicureans – as the standard of value for evaluating

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<sup>17</sup> Epicurus also appears to reify nonexistence with his concept of void and the important role it plays in his metaphysics; see his Letter to Herodotus and Fragments 13, 14, and 16.

<sup>18</sup> cf. Den Uyl and Rasmussen (1981), pp. 245: “Given that life is a necessary condition for valuation, there is no other way we can value something without also (implicitly at least) valuing that which makes valuation possible. Paradoxically perhaps, we could value not living any longer, but in making such a value we must nevertheless value life. Death, a living thing not-being, does not require any actions; it has no needs. Death cannot be an ultimate value, then, simply because it does not require any actions and thus cannot be the reason or cause of goal-directed behavior. Therefore, we cannot 'suppose' death or anything else (other than life) as the ultimate value, for the very activity of 'holding something as a value', let alone as an ultimate one, depends on life being the ultimate value in the sense of 'ultimate' discussed earlier.”

death while alive, Epicureans are necessarily committed to being completely indifferent to death and, consequently, completely indifferent to life. With a nonvalue as his standard of value, the Epicurean has no basis whatsoever for evaluating and choosing ends and means. Moreover, it appears that the Epicurean, to the extent that he accepts both hedonism and Epicurus's argument regarding death, is committed to holding two contradictory standards of value: a hedonic (or *life-based*) standard and a death standard. The hedonic standard requires the Epicurean to pursue pleasure and avoid pain, while the death standard precludes the Epicurean from any action at all. Not only is the death standard by itself incoherent, but it is impossible to act simultaneously on two different standards of value. A closer look at *Epicurean* hedonism, however, suggests that the claim of contradiction may be somewhat premature. The ultimate end or value of Epicurean hedonism is a complete life which is defined as a life in which the highest pleasure, katastematic pleasure – the absence of physical and mental pain (*aponia* and *ataraxia*) – has been attained. Paradoxically, *ataraxia* (part of a complete life) requires not fearing death, yet until one's life is complete (which requires the attainment of *ataraxia*) one still has reason to at least fear premature death.<sup>19</sup> However, even if this paradox could be resolved, Epicurus's most compelling argument in support of his view of a complete life – that we should not fear death because it is nothing to us – has been shown to be false and is ultimately incompatible with Epicurean hedonism even though the kind of ascetic life Epicureanism calls for does not seem so far removed from death.

It is important here to point out that I have actually made four distinct but interrelated arguments in this section. Each one poses a devastating problem to the

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<sup>19</sup> cf. Warren (2004), pp. 153-9.

Epicurean argument. One does not need to accept the praxeological critique to accept the standard of value argument, and vice versa. Both arguments provide an explanation for why ascribing nonvalue to death precludes the possibility of action and is contrary to life. Moreover, even if both of these arguments are rejected, the Epicurean still has to deal with the non sequitur and reification problems, and vice versa. The Epicurean can either (a) attempt to show that the ascription of nonvalue to death for the living in virtue of its nonvalue to the dead is not a reification of death or (b) avoid reifying death by attempting to derive the nonvalue of death from the hedonic standard of value. Even if my reification argument is rejected, if the Epicurean pursues strategy (a) he must still provide additional arguments to avoid making the non sequitur involved in leaping from death being a nonvalue for the dead to death being a nonvalue for the living. If strategy (b) is adopted, the Epicurean must somehow avoid the praxeological critique of indifference to death as well as challenges to Epicurean hedonism itself; in any case the debate will have been shifted away from the problem of the subject. Although these are distinct arguments, it is no accident that praxeological analysis reveals that holding death as one's standard of value is implicit in the ascription of intrinsic nonvalue to death, and it is no accident that in the process Epicurus commits the non sequitur and reification of the zero fallacies; the root of the problem lies in Epicurus's failure to understand the nature of life and value. In ascribing intrinsic nonvalue to death he commits the stolen-concept fallacy, for he attempts to apply the concept of value independently of the antecedent concept life upon which it depends and from which it is derived.

