

Duties to the Dead: Is Posthumous Mitigation of Injustice Possible?¹

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1. Introduction

Is it ever possible to mitigate any of the past injustice that was done to the living but who are no longer alive? Or should we rather think that, as Horkheimer put it, '[p]ast injuries took place in the past and the matter ended there. The slain are truly slain'?² I will argue that matters did not end with the death of the victims; it is possible to mitigate some injustice done to those who are no longer alive. As a result, the living will sometimes have duties to the dead to mitigate some of the injustice they suffered.

Much valuable ink has now been expended on arguing about what might be owed to the living on account of past injustices.³ Much less focus has been paid to the question of what might be owed at the bar of justice to the dead.⁴ One such strategy of establishing that mitigation of past injustice is possible, despite the fact that the victims are no longer alive, would be to deny that one's wellbeing can only be affected during one's biological life and argue that since we can benefit or harm people posthumously we may mitigate (or exacerbate) injustice when we do so. And while I think that we can harm or benefit people posthumously, in this paper I explore a complementary strategy that is not directly concerned with establishing the possibility of posthumous benefit and harm.⁵ Although some of my arguments bear on the possibility of posthumous wellbeing, I want to show that justice should be concerned with the distribution of opportunities people have for the fulfillment of their preferences, including their preferences over outcomes that stretch beyond their wellbeing and biological lives. Since we can affect such outcomes even though the people whose preferences are at stake are no longer alive, we can curtail, advance and mitigate (in)justice.

I will have the space here to establish only one element of this picture: that death of the victims of injustice does not make mitigation of the injustice impossible. I will simply assume that, in general, bystanders can have duties to mitigate injustice that they did not perpetrate themselves. I will also assume (and return to briefly in section 5) that if posthumous mitigation of injustice is possible then sometimes the bystanders will have duties to do so rather than always needing to attend only to the interests of the living. As I will understand it here, an injustice occurs when people are not treated by others as others have a duty to treat them.⁶ An injustice is understood here as 'past' or 'historic', even if it is still ongoing just as long as many of its victims are no longer alive, since this fact poses a unique problem for mitigation of the injustice. Mitigation is understood as anything that reduces

the extent of the injustice suffered by the victim, however limited the reduction may be. Through the initial sections of the paper, I will work without a discussion of what we should mean by mitigation. In section 4, I will distinguish between a narrow view of mitigation where mitigation requires something akin to direct rectification and a permissive view where simply improving the position of the victim overall will qualify as mitigation. Whichever reasonable version of the view, or a mix of views, we adopt, posthumous mitigation of past injustice is possible, though there are many more opportunities for it on the more permissive understanding of mitigation.

There are what we might call two problems of injustice. The first problem of injustice is that it amounts to a particular mistreatment (and often loss) for the victims. That is, injustice deprives victims of something particular that they are due from others in a given instance (e.g. bodily integrity, property, particular opportunities, an appropriate reaction, etc.). The second problem of injustice is that the mistreatment by others is a violation of the moral status of people as beings to whom the particular mistreatment should not happen. We address this second problem of injustice, at least partially, when we affirm the moral status of the victim of injustice. Some may consider such mitigation of injustice through the affirmation of the value of the person as, at best, symbolic.⁷ In what follows, therefore, I focus on the mitigation of the first problem of injustice: the fact that injustice consists in a particular mistreatment that often results in a tangible loss.

I begin, in section 2, by setting out in general terms why I think it is possible to mitigate injustice even if its victims are no longer alive. As already signaled, the idea appeals to the fact that people have preferences concerning posthumous outcomes. In section 3, I defend the idea that justice should care about such preferences even if these are impersonal preferences. In section 4, I say more about what needs to be the case about people's preferences that fulfilling them posthumously can qualify as posthumous injustice mitigation. In section 5, I consider the implications of my claims given the enormity of past injustice we face today. Section 6 concludes.

Of course, the presence of injustice and dead victims does not only give rise to considerations of what duties of mitigation, if any, we may owe the dead. We have duties with respect to the dead that we owe the living. We also have duties to the dead, if my argument is successful, that we have on account of injustices done to them once they were no longer alive. And, of course, we have a host of reasons that have nothing to do with past justice to the dead to set requirements regarding how we remember, commemorate or forget the dead. But my focus here is on the duties we owe to the dead

on account of the fact that they had suffered injustice while alive and whose construction does not presuppose that we must be able to benefit or harm them now that they are no longer alive.

2. The Possibility of Posthumous Mitigation of Injustice

Let us begin with a case of someone having a project. Suppose I would like to become a published novelist. My opportunity for it to happen depends on what I do as well as what others do. Suppose a barrier to the success of my project has been erected during my lifetime – although I do not know about it, the manuscript of my novel has been stolen from the publisher. Clearly, it would remove this barrier to my success as a novelist to retrieve it and return it to the publisher. But if it would remove this barrier to the publication of my novel to return it to the publisher while I am still alive, it would also remove this barrier to do so after I am already dead. In essence, just as long as our opportunities for X – e.g. to achieve things and to have things happen to us – span more than our biological lifetimes, they can be posthumously advanced and curtailed. And it is undeniable that some of our projects span more than our lifetimes. Some of our projects may even require our death. For example, Chopin's opportunity to have his heart buried in Warsaw depended on him no longer being alive.⁸

Justice, as I argue below, cares⁹ about the distribution of the conditions for the fulfillment of at least some of people's projects, goals and, more generally, preferences (where I will use these terms interchangeably). Or, to put it more simply, justice cares about the distribution of opportunities to have one's preferences fulfilled (that is, for whatever these are preferences about to obtain).¹⁰ And, as the aspiring novelist story shows, biological death does not put an end to our capacity to advance or curtail opportunities for preference fulfillment. If advancing or curtailing opportunities of preference fulfillment when a person is alive can mitigate (or exacerbate) injustice, it can also, I will argue, do so posthumously. This is, in a nut shell, the core of my case. It thus rests on the following key moves: that justice cares about opportunities for preference fulfillment and that there is nothing about preferences that were once those of a living person but which survived her that would disqualify them from being the concern of justice. I focus on the first of those moves in 2.1 and on the second in 2.2 and 3.

