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Are There Duties To The Dead?

Walter Ott doesn't think so.

Mrs White devoted much of her working life to her business, a small laundromat. Upon her death, her son Jimmy wonders what to do with it. Would he be harming Mrs White if he were to sell it? Does he have some kind of duty to keep it going, no matter what? If so, to whom does Jimmy have this duty, given that Mrs White no longer exists?

I shall argue that we have no duties to the dead because there is no good answer to this last question. Where we have duties to one another, we can harm or benefit one another. But 'to harm', for instance, is a transitive verb. Something is harmed. So, what's the object in the laundromat case? Not the corpse, presumably, for it doesn't care about laundromats. The most recent defenders of duties to the dead claim that all harms to the dead are instead committed against the corpse's *antemortem* (before death) self. When Jimmy sells the laundromat and squanders the proceeds, it is not Mrs White *now* who is harmed, but rather, Mrs White *when she was alive*. On the face of things, this seems pretty odd. It's as if I can reach back through the decades and pop great-granddad on the nose. Doesn't harming a dead person prior to her death require time-travel?

Timeless Harms

George Pitcher thinks harming the dead seems counter-intuitive only because we wrongly assume that a harm must

(a) change someone's 'metaphysical state', and

(b) be something of which the subject is aware.

Let's take these in turn. Kicking you in the shins is one way to harm you; and it does produce a change in your metaphysical state in the sense Pitcher means. C-fibers fire in your brain, you wince, and so on. But not all harms are like this. If your daughter dies in India without your knowledge, you've been harmed; but nothing about you – your sensations, your mental states, generally, nothing – has changed. If it's like this, harming the dead would not require anything spooky like backward causation.

As for (b), a similar example indicates that you can be harmed without your knowledge. If you contract a fatal disease, you're harmed, even if you don't find out about it for years, maybe if you never find out (say you're hit by a bus a year later, before showing symptoms).

So Pitcher seems to be right: we can't rule out harms to the dead just because they don't change their states or are not aware of the harm. But Pitcher is still far from home. To make his positive story of duties to the dead work, he needs at least what he calls a 'rough' definition of harm: "an event or state of affairs is a misfortune for someone (or harms someone) when it is contrary to one or more of his important desires or interests" (quote from his essay 'The Misfortunes of the Dead' in *The Metaphysics of Death*, ed. J.M. Fischer, 1993).

Given this revision of the idea of harm, Pitcher can seemingly close his case. Clearly, our interests and desires *can* be thwarted *postmortem*, and this is a harm to our *antemortem* selves. The chief interest which structured Mrs White's life was her business. If it fails after her death, it seems plausible to say on the basis of this redefinition that Mrs White has been harmed.

Unfortunately, Pitcher's definition of a harm isn't so much 'rough and ready' as 'false and useless'. It would make it impossible to grade students fairly, or to break up with anybody, without harming them. For in doing either of these things, we sometimes bring about states that are contrary to their interests. This is a familiar complaint, and there are many ways to deal with it. However, here, I want to grant Pitcher his 'interest-thwarting' analysis of harm, and see if it helps with the problem of the object of harm.

Consider first, picking out the *time* at which the late Mrs White was harmed by the posthumous failure of her business. It would indeed be absurd if she were harmed when the business goes under. She doesn't exist at that time, so she cannot be harmed then. Perhaps we can say instead that she was harmed all along, by the fact that her business was *going* to fail; or at least, she was harmed as soon as she acquired an interest in the preservation of her business. So it's not really a *postmortem* harm at all: it's what we might call a 'timeless' harm. As Joel Feinberg puts it in 'Harm to Others', also from *The Metaphysics of Death*: "It does not suddenly 'become true' that the *antemortem* Smith was harmed [when his interests are thwarted *postmortem*]. Rather it becomes apparent to us for the first time that it was true all along – that from the time Smith invested enough in his cause to make it one of his interests, he was playing a losing game." We can call Pitcher's and Feinberg's view that there are timeless harms 'P-F' for short.

There are two things to immediately notice about this view. First, there is no constraint on what interests are relevant: they can be morally neutral or even evil. Suppose I have a strong interest in the continuation of doubles tennis in grand slam tournaments. This is morally neutral. On P-F, if, some hundred years hence doubles matches get the axe, *I* will have been harmed. Second, P-F requires determinism, at least where human actions and events are concerned. The disastrous future must be certain. If determinism is false, then it's not true *now* that Mrs White's business will (definitely) fail, and so there's no truth now that can harm her. I find determinism pretty plausible, so I won't object on that score. But it has some unforeseen consequences for P-F.

Objection 1: *Antepartum* Harms

If *postmortem* (after death) harms are possible, then what we might call *antepartum* (before birth) harms are equally possible.

I like to think I have an interest in innocent persons not being killed. On P-F's idea of timeless harms, Hitler has therefore harmed me, by bringing about events contrary to one of my important interests. But this cannot be right. If one is totting up Hitler's sins, surely we cannot count among them 'thwarting the desires of Walter Ott, who is yet to be born'.