Undoubtedly it is possible to conceive of an alternative argument with a firm

hedonist foundation for why we should not have an *irrational* fear of death, but such is not my aim in this paper. Indeed, as an Aristotelian I reject hedonism. I will offer a brief suggestion, however. Instead of arguing that death is nothing to us as he did, Epicurus could have argued that we should not hold an irrational fear of death because doing so would deprive us of much enlightened pleasure in life<sup>20</sup>; that, although death is not nothing to us and is often a great evil, there are fates far worse than death. The difference between such a hedonic argument and the argument Epicurus actually made is striking. Perhaps the limitations of a purely hedonic theory of value and/or his adherence to atomism drove Epicurus to offer such an extreme argument as he did. Alternatively, or additionally, Epicurus's error could lie in a claim made by Feldman (1992, Chapters 8-9) that Epicurus failed to fully appreciate the distinction between intrinsic and extrinsic value. The argument actually put forth by Epicurus, at any rate, is incompatible with hedonism and with life as well as fundamentally flawed.<sup>21</sup>

Consequently, it seems impossible for anyone to be a consistent Epicurean on the issue of death. More importantly, the evaluative standpoint of the Epicurean argument regarding death has been shown to be incoherent, thus eliminating a potential objection to the arguments in the following paragraphs and sections. An Epicurean might be tempted to object that life-death comparisons<sup>22</sup> are invalid, that we cannot know what death is like, that it is a zero (a nonvalue) and so cannot be measured against alternatives.

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<sup>20</sup> Indeed, Epicurus made an argument similar to this regarding the process of dying and the anticipation of death, but not for death itself. See Miller (1976) as well as Epicurus's "Letter to Menoeceus," *Principal (or Basic) Doctrines* 2-4, and *Vatican Sayings* 1.

<sup>21</sup> If my arguments thus far are correct, then the debate between Luper-Foy (1993) and Rosenbaum (1993a, b) over the implications of Epicurus's argument for the kinds of valuation and quality of life available to Epicureans, though interesting, is rendered largely superfluous. My arguments operate on a more fundamental level than do theirs.

<sup>22</sup> On the subject of "life-life" and "life-death" comparisons, see Silverstein (1993).



However, the evaluative standpoint of the Epicurean is incoherent and so these objections lack force. Moreover, we *do* know something about death; we know at least enough to evaluate its value or disvalue to us. Death is the cessation or absence of life. When death comes we cease to be able to enjoy the things we value in life. It is the end of our consciousness, the end of our ability to experience, to hold values, to strive after and attain our goals, to feel happiness. After death, we no longer exist (as a living, sentient being).<sup>23</sup>

The foregoing opens the door to demonstrating how, on the basis of life as the source and standard of value, it can be shown that one can coherently and rationally (dis)value death. Life here is not meant in the abstract, for life as such does not exist in the abstract, but rather as each individual living being's own life as the kind of being it is. In particular, by life as a standard of value, I mean the life of man *qua* rational being. To quote Ayn Rand:

“Value” is that which one acts to gain and[/or] keep, “virtue” is the action by which one gains and[/or] keeps it. “Value” presupposes a standard, a purpose and the necessity of action in the face of an alternative. Where there are no alternatives, no values are possible.” (Rand 1961, 121)

It is only an ultimate goal, an *end in itself*, that makes the existence of values possible. Metaphysically, *life* is the only phenomenon that is an end in itself: a value gained and kept by a constant process of action. Epistemologically, the concept of “value” is genetically dependent upon and derived from the antecedent concept of “life.” To speak of “value” as apart from “life” is worse than a contradiction in terms. “It is only the concept of 'Life' that makes the concept of 'Value' possible.” (Rand 1964, 17; emphasis in original)

“Given that life is a necessary condition for valuation, there is no other way we can value something without also (implicitly at least) valuing that which makes valuation possible.

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<sup>23</sup> Cf. Feldman (1992), Chapter 13.

Paradoxically perhaps, we could value not living any longer, but in making such a value we must nevertheless value life” (Den Uyl and Rasmussen 1981, 245). Insofar as death has any value or disvalue to the living, it is only derivatively in relation to the context of one's life and hierarchy of values. It follows then that death can be disvalued when it is premature and thus serve as the motivation for avoidance-action, and it can acquire derivative instrumental value as the result of some action aimed at a value that is intrinsic to and constitutive of a life of well-being. Death cannot, however, have independent or intrinsic value; it cannot be an end in itself, an ultimate value, a standard of value, or even a final end; for death – the cessation or absence of life – is dependent on life, requires no actions, and has no needs (ibid.).

