

# ***Erasure of the Past: How Failure to Remember Can Be a Morally Blameworthy Act***

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Wojtaseiwicz (2006) argues that procedurally fair policy efforts to avoid providing “futile” end-of-life treatment nonetheless may unjustly place the disparate burdens of such policies on those who have historically borne the burdens of injustice. I do not contest Wojtaseiwicz’s reasoning. However, I wish to investigate whether anything else morally blameworthy is occurring in this scenario. To that end, let us bracket the matters of whether it is unjust or simply unfortunate that the burdens of these policies have a disparate impact (Lindsay 2006) and whether failure to account for history leads to injustice. I contend that when moral agents fail to properly remember past injustices, they erase those past injustices. Such erasures of the past can themselves be morally blameworthy *irrespective* of whether they result in acts which are (rightly or wrongly) perceived as morally blameworthy.

Two points must be made in support of the contention that erasures of past injustices by failure to remember can be morally blameworthy acts. We must see why voluntary erasure of past injustice may be morally blameworthy. We also must see that failure to remember *can be* a voluntary act because involuntary acts are not traditionally held to be morally blameworthy or praiseworthy.

Let us first consider how voluntary erasure of past injustice can be morally blameworthy. Margalit (2002) argues that we have a duty to remember important events. He illustrates this with the example of a commanding officer (CO) who had forgotten the name of a soldier killed under his command in a friendly fire incident, a soldier he was obligated to protect from such incidents. Asking the soldier’s name stands in for asking whether the soldier himself is remembered. Margalit suggests that if the CO had been able to recall some definite description of the soldier, he would have done just as well. But he had forgotten it all. He remembered only the event of a soldier’s death in the friendly fire incident (Margalit 2002, 18–20). Margalit makes this a case of the obligation to remember because remembering itself is an obligation. The case of the soldier illustrates that there are two potential losses at a person’s death: the life and the memory of the life. To lose both is to erase the person from ever having existed. Yet the CO does remember the wrong that was done: that some individual who was a member of a certain group (soldiers under his command) died in a friendly fire incident. I contend that if the CO had not remembered the friendly fire incident, yet a third loss would have occurred: not just the life and

the memory of the life, but the memory of the relationship between the CO and this individual and the violation of the trust between them that ultimately shaped the final structure of that relationship.

The connection between the friendly fire incident and injustices may be opaque, but in both cases something is lost in the occurrence and in the failure to remember. At the time an injustice is committed, justice itself is lost, but also belief in ideals of justice, and the “good life” that might have been had by the victims of injustice. But it is yet another loss if we fail to remember the injustice,<sup>1</sup> for we then also lose our grasp on the nature of the actual ethical relations between persons, namely one tainted by the losses already incurred. As Margalit (2002, 8) notes, ethics and morality are about the relations between persons. To distort these relations from their actual nature without any good reason for doing so is to commit a wrong. This is what would have happened had the CO forgotten the friendly fire incident altogether, and this is the character of forgetting most past injustices. Such erasures of the past lead us to believe that our relations with each other are other than they are—they give us false beliefs and false relations. Whereas such false beliefs and relations may impair our ability to conduct right action, the creation of these beliefs and relations through voluntary faulty remembering can itself be a wrong action because of the damage they do to the ethical fabric of human interaction. Indeed, we might borrow Wojtaseiwicz’s (2006) phrasing and say that we have compounded the damage from a past injustice by erasing it from memory.

But is this erasure voluntary? Recall that it must be voluntary if we are to hold moral agents morally blameworthy for erasure of the past. Situations do seem to exist in which ensure is not voluntary, at least not in all cases for all parties—consider the notorious manufacturing of history by Soviet ministers of education and the concomitant punishment of dissenters, the accidental destruction of archives that alone record past events, or the classic example of amnesia. On the part of some agents, these are involuntary instances of failing to remember. However, in the context that concerns us, where professional organizations

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1. Nussbaum (2000) has placed injustice in the context of what is commonly called the *capability approach*: justice demands that we perform those actions which allow people to exert those human capabilities which make a fully human “good life” possible, and injustice occurs when we prevent the exertion of those capabilities.

and healthcare institutions strive to use fair process to formulate end-of-life policies, failing to remember is a wholly voluntary act: no agency strives to prevent us from accessing the past; no accident has destroyed our ability to do so. Communities have the power to set out to accurately describe the past and present relations between their members, to deliberately seek out pertinent information. South Africa's Truth and Reconciliation Commission (Cape Town, South Africa) has illustrated this most profoundly. In the bioethical context, the canonical nature of discourse about the Tuskegee syphilis studies also illustrates this. Thus, to fail to seek and attend to information necessary for accurately understanding ethical relations is a voluntary act. That professional organizations and healthcare institutions do or do not set out to recall and attend to relevant past injustices is therefore a choice for which they can be held morally blameworthy.

Can we say that fair process is itself an attempt to take just such account? One might be tempted to think so based on the description of the procedure as offering "all involved parties the opportunity to present and discuss their respective positions" (Wojtasiewicz 2006, 8). One might charitably interpret this as including interpretations of relations between involved parties, past and present. Alas, I do not think such charity deserved, for the "fair process for considering futility cases" as defined by the American Medical Association (Chicago, IL) Council on Ethical and Judicial Affairs seeks only to give fair hearing to "discrepancies between values and goals" of "involved parties" (AMA 1999). The council's report also makes it clear that fair process is intended for use in individual cases for which there appears to be irresolvable agreement about care that has been judged by someone to be futile or not futile with respect to the actual hospital policy. It is not intended for use in formation of hospital policies on futility but for implementation thereof (AMA 1999, 940). More to my point, the steps involved indicate that fair process does not consider background information that would help construct an accurate picture of past and current relations between involved parties. The steps of fair process, should disagreement continue after each step, are to: 1) consider prior deliberation of values; 2) engage in joint decision making using outcomes data and value judgments; 3) involve consultant(s); 4) involve the ethics committee; 5) attempt to transfer care within the institution; 6) transfer to another institution; and finally 7) to cease futile intervention despite the protests of the party who wishes to continue. It is indeed critical to con-

sider values and goals and data and to seek the informed opinions of consultants and ethics committees. Yet, none of these are necessarily acts of remembering. The procedure of fair process itself thus ignores the importance of past events, injustices or otherwise. Fair process may be a fair process, but fairness is not the only component of ethics. It is entirely possible to abide by fair process—indeed to be entirely fair—and still commit a morally blameworthy act of erasing the past. Institutions and organizations thus have obligations to augment the "fair process for considering futility cases" with relevant considerations, including deliberate attempts to remember events which, if forgotten, might skew relations between involved parties.

I have argued that whether or not the policies Wojtasiewicz (2006) describes result in injustice because their burdens fall on those whom the past reveals to already have been overburdened, something else is awry when we fail to remember and attend to the past: the failure, itself. I do not mean to suggest that every healthcare organization needs its own sweepingly comprehensive truth and reconciliation commission. I simply mean to suggest that backgrounding decisions against an inaccurate picture of relations between involved parties can do morally blameworthy damage to the involved parties and their relations. With rare exception, we are obligated to be honest about how we are with each other; part of that obligation is remembering how we have been with each other. ■

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