2.1. Justice and preferences

Why might people have duties of justice to one another with respect to their projects and preferences? There is a simple story to be told here according to which justice is concerned only with opportunities for preference fulfillment (or with preferences for short) where this is the

fundamental currency of justice. This is not the story I wish to advance. As I see it, the content of our duties of justice is set by a variety of considerations, one of them is what people care about (and how much), but people's well-being, interests, ability to control, autonomy, what might demean people also matter.¹¹ These are, of course, not mutually exclusive categories – for example, getting something may be in my interest only when and because I care about it; or fulfilling my preferences may sometimes matter only because doing so protects my autonomy or well-being.¹² This means that preferences may matter to justice for a variety of reasons. This variety is no obstacle to the possibility of mitigation of injustice through preference fulfillment, but, to clarify, I do think that justice must care that there are at least some opportunities to fulfill one's preferences even when these do not serve one's well-being or autonomy; it is the fact that they are one's preferences that matters.

Why should we accept that justice should at least to some extent care about what people care about? Since there may be various reasons for justice to care about preferences, there may be many rationales here but a general rationale is also available that captures why preferences would matter in their own right. Justice that is sensitive to what people care about is justice that, in the words of Tom Parr (2018: 307), 'consults, rather than usurps'.¹³ Why should justice consult?¹⁴ We may think, following Rawls and others, that this is what is required by thinking of people as self-authenticating sources of valid claims. It is, inescapably, each person's task to take a stance on what is value in this world and it would therefore be disrespectful not to allow justice to be sensitive to such decisions.¹⁵

Is it possible that justice should not care about preferences fulfillment at all? Perhaps, with Dworkin and Rawls, we should think that justice requires that people get a fair share of resources or primary goods. Notice, however, that the justification offered by Rawls (2001: 57–61) for justice distributing primary goods is that such goods let people achieve whatever else they wish to achieve. Similarly, Dworkin (2002: ch. 2) is concerned with giving people resources such that their ambition is not unfairly constrained. It is a complicated question how preference satisfaction relates to autonomy, welfare or respect on these accounts and, clearly, the two theorists do not postulate equal preference satisfaction as their measure of justice. I return below (3.2) to the problem of accommodating some preferences in a Dworkinian account but my point here is that opportunities for preference satisfaction have to come somewhere into the story of what justice requires. This is because a just society is a society that must leave reasonable amounts of space for people to select their own ends.¹⁶

All this leaves open how many people have to care about something for that something to become a concern of justice. The answer likely depends on the nature of the good they care about, the intensity with which they care and the expense of providing it. For some goods merely one person caring about it, should be enough for justice to also care – e.g. if Andrew cares about being present at the birth of his child then, barring opposing considerations, justice should deliver. For some goods (religions), a certain number of people must care but once they do, all should have access to it (e.g. access to a temple, as compatible with that religion's rules). In this case, if some people care, all must have access to it to protect their autonomy; in other cases, all may need to have access because when some people care about it, they produce something that is valuable for all (democracy) or desired by (almost) all (the internet). And this is compatible with it being the case that for some goods there is only an injustice when those who care about it cannot have it (holidays).

Of course, what people care about, or at least care about deeply, is hardly the only determinant of the content of justice and indeed leaves wide open how the sensitivity should be achieved. In any case, any claim that justice should be sensitive to what people care about needs to be subject to caveats. Let me list four (while in 3.2 I concede a further one).

(1) For justice to care about what people care about it must be the case that advancing the fulfillment of what they care about, and placing people under a duty to advance it, is appropriate in light of other considerations of justice.¹⁷ I am not going to specify here in full what the 'other considerations of justice' might consist in but even this vaguely stated caveat should be understandable. The content of what people care about may be such that in light of other considerations of justice, people may have a duty not to have the preference, or not to act on it, or for others not to advance its fulfillment. For example, simply because some people would like to advance racist projects, this does not make the advancement of racist projects a concern of distributive justice: we have a duty not treat each other in a racist way. And even if the content of the preference is innocuous – e.g. when they are adults, I would like my daughters to speak to me every week – there may be no duty on anyone to advance its fulfillment because of what it would cost them, in autonomy, to do so. True, if their speaking to me every week would mitigate an injustice they would have a reason of justice to visit me though still not necessarily a duty (Stemplowska 2018a). I will return to the problem of whether the preference to be remembered can meet this caveat in subsection 4.3 below.

(2) Advancing the fulfillment of what people care about must appropriately reflect the value of what people care about. This means that advancing the fulfillment of the preferences does not make a mockery of the value the preference expresses. For example, if I have a preference for being a master judge of the number of people present in a seminar room and believe that there are 100 people present while there are in fact 11, it would fulfill my preference to be correct if someone were to usher an extra 89 people into the room but I would not thereby display masterful judgement.¹⁸

(3) I am also prepared to grant for the sake of the argument that for justice to care about people's preferences, these preferences need to be authentic in two senses. First, what people care about should not itself be a mere product of injustice (Parr, 2018: 308). Second, the preferences must be appropriately attributable to people: they should not be stray preferences they themselves wished they did not have.

(4) It may be the case that for justice to care about what people care about, what people care about should not be too irrational. Perhaps preferences over success at grass counting or access to unlimited sauerkraut or to erect a statue to Hitler in one's garden (even if permissible) need not concern justice. But a just society also needs to allow people secure access to a range of projects the rationality of which may be in question (as the firm atheists and devout religious people who nonetheless believe in liberal freedoms will attest).

Since I leave it open how justice should achieve sensitivity to preferences, let me make what I say more concrete by pointing out that there are three main ways in which what people care about will matter for mitigation. First, justice may care about the distribution of opportunities for the fulfillment of specific preferences, for example, to avoid hunger or to have children. Of course, when justice cares about these opportunities it may be because they are rights or something else normatively fundamental, but the language of preferences serve a purpose here since, following death, that is the currency in which we will deal when it comes to mitigation. When justice cares about the distribution of opportunities for the fulfillment of specific preferences then, clearly, depriving people of the requisite opportunities amounts to an injustice (in need of mitigation).

Secondly, there are also other cases when it is accurate to say that justice cares about the distribution of our opportunities for the fulfillment of given preferences, even if it is not in itself unjust to deprive someone of the opportunity for the fulfillment of these preferences. This is the

case when a person suffers some independently identifiable injustice (e.g. an assault) that affects her opportunity to fulfill the preference and this loss of opportunity must be taken into account when calculating how much injustice a person has suffered due to the original and independently identifiable wrongdoing. For example, it may not be unjust to stop a person from getting a job by competing with her fairly, but, if one wrongs a person by assaulting her, the fact that the assault also stops her getting a job she wanted counts in the calculus of injustice the person has suffered.¹⁹ The idea here is that some shortfalls in opportunities to fulfill one's preferences count as injustice in need of mitigation if they are due to an independently identifiable injustice (as in the case of murder here).²⁰

Thirdly, even if justice did not care about the distribution of opportunities for preference fulfillment, it may still care about preferences as a matter of corrective justice.²¹ That is, even though the injustice of an assault a person suffers is not exacerbated by the fact that the assault stopped her from obtaining the last signed copy of a book, if (implausibly in most cases) the only thing we could do for the victim is not get her the signed copy, justice may require this to be done.