“Since reason is man's basic means of survival [*qua* flourishing], that which is proper to the life of a rational being is the good; that which negates, opposes or destroys it is the evil” (Rand 1964, 25). Thus, although death is a natural part of life, death can in certain contexts be a harm to the one who dies, provided a subject for the harm can be identified (see section five below). Even absent such a subject, however, with the life of man *qua* rational being (*i.e.*, a life of flourishing or well-being) as the standard of value it should be clear that it can be coherent and rational to disvalue death. By the same token, it can be coherent and rational to prefer death over continuing to live in certain contexts. For example, a freedom fighter may prefer to die rather than compromise his principles by betraying his cause, because a life in which he did so would not be worth living. On the other hand, the average twenty year old in full health and with a promising life ahead of him can reasonably hold dying at the age of twenty-one rather than at the ripe old age

of seventy-five as a disvalue, because he values life and all of its constitutive values and has no rational reason to choose death.<sup>24</sup>

#### IV. Virtue-Ethics and Natural Rights

In this section I will briefly sketch an argument to the effect that, even if there is no subject who can be harmed by death or posthumous events, a eudaimonistic theory of virtue-ethics and natural rights can provide strong reasons for the immorality of murder and for respecting both the living and the dead. The principal defect of both deontic and consequentialist theories of ethics, especially pertaining to this debate, is that they tend to focus on the moral-recipient or -patient. Thus, if there is no subject who can be harmed by death and posthumous events, then deontic and consequentialist theories of ethics can give us little or no reason to maintain that murder is immoral or that we should respect the living and the dead. A virtue-ethics approach, such as I suggest, focuses on the moral agent. Virtue ethics offers a *supply-side* approach rather than a *demand-side* approach to morality. As Roderick Long (1994-95) explains: “According to a demand-side ethics, the way that A should treat B is determined primarily by facts about B, the *patient* of moral activity; but for a supply-side approach like Virtue Ethics, the way that A should treat B is determined primarily by facts about A, the *agent* of moral activity.” The central question of virtue ethics is not “What consequences should I promote?” or “What rules should I follow?” but rather “What kind of person should I be?”

It is characteristic of modern deontic and consequentialist ethical theories that

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<sup>24</sup> Cf. the deprivation account of why death can be a harm to the one who dies in chapters 8 and 9 of Feldman (1992). While I think my argument here can support a deprivation account, (see section five), I do not think it is necessary to propose one. My argument here avoids speculation about possible future lives in counterfactual worlds that could have obtained if a person had not died and instead focuses on a person's actual or presumptive valuation of possible alternatives in a given context.

they tend to be demand-side (primarily social or other-oriented) theories. I am not aware of any modern supply-side ethical theories that are not actually variations on ancient theories. Aristotelian virtue-ethics does not fall neatly into either the deontic or consequentialist categories, as it possesses some features of neither and both. Interestingly for this debate, Epicurean hedonism qualifies as an example of an ancient supply-side ethical theory. It should be noted that deontic and consequentialist theories suffer from additional well-known problems as well. On the weakness of modern consequentialist ethical theories in particular in dealing with the harm of death and posthumous events I refer the reader to section two above.

The supply-side virtue-ethics approach I suggest holds life as the proper standard of value for man, or, more precisely, the life of man *qua* rational being. By standard of value I mean that ultimate value, that *end in itself*, by which the value of all means and lesser (instrumental or constitutive) ends are to be judged. The life of man *qua* rational being means that man's distinctive characteristic is his rational faculty and that holding life as an end in itself entails one's ultimate end being a fully human life, *i.e.*, a life according to reason, and not one of mere survival or pleasure-seeking. This means using reason to determine the other ends we should pursue and the proper means by which to attain them. In our relations with other men, this means that we should deal with them by voluntary exchange and persuasion rather than by force.

The use of force (and the threat thereof) infringes on man's ability to freely exercise his rational faculty, to freely choose and take the actions necessary to maintain and further his life. Indeed, such (political) autonomy (*i.e.*, self-directedness or liberty) is

constitutive of a life of well-being. Even though people do not always choose to act morally, autonomy is a necessary constitutive feature of a flourishing life. A flourishing life requires not only that one perform morally good actions but that one both desire to do the good and voluntarily choose it. Coercion destroys one or both of the elements of morally good action – the action itself and/or the intention – as well as the necessary link between them. Thus, being forced to perform good actions cannot make one good and, consequently, cannot contribute to a flourishing life. Moreover, the notion that others can be forced to perform good actions or to be good tends to corrupt good intentions in the coercer by channeling them into actions that result in evil for both parties.