But perhaps this is not fair to P-F, for Pitcher and Feinberg stipulate that it is only once Mrs White acquires the relevant interest that she can be harmed by the fact that her business will fail, and so she is only harmed if her interest is spoiled after she acquired the interest.

Will this work? I don't think so. On the determinism P-F must adopt to work, the past and future are perfectly symmetrical. So if it's true now that Mrs White's business fails in 2020, it is timelessly so. And if it is true now that in 2015 Mrs White has an interest in the success of her business, it is equally timelessly so. Similarly, if King Blight creates economic conditions in 1900 that bring about the failure of Mrs White's laundromat in 2020, then King Blight has thwarted her interests, even before she has any interests to *be* thwarted. (David Suits makes this point in his 'Why death is not bad for the one who died', *American Philosophical Quarterly* 38, 2001.)

Is there any justification for resisting this symmetry? A defender of P-F might argue that until Mrs White's interests exist they cannot be thwarted, since only existing interests can be fulfilled or thwarted. Until she forms

a deep interest in the success of her laundromat, she cannot suffer harm because of the fact that in 2020 her business will fail.

This counter-move only plays into my hands. If interests must exist in order to be fulfilled or thwarted, then so must the person whose interests they are. It is not as if interests float about in the ether. More to the point, P-F depends on the claim that existence of the interested party is not a necessary condition for harm. How then can existence of the interests themselves be a necessary condition for harm?

Someone might object that we clearly do have obligations to future generations (eg, not to ruin the planet), and that *anteportum* harms are thus not in general to be ruled out *a priori*. I doubt that we do have such obligations. However, even if we do, the best analysis of such obligations is not in terms of our obligations to specific future persons, but rather, to ‘those who will come after us’. Similarly, I’m obligated to flush a public toilet because I know someone will want to use it after I’m gone. This is not an obligation to Tom Jones (or whomever), but rather to whomever happens to come in next. But the proposal we are considering is that we are obligated to Mrs White in particular.

Objection 2: The Stasis Problem

One defect even Aristotle finds in the thesis that the dead can be harmed, is that “it is absurd to conceive the dead man as sharing all vicissitudes [with the living], and as becoming happy one moment and wretched the next.” (*Nicomachean Ethics*, I.x.) P-F has the opposite difficulty – a timeless, unchanging one: whatever happens to my interests *postmortem* was *always* going to happen. But this is also true *premortem*. That is, as hinted above, if we adopt the timeless analysis of harms, we have to say that all the events of one’s life (and all the events before and after it) were always going to happen.

If Mrs White can be harmed by the fact that her laundry will fail after her death in 2020, she can even more clearly be harmed by the fact that she will be paralyzed in a gardening accident in 2015. But notice that the timeless view exploited by P-F must say that she is no better or worse off before or after her accident, in terms of her interests at least. For it was *always* true that she was going to be paralyzed; and hence her life, right from the start, was just as interest-impoverished at birth as it is in 2015. From an early age, we can assume, she has had an interest in moving about bipedally, and it was always true that this interest was going to be thwarted in 2015. So the child Mrs White is harmed by future events, even though she doesn’t know about them.

This doesn’t require backwards causation; but it does seem to require an implausible kind of timeless stasis of well-being. Suppose that Mrs White has an identical twin, Mrs Black. At birth in 1960 they are equally healthy children; but one suffers harm at the hands of a future gardening accident and the other does not. So, despite their qualitative identity, and their identity of condition, one is substantially worse off in 1960 – indeed, is harmed – and the other is not. This strikes me as a *reductio ad absurdum* argument against the idea of retroactive future harms, rather than a bullet that can be bitten by P-F then spat out.

The next objections develop a single theme:

Objection 3: The Expiration Problem

Suppose I am the best customer at White’s Laundry. I know nothing about Mrs White, her lifelong laundromat dreams, or her family. After her death, a competitor opens up, closer to my house. I start patronizing their establishment instead. Partly as a result of this, White’s Laundry goes under. I have now harmed poor late Mrs White. Does this seem plausible?

More generally, how long do Mrs White’s interests remain morally relevant after her death? Feinberg compares her *interests* to her *estate*, which can have outstanding debts or claims (*Metaphysics of Death*, p.176). But there’s a procedure for closing out the estate, and there’s no procedure for ‘closing out’ Mrs White’s interests. She can

apparently torment us from beyond the grave with nearly never-ending demands that she not be harmed and her interests be respected.

One plausible solution would be to say that the moral estate is closed when the interests concerned are no longer satisfiable. After the Sun becomes a red giant in four billion years' time, having a washeteria on 14th Street is no longer going to be an option.

This still seems too permissive. Moreover, consider that many of our interests do not have a built-in expiration date; for example, an interest in promoting human rights or the welfare of non-human animals. When is it OK to stop worrying about what Mrs White wanted? P-F has no answer, and can give none.