2.2. *Surviving preferences*

Following Feinberg (1984), I will refer to preferences that were the preferences of the now dead person and that were about outcomes that can in principle be realized even or only after one's death, as her surviving preferences. The pertinent question, then, is whether justice should care about the fulfillment of *surviving* preferences and projects and thus opportunities that can be advanced *posthumously*, or whether access to these opportunities matters only while people are alive. And the answer is that justice should concern itself with the fulfillment of surviving preferences and projects because people themselves, while alive, have strong preferences about posthumous states of affairs and take steps to block or bring them about. Since justice must be sensitive to what people care about, it should take a stance on the distribution of opportunities for the fulfillment of surviving preferences, especially (though not exclusively) when this would allow us to mitigate injustice. For us not to do so, we would need to argue that surviving preferences exhibit some feature that disqualifies them. I argue below that they do not.

Right away, some may object that the surviving preferences, and the corresponding opportunities to have them fulfilled, are disqualified because they cannot survive as victim's preferences. This is because, being dead, they cannot have any preferences or projects; a person's projects *were* her projects rather than *are* her projects. I have no quarrel with the linguistic move requesting the use of

the past tense in the attribution of preferences to the dead. But such a linguistic move does not settle the normative question of whether justice ought to care merely about the opportunities for the fulfillment of the preferences of the living or also the preferences that survive our death.

Can surviving preferences meet caveat 4 (subsection 2.1. above), according to which for justice to care about preferences they cannot be too irrational? Luckily, I do not need to take a stance on the precise content of this caveat to show that it can. This is because, at worst, preferences over posthumous outcomes will qualify as acceptable irrational preferences (on a par with self-regarding preferences relating to homeopathy, say). But even this worst case scenario is unlikely. More likely, as Scheffler (2013) has suggested, is that preferences over posthumous outcomes are preferences over matters that genuinely give meaning to our lives. Posthumous preference satisfaction should not strike us as a weird superstition but, rather, something towards which it is reasonable and not uncommon to orient much of one's life, deriving meaning from projects that span more than one's lifetime (think here, for example, of one's children or other projects that are meant to transcend a single lifetime).²² In any case, preferences over posthumous states of affairs should not be deemed so irrational as to fall short of this caveat.

In what follows I will look at a different strategy that may disqualify surviving preferences from being the object of justice: not because they are preferences that were held by those who are no longer alive but because they must be impersonal preferences and, so the argument goes, justice need not be concerned with our opportunities to advance our impersonal preferences.

3. The Importance of Impersonal Preferences (Though Not All Surviving Preferences Are Impersonal Anyway)

Following the literature, let me call preferences that affect the person, one's personal preferences. Impersonal preferences are all the remaining preferences a person has. People clearly have strongly held impersonal preferences and many of my own surviving preferences are impersonal. I care that no one needlessly harms kids now or ever, or, less crucially, that even if I do not, one day humanity learns whether John Stuart Mill and/or Harriet Taylor burnt Thomas Carlyle's sole draft of his 'History of the French Revolution' book manuscript on purpose or whether it was genuinely an accident. I want the truth about Mill and Harriet to come out.

Dworkin (2002: 27–28) captures the skepticism about the importance of impersonal preferences to justice in the context of outlining his egalitarian theory of justice:

‘[o]f course people do care, and often care very deeply, about their... impersonal preferences. But it does not seem callous to say that insofar as government has either the right or the duty to make people equal, it has the right or the duty to make them equal in their personal situation or circumstances, including their political power, rather than... in the degree to which their differing visions of an ideal world are realized. On the contrary, that more limited aim of equality seems the proper aim for a liberal state, though it remains to see what making people equal in their personal circumstances could mean.’

I will argue below (in 3.2) that justice should care about impersonal preferences just as it cares about personal ones. First, however, let me point out that, in any case, at least some surviving preferences can be personal preferences.

3.1. Must surviving preferences be impersonal preferences?

There are going to be difficult cases considering the classification of preferences into personal and impersonal. If a person invests herself fully into a preference – orients her life around a project – for example, follows the trials the tribulations of a football team, it becomes unclear whether her preference that the team wins is personal or impersonal.²³ Similarly, any parent who loves her children will have preferences about their wellbeing that seem personal even if the child’s wellbeing has no impact on the experience of the parents. For example, suppose that children were taken from a loving parent (say, through a mistake made by the social services). It seems the parent benefits, not just the children, when the children find alternative happy homes.²⁴

But even if we are careful to keep the category of personal preferences narrow, we will find it difficult to classify all surviving preferences as impersonal. This is at least if we grant – seemingly unadventurously – that the preferences a person has about her achieving things herself are her personal preferences. Given the complexity of our causal involvement in the world some of our surviving preferences will turn out to be personal preferences on this view. This is because a person can achieve things collectively with others. That is, we can see a project as someone’s achievement (together with others) if this person was appropriately involved in bringing it about. For example, if she raised the funds for a forest, the forest is one of her (collective) accomplishments, even if she did not plant all or even any of the trees herself. For notice that if we want to appropriately describe what the person has achieved, we must say that the forest is her partial achievement, not merely that ‘fundraising’ was. We may get away with saying that she achieved ‘fundraising for the forest’ but the implication even here is that she is partially responsible for the forest itself, not just the fundraising – the fundraising had an object. Similarly, the violinist who plays a concerto in her orchestra is not merely playing her violin; the player who plays defense in a football game is not

merely stopping the other team from scoring; he is winning or losing the whole game; the men stabbing Julius Caesar are not merely wounding him but killing him.

All this, of course, raises the famous problem of under which conditions we can attribute part of the collective outcome to the individual. My point here is not to offer a solution to this problem but only to point out that on any plausible view of agency, a person has to be seen as partially responsible for outcomes that go beyond what her physical reach has been. That is, inevitably, there will be outcomes that can be (partially) attributed to the person even if the person was not causally involved in them all the way to the finish line. But this means, of course, that one can, non-metaphorically, achieve outcomes that happen to arise only following one's death. So if, as I assumed, preferences about achieving things oneself are one's personal preferences some of such preferences may also become surviving preferences that concern posthumous outcomes.