As a rational being man is also necessarily a social and political being. Each individual human being is a moral agent with his own and only life to live. We each must seek our own self-perfection though we cannot do so alone: the various values that constitute a life of well-being cannot be fully actualized except through cooperation and voluntary exchange with others in society. Combined with the recognition that autonomy and the desire to do good are necessary features of moral agency and morally good action, this means that it is a constitutive part of each moral agent's own well-being that he treat himself and others as potential ends-in-themselves rather than merely as means to his end or theirs. The fundamental rights to life, liberty, and property embody this recognition that each individual human being is a potential end-in-himself. Rights can only be violated by the initiation of force (and the threat thereof) and are the basic moral principles necessary for establishing the boundary conditions or moral territory necessary for each moral agent to pursue a life of well-being, indeed, for moral agency as such.<sup>25</sup>

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<sup>25</sup> For the roots of liberal natural law and natural rights theory in Aristotle, see Fred D. Miller, Jr. (1995);

Space constraints prevent me from offering a full explication and defense of my own ethical position in general, and on death in particular, so I refer the reader to the writings of those with whom I am most in agreement.<sup>26</sup> I will briefly sketch how a eudaimonistic theory of virtue-ethics and natural rights, such as I have hinted at here, would handle some of the moral issues central to this debate. First, such a eudaimonistic theory informs us that the great harm and immorality of murder is that a rational being interferes absolutely with, and permanently ends, another rational being's liberty to maintain and further his life. Murder is harmful both to the moral agent and, as I will demonstrate in section five below, to the moral recipient. Second, with regards to respecting the dead, it would be a constitutive part of the moral agent's own virtue and well-being to respect persons (even long dead ones), keep his promises, fulfill his contracts, conduct himself with integrity and honesty, etc. Whether death (or a posthumous event) has a subject who can be harmed by it is irrelevant. Third, as the example of the freedom fighter given above serves to illustrate, there are far worse things than death. A eudaimonistic theory of virtue-ethics can fulfill Epicurus's intention by providing guidelines and strong reasons not to hold an irrational fear of death. Murder, theft, the breaking of promises and contracts, even if there is no longer any subject who can be harmed by them, and obsessing over one's own mortality, etc., are actions which harm the moral agent's own well-being and are thus to be avoided. Moreover, even if there is no subject who can be harmed by death and posthumous events, it can at least be said that living persons are harmed by those who violate their rights and non-political

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and for a necessary amendment to it, see Long (1996). See also, note 21.

<sup>26</sup> See Rasmussen and Den Uyl (1991, 1997), Ayn Rand (1961, 1964, 1966), Roderick Long (1994/95, 2000, 2001b, 2002b), Murray Rothbard (1998, 2004), and Aristotle (see note 20 above).

moral claims.

## V. The Subject of Death and Why the Dead Cannot Be Harmed

I believe I have successfully shown the basis on which death can rationally be considered a disvalue by the living and why murder is wrong, whether or not death has a subject. Although it is not necessary and may be superfluous, I wish to make the additional and stronger claim that death does have a subject. Indeed, it is no accident that death has a subject but rather a matter of essential and logical necessity. It is useful here to draw upon a distinction made by the Epicurean, Stephen Rosenbaum (1986, 1989). He unpacks the ambiguous concept of death by distinguishing between and clarifying three important concepts death is often used to mean: dying, death, and being dead. Dying is a process that normally results in being dead. Being dead is a state in which the person no longer exists (as a living, sentient being). Death is an event that intervenes between dying and being dead; it marks the end of life and the beginning of being dead.<sup>27</sup> When death occurs, then, we cease to exist and there is no longer a subject who can be harmed by posthumous events. Recall, however, that life is the antecedent of death. Death is that event when life ceases or becomes absent. It is only living beings that die, *i.e.*, death can only occur to a living being. Therefore, death must of essential necessity have a subject: the living being who dies.<sup>28</sup> Although death has a subject, death is the destruction of the

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<sup>27</sup> Rather than the terms death and being dead, we could refer to these two different senses of death in the following manner in order to maintain common usage without confusion: death-as-an-event and death-as-a-state. Though Rosenbaum (1989) has compellingly argued that death-as-a-state (being dead) was the intended focus of Epicurus's argument, my argument in the previous section addresses and applies unproblematically both to the concept of death-as-an-event (death) and of death-as-a-state (being dead).

