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Course: CCHU9009 Moral Controversies in Contemporary Societies

# We Do Not Wrong the Dead by Disrespecting Their Wishes

In this essay, I will argue that we do not wrong the dead by disrespecting their wishes. I will first clarify the notion of wronging, and show that death removes the very subject of dignity, interests and rights. I will then take a step back and consider the notion of unaffected harm and demonstrate why it fails. Finally, I conclude that our duties regarding the dead arise not from themselves but from the moral practices that structure our community.

Let's begin by clarifying what it is to *wrong* someone. In ordinary usage, to say that A wrongs B is to say that A treats B in an undeserved way. Philosophers build on this basic intuition, but further differ in how they understand the nature of such treatment. On a Kantian view, B is wronged when A treats her as mere means rather than as an end, thereby failing to respect her dignity. For legal philosophers, wronging is closely related to the notion of harm: "To say that A has harmed B in this sense is to say much the same thing as that A has wronged B," and such harm involves the violation of rights or interests (Feinberg, 1977, pp. 34).

However, I would argue that none of these accounts can plausibly apply to the dead. As Epicurus famously put, “When we are, death is not come; when death is come, we are not” (Epicurus, c. 300 BCE, para. 3). It is simply impossible to wrong someone if they no longer exist. Kant regards a person, understood as “the subject of morally practical reason”, possesses a dignity and demands respect from all other beings (Kant, 1797/1996, 6: pp. 434-435). This conception of dignity cannot extend beyond death, for a dead person isn’t capable of exercising the morally practical reason. She cannot deliberate, legislate, or act, and therefore can no longer be regarded as a dignity-bearing subject.

The same problem happens in Feinberg’s theories. He introduces the notion of *posthumous harm* in “Harm and Self-Interest”, arguing that certain interests can “survive” death, and that events occurring after a person’s death may still damage those interests (Feinberg, 1977, pp. 308). However, as Partridge points out, within Feinberg’s own framework, the existence of such posthumous harm is “ultimately paradoxical” (Partridge, 1981, pp. 244). In Feinberg’s other papers, he develops a progressive line of arguments concerning who can count as a member of the moral community, that is, who is capable of holding rights and interests. “Without awareness, expectation, belief, desire, aim and purpose, a being can have no interests; without interests, he cannot be benefited; without the capacity to be a beneficiary, he can have no rights” (Feinberg, 1974, pp. 61). The dead, lacking all these psychological capacities, therefore having neither

interests that could be harmed nor rights that could be infringed, and cannot be wronged.<sup>1</sup>

I have shown that the most serious inconsistency within claims that support the dead can be wronged is the non-existence problem: death removes the very subject whose dignity could be disrespected or whose interests could be harmed. Without such a subject, wronging is conceptually impossible. Nevertheless, let me set this problem aside for the sake of argument. Suppose, contrary to the non-existence view, that the dead could in some sense retain their membership in the moral community. What would it then mean to wrong them by disrespecting their wishes? Several arguments have been offered by the defenders of posthumous harm, and I find them convincing enough to warrant careful examination.

A very intuitive way to understand posthumous harm comes from Aristotle. “Both evil and good are thought to exist for a dead man”, he writes, “as much as for one who is alive but not aware of them” (Aristotle, c. 350 BCE, 1.10). Feinberg builds on this idea and argues that posthumous harm is analogous to the kind of harm a living person suffers without ever becoming aware of it - what Partridge later terms “unafflicting harm” (Partridge, 1981, pp. 246). Imagine a person wishes to maintain a good reputation, but someone defames her in a way that neither she is able to find out, nor she is affected by the rumor. If we admit

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<sup>1</sup> One may argue that one’s expectation, aim or purpose could survive her death. For example Alfred Nobel’s aim for world peace and his Nobel Peace Prize. Due to the word limit, I’m not able to discuss this view, but you could read Partridge’s analysis on *The Argument from Detachable Interests* and *The Argument That Life is Relational* (Partridge, 1981, pp. 246-249).

that this unknown defamation is a kind of harm, then we must also concede that a dead person can suffer the same type of harm. I find this argument particularly challenging because conventional moral values require that we should not speak ill of someone behind their back, even if they are unaware and unaffected.

Partridge, however, rejects the whole notion of unaffected harm, and argues that both unknown defamation of the living and defamation of the dead are not counted as harm (Partridge, 1981, pp. 251-253). His central point is that the very idea of “unaffected harm” relies on an unrealistically abstract thought experiment. We must assume that the victim never learns of the defamation and that it has absolutely no impact at all - no altered opportunities, no changed relationships, no emotional disturbance, not even the slightest indirect consequence. If we are reminded of these strict conditions, he argues, the intuitive sense of harm that Feinberg appeals to begins to dissolve; what remains is not a genuine harm to the victim, but rather our own “psychological leakage” as independent spectators. We know she is wronged, and we imagine that if such a thing were done to us, we would suffer for it. But if we take the point of view of the victim, nothing in her life is made worse off. Therefore, Partridge concludes we cannot say that she has been harmed, and thus unaffected harm doesn’t exist.

To deny that the dead can be wronged is admittedly a big bullet to bite. Conventional moral values strongly suggest that disrespecting a person’s final wishes is objectionable, and it is tempting to explain this by saying that the dead themselves are wronged. My previous discussion reveals that this cannot be right,

yet it does not follow that ignoring a dead person's wishes is morally innocuous. I believe the wrong falls not on the dead but on the living members of the moral community. Consider the case of my favourite writer, Franz Kafka: his last request was that everything he had ever written be burned unread; yet his best friend, Max Brod, famously refused to honour.<sup>2</sup> Brod's decision is widely upheld because it aligned with the values of their friendship and his deep belief in Kafka's literary genius. Therefore, what grounds our reasons to respect the wishes of those who are no longer with us is not their supposed "interests", but the integrity of the moral practices that bind us, the living, as a community.

(Word Count: 1068)

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<sup>2</sup> Brod ended up saving all of Kafka's unfinished works - including *The Trial*, *The Castle*, *Amerika* - along with countless shorter pieces, diaries, and letters. Had he burned them as instructed, modern literature would have lost some of its most iconic texts!

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