3.2. Must justice be sensitive only to personal preferences?

In any case, we should not grant the claim that justice should be sensitive only to personal preferences. Granting this would not make posthumous mitigation of injustice impossible, but it would certainly restrict the opportunity for it. The quoted passage from Dworkin at the start of this section contained a mere assertion or an appeal to an intuition. But one thought animating it that appears elsewhere in his work is that we may thereby give more weight to some people than others and not enough to some (Dworkin, 2002: 23–4). Altruists, for example, may discount their own personal preferences and ask only that others fare well. People whose welfare matters to more people might end up with more.

One obvious response, then, is to grant that the impersonal preferences that count should not be preferences about other people's welfare or access to resources; in other words, they need to be doubly impersonal. This would rule out, importantly, justice taking into account preferences of ancestors over the welfare of their descendants thus reducing scope for mitigation of injustice, but it would still leave other avenues for its pursuit, for example through completing the victim's projects and commemorating them. A self-abnegating altruist, however, may pose a further challenge. Even if their care of others would not be permitted to translate into requirements of justice, they may simply self-abnegate such that justice cannot serve their welfare. But, if so, allowing impersonal preferences as a concern of justice seems to be a move that at least allows justice to serve their impersonal preferences and so we have less of a reason to worry, putting adaptive preferences aside, that they are inappropriately discounted in the calculus of justice. In any case, even if we allow only

doubly-impersonal references and even if we bestow on any self-abnegators inalienable rights to some level of welfare (or against suffering specific kinds of harm), we would be left with a range of impersonal preferences that could be the concern of justice without invoking any of the worries about double or undercounting of people.

In any case, note that on Dworkin's vision of a just society – as already flagged up in 2 above – a just society would offer opportunities to pursue one's impersonal preferences. Although people's share of resources would be ascertained without reference to what they might need to advance their impersonal preferences, they would be permitted to pursue all permissible impersonal preferences. Indeed, the rules of liberty in a just society would ensure that there would be space for the pursuit of such preferences.²⁵

To bolster the last thought, suppose that all people have a range of preferences: some deeply-held personal and impersonal preferences and some weakly-held personal and impersonal preferences. If a policy was passed that would prevent people from realizing all of their deeply-held impersonal preferences there would be a *prima facie* (or even *pro tanto*) injustice, even if this did not manifest in any harm to the persons. Such a policy would be in need of a special justification. What would make the policy *prima facie* (or even *pro tanto*) unjust would be precisely the fact that the person did not get to advance any of the impersonal preferences she was invested in. We should accept that the fulfilment of at least some of one's (deeply-held) impersonal preferences should matter to justice in its own right.

There is a positive reason that explains the intuition that justice must care about impersonal preferences and accord them the treatment it accords personal preferences.²⁶ As Lippert-Rasmussen (2016: 101), who – almost uniquely among egalitarians – thinks that justice should care about impersonal preferences, puts it, '[t]aking account of people's...[impersonal] concerns is a way of respecting them.'²⁷ Lippert-Rasmussen does not elaborate on this, but I take it that the idea is along the following lines. It is respectful to people to take into account what matters to them, and the fact that people may care as much, or even more, about the fulfilment of their impersonal preferences as their personal ones makes it hard for us to insist that only the fulfilment of personal preferences should matter to justice. Such a move would be arbitrary. To avoid such arbitrariness, we should see justice as concerned with impersonal preferences (at least those that are equally strongly held as the personal ones that we accept justice should care about). To construct a full theory of justice we would need to know how to construct a comparative measure of the importance of fulfillment of

each person's impersonal preferences and what counts as a fair opportunity to fulfill them.²⁸ But we do not need to do that to establish that advancing the surviving impersonal preferences of persons could in some cases mitigate some of the injustice done to her.

3.3 *The Importance of People's Lives*

I think that the argument just advanced explains why impersonal preferences must matter to justice but for those who are uneasy about incorporating into justice a full spectrum of impersonal preferences (of sufficient strength and quality), here is an argument designed to harness the intuition that justice would be amiss if it did not care at all about at least a specific subset of impersonal preferences: those concerning people's lives.

Here I follow Kagan (1994) and Glannon (2001) in drawing a distinction between a person and her life. Suppose we grant that, for the purposes of this argument, a *person* is understood as the unified body and mind. On a widespread understanding of a unified body and mind, this would make a person an embodied collection of connected psychological mental states.²⁹ By contrast, when we think of a person's *life* we more intuitively reach for a broader category than that of a person: a life is composed of a sequence of events that together add up to a story, in which the person features as the central character (Glannon, 2001: 129,140). A life so understood is the history of the person rather than just one's biological life. And it is easy to see why posthumous events can affect one's life since posthumous events bear on the story in which the person features as the central character.

For example, if a great project is dismantled, the lives of the architects of the projects amount to less as a result. If *Sagrada Família* is never finished, Gaudí's life amounts to less. If Trump fully dismantles 'Obamacare', Obama's life amounts to less, whether or not Obama is alive to witness it, because he would no longer be the architect of a lasting healthcare for many. Or consider the fact that Trump becoming elected has cheapened the honor of achieving the presidency for all who had achieved it before him (even if merely by revealing the presidency as something that a person with no virtues can get). The other presidents need not be alive for this fact to affect the story of their lives. Similarly, many accept that bringing health and well-founded joy to the lives of others does make for a better *life*. For example, Maria Skłodowska-Curie's life is better (in that it amounts to more) on account of the fact that she discovered Radium that led to a technology that saves lives. And van Gogh's life is better on account of the fact that his paintings bring well-founded joy to millions. If we accept that lives can go better when they positively affect others and accept that lives

stretch beyond one's biological existence, then we must accept that lives can become even better on account of how they affect others including after the biological person is no longer alive.

Since lives are distinctive from persons, people have *impersonal* preferences about their lives, not just personal preferences about their well-being (or personhood). And the reason to think that justice should care about the shape of people's lives is, as above, that people care about their lives not just the harm and benefit to themselves.³⁰ But note that this general appeal to the importance for justice of what people care about is here enhanced by the fact that it is intuitively easy to see why caring about one's life is a reasonable and meaningful preoccupation. Indeed, there would be an odd dogmatism in saying that justice is insensitive to people's preferences concerning their lives when we readily accept that it should be sensitive to their preferences concerning their personhood. We will need to set conditions on at which cost such impersonal preferences should be given a chance of fulfillment but it would be a philistine notion of justice that held that the only thing worth fighting for was the person and never anything beyond her that she may care about. People see themselves as parts of the world and the universe and justice should reflect that.