Objection 4: The Crowding Problem

Consider the sheer number of the dead. If all their interests are morally relevant, I am a much worse person than I thought. I can't even decide where to do my laundry without harming at least some of the ex-laundromat owners.

If P-F were to produce an answer to the expiration problem in Objection 3, we might only have to worry about the recently dead. Even these are fairly numerous. It would be impossible to navigate through the world without thwarting some of their interests with every significant action. So much the worse for us, some might reply. But now we seem to have generated a moral theory that is far too demanding. I don't know whether *ought* implies *can*, but I suspect it does in most cases. P-F generates too many 'oughts' with too few 'cans,' if only in virtue of my ignorance of the wishes of the recently-enough deceased.

Jeremy Wisnewski is the only defender of duties to the dead I've found who takes this problem head-on. As he puts the objection in 'What We Owe The Dead' in *Journal of Applied Philosophy*, 26, 1, 2009: "Obligations to the dead seem to be far-reaching indeed. The dead have set many ends, and there are many dead. Centuries of obligation seem to fall upon the shoulders of the living: from a grandmother's wish to be remembered on her birthday to the desire of an ancient Greek to have his works read throughout history. There are perhaps as many obligations as there are persons who have set foot upon the earth." Wisnewski says that we can blunt the force of this worry by noting that obligations lose their hold on us when their objects become unattainable (as in my red giant example), and when they require us to do morally impermissible acts. But even Wisnewski concedes that these limitations will not cancel even most of the obligations generated by millennia of demanding dead people. He then claims that these obligations "must be examined on a case by case basis" (p.66). That seems to make the obligation problem worse, not better.

The *Reductio* Argument For Duties To The Dead

Rather than offering a positive account of how duties to the dead are possible, Wisnewski argues that those who deny that there are such duties are committed to an untenable view. This type of approach is called a *reductio ad absurdum* argument, in which an absurd conclusion demolishes an argument's premisses.

Wisnewski's *reductio* runs thus: Suppose Susie promises Jane that she will read a poem at Jane's funeral. Like all promises, this creates an obligation. Moreover, it's a promise to a living person, even though the satisfaction conditions of the promise (ie, what it would take to live up to the promise) necessarily include the death of Jane. Susie, it seems, in virtue of promising the now-living Jane, is obligated to read the poem at Jane's funeral, if this turns out to be possible. But if there are no duties to the dead, Wisnewski argues, then despite her promise, Susie has no such obligation. She can comfortably sleep in on the morning of the funeral, secure in her knowledge that Jane is dead and hence cannot be harmed by her failure to read the poem.

Some of the many possible replies which Wisnewski discusses involve technical considerations about the nature of obligation into which I'd prefer not to trespass. The most straightforward response is to bite the bullet and say,

of course, Susie is not obligated to read the poem. This is my view. For Wisnewski this is deeply counterintuitive, and hence not a good reply. But does it run so counter to our moral intuitions?

Let me suggest a parallel case. Suppose Ahmed is going away for the summer and has an interest in having his lawn mowed. I promise to mow it for him while he's away. Now, my promise is not to mow the lawn of whatever property Ahmed happens to be renting. Ahmed will be in Hawaii, and I haven't undertaken to fly there to do his yard work for him. Instead, my promise is: 'I will mow the lawn at 32 Cherry Drive this summer.' Now, suppose Ahmed sells the house in June. Am I obliged to continue with the mowing? Intuitively the answer is no. Ahmed no longer has the interest he once did in having the lawn at 32 Cherry Drive taken care of. Similarly, Jane, being quite dead, no longer has an interest in anything at all, and in particular not in what's read at her funeral. The absence of an interest cancels the obligation, in just the same way that Ahmed's selling his house cancels my obligation to mow the lawn.

I am not suggesting that it wouldn't be 'nice' in some sense for Susie to read the poem. Reading it indicates an attitude toward Jane that we find laudable. Similarly, not reading it indicates an attitude of dismissal of who Jane used to be. But to think that in sleeping in Susie *harms* Jane is to engage in magical thinking.

Matters become complicated if we imagine Susie promising to take care of Jane's children if Jane should die. When Jane dies, can Susie then turn the children over to the state?

This situation is quite different. In this case, Jane's children are themselves moral agents. This alone generates some duty on Susie's part, promise or no promise, to see to their well-being, if she is well positioned to do so. Even if Susie were not bound by her promise to Jane, she *is* bound to see to their well-being by her connection to the children and her knowledge of their situation. These obligations only go so far, and the precise extent of Susie's obligations depend on the details of the case. But this shows that my view on the limitations of our obligations is not without resources when it comes to accommodating our intuitions about what Susie should do in this situation.

Conclusion

My claims might seem distressing, insofar as they indicate what we might call the 'moral erasure' of the person and her interests and projects after death. The dead are not moral beings, and they cannot ground duties. There is a bright side: we are insulated from harms once we die. The only drawback is that we're not around to enjoy it.

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