<sup>28</sup> I have thus far been discussing death as the simultaneous death both of the physical body and of the mental personality of the person (the Ego, Self, or "I"). I will continue to do so. It is, however, possible for the physical body to go on living for a time even after the Ego or the person has ceased to exist, but

subject (*qua* living, sentient being). Using Rosenbaum's distinction we can reformulate the definition for death given in section three as follows: death is the cessation of life; 'being dead' is the absence of life, *i.e.*, a special kind of nonexistence that applies to formerly living beings.

To clarify these points and their implications it will be useful to offer an explication of basic ontological categories. It must be stipulated that only entities exist. Metaphysically, “entities are the only primary existents” (Rand 1990, 15); or, to be more precise, physical entities are the only primary existents. Properties of entities (attributes, actions, relations) can be abstracted from them through a mental process of selective focus, differentiation, and integration (*i.e.*, concept-formation). Such things as percepts, memories, emotions, and concepts can be thought of as mental entities; they exist in a dependent sense in that they are attributes of attributes of physical entities, *i.e.*, mental attributes of the consciousness of a sentient being. Properties are dependent upon entities and are not separable from them; an entity just is its properties, although not all its properties are essential or equally essential to the identity of an entity. All primary entities are made up of physical material but physical material does not exist except in the form of an individual entity of some kind. All entities are (simple or complex) wholes. Parts are distinguishable from properties in that properties cannot be physically separated from entities but parts can be, in which case they become separate independent entities. For example, consciousness *qua* faculty is an attribute of man and cannot exist separately from the physical form of individual men; a human arm can be severed, in which case it

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not vice versa, such as when someone is reduced to a persistent vegetative state. Such cases complicate matters, but I think my arguments here are equally applicable.



can be viewed as “an entity of a certain kind: a dying part of a human being” (270).

Entities exist in certain states (or conditions) and experience certain changes (events or processes). Changes and states always involve one or more entities. The separation of parts from an entity may change the kind of entity it is.

With the foregoing in mind we can gain a better understanding of life and death. I do not see how harm can be anything but a real change or state affecting real, living beings, although I do not think that the harm need be perceived or felt in the sense of mental states or physical pain. I understand death to be a real change or event in the subject because upon death the living subject (a primary existent) ceases to be. As a real event, then, it seems that death can in certain contexts be a harm to the one who dies. I do not, however, make the claim that death-in-itself is a harm or that death is always a harm. Death as such is a natural part of life but in certain contexts it can be (dis)valued by the living and as such may count as a harm. On the other hand, the possibility of posthumous harm seems to be precluded absolutely. The living being who can be the subject of harm ceases to exist upon death. It can be argued, however, that the once-living subject can continue to exist after its death, *but only as an entity of a different kind*. For one thing, the past is real in the sense that it did occur and has shaped the present. Moreover, human beings can also “live on,” to speak metaphorically, in the hearts and minds of others in the form of percepts, memories, and conceptualizations as well as physically in photos, videos, the written word, the material products of their efforts, and as a corpse. Recall that percepts, memories, and concepts are mental entities. Though not strictly speaking concepts, we can retain conceptual knowledge of once-living beings, denoted by their

proper names. As conceptual knowledge held by myself and many others Socrates continues to exist as a mental entity(-ies) and this knowledge of him can undergo changes. The dead, existing in this sense, cannot experience (or be intrinsically affected by) anything and cannot hold values that can be thwarted or destroyed. Value and disvalue, and therefore benefit and harm, are dependent upon life. It follows, then, that the dead cannot be harmed. However, the dead, existing in this sense, can be the subject of certain relational properties (*e.g.*, reputation) as well as the gains, losses, and changes of such properties. If the dead did not exist in this sense, to what would we ascribe the property of 'being dead' or 'once-living'? Thus, while we can ascribe certain relational properties to a dead/historical subject, it is only to a living subject that we can ascribe benefits and harms.<sup>29</sup> On the other hand, I want to tentatively suggest that we might be able to say that although a subject was harmed by his death we can in a limited sense adjust our epistemic understanding of the severity of that harm or our epistemic estimation of the overall value of his life in light of posthumous events.<sup>30</sup>

However, there still remains the question of when the harm of death occurs. Recall the distinction between dying, death, and being dead. I would venture to suggest that the harm of death, in contexts in which death *is* a harm, coincides with the event of death. One could argue that someone can in certain contexts be harmed when the process of dying begins, but the process of dying can potentially be arrested and reversed so the

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<sup>29</sup> I hesitate to employ the distinction between real and Cambridge properties and changes here, because I suspect that the distinction is an artificial dichotomy; and it is not necessary to do so in any case. If harm is treated as a Cambridge property, as it implicitly is in the Feinberg-Pitcher account of posthumous harm, then harm seems to lack teeth. On the subject of real vs. Cambridge properties and changes, see Mulligan and Smith (1986) and Ruben (1988).