I think we have conclusive reasons to accept that justice should concern itself with the opportunities people have to fulfill their preferences including their surviving preferences. It should do so even in a world in which there is no injustice. However, even if I am wrong and justice should not directly care about the opportunities for the fulfillment of people's deeply-held impersonal preferences, this does not entail that, as a matter of *corrective* justice it should not care about them. That is, if we accept a permissive view of mitigation, it may be that the advancement of impersonal preferences is the only (or best) way to mitigate the injustice done to people whose welfare was violated while they were alive.

4. The Possibility of Mitigation

4.1. Permissive and Narrow Mitigation

Suppose then a young woman has been murdered. If her parents set up a University scholarship in her honor, do they thereby mitigate any of the injustice? Not necessarily. The murdered young woman may not have cared about University education. But suppose she wanted to be noticed (and perhaps even posthumously remembered) and so the scholarship does fulfill a surviving preference of hers. The discussion so far proceeded with an intuitive notion of mitigation. Mitigation is something that reduces the extent of the injustice suffered by the victim, however insignificant that reduction may be in the context of the injustice. Of course, nothing can undo the original injustice

but anything that responds to the injustice in a way that is focused on the position of the victim can potentially qualify as mitigation.³¹ At this point, however, we can distinguish between a permissive and a narrow view. On a permissive view, to mitigate is to improve the position of the victim. We can do so by fulfilling the dead woman's surviving preferences.

Should we be guided by the preferences a person held at the end of one's life or the preferences the person had the longest during her lifetime? I do not know the answer to that. Luckily, in many cases many preferences a person has remain stable so we can simply focus on those. We cannot always be sure that fulfilling given preferences meets all the conditions. But the balance of probability may be enough to command us to act.

On a narrow view, to mitigate is to engage in direct rectification where the particular loss suffered by the victim is addressed. On this view, that is, the improvement must take the form of direct (even if partial) rectification. We must in some sense advance the opportunities that the injustice took away from the victims. Clearly, we cannot rectify what is the most important loss: one's life. Is there anything we can rectify? We need to understand what it means to, in some sense, rectify the loss of an opportunity to fulfill the victim's preferences.

Consider the case of an activist who was murdered and thus was unable to donate money to a forest fund. We may wonder whether it really counts as rectification of the lost opportunity – e.g. to donate to the forest fund – when we deliver the outcome (a donation) rather than restore the person's opportunity to donate herself? Of course, if all the person wanted was to achieve the outcome singlehandedly then it does not. But suppose she cared independently about the outcome being achieved. We cannot now restore the opportunity for her to pursue it, but we can still deliver the outcome (or a chance of/opportunity for the outcome being realized). It mitigates the injustice of the loss of the opportunity to have at least some of the outcome for which this was an opportunity brought about.

Does this prove too much? Does it imply that we would also mitigate an injustice if we delivered the outcomes that the dead took steps to avoid but for which they lost opportunities due to the initial injustice? For example, murdering the forest enthusiast also deprived her of the opportunity to donate to the oil industry. And, after all, with the living we are not standardly concerned with their preferences when mitigating an injustice. For example, we mitigate an injustice for the living owner of her car if we return the stolen car to her, even if she dislikes the car and would rather not have it.

But the car analogy is misleading because in the car case the person was entitled to the car while in the case of the donation to the oil company the forest lover was not entitled to such a donation. Moreover, with the living we normally assume that they can dispose of any unwanted returns. If it really were the case that the car owner did not want the car but returning it, for some reason, would deprive her of the possibility to get rid of it that she had before the car was stolen, we may not see such a return as required or even permissible. It is only when the victims would have wanted the specific outcomes we deliver to transpire that we mitigate injustice that took the opportunity for those outcomes away.

On both the narrow as well as the permissive view of mitigation, then, we need to have a sense of the surviving preferences of the dead victims of injustice. In some cases we will know them. In others, we can make reasonable guesses. Even when we know nothing about the victims other than the most general facts about them, we can make such guesses. It is my conjecture, for example, that most typical people currently alive in numerous cultures (whether in Africa, Asia, Europe, Latin America or elsewhere) share the preference to be remembered. If in doubt, therefore, we can always try to mitigate injustice by learning more about the public persona of the dead person,³² taking into account that victims of injustice may have wanted to be remembered (also) as they were before they were wronged (Stemplowska 2014). Think here, for example, of memorials, such as the Vietnam War Memorial in Ho Chi Minh City that contains stories by parents about their murdered children's lives or Yad Vashem that, as far as possible, contains histories of the victims. And if we know more about the people, our guesses can improve. Journalists will have typically wanted their work to be read, architects their work to be built, football supporters their teams to be well-funded, etc.

4.2. Is Consent not Needed?

My claim that we may in some cases know, or reasonably guess, which surviving preferences to fulfill invites an objection. Suppose that you are alive and well and, say, spend every day painting a long fence round the local park that you got permission from the local government to repaint. While you are asleep, your painting is vandalized and I (a person whom you never met before) repair the painting while you are still asleep. My action may not count as mitigation of injustice. I repaired a wrong but might have committed another wrong of making it the case that the final coat of paint of the fence was not placed with your hand. Since you were asleep, we could not be sure if you wanted the fence painted or if, in particular, you wanted to be the person who painted the fence. But even if we knew you merely wanted the fence painted, it still does not seem that justice necessarily calls for

me to repaint the fence while you are asleep. Rather, I should ask you what you would wish. I need your consent.

But if consent is needed before the fulfillment of one's preferences counts as mitigation of injustice, then posthumous mitigation is doomed (except in the rare cases of such consent had been granted). So is consent always needed? Notice that the reason why we must ask for consent while people are alive (other than to ascertain if they wish an outcome or to bring the outcome about) is that we thereby recognize that those who set themselves goals might also change their mind. More precisely, it is not the probability of them changing their mind that is decisive but the recognition that they have a mind to change. But the dead do not have a mind to change so if a goal was theirs before they died, it remains theirs posthumously. Of course, goals only make sense within their context and so as the context changes, our ability to say what the goal would be like in the new context erodes until it evaporates entirely. This will mean that there will be instances when we can no longer respect people by advancing their goals but such crippling uncertainty about people's surviving preferences is not always our fate.

Is this too hasty? Why not say that it is precisely because the dead have no minds to change that the goals they once had are no longer theirs: there are no goals we can ascribe to people once they have died. The idea here is not that they cannot have goals merely because they do not exist – the idea of surviving preferences does not require existence – but that they cannot have them because as contexts change so do goals and since they cannot endorse any new goals, there are no goals that survive them.

I accept that as circumstances change, it will become increasingly uncertain which preferences the now dead would have in the new circumstances. But it is epistemically unwarranted to say that death alone makes it radically uncertain what preferences a person would have on any issue. Most parents who cared about their children while they were alive, for example, would still care that their descendants fare well, even if, eventually, we may be unsure what they would have seen as such. And not all goals are as context sensitive as others. We can be pretty sure, for example, that those who wanted to be remembered would want to be remembered even by people who are very different to them. Or think of the practice of completing and performing works of art. As I type, musicians are practicing for a concert in Warsaw at which they will perform Beethoven's Ode to Joy with the words in Hebrew based on a translation begun in the Warsaw Ghetto during the German occupation despite the German ban on Jews performing non-Jewish music. Even if the

authors of the original translation would have wanted the symphony performed by a different orchestra and choir, preparing performance music and texts means expecting that it would be performed by a variety of authors. Moreover, the costs of getting their surviving preferences wrong is relatively small.³³ Even if the performance did not mitigate any of the injustice it is unlikely to compound it.

4.3. Is Mitigation Through Remembrance Permissible?

At this point, however, we may worry whether the surviving preferences to be remembered or for one's work to be commemorated, meet the condition of permissibility (caveat 1 in subsection 2.1 above). If one's surviving preference is that one's novel gets published or a forest gets planted this seems innocuous enough. But for most people the surviving preferences we are most likely to know about will be over the welfare of their children; which we may be unable permissibly to fulfill if such welfare would come at the expense of other people's children; over political projects, which would need to be accommodated to make room for the democratic decisions of the living;³⁴ and to be remembered.

What shall we say about the permissibility of fulfilling the preference to be remembered? Clearly, preferences whose fulfillment dictates states of mind or actions of others may exhibit lack of respect for others. Is wanting to be remembered by numerous strangers – rather than wanting to merit remembering or just wanting to be remembered by one's family and friends – a preference that exhibits lack of respect for others? It may be, even if we understand remembering in a way that aligns with our current practices of remembrance: we are not required to constantly ruminate on those we are asked to, or want to, remember but occasionally to recall them or allow ourselves to be reminded of them. Still, it seems clear to me that if I wanted to be remembered by everyone for generations to come, this preference would exhibit lack of respect, most likely both for those who merit or are entitled to remembrance ahead of me and for those who would do the remembering. My preference to be remembered should be for no more than my fair share of memory.

That said, however, it may still be permissible – and even required – to advance the fulfillment of such a disrespectful preference.³⁵ In this instance, even if the rememberee is asking for more than her fair share of the world's attention, delivering it to her need not amount to a recognition that she really is more important than others but only, as the case may be, that doing so would fulfill her surviving preference and thereby mitigate some of the injustice she had suffered. In this respect, fulfilling the preference for remembrance is different to fulfilling the preference of a racist for a

racist statue to be erected: fulfilling such a preference would normally remain impermissible given what the fulfillment communicated about people with different skin color. This means that even if some victims of injustice are owed remembrance this does not mean that they are owed remembrance in any form they would welcome. But it allows for the fulfillment of some preferences for remembrance to count as mitigation.

5. All the Victims Who Have Ever Lived?

The history of the world is a history of injustice. Is there no expiration date on the injustices whose presence triggers the duty to mitigate? I think that the passage of time does not matter in its own right for lessening the concern of (corrective) justice with the injustice that initially took place (Butt 2007: 152; 2013: 265-6). I do not have the space to argue for this here but can help myself to the assumption since it makes my case harder rather than easier. Clearly, that seems to leave us with quite a lot of injustice to mitigate.

That the problem is so enormous alone does not reveal the analysis to be wrong, however. It just means we need tools for deciding which parts of the injustice we face we must tackle first. But for those who would like our duties of mitigation to conservatively resemble what we currently tend to imagine them to be there is some good news. First, the mitigation we can offer to the living is far greater than the one we can offer to the dead, let alone the prevention we can offer the living. This means that, on reasonable assumptions that the effectiveness of our efforts bears on the requirements to engage in them, we have good reasons to privilege focusing our justice advancement measures on the living. But we should not expect the duty to mitigate the injustice done to the living to colonize entirely our efforts here. This is because the effort needed to mitigate injustice for the living may call on a different set of resources than that needed to mitigate injustice for the dead. On a plausible view of our duties, even after we campaigned, voted and transferred resources to mitigate the injustice done to the living, we will have time left to remember the dead.

All this is compatible with us thinking that there may be unusual cases when the living do not even get priority at all. Imagine a very unlikely case in which two people's reputations have been unjustly tarnished and we can only repair one of them. Suppose also that one person is already dead while the other alive but that they and their situations are identical in all other respects and, moreover, the person who is alive will never get to experience or be otherwise affected by our actions in ways other than whatever we can do for the dead person.³⁶ In such a case, when deciding

what we owe the victims, the living victim does not get priority as victims to whom mitigation is owed.

There is another reason why we may expect conservative results: as time passes our knowledge of who suffered injustice, of what type, and which surviving preferences they might have had fades dramatically. This means that we cannot help but tend to focus on the more recent injustices rather than the more distant ones.

What to say about cases where our knowledge of the surviving preferences of individual victims is equal? Should we prioritize, say, the injustice suffered by someone murdered in the 21st century or the 11th? If the (whole life) injustice they suffered were of similar magnitude, our efforts likely to be similarly effective and our confidence about them equal, and we discount considerations about relatives and education effects, etc. then the case for privileging mitigation of the more recent injustice over the more distant one is hard to make. We may have a greater reason to act on injustices that we are more closely involved in – as a community – or more likely to have benefited from and this would give us a reason to privilege the recent injustice over the more distant one. Absent such considerations, however, we might be engaging in a form of ‘presentism’ that is akin to ‘speciesism’ should we privilege things that are closer to us in time than those that are more distant.

6. Conclusion

I argued that it is possible to mitigate injustice posthumously provided we know – or can make a reasonable guess – about the dead person’s preferences and projects. I also think that such knowledge is not scant on the ground. This leaves many elements of the picture still missing. For example, I said nothing or next to nothing about the problem of how to weigh the importance of such posthumous mitigation versus mitigation of ongoing injustice or how to maximize whom we can collectively remember. Nor did I say on whom the duty may fall, whether it is overdemanding to require people to remember horrific injustice, which of our actions may unacceptably compound injustice to the dead, or how to select whose injustice to mitigate given the countless (equally mistreated) victims. But there is plenty we can all be doing to mitigate past injustice even before we have answers to all these questions.