<sup>30</sup> For different though similar suggestions, see Warren (2004), pp. 50-55, and Aristotle, *Nicomachean Ethics* 1.10-11; cf. Arendt (1998), section 26, "The Frailty of Human Affairs," and section 27, "The Greek Solution," especially pages 192-193.

harm of death something distinct and cannot occur until the end of the process of dying, and yet being dead is not a harm. It seems an essential necessity, then, that the harm of death must coincide with the event: the subject of death is the subject of the harm. To put it another way, the moment I am shot in the chest (we will assume wrongfully) begins the process of my dying and I am certainly harmed by this; if healed I would no longer be in a harmed state, but if I am not healed and I die then my death in such a context is most certainly an even greater harm; my untimely and wrongful death is the destruction, then and there, of my ultimate value: my life.<sup>31</sup> It would be true to say that my death greatly harmed me in a very real sense. If my death occurred at precisely noon on April 4, 2003 it would still be true now in 2005 that my death harmed me then, and you dear reader would unfortunately not have this paper to read. It would not have been true in 2000 to say that I would be harmed by my death in 2003, because the future is indeterminate: in 2000 there would be no truthmaker for an assertion or denial of the statement made in 2000 regarding a contingent future event in 2003. For the foregoing to be true I need not exist after death to experience the harm of being dead – indeed, properly speaking, there is no such thing – and one need not make any tortured attempts to show that the harm of death is timeless (Nagel 1993, Silverstein 1993) or that the harm is eternal (Feldman 1992) or that I am in a harmed state during the time in which I would have lived (Bradley 2004) or that it is my ante-mortem self that is harmed (Pitcher 1993, Feinberg 1993).

## **VI. Conclusions**

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<sup>31</sup> Again, this is not a deprivation account, at least not in the traditional sense which focuses on deprivation of possible future goods and entails comparisons between possible lives in counterfactual worlds.

In the course of this paper I have argued that complete indifference to death is praxeologically impossible and that indifference to death is praxeologically unstable. While someone may be indifferent to death relative to some other alternative(s) in a specific context, one cannot be completely indifferent to death. I have presented a plausible account of values as being agent-relative and ordinally ranked, and I have argued that even cardinal value theory, if it were plausible, cannot save the Epicurean argument. We rank values ordinally and, simply by choosing to act (including purposeful inactivity), we must necessarily rank death higher or lower on our value scale than other possible life alternatives. More fundamentally, I believe I have shown that the Epicurean argument rests upon at least two logical fallacies. Epicurus argues that death is nothing to us while we live because while alive death does not affect us and when we are dead there is no longer any subject who can be harmed by it. The Epicurean argument thus treats death as the standard of value for both life and death, reifying death in the process.

I have argued that it can be coherent and rational to disvalue death and being dead if one holds life as one's standard of value. Moreover, on this ground an Aristotelian virtue-ethics approach can provide strong reasons for the immorality of murder and for respecting both the living and the dead, regardless of whether there is a subject who can be harmed by death or posthumous events. Though such an approach takes into account the consequences of action on the moral recipient, its focus is on the virtue and well-being of the moral agent. Furthermore, I believe I have also sketched a plausible account of the subject of death and the harm of death – the living being who dies – and why the dead cannot be harmed.

Although the argument Epicurus offered has turned out to be fundamentally flawed, I do think that his intention – to provide us with a reason not to have an irrational fear of death – was a noble one. By reformulating this intention on the basis of a rational life of well-being as the standard of value, we can give it a sounder and more aesthetically pleasing foundation and therefore make the argument more persuasive. A rational life of well-being can provide the measure of what counts as an irrational fear of death and why such fear should be rejected. As an Aristotelian I agree with Epicurus that it is not the duration but rather the quality of a life that matters most; and yet, duration is not unimportant, although it should not be taken out of context with the realm of the humanly possible. Learning to live well and learning to die well are two aspects of the same thing (“Letter to Menoeceus”).

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