7. References

Boxill, B.R. (2003). “A Lockean Argument for Black Reparations,” *The Journal of Ethics* 7: 63–91

- Brandt, R.B. (1979). *A Theory of the Right and the Good*. Oxford: Oxford University Press.
- Butt, D. (2007). "On benefiting from injustice", *Canadian Journal of Philosophy* **37**: 129–152.
- Butt, D. (2009). *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations*. Oxford: Oxford University Press.
- Butt, D. (2013). "Inheriting rights to reparation: compensatory justice and the passage of time", *Ethical Perspectives* **20**: 245–269.
- Dworkin, R. (2002). *Sovereign Virtue*, Cambridge, MA: Harvard University Press.
- Dworkin, R. (2011). *Justice for Hedgehogs*. Cambridge, MA: Harvard University Press.
- Feinberg, J. (1984). *Harm to Others: The Moral Limits of the Criminal Law*. Oxford: Oxford University Press.
- Glannon, W. (2001). "Persons, Lives and Posthumous Harms," *Journal of Social Philosophy* **32**: 127–42.
- Kagan, S. (1994). "Me and My Life," *Proceedings of the Aristotelian Society* **94**: 309–324.
- Kagan, S. (2012). *Death*. New Haven: Yale University Press.
- Lippert-Rasmussen, K. (2016). *Luck Egalitarianism*, London: Bloomsbury.
- Lu, C. (2007). *Justice and Reconciliation in World Politics*. Cambridge: Cambridge University Press.
- Meyer, L.H. (2004). "Surviving Duties and Symbolic Compensation," L.H. Meyer (ed.) *Justice in Time: Responding to Historical Injustice*. Baden-Baden: Nomos Verslagsgesellschaft, 173–184.

Meyer, L.H. (2015). "Intergenerational Justice," *Stanford Encyclopedia of Philosophy*, section 5.3. Available at: <https://plato.stanford.edu/entries/justice-intergenerational>.

Parfit, D. (1984). *Reasons and Persons*. Oxford: Oxford University Press.

Parr, T. (2018). How to Identify Disadvantage: Taking the Envy Test Seriously," *Political Studies* **66**: 306–22.

Quong, J. (2011). *Liberalism without Perfection*. Oxford: Oxford University Press.

Rawls, J. (2001): *Justice as Fairness: A Restatement*. Cambridge, MA: The Belknap Press of Harvard University Press.

Ridge, M. (2003). "Giving the Dead Their Due," *Ethics* **114**: 38–59.

Scheffler, S. (2013). *Death and the Afterlife*, N. Kolodny (ed.). Oxford: Oxford University Press.

Sher, G. (1981). "Ancient Wrongs and Modern Rights," *Philosophy & Public Affairs* **10**: 3–17.

Sobel, D. (1994). "Full Information Accounts of Well-Being," *Ethics* **104**: 784–810.

Spinner-Halev, J. (2012). *Enduring Injustice*. Cambridge: Cambridge University Press.

Steiner, H. (1994). *An Essay on Rights*. Cambridge, MA: Blackwell.

Stemplowska, Z. (2014). "Polin: A Wish to be Remembered; The Museum of the History of the Polish Jews", *Times Literary Supplement*, 19 November.

Stemplowska, Z. (2018a). "Should Coercive Neurointerventions Target the Victims of Wrongdoing?," D. Birks and T. Douglas (eds.) *Treatment for Crime*. Oxford University Press, 338–350.

Stemplowska, Z. (2018b). "Should I be Proud of Liberalism with Excellence?," *The American Journal of Jurisprudence* **63**: 1–11.

Stemplowska, Z. (2019). "How Generous Should Egalitarians Be?," *Critical Review of International Social and Political Philosophy* 22: 269-283.

Tadros, V. (2017). *Wrongs and Crimes*. Oxford: Oxford University Press.

Thompson, J. (2002). *Taking Responsibility for the Past: Reparation and Historical Injustice*. Cambridge: Polity, 2002.

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² Transl. and quoted in Meyer (2015).

³ See for example Sher (1981) Thompson (2002), Boxill (2003), Lu (2007), Butt (2009), and Spinner-Halev (2012).

⁴ Either because some, like Scheffler (2013), seem to be skeptical that mitigation of injustice is possible or because they side step the topic of posthumous justice entirely (cf. Kagan, 2012) or because, while they assume the existence of duties to the dead they, explicitly, do not set out to justify their existence since their focus lies elsewhere (cf. Ridge, 2003). Others, like Meyer (2004), offer such a justification but in this paper I focus on a distinctive strategy.

⁵ I pursue the other strategy in 'Descendants', a working paper.

⁶ This is a sufficient condition only that suffices for my purposes here (I do not take a stance in the paper on whether injustice may also consist in something else). 'Treatment by others' here is meant to encompass both treatment by individuals and by collectives. In saying that a person has a duty to treat another in a certain way I am merely saying that she is required to deliver such treatment, even if she has some discretion about how to achieve it, not that the recipient necessarily has a right to it.

⁷ I do not think it is merely symbolic and I think it too is possible. We affirm the moral status of a person when we guide or are prepared to guide our actions in light of the fact that the people are sources or repositories of value. (I put aside the role perpetrators must play in this). We can, for example, observe their wishes (as long as these wishes themselves did not reflect the person's inaccurate idea that they lacked the required moral status). Someone's death is no obstacle to us being able to nonetheless guide our actions in light of her being a source of value. To be clear, for our action to count as affirmation of the moral status of the relevant person, we must be motivated by the fact that the person herself is the source of value. For example, when we fulfill her wishes we must do it because they were *her* wishes. If, by contrast, we fulfill them merely because we independently want to act this way, we may show respect for the victim's judgement, but we do not thereby affirm the person's moral status as someone who is of such value as to affect or constrain how we act. However, if we are at least in part motivated by the fact that these were their wishes, then we thereby respect the dead as sources of value that guide our actions.

⁸ The heart travelled from Paris and was smuggled into partitioned Poland by his sister and is buried in the Holy Cross Church in Warsaw (then part of the Russian partition).

⁹ E.g. For justice to care about X means that it is a matter of justice what happens vis-à-vis X where justice may, among other things, maximize, minimize, weigh X or have X as a constraint.

¹⁰ What this means, given the stipulation above about how to understand justice, is that people will have duties towards others with respect to these conditions, that is with respect to the likelihood of success of such projects and preferences. These duties will sometimes call for specific actions and sometimes, qua imperfect duties, will leave duty-bearers with a choice of how to discharge them. Although shortfalls in justice are here assumed to correspond to some failing to perform their duties, for simplicity, I will usually talk only about victims' projects or preferences being unfulfilled or people lacking opportunities for preference fulfillment, rather than about the perpetrators failing to advance the fulfillment of the preferences or failing to preserve or deliver conditions for their fulfillment. Admittedly, there is a certain linguistic oddness to saying that justice may care about posthumous opportunities since we often think of opportunities as opportunities to do something and the dead cannot do anything. But opportunities need not be merely or only opportunities to act. Think back to the example of publishing a novel. We may say that writing and getting a novel published means accessing the opportunity to become a novelist. This opportunity involves acting by the person whose opportunity it is (writing the novel) but also the novel getting published by a publisher that need not involve the writer doing anything. The opportunity is thus advanced when the manuscript is sent to the publisher following the death of the writer and is curtailed if it is burnt.

¹¹ For a particularly illuminating discussion of various grounds for wrongful and non-wrongful actions, see Tadros (2017).

¹² There are good reasons to think that justice should care about what people care about not only when and because it bears on their well-being. There is also the issue of whether well-being should be understood as preference fulfillment. On this other issue see, for example, Richard B. Brandt (1979), Derek Parfit (1984), and David Sobel (1994). My own view is that a plausible account of wellbeing cannot be a mere preference satisfaction account (on this see also n 27). But whether I am right about this does not, in fact, matter for the purposes of establishing the possibility of posthumous injustice mitigation; it matters only for the purposes of establishing the less interesting fact that my argument from the importance of surviving preferences to justice offers a distinctive way for establishing the possibility of posthumous injustice mitigation than an argument that appeals only to the importance of posthumous benefit and harm would.

¹³ Parr uses this idea to argue for a specific way in which justice should be sensitive to people's views: not just their views about what matters but their valuation of their own comparative standing vis-à-vis others. He goes on to explain how justice having this shape helps it avoid three objections: the usurpation, disrespect and burdens objections. I draw on some of his claims here but my task is less ambitious. All I need for my argument to go through is that justice displays some (reasonably extensive) sensitivity to people's views about what matters.

¹⁴ One obvious reason is that it may tend better to people's wellbeing this way. But this is only one reason and often not consulting would bear better fruit.

¹⁵ Cf. John Rawls (2001: 23–24), Ronald Dworkin (2011). Dworkin argues that we value 'each individual's responsibility to determine for herself what it means to live well' (Parr, 2018: 309). We may also think that deciding for people would display, as Tom Parr (2018: 309) summarizes Jonathan Quong's view, 'a negative attitude concerning the individual's ability effectively to judge and to advance her own interests in a given situation'. See also Quong (2011: 100–106).

¹⁶ See also Parr (2018).

¹⁷ This means that advancing the fulfillment of what people care about requires that the fulfillment of all the preferences be compatible with each other as well as the remaining considerations of justice or that we have a hierarchy of the advancement of the preferences and the remaining considerations.

¹⁸ I thank Tom Parr for assisting me with this difficult maths here (and drafting an early version of this footnote). I am grateful to Victor Tadros for a version of this example. I am also grateful to Hillel Steiner for pointing out the important political resonance of this example in light of Trump's inflated inauguration attendance figures.

¹⁹ There was an injustice in the actual sequence of events, which I take is sufficient (e.g. this is not a counterfactual view).

²⁰ I defend the view that injustice can be compounded this way further in Stemplowska (2018a).

²¹ I am grateful to Tom Parr for this point.

²² Scheffler suggests that it is not possible to mitigate posthumous injustice, but here I am referencing his argument to the effect that for our lives to be as meaningful as we imagine them to be, there must be future generations that will preserve/respect/carry on some of what we do now.

²³ I discuss this in greater detail in Stemplowska (2018b).

²⁴ This can be contrasted with a case, similar to one initially offered by Parfit (1984: 494) in support of the thesis that not all preference satisfaction bears on one's well-being. Consider a person who chats with a stranger on the train and in the course of the brief encounter (that is never to be repeated) develops a preference that the stranger gets the job she has applied for. Suppose the stranger goes on to get the job. Although her preference is satisfied, it is counterintuitive to think that this bears on the person. The difference between this and the case of the parent mentioned in the main text resides in the fact that in the parent case the parent does not merely have a preference regarding the wellbeing of her children but – we would standardly assume – invests the preference with meaning for her life and shapes her identity round it.

²⁵ There is more to be said here to explain the implications of this view for how we might count what is a fair share of resources for Dworkinians or primary goods for Rawlsians. My view is that these metrics must themselves to some extent track people's preferences (including impersonal ones) to be plausible. I am grateful to Tom Parr for pressing me to clarify my position here (even if not my argument).

²⁶ At least qua preferences; it may treat preferences that bear on a range of things it cares about as more fundamental – e.g. autonomy – differently depending on how these preferences interact with that more fundamental category.

²⁷ Grammatically, it might be that it is the concerns (not their bearers) that are respected but this would amount to a restatement rather than an explanation, so I opt for the more natural interpretation.

²⁸ Dworkin (2002), Lippert-Rasmussen (2016), Stemplowska (2019).

²⁹ And, incidentally, on such an understanding of personhood, according to Glannon (2001: 140), '... if a person is nothing more than a body and mind, then it is difficult to see how facts that do not either directly or indirectly affect the body or mind and cause adverse changes in the person [since they happen posthumously] can harm him.'

³⁰ We may even think that – independently of whether people care about their lives – lives are the type of thing that justice should care about. Just as justice should care about harm and benefit to persons even if all they care about is glory in the eyes of God (at least in so far as the two don't conflict), justice should care about lives even if all people care about is pain and pleasure. If so, it would seem that improving someone's life posthumously may mitigate injustice. But see section 4.2 for my argument that mitigation requires that we fulfill the preferences that the victims of injustice actually had.

³¹ I am grateful to Rainer Forst for making me clarify my position.

³² I say 'public' since people may not want their private lives to be known. By 'public' I do not mean 'the public life' of the person but what the person herself was projecting into the world, even if the world itself was, say, that of the neighborhood shop.

³³ This is not to deny that there may be cases where specific performers – perhaps the perpetrators – should not perform a given piece of art.

³⁴ There is no reason to think that this cannot be done; I just cannot outline it here. For a discussion of how not to do it, see the vignette offered by Hillel Steiner (1994: 2050) of corrupt Chicago politics where the dead would remain on the electoral roll.

³⁵ But even if remembrance may be a required form of mitigation of injustice (even when it fulfills over-bloated and disrespectful surviving preferences), it still seems appropriate to privilege the fulfillment of permissible over impermissible preferences. This means, for example, that we would be privileging the preference to be remembered by one's family and kin over one to be remembered by all as well as privileging the preference to be remembered together with other victims of the same or similar injustice over a preference to be remembered as, say, the symbol of that injustice.

³⁶ I am grateful to Daniel Elstein for this example.